

AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, August 3, 2012 AT 3:00 P.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
CITY COUNCIL CHAMBERS ROOM 112
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)

2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

Individuals from the audience will be given a total of 5 minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record.

3. Approval of the minutes from the JPA meeting held July 20, 2012 (Chair Beutler)

➤ (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. WH 12-48 Resolution to approve the Special Purchase Contract Agreement between the West Haymarket Joint Public Agency and General Excavating Company regarding Haymarket Infrastructure Improvements, City Conduit System, pursuant to Quote No. 4099 for Project No. 870951. (Chris Connolly)

➤ Public Comment

➤ (Staff recommendation is for the JPA Board to approve the resolution)

5. Set Next Meeting Date: Friday, August 17, 2012 at 3:00 p.m. in City Council Chambers Room 112

6. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
July 20, 2012

Meeting Began At: 1:00 P.M.

Meeting Ended At: 1:30 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

Item 1 -- Introductions and Notice of Open Meetings Law Posted by Door

Chair Beutler opened the meeting with introductions of the Board members. He advised that the open meetings law posted at the back of the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

Chair Beutler welcomed public comment. He stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 3 -- Approval of the minutes from the JPA meeting held July 6, 2012

Beutler asked if there were any corrections or changes to the minutes of the July 6, 2012 meeting. Being none, Carroll moved approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 -- West Haymarket Updated Fly Through Video

Paula Yancey, PC Sports, explained that the project teams have been working on updating the Fly Through Video now that there is additional information on final designs and concepts for various district buildings. The video was originally prepared pre-bond election. The updated video by DLR Group will be used for sales, booking of events, future development opportunities, and for the general public's information. This will give everyone a great feel of what the district will look like a year from now. The video will be posted on the Haymarket Now website so everyone will have access.

Yancey turned over the presentation to Stan Meredith of DLR Group. Meredith stated that DLR had hired a number of interns from UNL through this project, which is good for UNL and the City of Lincoln. He introduced Heather Hudson originally hired as an intern from UNL. She has done such a good job that she has been hired as a full-time intern architect. Heather has been heavily involved in the production of the updated Fly Through Video. The updated video was presented. Some things may develop or change, but DLR has done a great job of rendering this as accurately as possible. The Board shared their appreciation for the video.

Jane Kinsey questioned how far the walk would be from parking to the arena. Beutler listed numerous selections -- there is a parking lot attached to the arena, one across the street from the arena, another one will be across from that parking lot, there is a parking lot to the east, and there is a beautiful bridge that pedestrians could walk across and park on the north side of the railroad tracks.

Kinsey inquired as to walking distance now compared to the six blocks discussed when the campaign was running, and what the furthest away someone would have to park and walk. Yancey explained it depends on where people want to park. Some may find it more desirable to park in their office space downtown if more in line with their needs. However, there are several parking garages, parking lots, temporary lots, and on-street parking throughout the district – plus the festival space. Therefore, there is plenty of parking in a very short distance. Meredith added that one of the standards in the industry for an arena design is that parking stalls and counts are calculated based on how far someone would walk in 10 minutes. That may be a quarter to a half a mile. The City of Lincoln has been very sensitive in using tax dollars. One of the concepts for parking on this arena is that the City will use existing parking garages in the central business district to augment parking for the arena. Lincoln’s parking plan is very sophisticated compared with other cities that go out further and build large parking lots that really are not sustainable. The City has done a great job of providing parking within a 10-minute walk.

Kinsey continued by asking about parking fees and parking for disabled persons. Dan Marvin stated that what was modeled before the vote was in the neighborhood of 4,500 stalls north and south of the arena within the 10-minute distance. The cost modeled before the vote was in the range of \$3 to \$5 per stall. That might depend on location, as well as size and demand for an event. They are working on a proforma with a parking consultant and those numbers should be back in August. The announcement on fees, which will be public, would be made by the end of the year or beginning of next year. The public will have the opportunity to prepay for specific events so they will know the cost upfront. Any parking plan will meet the American with Disabilities Act (ADA) requirements. The plan, which will include handicap stalls and drop-off lanes, has been shown to several groups for review. They are working through those issues.

Clare posed if it was fair to say that one of the biggest complaints at the Devaney Center is the distance people have to walk. Marvin acknowledged that within the same radius they were capturing 4,500 stalls here compared to Devaney only having 2,000 stalls. The walking distance here would be considerably less than at Devaney.

Item 5 -- Approval of Payment Registers

Steve Hubka, City Finance, presented the payment registers for the month of June for \$6,384,524. Those \$6.4 million will help the concepts shown in the video become a reality.

Clare asked for clarification on the City-reimbursed salary benefits of \$80,000 and the artist stipends. Hubka explained the salary payment is a quarterly payment to reimburse City staff working on this project. Regarding the artist stipends, Yancey explained that the West Haymarket Public Art Committee -- when narrowing down the selection of artists to provide art within the arena lobby, arena plaza, and other significant potential public art areas -- offered a stipend to each artist creating a proposal. If not selected, this compensated the artists for their time to develop their concepts.

Clare asked if the \$6+ million was consistent with the budget and if all the proper signatures and documentation were being obtained from an audit prospective. Hubka confirmed that was the case.

There was no public comment. Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 6 -- Review of the June 2012 Expenditure Reports

Hubka presented the job cost report for the capital budget. Also, included is an operating budget report for the month of June.

Beutler asked for public comments. No one came forward.

Item 7 -- WH 12-43 Resolution to approve a model Pinnacle Bank Arena Club Seat Use Agreement for private use agreements between the West Haymarket Joint Public Agency and the Club Seat User and authorizing the Chair to execute said Club Seat Agreements on behalf of the JPA

Ben Wrigley, Legends Sales & Marketing, came forward to introduce this item in place of Jeff Kirkpatrick. Presented is a resolution for approval of the Club Seat Use Agreement. This is for the sale of approximately 800 club seats in the facility. Although stated in the resolution; there is, in fact, no need for counter execution by the Chair to approve these agreements for the JPA. The user will sign the agreement and that signature will be sufficient to bind them to the terms and conditions.

Beutler invited public comment. Hearing none, Clare moved approval of the resolution. Carroll seconded the motion. Motion carried 3-0.

Item 8 -- WH 12-44 Resolution to approve Change Order No. 1 to the Contract Agreement between Terracon Consultants Inc. and the West Haymarket Joint Public Agency for West Haymarket Arena and Garage Special Inspections to add additional required steel shop inspections and testing of added structural masonry

Yancey stated this item would be deferred to the August 17 JPA Board Meeting to allow for correction of a typographical error in the contract amount prior to review and approval.

Item 9 -- WH 12-45 Resolution to approve the Amended and Restated Agreement between Hausmann/Dunn, a joint venture, and the West Haymarket Joint Public Agency to provide construction manager at risk preconstruction and construction phase services for the Precast Parking Deck No. 1

Yancey introduced this item for the approval of the Hausmann and J. E. Dunn construction manager at risk agreement for Parking Deck No. 1 construction. The preconstruction agreement was originally executed on February 28 as part of Resolution WH00297. This agreement will extend the services of Hausmann/Dunn and cover the total services required for the construction of the parking deck. This is for the contract form and the next resolution will be for the actual amended guaranteed maximum price (GMP).

There was no public comment. Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 -- WH 12-46 Resolution to approve the Guaranteed Maximum Price Amendment to the Amended and Restated Agreement between Hausmann/Dunn and the West Haymarket Joint Public Agency to establish \$12,982,048 as the amount the Contract Sum shall not exceed for the Precast Parking Deck No. 1

Yancey explained this is the guaranteed maximum price (GMP) as a result of various bids and estimates to set a guaranteed maximum price for the construction of the garage. The GMP is for \$12,982,048 and includes all the construction necessary. This is within the budget for Parking Deck No. 1.

Clare commented that this facility originally was to have three elevators, but now a fourth elevator could be added at a cost below the budgeted amount. So, we are enhancing the project and still staying within budget. Yancey verified that was correct.

Jane Kinsey asked for clarification on what comprises Deck No. 1 and asked about the attached garage. Yancey relayed that this is the parking deck directly south of the arena on 'R' and Pinnacle Drive. It is a 940-stall garage. Mortenson has the attached garage in their contract and they are working on it currently. Responding to Clare, Yancey stated the completion of this garage would be at the same time as the arena.

Being no further public comment, Clare made a motion to approve Resolution WH 12-46. Carroll seconded the motion. Motion carried 3-0.

Item 11 -- WH 12-47 Resolution to approve the Contract Agreement between Baring Industries Inc. and the West Haymarket Joint Public Agency to provide Broker/Bundler Food Service Equipment for the Pinnacle Bank Arena

Yancey presented this contract agreement to approve Baring Industries, Inc. as the food service equipment provider for the Pinnacle Bank Arena. Not only will they provide the equipment, but they will also deliver and install the equipment. This scope of work was bid through City Purchasing using the E-Bid System. Baring Industries was the lowest, most responsive bidder with the most complete bid. The amount of the bid is \$2,919,018 funded in the arena's furniture, fixtures and equipment budget. PC Sports and SMG both recommend the contract for approval. Baring Industries, Inc. representative, Chuck Sperry, commented that they look forward to being part of this magnificent project and completing the contract.

Jane Kinsey asked if this was a local company; and, if not, how it would work to get food here. Yancey replied that this company is out of Florida. She reiterated that this is for equipment (such as freezers, refrigerators, hot dog rollers, stoves, sinks) installed inside the arena. Once equipment delivery takes place, the company will be out of the picture. The company does not provide food.

There was no further public comment. Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 12 – Set Next Meeting Date

The next regular meeting date is Friday, August 3, 2012 at 3:00 p.m. in City Council Chambers Room 112.

Item 13 -- Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 1:30 P.M.

Prepared by: Pam Gadeken, Public Works and Utilities

RESOLUTION NO. WH- _____

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public

2 Agency:

3 That the Special Purchase Contract Agreement between the West Haymarket Joint Public
4 Agency and General Excavating Company regarding Haymarket Infrastructure Improvements,
5 City Conduit System, pursuant to Quote No. 4099 for Project No. 870951, is hereby approved
6 and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is
7 hereby authorized to execute said Contract Agreement on behalf of the West Haymarket Joint
8 Public Agency.

9 The City Clerk is directed to return a copy of this Resolution and the Contract Agreement
10 to Chris Connolly, Assistant City Attorney for transmittal to General Excavating Company.

11 Adopted this _____ day of _____, 2012.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
QUOTE NO. 4099

CONTRACT AGREEMENT

(Involving Work on BNSF Property)

THIS JPA CONTRACT AGREEMENT (“Contract”) is made and entered into this _____ day of _____, 2012, by and between **GENERAL EXCAVATING COMPANY**, a Nebraska corporation, hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

RECITALS

WHEREAS, JPA has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published a Request for Quotes advertisement for and in connection with said Work, to wit:

West Haymarket JPA – City Conduit System, Project No. 870951
Quote 4099

WHEREAS, pursuant to Neb. Rev. Stat. § 23-3109, JPA sought and received terms for a special purchase to perform the work described herein.

WHEREAS, the Contractor, in response to a Request for a Quote as a Special Purchase, has submitted to the JPA, in the manner and at the time specified, a sealed Quote in accordance with the terms of said request.

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed other Quotes submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest and best bidder for the said Work for the sum or sums named in the Contractor’s Quote. Copies of the bid documents and the Contractor’s Quote are attached hereto as Exhibit A.

WHEREAS, since construction of the Work will be carried out on BNSF Property or within 50 feet of BNSF Property, the Work must be performed in accordance with (i) the terms and conditions of the Right of Entry issued by BNSF and amendments thereto, if any (“License”) to perform the Work for the JPA and (ii) the terms and conditions of the Construction and Maintenance Agreement (“C&M Agreement”) between BNSF and the City of Lincoln as assigned to the JPA. The License and C&M Agreement are attached hereto as Exhibit B and Exhibit C, respectively.

WHEREAS, Contractor understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Work and therefore this Contract is subject to the Davis-Bacon Act; and that the Contractor is required to comply with the Contract clauses in 29 C.F.R. §5.5(a) which are made part of this Contract.

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Heavy Construction General Wage Decisions for Lancaster County, Nebraska] ("NE57 Wage Decision").

WHEREAS, Contractor understands and acknowledges that if the NE120057 Wage Decision is modified or superseded by another Building Construction, Highway Construction, and/or Heavy Construction General Wage Decision for Lancaster County, Nebraska in effect (i.e., published on the Wage Determinations On-Line (WDOL) website: www.wdol.gov) on the date of contract award ("New Wage Decision"), the Contractor shall pay prevailing wages in accordance with the New Wage Decision.

WHEREAS, the applicable NE120057 Wage Decision or the New Wage Decision is hereinafter referred to as the "Effective Wage Decision."

WHEREAS, Contractor understands and acknowledges that pursuant to the C&M Agreement, the provisions in Section 3.2.9 therein are required to be included in this Contract and that the JPA is further required to cause Contractor to comply with the City Contractor requirements in Section 3.3 and 3.4 of the C&M Agreement.

WHEREAS, the use of the term "City of Lincoln" in the License and the C&M Agreement shall be deemed to refer to the JPA.

WHEREAS, the use of the term "Contracting Officer" in 29 C.F.R. parts 1, 3 and 5 shall be deemed to refer to the JPA.

WHEREAS, Contractor possesses certain skills, experience, education and competency to perform the Work on behalf of the JPA and the JPA desires to engage Contractor for such services on the terms and conditions provided herein.

WHEREAS, Contractor is willing and able to perform the Work in accordance with this Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein and incorporating all of the above Recitals into this Contract as if fully set forth herein, the Contractor and JPA have agreed and hereby agree as follows:

PERFORMANCE OF WORK - The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and

form a permanent part of the complete Work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by JPA's official award of this Contract to the Contractor, such award being based on the acceptance by JPA of the Contractor's Proposal as set forth in Exhibit A.

BNSF CONTRACT REQUIREMENTS. Contractor agrees that the provisions in Section 3.2.9 of the C&M Agreement are made part of this Contract. Contractor agrees to comply with the requirements of Section 3.2.9 as well as the Contractor requirements in Sections 3.3 and 3.4 of the C&M Agreement. Contractor agrees that if work is being performed on or within 50 feet of BNSF Property, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Said Requirements and Contractor Right of Entry are attached to the Special Provisions in the Bid Documents attached hereto as Exhibit A. Contractor understands and agrees that prior to entering BNSF Property to perform the Work, the Contractor must:

(a) Obtain all required insurance, evidenced by certificates of insurance as required by the JPA, City Legal, BNSF, and any other required insurance.

(b) Submit signed C-1A agreement and all required insurance certificates to BNSF@certfocus.com and to PC Sports.

(c) Submit copies of signed C-1A agreement and all required insurance certificates to Michael Schaefer (BNSF):

Michael Schaefer
Michael.Schaefer2@BNSF.com
402-458-7379 (office)
402-304-1437 (cell)
402-458-7457 (fax)

(d) Complete the BNSF Contractor Safety Orientation at www.contractororientation.com. All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(e) Complete the e-RAILSAFE security orientation training program at www.erailsafe.com. All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(f) Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Michael Schaefer, along with a list of all personnel who have taken both programs. This includes employees of subcontractors employed by the Contractor.

(g) Receive the BNSF executed C-1A agreement from Michael Schaefer.

Contractor further agrees that prior to entering BNSF Property to perform the Work, Contractor shall complete the safety training program at the website *www.contractororientation.com* and the e-RAILSAFE as more particularly set forth in Section 3.3.4 of the C&M Agreement. Contractor further agrees that each and every employee of the Contractor shall possess a card certifying completion of the safety training program and the e-RAILSAFE security program prior to entering upon BNSF Property.

COMPENSATION - JPA agrees to pay to the Contractor for the performance of the Work embraced in this Contract, and the Contractor agrees to accept as full compensation therefore, the sums and prices for all Work covered by and included in the Contractor's Quote awarded by the JPA to the Contractor award, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

COMPLETION DATE - The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date.

INDEMNIFICATION - The following Indemnification provisions are in addition to and not in lieu of the Assumption of Liability and Indemnification provision in Article VI.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **INDEMNIFICATION OF JPA.**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR'S CONTRACTOR PARTIES IN, ON, OR ABOUT ANY RAILROAD'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WORK AREA;

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF ANY RAILROAD'S RIGHT-OF- WAY OR OTHER RAILROAD PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF ANY RAILROAD'S RIGHT-OF-WAY OR OTHER RAILROAD PROPERTY IN CONNECTION WITH PERFORMANCE OF THE WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WORK BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF JPA, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY JPA'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF JPA.

B. INDEMNIFICATION OF BNSF. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor's Right of Entry.

INSURANCE – The following insurance requirements are in lieu of the Insurance Requirements for all City Contracts found in Article X.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **JPA Insurance Requirements.** Contractor shall at all times during the term of this Agreement purchase and maintain in place insurance coverage as required by the Insurance Requirements for All West Haymarket Joint Public Agency Contracts included in the other Attached Contract Documents (Exhibit D).

B. **BNSF Insurance Requirements.** Contractor shall at all times during the term of this Contract purchase and maintain the Insurance requirements of BNSF found in the C&M Agreement and the Contractor’s Right of Entry.

C. **Special Insurance Requirements.** NONE.

Contractor agrees to provide all types of insurance required by either the JPA or BNSF. Contractor will furnish coverages against any and all perils required by either the JPA or BNSF. In the event Contractor discovers a discrepancy in coverage limits, Contractor will provide the larger amount satisfying both JPA and BNSF requirements.

DAVIS-BACON ACT – Contractor agrees to comply with the Davis-Bacon Act. Contractor further agrees to comply with contract clauses set forth in 29 C.F.R. §5.5(a) included in the Other Attached Contract Documents (Exhibit D) which provide in part that Contractor shall:

- On a weekly basis pay all laborers and mechanics not less than the federal prevailing wages listed in the wage determinations included in the contract;
- Submit weekly certified payroll records to the JPA; and
- Post the applicable Davis-Bacon wage determinations with the Davis Bacon poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by the Contractor’s workers.

Contractor further agrees to pay the prevailing wages set forth in the Effective Wage Decision. Said Effective Wage Decision is included in the Other Attached Contract Documents (Exhibit D). Contractor agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Contractor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

NEB. REV. STAT. § 77-1323 CERTIFIED STATEMENT – Contractor, pursuant to the requirements of Neb. Rev. Stat. § 77-1323, has executed the Certified Statement attached hereto as part of Exhibit D certifying that all equipment to be used in performance of the Work, except that acquired since the assessment date has been assessed for the current year. Contractor

understands and acknowledges that under Neb. Rev. Stat. §77-1324, any person, partnership, limited liability company, association, or corporation falsifying any statement required by Neb. Rev. Stat. § 77-1323 shall be guilty of a Class IV misdemeanor.

CONTRACT DOCUMENTS - The Contract Documents comprise the Contract, and consist of the following, whether or not attached hereto:

1. Bid Documents (Exhibit A).
2. License (Exhibit B).
3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).
 - a. Commentary to Accompany Construction Bonds.
 - b. Construction Performance Bond.
 - c. Construction Payment Bond.
 - d. Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012).
 - e. Executive Order. No. 83319.
 - f. Modified BNSF Insurance Certification Process (10-21-2011).
 - g. 29 C.F.R. § 5.5(a) Contract Provisions.
 - h. Effective Wage Decision.
 - i. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
5. Other Non-Attached Contract Documents.
 - a. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA's Change Order Process adopted by JPA Resolution No. WH00195.
 - b. Lincoln Standard Plans 2010.
 - c. Project Plans, Specifications, and Profile Detail Sheets.
 - d. Any executed Addenda or Change Orders.
 - e. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase).
 - i. Form of Nebraska Resale or Exempt Sales Certificate.
 - ii. Form of Purchasing Agent Appointment.

Note: Any portion of this project used for providing water service, such as pipe for water mains, are not tax exempt and are subject to sales and use tax.

Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use tax.
 - f. Requirements in 29 C.F.R. parts 1, 3 and 5.

This Contract, together with the other Contract Documents herein above mentioned, form this Contract and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and JPA hereby agree that all the terms and conditions of this Contract shall, by these presents, be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and JPA do hereby execute this Contract.

CONTRACTOR:

GENERAL EXCAVATING COMPANY

By: _____
Title: _____

JPA:

**WEST HAYMARKET JOINT PUBLIC
AGENCY**

By: _____
Chris Beutler, Chairperson of the West
Haymarket Joint Public Agency Board of
Representatives

EXHIBIT A
Bid Documents

Approved by Law
July 17, 2012

Item	Item Description	Unit	Quantity	Material Costs	Eq/labor Cost	Cost/unit	Total
24.01022	Rem Pull Box	each	2	0	\$560.00	\$560.00	\$1,120.00
24.03220	Conduit, 2" trenched	Lin. FT.	102	\$1.67	\$3.25	\$4.92	\$501.84
24.03140	Conduit, 4" bored	Lin. FT.	973			\$17.36	\$16,891.28
24.03240	Conduit, 4" trenched	Lin. FT.	18,528			\$4.67	\$86,525.76
24.04000	Locate stick	each	1	\$81.00	\$123.00	\$204.00	\$204.00
24.12100	Cable, Tracer wire	Lin. FT.	19,603	\$0.39	\$0.00	\$0.39	\$7,645.17
24.12812	Cable, 12 single mode fiber	Lin. FT.	252	\$5.11	\$6.23	\$11.35	\$2,860.20
50.00001	fiber vault (30"x48"x36")	each	18	\$1,983.33	\$560.00	\$2,543.33	\$45,779.94
50.00001	Install fiber vault (BNSF)	each	2	\$129.12	\$560.00	\$689.12	\$1,378.24
50.00001	Tunnel Wall Penetration	each	2	\$0.00	\$480.00	\$480.00	\$960.00
50.00001	Haymarket Parking Garage Building Entrance	each	1	\$0.00	\$4,631.00	\$4,631.00	\$4,631.00
Total							\$168,497.43

4" Bores							
24.03140	2-4" conduit bored	Lin. FT.	412	\$10.98	\$13.25	\$24.23	\$14,845.72
24.03140	1-4" conduit bored	Lin. FT.	149	\$5.67	\$7.50	\$13.17	\$2,046.61
Total							\$16,892.33
24.03140	Conduit, 4" bored	Lin. FT.	973			\$17.36	\$16,892.33

Conduit 4" trenched							
	Conduit, 2-4" trenched	Lin. FT.	7978	\$4.78	\$4.25	\$9.03	\$72,041.34
	Conduit, 4-4" trenched	Lin. FT.	10	\$9.56	\$8.00	\$17.56	\$175.60
	Conduit, 1-4" trenched	Lin. FT.	2532	\$2.39	\$3.25	\$5.64	\$14,280.48
Total							\$86,497.42
24.03240	Conduit, 4" trenched	Lin. FT.	18,528			\$4.67	\$86,497.42

item #	Description	Unit prices	unit
1	Two inch schedule 40 PVC	\$1.75	ft.
2	Four inch schedule 40 PVC	\$2.51	ft.
3	Four inch PVC sweeps	\$33.89	ea.
4	Four inch HDPE	\$5.66	ft.
5	Couplers 4" PVC - HDPE	\$22.05	ea.
6	Handholes per city spec	\$1,946.92	ea.
7	Tracer wire	\$0.41	ft.
8	12 strand fiber	\$1,353.24	ea.
9	Labor	\$43.05	hr.
10	Backhoe	\$57.75	hr.
11	Backhoe w/tamping device	\$60.90	hr.
12	Backhoe w/breaker	\$60.90	hr.
13	Haul off concrete	\$73.50	hr.
14	8" trench/tamp nominal depth 4'	\$2.36	ft.
15	24" trench/tamp nominal depth 4'	\$4.20	ft.
16	30" trench/tamp nominal depth 4'	\$5.20	ft.
17	Directional Bore 4" HDPE	\$7.88	ft.
18	Directional Bore 2-4" HDPE	\$13.91	ft.
19	Concrete Sawing	\$10.50	ft.
20	Install 2"- 6" PVC in trench	\$1.05	ft.



SPECIAL PROVISIONS

WEST HAYMARKET JOINT PUBLIC AGENCY (2012)

HAYMARKET INFRASTRUCTURE IMPROVEMENTS

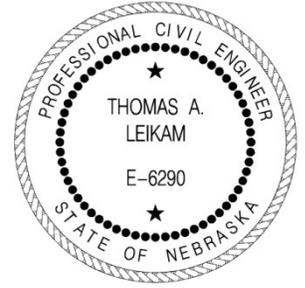
CITY CONDUIT SYSTEM

PROJECT No. 870951

QUOTE No. 4099

JULY 2012

**SPECIAL PROVISIONS
WEST HAYMARKET JOINT PUBLIC AGENCY (2012)
HAYMARKET INFRASTRUCTURE IMPROVEMENTS
CITY CONDUIT SYSTEM
PROJECT NO. 870951**



GENERAL CONTRACT REQUIREMENTS

The work as detailed on the plans shall be completed in accordance with the requirements outlined in the 2011 City of Lincoln Standard Specifications for Municipal Construction, the Special Provisions, the project plans, the 2011 City of Lincoln Standard Plans and all other supplementary documents attached to the bid documents and which are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project.

The Contractor shall not take advantage of any apparent error, discrepancy or omission in the plan, specifications or geotechnical reports. Upon discovery of such an error, discrepancy or omission, the Contractor shall notify the Engineer immediately. The Engineer will then make such corrections or interpretations as necessary to fulfill the intent of the plans and specifications.

Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.

Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Engineer and the Engineer's decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work

Any reference the City, or OWNER, in the City of Lincoln Standard Specifications for Municipal Construction shall be considered reference to the West Haymarket Joint Public Agency (JPA), its employees, or representatives hired by the JPA as a consultant for construction project management, observation or testing services. The JPA's address is 555 South 10th Street, Lincoln, Nebraska 68508.

JPA: JPA shall mean the West Haymarket Joint Public Agency, a joint administrative entity under the Interlocal Cooperation Act, comprised of the City of Lincoln and the University of Nebraska – Lincoln for the purpose of implementing and overseeing the operation of the West Haymarket arena and infrastructure improvement projects.

BONDING PERIOD

The City of Lincoln Standard Specifications, General Provisions and Requirements have been amended as follows:

- A. Award and Execution of Contract.
- B. Construction Performance and Construction Payment Bonds and Execution of Contract.

Within **five (5) days** after the acceptance of the bid, the successful Bidder must execute a written Contract between the Bidder and the JPA, said Contract will incorporate the JPA's Contract Documents and be on forms provided by the JPA, Construction Performance and Construction Payment Bonds, in a sum not less than the contract price, executed by the Bidder and by a corporate surety company authorized to transact business in the State of Nebraska.

CHANGES IN WORK

As part of the normal prosecution of site and utility work, unforeseen conditions may be encountered that could not reasonably be anticipated based upon the available information at the time the plans and contract documents were prepared. To address these conditions additional work may be necessary that was not included within the original project scope of work as outlined in the contract documents. Prior to performing the additional work the Contractor or JPA construction site representative shall contact the Program Manager and provide them with a written description of the work, an approximate cost to complete the additional work and any request for additional contract time required to complete the work. The Program Manager shall review the information and provide the Contractor written direction on how to proceed.

The Contractor can expect the Program Manager to respond to the additional work request within the following timeframe following receipt of information and provide the Contractor direction on how to proceed:

- For minor changes in the work that have an additional cost less than \$25,000 and that can be completed using existing unit prices, a negotiated price or on actual time and expense, the Contractor can expect a response within 24 hours from the time the Program Manager receives the information from the Contractor or JPA construction site representative.
- For major changes in the work that have an additional cost between \$25,000 and \$100,000, the Contractor can expect a response within 72 hours from the time the Program Manager receives the information from the Contractor or JPA construction site representative.
- Major changes in the work greater than \$100,000 will require approval by the JPA Board. This will require 21 days from the time the Program Manager receives the information from the Contractor or JPA construction site representative.

All approved additional work shall be document in writing. Additional work completed by the Contractor without the prior approval of the Program Manager shall not be paid for under this contract. The Program Manager point of contact for the review and approval of all changes in

the work under this contract is Adam Hoebelheinrich. He can be contacted at 402-405-9311. In the event the Contractor or JPA site representative cannot reach Adam they shall contact Paula Yancey at 210-601-3053 or PC Sports at 402-477-0487.

SPECIAL BIDDING CONDITIONS (Liquidated Damages)

Schedule is a critical element of the West Haymarket Project. As such the work to be completed under this contract will support the start and construction of adjacent public and private development projects that will be on-going during the duration of this project. This work will need to be coordinated and completed in conjunction with work on the construction of the new roadway, utilities, sidewalks, alleys and other paving on the Core Area Roadway and Utility Project. The contractor shall familiarize themselves with the attached preliminary schedule for work on the Core Area Project that outlines the various phases of work on that project along with the substantial and final completion dates.

For the purpose of this project, the Contractor shall have all conduits installed along each segment of roadway in advance of the substantial completion date shown for that particular phase in the Core Area Roadway Project. The phasing plans and Construction Phasing Special Provision for the Core Area Project are included for informational purposes. Failure to complete the work required for Substantial Completion or final completion by the date shown for the various project phases shall result in the assessment of liquidated damages in the amount of \$1,000 per day.

Determination of the Substantial Completion and Final Completion dates for each contract phase of the project shall be subject to the Engineer's approval. The amount of liquidated damages assessed for failure to achieve the required substantial or final completion dates for the various contract phases of the project will be deducted from the money due the Contractor prior to final payment or in the case where the remaining amount due the Contractor is less than the total amount of the assessed disincentives, the JPA shall have the right to recover the difference from the Contractor or the Contractor's Surety.

SUBSTANTIAL AND FINAL COMPLETION

Work on this project has been broken down into Four (4) separate contract phases in regard to determination of substantial and final completion dates. The contract phases generally follow the primary construction phases shown for the Core Area Roadway and Utility Project. The purpose for the multiple completion dates is to accommodate the various new public and private construction projects which will be under construction concurrently with the work on this project. The Contractor shall carefully review and familiarize themselves with the requirements for substantial and final completion for each contract phase and take this into consideration when preparing their bid. Separate liquidated damages shall apply to the various contract phases as outlined in these Special Provisions.

- Contract Phase IA – this includes installation of new conduits to support the Core Area work associated with the preparation and construction of the eastern portion of the surfaced parking lot and drive located between “O” Street and “P” Street as shown on Construction Phase IA of the Core Area Project. Substantial completion of this contract phase is identified as the installation of the new conduits that will cross under the new

roadway and parking lot paving including the installation of communication conduits and fiber cable to connect to the relocated parking lot building. Final Completion is shall be final site clean-up and completion of any punch list items. Work on this phase will need to be coordinated closely with the contractor completing the work on the Core Area Project to allow the new conduits to be installed after completion of the grading and prior to the start of the pavement construction. If the Contractor is unable to install the conduits prior to the construction of the new paving than they shall install bored conduits at no additional cost to the JPA.

- Contract Phase IB – this includes installation of new conduits to support the Core Area work associated with the construction of the new roadways generally north of “Q” Street as shown on Construction Phases IB through IF on the Core Area Project. Substantial completion of this phase shall be defined as the installation of the new conduits and pull boxes/fiber vaults along Pinnacle Arena Drive between “Q” Street and 8th Street; along “R” Street; along “Q” Street; and along 7th Street. Final Completion is shall be final site clean-up and completion of any punch list items. Work on this phase will need to be coordinated closely with the contractor completing the work on the Core Area Project to allow the new conduits to be installed after completion of the grading and prior to the start of the pavement construction. If the Contractor is unable to install the conduits prior to the construction of the new paving than they shall install bored conduits at no additional cost to the JPA.
- Contract Phase II – this includes installation of new conduits to support the Core Area work associated with the construction of the new roadways generally south of “Q” Street as shown on Construction Phase II of the Core Area Project. Substantial completion of this phase shall be defined as the installation of the new conduits and pull boxes/fiber vaults along the east side of Pinnacle Arena Drive between “N” Street and “Q” Street; along “N” Street; along the north side of “N” Street; and along Canopy Street. Final Completion is shall be final site clean-up and completion of any punch list items. Work on this phase will need to be coordinated closely with the contractor completing the work on the Core Area Project to allow the new conduits to be installed after completion of the grading and prior to the start of the pavement construction. If the Contractor is unable to install the conduits prior to the construction of the new paving than they shall install bored conduits at no additional cost to the JPA.
- Contract Phase III – this includes installation of new conduits to support the Core Area work associated with the construction of the new roadway along the west side of Pinnacle Arena Drive south of “Q” Street and the south side of “N” Street as shown on Construction Phase III of the Core Area Project. Substantial completion of this phase shall be defined as the installation of the new conduits and pull boxes/fiber vaults along the west side of Pinnacle Arena Drive between “N” Street and “Q” Street and along “N” Street as shown on the plans. Final Completion is shall be final site clean-up and completion of any punch list items. Work on this phase will need to be coordinated closely with the contractor completing the work on the Core Area Project to allow the new conduits to be installed after completion of the grading and prior to the start of the pavement construction. If the Contractor is unable to install the conduits prior to the construction of the new paving than they shall install bored conduits at no additional cost to the JPA.

