AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, March 22, 2013 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 March 7, 2013 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. Approval of February 2013 Payment Registers (Steve Hubka)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the payment registers)

5. Review of February 2013 Expenditure Reports (Steve Hubka)
   - Public Comment

6. WH 13-5 Resolution to approve a Letter Agreement between the West Haymarket Joint Public Agency and the University of Nebraska to amend the Lease and Operating Agreement to allow the assignment of and certain rights to three UNL Suites to the JPA. (Jeff Kirkpatrick)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

7. WH 13-27 Resolution to approve an Agreement between the West Haymarket Joint Public Agency and Davis Design for Design Services for the Parking Garage (Deck 3) generally located east of Pinnacle Bank Arena between O Street and P Street, pursuant to RFP 13-031. (Paula Yancey)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

8. WH 13-28 Resolution authorizing the issuance of not to exceed $30,000,000 of General Obligation Facility Bonds. (Steve Hubka)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

9. WH 13-29 Resolution to approve the West Haymarket Joint Public Agency Phase II Budget Summary. (Steve Hubka)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

10. WH 13-30 Resolution to approve a Contract between the West Haymarket Joint Public Agency and Lift Solutions, Inc. for purchase of forklifts for the Pinnacle Bank Arena, pursuant to Bid No. 13-063. (Paula Yancey/Canda Jellenc)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

11. WH 13-31 Resolution to approve the West Haymarket Redevelopment Agreement (P Street and Canopy Street Project) between the West Haymarket Joint Public Agency, the City of Lincoln, and Project Oscar LLC. (Rick Peo)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

12. WH 13-32 Resolution to approve Amendment No. 17 to the Agreement for Engineering Services, Haymarket Infrastructure Design Project No. 870000, between the West Haymarket Joint Public Agency and Olsson Associates dba Lincoln Haymarket Infrastructure Team to include the remainder of the design for parking garage Deck 2, and to provide professional services during construction. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

13. WH 13-33 Resolution authorizing the Chair of the West Haymarket Joint Public Agency (JPA) to (1) enter into a Fourth Amendment to Master Development Agreement between BNSF Railway Company (BNSF) and the JPA which will provide for BNSF to convey to the JPA and for the JPA to convey to BNSF certain additional properties which have been identified by BNSF and the JPA as needed for the JPA's West Haymarket Project and BNSF's track relocation, but were omitted from the last closing between the parties, and (2) execute required deeds and other closing documents on behalf of the JPA. (Rick Peo)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

14. Set Next Meeting Date: Friday, April 5, 2013 at 3:00 p.m. in City Council Chambers Room 112

15. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
March 7, 2013

Meeting Began At: 3:04 P.M.

Meeting Ended At: 3:37 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 introduction 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

Public comment is welcome. Beutler 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 February 22, 2013

Beutler asked for corrections or changes to the minutes of the February 22, 2013 meeting. Being none, Carroll moved approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 -- West Haymarket Progress Report (Paula Yancey)

Paula Yancey, Project Manager from PC Sports, distributed a monthly information packet (attached hereto) on the status of the Pinnacle Bank Arena and associated infrastructure projects. She began the progress report with the local participation report on all workers, including engineering and professional services. Through January and February there have been 2,390 workers on site. Of the total workers, 1,382 (or 58%) live in Lincoln/Lancaster County and another 754 (or 31%) live in Nebraska outside Lancaster County. Only 254 (or 11%) were from outside Nebraska.

Looking at just the construction employees doing the work onsite who are using Davis Bacon certified payrolls there have been 2,109 workers on site. Of that total, 1,239 (or 59%) of the workers are from Lincoln/Lancaster County, 699 (or 33%) were from Nebraska, and only 171 (or 8%) were from outside of Nebraska.

The West Haymarket company participation numbers show 366 firms have been awarded contracts. Out of the total firms, 281 (or 77%) were Nebraska firms and only 85 (or 23%) were outside Nebraska. That equates to $159.5 million out of a total $222.8 million awarded to firms that actually have an address in Nebraska.

Yancey continued with the infrastructure update for the area around the arena, displaying images including:

- Pedestrian bridge construction – This work is ongoing with bridge pier construction to be completed tomorrow. They are expecting to set the first bridge girder this week as well.
- GE underground electrical conduit work -- The image shows the installation looking towards the Canopy Lofts.
- Demo of the old Alter Scrap Yard Building – In anticipation of the widening of "N" where Pinnacle Drive and "N" Street connect, the front of the old Alter storage building had to be removed for Hawkins to finish the roadwork. The office building remains intact and being used as a construction site office. "O" Street is behind you in this view.
- Arena Drive – This view is looking north from the "P" Street intersection. You can see the Amtrak Building on the left and Parking Deck #1 on the right, with the arena construction behind that on the right. With nice weather, Hawkins will be able to finish much of the roadwork in the next several months.
- Parking Deck #1 – The image is a close up and shows the precast construction installation with the arena in the background.
- The TDP's Railyard Block – TDP has made great progress on their development blocks.
- View looking West on "R" Street standing at what will be the future intersection of Canopy Street – The Lofts block to the left on the image is being enclosed. The arena construction and garage is shown on the right.
- Aerial view of the arena as of February 15 – This is now enclosed and you can see the exterior metal panels coming around the building, along with the site work and pedestrian ramp. Responding to Clare's inquiry, Yancey confirmed the image shows the final roofing.
- Aerial view of the entire development area as of February 15 -- This gives a view of the start of a completed district.

John Hinshaw, Mortenson Construction, reported on the Pinnacle Bank Arena progress. His summary of the month's milestones include:

- Painting and finishing on all levels of the building
- Acoustic ceiling grid installation has started
- The garage will be fully erected next week
- Pile caps and foundation walls for the ramp will be complete next week
- Ice floor piping and prep for concrete, which will be poured this Saturday – big milestone
- Seating installation has started this week

They worked 57 consecutive days or two months now without a recordable safety incident, and only had one incident in the last eight months of work. They average 350, and sometimes up to 400, craft workers onsite daily.

The below construction images were viewed and are in the attached packet:

- Concrete work is nearing completion on interior of the building. The image shows a worker completing an ADA platform for Mortenson. The ice slab is last big concrete element inside the building.
- Two images of Ice Floor prep – First image of ice floor preparation shows a worker stringing the tubing that is cast in the concrete flooring. With liquid flowing through this tubing, the concrete will cool to freezing so that water can freeze on top. Second slide shows another picture of the tubing being pulled.
- The last piles that go down to bedrock are shown in the ramp foundation slide. The pile caps are to be cast next week in this area.
- Interior painting is being accomplished by Colors, Inc – a local firm.
- Production drywall image shows a worker finishing some of the many walls being completed throughout the project.
- Catwalk electrical has kicked off. All the sports lights are installed and the panels are setup on the catwalks to power those lights. On a sports job this is a big item.
- Mockup suite work is continuing and in this image a worker is installing carpet in the suite.
- Tiling work has started in all the public restrooms. A worker from Floors, Inc. – a local firm – is shown installing that tile.
- Seat installation prep is shown with a worker drilling in the anchors for the seats. Each seat has individual anchors, so for the 16,000 seats you have to drill 32,000 anchors holes.
- Garage precast erection is shown. The precast is fabricated by Concrete Industries and installed by Davis Erection. It is anticipated to be finalized by early next week.
- The final slide is of exterior finish installation on the building. The building is enclosed and the metal panel work continues. The image shows the copper metal panel on a west side stair tower, which will appear similarly on all four corners.

Responding to Clare's question, Hinshaw confirmed that the metal structure shown here on the left side of the building is for the Pinnacle Bank Arena signage. Hinshaw also verified that they are on time.

Beutler asked about the material on the roof. Hinshaw stated it was a typical TPO membrane roof. It is a similar to a rubber material. It comes in big rolls that are rolled out and welded together.

Jane Kinsey, Watchdogs of Lincoln Government, asked for confirmation that this is not an asphalt material and if we can anticipate needing to reroof in 20-25 years. Hinshaw verified this was not asphalt. Yancey stated that the warranty is for 20-25 years, but they are, of course, hoping for a longer life span on the roof.

Kinsey asked about the status of the injured person, and if Worker's Compensation covered expenses. Hinshaw stated the worker was back at work and his care was covered by Worker's Compensation.

Kinsey was concerned that the copper did not weather very well if on the exterior. Hinshaw explained that it is actually not copper and will not turn green. It is an aluminum-anodized product that is copper colored. The hope is that the finished metal will weather over time enhancing the patina making it more attractive. It should last forever, but all the materials are set for a 40-50 year timeframe.

Item 5 -- WH 13-5 Resolution to approve a Letter Agreement between the West Haymarket Joint Public Agency and the University of Nebraska to amend the Lease and Operating Agreement to allow the assignment of and certain rights to three UNL Suites to the JPA.

Beutler announced that, without objection, this item would be delayed until the next meeting pending acquisition of additional information. Being no objections, the Board moved to Item 6.

Item 6 -- WH 13-23 Resolution to approve the PS Furniture, Inc. bid to furnish Folding Table for the Pinnacle Bank Arena for the sum of $102,858.95.

Canda Jellenc, P.C. Sports, explained this resolution approves a contract with PS Furniture, Inc. to provide all the folding tables and was bid through the City's Purchasing Department. PS Furniture, Inc. was selected as the low bid and meets all the specifications. The $102,858.95 amount is within the FFE (furniture, fixtures, and equipment) budget.

Kinsey asked about the use of the folding tables, to which Jellenc responded these would be used throughout the arena mostly in the dining areas and public areas to be used for public events and meetings. There are also a few stationary tables that will be in the furniture package.

Rick Peo, City Attorney's Office, explained that there is a Motion to Amend No. 1 on this item to adopt a substitute resolution. The typical procedure would be to move to adopt the main motion. Then put the amendment on the table for voting before the vote on the main motion. This amendment does not change any substantive matters in the resolution, but simply puts additional detail in the record to indicate that a public process was used to select this contractor by including two whereas clauses in the resolution. Beutler asked about the bid process and Peo substantiated that it went through the public bid process. Clare inquired as to the "lowest responsible bidder" wording. Peo stated that is the terminology used in the standard contract language. They were, in fact, the low bid.

Clare moved approval of the main motion. Carroll seconded the motion. Carroll moved approval of the motion to amend. Clare seconded the motion. Motion to Amend No 1 carried 3-0. The main motion was adopted 3-0.

Item 7 -- WH 13-24 Resolution granting Lincoln Electric System a permanent utility easement on or across certain JPA property for underground utility lines and/or underground utility facilities generally located east of Pinnacle Arena Drive and north of T Street.

Yancey explained that this resolution was to grant an easement to LES. The easement is at the north of the Pinnacle Arena site from their transformer site to Pinnacle Arena Drive, providing redundant service to the arena. It is an underground utility easement and has been reviewed by all the parties. Yancey displayed the map attached to the resolution showing the location.

She responded to Clare that earlier easements were provided from the south. Steve Hanks with Lincoln Electric System affirmed for Clare that this would provide backup service in the event the initial power source goes out.

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

Item 8 -- WH 13-25 Resolution to approve the Spec Seating bid to furnish Folding Chairs and Carts for the Pinnacle Bank Arena for the sum of $195,622.60

Jellenc introduced this resolution to award the contract to Spec Seating for the folding chairs and storage carts. This item was bid through the City Purchasing Department. Spec Seating was the low bidder and meets the specifications for a total of $195,622.60. She displayed the attached photo of one of the chairs. The chairs will be black and have the N logo for Nebraska.

Kinsey asked about the use of the chairs and if it would have been possible to save money by using chairs from Pershing, especially after their demise. She wanted to know how many chairs were to be ordered. Jellenc explained these were the folding chairs for courtside seating in the platform areas between the lower retractable seating and the court floor. They will be available to be set up for events. Jellenc would need SMG to respond, but assumes Pershing has need to use the chairs in their facility as well. Yancey responded that some items would be brought over from Pershing when it is finished, however, this is a bigger facility and the needs are greater. Yancey detailed this item includes 112 chairs at $195 each, 2,000 at $67, and 84 at $78.90. In addition, there were four storage carts at $615 each, 40 storage carts at $615, and three storage racks at $615 (each storage cart a different model for various type of chairs), and 1,000 spacer brackets at $4.25 each to allow them to gang chairs together. The same information is available on HaymarketNOW! and the City's websites. This was the low bid.

Peo explained that there is another Motion to Amend on this item to adopt a substitute resolution. Again this change is to simply put additional detail in the record by including two whereas clauses in the resolution to indicate that a public process was used.

Clare moved approval of the main motion. Carroll seconded the motion. Carroll then moved approval of Motion to Amend No. 1. Clare seconded the motion. Motion to Amend carried 3-0. Being no further discussion, the main motion was adopted 3-0.

Item 9 -- WH 13-26 Resolution granting Lincoln Electric System a permanent utility easement on or across certain JPA property for underground utility lines and/or underground utility facilities generally located at North 7th Street and N Street.

Yancey explained that this is another LES utility electrical easement request. This easement is in relation to the City's Lumberworks Garage and future liner building. Previously the Board approved sale of the liner building to the City as soon as a liner building developer came onboard. Since that has not happened yet, the JPA still holds title to the property. Therefore, in order to bring power to the Lumberworks Garage and future liner building, LES requires an easement. Yancey displayed the map attached to this item. Assuming approval by the JPA, the granted easement would switch hands with the property once it is sold to the City. Hanks explained that they have a substation to the east and need to cross the 7th Street right-of-way.

Peo requested the addition of two words to properly describe the easement in two places on line three of the resolution. This easement is for both overhead and underground electrical facilities. In both cases, the two words to be added are "overhead and" in front of "underground." Hanks explained that there is an existing 115,000-volt transmission line that comes in and feeds that specific substation from the west, and is part of the redundant feed for that substation. LES needs to protect that structure that exists today, and also the line that comes in from the west into the substation.

Beutler suggested, if no objection, that the Board consider the resolution as delineated by Peo. Being no objection and being no public comment, Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 -- Set Next Meeting Date

The next meeting date is set for Friday, March 22, 2013 at 3:00 p.m. in City Council Chambers Room 112.

Item 14 -- Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. The meeting adjourned at 3:37 p.m.