The following are the substantial and final completion dates for the various contract phases based upon the Contractor receiving an NTP by the date shown. In addition the table shows the liquidated damages amount per calendar day that will be charged to the Contractor in the event the work as outlined for substantial or final completion of the respective contract phase is not met unless an approved extension in contract time has been approved by the JPA.

Substantial and Final Completion Based Upon NTP of August 6, 2012				
Contract Phase	Substantial Completion Date	Substantial Completion LD/Day	Final Completion Date	Final Completion LD/Day
IA	10-15-12	\$1,000	10-15-12	NA
IB	4-19-13	\$1,000	8-2-13	\$1,000
II	7-26-13	\$1,000	8-30-13	\$1,000
III	9-20-13	\$1,000	10-4-13	\$1,000

DISCOVERY OF ARCHAEOLOGICAL AND OTHER HISTORICAL RESOURCES

The existing project area may have remnants of previous historical significance, archaeological articles and other items of cultural significance that will need to be preserved. Should the contractor encounter any fossils, Native American relics, or other articles of historical, geological or cultural interest then the Contractor shall immediately suspend work in the area and promptly contact the Engineer for direction on how to proceed. The Engineer shall consult with the appropriate historical and cultural resource agencies to determine a course of action and to make arrangement for removal and preservation of the articles if necessary. All such articles shall become the property of the JPA.

WORKER VISIBILITY

Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:

Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

High-visibility safety apparel is defined to mean personal protective safety clothing that:

- 1 - is intended to provide conspicuity during both daytime and nighttime usage, and
- 2 - meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standards for High-Visibility Safety Apparel and Headwear."

If the Contractor fails to comply with the worker visibility requirements and as a result, Federal and State authorities withhold Federal Funds, then JPA reserves the right to seek reimbursement from the Contractor for the loss of federal funds that are attributed to the Contractor's non-compliance.

COORDINATION WITH OTHERS

The Contractor will be required to coordinate their work with multiple projects in the West Haymarket that will be under construction concurrently with this project. These include the work at the new arena; the work on the Core Area Roadway and Utility Project; the work associated with construction of the new parking garage located along the east side of Pinnacle Arena Drive between “Q” and “R” Streets; the work on the new District Energy Corporation plant (DEC) that is located along the south side of “Q” Street; the work associated with the removal, restoration and reinstallation of the canopy along Canopy Street between “N” Street and “R” Street; the work associated with the private developments located along the east and west side of Canopy Street between “Q” and “P” Street; and the work on a new City Parking Garage located along the south side of “O” Street east of Canopy Street. The Contractor shall familiarize themselves with these projects, the location of the work and the staging areas designated for each project. The Program Manager has developed a map that shows the locations of the various projects and staging areas that is attached to the end of these Special Provisions.

In addition to those entities listed above, the Contractor will also be required to coordinate work adjacent to or on the BNSF railroad corridor with the appropriate BNSF staff.

Arena Project

The new arena project is currently under construction to the north of “R” Street. Access to the current site is from 8th and Pinnacle Arena Drive across a temporary construction road built as part of the Initial Site Preparation Project. The arena contractor will continue to use this access until the new pavement is constructed along “R” Street and along Pinnacle Arena Drive from “Q” Street north through the limits of the arena site.

The point of contact for the Arena Construction Manager at Risk is:

John Hinshaw
Mortensen Construction
Cell: (502) 377-4194

Core Area Roadway and Utility Project

The Core Area and Utility Project is scheduled to begin work on or before August 1, 2012. This project will be constructing the new roadways, storm sewers, sanitary sewers, water mains and roadway lighting along the new roadway corridors in the West Haymarket Area. This work will also include significant grading and over-excavation work to prepare the site for the new roadways and future development.

The Contractor will be required to coordinate their work closely with the construction of the Core Area Project to allow for conduits that cross paved areas to be installed prior to paving operations. The Contractor shall not be allowed to remove any newly constructed pavement to accommodate the conduit installations without the approval of the Engineer and any additional costs associated with pavement removal/replacement of boring of conduits shall be borne by the Contractor and not charged to the JPA. In addition the installation of the conduits shall be coordinated closely with construction of the new sidewalks, driveways, lighting, finished grading and seeding/sodding at the areas behind the back of curb to ensure that new construction work completed as part of the Core Area Project is not disturbed. Newly constructed items that are

damaged as a result of the construction of the conduit system shall be repaired or replaced by the Contractor to the satisfaction of the Engineer and JPA at no additional cost to the project.

The point of contact for the Core Area Roadway and Utility Project is:

Tom Crockett
Hawkins Construction
(402) 221-7637

New Parking Garage, East Side of Pinnacle Arena Drive, “Q” Street to “R” Street

Construction at the new parking garage will begin in October of 2012 with initial work at the east side of the site. Initial access to the parking garage site will be from “N” Street or from “R” Street. The Contractor shall be required to coordinate their work adjacent to the parking garage site with the construction manager to ensure that both projects can be completed without adversely impacting one another.

The point of contact for the Parking Garage Construction Manager at Risk is:

Joey Hausmann
Hausmann Construction
President
Phone: 402-438-3230

District Energy Corporation Plant – South Side of “P” Street and New DEC Piping

Construction at the new District Energy plant is currently underway and is expected to be complete in the spring of 2013. The Contractor shall be required to coordinate their work adjacent to the DEC site with the DEC representative to ensure that both projects can be completed without adversely impacting one another.

In addition the DEC will be constructing new piping within the limits of the project. This will include piping along the north-south alley between “P” Street and the new arena and new piping along the south side of “Q” Street and the west side of 7th Street.

The point of contact for the DEC plant and piping is:

Tom Davlin
Manager Project Engineering
Lincoln Electric System
473-3399

Canopy Restoration Project

This project includes work associated with removing, restoring and reinstalling the railroad canopy along the east side of Canopy Street between “N” and “R” Street. This work is being completed in conjunction with the work on the Core Area Project. The Contractor shall be required to coordinate their work along the east side of Canopy Street closely with the work on this project and in particular the installation of the new BNSF conduits and tunnel penetrations.

The Contact for the Canopy Restoration Project is:

Tom Crockett
Hawkins Construction
(402) 221-7637

New Private Development

New private development work will be underway beginning the first of August 2012 at the block located along the west side of Canopy Street between “Q” and “R” Street. In addition new private development will begin along the east side of Canopy Street between “Q” and “R” Street sometime in October. The developer for the projects is WRK LLC. These projects will generally stage their work within the existing blocks. Temporary power for the west block will be provided from a temporary transformer located along the south side of “Q” Street. The Contractor shall coordinate installation of conduits along “Q” Street, Canopy Street, “R” Street and 7th Streets with the developer’s contractor. In addition the Contractor shall be aware of the temporary electrical connection to the new developments.

The Contractor shall be required to coordinate all construction work in the vicinity of the new developments with the WRK LLC representatives listed below:

Devon Seacrest
Project Manager
WRK, LLC.
402-477-6767

Brett West
Project Manager
WRK, LLC
402-477-6767

New City Parking Garage at 7th and “O” Street and Parking Lots

The City of Lincoln is planning for construction of a new parking garage generally located south of “O” Street near 7th Street (east of the new Canopy Street). It is anticipated that construction on the new parking garage may begin in late 2012 and be on-going with construction on this project. The Contractor shall coordinate their work along Canopy Street and “O” Street with representatives of the City of Lincoln Parking Services with respect to the proposed parking garage construction.

In addition, the Contractor shall coordinate with the City of Lincoln Parking Services with regard to the installation of conduits and fiber cable to the relocated parking lot building near Canopy Street and “O” Street.

The point of contact for coordination with the City of Lincoln Parking Services is:

Ken Smith
Parking Manager – City of Lincoln
402-441-6097

BNSF

The Contractor shall coordinate all work on this project that is adjacent to or that will encroach into the BNSF Railway property with the appropriate BNSF representatives. This will installation of new conduits and pull boxes, tunnel penetrations and other items of work associated with the construction of the new BNSF conduits. The primary point of contract for the BNSF Railway is Mike Schaefer. Byron Mitchell is the point of contact with respect to the installation of the new telecommunication conduits. The Contractor shall exercise extreme care

when working adjacent to or on the BNSF property so as not to damage any railroad facilities during construction of this project.

The BNSF Railway Project Engineer is:

Mike Schaefer
BNSF Railway
Phone: (402) 458- 7379 (office), (402) 304-1437 (cell)

The BNSF Railway Telecommunications Engineer is:

Byron Mitchell
BNSF Railway
Office: (402) 458-7600

Private Utilities

The Contractor shall coordinate all work on this project with the work to be completed by the private utilities. This would include work associated with construction of new conduits and cables for LES, TWC and Windstream as shown on the plans. In addition Black Hills Energy shall also be installing new gas mains within the project area as shown on the plans. It is anticipated that the work associated with installation of the new conduits and manholes for LES, TWC and Windstream will be led by LES and the Contractor shall coordinate their work closely with LES's selected contractor who will also be completing their work in conjunction with the work on the Core Area Roadway and Utilities Project.

The following are the respective contacts for the utility companies:

Steve Wallingford
LES
Phone: (402) 467-7680

Mike Willey
TWC
Phone: (402) 421-0394 (office) or (402) 651-9328 (cell)

Ken Adams
Windstream
Phone: (402) 436-5794

Randy Kreifels
Black Hills Energy
Phone: (402) 437-1715

TECHNICAL PROVISIONS

The following Special Provisions amend or supplement the 2011 City of Lincoln Standard Specifications for Municipal Construction and the State of Nebraska Standard Specifications for Highway Construction, 2007 Edition. All provisions which are not so amended or supplemented remain in full force and effect.

MOBILIZATION

Mobilization shall not be paid for directly and shall be considered subsidiary to the cost of the individual items for which direct payment shall be made as shown on the bid proposal.

CONSTRUCTION STAKING

The JPA shall furnish construction staking for the construction of the new conduit system. This work shall be completed utilizing the construction surveyor completing the work for the Core Area Project and as such the Contractor for the conduit system is not responsible for completing this work.

ENVIRONMENTAL CONTINGENCY PLAN

During the execution of the work on this project it is anticipated that the Contractor may encounter contaminated soils, debris or groundwater (media). If contaminated media is encountered and it is determined by the West Haymarket Environmental Team that it cannot be used on-site (e.g. as backfill for the utility trenches), the Contractor shall be required to dispose of any contaminated media in accordance with all federal, state and local laws.

The Contractor shall also strictly adhere to the requirements and procedures set forth in the Environmental Contingency Plan. The Environmental Contingency Plan is attached and incorporated as if fully set forth herein.

In the event the Contractor or on-site construction management personnel suspect that contaminated media is encountered or will be during the performance of the work, they shall immediately notify the West Haymarket Environmental Team and follow the procedures outlined in the Environmental Contingency Plan for resolution on how to manage the contaminated media. Typical indications of potentially contaminated media include discoloration, odors associated with the media removed as part of boring, trenching or other excavation work. In addition, the Environmental Contingency Plan illustrates where environmental testing has been taken on-site. The Contractor shall familiarize themselves with these Figures to determine whether the project is located in the area of these environmental impacts.

Management of Soil or Debris to be Removed from the Work Site

During the course of the project the Contractor shall not haul any excavated material off-site without the prior approval of the West Haymarket Environmental Team. As such, the Contractor shall provide locations on-site to temporarily stockpile all excavated material that has not been approved by the West Haymarket Environmental Team for removal from the site. All temporary stockpiles shall comply with the requirements set forth in the Construction Storm Water Pollution Prevention Plan (SWPPP). The West Haymarket Environmental Team will

determine the appropriate method for disposal of the excavated material and make a recommendation to the Contractor.

The Contractor shall base their bid on the basis that all excavated or stockpiled soils from this project that are not used in the construction of the fills and embankments, but that meet the requirements for beneficial reuse soils shall be hauled to the North 48th Street Solid Waste Facility for placement. Excavated or stockpiled soils not reused in the fills and embankments that do not meet the requirements for beneficial reuse soils but that are classified as Construction and Demolition waste shall be hauled to the North 48th Street Solid Waste Facility for disposal at the Construction and Demolition Waste Disposal Area. Beneficial reuse soils shall be as described in the Special Provision for the North 48th Street Solid Waste Facility Beneficial Soils and Construction and Demolition Waste Material Requirements. If the excavated material requires special handling due to contamination (petroleum or other chemicals) and the contamination is not the result of the Contractor's activities, then additional compensation for disposal of the contaminated material will be considered on an "Extra Work" basis.

DUST CONTROL DURING CONSTRUCTION

The Lincoln /Lancaster County Health Department has Air Pollution Regulations that provide requirements for dust control that need to be followed by contractors working on the project. No dust that is generated by the construction activities shall be allowed to migrate off the site onto adjacent properties. This will require the Contractor to provide some means for dust control at the site at all time during the work. These requirements apply to work not only at the Haymarket site but also at any off-site borrow pits where material would be loaded and along any routes used to haul the material to the site. At this time there is not a permit required by this agency for a fugitive dust control permit. The following is a portion of the regulations pertaining to dust control:

SECTION 32. DUST -- DUTY TO PREVENT ESCAPE OF

(A) Handling, Transportation, Storing. No person may cause or permit the handling, transporting or storage of any material in a manner which may allow particulate matter to become airborne in such quantities and concentrations that it remains visible in the ambient air beyond the premises where it originates.

(B) Construction, Use, Repair, Demolition. No person may cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures to prevent particulate matter from becoming airborne so that it remains visible beyond the premises where it originates. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to paving or frequent cleaning of roads, driveways and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.

(C) Notwithstanding any other provisions of this section, the Department shall not regulate emissions from normal farming practices, farm crop drying and handling, or animal feeding activities, provided that reasonable and practical measures to limit particulate matter from such sources are utilized.

Ref: Title 129, Chapter 32, Nebraska Department of Environmental Quality

FIBER VAULT

The Contractor shall furnish and install fiber vaults at the locations shown on the plans and as directed by the Engineer. The fiber vaults and their covers are required to conform to all test provisions of ANSI/SCTE 77 "Specifications For Underground Enclosure Integrity" Tier 22 and labeled as such inside the vault and on top of the cover. All covers are required to have a minimum coefficient of friction of 0.05 in accordance with ASTM C1028. Independent third party verification or test reports stamped by a registered Professional Engineer certifying that all test provisions of this specification have been met are required with each submittal.

The fiber vault shall be constructed of epoxy or polyester resin mortar with woven glass fiber reinforcement and have appropriate aggregate dimensions of 30" X 48" X 36"(Depth) with an open bottom. Fiber vault covers shall have a split lid and be labeled "FIBER" on top as indicated in plans.

The fiber vault shall rest firmly on a bed of ¾" washed crushed limestone rock with a minimum depth of 12" below the bottom, extending at least 3" beyond the outside edges of the vault. Avoid placing these vaults in concrete. Set handholes flush with the finished surface of the surrounding ground. Do not install lid bolts. Fiber vault edges, lid and lifting eye shall be kept clear of concrete and foreign material. Conduit shall enter the handhole from the bottom and extend conduit ends between four (4) and six (6) inches above the aggregate bedding. Side penetrations are not permitted.

Fiber vaults, complete, in place and accepted by the Engineer, will be measured for payment as single units and shall be paid for at the contract unit price bid per each for the pay item "Fiber Vault (30" X 48" X 36)". This price shall be full compensation for all excavation required; for furnishing and installing the pull box; for conduit, conduit stub out, concrete, and crushed rock; and for all labor equipment, tools, materials, and incidentals required to complete the work.

Fiber vaults to be used in conjunction with the new conduits being constructed for the BNSF telecommunication system shall be furnished to the Contractor by BNSF (refer to the Status of Utilities and Project Coordination Special Provisions for BNSF contact information). BNSF fiber vaults, complete and accepted by the Engineer, will be measured for payment as single units and shall be paid for at the contract unit price bid per each for the pay item "Install Fiber Vault". This price shall be full compensation for all excavation required; for installing the pull box; for conduit, conduit stub out, concrete, and crushed rock; and for all labor equipment, tools, materials, and incidentals required to complete the work.

HAYMARKET PARKING GARAGE BUILDING ENTRANCE

The Contractor shall construct the necessary conduit/wiring entrances into the Haymarket Parking Garage in accordance with the details shown on the plans and as directed by the Engineer. This work includes furnishing and installation of all conduits, couplings, connectors, core drilling, and other required equipment or accessories as on the plans. It shall include building penetrations and patching, connection to the internal building components as indicated or directed by the Engineer, internal routing, and all other incidental items necessary to provide a complete and functional installation. This work shall be coordinated with Lincoln Parking Services.

Construction of the building entrance as shown on the plans and accepted by the Engineer shall be paid for at the lump sum bid price for the bid item "Haymarket Parking Garage Building Entrance". Said price shall be full compensation for furnishing all labor, equipment, tools, materials and all other incidental items required to complete the work as shown on the plans, as outlined in the Standard Specifications and Special Provisions and in accordance with all building and electrical codes to provide a complete and fully functional installation.

TUNNEL WALL PENETRATION

The Contractor shall construct the necessary wall penetrations through the portion of the existing tunnel into the basement of the Lincoln Station Building as required to install the new BNSF conduits. This work shall include all core drilling and patching around the conduits with non-shrink concrete grout. The work shall be coordinated closely with the Core Area Contractor who will be removing a portion of the tunnel and stairwells. The Contractor shall verify the limits of the removal work on those portions of the existing tunnel and stairwells to ensure that the location of the wall penetrations are not in conflict with any of the removal work or construction of the new concrete bulkhead.

Access to the inside of the tunnel is through the existing depot building. Access to the tunnel through the building shall be coordinated with the JPA and the property owner.

Construction of the wall penetrations as shown on the plans and accepted by the Engineer shall be paid for per each in accordance with the price bid for the pay item "Tunnel Wall Penetration". Said price shall be full compensation for furnishing all labor, equipment, tools, materials and all other incidental items required to complete the work as shown on the plans for each location (penetrations may include single or multiple conduits), as outlined in the Standard Specifications and Special Provisions and in accordance with all building and electrical codes to provide a complete and fully functional installation.

BNSF RAILWAY SPECIAL PROVISIONS

The following Exhibit "C" provides the Contractor Requirements for work that will be completed on existing BNSF Railway property or within 50 feet of the BNSF property as part of this project. The Contractor shall be required to strictly adhere to all requirements as outlined and shall coordinate their work with the BNSF's Project Engineer, Mike Schaefer or other designated representative at all times during completion of work on railroad property.

All Contractor employees that will be involved with work within the BNSF right-of-way will need to be certified through the BNSF E-Rail Safe program and shall have the required BNSF Contractor Safety Orientation as outlined in the BNSF Special Provisions. This would include employees working on any utility borings and conduit under the railroad tracks, grading work adjacent to the tracks and work associated with the temporary fencing and permanent fencing along the railroad corridor. Refer to the BNSF Special Provision for the requirements for the Contractor Safety Orientation. Refer to <https://www.e-railsafe.com/ev/servlet/hr.utilities.HRInfo> for requirements on the BNSF E-Rail Safe certification.

In addition the Contractor will be required to execute the attached agreement Exhibit C-1A and provide certification of the required insurance coverages outlined in the agreement to the BNSF Railway prior to start of any work on railroad property.

Flagging will be required when work is required on BNSF property within 25 feet of the existing tracks and as outlined in the BNSF Special Provision. Flagging services shall be performed by BNSF employees as outlined in the following Contractor's Requirements for work on BNSF Railway property. The cost of the flagging up to a maximum amount of \$25,000 shall be borne by the JPA. The \$25,000 amount of flagging is based upon 25 flagging days using a standard 10-hour work day and the BNSF requiring a single flagger for this work. If the BNSF requires additional flaggers than the maximum amount is subject to change as determined by the Engineer. All flagging costs in excess of the \$25,000 amount shall be deducted from the retainage held on the project prior to final payment.

EXHIBIT C
Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

Roger Figard, City Engineer
Department of Public Works and Utilities
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway's Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to Railway's Property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on Railway's Property. Contractor shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may

be pre-existing in Railway Property and as encountered in the C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway Property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give Railway notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting Railway Property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish Railway upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.
- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.
- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.
- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25)

feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.

- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the C&M Work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
 - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor

must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor, upon completion of the C&M Work, must promptly remove from the Railway Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway's Project Engineer to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Railway Property, except after Contractor has obtained written approval from Railway Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to

protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

- **1.07.05** Contractor will be responsible at no cost to Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway Property (collectively, "**Other Improvements**"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway improvements and Other Improvements in the field in order to verify their locations. Contractor must also use all reasonable methods when working on or near Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting Railway Property, in a manner that does not adversely impact utility service to Railway.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1 (800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1 (817) 352-7595 and to the Railway's Project Engineer no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

- 1. Accident City/St
- 2. Date: _____ Time: _____ County: _____
- 3. Temperature: _____
- 4. Weather _____
(if non-Railway location)
- 5. Social Security # _____
- 6. Name (last, first, mi) _____
- 7. Address: Street: _____ City: _____
St. _____ Zip: _____
- 8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
- 9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
- 11. Description of Accident (To include location, action, result, etc.): _____
- 12. Treatment:
 First Aid Only
 Required Medical Treatment
 Other Medical Treatment
- 13. Dr. Name _____ 30. Date: _____
- 14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____
- 15. Hospital Name: _____
- 16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____
- 17. Diagnosis: _____

**FAX TO RAILWAY AT (817) 352-7595
AND COPY TO RAILWAY ROADMASTER FAX**

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20__ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 201__, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR

FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000.00 per occurrence, and \$10,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this Agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

BNSF Railway Company
PO Box 140528
Kansas City, MO 64114
Fax number: 817-840-7487

Email: BNSF@certfocus.com
www.certfocus.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway

performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

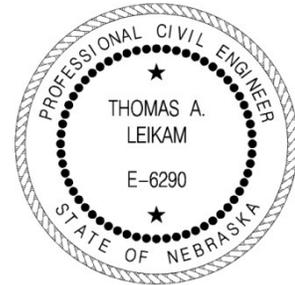
Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

ADDITIONAL SPECIFICATION SECTIONS AND SUPPORTING INFORMATION

The following supporting data shall be considered a part of these project Special Provisions and are attached to the contract documents.

- Core Area Roadway and Utilities Construction Phasing Special Provision
- The West Haymarket Environmental Contingency Plan
- West Haymarket Construction, Staging, and Parking Coordination 2/10/12
- Core Area Roadway and Utilities Project Draft Schedule for August 1, 2012 NTP (For Information Only)
- Core Area Roadway and Utilities Project Construction Phasing Plans (For Information Only)



**Core Area Roadway and Utility Schedule
Schedule Based on 8-1-12 Early NTP**

ID	Task Name	Duration	Start	Finish	2013												2014											
					3rd Quarter			4th Quarter			1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			1st Qua					
					Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan					
1	Phase IA Construction - First Phase Parking Lot "O" Street to "P" Street	61 days	Mon 7/23/12	Mon 10/15/12																								
2	Relocate Access Road & Grading Work at Parking Lot (Within Current JPA Property)	10 days	Mon 7/23/12	Fri 8/3/12																								
3	First Phase Pavement Construction at Parking Lot	20 days	Mon 8/6/12	Fri 8/31/12																								
4	First Phase Parking Lot Striping	5 days	Mon 9/3/12	Fri 9/7/12																								
5	Excavation/Over-Exc and Embankment work at Canopy & "O" Street	5 days	Thu 9/13/12	Wed 9/19/12																								
6	Pavement Construction at Canopy & "O" Street	12 days	Thu 9/20/12	Fri 10/5/12																								
7	Relocate Parking Building From Iron Horse Lot to New Lot & Install Gates	17 days	Thu 9/20/12	Fri 10/12/12																								
8	First Phase of Parking Lot "O" to "P" Street Open for Use	1 day	Mon 10/15/12	Mon 10/15/12																								
9	Phase IB Construction - Pinn Arena D Grading, Utilities & Paving "Q" to 1986+50	93 days	Wed 8/1/12	Fri 12/7/12																								
10	Monitoring Wells Abandoned at Title 200 Area (Completed by Others)	0 days	Fri 9/7/12	Fri 9/7/12																								
11	Grading Work - Exc, Over-Exc "Q" to Station 1988+00 Outside Monitoring Wells	23 days	Wed 8/1/12	Fri 8/31/12																								
12	Storm Sewer Construction "Q" to "R" Street	12 days	Thu 8/9/12	Fri 8/24/12																								
13	Embankment Construction Adjacent to Arena	10 days	Mon 8/27/12	Fri 9/7/12																								
14	Grading Work Complete Adjacent to Arena Substantial Milestone 1	1 day	Mon 9/10/12	Mon 9/10/12																								
15	Embankment Construction East Side "Q" to "R" for Garage Site	10 days	Mon 9/17/12	Fri 9/28/12																								
16	Grading Work at Parking Garage Site Complete Substantial Milestone 2	1 day	Mon 10/1/12	Mon 10/1/12																								
17	Remaining Embankment Construction "Q" Street to Station 1988+00	25 days	Mon 9/17/12	Fri 10/19/12																								
18	Storm Sewer Construction "R" to Station 1988+00	20 days	Mon 8/27/12	Fri 9/21/12																								
19	Sanitary Sewer Service "Q" Street to "R" Street and Service Along "R" Street	10 days	Mon 10/29/12	Fri 11/9/12																								
20	Grading Work at East Side "P" to "Q" Street	10 days	Mon 10/22/12	Fri 11/2/12																								
21	Staging Area West of DEC Ready for Parking Deck No. 1 Contractor	1 day	Mon 11/5/12	Mon 11/5/12																								
22	Water Main Construction (Phase 1 Water Work)	25 days	Mon 9/17/12	Fri 10/19/12																								
23	Water Main Testing/Flushing/Disinfection (Phase 1 Water Work)	10 days	Mon 10/22/12	Fri 11/2/12																								
24	Complete Arena Water Service Connection to New Main	5 days	Mon 11/5/12	Fri 11/9/12																								
25	Arena Water Service Connected to New Main, Phase 2 Water Work Can Start	0 days	Fri 11/9/12	Fri 11/9/12																								
26	Final Grading/Storm Sewer Work, "P" to Sta. 1988+00I	5 days	Mon 11/12/12	Fri 11/16/12																								
27	Substantial Completion Phase IB Milestone 3	1 day	Mon 11/19/12	Mon 11/19/12																								
28	Water Main Construction Phase 2 ("R" Street)	10 days	Mon 11/12/12	Fri 11/23/12																								
29	Water Main Testing/Flushing/Disinfection (Phase 2 Water Work)	10 days	Mon 11/26/12	Fri 12/7/12																								
30	Final Completion of Phase IB Work	0 days	Fri 12/7/12	Fri 12/7/12																								
31	Phase IC Construction, Grading and Utility Work on "Q" Street, 7th Street and "Yard" Block	173 days	Thu 9/13/12	Mon 5/13/13																								
32	Grading Work on "Q" Street from West Side of BNSF Passenger Mains to 7th Street	5 days	Thu 9/13/12	Wed 9/19/12																								
33	Relocate USPS Drop Box to East Side of 7th Street	5 days	Thu 9/20/12	Wed 9/26/12																								
34	Sanitary Sewer Construction	17 days	Thu 9/20/12	Fri 10/12/12																								
35	Storm Sewer Construction on "Q" Street and 7th Street East of Canopy	15 days	Mon 10/8/12	Fri 10/26/12																								
36	Demolition and Grading at "Yard" Block	10 days	Mon 10/29/12	Fri 11/9/12																								
37	"Yard" Block Pad Site Ready for Developer - Phase IC Substantial Completion	1 day	Mon 11/12/12	Mon 11/12/12																								
38	DEC Piping Construction on 7th Street and "Q" Street	30 days	Mon 10/29/12	Fri 12/7/12																								
39	Water Main Constructin on "Q" Street, 7th to Canopy (Water Main Phase 3)	15 days	Mon 3/11/13	Fri 3/29/13																								
40	Water Main Testing/Flushing/Disinfection (Phase 3 Water Work)	10 days	Mon 4/1/13	Fri 4/12/13																								
41	Complete Storm Sewer Laterals and Inlets	10 days	Mon 4/1/13	Fri 4/12/13																								
42	Pavement Construction along 7th Street	20 days	Mon 4/15/13	Fri 5/10/13																								
43	Move USPS Drop Box Back to West Side and Open 7th Street to Traffic	5 days	Mon 5/6/13	Fri 5/10/13																								
44	7th Street Open to Traffic - Final Completion Phase IC	1 day	Mon 5/13/13	Mon 5/13/13																								
45	Phase ID Construction - Canopy Road "Q" to "R" to Accommodate Developer	32 days	Thu 9/13/12	Fri 10/26/12																								
46	Sanitary Sewer Work	5 days	Thu 9/13/12	Wed 9/19/12																								
47	Grading Along Canopy "Q" to "R" Streets, "R" Street and Storm Sewer Removal	7 days	Thu 9/20/12	Fri 9/28/12																								
48	Construct Initial Segment of 21" Storm Sewer on Canopy & Drain for Sediment Basin	5 days	Mon 10/1/12	Fri 10/5/12																								
49	Grading Adjacent to Development Completed - Substantial Completion Phase ID	0 days	Fri 10/5/12	Fri 10/5/12																								
50	Final Grading at "R" Street at Relocation of Iron Horse Lot	10 days	Mon 10/15/12	Fri 10/26/12																								

Project: West Haymarket Timeline Set
Date: Wed 4/25/12

Task		Milestone		Rolled Up Task		Rolled Up Progress		External Tasks		Group By Summary	
Progress		Summary		Rolled Up Milestone		Split		Project Summary		Deadline	

**Core Area Roadway and Utility Schedule
Schedule Based on 8-1-12 Early NTP**

ID	Task Name	Duration	Start	Finish	2013												2014					
					3rd Quarter			4th Quarter			1st Quarter			2nd Quarter			3rd Quarter			4th Quarter	1st Qua	
					Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
51	Final Completion for Phase ID	0 days	Fri 10/26/12	Fri 10/26/12																		
52	Phase IE Construction - Paving Pinnacle Arena Drive "Q" to Station 1986+50	200 days	Mon 10/29/12	Fri 8/2/13																		
53	Paving on Pinnacle Arena Dr. "Q" to Sta. 1986+50	20 days	Mon 10/29/12	Fri 11/23/12																		
54	Paving on "R" Street, Pinnacle Arena Drive to 7th Street	15 days	Mon 11/26/12	Fri 12/14/12																		
55	Phase IE Substantially Complete	0 days	Fri 12/14/12	Fri 12/14/12																		
56	Remaining Work on Phase IE for Final Completion	90 days	Mon 4/1/13	Fri 8/2/13																		
57	Phase IE Final Completion	0 days	Fri 8/2/13	Fri 8/2/13																		
58	Phase IF Construction - Pinnacle Arena Drive, Sta. 1986+50 to 8th Street	95 days	Mon 3/25/13	Fri 8/2/13																		
59	Grading Work	5 days	Mon 3/25/13	Fri 3/29/13																		
60	Storm Sewer Work	5 days	Mon 4/1/13	Fri 4/5/13																		
61	Paving	10 days	Mon 4/8/13	Fri 4/19/13																		
62	Substantial Completion Phase IF	0 days	Fri 4/19/13	Fri 4/19/13																		
63	Remaining Work on Phase IF for Final Completion	75 days	Mon 4/22/13	Fri 8/2/13																		
64	Final Completion Phase IF	0 days	Fri 8/2/13	Fri 8/2/13																		
65	Phase II Construction	140 days	Mon 2/18/13	Fri 8/30/13																		
66	Sanitary Sewer Work	25 days	Mon 2/18/13	Fri 3/22/13																		
67	Grading Work on Arena - East Side "N"	5 days	Mon 3/11/13	Fri 3/15/13																		
68	Water Main Construction Phase 4 ("N" Street)	10 days	Mon 3/18/13	Fri 3/29/13																		
69	Water Main Testing/Flushing/Disinfection (Phase 4 Water Work)	10 days	Mon 4/1/13	Fri 4/12/13																		
70	Grading on Canopy, "P", "Q" and East Half of Pinnacle Arena Drive	35 days	Mon 3/18/13	Fri 5/3/13																		
71	Storm Sewer Construction - Arena "N" to "Q", "Q", "P" and Canopy Road	35 days	Mon 4/8/13	Fri 5/24/13																		
72	Water Main Construction Phase 5 & 6 ("N" Street)	25 days	Mon 5/6/13	Fri 6/7/13																		
73	Water Main Testing/Flushing/Disinfection (Phase 5 & 6 Water Work)	10 days	Mon 6/10/13	Fri 6/21/13																		
74	Street Paving on Canopy, "P", "Q" and Arena East Side and Grading Back of Curb	35 days	Mon 6/10/13	Fri 7/26/13																		
75	Phase II Substantially Complete	0 days	Fri 7/26/13	Fri 7/26/13																		
76	Sidewalk and Bike Path Construction and Finished Grading	25 days	Mon 7/29/13	Fri 8/30/13																		
77	Lighting and Pavement Markings	25 days	Mon 7/29/13	Fri 8/30/13																		
78	Phase II Construction Final Completion	0 days	Fri 8/30/13	Fri 8/30/13																		
79	Phase III Construction	50 days	Mon 7/29/13	Fri 10/4/13																		
80	Grading Work	10 days	Mon 7/29/13	Fri 8/9/13																		
81	Sanitary Sewer Construction	10 days	Mon 8/5/13	Fri 8/16/13																		
82	Storm Sewer Construction	10 days	Mon 8/12/13	Fri 8/23/13																		
83	Street Paving and Grading Back of Curb	20 days	Mon 8/26/13	Fri 9/20/13																		
84	Phase III Substantially Complete	0 days	Fri 9/20/13	Fri 9/20/13																		
85	Sidewalk and Bike Path Constructin & Finish Grading Back of Curb Phase III	15 days	Mon 9/16/13	Fri 10/4/13																		
86	Lighting and Pavement Markings	15 days	Mon 9/16/13	Fri 10/4/13																		
87	Phase III Final Completion - All Roadways Open to Traffic	0 days	Fri 10/4/13	Fri 10/4/13																		
88	Phase IV Construction	61 days	Mon 9/23/13	Mon 12/16/13																		
89	Second Phase of Construction at Parking Lot, "O" to "P" Streets	25 days	Mon 9/23/13	Fri 10/25/13																		
90	Parking Lot Striping and Lighting	15 days	Mon 10/28/13	Fri 11/15/13																		
91	Construction of Alternate Bid Parking Lot West of the DEC	15 days	Mon 9/23/13	Fri 10/11/13																		
92	Parking Lot Striping and Lighting at Alternate Bid Lot	10 days	Mon 10/14/13	Fri 10/25/13																		
93	Construction of Alternate Bid Parking Lot, "N" to "O" Street	25 days	Mon 9/23/13	Fri 10/25/13																		
94	Parking Lot Striping and Lighting at Alternate Bid Lot	15 days	Mon 10/28/13	Fri 11/15/13																		
95	Phase IV Substantially Complete	0 days	Fri 11/15/13	Fri 11/15/13																		
96	Final Site Clean-up and Punch List	20 days	Mon 11/18/13	Fri 12/13/13																		
97	Final Project Completion	1 day	Mon 12/16/13	Mon 12/16/13																		

Project: West Haymarket Timeline Set
Date: Wed 4/25/12

Task Milestone Rolled Up Task Rolled Up Progress External Tasks Group By Summary

Progress Summary Rolled Up Milestone Split Project Summary Deadline

CORE AREA ROADWAY AND UTILITIES (FOR INFORMATION ONLY) SPECIAL PROSECUTION AND PROGRESS – CONSTRUCTION PHASING

The following prosecution and progress of work shall be used in developing the baseline schedule for the project. The Contractor will be required to generally proceed with sequencing the construction work as shown on the phasing plans unless otherwise approved by the Engineer.