Prepared by: Pam Gadeken, Public Works and Utilities

West Haymarket JPA Meeting

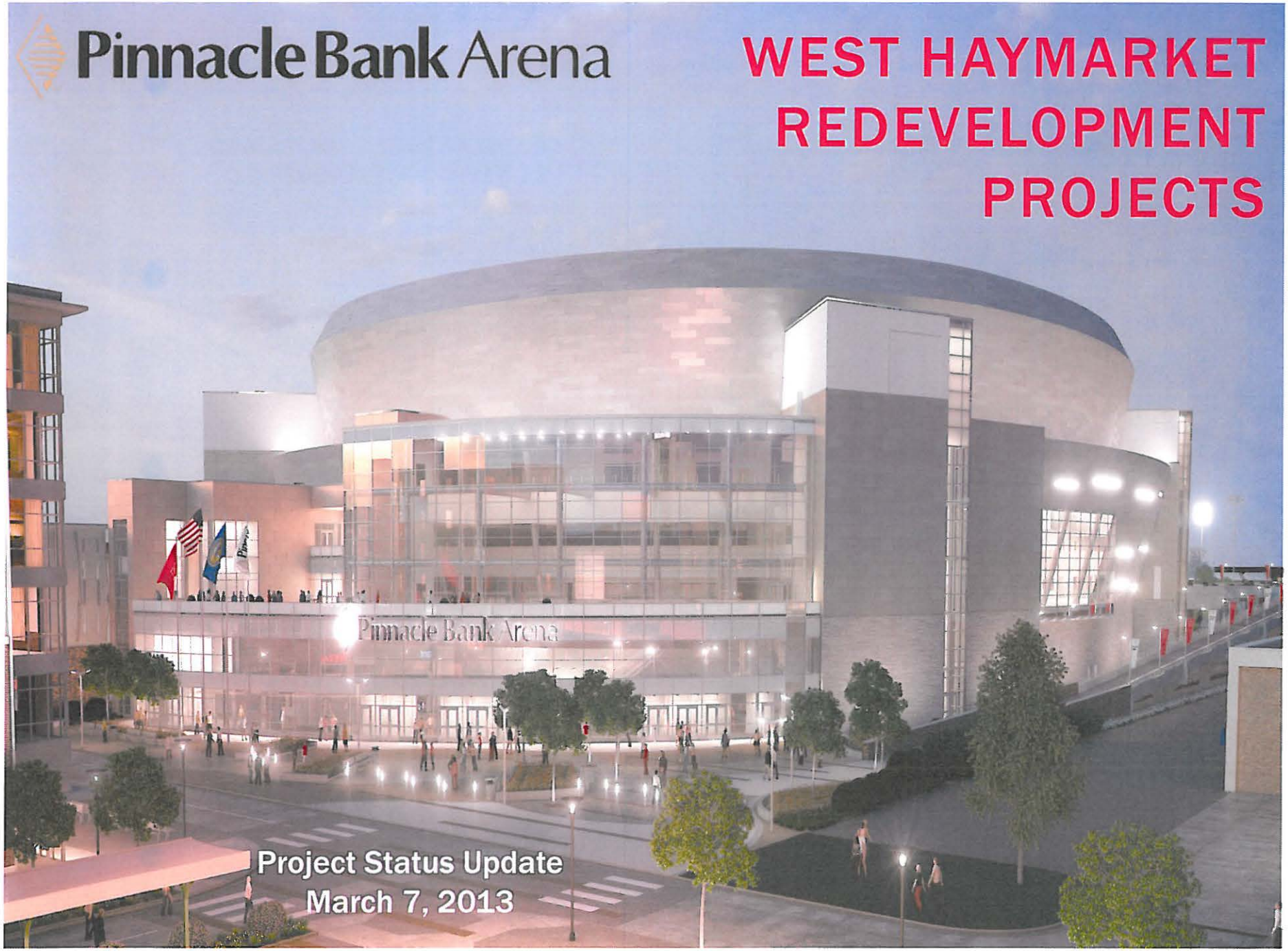
Date 3/7/2013

Page 1

Name (Please Print)	Address	Phone/E-Mail
Jane Kinsey watchdogs		

Pinnacle Bank Arena

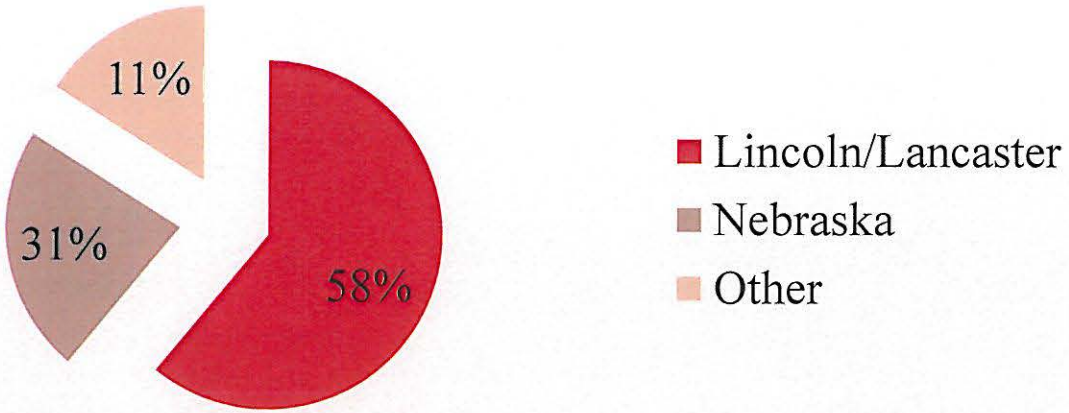
WEST HAYMARKET REDEVELOPMENT PROJECTS



Project Status Update
March 7, 2013

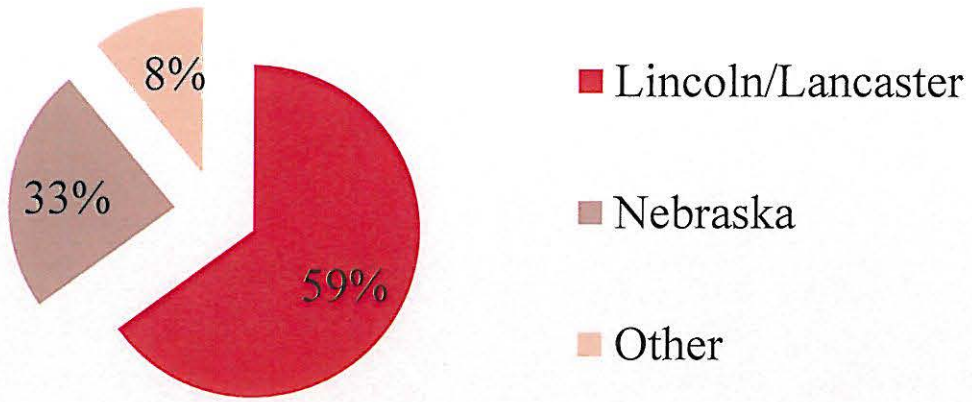
West Haymarket Local Participation Report
All Workers – Including Engineering and Professional Services
Through Jan/Feb 2013

	Total	Percentage
Lincoln/Lancaster County	1382	58%
Nebraska	754	31%
Other	254	11%
	2390	100%



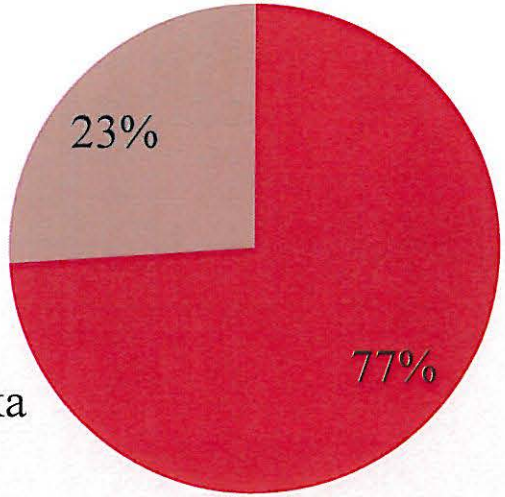
West Haymarket Local Participation Report
Davis Bacon / Construction Employees
Through Jan/ Feb 2013

	Total	Percentages
Lincoln/Lancaster County	1239	59%
Nebraska	699	33%
Other	171	8%
	2109	100%



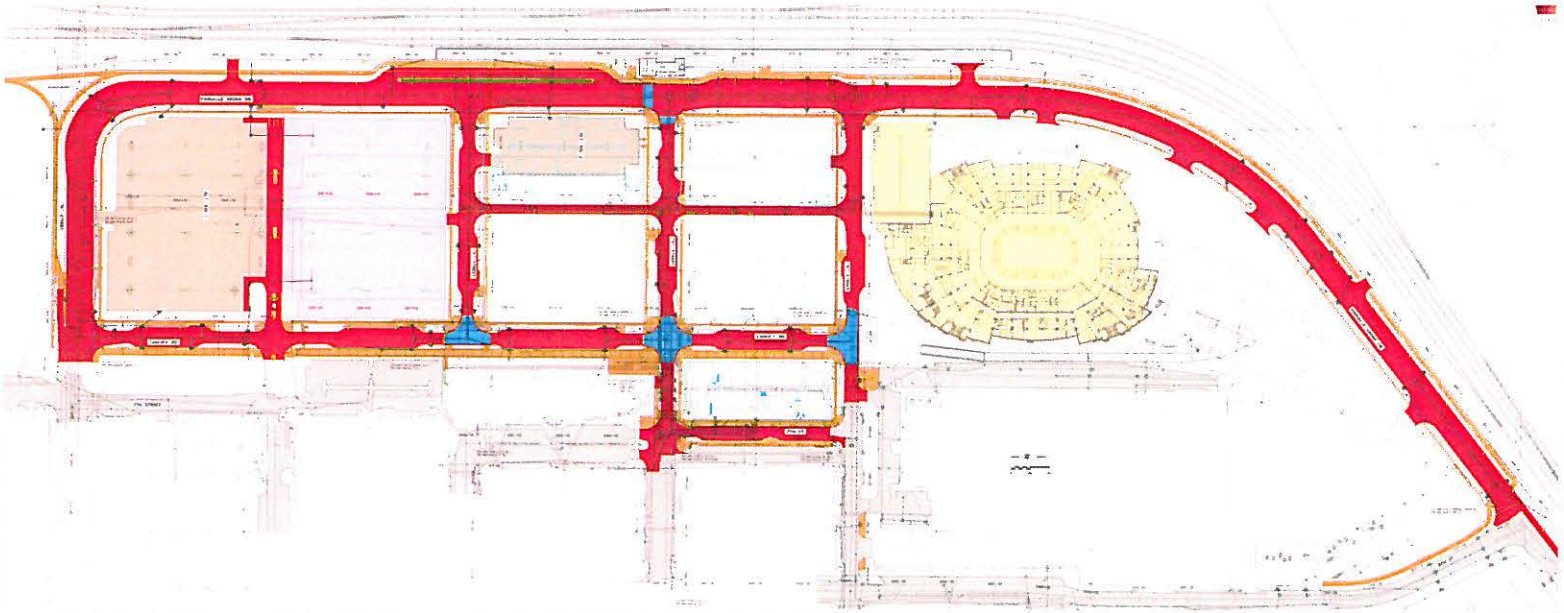
West Haymarket
Company Participation

	Total	Percentage
Nebraska Firms	281	77%
Other	85	23%
	366	100%



$159.5 Million Nebraska Dollars out of $222.8 Million

Infrastructure Progress



CONSTRUCTION OF PEDESTRIAN BRIDGE PIERS

INSTALLATION OF CONDUIT ALONG FUTURE CANOPY STREET

VIEW OF NEW WEST HAYMARKET DISTRICT FROM CANOPY & "P"

DEMOLITION OF OLD ALTER SCRAP YARD BUILDING

ARENA DRIVE LOOKING NORTH FROM "P" STREET

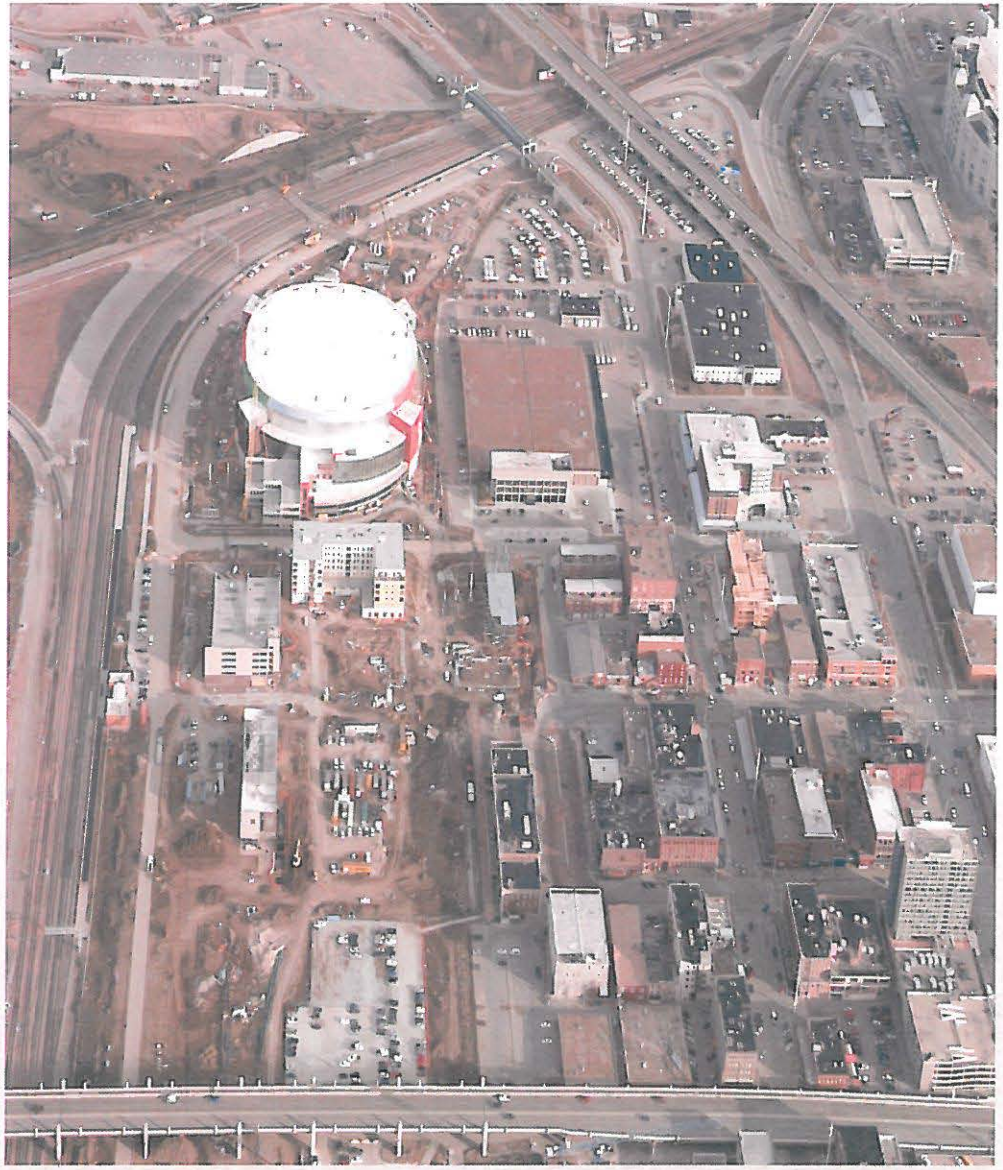
PARKING DECK 1 PRECAST CONSTRUCTION

TDP's RAILYARD STEEL CONSTRUCTION

LOOKING WEST ON "R" STREET FROM 7TH STREET

AERIAL 2-15-2013

AERIAL
2-15-2013



Presentation to the JPA

Pinnacle Bank Arena

March 7, 2013

Mortenson construction | HAMPTON CONSTRUCTION

Milestones Achieved

- Painting on all levels has started
- Ceiling installation started
- Erection of garage precast nearing completion
- Ramp foundations nearing completion
- Ice floor piping and prep for concrete
- Seating started

Mortenson construction | Hampton Construction

Safety

- Worked 57 consecutive days without a safety incident
- The Project averages over 350 Craft Workers daily