General

All work on BNSF owned property shall be coordinated with the BNSF's designated project representative as shown on the plans. Continuous construction access shall be maintained to the arena site, the DEC, the parking garage site (once construction has started) and the private development sites at all times. Vehicular and pedestrian access shall also be maintained to the United States Post Office parking lots and the Amtrak Station building at all times during the construction of the project as well as access to adjacent properties unless otherwise approved in advance by the Engineer.

Traffic Control

The Contractor shall be responsible for providing the traffic control plan and submitting to the owner for approval for each phase of the work. The Contractor shall also be responsible for supplying all temporary construction signs and traffic control devices for the project as outlined in the City of Lincoln Standard Specifications for Municipal Construction.

Access During Construction

The Contractor shall not close any portion of the public roads or begin any work which may impact drive access to adjacent properties without the permission of the Engineer. The Contractor shall at all times, to the extent practical, provide facilities of ingress and egress to and from the public street to maintain access to adjacent properties throughout the duration of the project as noted on the plans or as directed by the Engineer.

This may require the Contractor to construct new drives or pavement in phases to allow access from the public street during construction, use high early strength concrete for drive construction, or to provide temporary drives as shown on the plans or as directed by the Engineer. All temporary drives and approaches to provide ingress and egress at adjacent properties shall be provided and maintained by the Contractor. All temporary drives which have active sidewalks (permanent or temporary sidewalks) crossing the drive shall be constructed using temporary hard surfacing and shall be ADA compliant. Crushed rock surfacing shall not be used at temporary drives that have permanent or temporary pedestrian access routed across the drives.

The Contractor shall notify all adjacent property owners a minimum of 7-days in advance of any roadway closures or changes in access to their properties during the work on all phases of this project. The Contractor shall provide temporary hard surfacing as directed by the Engineer to provide access to adjacent properties along the roadways during the construction of the project. To the extent practical, the Contractor shall make every effort to minimize the time access is restricted to the adjacent properties.

During the course of this work, the Contractor shall maintain all construction entrances to ensure that dirt track off from the site onto the public roads is minimized. In addition the Contractor shall be required to review the adjacent public streets on a daily basis to verify that there is not any dirt being tracked off from the site onto these roadways. Any dirt track off from the site shall be immediately cleaned up by the Contractor as directed by the Engineer.

Initial access to the site prior to September 13, 2012 will be available at 7th and “R” Street with limited access also available at “N” Street and 6th Street up to August 10, 2012 when the proposed roadway construction work on “N” Street will be substantially complete. After August 10, 2012 the “N” Street corridor should be fully available for access to the site at 6th and “N” Street. After the completion of the final property closing between the BNSF and the JPA the Contractor will be allowed to construct additional construction accesses as needed near 8th Street and Pinnacle Arena Drive as well as additional accesses off of “N” Street at Canopy Street or at Arena Drive. If an early NTP is provided, than the Contractor may also construct a site access near Pinnacle Arena Drive and “N” Street to begin early grading and utility work in the area of the former BNSF “X” Yard.

Temporary Fencing

The Contractor shall furnish and install temporary six foot high chain link fence as shown on the plans to prevent pedestrians and construction workers from entering the BNSF property. The six foot high chain link construction fence may be required at other locations as directed by the Engineer. Chain link fence, six foot in height shall be a contract pay item. The chain link fence along the BNSF tracks shall be constructed as soon as possible after completion of the grading along the property or if possible prior to the grading as long as the fencing does not impact access along the existing railroad maintenance road. At locations where the temporary fence will be in conflict with proposed utility construction, the fence shall be temporarily removed and reinstalled by the Contractor as necessary to complete the utility work. Removal and reinstallation of the temporary fence shall not be paid for directly and shall be considered subsidiary to the pay item for the temporary fence construction.

Pedestrian Accommodations

All temporary construction fencing that is to be installed adjacent to pedestrian areas and sidewalks shall be ADA compliant. When temporary fencing is used to delineate a pedestrian pathway, a continuous detectable edging should be provided throughout the entire length of the facility such that pedestrians using a cane can follow it. These detectable edgings should adhere to the provisions outlined in the current MUTCD for “Detectable Edging for Pedestrians”.

Sidewalk closures and detours shall be clearly posted and maintained throughout the course of the project to direct pedestrians around the construction site. The Contractor will be required to maintain pedestrian access to the adjacent properties as directed by the Engineer throughout the duration of the project. All temporary pedestrian pathways shall be a continuous hard surface throughout the entire length of the temporary facility and shall be ADA compliant. Temporary sidewalks shall be 4” concrete or 4” asphalt and shall be paid for as “Temporary Sidewalk”. This pay item shall include construction and removal of the sidewalk. Temporary sidewalks shall be constructed at the locations shown on the plans and as directed by the Engineer to facilitate pedestrian access during the construction of the project.

Unsuitable Materials

Unsuitable materials encountered during the prosecution of the excavation, over-excavation and utility construction shall be reviewed by the West Haymarket Environmental Team and may need to be temporarily stockpiled on site to allow testing of the material by the West Haymarket Environmental Team to determine the appropriate method of disposal. Refer to the Environmental Contingency Special Provision that is included with these Special Provisions for further details on disposal of soils off site and dewatering requirements.

The following is a description of the work associated with each phase of the project. As outlined earlier this contract has been broken down into multiple contract phases with distinct substantial and final completion dates for each individual contract phase. The work associated with each contract phase may include all or a portion of an individual construction phase or phases.

Construction Phase IA

This phase of the project generally includes the construction of the initial phase of the parking lot and driveway located between “O” Street and “P” Street along with the temporary roadway connection to 7th and “O” Street. The work on the parking lot area inside the existing fence and a minimum of 25’-0” from the centerline of the BNSF tracks can begin prior to the anticipated early notice to proceed contingent upon the contracts being executed. The following are key elements of this work:

- Construction of the new concrete drive aisle, parking lot surfacing, striping and lighting to provide approximately 181 initial parking stalls (the initial phase will include temporary striping for the handicap stalls, refer to the “Pavement Markings and Signing Plans”). This will require relocation of a segment of the existing site access road that runs along 6th Street north of “N” Street to the west outside the limits of the first phase of the lot construction. The Contractor shall grade and relocate this road prior to performing the necessary grading work for the new parking lot. The relocation work for this road shall be coordinated with the DEC contractor to maintain access to the construction site of the new plant at all times.
- Construction of a portion of the new pavement on Canopy Street adjacent to the parking lot and the driveway paving as shown on the phasing plan. This will require excavation work, over-excavation work and embankment construction to bring the subgrade in conformance with the final grade and compaction requirements. This work cannot begin until the BNSF Passenger mains have been removed. Temporary surfacing shall be constructed to connect the new pavement to the east at 7th and “O” Street. In addition a portion of the driveway shall be constructed using temporary surfacing to allow for removal when the new water main is installed as part of Phase II. The Contractor shall verify the limits of the temporary surfacing at the drive to ensure adequate room to construct the water main while also providing sufficient room for vehicles to exit the parking lot during the completion of the water main work.
- Construction of a portion of the new storm sewer at the east side of the parking area. The new outlet storm sewer will not be constructed at this time and the contractor will be required to construct a temporary ditch from the outlet of the curb inlet to flow south to “N” Street. The Contractor shall pothole the existing 15” storm sewer that connects to the

“N” Street box to verify that the storm sewer can be lowered as shown on the phasing plans to facilitate drainage from the parking lot during the interim period until the new outlet storm sewer is constructed. If required the Contractor may need to tap the existing box culvert at a lower elevation to provide positive fall from the new inlet to the temporary storm sewer connection at “N” Street.

- Relocation of the existing parking building and associated equipment from the Iron Horse Lot to the new entrance/exit and providing the necessary wiring and electrical service for the building and parking lot equipment. This work shall be coordinated with Lincoln Parking Services to verify location of equipment, conduits and wiring for the relocated equipment.
- This phase will also require the removal of a portion of the existing sanitary sewer as shown on the plans to the south side of the new drive. The existing sanitary sewer along the north side of the entrance drive will need to stay in service until the new sanitary sewer along the west side of Canopy Street is constructed. At that time the portion of the sanitary sewer under the parking lot will be abandoned.
- As part of this phase the Contractor will be required to build a temporary sidewalk from the new parking lot across the Canopy Street corridor to connect to the existing platform and the sidewalks adjacent to Lincoln Station.
- The Contractor shall install and maintain temporary 48” high orange construction fencing around the entire lot. Breaks shall be provided in the fencing at the pedestrian access points as well as at locations to facilitate snow removal. The Contractor shall coordinate the location of the breaks with Lincoln Parking Services. Payment for furnishing, installing and maintaining the temporary 48” high orange construction fencing shall not be paid for directly but shall be subsidiary to the parking lot construction.
- Construction of the new water main along “N” Street as shown on the water main plans as Phase 4 Water Main work. This work can begin at the west end prior to the removal of the passenger mains. As part of this work the Contractor will be required to complete the necessary Excavation for Beneficial Reuse, Over-excavation and a portion of the embankment construction along the alignment of the new water main. This work shall extend a minimum distance of 15 feet either side of the new utility. The Contractor shall also pothole the existing water main at the west end to determine whether or not there is a casing around the existing pipe. If there is not an existing casing, the JPA may direct the Contractor to replace additional 12-inch water main pipe up to the railroad right-of-way line. Note if a casing is in place, the Contractor shall provide a watertight end seal between the water main and the existing casing as part of the work to connect the new main to the existing. Casing end seals and all work associated with installation of the end seal is subsidiary to the water main pipe construction.

Work on Construction Phase IA shall be completed and the lot open for users prior to the closure and demolition of the existing Iron Horse Parking Lot to the north of Lincoln Station.

Construction Phase IB

This phase of the project generally includes the necessary excavation, over-excavation, embankment construction, storm sewer, sanitary sewer, water main construction and roadway paving along Pinnacle Arena Drive between Station 1966+50 (“Q” Street) and approximate Station 1986+75. This phase will also include the necessary excavation, over-excavation and embankment construction at the pad site along the east side of Pinnacle Arena Drive between Station 1963+00 and Station 1966+50 along with the eastern half of the street right-of-way in this area. The following are key elements of this work:

- Prior to start of work on this phase the Contractor shall construct a new construction entrance off of the existing access drive near 8th Street as shown on the plans. Additional construction entrances should also be constructed off of “N” Street at Pinnacle Arena Drive and Canopy Street at Pinnacle Arena Drive as needed to complete the work. The construction entrances shall be located in the field by the Contractor so that they minimize any conflicts with future work including utility construction, grading and paving work.
- Excavation, over-excavation and embankment construction along Pinnacle Arena Drive between approximate Station 1966+50 and 1986+75; and along the pad site adjacent to the east side of Pinnacle Arena Drive between approximate Station 1963+00 and Station 1966+50 including the eastern half of the adjacent street right-of-way. The Contractor shall exercise care when grading in the vicinity of the “Q” Street and Pinnacle Drive intersection so as not to damage the existing temporary water main to the Amtrak Station building or the new LES buried electrical lines.
- Construction of the new storm sewers along Pinnacle Arena Drive between Station 1966+75 and Station 1987+25. The Contractor shall review the cross sections to identify areas where storm sewer work may be completed concurrently with grading operations to facilitate the schedule. The new storm sewer construction will provide stub outs to connect to future storm sewers to drain the arena site. This work will include the construction of a temporary CMP storm sewer at one of the pipe stub outs to facilitate drainage of the site for the arena parking garage construction, refer to the plans.
- Sanitary sewer construction along the west side of Pinnacle Arena Drive between approximate Station 1969+00 and Station 1970+85 including the six inch sanitary sewer that crosses Pinnacle Arena Drive along the south side of “R” Street. The Contractor shall also construct a portion of the proposed 10” sanitary sewer to the south of “Q” Street along Pinnacle Arena Drive as required to extend the existing sewer beyond the end of the proposed paving to be completed as part of Phase IE. As part of this work the Contractor shall verify the flowline at the existing 10” sanitary sewer and report any discrepancies to the Engineer who will then determine if any changes need to be made in the flowlines at the sewer manholes to the south.
- Water main construction along Pinnacle Arena Drive between approximate Station 1966+75 and Station 1988+50 and along “Q” Street between Pinnacle Arena Drive and Canopy Street (refer to the water main plans for Phase 1 water main work). The water main work will need to be coordinated with the completion of the grading, excavation,

storm sewer and sanitary sewer work for Construction Phase IC. It should be noted that the water main work will require directional drilling under the existing access road immediately west of 8th Street. The new water main will also cross over the top of multiple storm sewer laterals as well as the trunk sewers on “Q” and “R” Streets so this work should be scheduled to occur after completion of these segments of storm sewer. There are also several locations where the water main will need to be looped to facilitate the sewer work. The Contractor will need to carefully review the proposed horizontal and vertical alignments of the various utilities and coordinate the construction of these facilities accordingly.

- This phase will also include the construction of the new roadway pavement, drives, sidewalks, bike path, lighting and other miscellaneous items including permanent fencing. It is the desire of the JPA to have the new roadway pavement constructed prior to December 1, 2012 if at all possible. Refer to the substantial completion dates for further information.
- The Contractor will be required to construct temporary chain link fence along the BNSF corridor outside the edge of the existing railroad access road to keep pedestrians and construction workers from entering the BNSF property. The temporary fence shall be located along the BNSF maintenance road or right of entry line as noted on the plans. This may require the contractor to perform some grading work along the railroad corridor prior to installing the fence.
- It is anticipated that the Contractor will need to utilize multiple crews to complete the work on Phase IB as well as the other phases of the work that will be underway concurrently with this phase. It is anticipated that the work on this phase will be completed concurrently with all or a portion of the work on Phase IA, Phase IC and Phase ID.
- During the work on this phase the Contractor shall coordinate their work with the construction work underway at the new arena site, the DEC site, the DEC piping, the new parking garage as well as the work at the private development.

Construction Phase IC

This phase of the project generally includes the construction of the new storm sewer along “Q” Street between Pinnacle Arena Drive and 7th Street as well as the necessary grading and demolition work required to prepare the development pad located along the east side of Canopy Street between “Q” and “R” Streets (referred to as the “Yard” block). This work will generally be completed concurrently with work on Phase IB, starting after the new storm sewer has been constructed between “R” Street and “Q” Street on Phase IB. The following are key elements of this work:

- Construction access for this phase will be from “N” Street utilizing the construction entrances constructed as part of Phase IB or from the construction entrance at “R” Street.
- Construction of the new storm sewers along “Q” Street between Pinnacle Arena Drive and 7th Street. Construction of the new storm sewer along “Q” Street shall be coordinated with the construction of the DEC piping that runs north-south along the alley.

The contractor for the DEC piping shall leave a gap in the piping at the location for the new storm sewer so that the trunk sewer can be constructed to fall below the DEC piping. Immediately following the laying of the new storm sewer pipe across the DEC piping corridor, the Contractor shall contact the appropriate DEC officials to notify them that the storm sewer crossing is complete and that the final construction of the closure sections of the DEC piping can begin at “Q” Street. The new storm sewer needs to be in place prior to November 1, 2012 to facilitate completion of the DEC piping to the new arena.

- Sanitary sewer construction at “Q” Street between Canopy and 7th Street and along the west side of 7th Street north of “Q” Street. Note the new 72” storm sewer work east of Canopy Street cannot begin until the new sanitary sewer work has been completed, tested and placed in service. The sanitary sewer construction across the 7th and “Q” Street intersection shall be phased to maintain one half of the 7th Street roadway open at all times (northbound or southbound). Prior to pavement removal work at “Q” Street to facilitate the sanitary sewer construction the Contractor shall construct a temporary access drive to the Iron Horse Parking Lot at “R” Street as shown on the phasing plans. This drive and access from “R” Street shall be maintained until the new parking lot at Canopy Street and “O” Street is open.
- The DEC will be constructing new piping along the south side of “Q” Street east from the alley to 7th Street, and then north along 7th Street. The construction of the DEC piping along “Q” Street and 7th Street will need to be closely coordinated with this phase. It is anticipated that the sequencing for the construction of the utilities will be sanitary, 72” trunk storm sewer, DEC piping, water main and storm sewer laterals at areas that cross the DEC pipes. In addition the Contractor will need to provide a temporary 30-inch CMP pipe to connect the existing 36-inch pipe to the new storm sewer manhole at 7th and “Q” Street to maintain drainage during the installation of the new DEC piping under this storm sewer segment.
- This phase will also include the construction of the new roadway pavement, median surfacing and sidewalks at the 7th and “Q” intersection following completion of the sanitary sewer, storm sewer and DEC piping work. Construction of the new concrete paving at the 7th and “Q” Street intersection shall be phased to maintain access along 7th Street in one direction at all times south of “Q” Street and shall maintain access to northbound 7th Street, north of “Q” Street at all times.
- Water main construction along “Q” Street between Canopy Street and 7th Street (refer to water main plans for Water Main Phase 3 work). This work shall be completed after construction of the new storm sewer, sanitary sewer, DEC piping along 7th Street and prior to the paving construction.
- Prior to closure and removal of the existing pavement on 7th Street between “Q” and “R” Street the Contractor shall contact the USPS representative to coordinate the temporary relocation of the mail drop boxes to the east side of the 7th Street median. The Contractor shall set up all necessary traffic control devices to delineate the temporary drop off lane and coordinate with City of Lincoln Parking Services to have the existing parking meters covered that are in conflict with the temporary drop off lane. The USPS will relocate the drop box and the Contractor is required to provide the USPS a minimum of 15 calendar

days advance notice of when the box needs to be relocated and shall have all temporary devices in place to delineate the temporary drop off lane prior to the USPS relocating the mail drop box.

- It is anticipated that the Contractor will need to utilize multiple crews to complete the work on this project. It is anticipated that the work on this phase will be completed concurrently with all or a portion of the work on Phase IA, Phase IB and Phase ID.
- During the work on this phase the Contractor shall coordinate their work with the construction work underway at the new arena site, the DEC site, the DEC piping, the new parking garage as well as the work at the private development located along the west side of Canopy Street between “Q” and “R” Streets.
- Work on this phase through the limits of the Canopy Street corridor cannot begin until the BNSF passenger mains have been removed in the event an early notice to proceed is provided for the project.
- Work on this phase will include the necessary excavation and removal of unsuitable soils from the “Yard Block” which is the area bounded by “Q” Street on the south, Canopy Street on the west, “R” Street on the north and 7th Street along the east. The geotechnical report completed for the new development has identified unsuitable soils at this site that need to be removed and replaced with approved off site borrow material. To complete this work the Contractor will be required to install temporary shoring along the north side of the excavation with the face of the shoring located 8 feet north of the south right-of-way line on “R” Street to protect the existing 12-inch water main. The Contractor shall exercise care when installing the temporary shoring so as not to damage or disturb the existing water main. In conjunction with the excavation work at the “Yard Block” the Contractor shall also complete removals of the existing storm sewers and inlets as well as the removal of the existing 8-inch sanitary sewer line that crosses the property.

Construction Phase ID

This phase of the project generally includes the necessary excavation, over-excavation, embankment construction, storm sewer and sanitary sewer construction along Canopy Street between approximate Station 2211+25 and “R” Street; and along “R” Street between Pinnacle Arena Drive and 7th Street. This work will complete the grading work adjacent to the new development along the west side of Canopy Street between “Q” and “R” Streets. Work on this phase cannot begin until the BNSF passenger mains have been removed and the property transferred to the JPA. This work will generally be completed concurrently with work on Phase IA, IB and IC. The following are key elements of this work:

- Initial work shall include the necessary excavation, over-excavation and embankment construction along the roadways to the west of the temporary drive to the Iron Horse Parking lot. This work shall be coordinated closely with the contractor completing the work at the adjacent development to prevent impacting the development work or access to the site. The grading along the Canopy Street and “R” Street corridors should match the existing pad site grading at the development.

- Following completion of the grading work the Contractor shall construct the segment of the new sanitary sewer along the west side of Canopy Street, north to “R” Street. This shall include the necessary sanitary sewer services for the new development. This work shall be coordinated closely with the contractor for the new development.
- Construction of the new storm sewer along Canopy Street shall be completed between “Q” and “R” Streets as shown on the plans. The proposed 21” storm sewer shall be constructed over the existing casing at the water main along “R” Street with the pipe grade broken as shown on the plans. Following construction of the storm sewer the water main loop on “R” Street will be abandoned and the water main constructed over the top of the new storm sewer as shown on the plans. The Contractor can elect to construct the north inlets as part of the storm sewer construction but shall leave the pipes stubbed out from the manhole as shown to facilitate drainage at the site until such time that the existing sediment traps are removed as part of the construction of the new storm sewer along “Q” Street.
- To accommodate construction of the new sanitary sewer it will be necessary to remove the existing 15” outlet pipe from the existing sediment basin. As such to maintain drainage at the site, the Contractor will be required to construct the new pipe tap and a segment of the 21” storm sewer along with any necessary grading to allow drainage of the sediment basin outlet pipe to the new storm sewer. The 21” storm sewer shall at a minimum be constructed 15 feet south of the existing water main crossing at “R” Street to ensure that the main is not left exposed.
- Following completion of the grading work and construction of a portion of the new storm sewer trunk (to allow drainage from the existing sediment basin to outlet into the “R” Street storm sewer) the Contractor shall construct the segment of new sanitary sewer along the west side of Canopy Street, north to “R” Street. This shall include the necessary sanitary sewer services for the new development. This work shall be coordinated closely with the contractor for the new development.
- Water main construction along “R” Street between Pinnacle Arena Drive and the east side of Canopy Street along with water main construction along Canopy Street between “Q” Street and “R” Street (refer to water main plans for Water Main Phase 2 work). Construction of the new water mains shall be coordinated with the completion of the Phase 1 Water Main work which is included as a part of Construction Phase IB.
- It is anticipated that the Contractor will need to utilize multiple crews to complete the work on this project. It is anticipated that the work on this phase will be completed concurrently with all or a portion of the work on Phase IA, Phase IB and Phase IC.
- During the work on this phase the Contractor shall coordinate their work with the construction work underway at the new arena site, the DEC site, the DEC piping, the new parking garage as well as the work at the private development located along the west side of Canopy Street between “Q” and “R” Streets.

Construction Phase IE

This phase of the project generally includes the paving of the new roadway, bike paths, sidewalks and all other finish work along Pinnacle Arena Drive between “Q” Street and approximate Station 1986+50. This also includes the paving and finish work along “R” Street between Pinnacle Arena Drive and 7th Street. Work on this phase cannot begin until the work on Phases IB and ID have been completed. The following are key elements of this work:

- This phase will include the construction of the new roadway pavement, drives, sidewalks, bike path, lighting and other miscellaneous items.
- This phase will include the construction of the permanent fencing along the railroad corridor between the Amtrak Station and 8th Street.
- This phase will include the final seeding and sodding along the roadway segments included for paving under this phase.
- The work on this phase shall be coordinated with the utility work included as part of this contract as well as other private utilities that will be installing new facilities along Pinnacle Arena Drive. It is anticipated that Black Hills Energy may be constructing portions of their new gas main along Pinnacle Arena Drive, “R” Street and “P” Street during this phase. Utility work that may be completed concurrently with this phase may include the construction of the new water and gas services that will serve the new arena.
- During the work on this phase, the Contractor shall coordinate their work with the construction work underway at the DEC site, the new parking garage as well as the work at the private development. Access shall be maintained to these construction sites at all times.

Construction Phase IF

This phase of the project generally includes the necessary excavation, over-excavation, embankment construction, storm sewer and paving work to complete the connection of Pinnacle Arena Drive to the existing roadway at 8th Street. This work will require removal of the existing access road to the north side of the arena site and cannot begin until the new roadway paving along Pinnacle Arena Drive between “Q” Street and approximate Station 1986+50 is completed along with the paving on “R” Street between Pinnacle Arena Drive and 7th Street. These new paved roadways will need to be in place to allow access to the arena site from 7th and “R” Street during this phase. The following are key elements of this work:

- Prior to start of work on this phase access to the arena site will need to be available across the new paving constructed at “R” Street and along Pinnacle Arena Drive (including the new pavement at the drives to the arena site).
- Initial work shall include the necessary excavation, over-excavation and embankment construction along the roadway. This will include removal/demolition of a portion of the existing access road to the arena site. This work shall be coordinated with the arena contractor.

- Following completion of the grading work the Contractor shall construct the new storm sewers as shown on the plans and the new roadway paving.
- At the completion of the paving the contractor shall coordinate with the arena contractor to determine if a reconstructed construction entrance to the northeast portion of the arena site is required. If needed the construction entrance shall be modified as shown on the phasing plans to tie in with the existing access road.

Construction Phase II

This phase of the project generally includes the necessary excavation, over-excavation, embankment construction, storm sewer, sanitary sewer, water main construction, roadway paving, sidewalk and bike path construction along the following roadways: Canopy Street, “P” Street, “Q” Street, the north half of “N” Street and the east half of Pinnacle Arena Drive between “N” Street and “P” Street. The following are key elements of this work:

- Prior to start of work on this phase the Contractor shall build or modify existing construction entrances as necessary at “N” Street, Pinnacle Arena Drive and “R” Street.
- Initial work shall include the removal of the tunnel and stairwell located near the Lincoln Station, excavation, over-excavation and embankment construction along the areas outlined above and as shown on the plans for this phase.
- The Contractor shall exercise care when grading in the vicinity of the “Q” Street and Pinnacle Drive intersection so as not to damage the existing LES buried electrical lines. In addition the Contractor shall exercise care during the removal of the existing platform and grading work along Canopy Street and along “P” Street in the vicinity of the existing BNSF telecommunication lines. The work along the north half of “N” Street will require removal of a portion of the existing paving along the north side. A minimum width of 24 feet shall remain for the paving along the south side to accommodate access to the Amtrak Station.
- Following initial grading operations the Contractor shall continue with construction of the new storm sewers along Pinnacle Arena Drive, “P” Street and Canopy Street. The storm sewer work will include the construction of the new storm sewer and tapping of the existing box culvert at Pinnacle Arena Drive and “N” Street as shown on the plans. The storm sewer shall proceed in such manner as to always provide positive drainage of the site. Temporary silt fence shall be constructed at open ends of pipes in advance of forecasted rainfall or as directed by the Engineer.
- This phase will include sanitary sewer construction along the west side of Canopy Street between “O” Street and “Q” Street as well as along “P” Street between Pinnacle Arena Drive and the alley as shown on the plans. Note the sanitary sewer along “P” Street will need to be constructed prior to construction of the downstream sewer segment on Pinnacle Arena Drive between “P” and “Q” Street. As such the Contractor shall verify the flowline at the proposed manhole at “P” Street to verify that the slope shown on the plans will be provided at the downstream sewer when this segment is constructed as part of Phase III.

- The work associated with construction of the new sanitary manhole at the west end of “P” Street will require shoring at the temporary parking lot for the Amtrak Station. The Contractor shall coordinate this work with Amtrak and shall maintain access to the parking area at all times for both vehicles and pedestrians. In addition the Contractor shall provide the necessary protection during the construction of the new manhole at Canopy and “O” Street to maintain access the parking area along the west side of Canopy.
- This phase shall include the construction of the new water mains along Canopy Street and Pinnacle Arena Drive south of “Q” Street; along “N” Street; and along “P” Street. The new water mains are generally shown on the water main plans as Water Main Phase 4, 5 and 6. Construction of the new water main along “N” Street will require pavement removal and construction of temporary surfacing at “N” Street and Pinnacle Arena Drive to accommodate the connection to the existing water main.
- This phase will also include the construction of the new roadway pavement, drives, sidewalks, bike path, lighting and other miscellaneous items.
- Temporary surfacing for roadways and temporary sidewalk surfacing shall be constructed as shown on the plans or as directed by the Engineer to facilitate access to existing properties and parking areas during the prosecution of the work on this phase.
- It is anticipated that the Contractor will need to utilize multiple crews to complete the work on this phase and that grading and utility work will be completed concurrently where possible. Work on this phase may be underway concurrently with the paving work on Phase IB (if the Contractor receives a late notice to proceed).
- During the work on this phase, the Contractor shall coordinate their work with the construction work underway at the DEC site, the new parking garage as well as the work at the private development. Access shall be maintained to these construction sites at all times.
- The Contractor shall coordinate their work on this phase with private utilities that may be installing new services to the DEC, Parking Garage and new development sites. It is anticipated that Black Hills Energy may be constructing portions of their new gas main along Pinnacle Arena Drive and Canopy Street during this phase. In addition LES and Windstream may also be constructing facilities along the new roadways.
- During this phase the Contractor shall maintain continuous access for both vehicles and pedestrians to the new parking lot along the west side of Canopy Street between “O” Street and “P” Street. This will require the construction of temporary sidewalks as directed by the Engineer to facilitate the construction of the new sanitary sewer and water main along Canopy Street.
- The Contractor shall maintain access to the Amtrak Station and existing business located at the southwest corner of 7th and “N” Street at all times during the work on this phase.

- The Contactor may begin work on Phase II of the project prior to completion of all work on Phase IA through IE as long as adequate access can be provided to all construction sites for the various public and private projects.

Construction Phase III

This phase of the project generally includes the necessary excavation, over-excavation, embankment construction, storm sewer and paving work to complete the construction of the west half of Pinnacle Arena Drive between “N” Street and “Q” Street (including the new Amtrak parking area) and the south half of the paving along “N” Street.

Work on this phase will require removal of the existing access road to the Amtrak Station and the temporary Amtrak parking south of the building. As such the Contractor will need to provide temporary parking for Amtrak patrons at the lot located along the east side of Pinnacle Arena Drive between “P” and “Q” Street. Temporary crushed rock surfacing may be required at this lot to facilitate parking. If crushed rock surfacing is utilized at this lot, then temporary handicap parking for the Amtrak Station will need to be designated and signed along the drop-off area located to the north of the Amtrak Building along the west side of Pinnacle Arena Drive. All signage and temporary traffic control devices required to layout and mark the temporary handicap stalls shall be considered part of the pay item for the traffic control and shall be removed once Phase III is substantially complete. The following are key elements of this work:

- Prior to start of work on this phase, access to the new Amtrak parking areas will need to be available across the new paving constructed during Phase II. In addition construction entrances shall be constructed or modified as required for access to the site to complete the grading work.
- Initial work shall include the necessary excavation, over-excavation and embankment construction along the roadway. This will include removal/demolition of the existing paving along “N” Street and the access road/parking at the Amtrak Station. This work shall be coordinated with Amtrak Station staff to ensure that patrons know when changes will be made in the parking at the station. The Contractor shall provide Amtrak a minimum of 10-days advanced notice of when changes will be made in parking at the station.
- Following completion of the grading work the Contractor shall construct the new storm sewers, remaining sanitary sewer work, roadway paving, sidewalk, and bike path construction as shown on the plans.
- The work on Phase III can begin prior to the completion of all work on Phase II contingent upon the Contractor maintaining acceptable access to all construction sites and the Amtrak Station. This includes suitable ADA compliant pedestrian access to the Amtrak Station.
- The Contractor shall coordinate their work on this phase with private utilities that may be installing new services to the public and private developments within the area. It is anticipated that Black Hills Energy will be completing construction of their new gas main along “N” Street and the connection to the new gas main along Pinnacle Arena Drive.

- The Contractor shall maintain access to the existing business located at the southwest corner of 7th and “N” Street at all times during the work on this phase.
- The Contractor shall install all permanent fencing that has not been previously installed during this phase. This shall include the permanent fencing along the west side of the BNSF corridor. Temporary construction fence may also need to be installed along the right of entry line between “N” Street and the Amtrak Station building to allow completion of the grading, utility and paving work on this phase.
- The Contractor shall install all street lights and pedestrian lighting that has not been previously installed on the project during this phase. All street lighting shall be operational prior to opening the roadways to public traffic.
- The Contractor shall install all roadway signs that have not been previously installed on the project during this phase. All street signs shall be in place prior to opening the roadways to public traffic.
- The Contractor shall install all Pavement Markings that have not been previously installed during this phase. All pavement markings shall be in place prior to opening the roadways to public traffic.
- At the completion of this phase all roadways shall be open to public traffic and all sidewalks shall be open for pedestrian use.

Construction Phase IV

This phase of the project generally includes the construction of the remaining portions of the new parking lot located between “O” and “P” Street at the west side of Canopy Street, the paving along the north-south alleys between “P” and “R” Street and any selected Alternate Bid Items. The paving at the alleys can be completed with an earlier phase contingent upon the construction progress at the adjacent public or private developments. The remaining construction at the parking lot can also be completed as part of an earlier phase as approved by the Engineer.

At completion of construction work for each phase, the Contractor shall promptly remove and dispose of all debris and waste material from the site. The Contractor shall not use the temporary construction easement areas for general storage of materials, equipment, or employee parking unless otherwise approved by the Engineer and the adjacent property owner. The Contractor shall limit the time the temporary construction easement areas are disturbed to the time required to complete the work as detailed on the plans. If the Contractor will require additional space outside the street right-of-way or the JPA owned property shown on the plans for storage of equipment and material during the duration of the project, then the Contractor, at his expense, shall be responsible to secure temporary property rights from the adjacent property owners.

The Contractor may submit a revised construction phasing plan to the Engineer for review and approval. The revised construction phasing plan shall identify all streets that will remain open to accommodate local and through traffic within the project area during each construction phase of the project. The revised phasing plan shall take into consideration all traffic requirements and impacts to existing traffic as stipulated in the original phasing plan. The Contractor shall not alter the proposed sequencing shown on the phasing plans or as described in these Special Provisions without approval of the Engineer and the JPA.

The Plan Set for the project you are preparing to bid on is available at the following ftp website. Left-Click the link to open the FTP site.

<ftp://ftp.lincoln.ne.gov/4099/>

When prompted:

User name: **ebid**
Password: **ebid123**

1. Use the provided User ID and Password Log On As **Figure 1**
2. Right-Click on appropriate file. Click **'Copy to Folder...'** or **'Save Target As...'**, select folder to save, click **OK**. **Figure 2 & Figure 3**
3. Exit out of ftp site.
4. Go to folder to view.

Be aware that all systems are not the same. If you need any assistance, please call 402-441-7417.

These are graphic files and may take time to download or open. Please be patient.



Figure 1 Upon selecting the link above, the “**Log On As**” screen should appear. Use the provided *User Name* and *Password* to login. With the “**Save Password**” feature *Checked*, Internet Explorer should not ask you to login in the future.

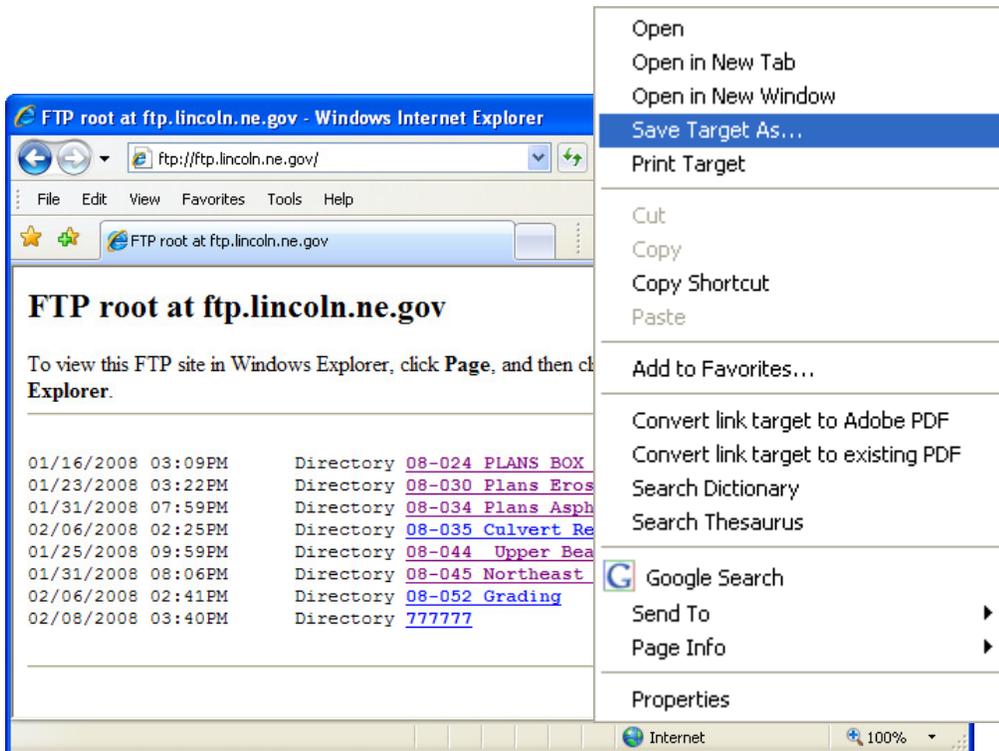


Figure 2 If your PC opens the FTP site using the *Windows Internet Explorer*, Right-Click the appropriate file and select **“Save Target As...”** and save a copy to

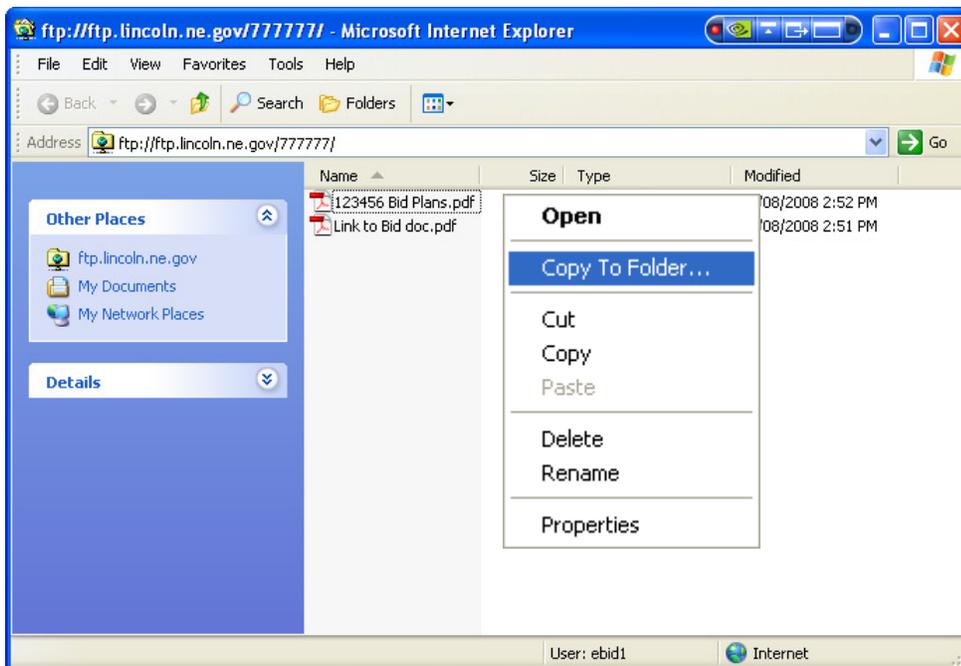


Figure 3 If your PC opens the FTP site using the *Microsoft Internet Explorer*, Right-Click the appropriate file and select **“Copy To Folder...”** and save a copy to your local computer.

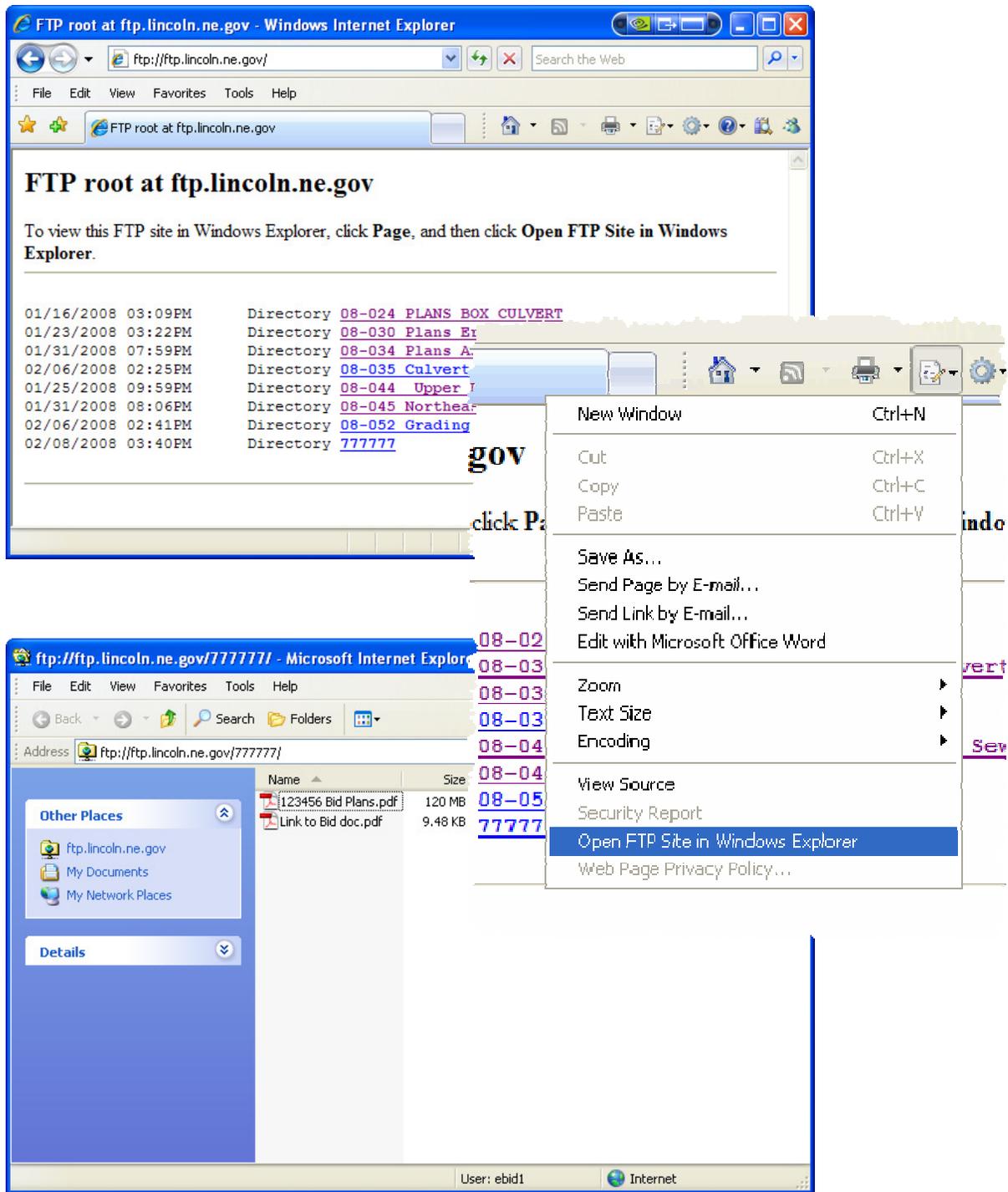


Figure 4 If the FTP site opens with *Windows Internet Explorer* and you wish to use *Microsoft Internet Explorer*, go to **Page > Open FTP Site in Windows Explorer**.

Environmental Contingency Plan West Haymarket Redevelopment Site

Prepared for:

The Joint Public Agency of Lincoln, Nebraska

Benesch Project Number: 110058.00.00006

Revision 3 February 3, 2012

Prepared by:



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In consultation with



and



SPILL/INCIDENT RESPONSE REFERRAL SHEET

Note: Waste/excess soil or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed below:

SPILL REPORTING

(Through City of Lincoln Environmental Project Management Team Decision Authority as described in Section 3.3 of the ECP)

First Call: Environmental Project Management Team Technical Representatives:

Frank Uhlarik – Alfred Benesch & Company: 402-333-5792

Cell: 402-669-0546

Alternate:

Bill Imig – Olsson Associates: 402-458-5903

Cell: 402-314-4568

Alternate:

Miki Esposito – Environmental Project Management Team: 402-441-6173

Agencies/Railroad Authorities:

Nebraska Department of Environmental Quality: 402-471-2186 or 877-253-2603

After Hours, Weekends and Holidays:

Nebraska State Patrol Dispatch: 402-471-4545

BNSF Railway Company Resource Operations Center: 800-832-5452

Union Pacific Railroad Security: 888-877-7267

National Response Center: 800-424-8802

ALL OTHER INCIDENTS

Fire and Police: Dial 911

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ATTACHMENTS

Attachment 1	Chemical Information
Attachment 2	Project Forms
Attachment 3	Project – Specific Authorizations

LIST OF ACRONYMS

CERCLA	Comprehensive Environmental Response Compensation and Liability Act
COPC	Chemicals of Potential Concern
CR	Contractor's Representative
ECP	Environmental Contingency Plan
EPMT	City of Lincoln Environmental Project Management Team
PCBs	Polychlorinated Biphenyls
PM	Project Manager
SVOCs	Semi-volatile Organic Compounds
TR	Environmental Project Management Team Technical Representative
VOCs	Volatile Organic Compounds
WHRS	West Haymarket Redevelopment Site

1.0 PURPOSE

The purpose of this Project Environmental Contingency Plan (ECP) is to prescribe management procedures and preventive measures relevant to areas and activities associated with construction within the West Haymarket Redevelopment Site (WHRS) that present the potential for environmental impacts or regulatory concerns if not properly controlled. The ECP is further intended to provide the City of Lincoln's Environmental Project Management Team (EPMT) with a mechanism for centralized management and documentation control of environmental matters – most specifically related to management of impacted soils or other contaminated media throughout the duration of planned WHRS projects.

2.0 SCOPE

2.1 Background

The WHRS and surrounding area has been home to large scale industrial and commercial operations for over a century including railroad thru-freight and switching, locomotive and railcar servicing/repair, manufactured gas plant operations, tanneries, paint and pigment manufacturing and scrap processing. Environmental and geotechnical investigations performed within the WHRS in recent years have identified the presence of petroleum constituents, heavy metals, polychlorinated biphenyls (PCBs), and a variety of fuel and chemical components and breakdown products classified under the general categories of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) in soil and/or groundwater.

In some areas, the levels of constituent impacts in soil or groundwater have been documented to exceed health-based standards established by the Environmental Protection Agency (EPA) and/or Nebraska Department of Environmental Quality (NDEQ). These standards are established under differing assumptions of life-long exposure using residential and commercial/industrial scenarios and do not necessarily represent threats to human health under instantaneous or short term exposure as may be the case under a construction worker exposure scenario. The known presence of these constituents in certain defined areas and their potential occurrence in areas not yet thoroughly investigated, however, presents a scenario for human exposure and/or corollary environmental or regulatory impacts that must be avoided in order to 1) protect human health and the environment and 2) minimize disruptions and cost impacts to the overall WHRS project.

2.2 Applicability

The location of the project and general boundary of redevelopment activity are depicted in Figures 1 and 2, respectively. The boundary in Figure 2 represents tentatively planned redevelopment footprints which is not strictly defined or intended to restrict applicability of this ECP to related WHRS construction activities outside of the boundary.

A tentative list of the suspected chemicals of potential concern (COPC) known to have been detected in site soils and/or groundwater along with representative chemical profiles is included as Attachment 1. The preponderance of COPC occurrence consists of petroleum, petroleum constituents, traces of heavy metals (some – largely arsenic believed to be naturally

occurring) VOCs, SVOCs and limited occurrences of PCBs. Compounds detected are common to railroad operations, former manufactured gas plant operations and/or scrap operations which encompass the major focus of investigations in the WHRS.

The scope of preventive measures and management procedures prescribed in this ECP are designed to cover all intrusive work in the WHRS. Intrusive work activities include (but are not limited to):

- Excavation
- Grading
- Drilling
- Boring
- Utility Trenching
- De-watering

This ECP does not address standard safety – related activities and programs such as confined space entry, electrical safety, fall protection, etc. regulated by the Federal Occupational Health and Safety Administration (OSHA under 29 CFR 1910). Project safety policies, procedures and compliance are the responsibility of the respective organizations and personnel who have cause to be in the project area in some official capacity or employment including railroads, City of Lincoln employees, regulatory agencies, contractors, consultants, and other suppliers of services to the project. The need for safety – specific precautions (including the potential for vapors in excavations and utility corridors) should, however be discussed during pre-construction briefings.

Section 4.0 of this ECP describes management procedures and required preventive measures to be followed by all personnel involved in WHRS construction activities.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

3.0 ECP MANAGEMENT

3.1 Roles and Responsibilities

This ECP has been prepared for and will be managed by the City of Lincoln’s Environmental Project Management Team (EPMT) led by the Public Works Director. The EPMT has contracted with Alfred Benesch & Company (Benesch) to provide environmental consulting services including preparation and implementation of the ECP.

Specifically, as an agent or technical representative (TR) of the EPMT, Benesch will:

- Prepare and amend the ECP as needed
- Disseminate the ECP to key stakeholders in the WHRS Project(s)
- Provide project/task start-up briefings when applicable (see Section 2.2)
- Provide compliance verification relative to handling of impacted soils/other media
- Provide on-call incident assistance to Project Managers (PM) and Contractor’s Representatives (CR) including sampling and analysis of suspect materials

The EPMT in turn provides routine coordination and support to the WHRS Program Manager in terms of environmental issues related to the overall WHRS project. Roles and responsibilities of the EPMT and WHRS Program Manager as well as other key stakeholders in the WHRS project with an interest and responsibility in conforming to this ECP are described in the table below:

Organization	Role	Responsibility	Contact
WHRs Program Manager	Overall WHRS program execution	Support conformance to the ECP	Paula Yancey 402-477-0487 paula@projectcontrol.com
City of Lincoln EPMT	Overall WHRS environmental performance	Prepare and oversee execution of the ECP	Miki Esposito 402-441-6173 mesposito@lincoln.ne.gov
Benesch/Olsson Associates	Technical Representative to EPMT	Prepare and oversee execution of the ECP	Frank Uhlarik 402-669-0546 fuhlarik@benesch.com Bill Imig (402) 314-4568 bimig@oaconsulting.com
BNSF	Landowner, Project Manager	Support conformance to the ECP by BNSF work forces and contractors	Greg Jeffries 763-782-3490 Gregory.jeffries@bnsf.com Gerald Maczuga 402-458-7537 Gerald.maczuga@bnsf.com
Contractors	Performance of any construction work in WHRS	- Attend pre-construction briefings on ECP - Comply with ECP	As identified by City, BNSF or other Property Owners within the WHRS
NDEQ	Regulatory Authority	Provide advice to EPMT regarding compliance requirements	Mike Felix 402-471-2938 Mike.felix@nebraska.gov

3.2 Documentation and Control

The following forms (included in Attachment 2) are to be used in maintaining and documenting compliance with the ECP:

ECP-1: Contractor Certification of Receipt and Special Precautions

This form will be reviewed and signed by the PM or CR certifying that he/she has received a copy of the ECP and agrees to comply with applicable work practices. In addition, task-specific precautions pertaining to COPCs, likely areas/volumes of impacted soil to remove, potential re-use of material as fill, etc. are to be documented on this form reflecting agreed upon procedures for the project and task between the contractor and TR. The Form ECP-1 will be co-signed by the TR.

ECP-2: Incident Log

This form will be filled out by the TR to record "incidents" and any follow-up corrective actions. "Incidents" will generally refer to observed or reported deviations from standard construction procedures, plans and specifications including, the following:

- Spills or discharges of hazardous substances, petroleum or equipment wash water/wastewater released to the environment associated with construction activities.
- Any observed or reported encounter with visibly or otherwise apparent impacted soil, groundwater, surface water or sediment contamination resulting from intrusive activities (grading, excavating, drilling, boring, utility work).
- Encroachment/impact upon defined wetland areas as further discussed in Section 4.2.

It is the responsibility of all stakeholders listed above in their capacity as project managers and contractors to comply with the provisions of the ECP and ensure notifications are made to the hierarchy of contacts listed on the Spill/Incident Response Referral Sheet found at the beginning of this ECP. Each contractor/stakeholder shall designate one responsible point of contact and one alternate for reporting incidents to ensure uniform and consistent control and reporting of information and to avoid duplicative or superfluous reporting.

Incident reporting in itself is not a cause for work stoppage – merely a notification to the EPMT of a condition that may require further investigation, evaluation through sampling/testing or other approved methods of determination and documented resolution by the TR. ***It is not the role of the TR to direct or in any way affect work stoppage. Work stoppage will be dictated solely by the project manager or contractor’s representative based on his or her corporate health and safety policies and procedures.***

Copies of all completed Forms ECP-1 and ECP-2 will be maintained by the TR at the Benesch offices located at 825 “J” Street in Lincoln, NE.

3.3 Regulatory Reporting

The need for reporting releases to State, Federal or Local authorities will be determined by the EPMT in consultation with the BNSF or other landowners potentially impacted by the release. Required reporting contacts are listed on the Spill/Incident Response Referral Sheet found at the beginning of this ECP. The following reporting guidelines have been extracted from NDEQ Title 126 - Rules and Regulations Pertaining to Management of Waste, Chapter 18 – Releases of Oil or Hazardous Substances which will be used by the EPMT in determining the need to report incidents:

002 Release Notification Requirements:

002.01 It shall be the duty of any responsible person to notify the Department of any release or suspected release of an oil or hazardous substance, in the following manner:

002.01A Immediate notification is required regardless of the quantity of an oil or hazardous substance release which occurs beneath the surface of the land or impacts or threatens waters of the state or threatens the public health and welfare.

002.01B Immediate notification is required of a release upon the surface of the land of an oil in a quantity that exceeds 25 gallons, or of a hazardous substance which equals or exceeds 100 pounds or its reportable quantity under Section 101(14) of the Comprehensive

Environmental Response, Compensation and Liability Act of 1980 as amended (40 CFR Part 302) and Section 329(3) of the Emergency Planning and Community Right-to-Know Act of 1986 (40 CFR Part 355), whichever is less.

002.01B1 Notification is **not required** for a release under this subsection if either of the following conditions is met:

002.01B1a The release is confined and expected to stay confined within a building or otherwise wholly enclosed structure, owned by the responsible party, in which the floors and walls are of non-earthen materials which are adequately impervious to the released substance(s) and is cleaned up within 24 hours of its discovery, or

002.01B1b The release is in compliance with conditions established in State statutes, regulations or permits.

002.01C Notification is **not required** for any release upon the surface of the land of oil or hazardous substance that does not exceed the reportable quantities in 002.01B above and which will not constitute a threat to public health and welfare, the environment, or a threat of entering the waters of the state and provided that the release is cleaned up.

002.02 Notification shall be made by telephone to the Department during office hours, from 8:00 a.m. to 5:00 p.m. Monday through Friday. After hours and holidays, reports shall be made to the Nebraska State Patrol (*numbers listed in the Spill/Incident Referral Sheet at the beginning of this Plan*). All information known about the release at the time of discovery is to be included, such as time of occurrence, quantity and type of material, location and any corrective or cleanup actions presently being taken.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.0 WORK PROCEDURES

4.1 Access

Access to the WHRS is restricted to railroad and City of Lincoln personnel and contractors conducting work in their official capacity as employees or contractors of their respective organizations. Access to Railroad operating property for purposes of providing construction – related services is subject to specific safety and rules training certifications and requirements found at: www.contractororientation.com. Access to other non-railroad private property for purposes of performing construction – related services within the WHRS must be arranged through the EPMT.

4.2 Best Management Practices

In general, PMs and CRs are accountable for obtaining applicable permits and authorizations for project activities under their purview including:

- Storm Water NPDES Construction Permits
- Flood Plain Permits
- Wetland (Section 404) Permits
- Special Waste Disposal Approval (Lincoln Lancaster County Health Department (LLCHD) or other entity that will receive the waste) for impacted soils/debris
- Dewatering Permit for Deep Excavations and Utilities (NPDES)
- State Historic Preservation Office (SHPO) Coordination

Some permits/authorizations (such as the Wetland Section 404 Permit) have been or will be obtained from the regulatory agency by the City of Lincoln for the WHRS. Special waste disposal will also be coordinated by and with the EPMT, however, PMs and CRs must be aware of and comply with provisions associated with these permits/authorizations.

Due to the potential risks and penalties involved in management of impacted media and protection of rare and unique saline wetlands as well as the wide applicability of these issues to planned construction activity, prescriptive management practices for these areas are as follows:

4.2.1 Impacted Soil and Debris Management

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the **PM or CR in consultation with the TR** to be no longer suitable for its intended purpose.
2. Title 132, Chapter 1, Section 041 defines fill as: *“solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material”*.
3. The *“use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment”*.
4. In accordance with Federal and State regulations and guidance, routine trench or foundation excavation spoils that are generated at a site are not considered a waste unless it is intended for disposal. Such spoils can normally be replaced in the excavation. It should be noted, however that any suspect material encountered during trench and foundation excavation must be inspected by the TR and only replaced if deemed by the TR not to be a vapor hazard within the utility corridor or building being constructed.
5. Prior to initiation of each construction task, the project manager or contractor’s representative will consult with the TR to determine the type of material anticipated to

be excavated, potential contaminants of concern (if any) and allowable re-use (including use as fill), alternatives to be employed for excess soil or debris to be generated associated with his/her respective work task. Provisions for temporary storage of potentially impacted soil/debris must be explicitly agreed upon. A written summary of these determinations is to be included in the Form ECP-1 completed for the work effort and filed according to procedures listed in Section 3.2 above.

6. On March 8, 2011, the NDEQ issued a guideline for management of excess soils for various activities within the WHRS covered under this ECP. Any discrepancies between NDEQ guidance and what is prescribed in the ECP must be resolved with the TR. The guidance is in Attachment 3.
7. A special waste authorization has been obtained from the Lincoln/Lancaster County Health Department for disposal of specified petroleum – impacted soils at the City of Lincoln’s Bluff Road Landfill. This authorization is included in Attachment 3 and may only be used when approved by the TR.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.1.1 Investigative Drilling/Boring

Drilling investigations conducted under the supervision and oversight of the NDEQ under the Voluntary Cleanup Program or Title 200 Programs require preparation of specific investigation work plans to address drill cuttings and other “Investigation – Derived Wastes” (IDW). This effort is managed by the TR and will follow established work plan protocols.

Geotechnical investigations (GI) within the WHRS will require conformance to the following management practices:

1. The GI Project Manager must contact the TR at least 7 days prior to drilling to discuss anticipated conditions and any special precautions to consider.
2. The GI Project Manager must arrange for all utility clearance.
3. The GI Project Manager will complete Form ECP-1 in consultation with the TR.
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of soil cuttings.
5. Unless superseded by other special considerations (such as drilling in known or highly suspected areas of impacted soils/groundwater), drilling procedures and soil cuttings management may proceed under standard GI processes and procedures including boring abandonment.

6. If during the completion of the boring the drill crew encounters potentially impacted soils, cuttings will be placed on plastic sheeting and segregated from non-impacted cuttings. Work shutdown will be at the discretion of the GI Project Manager's corporate health and safety policies and practices.
7. At the conclusion of the boring, impacted soil cuttings should be placed back in the boring at the relative depth/order which retrieved. The surface should be sealed with a minimum of three ft. of bentonite/cement slurry and if within 100ft. of a planned building should ideally extend from the surface to the depth of identified impacts.
8. Any remaining impacted soil cuttings will be sampled and analyzed as determined by the TR and instructions provided to the GI Project Manager for proper handling of the material. Cuttings must remain on plastic sheeting and covered with plastic or placed in sealed drums and labeled with the boring number until directions for further handling are provided by the TR.
9. Upon final resolution, the TR will complete and file an ECP-2 form relative to any IDW disposed of off-site or additional activities resulting in on-site re-use or application (land-spreading) of drill cuttings.

4.2.1.2 Grading/Excavation

Grading and excavating activities conducted under the supervision and oversight of the NDEQ under the Voluntary Cleanup Program or Title 200 Programs require preparation of specific remedial action work plans to address management of impacted soils and debris. This effort is managed by the TR and will follow established work plan protocols.

All other construction grading and excavation activities associated with applicable WHRS project activities require coordination and ECP compliance as follows:

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section 4.2), complete and sign Form ECP-1 and provide to the TR for co-signature and filing.
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and***

activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.

5. Unless superseded by other special considerations (documented in ECP-1), grading/excavation activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.
7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed in Form ECP-1, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR on Form ECP-2 and filed according to procedures in Section 3.2.
8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.1.3 Utility Work

Contractors performing utility work including all intrusive work (trenching, boring, digging, etc.) where surface features (soil, concrete, asphalt, vegetated surfaces) will be disturbed require conformance to the following procedures:

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all related utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section 4.2), complete and sign Form ECP-1 and provide to the TR for co-signature and filing.
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.***

5. Unless superseded by other special considerations (documented in ECP-1), utility construction activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/odors or other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.
7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. ***Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.***
8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed in Form ECP-1, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR on Form ECP-2 and filed according to procedures in Section 3.2.
9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.2 De-Watering Operations

De-watering operations within the WHRS will generally be associated with excavation or utility work described above. A project – specific Dewatering Permit has been provided by the NDEQ that governs any de-watering operations bounded by 2nd Street on the west, Salt Creek on the north and west, 8th Street on the east and “J” Street on the south. The permit and related conditions is included in Attachment 3. The City of Lincoln has been issued the permit and all contractors intending to utilize the permit will co-sign as owner/operator and will be held to all terms and conditions of the permit.

Required sampling and reporting to NDEQ will be conducted by the TR and approval to discharge accumulated storage of dewatering fluids must be obtained from the TR prior to discharge. Initial dewatering discharge flows must be containerized for sampling and testing by the TR, whereupon results will be provided to the contractor along with permission to discharge under the above referenced permit. Alternative means of discharge (whether to the City of Lincoln's Sanitary Sewer System or off-site disposal), may be required if permit

parameters are exceeded. Such alternative means will be in accordance with contractual requirements and shall be explicitly agreed upon by the CR and TR and documented on Form ECP-2.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.3 Wetland Protection

4.2.3.1 Summary of Delineated Wetland Areas

Olsson and Associates (OA) and HWS Consulting Group (HWS) staff conducted a wetland delineation and assessment for the Haymarket Project area in 2007. According to the 2007 Wetland Delineation Report (Olsson/HWS September 2008), the Study Area encompassed 443 acres of land for the Project. Based on the methodology as described in the September 2008 Wetland Delineation Report, 22 separate and distinct wetland areas are located within the Study Area totaling 8.65 acres. In addition, two perennial streams are located within the Study Area and are considered jurisdictional waterways. A map of the defined areas is provided as Figure 3.

4.2.3.2 Avoidance and Minimization

State and federal regulations require that an applicant utilize a three-part process (mitigation sequencing) when evaluating potential impacts to wetlands and waterways. The mitigation sequence generally is as follows:

- *Avoid* adverse impacts to wetlands
- *Minimize* adverse impacts that cannot be avoided
- *Mitigate* for the remaining impacts that cannot be avoided or further minimized. Note: compensatory mitigation relates to permanent impacts and permanent loss of function, and can be used to offset significant short-term impacts that may be in effect for an extended period of time.