Mortenson construction | HAMPTON CONSTRUCTION

Concrete Operations

- Concrete work is nearly finished, with only ice slab

Mortenson construction | HAMPTON CONSTRUCTION

Preparing ice floor

Preparing ice floor

Ramp foundation work

Interior Painting

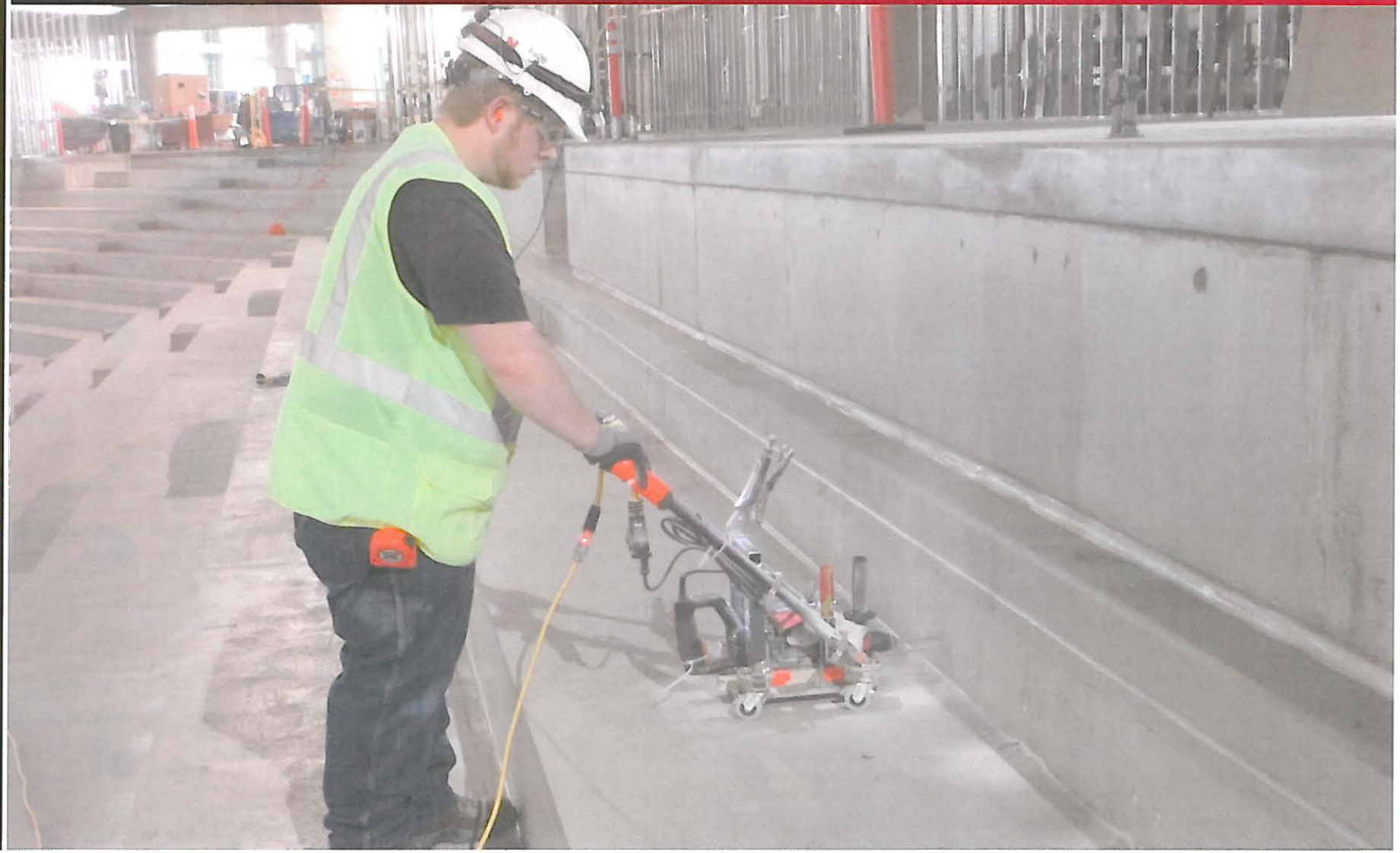
Production Drywall

Catwalk Electrical

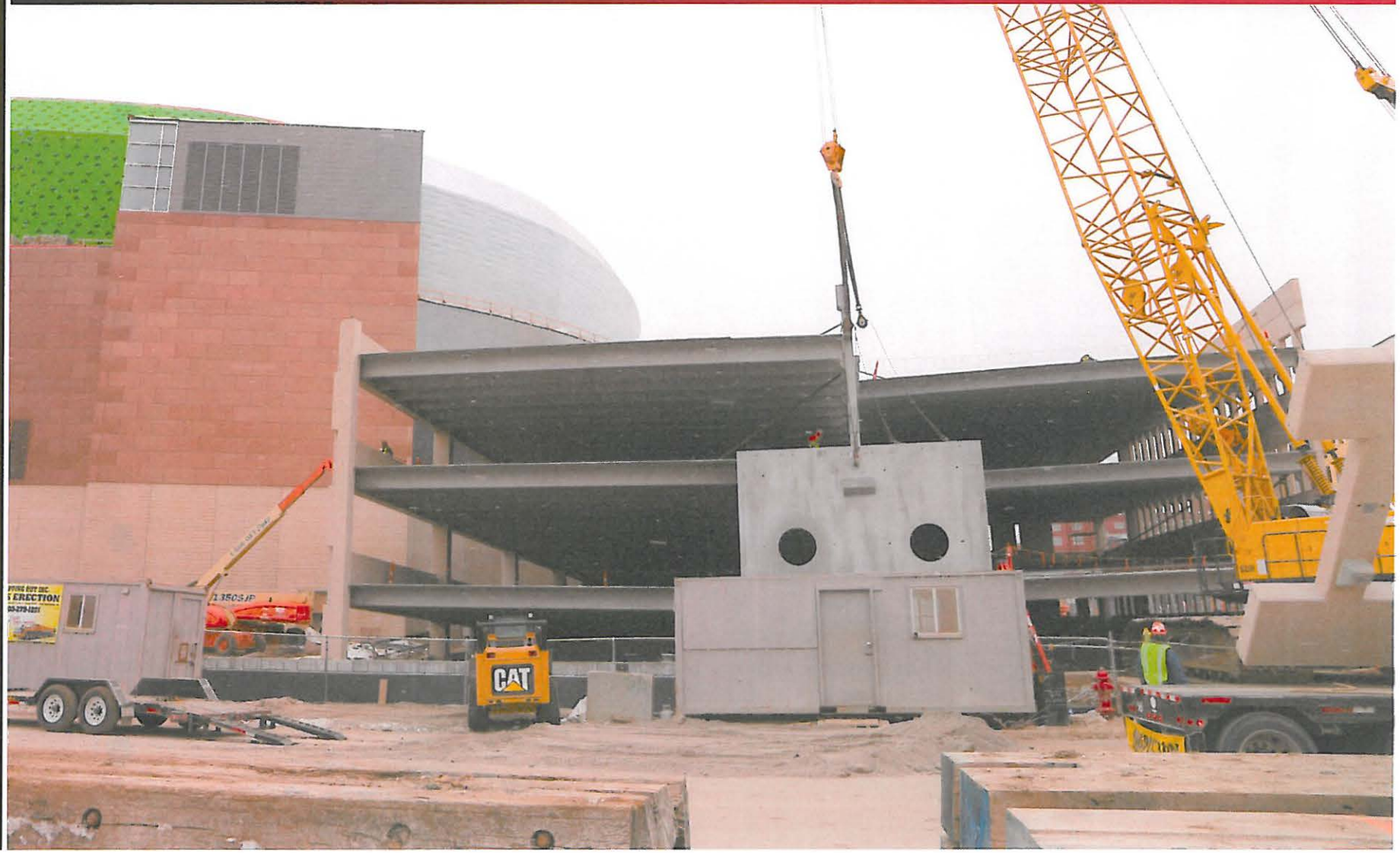
Mockup Suite

Tiling

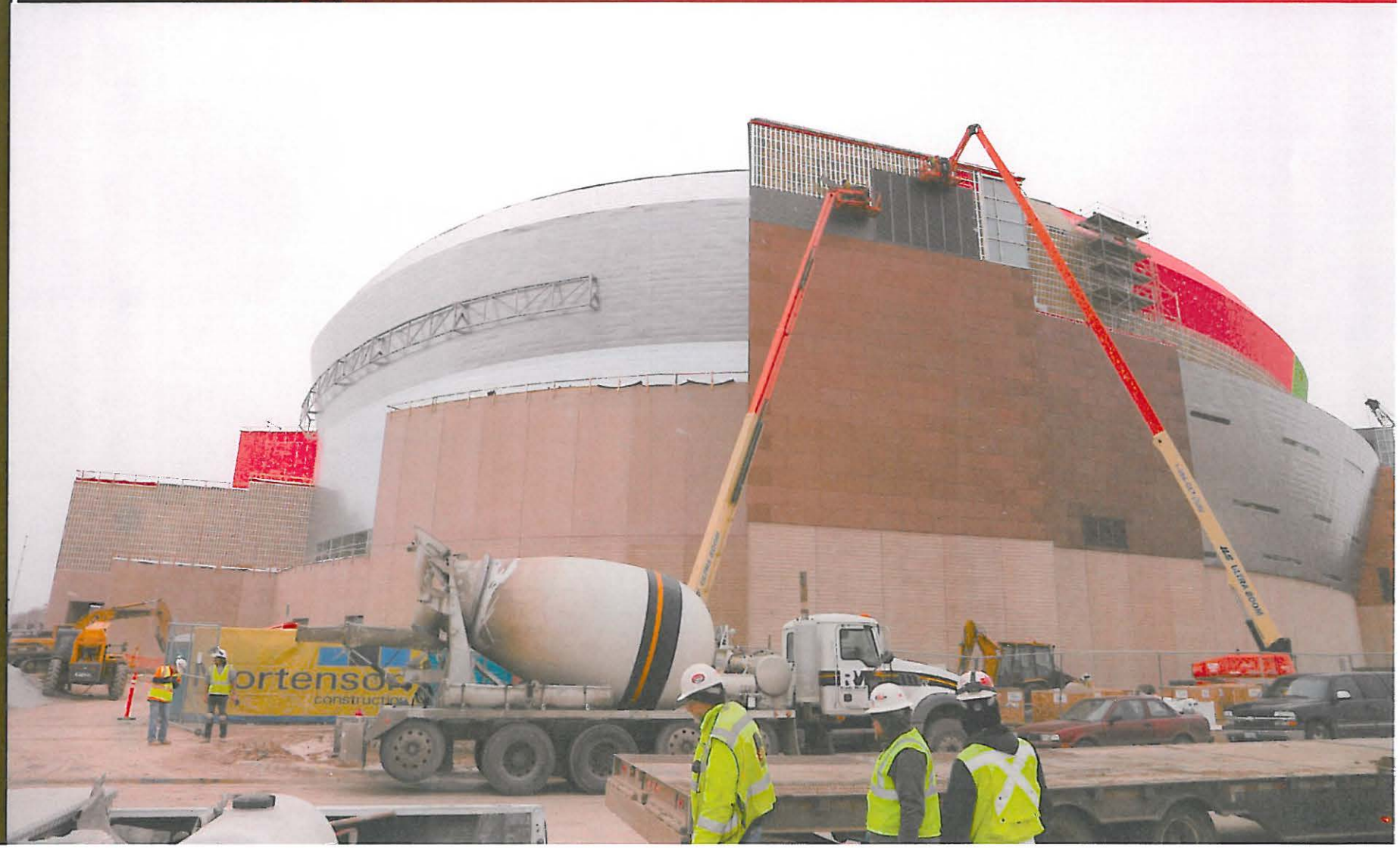
Seat Installation Prep

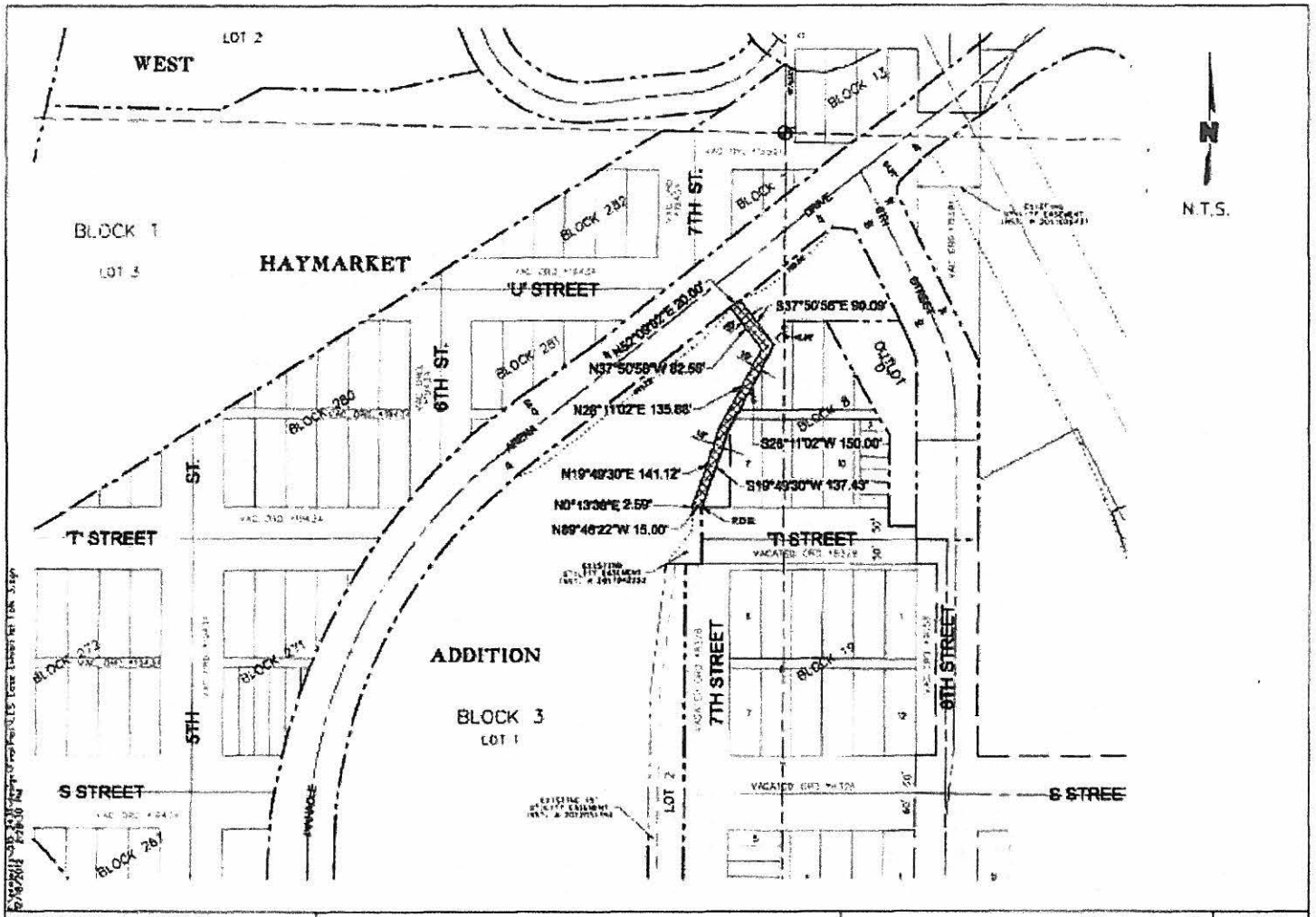


Garage Precast Erection



Installing exterior finishes





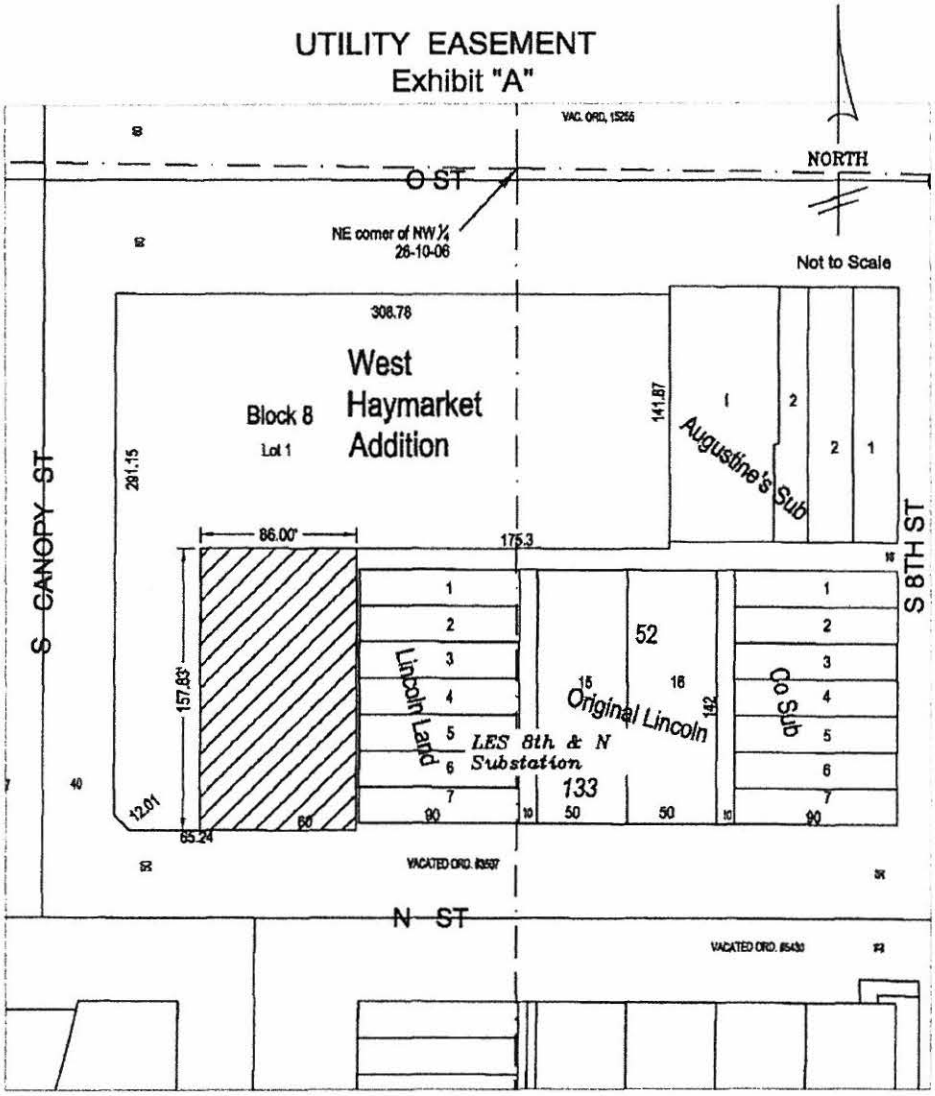
PROJECT NO: 010-2431	LES Easement across	OLSSON ASSOCIATES	SHEET
DRAWN BY: TDB	Lot 1, Block 3, West Haymarket Addition	1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	2 of 2
DATE: December 18, 2012			

The "Super" Chair ABS 750W

Designed To Put Comfort first. The "Super" star of the ARCBAC Series is designed for the real VIPs, players and coaches. The added height, wider stance, seat and back contribute to the comfort, and make it perfectly suited for those with great stature.