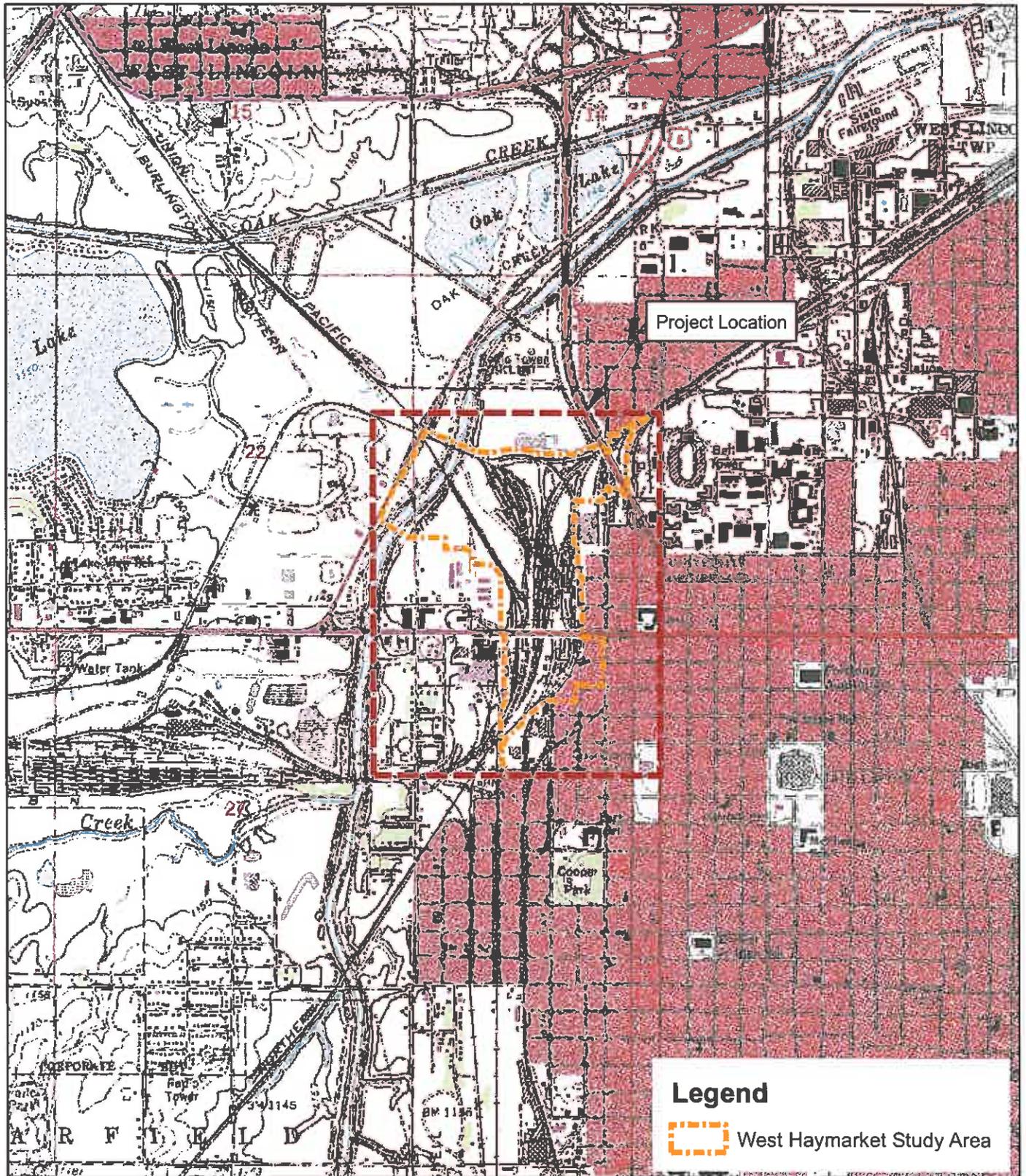
State and Federal Law generally requires that the applicant demonstrate that impacts¹ to jurisdictional wetlands and waters have been avoided and minimized to the greatest extent practicable. Potential construction practices near the boundaries of the delineated wetland areas should be considered when evaluating grading alternatives. For the purpose of the WHRS projects, wetland resources will be avoided to the extent practicable according to Section 404(b)(1) guidelines.

Tables 1 through 3 describe the typical disturbance activities, avoidance and minimization measures, respectfully for the wetland areas known to exist in the WHRS project area. These activities must be reviewed and determined by the PM/CR to what extent they must be

¹ 'Impacts' include fill, removal, mechanized land clearing (e.g., grubbing, bulldozing vegetation)

employed and specified in EP-1 described above. Additional provisions relative to the 404 permit to be aware of and complied with will be attached to this ECP when the permit is obtained.

FIGURES



NRCS Quad Map

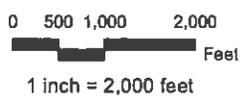
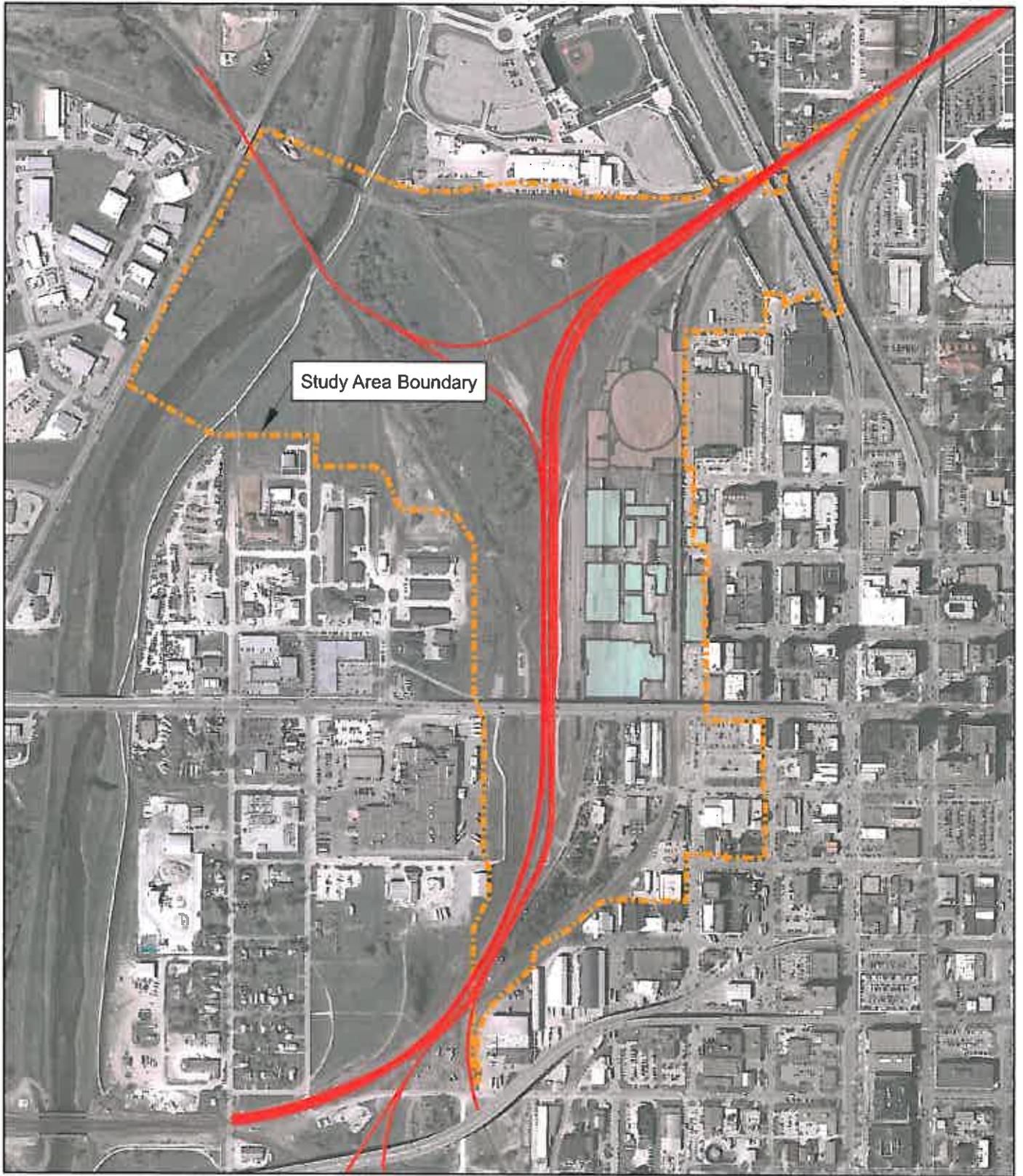


Figure 1
Site Location Map

Environmental Contingency Plan
Lincoln, Nebraska



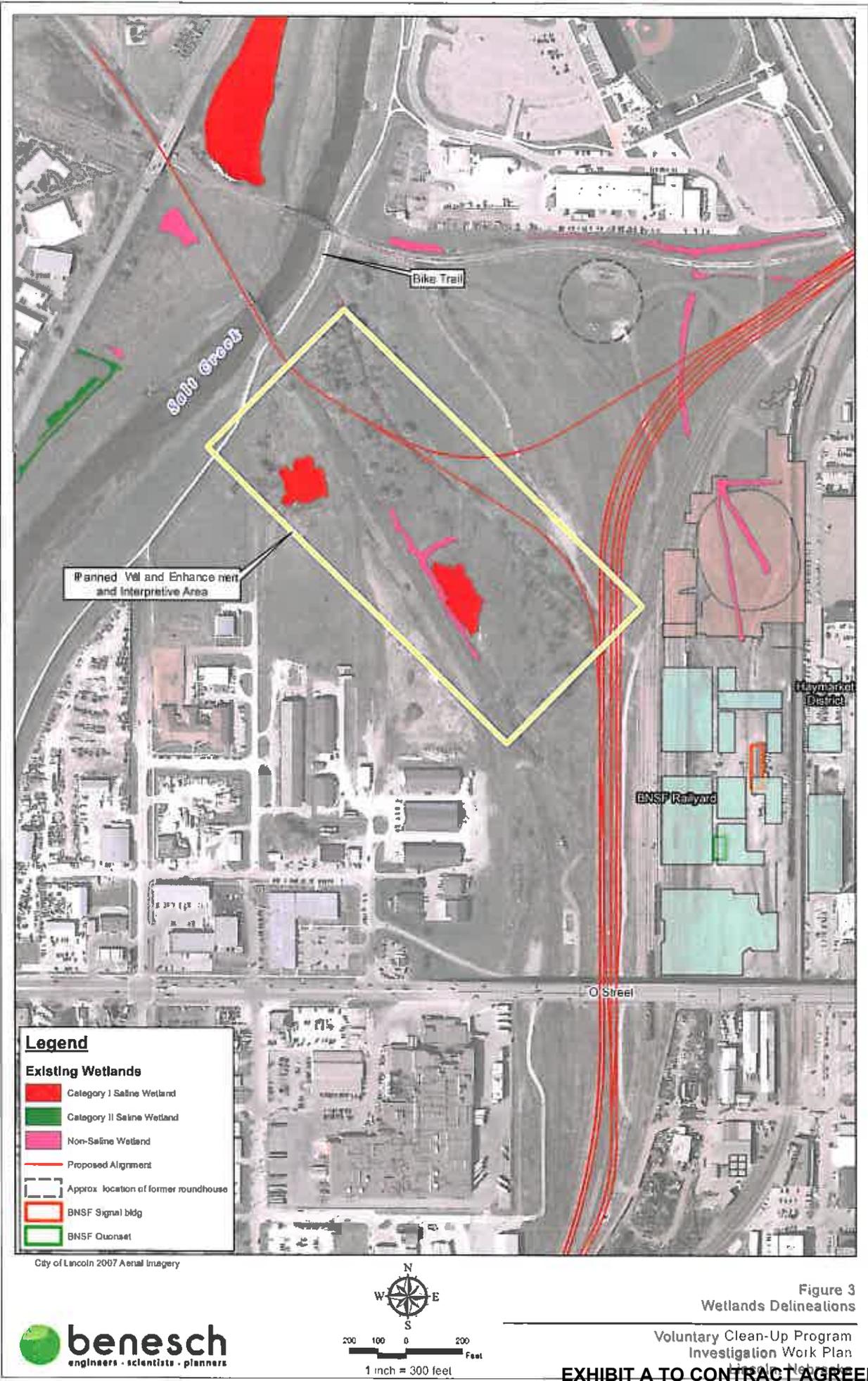
2007 Lancaster County Aerial



1 inch = 700 feet

Figure 2
Area Boundary Map

Environmental Contingency Plan
Lincoln, Nebraska



TABLES

Table 1 Potential Disturbance Activities		
Type of Activity	Description	Typical Examples and Effects
Fill	Fill is defined as any organic or inorganic material that is placed in a wetland or waterway ² .	<ul style="list-style-type: none"> • Temporary construction access roads • Stockpiling of construction material and or debris • Demolition • Construction pads for boring or other work • Trench side cast material • Work bridge or temporary detour structure piling • Highway improvements—shoulder widening, additional lanes, guardrail flares, etc.
Removal	Removal is defined as any organic or inorganic material that is removed from a wetland or waterway.	<ul style="list-style-type: none"> • Exploratory sampling or boring • Surface grading to create construction 'pad' or flat work area • Temporary trenching • Ditch cleaning where not exempt
Clearing / Grubbing	Clearing and grubbing involves the removal of vegetation and the top layer of soil to remove part of the roots.	<ul style="list-style-type: none"> • Sub-grade preparation • Abutment construction • Road bank re-contouring
Vegetation Clearing	To claim vegetation disturbance without soil disturbance the activity must involve cutting trees and shrubs off at their base, plucking them up, placing the debris in a truck and hauling it off.	<ul style="list-style-type: none"> • Creation of a roadway clear-zone
Hydrologic Changes	Changes that the project causes that affect the hydrology of the wetland or waterway	<ul style="list-style-type: none"> • Impeding or restricting the passage of normal or expected high flows • Stormwater treatment or drainage design that effectively alters wetland hydrology • Causing flooding or erosion downstream of the project • Draining an adjacent wetland by trenching/ditching/excavating

² According to the U.S. Army Corps of Engineers, piling is considered a structure and the placement of piling in a wetland or waterway does not require a permit under Section 404 of the Clean Water Act, which regulates the discharge of fill material. The placement of piling may be regulated under Section 10 of the Rivers and Harbors Act, which applies to tidally influenced and navigable waterways.

Table 2 Common Avoidance Measures	
Construction and Design Elements	Considerations
Reducing the Build Footprint	The use walls instead of fill slopes near wetlands and waterways should be considered if feasible and sustainable (i.e., will protect wetland functions with little maintenance). Walls are usually more costly than fill but the cost of mitigation should be weighed against the cost of fill.
Road Placement	Designing the placement of roadways to avoid wetlands and waterways is often not feasible; however slight shifts in alignment can often avoid and or minimize impacts to wetlands and waterways.
Temporary Roads and Access	<p>Consider construction staging to avoid impacts where necessary and safety allows. Place staging areas, temporary access roads, or storage areas outside of wetlands and waterways. The wetlands and waterways will be demarcated on the plans sheets as well as in the field as no work zones to avoid incidental impacts.</p> <p>If temporary access to piers or girders on a bridge is needed, evaluate the feasibility of conducting the work using scaffolding hanging from the topside of the bridge or limiting equipment access to the bank above ordinary high watermark.</p>
Stormwater Facilities	Avoid constructing storm water facilities in wetlands. Other locations or designs for stormwater facilities should be reviewed to determine that no other practicable alternative to locating them within a wetland exists.
Temporary Stockpiling of Materials	Avoid temporarily stockpiling construction material in wetlands. Suitable staging and stockpile areas are usually available. If absolutely necessary, follow minimization techniques for temporary fill described in Table 3.

Table 3 Minimization Measures	
Design and Construction Elements	Minimization Measure(s)
Temporary Fill for access roads, staging, other.	<p>Can compact soil and also be difficult to remove after use (e.g., individual pieces of gravel sink into the soil substrate).</p> <p>Fill material removal can be made easier by using geotextile fabric in combination with either chain link fencing (placed below the geotextile fabric), or a geogrid (placed on top of geotextile fabric). Fill material is then placed on the top of these materials. When construction is complete fill is removed in lifts until a small amount remains to allow the sub material to be pulled up without ripping or breaking.</p> <p>The use of large 'balloon' tires on trucks and other equipment can help prevent soil compaction.</p>
Construction Near Wetlands	<p>If not properly demarcated construction impacts can "spread" into wetlands intended for avoidance.</p> <p>To minimize impacts clearly identify wetlands on plan sheets and demarcate on the ground using orange construction fencing and or silt fencing.</p>
Construction Pads	Consider the use of crane mats, which are easily removed upon project completion with little mess (see photo).
Side cast material	Side cast material placed in wetlands should be replaced in the trench in the same order removed (i.e. topsoil segregation) to ensure the integrity of the soil is maintained and wetland impacts where the trench is located are minimized.
Sampling or Boring	Limit access to the wetland by sampling the edges instead of driving through the middle. If access is necessary it should be timed when the area is dry.
Temporary Trenching	Temporary impacts can become permanent if the trench is not adequately backfilled to prevent draining the adjacent wetland. Consider using clay plugs in the trench if the trench has the potential to "dewater" a wetland. Monitor area for changes.
Clearing / Grubbing and Vegetation Clearing	<p>Limits of construction should be clearly shown on plans and identified on the ground.</p> <p>Wetlands should not be grubbed unless necessary or where they will be permanently impacted.</p> <p>If appropriate re-vegetate cleared and grubbed areas.</p>
Hydrologic Changes	<p>Implement erosion control measures and manage construction storm water to avoid sedimentation in wetlands.</p> <p>Place permeable fill material or install small culverts to maintain connectivity between wetlands.</p> <p>New stormwater facilities should use infiltration or avoid redirection from or to an existing wetland or waterway.</p>

ATTACHMENT 1

PRELIMINARY CHEMICALS OF POTENTIAL CONCERN

ALTER PCOPCs	BNSF PCOPCs	JAYLYNN PCOPCs	LINCOLN DEPOT PCOPCs
2-Butanone (MEK)	1-Methylnaphthalene	1,1,2-Trichloroethane	1,3,5-Trimethylbenzene
Arochlor 1248	2-Methylnaphthalene	2-Methylnaphthalene	1-Methylnaphthalene
Arochlor 1260	4-Methyl-2-pentanone	4-Chloroaniline	2-Methylnaphthalene
Arsenic	Acenaphthene	Acenaphthene	Acenaphthene
Barium	Acenaphthylene	Acenaphthylene	Acetone
Benzene	Acetone	Acetone	Arsenic
Cadmium	Anthracene	Anthracene	Barium
Chromium	Arsenic	Arsenic	Benzene
Ethylbenzene	Barium	Azobenzene	Benzo(a)anthracene
Lead	Benzene	Barium	Benzo(a)pyrene
Mercury	Benzo(a)anthracene	Benzene	Benzo(b)fluoranthene
Naphthalene	Benzo(a)pyrene	Benzo(a)anthracene	Benzo(g,h,i)perylene
Silver	Benzo(b)fluoranthene	Benzo(a)pyrene	Cadmium
Toluene	Benzo(g,h,i)perylene	Benzo(b)fluoranthene	Carbon disulfide
Xylenes, total	Benzo(k)fluoranthene	Benzo(g,h,i)perylene	Chromium
	bis(2-Ethylhexyl)phthalate	Benzo(k)fluoranthene	Chrysene
	Cadmium	Cadmium	Dibenzofuran
	Carbazole	Carbazole	Ethylbenzene
	Carbon Disulfide	Carbon disulfide	Fluoranthene
	Chloroform	Chromium	Fluorene
	Chromium	Chrysene	Hexane
	Chrysene	Dibenzo(a,h)anthracene	Indeno(1,2,3-cd)pyrene
	cis-1,2-Dichloroethylene	Dibenzofuran	Isopropylbenzene
	Dibenzo(a,h)anthracene	Di-n-butyl phthalate	Lead
	Dibenzofuran	Ethylbenzene	Mercury
	Diethyl Phthalate	Fluoranthene	Methyl ethyl ketone
	Fluoranthene	Fluorene	Naphthalene
	Fluorene	Hexane	n-Butylbenzene
	Indeno(1,2,3-cd)pyrene	Indeno(1,2,3-cd)pyrene	n-Propylbenzene
	Isopropylbenzene	Lead	o-Xylene
	Lead	Mercury	Phenanthrene
	Mercury	Methyl ethyl ketone	p-Isopropyltoluene
	Naphthalene	Methyl Tert Butyl Ether	Pyrene
	n-Butylbenzene	Methylene chloride	sec-Butylbenzene
	n-Propylbenzene	Naphthalene	Toluene
	Phenanthrene	Phenanthrene	TEH (Diesel)
	p-Isopropyltoluene	Pyrene	TEH (Motor Oil)
	Pyrene	Selenium	
	sec-Butylbenzene	Styrene	
	Selenium	Toluene	
	Silver	TEH (Diesel)	
	tert-Butylbenzene	TEH (Motor Oil)	
	TEH (Diesel)	Xylenes, total	
	TEH (Motor Oil)		
	Trichloroethylene		
	Vinyl Acetate		

1,1,2-TRICHLOROETHANE

What is 1,1,2-trichloroethane?

1,1,2-Trichloroethane is a colorless, sweet-smelling liquid. It does not burn easily, can be dissolved in water, and evaporates easily. It is used as a solvent (a chemical that dissolves other substances) and as an intermediate in the production of the chemical, 1,1-dichloroethane. 1,1,2-Trichloroethane is sometimes present as an impurity in other chemicals, and it may be formed when another chemical breaks down in the environment under conditions where there is no air.

What happens to 1,1,2-trichloroethane when it enters the environment?

- Most 1,1,2-trichloroethane released into the environment will go into the air.
- 1,1,2-Trichloroethane breaks down slowly in air; it takes approximately 49 days for half of it to break down.
- 1,1,2-Trichloroethane may enter the groundwater by filtering through the soil.
- It appears to stay in water for a long time; it takes years for it to break down.

1,2-DICHLOROETHANE

What is 1,2-dichloroethane?

1,2-Dichloroethane, also called ethylene dichloride, is a manufactured chemical that is not found naturally in the environment. It is a clear liquid and has a pleasant smell and sweet taste. The most common use of 1,2-dichloroethane is in the production of vinyl chloride which is used to make a variety of plastic and vinyl products including polyvinyl chloride (PVC) pipes, furniture and automobile upholstery, wall coverings, house wares, and automobile parts. It is also used as a solvent and is added to leaded gasoline to remove lead.

What happens to 1,2-dichloroethane when it enters the environment?

- 'Most of the 1,2-dichloroethane released to the environment is released to the air. In the air, 1,2-dichloroethane breaks down by reacting with other compounds formed by sunlight. It can stay in the air for more than 5 months before it is broken down.
- 1,2-Dichloroethane can also be released into rivers and lakes. It breaks down very slowly in water and most of it will evaporate to the air.

1,2-DICHLOROETHENE

What is 1,2-dichloroethene?

1,2-Dichloroethene, also called 1,2-dichloroethylene, is a highly flammable, colorless liquid with a sharp, harsh odor. It is used to produce solvents and in chemical mixtures. You can smell very small amounts of 1,2-dichloroethene in air (about 17 parts of 1,2-dichloroethene per million parts of air [17 ppm]). There are two forms of 1,2-dichloroethene; one is called *cis*-1,2-dichloroethene and the other is called *trans*-1,2-dichloroethene. Sometimes both forms are present as a mixture.

What happens to 1,2-dichloroethene when it enters the environment?

- 1,2-Dichloroethene evaporates rapidly into air.
- In the air, it takes about 5-12 days for half of it to break down.
- Most 1,2-dichloroethene in the soil surface or bodies of water will evaporate into air.
- 1,2-Dichloroethene can travel through soil or dissolve in water in the soil. It is possible that it can contaminate groundwater.
- In groundwater, it takes about 13-48 weeks to break down.
- There is a slight chance that 1,2-dichloroethene will break down into vinyl chloride, a different chemical which is believed to be more toxic than 1,2-dichloroethene.

1,2-DICHLOROPROPANE

What is 1,2-dichloropropane?

1,2-Dichloropropane is a colorless, flammable liquid with a chloroform-like odor. It is moderately soluble in water and readily evaporates into air. It does not occur naturally in the environment. 1,2-Dichloropropane production in the United States has declined over the past 20 years. It was used in the past as a soil fumigant, chemical intermediate, and industrial solvent and was found in paint strippers, varnishes, and furniture finish removers. Most of these uses were discontinued. Today, almost all of the 1,2-dichloropropane is used as a chemical intermediate to make perchloroethylene and several other related chlorinated chemicals.

What happens to 1,2-dichloropropane when it enters the environment?

- 1,2-Dichloropropane released to air can spread to areas far from where it was released because it is not rapidly broken down by reactions with other chemicals and sunlight.
- Most of the 1,2-dichloropropane in water will evaporate to the air.
- When released to soil, it is not easily broken down by bacteria, but will easily evaporate to the air and filter into the groundwater.

- 1,2-Dichloropropane does not build up in the food chain.

SILVER

What is silver?

Silver is a naturally occurring element. It is found in the environment combined with other elements such as sulfide, chloride, and nitrate. Pure silver is “silver” colored, but silver nitrate and silver chloride are powdery white and silver sulfide and silver oxide are dark-gray to black. Silver is often found as a by-product during the retrieval of copper, lead, zinc, and gold ores. Silver is used to make jewelry, silverware, electronic equipment, and dental fillings. It is also used to make photographs, in brazing alloys and solders, to disinfect drinking water and water in swimming pools, and as an antibacterial agent. Silver has also been used in lozenges and chewing gum to help people stop smoking.

What happens to silver when it enters the environment?

- Silver may be released into the air and water through natural processes such as the weathering of rocks.
- Human activities such as the processing of ores, cement manufacture, and the burning of fossil fuel may release silver into the air.
- It may be released into water from photographic processing.
- Rain may wash silver out of soil into the groundwater.
- Silver does not appear to concentrate to a significant extent in aquatic animals.

ARSENIC

Arsenic is a metalloid

- Arsenic is ordinarily a steel gray metal-like material that occurs naturally.
- Arsenic compounds can be categorized as inorganic or organic.
- Inorganic arsenic is primarily used as a preservative for wood to make it resistant to rotting and decay. In 2003, the use of arsenic-containing wood preservatives was phased out for certain residential uses such as play structures, picnic tables, decks, fencing, and boardwalks. Arsenic wood preservatives are still used in industrial applications.
- Inorganic arsenic occurs naturally in soil and in many kinds of rock, especially in minerals and ores that contain copper or lead.

- Elemental arsenic is used as an alloying element in ammunition and solders, as an anti-friction additive to metals used for bearings, and to strengthen lead-acid storage battery grids.
- In the past, inorganic arsenic compounds were used as pesticides; this use is no longer permitted.
- MMA is used for weed control on cotton turf grass and lawns and under trees, vines, and shrubs. DMA, also referred to as cacodylic acid, is used for weed control under nonbearing citrus trees, around buildings and sidewalks, and for lawn renovation.

Arsenic in the Environment

- Arsenic cannot be destroyed in the environment. It can only change its form or become attached to or separated from particles.
- Arsenic attached to very small particles may stay in the air for many days and travel long distances.
- Arsenic in soil may be transported by wind or in runoff or may leach into the subsurface soil. Arsenic is largely immobile in agricultural soils, therefore, it tends to concentrate and remain in upper soil layers indefinitely.
- Transport and partitioning of arsenic in water depends upon the chemical form. Soluble forms move with the water and may be carried long distances. Arsenic may be adsorbed from water onto sediments or soils.

BARIUM

Barium is an alkaline earth metal

- Barium is a silvery-white metal that primarily occurs in nature as barite (barium sulfate) and witherite (barium carbonate) ores.
- Barium compounds are solids, existing as powder or crystals.

Barium in the Environment

- Barium enters the environment naturally through the weathering of rocks and minerals. Anthropogenic releases are primarily associated with industrial processes.
- In the atmosphere, barium is likely to present in particulate form and is primarily removed by wet and dry deposition.
- In aquatic media, barium is likely to precipitate out of solution as an insoluble salt.

- Barium is not very mobile in most soil systems due to the formation of water-insoluble salts and the inability of barium to form soluble complexes with fulvic and humic acids.
- Barium has the potential to bio-concentrate in marine animals and plants and in some terrestrial plants such as legumes, forage plants, Brazil nuts, and mushrooms.

BENZENE

Benzene is a colorless liquid

- Benzene, also known as benzol, has a sweet odor.
- Benzene is highly flammable.
- Benzene is made mostly from petroleum sources. Various industries use benzene to make other chemicals, such as styrene (for Styrofoam® and other plastics), cumene (for various resins), and cyclohexane (for nylon and synthetic fibers).
- Benzene is also used for the manufacturing of some types of rubbers, lubricants, dyes, detergents, drugs, and pesticides.
- Benzene is also a natural component of crude oil, gasoline and cigarette smoke.

Benzene in the Environment

- Benzene enters the air, water, and soil as a result of industrial processes, emissions from burning coal and oil, tobacco smoke, gasoline exhaust and gasoline leaks, and from natural sources including volcanoes and forest fires.
- Benzene in the atmosphere chemically degrades in only a few days.
- Benzene released to soil or waterways is subject to volatilization, photooxidation, and biodegradation.

CARBON DISULFIDE

What is carbon disulfide?

Pure carbon disulfide is a colorless liquid with a pleasant odor that is like the smell of chloroform. The impure carbon disulfide that is usually used in most industrial processes is a yellowish liquid with an unpleasant odor, like that of rotting radishes. Carbon disulfide evaporates at room temperature, and the vapor is more than twice as heavy as air. It easily explodes in air and also catches fire very easily. In nature, small amounts of carbon disulfide are found in gases released to the earth's surface as, for example, in volcanic eruptions or over marshes. Commercial carbon disulfide is made by combining carbon and sulfur at very high temperatures.

What happens to carbon disulfide when it enters the environment?

- The amount of carbon disulfide released into the air through natural processes is difficult to judge because it is so small.
- Carbon disulfide evaporates rapidly when released to the environment.
- Most carbon disulfide in the air and surface water is from manufacturing and processing activities.
- It is found naturally in coastal and ocean waters.
- Carbon disulfide does not stay dissolved in water very long, and it also moves through soils fairly quickly.
- Carbon disulfide does not appear to be taken up in significant amounts by the organisms living in water.

CADMIUM

What is cadmium?

Cadmium is a natural element in the earth's crust. It is usually found as a mineral combined with other elements such as oxygen (cadmium oxide), chlorine (cadmium chloride), or sulfur (cadmium sulfate, cadmium sulfide). All soils and rocks, including coal and mineral fertilizers, contain some cadmium. Most cadmium used in the United States is extracted during the production of other metals like zinc, lead, and copper. Cadmium does not corrode easily and has many uses, including batteries, pigments, metal coatings, and plastics.

What happens to cadmium when it enters the environment?

- Cadmium enters soil, water, and air from mining, industry, and burning coal and household wastes.
- Cadmium does not break down in the environment, but can change forms.
- Cadmium particles in air can travel long distances before falling to the ground or water.
- Some forms of cadmium dissolve in water.
- Cadmium binds strongly to soil particles.
- Fish, plants, and animals take up cadmium from the environment.

CHROMIUM

What is chromium?

Chromium is a naturally occurring element found in rocks, animals, plants, and soil. It can exist in several different forms. Depending on the form it takes, it can be a liquid, solid, or gas. The

most common forms are chromium(0), chromium(III), and chromium(VI). No taste or odor is associated with chromium compounds. The metal chromium, which is the chromium(0) form, is used for making steel. Chromium(VI) and chromium(III) are used for chrome plating, dyes and pigments, leather tanning, and wood preserving.

What happens to chromium when it enters the environment?

- Chromium can be found in air, soil, and water after release from the manufacture, use, and disposal of chromium-based products, and during the manufacturing process.
- Chromium does not usually remain in the atmosphere, but is deposited into the soil and water.
- Chromium can easily change from one form to another in water and soil, depending on the conditions present.
- Fish do not accumulate much chromium in their bodies from water.

DI-*n*-BUTYL PHTHALATE

What is di-*n*-butylphthalate?

Di-*n*-butyl phthalate is a manufactured chemical that does not occur naturally. It is an odorless and oily liquid that is colorless to faint yellow in color. It is slightly soluble in water and does not evaporate easily. Di-*n*-butyl phthalate is used to make plastics more flexible and is also in carpet backings, paints, glue, insect repellents, hair spray, nail polish, and rocket fuel.

What happens to di-*n*-butylphthalate when it enters the environment?

- Di-*n*-butyl phthalate is released to air as a vapor. It can react with other chemicals in the air and is usually broken down within a few days. Di-*n*-butyl phthalate can also attach to particles in the air and eventually settle to the land and water.
- Most of the di-*n*-butyl phthalate in water attaches to sediment and settles out of the water or is broken down by bacteria. Small amounts may evaporate to the air.
- When released to the soil, it attaches to soil particles and is broken down by bacteria.
- There is no evidence that it builds up in the food chain.

DIETHYL PHTHALATE

What is diethyl phthalate?

Diethyl phthalate is a colorless liquid that has a bitter, disagreeable taste. This synthetic substance is commonly used to make plastics more flexible. Products in which it is found include toothbrushes, automobile parts, tools, toys, and food packaging. Diethyl phthalate can

be released fairly easily from these products, as it is not part of the chain of chemicals (polymers) that makes up the plastic. Diethyl phthalate is also used in cosmetics, insecticides, and aspirin.

What happens to diethyl phthalate when it enters the environment?

- Diethyl phthalate has been found in waste sites and landfills from discarded plastics.
- It may break down in the air.
- It can become attached to particles of dust in the air, and can settle out.
- It is broken down to harmless products by microorganisms in soil and water.
- Small amounts of it can build up in fish and shellfish living in water containing it.

ETHYLBENZENE

Ethylbenzene is a liquid

- Ethylbenzene is a colorless liquid with an aromatic odor.
- Ethylbenzene is flammable and combustible.
- It is naturally found in crude petroleum.
- It is a high production volume chemical primarily used for the production of styrene.

Ethylbenzene in the Environment

- Ethylbenzene partitions primarily to air and removal via photochemically generated hydroxyl radicals is an important degradation mechanism.
- The half-life in air is approximately 1-2 days.
- In surface water, most of the ethylbenzene will evaporate. The remaining ethylbenzene is broken down through photooxidation and biodegradation.
- Ethylbenzene is moderately mobile in soil.
- Ethylbenzene does not appear to bioconcentrate in aquatic food chains

MERCURY

What is mercury?

Mercury is a naturally occurring metal which has several forms. The metallic mercury is a shiny, silver-white, odorless liquid. If heated, it is a colorless, odorless gas. Mercury combines with other elements, such as chlorine, sulfur, or oxygen, to form inorganic mercury compounds or "salts," which are usually white powders or crystals. Mercury also combines with carbon to make organic mercury compounds. The most common one, methylmercury, is produced mainly by

microscopic organisms in the water and soil. More mercury in the environment can increase the amounts of methylmercury that these small organisms make. Metallic mercury is used to produce chlorine gas and caustic soda, and is also used in thermometers, dental fillings, and batteries. Mercury salts are sometimes used in skin lightening creams and as antiseptic creams and ointments.

What happens to mercury when it enters the environment?

- Inorganic mercury (metallic mercury and inorganic mercury compounds) enters the air from mining ore deposits, burning coal and waste, and from manufacturing plants.
- It enters the water or soil from natural deposits, disposal of wastes, and volcanic activity.
- Methylmercury may be formed in water and soil by small organisms called bacteria.
- Methylmercury builds up in the tissues of fish. Larger and older fish tend to have the highest levels of mercury.

METHYL TERT-BUTYL ETHER

What is methyl *tert*-butyl ether?

Methyl *tert*-butyl ether (MTBE) is a flammable liquid with a distinctive, disagreeable odor. It is made from blending chemicals such as isobutylene and methanol, and has been used since the 1980s as an additive for unleaded gasoline to achieve more efficient burning. MTBE is also used to dissolve gallstones. Patients treated in this way have MTBE delivered directly to their gall bladders through special tubes that are surgically inserted.

What happens to MTBE when it enters the environment?

- MTBE quickly evaporates from open containers and surface water, so it is commonly found as a vapor in the air.
- Small amounts of MTBE may dissolve in water and get into groundwater.
- It remains in underground water for a long time.
- MTBE may stick to particles in water, which will cause it to eventually settle to the bottom sediment.
- MTBE may be broken down quickly in the air by sunlight.
- MTBE does not build up significantly in plants and animals.

POLYCYCLIC AROMATIC HYDROCARBONS (PAHs)

What are polycyclic aromatic hydrocarbons?

Polycyclic aromatic hydrocarbons (PAHs) are a group of over 100 different chemicals that are formed during the incomplete burning of coal, oil and gas, garbage, or other organic substances like tobacco or charbroiled meat. PAHs are usually found as a mixture containing two or more of these compounds, such as soot. Some PAHs are manufactured. These pure PAHs usually exist as colorless, white, or pale yellow-green solids. PAHs are found in coal tar, crude oil, creosote, and roofing tar, but a few are used in medicines or to make dyes, plastics, and pesticides.

What happens to PAHs when they enter the environment?

- PAHs enter the air mostly as releases from volcanoes, forest fires, burning coal, and automobile exhaust.
- PAHs can occur in air attached to dust particles.
- Some PAH particles can readily evaporate into the air from soil or surface waters.
- PAHs can break down by reacting with sunlight and other chemicals in the air, over a period of days to weeks
- PAHs enter water through discharges from industrial and wastewater treatment plants.
- Most PAHs do not dissolve easily in water. They stick to solid particles and settle to the bottoms of lakes or rivers.
- Microorganisms can break down PAHs in soil or water after a period of weeks to months.
- In soils, PAHs are most likely to stick tightly to particles; certain PAHs move through soil to contaminate underground water.
- PAH contents of plants and animals may be much higher than PAH contents of soil or water in which they live.

LEAD

Lead is a metal

- Lead is a naturally-occurring bluish-gray metal that is rarely found in its elemental form, but occurs in the Earth's crust primarily as the mineral galena (PbS), and to a lesser extent as anglesite (PbSO₄) and cerussite (PbCO₃).
- Lead is not a particularly abundant element, but its ore deposits are readily accessible and widely distributed throughout the world. Its properties, such as corrosion resistance,

density, and low melting point, make it a familiar metal in pipes, solder, weights, and storage batteries.

- Natural lead is a mixture of four stable isotopes, ^{208}Pb (51–53%), ^{206}Pb (23.5– 27%), ^{207}Pb (20.5–23%), and ^{204}Pb (1.35–1.5%). Lead isotopes are the stable decay product of three naturally radioactive elements: ^{205}Pb from uranium, ^{207}Pb from actinium, and ^{208}Pb from thorium.

Lead in the Environment

- Lead is dispersed throughout the environment primarily as the result of anthropogenic activities. In the air, lead is in the form of particles and is removed by rain or gravitational settling.
- The fate of lead in soil is affected by the adsorption at mineral interfaces, which are dependent upon physical and chemical characteristics of the soil (e.g., pH, soil type, particle size, organic matter content).
- Sources of lead in dust and soil can include lead from weathering and chipping of lead-based paint from buildings, bridges, and other structures.
- The solubility of lead compounds in water is a function of pH, hardness, salinity, and the presence of humic material. Solubility is highest in soft, acidic water.

PHENOL

What is phenol?

Phenol is both a manufactured chemical and a natural substance. It is a colorless-to-white solid when pure. The commercial product is a liquid. Phenol has a distinct odor that is sickeningly sweet and tarry. You can taste and smell phenol at levels lower than those that are associated with harmful effects. Phenol evaporates more slowly than water, and a moderate amount can form a solution with water. Phenol is used primarily in the production of phenolic resins and in the manufacture of nylon and other synthetic fibers. It is also used in slomicides (chemicals that kill bacteria and fungi in slimes), as a disinfectant and antiseptic, and in medicinal preparations such as mouthwash and sore throat lozenges.

What happens to phenol when it enters the environment?

- Following small, single releases, phenol is rapidly removed from the air (generally, half is removed in less than a day).
- Phenol generally remains in the soil only about 2 to 5 days.

- Phenol can remain in water for a week or more.
- Larger or repeated releases of phenol can remain in the air, water, and soil for much longer periods of time.
- Phenol does not build up in fish, other animals, or plants

SELENIUM

What is selenium?

Selenium is a naturally occurring mineral element that is distributed widely in nature in most rocks and soils. In its pure form, it exists as metallic gray to black hexagonal crystals, but in nature it is usually combined with sulfide or with silver, copper, lead, and nickel minerals. Most processed selenium is used in the electronics industry, but it is also used: as a nutritional supplement; in the glass industry; as a component of pigments in plastics, paints, enamels, inks, and rubber; in the preparation of pharmaceuticals; as a nutritional feed additive for poultry and livestock; in pesticide formulations; in rubber production; as an ingredient in antidandruff shampoos; and as a constituent of fungicides. Radioactive selenium is used in diagnostic medicine.

What happens to selenium when it enters the environment?

- Selenium occurs naturally in the environment and can be released by both natural and manufacturing processes.
- Selenium dust can enter the air from burning coal and oil. This selenium dust will eventually settle over the land and water.
- It also enters water from natural deposits in rocks and soil, and from agricultural and industrial waste. Some selenium compounds will dissolve in water, and some will settle to the bottom as particles.
- Insoluble forms of selenium will remain in soil, but soluble forms are very mobile and may enter surface water from soils.
- Selenium may accumulate up the food chain.

STYRENE

What is styrene?

Styrene is a colorless liquid that evaporates easily and has a sweet smell. It often contains other chemicals that give it a sharp, unpleasant smell. Styrene is widely used to make plastics and rubber. Products containing styrene include insulation, fiberglass, plastic pipes, automobile parts, shoes, drinking cups and other food containers, and carpet backing. Most of these

products contain styrene linked together in a long chain (polystyrene) as well as unlinked styrene. Low levels of styrene also occur naturally in a variety of foods such as fruits, vegetables, nuts, beverages, and meats. In addition, small amounts of styrene can be transferred to food from styrene-based packaging material.

What happens to styrene when it enters the environment?

- Styrene can be found in air, water, and soil after release from the manufacture, use, and disposal of styrene-based products.
- It is quickly broken down in the air, usually within 1 to 2 days.
- Styrene evaporates from shallow soils and surface water. Styrene that remains in soil or water may be broken down by bacteria or other microorganisms.
- Styrene is not expected to build up in animals.

XYLENES

Xylene is a colorless liquid

- Xylene is a colorless, flammable liquid with a somewhat sweet odor.
- Xylene evaporates and burns easily.
- Xylenes (mixtures of ortho-, meta-, and para-isomers) are used as industrial solvents, synthetic intermediates, and solvents in commercial products such as paints, coatings, adhesive removers, and paint thinners; they are also a component of gasoline.
- Xylene occurs naturally in petroleum and coal tar and is formed during forest fires.

Xylene in the Environment

- Xylene released to the atmosphere is quickly transformed by photooxidation with a half-life of approximately 8–14 hours.
- When released to soil or surface water, xylene volatilizes into the atmosphere, where it is quickly degraded.
- Xylene that does not volatilize quickly may undergo biodegradation in the soil or water.
- Xylene may also leach into groundwater, where degradation by microbes becomes the primary removal process.

ATTACHMENT 2

WEST HAYMARKET REDEVELOPMENT SITE

FORM ECP-1

ENVIRONMENTAL CONTINGENCY PLAN

WORK ACTIVITY:

PROJECT MANAGER/CONTRACTOR'S REPRESENTATIVE:

DATES OF CONSTRUCTION:

ATTACHMENTS (LIST):

SPECIAL PRECAUTIONS:

CERTIFICATION

By signing this certification, I acknowledge on behalf of _____ (organization) that I have received a copy of the WHRS ECP, understand the obligations and procedures relevant to my organization's planned work activity and agree to abide by any and all special precautions described above. Deviations to planned work activities and special precautions will be coordinated with the City of Lincoln's Environmental Project Management Team's Technical Representative (TR).

Organizational Representative

(Print Name and Title): _____

Signature/Date: _____

EPMT TR: _____

Signature/Date: _____

WEST HAYMARKET REDEVELOPMENT SITE

FORM ECP-2

ENVIRONMENTAL CONTINGENCY PLAN

WORK ACTIVITY:

PROJECT MANAGER/CONTRACTOR'S REPRESENTATIVE:

DATE OF ECP-1 AND ANY SUPPLEMENTS:

ATTACHMENTS (LIST) INCLUDING ANY PHOTO LOG:

OBSERVATION(S):

CORRECTIVE ACTION(S):

EPMT TR:

Signature/Date:

ATTACHMENT 3



Soil Management Guidance



On-Site Utilities, Grading Work, and Geotechnical Boring Soil:

- Generation of spoils is not considered active management, can be replaced in the excavation/hole
- Excess spoils should be containerized, or if stockpiled, an Area of Contamination (AOC) designation should be requested (use of plastic sheeting not acceptable)
- Soil must be sampled either “as generated” with reasonable sampling frequency **OR** pre-characterized with densely-spaced horizontal and vertical in-situ sampling
- Soil must be tested before taken off-site using either the TCLP method **OR** a totals analysis with moisture content (100% dry solids if 20 to 1 rule used)
 - Visual/olfactory evidence alone cannot be used
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

On-Site Unsuitable Geotechnical Material Soil:

- Excess spoils should be containerized, or if stockpiled, an Area of Contamination (AOC) designation should be requested (use of plastic sheeting not acceptable)
- Soil must be sampled either “as generated” with reasonable sampling frequency **OR** pre-characterized with densely-spaced horizontal and vertical in-situ sampling
- Soil must be tested before taken off-site using either the TCLP method **OR** a totals analysis with moisture content (100% dry solids if 20 to 1 rule used)
 - Visual/olfactory evidence alone cannot be used
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

On-Site Investigation Derived Waste and Remediation Waste Soil:

- Must be containerized and tested
- Soil must be sampled either “as generated” with reasonable sampling frequency **OR** pre-characterized with densely-spaced horizontal and vertical in-situ sampling **OR** based on collected environmental sample from groundwater or soil (soil sample must be representative of entire soil boring column)
- Soil must be tested before taken off-site using either the TCLP method **OR** a totals analysis with moisture content (100% dry solids if 20 to 1 rule used)
 - Visual/olfactory evidence alone cannot be used
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

Off-Site Utilities and Road Construction Soil:

- Generation of spoils is not considered active management, can be replaced in the excavation/hole
- Stockpiling of excess spoils and use of visual/olfactory evidence for soil characterization is acceptable **unless** there is knowledge of contamination in the area, then sampling must be done as described above for on-site utilities work
 - This knowledge may be acquired by conducting a records search of the Nebraska Department of Environmental Quality files
- If contamination is encountered during construction, the contaminated soil must be managed as described above for on-site utilities work
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

SPECIAL WASTE DISPOSAL PERMIT

Tuesday, November 09, 2010



Lincoln-Lancaster County Health Department
Special Waste Program
3140 N Street
Lincoln, Nebraska 68510
(402) 441-8021

Generator:

JOINT PUBLIC AGENCY-HAYMARKET ARENA

Facility:

JOINT PUBLIC AGENCY-HAYMARKET ARENA
555 S 10TH ST
ROOM 111
LINCOLN, NE 68508

Contact Information:

MIKI ESPOSITO
PW LIAISON & COMPLIANCE

DATE ISSUED: 11/09/2010 DATE EXPIRES: 08/01/2012

The following permits are granted for the disposal of Special Wastes at the sites shown below. These permits were issued based on the waste description information provided on the permit application. Any substantial change in the nature of the waste from that described in the permit application, will invalidate the permit. Failure to comply with the General Permit Conditions or special conditions described on this permit will invalidate the permit.

PERMIT NUMBER: 10-18355-001-10-09 **HAULER:** NO DESIGNATED HAULER
WASTE TYPE: 10 PETROLEUM CONTAMINATED REFUSE (A. FILTERS, B. SHOP RAGS, C. SOIL, D. ABSORBENTS, OR E. OTHER MATERIAL)
WASTE DESCRIPTION: SOIL FROM EAST-CENTRAL (FUEL DEPOT) & WEST GRADING AREA
DISPOSAL SITE: BLUFF ROAD LANDFILL ONLY
SPECIAL CONDITIONS: *** PETROLEUM-CONTAMINATED SOIL GENERATED AT THE FUEL RELEASE SITE NEAR THE EAST-CENTRAL AREA NEAR THE FORMER FUELING STATION. SOIL MAY ALSO BE GENERATED FROM OTHER AREAS (DETAILED MAP ON FILE AT LLCHD).

THIS PERMIT EXCLUDES CONTAMINATED SOILS THAT MAY BE ENCOUNTERED AT THE FORMER ROUNDHOUSE AND THE FORMER UPRR TURNABLE. ***

*** PLEASE NOTE THE FOLLOWING INFORMATION CONCERNING YOUR PERMIT ***

WASTE DISPOSED UNDER THIS PERMIT IS TO BE DIRECTED TO BLUFF ROAD LANDFILL ONLY!

PERMIT VALID FOR THE WASTE TYPE AND SOURCE LOCATION DESCRIBED ABOVE ONLY. PERMIT DOES NOT AUTHORIZE DISPOSAL OF HAZARDOUS WASTE. GENERATOR IS RESPONSIBLE FOR DETERMINING IF WASTE IS HAZARDOUS. ALL LOADS SUBJECT TO INSPECTION.

WASTE IN THIS CATEGORY MAY NOT CONTAIN "FREE PETROLEUM PRODUCT" OR OTHER LIQUIDS.

PLEASE CONTACT TINA BAKER AT THE LANDFILL AT 441-8102 BEFORE INITIATING THE FIRST LOADS OF WASTE TO DISCUSS QUANTITIES AND TIME SCHEDULES OF DELIVERY.

A COPY OF THIS PERMIT MUST ACCOMPANY ALL LOADS.

ALL LOADS TRAVERSING LANCASTER COUNTY ROADS AND/OR ENTERING THE LANDFILL MUST BE COVERED/TARPED.

MAR 30 2011



STATE OF NEBRASKA

Dave Heineman
Governor

Mr. Chad Blahak
City of Lincoln
Public Works/ Engineering Services
555 South 10th Street
Lincoln, NE 68508

MAR 30 2011

DEPARTMENT OF ENVIRONMENTAL QUALITY
Michael J. Linder
Director
Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186
FAX (402) 471-2909
website: www.deq.state.ne.us

RE: Dewatering Authorization Restrictions Under General National Pollutant Discharge Elimination System (NPDES) NEG671000 for Lincoln Haymarket/Arena Construction Revised 3/24/2011
(Area bounded by 2nd Street, Salt Creek Street, 8th Street, and J Street, Lincoln, NE)

Dear Mr. Blahak,

This letter provides requirements for continued authorization under the Department of Environmental Quality's General NPDES Permit for Construction Dewatering (NEG671000). Due to the known pollutants present in groundwater and soils in this area, additional restrictions will be required in order to protect surface water.

The general permit cannot authorize discharge that in accordance with Part I. C of the permit may create potential water quality impacts on the receiving stream. In addition, in accordance with Part IV.B, the permit prohibits toxic discharges. Known toxics have been determined to be present on this site, and therefore, unless there is further analysis of the dewatering water, it cannot be authorized by this permit to discharge. In order to determine whether or not an authorized discharge can take place, the water must be analyzed prior to discharge. Therefore, to continue authorization under NPDES General Permit NEG67100, all work requiring dewatering discharges must:

1. Containerize the dewatering water.
2. Test each container for the constituents found in Table 1, 2, and 3.
3. Test results must be completed and compared to maximum discharge levels found in Table 1, 2, and 3.
4. If all test results are **below** maximum discharge levels found in Table 1, 2, and 3 discharge authorization is continued under the NPDES General Permit NEG671000. All other terms and conditions of the permit continue to apply.
5. If any test result is **above** maximum discharge levels found in Table 1, 2, and 3, the discharge is no longer authorized under the NPDES General Permit NEG671000 and is prohibited from direct discharge. Alternate disposition and /or treatment are required.
 - a. Approval from a municipal wastewater treatment facility (WWTF) is required prior to discharging to the WWTF. Please be advised that some of the pollutants found on this site may adversely affect the quality of biosolids from the WWTF.
 - b. Any type of treatment on site will require a site-specific NPDES permit applicable to the type of treatment and the pollutants treated. A site specific application for this permit will be required. (Form 1 and 2C)

- c. Treatment can be performed by an off-site facility that is designed, permitted, and approved to treat the pollutants present.

1. Test results shall be recorded on the attached Discharge Monitoring Reports (DMR) and submitted to the Department on a quarterly basis. Reports can be sent to the address at the end of the DMR form.

Table 1: Requirements for Dieldrin, PCBs, and TPH

Parameters	State #	Units	Maximum Discharge Levels	Frequency	Sample Type
Dieldrin	39380	µg/L	0.00144	Once/batch	Grab
Polychlorinated Biphenyls	39516	µg/L	ND ^a	Once/batch	Grab
Total Petroleum Hydrocarbons	82180	mg/L	10	Once/batch	Grab

ND^a - Not Detectable. Detection limit of EPA approved test method 808. If any of the congeners are above detection limit, the discharge level is required and cannot be discharged.

Table 2: Requirements for Metals

Parameters	State #	Units	Maximum Discharge Levels	Monitoring Frequency	Sample Type
Arsenic, Total Recoverable	00978	µg/L	16.7	Once/batch	Grab
Cadmium, Total Recoverable	01113	µg/L	0.527	Once/batch	Grab
Chromium (III), Total Recoverable	04262	µg/L	189.5	Once/batch	Grab
Chromium (VI), Total Recoverable	78247	µg/L	11.0	Once/batch	Grab
Lead, Total Recoverable	01114	µg/L	8.1	Once/batch	Grab
Mercury, Total Recoverable	71901	µg/L	0.77	Once/batch	Grab
Selenium, Total Recoverable	00981	µg/L	5.0	Once/batch	Grab

Table 3: Requirements for Polycyclic Aromatic Hydrocarbons

Parameters	Storet #	Units	Maximum Discharge Levels	Monitoring Frequency	Sample Type
Benzo(a)anthracene	34526	µg/L	0.49	Once/batch	Grab
Benzo(a)pyrene	34247	µg/L	0.49	Once/batch	Grab
Benzo(b)fluoranthene	34230	µg/L	0.49	Once/batch	Grab
Benzo(k)fluoranthene	34242	µg/L	0.49	Once/batch	Grab
Chrysene	34320	µg/L	0.49	Once/batch	Grab
Dibenzo(a,h)anthracene	34556	µg/L	0.49	Once/batch	Grab
Indeno(1,2,3-cd)pyrene	34403	µg/L	0.49	Once/batch	Grab
Naphthalene	34696	µg/L	620	Once/batch	Grab

All of these values with the exception of PCBs are based on Title 117 – Nebraska Surface Water Standards and are the most stringent values allowable. PCB is based on minimum detection levels for EPA approved test method 608. Any detection of the congeners of PCBs will prohibit discharge.

These additional restrictions must be satisfied to qualify for authorization under the NPDES General Dewatering Permit NEG 671000 for construction dewatering activity in the area bounded by 2nd Street, Salt Creek Street, 8th Street and J Street, Lincoln, NE and are effective immediately. Please contact me if you have questions.

Sincerely,



Donna K. Garden, Supervisor
NPDES Permits and Compliance Unit
Wastewater Section
402-471-1367
donna.garden@nebraska.gov

cc: ✓ Frank Uhlarik, Alfred Benesch and Co., 825 J Street, PO Box 80358, Lincoln, Nebraska 68501,
Miki Esposito, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508

EXHIBIT B
Temporary License

Approved by Law
July 17, 2012

TEMPORARY ACCESS LICENSE FOR INITIAL CONSTRUCTION

THIS TEMPORARY ACCESS LICENSE FOR INITIAL CONSTRUCTION ("**License**") is made to be effective as of the ____ day of _____, 2012 ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**Licensee**").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. GENERAL.

1.1 For the purposes specified in **Section 1.3** below (the "**Permitted Uses**"), Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to use the areas of Licensor's property (i) identified by parcel numbers 1, 2, 3, or 4 and depicted on **Exhibit J-6** attached hereto and incorporated herein by reference (each parcel a "**Parcel**"), (ii) shown shaded on **Exhibit A** attached hereto and incorporated herein by reference (the "**Tie Storage Area**"), and (iii) identified as "Temporary Right-of-Entry" and shown on **Exhibit AA-2** and **Exhibit AA-3** each attached hereto and incorporated herein by reference (collectively, the "**Grading Area**") (all four Parcels, the Tie Storage Area, and the Grading Area, collectively, the "**Premises**"), such Premises being situated at or near Lincoln, County of Lancaster, State of Nebraska. Notwithstanding the grant of the license in this License, Licensee, and Licensee's employees, contractors, and agents shall not enter or use any Parcel until (i) all track has been removed from such Parcel, and (ii) Licensee has received written notice from Licensor that all track has been removed from such Parcel and that Licensee may enter and use such Parcel. Such notice from Licensor shall not constitute any guaranties or warranties with respect to such Parcel or the condition thereof.

1.2 In the event the Permitted Uses will affect any improvements or facilities of Licensor or Licensor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "**Other Improvements**"), if any, or interfere with the use of the Other Improvements, Licensee will be responsible at Licensee's sole risk to locate and make any adjustments necessary to such Other Improvements. Licensee must contact the owner(s) of the Other Improvements notifying them of any work that may damage and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses.

1.3 Licensee shall use the Tie Storage Area exclusively as a site for stockpiling and load out for railroad ties removed from Licensor's property. Licensee shall use the Grading Area exclusively as a site for grading. Licensee shall use the balance of the Premises exclusively as: (i) a site for ingress and egress, (ii) site preparation, and (iii) initial construction and core area roadway and utilities within the West Haymarket Project (as defined in that certain Master Development Agreement between Licensor and Licensee dated October 18, 2010 [the "**Master Agreement**"]), all as approved by Licensor in writing in advance (collectively, the "**Advance Construction**"). Licensee shall not use the Premises for any other purpose whatsoever. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("**CERCLA**") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

1.4 Licensor and Licensee mutually agree that no construction activities for the Permitted Uses, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on Licensor's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to Licensor's Network Operations Center (telephone number: 800 832-5452). Licensor and Licensee mutually understand and agree that trains cannot be subjected to delay during this time period.

1.5 In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.

1.6 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

2. TERM. This License shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until the date that is the earlier of: (i) completion of the Permitted Uses or (ii) the Fifth City Closing (as defined in the Exchange Agreement), but in no event later than the date that is the earliest to occur of: (i) the end of the Development Period (as defined in the Master Agreement), or (ii) December 31, 2014.

3. COMPENSATION.

3.1 Licensee shall pay Licensor, prior to the Effective Date, the sum of No Dollars (\$0) as compensation for the use of the Premises.

3.2 Subject to the provisions of the C&M Agreement (as defined below) concerning Licensee's reimbursement of costs and expenses, including without limitation flagging costs, incurred by Licensor in connection with Licensee's use of the Premises, Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all other costs and expenses incurred by Licensor in connection with Licensee's use of the Premises. All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

4.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the use of the Premises.

4.2 Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all of Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

4.3 Licensee shall, at all times, comply with all provisions contained in that certain

Construction and Maintenance Agreement between Licensor and Licensee dated October 18, 2010 (the "**C&M Agreement**"). In the event of conflicts between the terms of this License and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

5. DEFINITION OF COST AND EXPENSE. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

6. RIGHT OF LICENSOR TO USE. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

6.1 to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

6.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

6.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the Permitted Uses.

7. LICENSEE'S OPERATIONS.

7.1 Licensee shall notify Licensor's Project Engineer, Mike Schaefer, at 201 N. 7th Street, Lincoln, NE 68508, telephone (402) 458-7379, at least ten (10) business days prior to initially entering the Premises and prior to entering the Premises for any subsequent maintenance thereon (if applicable). After completion of use of the Premises for the Permitted Uses, Licensee shall notify Licensor in writing that such use has been completed.

7.2 In performing the Permitted Uses, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other. In the event Licensee must cross from one side of Licensor's tracks to the other at a location or locations other than a public roadway, and such location or locations are approved by Licensor in advance, then Licensee shall enter into Licensor's Agreement for Private Crossing for each such private crossing location, each such Agreement for Private Crossing to be in the form attached to the Master Agreement as Exhibit UU.

7.3 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to stop using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

7.4 Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, use the Premises in such a manner that it will not at any time be a source

of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of Licensor's railroad. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this **Section 7.4**, Licensor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

7.5 If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Advance Construction, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Advance Construction as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor.

7.6 Prior to Licensee conducting any excavating or boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested entry on the Premises, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines on the Premises. Prior to conducting any such boring work, Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

7.7 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

7.8 Any open hole, boring or well constructed upon Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

- 7.8.1 filled in to surrounding ground level with compacted bentonite grout; or
- 7.8.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on the Premises for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

7.9 Upon completion of Licensee's work on the Premises or upon termination of this License, whichever shall occur first, Licensee shall, at its sole cost and expense:

- 7.9.1 remove all of its equipment from the Premises;
- 7.9.2 report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
- 7.9.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 7.9.4 leave the Premises in the condition which existed as of the Effective Date.

7.10 Licensee's on-site supervisors shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

8. LIABILITY. During the term of this License, Licensee shall comply with all provisions contained in Sections 3.6 and 3.7 of the C&M Agreement, and all such provisions contained in Sections 3.6 and 3.7 of the C&M Agreement are hereby incorporated herein by reference.

9. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF LICENSOR.

10. INSURANCE. During the term of this License, Licensee shall comply with all provisions contained in Section 3.8 of the C&M Agreement, and all such provisions contained in Section 3.8 of the C&M Agreement are hereby incorporated herein by reference; provided, however, if any portion of the operation is to be subcontracted by Licensee, Licensee must require that Licensee's contractors provide and maintain the insurance coverages set forth in the C&M Agreement, naming Licensor as an additional insured; provided further, however, that policy limits for Commercial General Liability Insurance may be reduced to \$2,000,000 per occurrence and an aggregate limit of \$4,000,000, but in no event less than the amount otherwise carried by Licensee's contractors. In addition, Licensee must require that Licensee's contractors release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor in the C&M Agreement.

11. ENVIRONMENTAL.

11.1 Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

11.2 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall

give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

11.3 In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Advance Construction which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

11.4 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

12. **ALTERATIONS.** Licensee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

13. **NO WARRANTIES.** LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. **QUIET ENJOYMENT.** LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

15. **DEFAULT.** If default shall be made in any of the covenants or agreements of Licensee contained in this License, Licensor may pursue any and all remedies set forth in Section 24 of the Master Agreement. The remedy set forth in this **Section 15** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

16. **LIENS.** Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 16** or any other Section of this License.

17. **TERMINATION.** If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

18. ASSIGNMENT. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this License or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

19. NOTICES. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, TX 76155
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: West Haymarket Joint Public Agency
c/o City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

20. SURVIVAL. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

21. RECORDATION. It is understood and agreed that this License shall not be filed of record with the Lancaster County, Nebraska Register of Deeds Office or otherwise recorded in the official records of Lancaster County, Nebraska.

22. APPLICABLE LAW. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

23. VENUE. To the fullest extent permitted by law any dispute arising under or in connection with this License or related to any subject matter which is the subject of this License shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by Licensor and Licensee to be mandatory and not permissive. Licensor and Licensee each hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

24. SEVERABILITY. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

25. INTEGRATION. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

26. MISCELLANEOUS.

26.1 In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

26.2 The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

26.3 All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

[Signature page follows]

IN WITNESS WHEREOF, this License has been duly executed by the parties as of the date below each party's signature; to be effective, however, as of the Effective Date above.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska

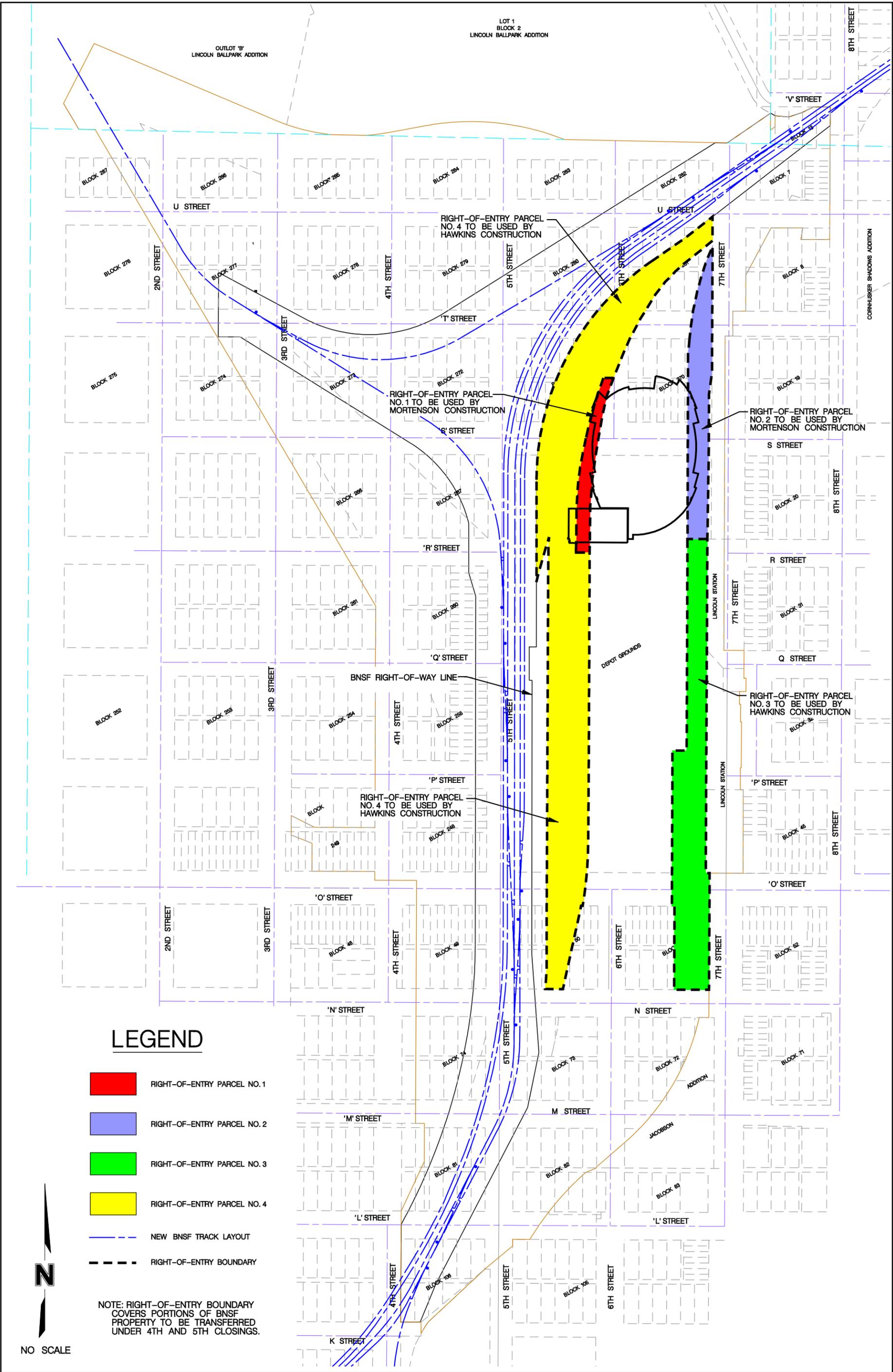
By: _____

Chris Beutler
Chairperson

Date: _____

EXHIBIT J-6

Parcels



LEGEND

- RIGHT-OF-ENTRY PARCEL NO. 1
- RIGHT-OF-ENTRY PARCEL NO. 2
- RIGHT-OF-ENTRY PARCEL NO. 3
- RIGHT-OF-ENTRY PARCEL NO. 4
- NEW BNSF TRACK LAYOUT
- RIGHT-OF-ENTRY BOUNDARY

NOTE: RIGHT-OF-ENTRY BOUNDARY
COVERS PORTIONS OF BNSF
PROPERTY TO BE TRANSFERRED
UNDER 4TH AND 5TH CLOSINGS.