ABS 750W

UTILITY EASEMENT
Exhibit "A"



Location of a Utility Easement in part of Lot 1, Block 8, West Haymarket Addition, NW 1/4, Section 26, T 10 N, R 06 E of the 6th P.M., Lincoln, Lancaster County, Nebraska.

West Haymarket Joint Public Agency
Payment Register
2/1/2013 through 2/28/2013

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
76881	Windstream	Billing Number 402-477-6387	06095	W Haymarket O & M	PV	1426615	92.62	02/06/13	487497
82368	State of Nebraska	Dec 2012,MonitoringPlan,#10620	870602	WH Voluntary Clean-up Program	PV	1426374	772.54	02/06/13	487498
82368	State of Nebraska	Dec 2012,Monitoring Plan,#0637	870602	WH Voluntary Clean-up Program	PV	1426377	1,132.99	02/06/13	487498
127319	Urban Development	JPA Share Kimley-Horn Pk Study	06095	W Haymarket O & M	PV	1426620	11,775.00	02/06/13	487499
589626	WRK LLC	GeoPier Soil Stabilization	06094	W Haymarket Revenue	PV	1426631	280,502.00	02/06/13	487500
38391	Lincoln Journal Star	Cust#60016059	870951	WH ITS & Dynamic Message Signs	PV	1426371	16.96	02/07/13	59370
53356	Lincoln Electric System	200 N 7th St, 10/26-11/26/12	870305	WH Core Area Roadway & Utility	PV	1426372	136.27	02/07/13	59382
53356	Lincoln Electric System	200 N 7th St, 11/27-12/26/12	870305	WH Core Area Roadway & Utility	PV	1426373	122.43	02/07/13	59382
98079	Black Hills Energy	Alter, 525 N St, 12/19-01/21	870305	WH Core Area Roadway & Utility	PV	1426370	195.53	02/07/13	59410
98642	Information Services	12/12 Data Processing	06095	W Haymarket O & M	PV	1428528	165.94	02/13/13	487966
102154	Public Building Commission	Finance- Mark L 02/13	06095	W Haymarket O & M	PV	1428529	204.62	02/13/13	487967
102154	Public Building Commission	Finance- Mark L 02/13	06095	W Haymarket O & M	PV	1428529	52.24	02/13/13	487967
36863	General Excavating	#870951,Infrastructure Impr	870951	WH ITS & Dynamic Message Signs	OV	1427455	5,621.76	02/14/13	59497
53356	Lincoln Electric System	200 N 7th St, 12/27-1/25/13	870305	WH Core Area Roadway & Utility	PV	1427262	136.64	02/14/13	59513
53356	Lincoln Electric System	510 N St	06095	W Haymarket O & M	PV	1428525	266.30	02/14/13	59513
320143	Hawkins Construction	#870305,Core Roadway Jan'13	870305	WH Core Area Roadway & Utility	OV	1427315	54,189.12	02/14/13	59592
320143	Hawkins Construction	3021 W Haymrkt Cnopy,Jan'13	870402	WH Canopy Phase II	OV	1427316	9,033.55	02/14/13	59592
593485	Thought District Inc	10-JPA-0007 Ongoing Mgmt 01/13	06095	W Haymarket O & M	PV	1428530	2,000.00	02/14/13	59634
596579	SMG	Cust#889,Sep,Oct books,Schilln	870100	WH Arena	PV	1427277	334.00	02/14/13	59643
596579	SMG	Cust#889,Sep,Oct books,Schilln	870100	WH Arena	PV	1427277	332.70	02/14/13	59643
596579	SMG	Cust#889,Sep,Oct books,Schilln	870100	WH Arena	PV	1427277	981.25	02/14/13	59643
598263	PC Sports LLC	Jan'2013 arena mgmt	870100	WH Arena	OV	1427348	30,450.00	02/14/13	59650
598263	PC Sports LLC	Jan'2013 program,garage mgt	870000	WH General Coordination	OV	1427348	78,050.00	02/14/13	59650
96516	3M Company	Signage samples	870951	WH ITS & Dynamic Message Signs	PV	1429894	500.00	02/20/13	488401
38391	Lincoln Journal Star	Cust#60016059,Bid#13 043	870000	WH General Coordination	PV	1429376	16.39	02/21/13	59699
53356	Lincoln Electric System	525 N St, 1/3-2/1/13	870305	WH Core Area Roadway & Utility	PV	1429888	202.10	02/21/13	59710
53356	Lincoln Electric System	601 N St,2, 1/4-2/1/13	870305	WH Core Area Roadway & Utility	PV	1429890	62.90	02/21/13	59710
320143	Hawkins Construction	#870201,Haymarket Improv	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1429373	135,580.82	02/21/13	59781
596608	M A Mortenson Company	Arena GMP,January,2013	870100	WH Arena	OV	1429833	8,427,661.00	02/21/13	59830
602474	Baring Industries Inc	Jan,2013 Food Service equip	870100	WH Arena	OV	1429883	550,948.50	02/21/13	59837
77921	County/City Property Management	January 2013 Amtrak Station	06095	W Haymarket O & M	PV	1431005	312.22	02/27/13	488785
77921	County/City Property Management	CITY CONTROLLER-JPA	06095	W Haymarket O & M	PV	1431008	75.37	02/27/13	488785
93323	Lincoln-Lancaster County Health Dept	601 N St, Asbestos #255201	870902	WH Alter Site Purchase	PV	1431160	295.00	02/27/13	488786
97885	Copy Services	Customer 595381	06095	W Haymarket O & M	PV	1431012	27.86	02/27/13	488787
108417	Citizen Information Center	WHJPA Video 1/11/13,1/24/13	06095	W Haymarket O & M	PV	1431013	180.00	02/27/13	488788
602769	Yummy Super Buffet Inc	Occupation Tax Refund	06094	W Haymarket Revenue	PV	1431015	129.14	02/27/13	488789
35692	Gregg Electric Company	Acct:WESTHA Work Order 111206	06095	W Haymarket O & M	PV	1430999	1,729.31	02/28/13	59862
38391	Lincoln Journal Star	Cust#60016059	870100	WH Arena	PV	1431161	18.09	02/28/13	59866
38391	Lincoln Journal Star	Cust#60016059	870000	WH General Coordination	PV	1431162	16.96	02/28/13	59866
38391	Lincoln Journal Star	Cust#60016059	870100	WH Arena	PV	1431163	17.52	02/28/13	59866
222586	Don Herz	Services Dec 2012, Jan 2013	06095	W Haymarket O & M	PV	1431014	1,645.60	02/28/13	59931
320143	Hawkins Construction	Area Improv,1/27-2/9/13	870305	WH Core Area Roadway & Utility	OV	1431166	85,510.95	02/28/13	59938
599315	Legends Sales & Marketing LLC		870100	WH Arena	OV	1431164	20,286.28	02/28/13	59973
602078	Hausmann-Dunn, a Joint Venture	Parking deck 1 work,Jan'13	870202	WH Parking Garage #1	OV	1431165	1,501,203.00	02/28/13	59983
Grand total							11,202,983.47		

West Haymarket Joint Public Agency
Public Works Engineering Costs
2/1/2013 through 2/28/2013

Description	Fund	Project	Description	Do Ty	Document Number	Object	Sub	Amount	G/L Date
Design Engineering	00951	870000	WH General Coordination	EU	359310	6153	130	1,541.60	02/07/13
Design Engineering	00951	870201	WH HymktPkLot,FestSp&PedGrdStr	EU	359310	6153	130	932.02	02/07/13
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	359310	6153	130	349.51	02/07/13
Design Engineering	00951	870306	WH Traffic Analysis	EU	359310	6153	130	62.29	02/07/13
Design Engineering	00951	870951	WH ITS & Dynamic Message Signs	EU	359310	6153	130	155.71	02/07/13
Design Engineering	00951	870000	WH General Coordination	EU	360097	6153	130	1,891.11	02/21/13
Design Engineering	00951	870201	WH HymktPkLot,FestSp&PedGrdStr	EU	360097	6153	130	873.78	02/21/13
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	360097	6153	130	178.35	02/21/13
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	360097	6153	130	349.51	02/21/13
Design Engineering	00951	870951	WH ITS & Dynamic Message Signs	EU	360097	6153	130	124.58	02/21/13
Grand total								6,458.46	

City of Lincoln, NE
West Haymarket Joint Public Agency
Job Cost Report
As of February 28, 2013

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70090 West Haymarket Park						
870000 WH General Coordination	6,674,522	5,551,609	1,372,492	249,579-		249,579-
70090 West Haymarket Park	6,674,522	5,551,609	1,372,492	249,579-		249,579-
70091 Arena						
870100 WH Arena	178,079,903	118,261,006	57,586,333	2,232,564		2,232,564
870101 WH Arena Contingency	6,643,925			6,643,925		6,643,925
870203 WH Arena Parking Garage	726,438	618,767	107,028	643		643
70091 Arena	185,450,266	118,879,773	57,693,361	8,877,132		8,877,132
70092 Parking						
870201 WH HymktPkLot,FestSp&PedGrdStr	14,983,049	5,037,783	9,710,059	235,207		235,207
870202 WH Parking Garage #1	14,234,442	5,455,579	8,566,153	212,710		212,710
870204 WH Parking Garage #2	207,036	203,219	3,817			
70092 Parking	29,424,527	10,696,581	18,280,029	447,917		447,917
70093 Roads						
870301 WH Charleston Bridge/Roadway	258,985	252,015		6,970		6,970
870302 WH "M"&"N" St,7th to 10th St	3,432,807	3,432,707	65,980	65,880-		65,880-
870303 WH USPS Parking Lot Reconstctn	698,178	696,054		2,124		2,124
870304 WH 10th & Salt Creek Road Impr	3,444,647	3,436,721		7,926		7,926
870305 WH Core Area Roadway & Utility	15,914,406	10,481,173	4,784,731	648,502		648,502
870306 WH Traffic Analysis	78,170	71,947		6,223		6,223
870307 WH Streetscape	425,638	366,162	40,458	19,018		19,018
870308 WH Sun Valley Blvd & West "O"	29,370	23,682	5,689	1-		1-
70093 Roads	24,282,201	18,760,461	4,896,858	624,882		624,882

City of Lincoln, NE
West Haymarket Joint Public Agency
Job Cost Report
As of February 28, 2013

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70094 Pedestrian Ways						
870401 WH Plaza						
870402 WH Canopy Phase II	1,424,060	471,318	852,714	100,028		100,028
70094 Pedestrian Ways	1,424,060	471,318	852,714	100,028		100,028
70095 Utilities						
870501 WH Sanitary Sewer Relocation	1,492,905	1,492,905				
870502 WH Fiber Optic Comm & Other	506,035	506,035				
70095 Utilities	1,998,940	1,998,940				
70096 Environmental						
870601 WH NDEQ T-200	2,413,851	1,598,921	5,482	809,448		809,448
870602 WH Voluntary Clean-up Program	1,157,029	920,153	209,869	27,007		27,007
870603 WH Environmental Contngy Pln	2,315,878	1,272,538	18,533	1,024,807		1,024,807
870604 WH Other/Miscellaneous	926,292	624,666	84,830	216,796		216,796
870605 WH Canopy Phase I-Lead Abatemt						
70096 Environmental	6,813,050	4,416,278	318,714	2,078,058		2,078,058
70097 Dirt Moving						
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF						
870703 WH Initial Haymarket Site Prep	6,063,449	6,089,662	6,268	32,481-		32,481-
870704 WH Other Stormwater Mitigation						
70097 Dirt Moving	6,063,449	6,089,662	6,268	32,481-		32,481-
70098 TIF Improvements						
870800 WH TIF Improvements						
70098 TIF Improvements						

City of Lincoln, NE
West Haymarket Joint Public Agency
Job Cost Report
As of February 28, 2013

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
70099 Site Purchase						
870901 WH BNSF Land Acquisition	1,060,419	1,060,419				
870902 WH Alter Site Purchase	4,846,286	4,544,739		301,547		301,547
870903 WH Jaylynn Site Purchase	1,700,176	1,700,182		6-		6-
870904 WH UP Site Purchase	1,326,248	1,326,248				
870905 WH BNSF Const, Rehab, Reloc	47,695,867	47,671,699		24,168		24,168
870906 WH Amtrak Station	2,367,186	2,361,623	599	4,964		4,964
870907 WH UP Track Mod West of Bridge	1,225,232	1,225,232				
870908 WH Other Private Prop Acqstns	2,264,241	2,214,227		50,014		50,014
70099 Site Purchase	62,485,655	62,104,369	599	380,687		380,687
70100 Other Costs						
870951 WH ITS & Dynamic Message Signs	1,826,827	233,608	193,964	1,399,255		1,399,255
870952 WH Community Space & Civic Art	1,500,000	148,215	235,570	1,116,215		1,116,215
70100 Other Costs	3,326,827	381,823	429,534	2,515,470		2,515,470
70105 Bond Related Costs						
870975 WH Miscellaneous	528,317			528,317		528,317
870976 WH Line of Credit	53,227	53,227				
870977 WH Series 1 JPA Debt	1,535,168	1,535,168				
870978 WH Series 2 JPA Debt	1,221,802	1,221,802				
870979 WH Series 3 JPA Debt	577,661	577,661				
870980 WH Series 4 JPA Debt	1,243,825	1,243,825				
70105 Bond Related Costs	5,160,000	4,631,683		528,317		528,317
00951 West Haymarket Capital Proj	333,103,497	233,982,497	83,850,569	15,270,431		15,270,431

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of February 28, 2013

00950 West Haymarket Reven
06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies	250			250	92	158
5261 Postage	2,000			2,000	372	1,628
5323 Bldg Maint Supplies	560			560	89	471
11 Materials & Supplies	2,810			2,810	553	2,257
12 Other Services & Charges						
5621 Misc Contractual Services	454,945			454,945	126,303	328,642
5624 Auditing Service	15,500			15,500	12,000	3,500
5631 Data Processing Service	6,992			6,992	830	6,162
5633 Software	1,100			1,100		1,100
5643 Management Services	53,000			53,000	20,000	33,000
5683.04 Snow Removal					1,047	1,047-
5683.05 Fire Alarm Monitor	500			500	205	295
5762 Photocopying	500			500	219	281
5763 Printing	500			500	121	379
5794 Public Officials	27,000			27,000		27,000
5821 Electricity - Bldg & Grnds	4,000			4,000	2,719	1,281
5825 Natural Gas					1,059	1,059-
5829 Telephone	1,200			1,200	655	545
5830 Water	6,000			6,000	114	5,886
5856 City Share Linc Center Main					1,087	1,087-
5862 Grounds Maintenance					1,729	1,729-
5870 Other Bldg Maintenance	4,000			4,000	2,295	1,705
5928 Rent of Co/City Bldg Space	2,456			2,456	1,228	1,228
5931 Parking Rent Bldg Comm	627			627	313	314
5952 Advertising/Media Serv	2,850			2,850	540	2,310
12 Other Services & Charges	581,170			581,170	172,464	408,706
06095 W Haymarket O & M	583,980			583,980	173,017	410,963

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of February 28, 2013

00950 West Haymarket Reven
195011 JPA 2010A Debt Servi

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195011 JPA 2010A Debt Servic						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg	524			524	524	
6235 Bd Trustee Pmt-Interest	4,651,510			4,651,510	2,325,755	2,325,755
15 Debt Service	4,652,034			4,652,034	2,326,279	2,325,755
195011 JPA 2010A Debt Servic	4,652,034			4,652,034	2,326,279	2,325,755

00950 West Haymarket Reven
195021 JPA 2010B/C Debt Ser

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg	1,048			1,048	848	200
6235 Bd Trustee Pmt-Interest	5,874,322			5,874,322	2,937,161	2,937,161
15 Debt Service	5,875,370			5,875,370	2,938,009	2,937,361
195021 JPA 2010B/C Debt Serv	5,875,370			5,875,370	2,938,009	2,937,361

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of February 28, 2013

00950 West Haymarket Reven
195031 JPA 2011 Debt Servic

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195031 JPA 2011 Debt Service						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg	424			424		424
6235 Bd Trustee Pmt-Interest	4,591,688			4,591,688	2,295,844	2,295,844
15 Debt Service	4,592,112			4,592,112	2,295,844	2,296,268
195031 JPA 2011 Debt Service	4,592,112			4,592,112	2,295,844	2,296,268
00950 West Haymarket Revenue	15,703,496			15,703,496	7,733,149	7,970,347

UNIVERSITY OF Nebraska

OFFICE OF THE VICE PRESIDENT AND GENERAL COUNSEL

March 4, 2013

The West Haymarket Joint Public Agency
Attn: Chris Beutler, Chair
555 S. 10th Street
Lincoln, NE 68508

The City of Lincoln
Attn: Office of the City Attorney
555 S. 10th Street
Lincoln, NE 68508

Re: Lease and Operating Agreement
Arena Suite Assignment

To the West Haymarket Joint Public Agency:

The purpose of this letter is to provide for an assignment to the West Haymarket Joint Public Agency (the "JPA") by the University of Nebraska (the "University"), certain rights to *suite seating* belonging to the University pursuant to Section 9.C. of the Lease and Operating Agreement (the "Agreement") entered into between these two parties and dated November 7, 2011.

Section 9.C. of the Agreement states of the suites constructed within the "Arena," . . . "four (4) will be designated as UNL Suites, two (2) will be designated as City Suites and the remaining 30 suites will be designated as Private Suites . . . The City will market and sell all of the Private Suites, retaining the related Suite revenues, provided that Athletics [the University] will be provided and retain sole control of the 4 UNL Suites for all Arena events from the initial phase of construction to market, sell or use as determined by Athletics . . ."

The University hereby licenses to the JPA and assigns any and all of its rights, except as otherwise specifically stated in this letter, to three of the four UNL Suites described by the Agreement. Such license and assignment shall commence on the date the JPA accepts these rights, as evidenced by its signing and delivery of this letter to the University's representative, and end on June 30, 2018 (the "License Term"), unless the License Term is extended or renewed, as provided for later in this letter. The three suites assigned by UNL to the JPA are Suites 36, 33, and 22.

In exchange for the assignment of rights, the JPA shall pay to the University or its designee, a sum equal to 88% of the gross revenue collected by the JPA from its suiteholders in

Varner Hall / 3835 Holdrege Street / P. O. Box 830745 / Lincoln, NE 68583-0745
(402) 472-1201 / FAX: (402) 472-2038 / www.nebraska.edu

relation to the rights granted to those suiteholders for the three licensed UNL Suites during the License Term; provided that the JPA shall exert its best efforts to keep the three suites occupied and to collect revenues. The amount owed to the University described in this paragraph shall be paid to the University as an additional "Credit Against UNL Rent," under the Agreement's *Section 8. UNL Rent.*

At the end of the License Term, the JPA agrees to return the assigned rights in the UNL Suites to the University in full, as such rights exist or will exist under the Agreement. No additional encumbrances, including such things as suite naming rights or sponsorship recognition, shall exist upon the UNL Suites at the end of the License Term. In addition, the suites shall be returned to the University in substantially the same condition as they will be upon their completion when they are ready for occupancy, normal wear and tear excepted.

With respect to event tickets and all amenities, the three UNL Suites will be treated in the same manner as all other Private Suites administered by the JPA, that is the JPA will provide to the suiteholders tickets to events appearing in the Arena, including University of Nebraska Cornhusker Men's and Women's Basketball. Such basketball tickets shall be purchased from the University of Nebraska Department of Intercollegiate Athletics and paid in full, under such terms and conditions as are generally offered to season ticket purchasers for Cornhusker Men's and Women's Basketball. Should additional contests or events be hosted by the University of Nebraska-Lincoln Department of Intercollegiate Athletics in the Arena, then the JPA agrees to purchase the additional event tickets for its suiteholders from the University. Failure to purchase and pay for any such University tickets described in this paragraph shall be cause to immediately terminate the license described in this letter.

No later than 180 days before the expiration of the License Term, the University shall inform the JPA in writing whether or not the University wishes to extend the License Term for an additional five years. Failure to so notify the JPA of the extension will result in the expiration of this assignment at the end of the License Term.

If the terms of this letter are agreeable to the JPA, please have an authorized representative of the JPA sign this letter where indicated below and return the executed letter to me.

Thank you very much for your consideration and cooperation with respect to this matter.

Very truly yours,

Carmen K. Maurer

Carmen K. Maurer
Associate General Counsel

On behalf of the West Haymarket Joint Public Agency, I represent and warrant that I am authorized to execute this letter and do hereby agree to its terms and provisions.

Chris Beutler, Chair West Haymarket Joint Public Agency	Date

atharenasuitcassign ckm.03042013

University of Nebraska Memorial Stadium
Pinnacle Bank Arena Suites
Annual Rent Reduction Calculation
Men's and Women's Basketball
3 Suites (12 seats per suite)

				Men's Basketball			Women's Basketball							
Fiscal Yr	$45k Suite (2) Revenue	$55k Suite (1) Revenue	Annual Revenue Rec'd by City	$18 Price Level Ticket Cost	Assumed Number of Home Games	# of Tickets	$8 Price Level Ticket Cost	Assumed Number of Home Games	# of Tickets	Less Total Ticket Cost	Annual Rent Reduction All Suites (3)	% of Ticket Cost Over Revenue Rec'd	% of Gross Revenue Given as Rent Reduction	Dollar Amt Reduction at 88%
FY14	$90,000	$55,000	$145,000	$18.00	19	36	$8.00	19	36	$17,784	$127,216	12.26%	87.74%	$127,600
FY15	$90,000	$55,000	$145,000	$18.18	19	36	$8.08	19	36	$17,962	$127,038	12.39%	87.61%	$127,60[illegible]
FY16	$93,600	$57,200	$150,800	$18.36	19	36	$8.16	19	36	$18,141	$132,659	12.03%	87.97%	$132,704
FY17	$97,344	$59,488	$156,832	$18.55	19	36	$8.24	19	36	$18,323	$138,509	11.68%	88.32%	$138,012
FY18	$101,238	$61,868	$163,106	$18.73	19	36	$8.32	19	36	$18,506	$144,600	11.35%	88.65%	$143,533
Totals	**$472,182**	**$288,556**	**$760,738**							**$90,716**	**$670,022**	11.94%	88.06%	**$669,449**

5-yr average [redacted]

City Suite Costs	
$45,000	$55,000
$45,000	$55,000
$46,800	$57,200
$48,672	$59,488
$50,619	$61,868
$236,091	$288,556

Assumptions:

We assumed a 1% inflation rate for the price of tickets.
We used 19 home games for women's basketball as they have had home games of 18, 18, 19 over the past 3 years.
We used 19 home games for men's basketball as they have had home game of 21, 18, 19 over the past 3 years.

WH 13-5

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 13-5 by accepting the attached Substitute Resolution and Letter Agreement with the University of Nebraska for the assignment of three Arena Suites to the JPA.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Jeff Kirkpatrick, Assistant City Attorney

Reasons for Request: To amend the Letter Agreement to reflect the correct Suite numbers and signature block for the JPA.

WH 13-5 Introduce: 2-8-13

SUBSTITUTE
RESOLUTION NO. WH- _____

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

That the attached Letter Agreement with ticket price spreadsheet between the West Haymarket Joint Public Agency and the University of Nebraska to amend the Lease and Operating Agreement to allow the assignment of rights to three UNL Suites to the JPA, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Letter Agreement on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Letter Agreement to Carmen Maurer, Associate General Counsel, University of Nebraska, 3835 Holdrege Street, Lincoln, NE 68583-0745.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

WH 13-27 Introduce: 3-22-13

RESOLUTION NO. WH- _____

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

That the attached Agreement between the West Haymarket Joint Public Agency and Davis Design for Design Services for the Parking Garage (Deck 3) generally located east of Pinnacle Bank Arena between O Street and P Street, pursuant to RFP 13-031, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Agreement to Rick Peo, Chief Assistant City Attorney, for transmittal to Davis Design.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

AIA® Document B103™ – 2007

Standard Form of Agreement Between Owner and Architect for a Large or Complex Project

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

The West Haymarket Joint Public Agency ("JPA")
a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

and the Architect:
(Name, legal status, address and other information)

Davis Design
211 North 14th Street
Lincoln, NE 68508

for the following Project:
(Name, location and detailed description)

Design Services for the Parking Garage (Deck 3) generally located east of Pinnacle Arena Drive between O Street and P Street

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.
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User Notes: (1697675575)

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6 COST OF THE WORK

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8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Request for Proposal (RFP) No. 13-031 set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

Preliminary and Final Design of the Deck 3 parking garage to be constructed on property generally located between "O" and "P" Streets and Pinnacle Arena Drive as shown on Exhibit A and legally described as Lot 1, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska (to be replatted as Lot 1, West Haymarket 1st Addition).

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project scope shall include (1) an approximately 940 stall multi-level parking structure and related site improvements as set forth in the Scope of Services, Haymarket Infrastructure Project – Parking Deck #3 Project ("Scope of Services") attached hereto marked as Exhibit B.

§ 1.1.3
(Paragraphs deleted)
Intentionally Omitted.

§ 1.1.4 The Owner's anticipated design and construction schedule: To be determined by the Owner's Project Design and Construction Team consisting of members to be designated by Owner at a later date.

Init.

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.1 Design phase milestone dates, if any:

Design work on the parking garage is proposed to begin immediately. The Design Schedule must enable the Construction Manager at Risk to meet the June 30, 2014 substantial Completion Date.

.2 Commencement of construction:

.3 Substantial Completion date or milestone dates:

June 30, 2014

.4 Other:

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract or construction management.)

Construction Manager at Risk

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

Design Work shall begin immediately upon execution of this Agreement by both parties and Architect's design schedule must enable to CMR to construct and substantially complete Parking Deck 3 by June 30, 2014.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address and other information.)

Program Manager: PC Sports

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

§ 1.1.10 The Owner will retain the following consultants and contractors:
(List name, legal status, address and other information.)

.1 Cost Consultant:

The Owner's Program Manager will act as Cost Consultant

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.2 Scheduling Consultant:

The Owner's Program Manager will act as Scheduling Consultant

.3 Geotechnical Engineer:

.4 Civil Engineer:

.5 Other, if any:
(List any other consultants or contractors retained by the Owner, such as a Project or Program Manager, construction contractor, or construction manager as constructor.)

Construction Manager at Risk (to be named)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

Michael A. Wachal, PE, Davis Design
1221 N Street
Suite 600
Lincoln, NE 68508

§ 1.1.12 The Architect will retain the consultants identified in the Scope of Services (Exhibit B) and in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

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.2 Mechanical Engineer:

.3 Electrical Engineer:

.4 Civil Engineer:

Olsson Associates
1111 Lincoln Mall
Suite 111
Lincoln, NE 68501-4608

§ 1.1.12.2 Consultants retained under Additional Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

Architect will sub-contract with AGA Consultants for a Parking Garage Consultant to do design, quality control and specifications.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall procure and maintain the following insurance coverage from A-rated insurance carriers for the duration of this Agreement. The Owner shall be named as an additional insured on the Commercial General Liability, Automobile Liability and any umbrella or excess Commercial General Liability and Automobile Liability policies. Additional insured coverage shall be primary and not

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contributory to any such coverage maintained by Owner. The policies shall contain a severability of interests' provision in favor of the additional insureds. The insurance policies shall contain a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. All deductibles and premiums associated with the below coverages shall be the responsibility of the Architect.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars ($2,000,000) for each occurrence and Two Million Dollars ($2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies and follows the form of the additional insured provisions as included in the underlying policies.

§ 2.5.4 Workers' Compensation as statutorily required and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars ($500,000).

§ 2.5.5 Professional liability covering the Architect's negligent acts, errors, and omissions in its performance of professional services with policy limits not less than Five Million Dollars ($5,000,000) per claim and in the aggregate.

§ 2.5.6 The Architect shall ensure that all Consultants engaged by the Architect carry and maintain professional liability insurance with policy limits of Two Million Dollars ($2,000,000) per claim and in the aggregate.

§ 2.5.7 Prior to commencing work under this Agreement, the Architect and Consultants shall submit certificates of insurance evidencing compliance with the requirements in this Section 2.5 to the Owner. The certificates shall show the Owner as an additional insured on the Commercial General Liability and Automobile Liability policies and shall include the provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary **civil,** structural, mechanical, and electrical engineering services as defined in Exhibit B, Scope of Services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Program Manager a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Program Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager at Risk and Program Manager. The Architect shall meet with the Construction Manager at Risk and Program Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Program Manager's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner and the Program Manager and Construction Manager at Risk. The Architect shall meet with the Program Manager and Construction Manager at Risk to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Program Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager at Risk will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall, if requested, assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Program Manager and Construction Manager at Risk. The Architect shall meet with the Program Manager and Construction Manager at Risk to review the Construction Documents.

§ 3.4.5 Upon receipt of the Program Manager's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner and Construction Manager at Risk in establishing a list of prospective subcontractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager at Risk in (1) obtaining either competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk in bidding the Project by

1. facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
2. participating in a pre-bid conference for prospective bidders, if any, and
3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs deleted)

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk in obtaining proposals by

1. facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
2. participating in selection interviews with prospective contractors; and
3. participating in negotiations with prospective contractors.

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§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager at Risk modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Program Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Program Manager only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner/Program Manager reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the Owner/Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall advise the Owner/Program Manager in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall act as the Owner's representative in interpreting the requirements of the Contract Documents and in judging the performance of the Construction Manager at Risk thereunder. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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§ 3.6.2.4 In any dispute between the Owner/Program Manager and Construction Manager at Risk, the Architect shall, upon request by Owner/Program Manager, advise the Owner/Program Manager on issues concerning performance under the Contract Documents. Architect may decide any such performance issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner/Program Manager and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

(Paragraph deleted)

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall, if requested by Owner, review and certify the amounts due the Construction Manager at Risk and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner/Program Manager, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner/Program Manager to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall, if requested, maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Construction Manager at Risk submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager at Risk submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk to provide professional design services or certifications by a design professional related to systems, materials or

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equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager at Risk that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager at Risk in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's/Program Manager's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager at Risk and forward to the Owner/Program Manager, for the Owner's/Program Manager's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner/Program Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner/Program Manager about the balance of the amount remaining to be paid the Construction Manager at Risk, including the amount to be retained by the Owner under the agreement with the Construction Manager at Risk, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner/Program Manager the following information received from the Construction Manager at Risk: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager at Risk under the Contract Documents.

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§ 3.6.6.5 Upon request of the Owner/Program Manager, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner/Program Manager to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SPECIALTY CONSULTANT SERVICES

§ 4.1 Additional Specialty Consultant Services listed below, except as otherwise noted, are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Specialty Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.4.
(Designate the Additional Specialty Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services		**Responsibility** *(Architect, Owner or Not Provided)*	**Location of Service Description** *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1	Programming		
§ 4.1.2	Multiple preliminary designs		
§ 4.1.3	Measured drawings		
§ 4.1.4	Existing facilities surveys		
§ 4.1.5	Site Evaluation and Planning (B203™–2007)		
§ 4.1.6	Building information modeling		
§ 4.1.7	Civil engineering		
§ 4.1.8	Landscape design		
§ 4.1.9	Architectural Interior Design (B252™–2007)		
§ 4.1.10	Value Analysis (B204™–2007)		
§ 4.1.11	Detailed cost estimating		
§ 4.1.12	On-site project representation		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	As-Designed Record drawings		
§ 4.1.15	As-Constructed Record drawings		
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™–2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™–2007)		
§ 4.1.22	Commissioning (B211™–2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™–2007)		
§ 4.1.25	Historic Preservation (B205™–2007)		
§ 4.1.26	Furniture, Furnishings, and Equipment Design (B253™–2007)		

§ 4.2 Insert a description of each Additional Specialty Consultant Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

The scope of work and description of additional specialty consultant services shall be determined by the Owner and Architect prior to solicitation and negotiation of the specialty consultant agreements.

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§ 4.3 Additional Specialty Consultant Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Specialty Consultant Services provided by Architect in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Specialty Consultant Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- **.1** Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- **.2** Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- **.3** Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- **.4** Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- **.5** Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- **.6** Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- **.7** Preparation for, and attendance at, a public presentation, meeting or hearing;
- **.8** Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- **.9** Evaluation of the qualifications of bidders or persons providing proposals;
- **.10** Consultation concerning replacement of Work resulting from fire or other cause during construction;
- **.11** Assistance to the Initial Decision Maker, if other than the Architect.
- **.12** Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;
- **.13** Providing services made necessary by the default or termination of Construction Manager at Risk, by defects or deficiencies in the construction of the Project or by the failure of the Owner, any contractor or others performing services or Work in connection with the Project; or
- **.14** Providing services in connection with building commissioning.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Specialty Consultant Services, notify the Owner/Program Manager with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect through the Program Manager, and the Owner shall have no further obligation to compensate the Architect for those services:

- **.1** Reviewing a Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;
- **.2** Responding to the Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager at Risk from a careful study and comparison of the Contract

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Documents, field conditions, other Owner-provided information, Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker;

.5 Evaluating substitutions proposed by the Owner or Construction Manager at Risk and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

.7 Services as may be requested by the Owner in connection with the failure of performance of Owner's consultants and contractors, including insolvency.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Specialty Consultant Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 One (1) onsite project representative of the Architect

.3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed by October 31, 2013, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall furnish the services of a Program Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Program Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project

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prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager at Risk and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before accepting the Construction Manager at Risk's guaranteed maximum price (GMP) and giving the Construction Manager at Risk Notice to Proceed with the Construction Phase of Contract, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the

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executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work (Guaranteed Maximum Price) shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include Construction Manager at Risk's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 Intentionally Omitted.