NO SCALE

DATE: 7/2/2012 DGN: F:\PROJECTS\010-2431\Design\Exhibits\BNSF\BNSF Exhibit J-6 Display_RIGHT OF ENTRY.dgn

PROJECT NO:	010-2431
DRAWN BY:	JJW
DATE:	7/2/2012

RIGHT-OF-ENTRY EXHIBIT FOR CORE AREA PROJECT AND ARENA PROJECT

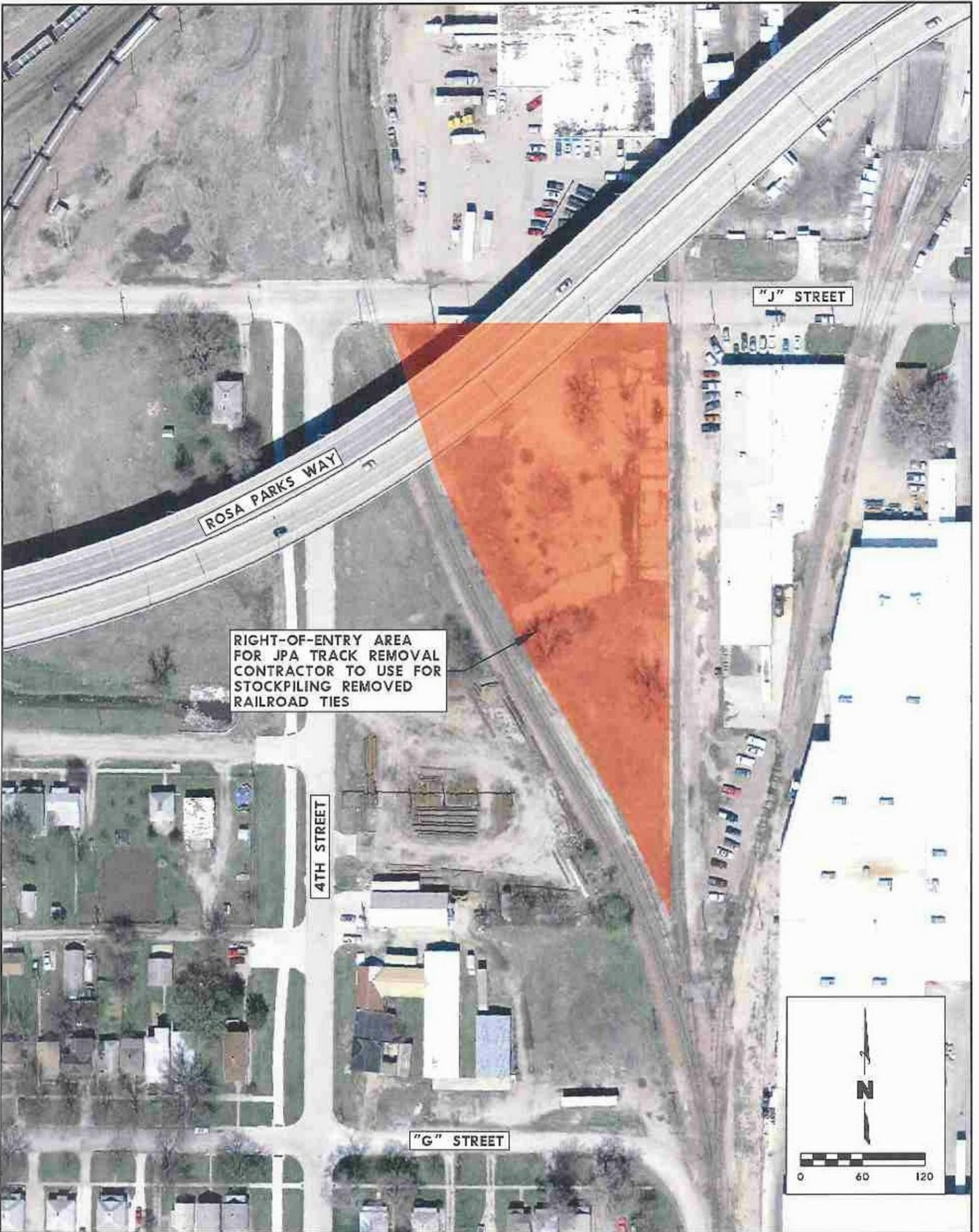


1111 Lincoln Mall, Suite 111
P.O. Box 84608
Lincoln, NE 68501-4608
TEL 402.474.6311
FAX 402.474.5160

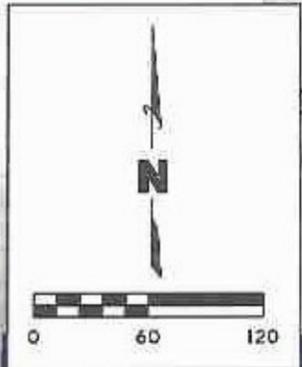
EXHIBIT
J-6

EXHIBIT A

Tie Storage Area



RIGHT-OF-ENTRY AREA
FOR JPA TRACK REMOVAL
CONTRACTOR TO USE FOR
STOCKPILING REMOVED
RAILROAD TIES



DATE: 7/6/2012
DRAWN BY: JJW
PROJECT: 010-2431

PROJECT NO: 010-2431
DRAWN BY: JJW
DATE: 7/6/2012

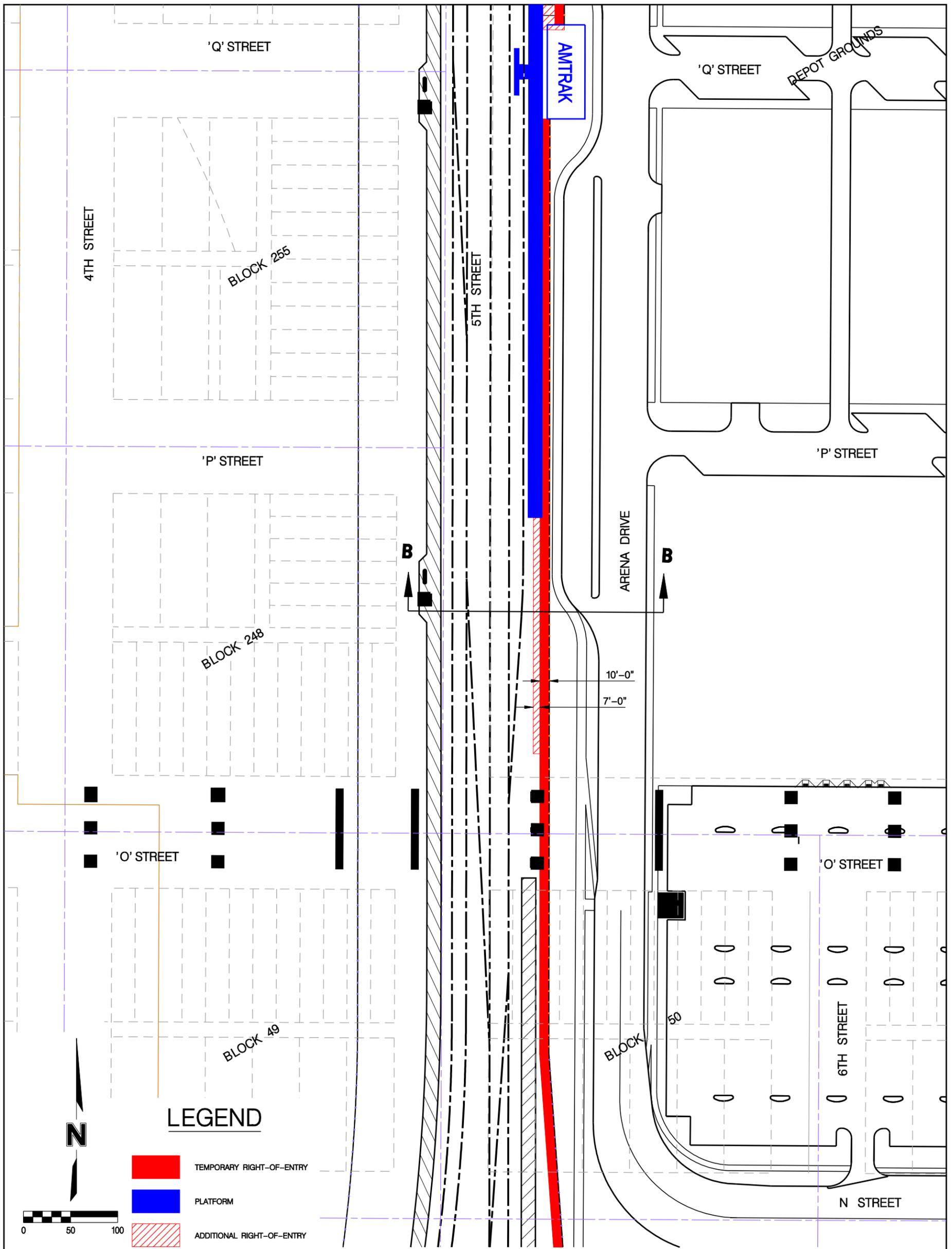
PROPOSED TIE STOCKPILE
AND LOAD OUT LOCATION

MOLSSON
ASSOCIATES

EXHIBIT
A

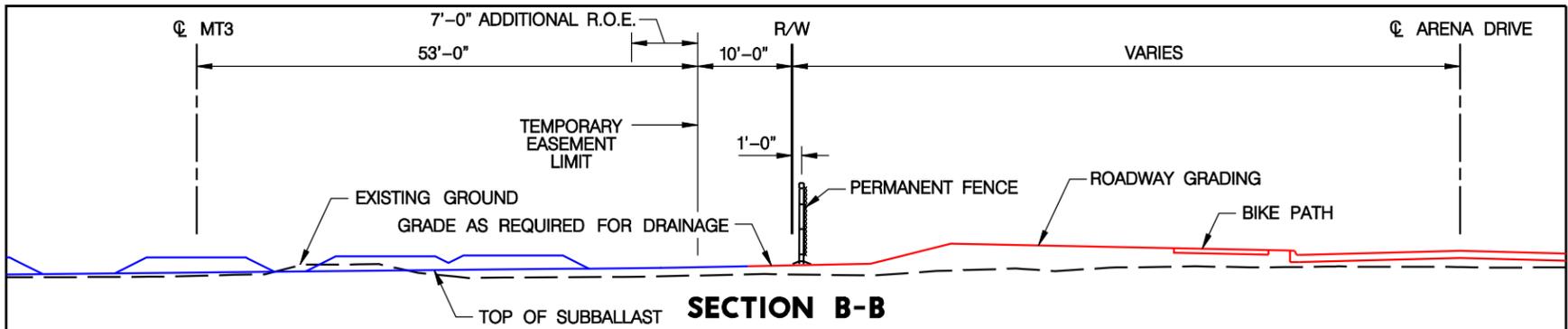
EXHIBIT AA-2

Grading Area



LEGEND

- TEMPORARY RIGHT-OF-ENTRY
- PLATFORM
- ADDITIONAL RIGHT-OF-ENTRY



PROJECT NO: 008-0645
 DRAWN BY: DC
 DATE: 4/3/2012

TEMPORARY RIGHT-OF-ENTRY FOR ARENA DRIVE & PARKING LOT CONSTRUCTION



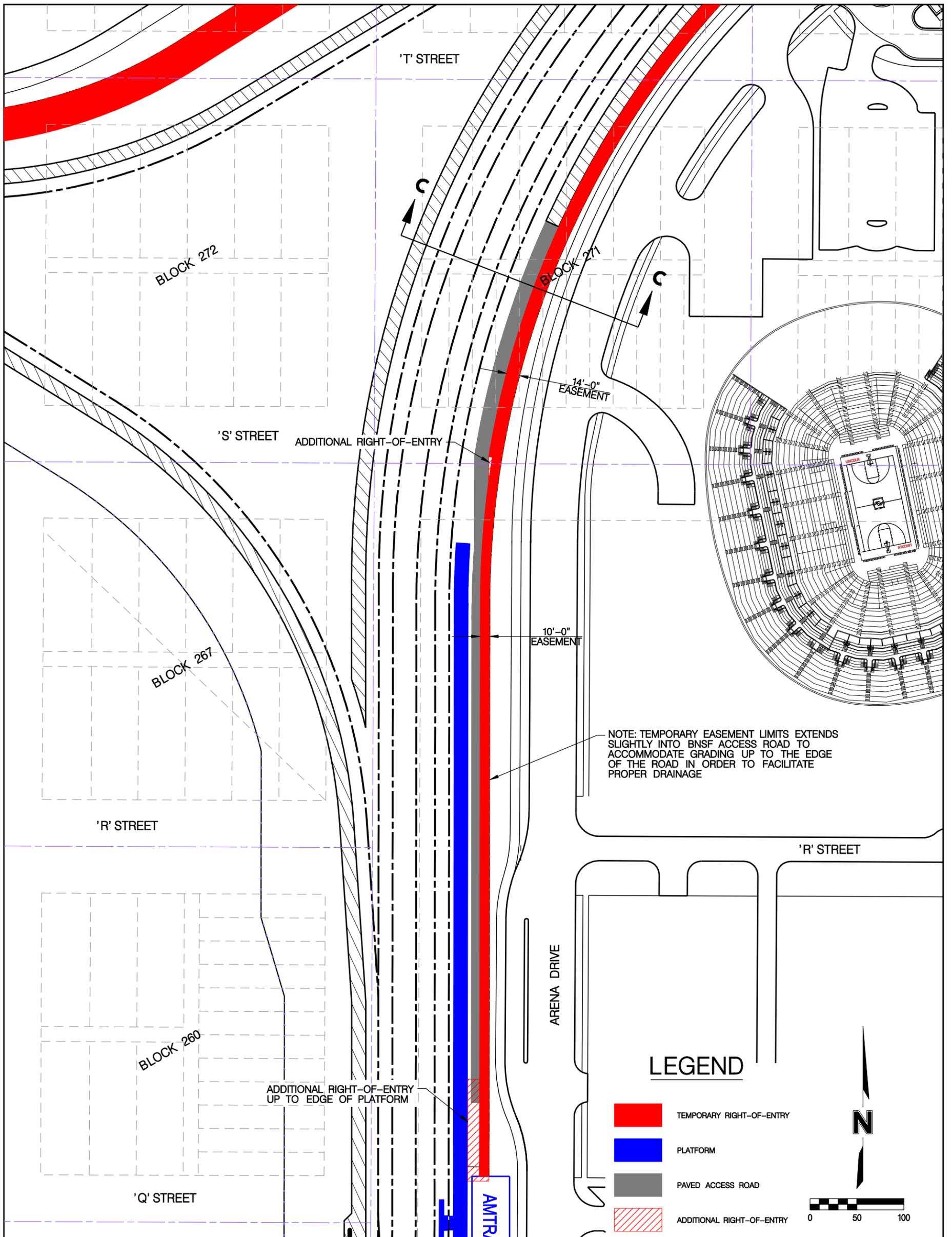
1111 Lincoln Mall, Suite 111
 P.O. Box 84608
 Lincoln, NE 68501-4608
 TEL 402.474.6311
 FAX 402.474.5160

EXHIBIT
AA-2
 (REVISED)

DATE: 4/3/2012 DGN: f:\projects\008-0645\1ms_base\exhibits\allroad_agreement_exhibits\display\AA-2_Display_revised.dgn

EXHIBIT AA-3

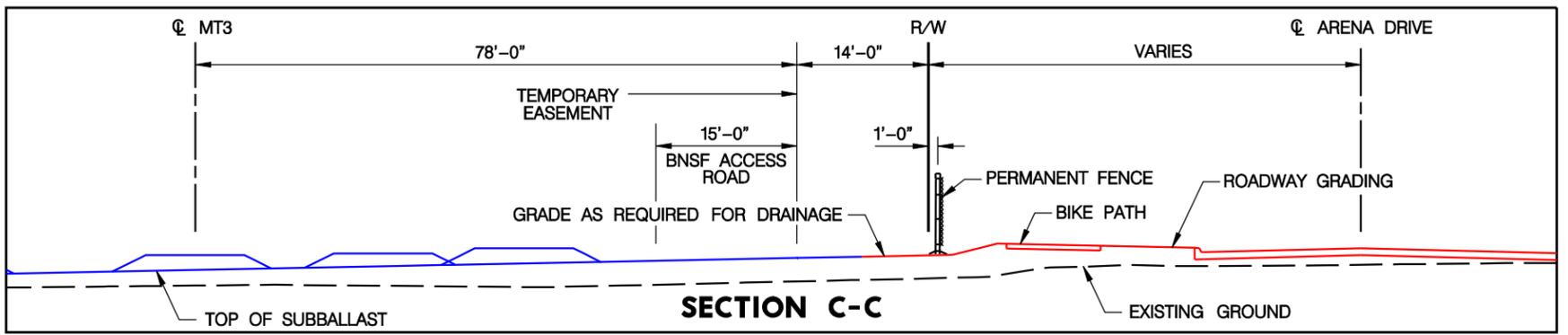
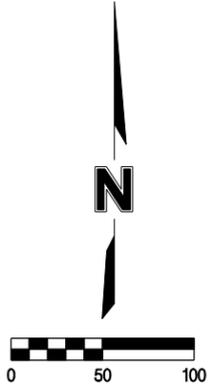
Grading Area



NOTE: TEMPORARY EASEMENT LIMITS EXTENDS SLIGHTLY INTO BNSF ACCESS ROAD TO ACCOMMODATE GRADING UP TO THE EDGE OF THE ROAD IN ORDER TO FACILITATE PROPER DRAINAGE

LEGEND

- TEMPORARY RIGHT-OF-ENTRY
- PLATFORM
- PAVED ACCESS ROAD
- ADDITIONAL RIGHT-OF-ENTRY



DATE: 4/3/2012
DGN: f:\projects\008-0645\ms_base\exhibits\railroad_agreement\exhibits\BNSF_Exhibit_AA-3_Display_revised.dgn

PROJECT NO: 008-0645
DRAWN BY: DC
DATE: 4/3/2012

TEMPORARY RIGHT-OF-ENTRY FOR ARENA DRIVE & PARKING LOT CONSTRUCTION



1111 Lincoln Mall, Suite 111
P.O. Box 84608
Lincoln, NE 68501-4608
TEL 402.474.6311
FAX 402.474.5160

EXHIBIT
AA-3
(REVISED)

EXHIBIT C

**Construction and Maintenance Agreement
Between BNSF and the City of Lincoln**

*Approved by Law
February 22, 2012*

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be effective the 18th day of October, 2010 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**City**"). City and BNSF, respectively, are sometimes referred to in this C&M Agreement each as a "**Party**" and collectively, as the "**Parties**".

RECITALS

A. BNSF owns and operates a line of railroad in and through the City of Lincoln, State of Nebraska

B. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, City plans to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**") in the area shown on the map attached hereto as **Exhibit A** and incorporated herein by reference ("**Project Area**"). The West Haymarket Project will include, among other things, an approximately 16,000-seat arena (the "**Arena**"), an ice center facility (the "**Ice Center**"), a district energy facility, and upgrades to parking, utilities, and surface transportation access to the area.

C. City and BNSF have entered into that certain Master Development Agreement of even date herewith (the "**Master Agreement**"). In connection with certain economic development objectives of City as set forth in the Master Agreement, City desires that BNSF grant certain permanent or temporary license and/or easement rights to City and certain third parties (each a "**Right of Entry**" and, in multiples, "**Rights of Entry**") for certain activities on BNSF's Property (defined below) (each a "**Right of Entry Work**" and collectively, "**Rights of Entry Work**"). For the purposes of this C&M Agreement, the term "BNSF's Property" shall mean the applicable Existing BNSF Property, Retained BNSF Property, and/or Replacement BNSF Property which is under BNSF ownership at the time work is done under the Right of Entry. All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I – CITY C&M WORK. The provisions of this C&M Agreement, in addition to and not in limitation of the provisions contained in the applicable Rights of Entry, shall apply with respect to the Rights of Entry Work and any other construction, maintenance, Operation (as defined in the Master Agreement), or other work being performed on or adjacent to BNSF property by or for City (collectively, the "**City C&M Work**"). In the event of conflicts between the terms of this C&M Agreement and any applicable Right of Entry agreement, the most restrictive provisions shall apply to City.

ARTICLE II – BNSF OBLIGATIONS. In consideration of the covenants of City set forth herein and the faithful performance thereof, BNSF agrees to do the following:

2.1 Grant to City the following temporary Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.1.1 The Temporary Access License for Initial Construction as defined and described in Section 3.2.1 of the Master Agreement and attached thereto as **Exhibit EE**;

2.1.2 The Temporary Grading License for Storm Water Mitigation as defined and described in Section 3.2.2(a) of the Master Agreement and attached thereto as Exhibit FF-1;

2.1.3 The Temporary Access License for Soil Staging as defined and described in Section 3.2.3 of the Master Agreement and attached thereto as Exhibit GG;

2.1.4 The Temporary Access License for Construction Staging - Pedestrian Bridge as defined and described in Section 3.2.4(a) of the Master Agreement and attached thereto as Exhibit HH-1;

2.1.5 The Temporary Access License for Amtrak Work as defined and described in Section 3.2.5 of the Master Agreement and attached thereto as Exhibit II;

2.1.6 The Temporary Grading License for Arena Drive and Parking Lot Construction as defined and described in Section 3.2.9 of the Master Agreement and attached thereto as Exhibit KK;

2.1.7 The Temporary Access License for Survey / Geotech / Environmental Activities as defined and described in Section 3.2.11(a) of the Master Agreement and attached thereto as Exhibit BB;

2.1.8 The Crossing Agreements as defined and described in Section 3.2.12 of the Master Agreement and attached thereto as Exhibit UU.

2.1.9 The Temporary Construction and Access License for Sanitary Sewer Work as defined and described in Section 3.2.11(b) of the Master Agreement and attached thereto as Exhibit BB-1.

2.2 Grant to City the following permanent Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.2.1 The Storm Water Mitigation Easement as defined and described in Section 3.2.2(b) of the Master Agreement and attached thereto as Exhibit FF;

2.2.2 The Pedestrian Bridge Easement as defined and described in Section 3.2.4(b) of the Master Agreement and attached thereto as Exhibit HH; and

2.2.3 The City Utility Easements as defined and described in Section 3.2.7 of the Master Agreement and attached thereto as Exhibit TT and Exhibit TT-1.

2.2.4 The 2nd & J Utility Easement as defined and described in Section 3.2.10 of the Master Agreement and attached thereto as Exhibit TT.

2.3 Grant to City the Security Fencing License in accordance with and as defined and described in Section 3.2.8 of the Master Agreement and attached thereto as Exhibit JJ.

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

3.1.1 If any City C&M Work is not included in the City Work Final Design (as defined in the Master Agreement), City must furnish to BNSF four sets of plans and specifications for such City C&M Work (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, for approval prior to commencement of any construction. For each set of such plans and specifications submitted by City to BNSF, BNSF shall approve or reject such plans and specifications within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans and specifications shall be approved or rejected in the manner hereinbefore provided. BNSF will give City final written approval of the plans and specifications substantially in the form of Exhibit B, attached hereto and incorporated herein by reference. Upon BNSF's final written approval of the plans and specifications (the "**Approved Plans**"), the Approved Plans will

become part of this C&M Agreement and incorporated herein. Any approval of the Approved Plans by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the Approved Plans meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the Approved Plans or construction is structurally sound and appropriate or that the Approved Plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

3.1.2 City must provide for and maintain minimum vertical and horizontal clearances, as required in the Contractor Requirements in **Exhibit C**, attached hereto and incorporated herein by reference, and as approved by BNSF as part of the City Work Final Design or any other Approved Plans.

3.1.3 Prior to the start of any segment of City C&M Work on or affecting BNSF's property, City must provide to BNSF, and BNSF must approve, exact minimum vertical and horizontal clearances for such segment of City C&M Work being constructed pursuant to the City Work Final Design. Upon BNSF's approval of each segment of City C&M Work, BNSF and City agree to execute an amendment to this C&M Agreement incorporating the approved clearances into this C&M Agreement as **Exhibit D** ("**Final Clearances**"). City shall not deviate from the Final Clearances for the applicable segment of City C&M Work without the prior written approval of BNSF.

3.1.4 City or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Project Engineer (defined below) for approval. The shoring, falsework or cribbing used by City Contractors (defined below) shall comply with all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

3.1.5 (a) For purposes of notices required under this C&M to be made to BNSF's Project Engineer, Division Engineer, Manager Signal, and Director Engineering Services, the following contact information is in effect at the Effective Date:

(i) BNSF's "**Project Engineer**" is:

Gerald Maczuga
Gerald.Maczuga@BNSF.com
402-458-7537 (office)
206-265-2427 (cell)
402-458-4376 (fax)

(ii) BNSF's "**Division Engineer**" is:

Andrew Shearer
Andrew.Shearer@BNSF.com
402-458-7724 (office)

(iii) BNSF's "**Manager Signal**" is:

Mike Koetter
Michael.Koetter@BNSF.com
402-458-7504 (office)
402-458-7590 (fax)

(iv) BNSF's "**Director Engineering Services**" is:

Tom Schmidt
Thomas.Schmidt@BNSF.com
913-551-4330 (office)

(b) The contact information in **Section 3.1.5(a)** may be changed from time to time in accordance with the notice provisions of **Section 4.6** below.

3.2 Additional City Requirements.

3.2.1 City must supervise and inspect the operations of all City Contractors to assure compliance with the City Work Final Design and all other Approved Plans, the terms of this C&M Agreement and all communicated and applicable safety requirements of BNSF.

3.2.2 City must make any required applications and obtain all required permits and approvals for the City C&M Work.

3.2.3 City must acquire all rights of way necessary for the City C&M Work.

3.2.4 City must furnish all labor, materials, tools and equipment for the performance of the City C&M Work.

3.2.5 City must advise BNSF's Project Engineer in writing of: (i) the completion date of each Right of Entry Work within thirty (30) days after each such completion date and (ii) the date on which City and/or City Contractor will meet with BNSF for the purpose of making final inspection of each Right of Entry Work.

3.2.6 City must notify and obtain prior authorization from BNSF's Project Engineer before entering BNSF's right-of-way for inspection, construction, maintenance, or any other purposes. Prior to performing any inspection, construction or maintenance with its own personnel, City shall: comply with all of BNSF's communicated and applicable safety rules and regulations; require any City employee performing maintenance to complete the safety training program at the Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of **Exhibit C** or **Section 3.3.6** below, flaggers are required to be present; and procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

3.2.7 City agrees to reimburse BNSF for work of an emergency nature caused by City or City Contractors in connection with the City C&M Work which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such emergency work may be performed by BNSF without prior approval of City and City agrees to fully reimburse BNSF for all such work.

3.2.8 The City C&M Work must be performed by City or City Contractors in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

3.2.9 City must include the following provisions in any contract with City Contractors:

3.2.9.1 City Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "**Lines**") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. City Contractor will be responsible for contacting BNSF's Project Engineer, BNSF's Manager Signal, and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. City Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. City Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

3.2.9.2 City Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the City C&M Work. City Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

3.2.9.3 Failure to mark or identify these Lines will be sufficient cause for BNSF's Project Engineer to stop all or any part of the City C&M Work at no cost to City or BNSF until these items are completed.

3.2.9.4 All City C&M Work performed within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF.

3.2.9.5 Changes or modifications during the City C&M Work that affect safety or BNSF operations must be subject to BNSF's approval.

3.2.9.6 No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(A)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.7 Notwithstanding the provisions of **Section 3.2.9.6** above, solely for the temporary Rights of Entry described in **Sections 2.1.1, 2.1.3, 2.1.4, and 2.1.5** above, no work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work under the referenced temporary Rights of Entry have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(B)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.8 To facilitate scheduling for the City C&M Work, City Contractors shall give BNSF's Project Engineer eight (8) weeks' advance notice of the proposed times and dates for work windows, except in case of emergency, in which event City Contractors must notify BNSF's Project Engineer by telephone at (402) 458-7537 as soon as practicable and shall promptly thereafter follow up with written notice to BNSF's Project Engineer at City Contractor's earliest opportunity. Notwithstanding the foregoing, in no event shall City or any City Contractors enter onto BNSF's property prior to receiving written approval for such entry from BNSF's Project Engineer. BNSF and the City Contractors will establish mutually agreeable work windows for the City C&M Work. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the City C&M Work.

3.3 Construction and Contractor Requirements.

3.3.1 Contractor Requirements. For the City C&M Work, City must comply, and cause all of its contractors (each a "**City Contractor**", and collectively the "**City Contractors**") to comply, with the obligations set forth in **Exhibit C** attached hereto and incorporated herein by reference, and cause all City Contractor(s) for such work to execute and deliver a Contractor Right of Entry ("**CROE**") in the form of **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable. In addition, all City C&M Work must comply with all of the following requirements:

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each

portion of the City C&M Work must be promptly commenced by the Party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the City C&M Work which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from BNSF's Project Engineer.

3.3.3 Site Cleanup and Restoration. City shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the City C&M Work to the reasonable satisfaction of BNSF's Division Engineer.

3.3.4 Safety/Security.

3.3.4.1 During the City C&M Work, City, at City's sole cost, shall perform all activities and work in such a manner as to preclude personal injury or property damage to BNSF or any other party, and shall ensure that there is no interference with the railroad operations or other activities of BNSF, or anyone present on BNSF's property with the authority or permission of BNSF. City shall not disturb any improvements of BNSF or BNSF's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements, except as permitted by **Section 3.3.5** below.

3.3.4.2 Prior to entering BNSF's property to perform the City C&M Work, City shall cause all City Contractor(s) to comply with all of BNSF's communicated and applicable safety and security rules and regulations and complete the safety training program at the Website "www.contractororientation.com" or then-current program designated by BNSF (the "**Safety Orientation**") and eRAILSAFE or then-current security program designated by BNSF (the "**Security Orientation**") within one year prior to entering upon BNSF's property. Additionally, City must ensure that each and every employee of all City Contractors possess a card certifying completion of the Safety Orientation and the Security Orientation prior to entering upon BNSF's property. City must renew the Safety Orientation and Security Orientation annually.

3.3.4.3 City must supervise and inspect the activities of all City Contractors entering onto BNSF's property to perform the City C&M Work, and assure compliance with the applicable Approved Plans, the terms of this C&M Agreement, and all communicated and applicable safety requirements of BNSF. BNSF will have the right to stop work if any of the following events take place: (i) If BNSF determines that proper supervision and inspection are not being performed by City at any time during the City C&M Work, (ii) any City Contractor performs any work in a manner contrary to the applicable Approved Plans; (iii) any City Contractor, in BNSF's opinion, prosecutes its work in a manner which is hazardous to BNSF property, facilities, personnel, or the safe and expeditious movement of railroad traffic; or (iv) the insurance described herein or in **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable, is canceled or expires. The work stoppage will continue until all necessary actions are taken by City to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have under this C&M Agreement or an applicable Right of Entry. In the event that BNSF desires to stop work, BNSF agrees to immediately notify City. Notwithstanding the foregoing, BNSF has no duty or obligation to observe or inspect, or to halt work by any City Contractor on BNSF's property, it being solely City's responsibility to ensure that work performed by any City Contractor is conducted in compliance with the terms of this C&M Agreement, all Legal Requirements and the applicable Approved Plans.

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "**Other Improvements**"). City must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. City must also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or

Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this **Section 3.3.5**, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

3.3.6 Flagging. Subject to modification in writing by BNSF's Division Engineer, no City Contractor shall conduct any activities on, or be present on, any portion of BNSF's property that is within twenty-five (25) feet of any active railroad track or where any such activities have the potential to foul any active railroad track, except in the presence of a flagger. In addition to and not in limitation of the foregoing, City shall, and shall cause its City Contractors to, comply with all BNSF requirements concerning flagging, including without limitation the provisions of Section 1.05 of **Exhibit C**. BNSF shall arrange for the presence of flaggers as soon as practicable after receipt of notice from City in accordance with Section 1.05.01 of **Exhibit C**; provided, however, BNSF shall not be held responsible for City delays when flaggers are not available.

3.3.7 Flagging Costs. Flagging costs of the Included BNSF Work (as defined in the Master Agreement) are the responsibility of BNSF to the extent described in Section 2.2(i) of the Master Agreement. All other flagging costs, including without limitation flagging costs for City C&M Work, BNSF Additional Cost Work and any other work that is or becomes a part of the West Haymarket Project, shall be at City's cost and expense; provided, however, to the extent BNSF is performing work requiring flagging that is the responsibility of BNSF (under the first sentence of this **Section 3.3.7**) at the same time and in the same location as the City C&M Work, BNSF Additional Cost Work and/or any other work that is or becomes a part of the West Haymarket Project, such flagging costs and expenses shall be deemed to be part of the Included BNSF Work. Notwithstanding the foregoing, however, if the City C&M Work, BNSF Additional Cost Work or any other work that is or becomes part of the West Haymarket Project is of such magnitude that additional flaggers or additional flagging time is required, then City shall be responsible for all flagging costs and expenses for such incremental flaggers and additional flagging time as BNSF Additional City Cost Work. As further described in Section 1.05.03c of **Exhibit C**, the governmental flagging rate in effect at the time of performance by the flaggers will be used to calculate flagging costs. As more particularly described in Section 2.7.2 of the Master Agreement and also in the Escrow Agreement (as defined in the Master Agreement), City shall deposit additional amounts, including amounts for estimated flagging costs, into escrow for BNSF Additional City Cost Work.