§ 6.3 The Owner shall require the Program Manager as Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work, including a five percent (5%) design and construction contingency as defined in Paragraph 12.1.1. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Program Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Program Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Program Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Program Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Program Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- **.3** implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

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ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 Ownership, not including the copyright, of Architect's and Architect's Consultant's Instruments of Service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use subject to Owner's approval which will not be unreasonably withheld. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for an against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

(Paragraphs deleted)

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that the Architect will be named as an additional insured under the Commercial General Liability Insurance obtained by the Construction Manager at Risk for the Project.

§ 8.1.3 The Architect shall and shall cause Architect's consultants to indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's and/or Architect's consultants' negligent acts, errors or omissions in the performance of any services performed by Architect or Architect's consultants under this Agreement and for patent, copyright or trademark infringement attributable to Architect's services under this Agreement. Notwithstanding the above, Owner agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement, except for gross negligence or intentional acts of misconduct.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or Construction Manager at Risk (collectively for this indemnity "Owner Entity").

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§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.5 Direct Negotiation, as defined below, will be the initial process utilized by the parties to resolve Claims and disputes or other matters arising out of this Agreement.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.
Rick-If direct negotiations fail since the City has eliminated the obligation to mediate assume that litigation is next? DLR would prefer to still have the mediation step as part of the dispute resolution process.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through direct negotiation and/or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[Arbitration pursuant to Section 8.3 of this Agreement

Init.
/
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[X Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. If the Project is resumed after more than thirty (30) days of suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services and the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include demobilization expenses including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Nebraska.

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§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, except that the term Contractor shall mean Construction Manager at Risk.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the West Haymarket Joint Public Agency (JPA) or to a lender providing financing for the Project if the JPA or lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services for the arena and surface parking only, described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

A lump sum fee of Seven Hundred Sixty-six Thousand Seven Hundred Six Dollars ($766,706) as defined in Exhibit C, Total Deck 3 – Design Fees.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

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See Paragraph 11.4.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: Services shall be a negotiated amount based upon work effort to be expended.
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Architect's specialty consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%):

§ 11.5 The compensation for each phase of Basic Services shall be as follows:

Predesign Phase	0%
Schematic Design Phase	10%
Design Development Phase	30%
Construction Documents Phase	25%
Bidding or Negotiation Phase	5%
Construction Phase	30%
Total Basic Compensation	100%

(Paragraph deleted)
§ 11.6 If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the hourly fee and work schedule set forth in Exhibit C. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be reviewed annually and are subject to adjustment by the Architect on or after agreement anniversary date.
(If applicable, attach an exhibit of hourly billing rates or insert them below.) (See Exhibit C - Hourly Rates)

Employee or Category **Rate**

§ 11.8 Intentionally Deleted.
§ 11.8.1
(Paragraphs deleted)

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Intentionally Deleted.
§ 11.8.2 Intentionally Deleted.

§ 11.9
(Paragraphs deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT
§ 11.10.1 An initial payment of $0.00 shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice. Amounts unpaid forty-five (45) days after receipt of the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

_____% per annum

§ 11.10.3 Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
§ 12.1 Special terms and conditions that modify this Agreement are as follows:

§ 12.1.1 The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

Owner agrees to establish a Design and Construction Contingency of five percent (5%) of the Cost of the Work for changes in the construction of the project due to omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes for construction modifications or adjustments necessary to complete the project in accordance with the original design intent.

§ 12.1.2 Each Party agrees that the other Party is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or

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time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.1.3 If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 12.1.4 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 12.1.5 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services provided Architect requires all such subcontractors to maintain professional liability insurance coverage covering the subcontractor's negligent acts, errors and omissions in its performance of the laboratory testing services with policy limits appropriate to the Project in the reasonable discretion of the Architect. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 12.1.6 A copy of the agreement between the Owner and the Construction Manager at Risk will be provided to the Architect defining the duties, responsibilities and authority of the Construction Manager at Risk.

§ 12.1.7 Notwithstanding anything else contained in this Agreement to the contrary, Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.8 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The

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Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the state of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.9 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contractor is that of independent contractor to the JPA.

§ 12.1.10 Architect shall comply with applicable Federal and State laws and City of Lincoln ordinances applicable to the work.

§ 12.1.11 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of section 48-1122, Nebraska Reissue Revised Statues (as amended).

§ 12.1.12 Architect shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined above, copies of all financial and performance related records and materials at no cost to the JPA germane to this Agreement, as allowed by law.

§ 12.1.13 Services to be Confidential. Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of Deck 3 and the work product generated by third parties regarding costs, performance, and potential tenants of other elements to be integrated into the City of Lincoln's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

(i) was in the possession of Architect before receipt from Owner; or
(ii) is or becomes a matter of public knowledge through no fault of Architect; or
(iii) is rightfully received by Architect from a third party without a duty of confidentiality; or

(iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party, or is independently developed by Architect and shown by documentation; or
(v) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors, or employees with a specific need to know / Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from any disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be

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essential to the completion of the Agreement.

Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

§ 12.1.14 In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Architect agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Architect shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Architect shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect, as amended (including Exhibits A, B and C).

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, AIA Document C106™-2007, Digital Data Licensing Agreement, or the following:

.3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER	**ARCHITECT**
(Signature)	*(Signature)*
Chris Beutler, Chair	Principal / CFO
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for
AIA® Document B103™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

The West Haymarket Joint Public Agency ("JPA")
a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

...

Davis Design
211 North 14th Street
Lincoln, NE 68508

...

Design Services for the Parking Garage (Deck 3) generally located east of Pinnacle Arena Drive between O Street and P Street

PAGE 2

§ 1.1 This Agreement is based on the ~~Initial Information~~ Request for Proposal (RFP) No. 13-031 set forth in this Section 1.1.

...

Preliminary and Final Design of the Deck 3 parking garage to be constructed on property generally located between "O" and "P" Streets and Pinnacle Arena Drive as shown on Exhibit A and legally described as Lot 1, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska (to be replatted as Lot 1, West Haymarket 1st Addition).

...

The Project scope shall include (1) an approximately 940 stall multi-level parking structure and related site improvements as set forth in the Scope of Services, Haymarket Infrastructure Project – Parking Deck #3 Project ("Scope of Services") attached hereto marked as Exhibit B.

§ 1.1.3 ~~The Owner's budget for the Cost of the Work, as defined in Section 6.1:~~
~~*(Provide total and, if known, a line item breakdown.)*~~

Intentionally Omitted.

§ 1.1.4 The Owner's anticipated design and construction schedule: To be determined by the Owner's Project Design and Construction Team consisting of members to be designated by Owner at a later date.

PAGE 3

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Design work on the parking garage is proposed to begin immediately. The Design Schedule must enable the Construction Manager at Risk to meet the June 30, 2014 substantial Completion Date.

...

June 30, 2014

...

Construction Manager at Risk

...

Design Work shall begin immediately upon execution of this Agreement by both parties and Architect's design schedule must enable to CMR to construct and substantially complete Parking Deck 3 by June 30, 2014.

...

Program Manager: PC Sports

...

The Owner's Program Manager will act as Cost Consultant

PAGE 4

The Owner's Program Manager will act as Scheduling Consultant

...

Construction Manager at Risk (to be named)

...

Michael A. Wachal, PE, Davis Design
1221 N Street
Suite 600
Lincoln, NE 68508

...

§ 1.1.12 The Architect will retain the consultants identified in the Scope of Services (Exhibit B) and in Sections 1.1.12.1 and 1.1.12.2:

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.4 Civil Engineer:

Olsson Associates
1111 Lincoln Mall
Suite 111
Lincoln, NE 68501-4608

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...

Architect will sub-contract with AGA Consultants for a Parking Garage Consultant to do design, quality control and specifications.

...

§ 2.5 The Architect shall procure and maintain the following insurance coverage from A-rated insurance carriers for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.~~The Owner shall be named as an additional insured on the Commercial General Liability, Automobile Liability and any umbrella or excess Commercial General Liability and Automobile Liability policies. Additional insured coverage shall be primary and not contributory to any such coverage maintained by Owner. The policies shall contain a severability of interests' provision in favor of the additional insureds. The insurance policies shall contain a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. All deductibles and premiums associated with the below coverages shall be the responsibility of the Architect.

§ 2.5.1 ~~Comprehensive~~ Commercial General Liability with policy limits of not less than ~~($)~~ Two Million Dollars ($2,000,000) for each occurrence and Two Million Dollars ($2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering ~~owned and rented~~ owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than ~~($)~~ Two Million Dollars ($2,000,000) combined single limit ~~and aggregate~~ for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for ~~Comprehensive~~ Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies and follows the form of the additional insured provisions as included in the underlying policies.

§ 2.5.4 Workers' Compensation ~~at statutory limits~~ as statutorily required and Employers Liability with a policy limit of not less than ~~($).~~Five Hundred Thousand Dollars ($500,000).

§ 2.5.5 Professional ~~Liability~~ liability covering the Architect's negligent acts, ~~errors~~ errors, and omissions in its performance of professional services with policy limits ~~of~~ not less than ~~($)~~ Five Million Dollars ($5,000,000) per claim and in the aggregate.

§ 2.5.6 The Architect shall ~~provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.~~ensure that all Consultants engaged by the Architect carry and maintain professional liability insurance with policy limits of Two Million Dollars ($2,000,000) per claim and in the aggregate.

§ 2.5.7 Prior to commencing work under this Agreement, the Architect and Consultants shall submit certificates of insurance evidencing compliance with the requirements in this Section 2.5 to the Owner. The certificates shall show the Owner as an additional insured on the Commercial General Liability and Automobile Liability policies and shall include the provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

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§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary **civil,** structural, mechanical, and electrical engineering ~~services.~~ services as defined in Exhibit B, Scope of Services. Services not set forth in this Article 3 are Additional Services.

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§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the ~~Scheduling Consultant~~ Program Manager a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the ~~Scheduling Consultant~~ Program Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

PAGE 8

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the ~~Cost Consultant.~~ Construction Manager at Risk and Program Manager. The Architect shall meet with the ~~Cost Consultant~~ Construction Manager at Risk and Program Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the ~~Cost Consultant's~~ Program Manager's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

...

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development ~~Documents~~ documents to the Owner and the ~~Cost Consultant.~~ Program Manager and Construction Manager at Risk. The Architect shall meet with the ~~Cost Consultant~~ Program Manager and Construction Manager at Risk to review the Design Development Documents.

§ 3.3.3 Upon receipt of the ~~Cost Consultant's~~ Program Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

...

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the ~~Contractor~~ Construction Manager at Risk will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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§ 3.4.3 During the development of the Construction Documents, the Architect ~~shall~~ shall, if requested, assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the ~~Cost Consultant.~~ Program Manager and Construction Manager at Risk. The Architect shall meet with the ~~Cost Consultant~~ Program Manager and Construction Manager at Risk to review the Construction Documents.

§ 3.4.5 Upon receipt of the ~~Cost Consultant's~~ Program Manager's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

...

The Architect shall assist the Owner and Construction Manager at Risk in establishing a list of prospective ~~contractors.~~ subcontractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager at Risk in (1) obtaining either competitive ~~bids or negotiated proposals;~~ bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

...

§ 3.5.2.2 The Architect ~~shall assist the Owner~~ shall, if requested by Owner, assist the Construction Manager at Risk in bidding the Project by

~~.1~~ 1. facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
~~.2~~ 2. participating in a pre-bid conference for prospective bidders, if any, and
~~.3~~ 3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

...

~~§ 3.5.3 NEGOTIATED PROPOSALS~~
~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by~~
~~.1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
~~.2 participating in selection interviews with prospective contractors; and~~
~~.3 participating in negotiations with prospective contractors.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

§ 3.5.3 NEGOTIATED PROPOSALS
§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk in obtaining proposals by

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1. facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
2. participating in selection interviews with prospective contractors; and
3. participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

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§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the ~~Contractor~~ Construction Manager at Risk as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and ~~Contractor~~ Construction Manager at Risk modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Program Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the ~~Owner~~ Program Manager only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the ~~Contractor's~~ Construction Manager at Risk's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the ~~Contractor~~ Construction Manager at Risk or of any other persons or entities performing portions of the Work.

...

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the ~~Owner~~ Owner/Program Manager reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the ~~Owner~~ Owner/Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect ~~has the authority to reject~~ shall advise the Owner/Program Manager in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall ~~interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.~~ act as the Owner's representative in

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interpreting the requirements of the Contract Documents and in judging the performance of the Construction Manager at Risk thereunder. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 ~~Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if~~ In any dispute between the Owner/Program Manager and Construction Manager at Risk, the Architect shall, upon request by Owner/Program Manager, advise the Owner/Program Manager on issues concerning performance under the Contract Documents. Architect may decide any such performance issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner/Program Manager and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

~~**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.~~

§ 3.6.3.1 The Architect ~~shall~~ shall, if requested by Owner, review and certify the amounts due the ~~Contractor~~ Construction Manager at Risk and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the ~~Owner,~~ Owner/Program Manager, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the ~~Contractor's~~ Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the ~~Owner~~ Owner/Program Manager to substantiate the ~~Contractor's~~ Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the ~~Contractor~~ Construction Manager at Risk has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect ~~shall~~ shall, if requested, maintain a record of the Applications and Certificates for Payment.

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§ 3.6.4.1 The Architect shall review the ~~Contractor's~~ Construction Manager at Risk submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the ~~Contractor's~~ Construction Manager at Risk submittals such

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as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the ~~Contractor's~~ Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the ~~Contractor~~ Construction Manager at Risk to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the ~~Contractor~~ Construction Manager at Risk that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed ~~upon,~~ upon or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the ~~Contractor~~ Construction Manager at Risk in accordance with the requirements of the Contract Documents.

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§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the ~~Owner's~~ Owner's/Program Manager's approval and execution in accordance with the Contract Documents.

...

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the ~~Contractor~~ Construction Manager at Risk and forward to the ~~Owner,~~ Owner/Program Manager, for the ~~Owner's~~ Owner's/Program Manager's review and records, written warranties and related documents required by the Contract Documents and assembled by the ~~Contractor;~~ Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the ~~Owner~~ Owner/Program Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the ~~Contractor~~ Construction Manager at Risk of Work to be completed or corrected.

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§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the ~~Owner~~ Owner/Program Manager about the balance of the ~~Contract Sum~~ amount remaining to be paid the ~~Contractor,~~ Construction Manager at Risk, including the amount to be retained ~~from the Contract Sum,~~ by the Owner under the agreement with the Construction Manager at Risk, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the ~~Owner~~ Owner/Program Manager the following information received from the ~~Contractor:~~ Construction Manager at Risk: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the ~~Contractor~~ Construction Manager at Risk under the Contract Documents.

§ 3.6.6.5 Upon request of the ~~Owner,~~ Owner/Program Manager, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the ~~Owner~~ Owner/Program Manager to review the facility operations and performance.

~~ARTICLE 4 ADDITIONAL SERVICES~~

ARTICLE 4 ADDITIONAL SPECIALTY CONSULTANT SERVICES

§ 4.1 Additional ~~Services listed below~~ Specialty Consultant Services listed below, except as otherwise noted, are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Specialty Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section ~~11.2.~~ 11.4. (Designate the Additional Specialty Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

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§ 4.2 Insert a description of each Additional Specialty Consultant Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

The scope of work and description of additional specialty consultant services shall be determined by the Owner and Architect prior to solicitation and negotiation of the specialty consultant agreements.

§ 4.3 Additional Specialty Consultant Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Specialty Consultant Services provided by Architect in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Specialty Consultant Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

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.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; ~~or~~

.11 Assistance to the Initial Decision Maker, if other than the Architect.