3.3.8 No Unauthorized Tests or Digging. No City Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on BNSF's property, except after City has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.

3.3.9 Drainage. Any and all cuts and fills, excavations or embankments as part of the City C&M Work shall be deemed to be a part of the City C&M Work and shall be made by City in such manner, form and to the extent as will provide adequate drainage of and from BNSF's property and any adjoining BNSF right of way. Wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from either or both BNSF's property and BNSF's adjoining right of way, City shall construct such culverts or drains to preserve such natural and pre-existing drainage, and such culverts or drains shall also be deemed to be a part of the City C&M Work. City shall wherever necessary with respect to the City C&M Work, construct extensions of existing drains, culverts or ditches through or along BNSF's property (which extensions will also be deemed to be a part of the City C&M Work), such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

3.3.10 Liens. City shall promptly pay and discharge any and all liens arising out of any construction done, suffered or permitted to be done by City. BNSF is hereby authorized to post any notices

or take any other action upon or with respect to BNSF's property that is or may be permitted by Legal Requirements to prevent the attachment of any such liens to any portion of BNSF's property; provided, however, that failure of BNSF to take any such action shall not relieve City of any obligation or liability under this Section or any other section of this C&M Agreement. City shall include in its contracts with all City Contractors, and require all contractors performing any work on BNSF's property or providing materials to include in their contracts with their subcontractors, a notice and acknowledgement by the party providing work or materials that BNSF is not liable for any amounts due such contractor or contractors and waiving any right to place a lien on BNSF's property.

3.4 Environmental Compliance and Notification.

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to strictly comply with all federal, state and local environmental laws and regulations in its use of BNSF's property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to the BNSF property. City and its contractors, if any, shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on BNSF's property. City and its contractors, if any, shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in BNSF's property and as encountered in the City C&M Work and then only in compliance with Environmental Laws and the SMP (defined below), and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the City C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any BNSF property.

3.4.2 Notice of Release. City shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from BNSF's property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of BNSF's property. City shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in this C&M Agreement only in compliance with Environmental Laws and the SMP. City shall also give BNSF notice of all measures undertaken on City's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

3.4.3 Remediation of Release. In the event City has notice of a release or violation of Environmental Laws which occurred or may occur as a result of City's activities contemplated in this C&M Agreement, City shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting BNSF's property or improvements. If during the City C&M Work, soils or other materials considered to be environmentally contaminated are exposed, City will remove and safely dispose of said contaminated soils only in compliance with Environmental Laws and the SMP. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

3.4.4 Evidence of Compliance. City agrees to periodically to furnish BNSF upon written request with reasonable proof that it is in compliance with this **Article III, Section 3.4.**

3.4.5 Soil Management Plan. In addition to the other obligations of City and City Contractors as set forth herein, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the Soil Management Plan attached hereto as **Exhibit E** ("**SMP**") sets forth additional obligations of City and BNSF with respect to the proper management of impacted environmental media during the Development Period (as defined in the Master Agreement).

3.5 Timing.

3.5.1 City will use commercially reasonable efforts to perform all City C&M Work in accordance with the Timeline.

3.5.2 BNSF and City mutually agree that no construction activities for the City C&M Work, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on BNSF's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). BNSF and City mutually understand and agree that trains cannot be subjected to delay during this time period.

3.6 Indemnifications.

3.6.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AND BNSF'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CITY OR ANY CITY PARTY (DEFINED BELOW) PURSUANT TO THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THIS C&M AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CITY CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY WORK PERFORMED BY CITY OR ANY CITY PARTY IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING (AS DEFINED IN THE MASTER AGREEMENT), OR STORM WATER MITIGATION (AS DEFINED IN THE MASTER AGREEMENT) BY CITY;

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM THE WEST HAYMARKET PROJECT AND/OR AFFECTING THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO;

(iv) ANY AND ALL CLAIMS BROUGHT BY ANY PARTY RELATED TO OR ARISING FROM THE ACQUISITION AND/OR DEVELOPMENT OF ANY AND ALL PROPERTY AS PART OF THE WEST HAYMARKET PROJECT, INCLUDING WITHOUT LIMITATION PROPERTY DESCRIBED IN THIS C&M AGREEMENT, THE MASTER AGREEMENT, THE EXCHANGE AGREEMENT, AND/OR THE RIGHTS OF ENTRY AGREEMENTS;

(v) THE CONDITION OF THE REPLACEMENT BNSF PROPERTY, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS RELATED TO OR ARISING FROM THE EXISTENCE OF ANY THIRD PARTY RESERVED RIGHTS AND/OR ANY THIRD PARTY'S EXERCISE OF ITS RESERVED RIGHTS;

(vi) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CITY OR ANY CITY PARTY, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS

OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(vii) CITY'S OR ANY CITY PARTY'S BREACH OF THE TERMS AND CONDITIONS OF THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THE MASTER AGREEMENT;

(viii) ANY ACT OR OMISSION OF CITY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS, OR A CITY PARTY, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CITY AND THE CITY CONTRACTORS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY BNSF'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

3.6.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.

3.6.3 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES, AND SHALL CAUSE CITY'S CONTRACTORS TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CITY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

3.6.4 City agrees that its obligations under the provisions of this Section 3.6 expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement and the Rights of Entry agreements.

3.7 Waiver of Municipal and Sovereign Immunity. To the fullest extent permitted by law, City waives its municipal immunity and its sovereign immunity with respect to BNSF for matters arising out of the West Haymarket Project, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and this C&M Agreement, including, without limitation, (i) for environmental and other conditions of the Replacement BNSF Property that City is conveying to BNSF pursuant to the Master Agreement and the Exchange Agreement; (ii) for environmental and other conditions of the real property that BNSF is quitclaiming to City pursuant to the Master Agreement and the Exchange Agreement and of property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest, including remediation costs beyond Nebraska Department of Environmental Quality Title 200 funds ("**Title 200 Funding**"); (iii) for claims arising out of work performed by City or its contractors pursuant to the provisions of this C&M Agreement, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and the Exchange Agreement; and (iv) for claims arising out of continuing rights of City to enter onto property of BNSF, including work performed by City and City Contractors on such property of BNSF. Any lawful waiver of City's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of City's sovereign immunity pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement, and the Rights of Entry agreements.

3.8 Insurance Obligations.

3.8.1 During the Development Period, City shall, at its sole cost and expense, procure and maintain the following insurance:

3.8.1.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability in an amount of at least \$25,000,000 per occurrence and an aggregate limit of \$50,000,000, but in no event less than the amount otherwise carried by City. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

3.8.1.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

3.8.1.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- City's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.

3.8.1.4 Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- *Endorsed to remove any exclusion for punitive damages.*
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

In lieu of providing a Railroad Protective Liability Policy, City may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to City and City Contractors.

3.8.1.5 Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

City agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. City further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under City's care, custody or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

City is allowed to self-insure up to \$250,000 per occurrence and \$250,000 aggregate on General Liability and Automotive Liability and up to \$500,000 per occurrence and \$500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions

of this C&M Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the City C&M Work, City must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Upon notification to BNSF of cancellation, non-renewal, substitution or material alteration of any such policy(ies), BNSF shall have the option to (i) if feasible, pay, on behalf of the City, any and all such premiums, penalties, fees or expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market and procure such policy(ies) of insurance on behalf of City as required by this C&M Agreement at the then-current market rate. Upon any of the above occurrences, BNSF shall invoice the City for reimbursement of all such premiums, penalties, fees or expenses advanced on City's behalf plus an additional fifteen (15%) of such advanced amounts as remuneration for BNSF's overhead. Such amounts advanced by BNSF shall be paid by City within thirty (30) days after delivery of a statement for such expense. Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

City represents that this C&M Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by City to procure the insurance coverage required by this C&M Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. City represents that it understands and its insurance agent(s)/broker(s) have been informed that the City's insurance coverage being procured by City herein is to protect, defend, indemnify and hold harmless BNSF from any and all Liabilities, as such term is defined herein, that may arise in connection with this C&M Agreement and City, to the fullest extent allowed by law, waives its sovereign and municipal immunity and any caps or limitations on legal liability that may result therefrom.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by City, City must require that City Contractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured; provided, however, that policy limits for Commercial General Liability Insurance may be reduced to \$5,000,000 per occurrence and an aggregate limit of \$10,000,000, but in no event less than the amount otherwise carried by the City Contractor. In addition, City must require that City Contractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Section 3.8** will entitle, but not require, Railroad to immediately suspend, until such default is cured, any and/or all work under this C&M Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work, and (iii) any other work on or affecting any BNSF property, subject to termination as provided in the Master Agreement. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by City will not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this C&M Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this **Section 3.8**, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

3.8.2 During the Post-Development Period (as defined in the Master Agreement), City shall, and shall require City Contractors to, at City's sole cost and expense, procure and maintain the insurance coverages listed in the applicable Rights of Entry, continuing thereafter so long as the C&M Agreement and/or any Right of Entry agreement is in effect.

3.9 Adherence to Timeline. City must require City Contractors to reasonably adhere to the Timeline. The Parties mutually agree that BNSF's failure to complete the BNSF Work in accordance with *the Timeline due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this C&M Agreement by BNSF and will not subject BNSF to any liability.* Regardless of the requirements of the Timeline, BNSF reserves the right to reallocate the labor forces assigned to complete the BNSF Work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The Parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this C&M Agreement by BNSF.

ARTICLE IV – MISCELLANEOUS

4.1 Any books, papers, receipts, and accounts of the Parties relating to the City C&M Work and the BNSF Additional City Cost Work will at all reasonable times and upon reasonable prior written notice be open to inspection and audit by the agents and authorized representatives of the Parties for a period of one (1) year after the date of the final disbursement from the Escrow Account.

4.2 The terms and conditions of indemnification and liability provisions of **Sections 3.6 and 3.7** shall survive expiration or termination of this C&M Agreement, the Master Agreement and the Exchange Agreement, and all Closings under the Exchange Agreement.

4.3 The covenants and provisions of this C&M Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding the preceding sentence, neither Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein, City shall have the right to assign this C&M Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) City's entire interest under the Master Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to JPA.

4.4 This C&M Agreement shall be in effect for so long as the Master Agreement and/or any Right of Entry is in effect; provided, however, that if the Master Agreement and all Rights of Entry have expired or been terminated, BNSF has the right to terminate this C&M Agreement upon written notice to City.

4.5 Neither termination nor expiration of this C&M Agreement will release either Party from any liability or obligation under this C&M Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

4.6 Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party no less than thirty (30) days' advance written notice of such change in address.

If to BNSF: BNSF Railway Company
P.O. Box 961034
Fort Worth, TX 76161-0034.
Attn: Robert J. Boileau, P.E., Assistant Vice President, Engineering Services

If to City: City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

4.7 Time is of the essence of this C&M Agreement.

4.8 In any action (declaratory or otherwise) brought by either Party in connection with or arising out of the terms of this C&M Agreement, the prevailing Party in such action will be entitled to recover from the non-prevailing Party all actual costs, actual damages, and actual expenses, including, without limitation, reasonable attorneys' fees and charges to the fullest extent permitted by law.

4.9 Each Party and its counsel have reviewed and revised this C&M Agreement. The Parties agree that the rule of construction that any ambiguities are to be resolved against the drafting Party must not be employed to interpret this C&M Agreement or its amendments or exhibits.

4.10 If any clause or provision of this C&M Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this C&M Agreement, then and in that event, it is the intention of the Parties that the remainder of this C&M Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this C&M Agreement that is illegal, invalid or unenforceable, there be added, as a part of this C&M Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

4.11 This C&M Agreement, the Master Agreement, the Exchange Agreement, and, to the extent executed, the Right of Entry licenses and/or easements described herein, contain the entire agreement between BNSF and City with respect to the West Haymarket Project. Oral statements or prior written matters not specifically incorporated into this C&M Agreement are superseded hereby. No variation, modification, or change to this C&M Agreement, the Exchange Agreement or the Rights of Entry agreements shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party's right to require strict compliance with any term of this C&M Agreement. The captions next to the section numbers of this C&M Agreement are for reference only and do not modify or affect this C&M Agreement.

4.12 No director, officer, elected or appointed official, or employee of either of the Parties shall be personally liable in the event of any default.

4.13 This C&M Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.

4.14 As of this same Effective Date, City and BNSF have also entered into the Master Agreement, the Exchange Agreement and to the extent executed, certain Right of Entry licenses and/or easements. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Right of Entry licenses and/or easements. City and BNSF agree that, except as otherwise stated in **Article 1** of this C&M Agreement: (i) in the event the terms of the Master Agreement and the terms of the C&M Agreement, the Exchange Agreement and the various licenses and/or easements are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement and the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the Exchange Agreement shall prevail, and (iii) in the event the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the C&M Agreement shall prevail.

4.15 All aspects of this C&M Agreement shall be governed by the laws of the State of Nebraska.

4.16 To the fullest extent permitted by law any dispute arising under or in connection with this C&M Agreement or related to any subject matter which is the subject of this C&M Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive. Each Party hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

4.17 By signing below, the Parties affirm they have the legal authority to enter into this C&M Agreement.

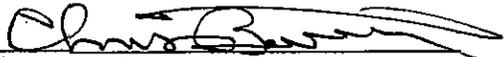
4.18 Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Party shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this C&M Agreement.

[Signature page follows]

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: 
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David L. Freeman, Vice President – Engineering

Date: _____

Signature Page - C&M Agreement

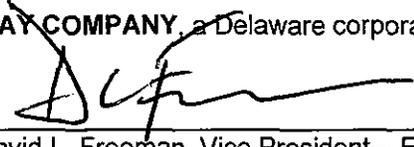
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

By:  _____
David L. Freeman, Vice President - Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]



APPROXIMATE LIMITS OF PROJECT AREA - ADDITIONAL OFFSITE TRANSPORTATION IMPROVEMENT ARE ALSO REQUIRED

LEGEND

- ROADWAY/PAVING
- SIDWALK
- SURFACE PARKING
- NEW DEVELOPMENT
- ARENA
- RIGHT OF WAY
- PROPOSED TRACK
- FUTURE TRACK

PROJECT NO: 008-0645
 DRAWN BY: JGO
 DATE: 8/23/2010

WEST HAYMARKET REDEVELOPMENT AREA

MOLSSON ASSOCIATES

1111 Lincoln Mall, Suite 111
 P.O. Box 84608
 Lincoln, NE 68501-4608
 TEL: 402.474.6311
 FAX: 402.474.5160

EXHIBIT
A

EXHIBIT B

Form of BNSF Plan Approval



Gerald Maczuga
Project Engineer

BNSF Railway Company
201 N 7th St
Lincoln, NE 68508
402-458-7537 (office)
402-458-4376 (fax)
Gerald.Maczuga@BNSF.com

Date: _____

Ernest R. Peo, III
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: Chief Assistant City Attorney

Re: Review of Plans and Specifications dated September 2, 2010, drafted by Olsson Associates (hereinafter called the "**Plans and Specifications**")

Dear Mr. Peo:

This letter serves as BNSF Railway Company's ("**BNSF**") response to its review of the Plans and Specifications covering the construction of the West Haymarket Utility Relocation - Project Number 870501. BNSF has reviewed these plans and no exceptions are taken. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design of the project. These comments are given to the City of Lincoln, Nebraska ("**City**") pursuant to Section 3.1.1 of that certain Construction and Maintenance Agreement between BNSF and City, dated _____, 2010. If the Plans and Specifications are revised by City subsequent to the date set forth above, this letter shall no longer serve as BNSF's written comments and City must resubmit said Plans and Specifications to BNSF for review.

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

Roger Figard, City Engineer
Department of Public Works and Utilities
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway's Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to Railway's Property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on Railway's Property. Contractor shall not handle, transport, release or suffer the release of "hazardous

waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in Railway Property and as encountered in the C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway Property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give Railway notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting Railway Property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish Railway upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.
- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.
- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.
- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the C&M Work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's

operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
 - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor, upon completion of the C&M Work, must promptly remove from the Railway Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway's Project Engineer to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
- **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Railway Property, except after Contractor has obtained written approval from Railway Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the

personnel or task changes. If the task is within 25 feet of any track, the job briefing **must** include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.**
- **1.06.04 When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.**
- **1.06.05 Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.**
- **1.06.06 Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.**
- **1.06.07 For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.**
- **1.06.08 All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. (NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF**

THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

- **1.07.05** Contractor will be responsible at no cost to Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway Property (collectively, "**Other Improvements**"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway improvements and Other Improvements in the field in order to verify their locations. Contractor must also use all reasonable methods when working on or near Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting Railway Property, in a manner that does not adversely impact utility service to Railway.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1 (800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1 (817) 352-7595 and to the Railway's Project Engineer no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

- 1. Accident City/St
- 2. Date: _____ Time: _____ County: _____
- 3. Temperature: _____
- 4. Weather
(if non-Railway location)
- 5. Social Security #
- 6. Name (last, first, mi)
- 7. Address: Street: _____ City: _____
St. _____ Zip: _____
- 8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
- 9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
- 11. Description of Accident (To include location, action, result, etc.):
- 12. Treatment:
 First Aid Only
 Required Medical Treatment
 Other Medical Treatment
- 13. Dr. Name _____ 30. Date: _____
- 14. Dr. Address:
Street: _____ City: _____ St: _____
Zip: _____
- 15. Hospital Name:
- 16. Hospital Address:
Street: _____ City: _____ St: _____
Zip: _____
- 17. Diagnosis:

**FAX TO RAILWAY AT (817) 352-7595
AND COPY TO RAILWAY ROADMASTER FAX**

EXHIBIT C-1(A)

**CONTRACTOR'S RIGHT OF ENTRY
For C&M Work**

**BNSF RAILWAY COMPANY
Attention: Project Engineer**

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20__ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000.00 per occurrence, and \$10,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this Agreement.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.

- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: _____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

EXHIBIT C-1(B)

**CONTRACTOR'S RIGHT OF ENTRY
For C&M Work**

**BNSF RAILWAY COMPANY
Attention: Project Engineer**

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000.00 per occurrence, and \$4,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this Agreement.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.

- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- *Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)*
 - Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ___ Zip: ____
Fax: _____
Phone: _____
E-mail: _____

EXHIBIT D

Final Clearances

Pursuant to the provisions of **Section 3.1.3** of the C&M Agreement, approved Final Clearances for each segment of City C&M Work being constructed pursuant to the City Work Final Design are attached hereto as **Exhibit D**.

EXHIBIT E

Soil Management Plan

In addition to and not in limitation of the requirements and obligations of City and City Contractors contained in the C&M Agreement, the following requirements shall apply to City and City Contractors with respect to management of impacted environmental media. In the event of conflicts between the terms of this **Exhibit E** and the rest of the C&M Agreement, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the most restrictive provisions shall apply to City and City Contractors.

Proper Management of Impacted Media

1. Access

Access to the West Haymarket Redevelopment Site (WHRS) is restricted to railroad and City of Lincoln personnel and contractors conducting work in their official capacity as employees or contractors of their respective organizations. Access to Railroad operating property for purposes of providing construction – related services is subject to specific safety and rules training certifications and requirements found at: **www.contractororientation.com**. Access to other non-railroad private property for purposes of performing construction – related services within the WHRS must be arranged through the EPMT.

2. Management Practices

Due to the potential risks and penalties involved in management of impacted media and protection of rare and unique saline wetlands as well as the wide applicability of these issues to planned construction activity, prescriptive management practices for these areas are as follows:

2.1 Impacted Soil and Debris Management

Attachment 3 - NDEQ Environmental Guidance Document 05-061 "Investigation Derived Waste and Remediation Considerations" (GD 05-061) is provided as reference. Relevant and critical points extracted from GD 05-061 as well as NDEQ's Title 132 (Integrated Solid Waste Management Regulations) for purposes of implementation and compliance is as follows:

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.
2. Title 132, Chapter 1, Section 041 defines fill as: *"solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material"*.
3. The *"use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment"*.
4. From pg. 2 of NDEQ GD 05-161: *"Activity not related to investigation or remediation is not considered "active management" under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation."*
5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

contaminants of concern (if any) and allowable re-use (including use as fill), alternatives to be employed for excess soil or debris to be generated associated with his/her respective work task. The project manager will work with the construction representative and advise where excess soils or debris shall be stored. Provisions for temporary storage of potentially impacted soil/debris must be explicitly agreed upon.

2.2 Grading/Excavation

Construction grading and excavation activities associated with applicable WHRS project activities require coordination and compliance as follows:

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.***
5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.
7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

2.3 Utility Work

Contractors performing utility work including all intrusive work (trenching, boring, digging, etc.) where surface features (soil, concrete, asphalt, vegetated surfaces) will be disturbed require conformance to the following procedures:

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all related utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.
7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.
8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:

Frank Uhlarik – Alfred Benesch & Company: 402-333-5792
Cell: 402-669-0546

Alternate:

Bill Imig – Olsson Associates: 402-458-5903
Cell: 402-314-4568

Alternate:

Miki Esposito – Environmental Project Management Team: 402-441-6173

Agencies/Railroad Authorities:

Nebraska Department of Environmental Quality: 402-471-2186 or 877-253-2603

After Hours, Weekends and Holidays:

Nebraska State Patrol Dispatch: 402-471-4545
BNSF Railway Company Resource Operations Center: 800-832-5452
Union Pacific Railroad Security: 888-877-7267
National Response Center: 800-424-8802

ALL OTHER INCIDENTS

Fire and Police: Dial 911

LIST OF ACRONYMS

CR	Contractor's Representative
SMP	Soil Management Plan
EPMT	City of Lincoln Environmental Project Management Team
PM	Project Manager
TR	Environmental Project Management Team Technical Representative
WHRS	West Haymarket Redevelopment Site

EXHIBIT D

Other Contract Documents

*Approved by Law
July 17, 2012*

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal
Place of Business):

Owner (Name and Address):
West Haymarket Joint Public Agency
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:
Amount:

Description (Name and Location):
For all labor, material and equipment necessary for (Bid Name and Number)

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company:

(Corp. Seal) SURETY
Company:

(Corp. Seal)

Signature: _____
Name and Title: Name and Title:

Signature: _____

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefore to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place
Of Business):

Owner (Name and Address):
West Haymarket Joint Public Agency
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT

Date:
Amount:

Description (Name and Location):
For all labor, material and equipment necessary for (Bid Name and Number)

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: _____ (Corp. Seal)

SURETY
Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The
Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly, and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
 11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
 12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
 14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
 15. DEFINITIONS
 - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

**INDEMNIFICATION AND INSURANCE REQUIREMENTS
FOR ALL WEST HAYMARKET JOINT
PUBLIC AGENCY CONTRACTS**

1. INDEMNIFICATION

A. Indemnification of JPA

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
 - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

2. INSURANCE GENERAL PROVISIONS

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

West Haymarket Joint Public Agency
c/o City Attorney
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

Certificates of insurance may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA, including by specific endorsement where necessary, as indicated in the following requirements.

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

F. **Other Requirements.** Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against JPA for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Upon notification to JPA of cancellation, non-removal, substitution or material alteration of any such policy(ies), JPA shall have the option to (i) if feasible, pay, on behalf of the Contractor, any and all such premiums, penalties, fees for expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market to procure such policy(ies) of insurance on behalf of Contractor as required by this Agreement at the then current market rate. Upon any of the above occurrences, JPA shall invoice the Contractor for reimbursement of such premiums, penalties, fees, or expenses advanced on the JPA's behalf plus an additional fifteen percent (15%) of such advanced amounts as remuneration for JPA's overhead. Such amounts advanced by JPA shall be paid by the Contractor within thirty (30) days after delivery of a statement for such expense.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release, defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

3. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of the Contract such insurance in the forms and minimum amounts as specified in this Section and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. Worker's Compensation Insurance and Employer's Liability Insurance. The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of JPA."

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

C. Commercial General Liability Insurance.

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

Coverage	Min Amt	Notes
General	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Products and Completed Operations	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Personal and Advertising Injury	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

- (2) The required Commercial General Liability Insurance shall also include coverage for the following:
- Bodily injury and property damage.
 - Fire legal liability
 - Coverage for all premises and operations.
 - Personal and advertising injury.
 - Operations by independent contractors.
 - X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
 - Any fellow employee exclusions shall be deleted.
 - Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
 - Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
 - Liability coverage which shall include contractually assumed defense costs in addition to any policy limits.
 - Contractual liability coverage.
- (3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
 - Endorsement to provide the general aggregate per project endorsement.
 - Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
 - Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
 - Separation of insureds.
 - Additional insured endorsement in favor of and acceptable to the JPA.
- (4) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer). The definition of insured contract shall be amended to remove any exclusion or other limitation for any work done within fifty (50) feet of railroad property.

D. Vehicle liability insurance coverage.

The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor of and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.
- Endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Umbrella/Excess Insurance. At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

F. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$5,000,000 per occurrence, \$10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following endorsements:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.

No other endorsements restricting coverage may be added. The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in ANY RAILROAD'S Blanket Railroad Protective Liability Insurance Policy available to JPA and JPA Contractors.

G. Special Provision. At the JPA's option, the minimum insurance requirements specified above may be increased or decreased by special provision in a JPA contract.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

smart # 10070200
7-26-10/law/tb



CITY OF LINCOLN
EXECUTIVE ORDER

NO. 083319

WHEREAS, there is concern over the inappropriate competitive advantages in the public bidding process for local publicly funded construction and delivery service contracts resulting from the misclassification of individuals performing construction labor services as "independent contractors" rather than "employees"; such "independent contractors" are commonly referred to as "1099 workers" due to the IRS form they receive rather than a W-4 which an employee receives;

WHEREAS, this misclassification of such individuals as "independent contractors" rather than as "employees" eliminates any obligation to pay these individuals legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit such individuals would typically receive if properly classified as employees;

WHEREAS, this misclassification of individuals performing construction labor services for the contractor as "independent contractors" rather than "employees" is a violation of federal and state law, but is difficult to enforce once public construction or delivery service contracts have been bid, awarded, and entered into;

WHEREAS, the use of public funds to compensate contractors who unlawfully avoid their obligation to pay legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit is not in the public interest; and

WHEREAS, the Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912 (effective July 15, 2010) provides that any contract entered into between a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat. § 4-114 requirements that the contractor register and use a federal immigration employment verification system to determine the work eligibility status of new employees physically performing services in the State of Nebraska, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to § 48-2912 of the Employee Classification Act.

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, I hereby establish the following policy as to the bid and award of contracts to contractors for construction and delivery services with the City of Lincoln:

The Purchasing Agent shall immediately include in the City of Lincoln's notice to bidders for construction contracts that all contractors submitting bids in response to the notice shall affirmatively certify to the Purchasing Agent that all individuals hired to perform construction or delivery labor services for the contractor under the contract shall be properly classified as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under federal and state law (including the requirements of the State of Nebraska Employee Classification Act), and that the contractor will comply with all legal obligations with respect to these employees (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes). The

notice to bidders shall further provide that contractors may use affidavits required pursuant to the Employee Classification Act for this purpose, but that a failure to make the affirmative certification to the Purchasing Agent shall render the bidder ineligible for award of the contract.

The Purchasing Agent shall immediately include the following provisions in contracts for construction or delivery services:

(1) Contractor agrees that each individual performing services for the contractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that contractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(2) Contractor understands and agrees that failure to classify each individual hired to perform services under the contract as an employee rather than as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the contract by the City.

(3) Contractor additionally agrees to include the following provisions in each subcontract entered into with a subcontractor as part of the contractor's contract with the City:

(a) Subcontractor agrees that each individual performing services for the subcontractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that subcontractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay,

workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(b) Subcontractor understands and agrees that subcontractor's failure to properly classify individuals hired to perform services under the subcontract as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the subcontract by the contractor.

(4) Contractor agrees that if subcontractor fails to or is suspected of failing to properly classify each individual hired pursuant to the subcontract as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or fails to comply with legal obligations with respect to the subcontractor's employee, the contractor shall take appropriate corrective action including, but not limited to, reporting the suspected violation of the State of Nebraska Employee Classification Act to the Nebraska Department of Labor or rescission of the subcontract by the contractor. Written notification of the corrective action shall be submitted to the City of Lincoln Purchasing Department. Contractor understands and agrees that contractor's failure to take appropriate corrective action shall be considered a breach of the contractor's contract with the City of Lincoln and is a grounds for rescission of the contract by the City.

(5) The City of Lincoln shall notify the Nebraska Department of Labor of any contractor or subcontractor it has determined is in breach of contract due to the terms of this order.

(6) Any contractor or subcontractor who shall have been determined by the Nebraska Department of Labor to have knowingly provided a false affidavit to the City of Lincoln

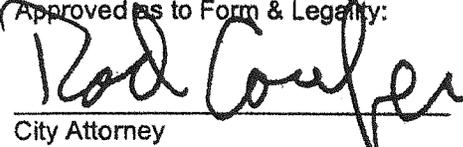
under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period of time, in accordance with Lincoln Municipal Code § 2.18.030(n)(1) or (2).

(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 5 of Neb. Rev. Stat. § 48-604 and is otherwise valid under federal and state law and is not intended to circumvent lawful obligations under federal and state law or city contractual requirements.

The City Clerk is directed to send a copy of this Executive Order to Vince Mejer, City Purchasing Agent, for his record.

Dated this 28 day of July, 2010.


Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney

EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, I, _____, herein below known as the Contractor, state under oath and swear as follows:

- 1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.
- 2. The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.
- 3. The Contractor has complied with Neb Rev Stat 4-114.
- 4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.
- 5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to section 12 of this Act.
- 6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska)
) ss.
County of _____)

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this _____ day of _____, 20__.

Notary Public



Jamie Stamper
Manager-Risk Management

BNSF Railway Company
P.O. Box 961073
Fort Worth, Texas 76131-1073
2500 Lou Menk Drive
Fort Worth, Texas 76131-2828
Telephone 817-352-3485
Fax 817-352-7207
Email Address
Jamie.Stamper@bnsf.com

RECEIVED

OCT 31 2011

LAW DEPT

October 21, 2011

WEST HAYMARKET JOINT AGENCY (JPA),

BNSF Railway Company (BNSF) is pleased to advise that we are modifying our insurance certification process. This new process will *improve your ease of doing business with BNSF* and increase the efficiency of insurance certification. We have partnered with CertFocus, an industry leader in the automation of certificate of insurance review and validation. Once a certificate is received, BNSF's Risk Management Department will work directly with customers, contractors, and vendors to resolve any variances between submitted certificates and contractual requirements.

The new process will begin November 1, 2011. To minimize the impact to entities submitting certificates of insurance, we will be transitioning as follows:

- **New agreements** processed on or after November 1, 2011, please e-mail your current certificate(s) of insurance to BNSF@certfocus.com.
- **Existing agreements** with BNSF requiring insurance which renews on or after November 1, 2011, please e-mail renewal certificate(s) of insurance to BNSF@certfocus.com. Any insurance renewal prior to November 1, 2011 should be directed to BNSF@Ebix.com until December 31, 2011.
- **Effective January 1, 2012 all certificates of insurance should be e-mailed to BNSF@certfocus.com.**
- For all certificates of insurance submitted on or after November 1, 2011, we also ask that you update the address in the certificate holder box to read as follows:

BNSF Railway Company
PO Box 140528
Kansas City, MO 64114

Thank you for your patience and understanding as we transition to our new process; we apologize in advance for any confusion or angst this transition may cause in the short term, but we also would remind you that the new process will improve your experience with BNSF as respects to insurance certification.

If you have any questions or would like further information on our new process, please contact Jamie Stamper, Manager – Risk Management at (817) 352-3485 or Jamie.Stamper@bnsf.com or Vickie Barnett, Assistant Manager – Risk Management at (817) 352-2414 or Vickie.Barnett@bnsf.com

Sincerely,

Jamie Stamper
Vickie Barnett

29 C.F.R. § 5.5

Code of Federal Regulations Currentness

Title 29. Labor

Subtitle A. Office of the Secretary of Labor

Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when

the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract,

the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the

name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140, 1215-0040
(a)(3)(ii)(A)	1215-0140
(c)	1215-0140, 1215-0040

[29 FR 100, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 30 FR 13136, Oct. 15, 1965; 36 FR 19304, Oct. 2, 1971; 40 FR 30481, July 21, 1975; 41 FR 10063, March 9, 1976; 47 FR 145, Jan. 5, 1982; 51 FR 12265, April 9, 1986; 54 FR 4243, Jan. 27, 1989; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 61 FR 68641, Dec. 30, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 74 FR 2862, Jan. 16, 2009]

SOURCE: 48 FR 19541, April 29, 1983; 51 FR 12265, April 9, 1986; 61 FR 40716, Aug. 5, 1996; 65 FR 80278, Dec. 20, 2000; 73 FR 77511, Dec. 19, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20__.

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On _____, 20__, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Notary Public

(SEAL)