.12 Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;

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.13 Providing services made necessary by the default or termination of Construction Manager at Risk, by defects or deficiencies in the construction of the Project or by the failure of the Owner, any contractor or others performing services or Work in connection with the Project; or

.14 Providing services in connection with building commissioning.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Specialty Consultant Services, notify the ~~Owner~~ Owner/Program Manager with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the ~~Architect,~~ Architect through the Program Manager, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 Reviewing a ~~Contractor's~~ Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the ~~Contractor's~~ Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the ~~Contractor~~ Construction Manager at Risk from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, ~~Contractor-prepared~~ Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of ~~Contractor's~~ Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;

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.5 Evaluating substitutions proposed by the Owner or ~~Contractor~~ Construction Manager at Risk and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

.7 Services as may be requested by the Owner in connection with the failure of performance of Owner's consultants and contractors, including insolvency.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Specialty Consultant Services. When the limits below are reached, the Architect shall notify the Owner:

.1 ~~(—)~~ Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 ~~(—) visits to the site by the Architect over the duration of the Project during construction~~ One (1) onsite project representative of the Architect

.3 ~~(—) inspections~~ One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 ~~(—) inspections~~ One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed ~~within (—) months of the date of this Agreement,~~ by October 31, 2013, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

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§ 5.2 The Owner shall furnish the services of a ~~Scheduling Consultant~~ Program Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a ~~Cost Consultant~~ Program Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

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§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the ~~Contractor~~ Construction Manager at Risk and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before ~~executing the Contract for Construction,~~ accepting the Construction Manager at Risk's guaranteed maximum price (GMP) and giving the Construction Manager at Risk Notice to Proceed with the Construction Phase of Contract, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and ~~Contractor,~~ Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the ~~Contractor~~ Construction Manager at Risk to provide the Architect access to the Work wherever it is in preparation or progress.

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§ 6.1 For purposes of this Agreement, the Cost of the Work (Guaranteed Maximum Price) shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include ~~contractors'~~ Construction Manager at Risk's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 ~~The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.~~ Intentionally Omitted.

§ 6.3 The Owner shall require the Program Manager as Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the ~~Work.~~ Work, including a five percent (5%) design and construction contingency as defined in Paragraph 12.1.1. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the ~~Cost Consultant~~ Program Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the ~~Cost Consultant's~~ Program Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the ~~Cost Consultant's~~ Program Manager's estimates solely for the Architect's guidance in completion of its services, however, the

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Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the ~~Cost Consultant's~~ Program Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the ~~Cost Consultant,~~ Program Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

...

§ 6.7 After incorporation of modifications under Section 6.6, the Architect ~~shall, as an Additional Service,~~ shall make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

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§ 7.2 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~ Ownership, not including the copyright, of Architect's and Architect's Consultant's Instruments of Service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use subject to Owner's approval which will not be unreasonably withheld. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for an against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

~~**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~

~~**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

~~**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the~~

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~~Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

...

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the ~~contractors,~~ Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the ~~contractors,~~ Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that the Architect will be named as an additional insured under the Commercial General Liability Insurance obtained by the Construction Manager at Risk for the Project.

§ 8.1.3 The Architect shall ~~indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.~~and shall cause Architect's consultants to indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's and/or Architect's consultants' negligent acts, errors or omissions in the performance of any services performed by Architect or Architect's consultants under this Agreement and for patent, copyright or trademark infringement attributable to Architect's services under this Agreement. Notwithstanding the above, Owner agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement, except for gross negligence or intentional acts of misconduct.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or Construction Manager at Risk (collectively for this indemnity "Owner Entity").

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§ 8.1.5 Direct Negotiation, as defined below, will be the initial process utilized by the parties to resolve Claims and disputes or other matters arising out of this Agreement.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.

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Rick-If direct negotiations fail since the City has eliminated the obligation to mediate assume that litigation is next? DLR would prefer to still have the mediation step as part of the dispute resolution process.

...

§ 8.2.4 If the parties do not resolve a dispute through direct negotiation and/or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

...

[ ]——Arbitration pursuant to Section 8.3 of this Agreement

[ ]—X___Litigation in a court of competent jurisdiction

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~~§ 8.3 ARBITRATION~~

~~**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~**§ 8.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 8.3.4 CONSOLIDATION OR JOINDER**~~

~~**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 8.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

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...

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. ~~When the Project is resumed,~~ If the Project is resumed after more than thirty (30) days of suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's ~~services. The~~ services and the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include demobilization expenses including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise ~~compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article ~~7 and Section 11.9.~~7.

...

§ 10.1 This Agreement shall be governed by the ~~law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~laws of the State of Nebraska.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for ~~Construction.~~Construction, except that the term Contractor shall mean Construction Manager at Risk.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the West Haymarket Joint Public Agency (JPA) or to a lender providing financing for the Project if the JPA or lender agrees to assume the Owner's rights and obligations under this Agreement.

PAGE 21

§ 11.1 For the Architect's Basic Services for the arena and surface parking only, described under Article 3, the Owner shall compensate the Architect as follows:

...

A lump sum fee of Seven Hundred Sixty-six Thousand Seven Hundred Six Dollars ($766,706) as defined in Exhibit C, Total Deck 3 – Design Fees.

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See Paragraph 11.4.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: Services shall be a negotiated amount based upon work effort to be expended.

...

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§ 11.4 Compensation for Additional Services of the Architect's specialty consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ~~percent (%), or as otherwise stated below:~~ten percent (10%):

...

§ 11.5 ~~Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services~~ The compensation for each phase of Basic Services shall be as follows:

~~Schematic Design Phase~~		~~percent (~~		~~%)~~
~~Design Development Phase~~		~~percent (~~		~~%)~~
~~Construction Documents Phase~~		~~percent (~~		~~%)~~
~~Bidding or Negotiation Phase~~		~~percent (~~		~~%)~~
~~Construction Phase~~		~~percent (~~		~~%)~~
~~Total Basic Compensation~~	~~one hundred~~	~~percent (~~	~~100~~	~~%)~~

Predesign Phase	0%
Schematic Design Phase	10%
Design Development Phase	30%
Construction Documents Phase	25%
Bidding or Negotiation Phase	5%
Construction Phase	30%
Total Basic Compensation	100%

~~The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.~~

§ 11.6 ~~When compensation is based on a percentage of the Cost of the Work and~~ If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the ~~schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project.~~ hourly fee and work schedule set forth in Exhibit C. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be ~~adjusted in accordance with the Architect's and Architect's consultants' normal review practices.~~reviewed annually and are subject to adjustment by the Architect on or after agreement anniversary date.
(If applicable, attach an exhibit of hourly billing rates or insert them below.) (See Exhibit C - Hourly Rates)

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...

§ 11.8 ~~COMPENSATION FOR REIMBURSABLE EXPENSES~~Intentionally Deleted.

§ 11.8.1 ~~Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:~~

~~.1 Transportation and authorized out-of-town travel and subsistence;~~

~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~

~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~

~~.4 Printing, reproductions, plots, standard form documents;~~

~~.5 Postage, handling and delivery;~~

~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

~~.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;~~

~~.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~

~~.9 All taxes levied on professional services and on reimbursable expenses;~~

~~.10 Site office expenses; and~~

~~.11 Other similar Project-related expenditures.~~

Intentionally Deleted.

§ 11.8.2 ~~For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus (percent (%) of the expenses incurred.~~**Intentionally Deleted.**

§ 11.9 ~~COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

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§ 11.10.1 An initial payment of ~~($)~~ $0.00 shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation~~ thirty (30) days from the date of receipt of the Architect's invoice. Amounts unpaid ~~( ) days after~~ forty-five (45) days after receipt of the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

~~%~~ _____% per annum

§ 11.10.3 ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

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...

§ 12.1.1 The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

Owner agrees to establish a Design and Construction Contingency of five percent (5%) of the Cost of the Work for changes in the construction of the project due to omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes for construction modifications or adjustments necessary to complete the project in accordance with the original design intent.

§ 12.1.2 Each Party agrees that the other Party is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.1.3 If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 12.1.4 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 12.1.5 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services provided Architect requires all such subcontractors to maintain professional liability insurance coverage covering the subcontractor's negligent acts, errors and omissions in its performance of the laboratory testing services with policy limits appropriate to the Project in the reasonable discretion of the Architect. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 12.1.6 A copy of the agreement between the Owner and the Construction Manager at Risk will be provided to the Architect defining the duties, responsibilities and authority of the Construction Manager at Risk.

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§ 12.1.7 Notwithstanding anything else contained in this Agreement to the contrary, Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.8 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the state of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.9 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contractor is that of independent contractor to the JPA.

§ 12.1.10 Architect shall comply with applicable Federal and State laws and City of Lincoln ordinances applicable to the work.

§ 12.1.11 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of section 48-1122, Nebraska Reissue Revised Statues (as amended).

§ 12.1.12 Architect shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined above, copies of all financial and performance related records and materials at no cost to the JPA germane to this Agreement, as allowed by law.

§ 12.1.13 Services to be Confidential. Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of Deck 3 and the work product generated by third parties regarding costs, performance, and potential tenants of other elements to be integrated into the City of Lincoln's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

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The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

(i) was in the possession of Architect before receipt from Owner; or
(ii) is or becomes a matter of public knowledge through no fault of Architect; or
(iii) is rightfully received by Architect from a third party without a duty of confidentiality; or
(iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party, or is independently developed by Architect and shown by documentation; or
(v) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors, or employees with a specific need to know / Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from any disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Agreement.

Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

§ 12.1.14 In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Architect agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Architect shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Architect shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

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.1 AIA Document B103™–2007, Standard Form Agreement Between Owner and ~~Architect~~ Architect, as amended (including Exhibits A, B and C).
.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, AIA Document C106™-2007, Digital Data Licensing Agreement, or the following:

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rick Peo , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:44:52 on 03/12/2013 under Order No. 8680409353_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B103™ – 2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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Attachment A: West Haymarket Site Layout Plan

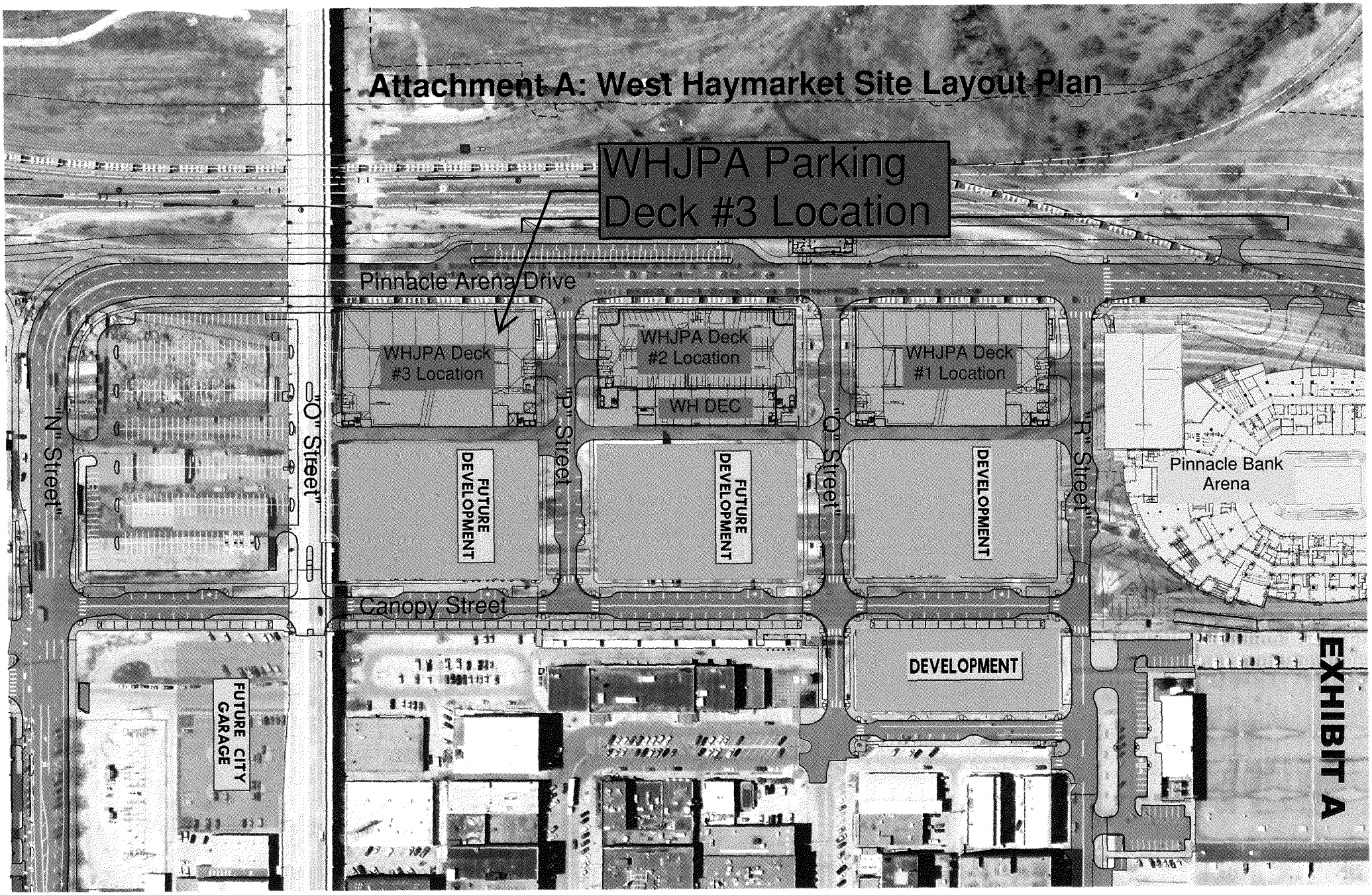

EXHIBIT A

EXHIBIT B

APPENDIX A-XX
Scope of Services

HAYMARKET INFRASTRUCTURE PROJECT
PARKING DECK #3 PROJECT

JPA Project Number 870XXX

General Description of Scope of Services

This scope of services generally includes services related to the preliminary and final design of the "Parking Deck #3". This garage is located directly south of Deck #2 and is approximately 940 stalls. It will be located on the lot between "O" and "P" Streets, and "Pinnacle Arena Drive" and the alley on the East side of the garage, the facility is to be a parking deck only. The parking deck is an "Event" garage and will be designed to accommodate the rapid loading and unloading of the vehicles during an event. The design of the garage will include design collaboration with the entire arena development area as well as the developers chosen for the adjacent site #3. Davis Design has included the fees for Walker Parking Consultants to provide functional design, traffic flow, ticket booths, and other design and quality control items. Davis Design will provide digital signage design throughout the garage to match all of the other City Parking facilities. Deck #3 is to be similar in design to the Deck #1 currently under construction. Efforts will be made to assure that the most efficient systems are used in the design of the facility. Deck #3 will be designed to look like Deck #1, but it is intended to have distinct features that will set it apart and be recognizable from Deck #1.

The following are the task items that are included as part of the scope of services for Parking Deck #3.

Task 1. Project Management

a. *Project Management*

The Design Team Project Manager will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work of the design team for this project. This work will include providing regular progress reports to support invoicing and updates on design schedule. Project Management efforts will follow appropriate guidance as given in the City of Lincoln's website "Guiding Principles and Procedures (GP&P)"

b. *Coordination with Others*

The Design Team will coordinate their design with agencies and/or Consultants that are involved with this project or adjacent projects. Coordination includes one-on-one meetings with the agencies, other Consultants and utilities. Special care shall be taken to coordinate with the DEC, Arena, and area developments.

Task 2. General Project Meetings

a. *Progress Meetings*

The Design Team Project Manager and appropriate design staff will schedule and attend progress meetings for this individual project. The Design Team will create and distribute a meeting agenda at least 48 hours prior to all progress meetings.

b. Review Meetings

The Design Teams Project Manager will schedule and attend review meetings to receive the JPA's review comments from the first and second submittals. Davis Design will work with and through PC Sports to assure proper lines of communication.

The project team consists of the following members:

• Davis Design	Architect/Engineer of Record
• Walker Parking Consultants	Functional Design, Parking Consultant, QC
• Olsson Associates	Geotechnical (Report & Special Inspections)
• Olsson Associates	Civil Design & Earthwork
• Olsson Associates	Traffic Design (turn lane on Arena Drive)

The project is to be a Construction Manager at Risk project delivery method.

c. Plan-in-Hand

The Design Team will schedule and attend a plan-in-hand meeting. This meeting is to be held following the review period of the first submittal.

TASK 3. Survey

A brief grade verification survey is included for Deck No. 3.

TASK 4. Utility Coordination

Utility coordination work is included with the project management hours.

Task 5. Public Involvement

a. One-on-One, Small Group Meetings

Not Required.

Task 6. Drainage Analysis

Drainage analysis for this project is included in the design work for the new parking structure and this project does not include design for offsite storm sewers or other drainage items.

Task 7. ITS/Parking Management and Monitoring

ITS and Parking Management/Monitoring is not included in this proposal

Task 8. First Submittal

a. Site Inspections (As Required)

- *The site is set to be a "Ready Pad Site" per the initial and final site preparation projects.*

b. Prepare Alternatives

The Design Team will evaluate possible alternatives for design of the parking deck. Design alternatives will include all traffic flow, parking, structural, lighting, pedestrian traffic, safety, connectivity to adjacent garages and buildings, etc.

This work shall also include development of conceptual plans and cost estimates for a 940 stall parking deck that is designed to serve as an "Event Parking Facility".

The design assumes that Deck #3 will be a similar design to Deck #1. Therefore the design fee reflects the fact that the engineered systems (structural, mechanical, electrical) will basically be the same. The fees reflect the design required to provide a distinct appearance to Deck #3 while keeping the systems intact.

c. Preliminary Designs

The Design Team shall prepare project base files and plan sheets in accordance with the City of Lincoln CADD standards. The first submittal will indicate the garage design at approximately 35% complete. Plan sheets to be included in the first submittal include the following:

- Cover Sheet
- Site Layout and Traffic Patterns
- Grading and Utility Sheets
- Floor Plans that indicate general traffic/pedestrian/and egress systems.
- Elevation sheets indicating garage façade.
- Preliminary structural system, Study aspects of a deep foundation system.
- Preliminary Layout of Precast Concrete Structure.
- Preliminary system identification for Mechanical and Electrical systems.

d. Preliminary Construction Phasing

The Design Team shall prepare a written description of a proposed Construction Phasing and Staging, noting detour routes if applicable. This phasing plan shall be submitted at the time of the first submittal.

e. Cost Estimates

The Design Team shall prepare an updated total project cost estimate. This shall include Construction Costs, Garage specific Utilities, Green design aspects, and Construction Engineering and site material testing.

f. Sustainable Design

The Design Team will employ when feasible Sustainable design issues within the project. These may include but are not limited to local materials and suppliers, photovoltaics for lighting, and other materials related issues. The parking deck is not to be design to be LEED certified. We have not included the use of a "Green Roof". Use of intense Sustainable techniques or providing for LEED certification of the building will require additional effort and design fees.

Task 9. Geotechnical Evaluation

a. *Design Recommendations*

Olsson Associates shall perform the necessary field investigations, borings and testing required for developing the geotechnical recommendations for the primary purpose of developing geotechnical design criteria for use in designing the South Parking Deck No. 3. Special care shall be taken to provide geotechnical engineering data to assist the structural engineer in designing of the deep foundations system for the parking garage. This is to include deep borings as required to provide a seismic classification for the structure; a recommendation and design information with respect to at least 2 different deep foundation systems, assistance to the structural engineer with respect to lateral loading design on piling, and other information normal to deep foundation systems. Also included is inspection and observation time for the construction of the deep foundation system. A more detailed description of work activities for Task 9. is attached herein.

Task 10. Environmental / Historical Review

Environmental or Historic Review work is not included as part of this Project.

Task 11. Existing Water Main or Wastewater Relocation

Water mains and wastewater work within the public right-of-way will be completed under the site preparation projects and/or the core area roadway and utility project. Design of service connections to the new mains will be part of the design for the new parking structure.

Task 12. Future Parking & Connectivity Structures

a. *Structural System of the Parking Garage*

The design of the structural system for the garage and the connection structure is to be completed by Davis Design. This proposal assumes the parking deck will utilize a Precast Concrete system.

b. *Connectivity to Adjacent Development:*

The Parking Deck #3 will need to coordinate an elevator/stair/connectivity tower and bridge into the parking deck facility. Davis Design has included coordination issues with the developer for project Oscar. This structure is to be located on the East side of the facility and will connect to the adjacent development at the stairways, and may need to connect on multiple levels. The connecting skywalk is not part of the design fee. Davis Design intends to coordinate the issues with the adjacent developer and assure the connections can be made. At the time to this proposal, we have included the design and re-structuring of the parking decks structural system to incorporate columns into the system to accept the skywalk. Davis Design is to design the parking deck to support the skywalk structure based upon design loads and parameters given to Davis by the Project Oscar Design team. Davis Design is not responsible for the design of the skywalk.

c. *Connectivity to Parking Deck to the North (Parking Deck #2):*

The Parking Deck to the North may or may not have any type of connectivity to the first garage for pedestrians, vehicles, or utilities. Davis Design will discuss and plan for this issue during design. This contract does not include the connecting system itself, only the coordination if the JPA decides it is something that is needed for Deck #3.

Task 13. Water Main Design

New/Replacement Water Main Design is not included in this scope of work. The connection of a new water service to the water main for Deck #3 is included.

Task 14. Wastewater Design

New/Replacement Wastewater Design is not included in this scope of work. The connection to the main storm drainage system for Deck #3 storm water is included.

Task 15. Right-of-Way

Right-of-way design is not included in this scope of work.

Task 16. Streetscape and Landscape Design

a. *Coordination with Project Streetscape Design*

The design team will coordinate with the streetscape design that is being completed under Project A-7.

b. *Landscape Design*

The design team will coordinate with the landscape design that is being completed under Project A-7.

Task 17. Second Submittal

a. *Second Submittal Design*

The Design Team shall prepare project base files and plan sheets in accordance with the City of Lincoln CADD standards. All sheets that will be included in the final plan set will be included in the second submittal. This includes, but not limited to, the following sheets:

- Cover Sheet
- Site Grading plan
- Site Construction Plan (Utilities, Roads, etc.)
- Geometric Plan of the garage.
- Architectural Floor Plans
- Architectural Elevations
- Architectural Cross Sections
- Architectural Details
- Finish and Door Schedules
- Structural Foundation Plans
- Structural Framing Plans
- Structural Details and General notes

- Pluming Plans
- Sprinkler System
- HVAC Plans
- Electrical Lighting and Power Plans
- Traffic Control Equipment
- Signage Location Plans
- Phasing Plans as Required
- Specifications

b. Cost Estimates

The Design Team shall prepare an updated total project cost estimate. This shall include, the total project including all items noted above in the finished plans.

c. Specifications

The Design Team will submit the final contract specifications with the second submittal.

Task 18. Quality Assurance / Quality Control (QA / QC)

The Design Team will give a copy of their QA / QC plan to the Program Manager and the JPA Project Management Team at the start of the project. The Design Team will submit in writing that this plan has been used during the project at each submittal with the name of the person responsible for performing the QA / QC aspects.

Task 19. Permit Applications / Agreements

The Design Team shall prepare and submit on behalf of the JPA the following permits, agreements, certifications, and forms. The Design Team shall copy the Program Manager and JPA Project Management Team on all applications being submitted.

- ❑ Floodplain Permit
- ❑ SWPPP - NPDES Permit

Task 20. PS&E Submittals

a. Draft PS&E Submittal

The Design Team shall submit a draft PS&E package to the JPA Project Management Team for final review. The package will include the plan set, project specifications, and a total project cost estimate.

b. Final PS&E Submittal

Upon incorporating review comments into the plan set and project specifications, the Design Team shall prepare and submit all drawings, specifications, and an updated total project cost estimate to the JPA Project Management Team for the final PS&E review. Upon JPA acceptance of the PS&E plans, the Design Team shall submit the bid package to the JPA Project Management Team. The bid package includes sealed bond drawings, sealed special provisions, and an electronic file with final bid items and quantities.

Task 21. Bidding Phase

a. *Attend Pre-Bid Meeting and answer questions*

b. *Answer Design Questions*

c. *Addenda to be prepare by Construction Manager at Risk*

d. *Provide assistance and participation in the cm selection process.*

Task 22. Construction Phase

a. *Attend Pre-Construction Meeting*

b. *Review Shop Drawings and material submittals*

c. *Prepare Revision Sheets*

d. *Answer Design Questions and Consultation to clarify plans/specifications*

e. *Evaluate Substitute "or equal" Bids items as requeted by the Program Manager*

f. *Conduct Site Visits as requested by the Program Manager and at regular intervals.*

TOTAL DECK #3 - DESIGN FEES

Parking Deck #3

JPA Project ??????

Item No.	Task Description		Fee Estimate
1	Davis Design Site Adaptaion Fees For Deck #3		$598,778
2	Olsson Associates, Sub-Consultant Fees		
	SharePoint Site Set Up and Maintenance for Deck #3	$0	
	Project Meetings	$3,456	
	Survey	$972	
	Entrance/Exits Traffic Analysis	$5,000	
	Off Site Design and Pavement Markings	$1,500	
	Geotechnical Investigations and Report	$18,800	
	Special Inspections, Deep Foundations only	$33,833	
	Permit Applications	$6,752	
	Civil/Site Design Related Issues	$11,328	
	PS&E - Civil/Site Design	$2,832	
	10% Mark up on Sub-Consultant Fees	$8,447	$92,920
Design Fee For Deck #3			**$691,698**
3	Assistance With Event Management Plan		
	Walker Parking Consultants	$5,000	
	Allowance for Printing and Misc Direct Expenses	$750	
	Davis Desing (estimated 16 hours @125/Hour)	$2,000	$7,750
4	West Façade Features for Deck #1, Deck #2, and Deck #3		$67,258
Total Contractual Design Fees Proposed For Deck #3			**$766,706**

Note:
1. The fees above are for a Precast Concrete Parking Structure. The parking deck will be designed as a sister to Deck #1, but will be designed to have a unique exterior façade.
2. These Fees compare for the base design of the garage and do not include additional design for artwork on the west façade of the parking deck.

EXHIBIT C

Davis Design Project Fees

Parking Deck #3
JPA Project ??????

Task No.	Task Description		Fee Estimate
1	Project Management		$32,664.00
2	General Project Meetings		$24,576.00
3	Survey		$0.00
4	Utility Coordination		$0.00
5	Public Involvement		$0.00
6	Drainage Analysis		$0.00
7	Traffic Control & ITS		$0.00
8	First Submittal (35% Complete)		$107,396.00
9	Geotechnical Investigation		$0.00
10	Environmental/Historical Review		$0.00
11	Water Main/Wastewater Relocation		$0.00
12	Future Parking & Connectivity Structures		$27,272.00
13	Water Main Design		$0.00
14	Wastewater Design		$0.00
15	Right-of-Way		$0.00
16	Landscape Design		$1,284.00
17	Second Submittal (Complete Documents)		$183,190.00
18	QA/QC		$6,480.00
19	Permit Applications		$0.00
20	PS&E Submittals		$0.00
21	Bidding Phase		$14,384.00
22	Construction Phase		$132,532.00
	Expenses		$69,000.00
		Total Project Cost	**$598,778.00**

Note:
1. The fees above are for a Precast Concrete Parking Structure. The parking deck will be designed as a sister to Deck #1, but will be designed to have a unique exterior façade.
2. These Fees compare for the base design of the garage and do not include additional design for artwork on the west façade of the parking deck.

DAVIS DESIGN PAY RATES (BASED ON HOURLY RATE SCHEDULE PER CLASSIFICATION)

Overhead Rate :	**0%**
Profit :	**0%**

Personnel		Total Hr.	Salary $ Per Hr.	Labor Cost	Total Cost
Principal In Charge/Project Manager	PIC/PM	513	$162.00	$83,106	$83,106.00
Project Architect	Proj Arch	830	$120.00	$99,600	$99,600.00
Architectect, AIA	Arch	792	$110.00	$87,120	$87,120.00
Architectural Designer	AD	256	$86.00	$22,016	$22,016.00
Structural Engineer	SE	492	$135.00	$66,420	$66,420.00
Structiral Designer	SD	312	$88.00	$27,456	$27,456.00
Mechanical Engineer	ME	300	$135.00	$40,500	$40,500.00
Mechanical Designer	MD	124	$88.00	$10,912	$10,912.00
Electrical Engineer	EE	212	$135.00	$28,620	$28,620.00
Electrical Designer	ED	176	$88.00	$15,488	$15,488.00
Interior Designer	ID	40	$83.00	$3,320	$3,320.00
Administrative	ADMIN	52	$63.00	$3,276	$3,276.00
Construction Administration	CA	428	$98.00	$41,944	$41,944.00
		0	$138.00	$0	$0.00
		0	$70.00	$0	$0.00
		0	$118.00	$0	$0.00
		0	$84.00	$0	$0.00
		0	$80.00	$0	$0.00
		0	$71.00	$0	$0.00
		0	$70.00	$0	$0.00
		0	$60.00	$0	$0.00
Expenses					**$69,000.00**
		4,527		**$529,778**	**$598,778.00**

TOTAL EXPENSES					
Expenses	**Amount**		**$ Ea.**		**Cost**
Design					
Parking Consultant, Walker, Functional Design Services	1	L.S.	$55,000		$55,000.00
Travel, mileage, Expenses, Walker only	1	L.S.	$2,500		$2,500.00
Standardized Signage Design	1	L.S.	$6,000		$6,000.00
Standardized Signage Document, Expenses	1	L.S.	$500		$500.00
Misc Office Printing Expenses (bid sets not included)	1	L.S.	$5,000		$5,000.00
		L.S.			$0.00
		L.S.			$0.00
		L.S.			
Aerial Mapping (DTM)		L.S.			$0.00
		L.S.	$0		$0.00
Geotechnical Borings and Report		L.S.			$0.00
			Sub Total		**$69,000.00**
Survey Expenses					
Public Involvement Expenses					
			Total		**$69,000.00**

DAVIS DESIGN MAN-HOUR ESTIMATE - Parking Deck #3, APPENDIX ????

| Task No. | Description of Work Items | [illegible] | [illegible] | [illegible]

DAVIS DESIGN MAN-HOUR ESTIMATE - Parking Deck #3_APPENDIX ????

Task No	Description of Work Items Tasks	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
13	**Water Main Design**																													
																														$0
14	**Wastewater Design**																													
																														$0
15	**Right-of-Way**																													
																														$0
16	**Landscape Design**																													
	Landscape Design, Coordination with Streetscape	2	8																						10	$1,284	$0	$1,284	$0	$1,284
																														$1,284
17	**Second Submittal (Complete Documents)**																													
	60%, 90%, and 100% Complete Construction Documents																								0	$0	$0	$0	$0	$0
	Geometric Sheets																								0	$0	$0	$0	$0	$0
	Civil Grading Plan																								0	$0	$0	$0	$0	$0
	Civil Site Plan																								0	$0	$0	$0	$0	$0
	Civil Utility Plan																								0	$0	$0	$0	$0	$0
	Architectural Sheets	35	180	200	160							40													715	$77,150	$0	$77,150	$0	$77,150
	Structural Design Sheets, Deep Foundations	8				120	120																		248	$28,056	$0	$28,056	$0	$28,056
	Structural Design Sheets, 840 Stalls, Precast Structure	12				80	80																		172	$19,784	$0	$19,784	$0	$19,784
	Mechanical Design Sheets							60	40																100	$11,620	$0	$11,620	$0	$11,620
	Plumbing Design Sheets							60	60																120	$13,380	$0	$13,380	$0	$13,380
	Electrical Design Sheets									40	120														160	$15,960	$0	$15,960	$0	$15,960
	Traffic Control Sheets			16							8														24	$2,464	$0	$2,464	$0	$2,464
	Signage Sheets			16							8														24	$2,464	$0	$2,464	$0	$2,464
	ITS sheets			16							8														24	$2,464	$0	$2,464	$0	$2,464
	Specifications		40					8			8		24												80	$8,096	$0	$8,096	$0	$8,096
	Preliminary Construction Phasing	2																							2	$324	$0	$324	$0	$324
	Cost Estimates	4	2					2		2															10	$1,428	$0	$1,428	$0	$1,428
	Special Provisions																								0	$0	$0	$0	$0	$0
																														$183,190
18	**QA/QC**																													
	Plan Review	40																							40	$6,480	$0	$6,480	$0	$6,480
																														$6,480
19	**Permit Applications**																													
	404 Permit																								0	$0	$0	$0	$0	$0
	Floodplain Permit																								0	$0	$0	$0	$0	$0
	SWPPP																								0	$0	$0	$0	$0	$0
	NPDES Permit																								0	$0	$0	$0	$0	$0
	Railroad Permit																								0	$0	$0	$0	$0	$0
	Railroad Agreement																								0	$0	$0	$0	$0	$0
	Railroad Insurance																								0	$0	$0	$0	$0	$0
	NDOR Use of Right of Way Permit																								0	$0	$0	$0	$0	$0
	NDOR Agreement																								0	$0	$0	$0	$0	$0
	Lancaster County Utility Permit																								0	$0	$0	$0	$0	$0
	Lancaster County Inter-local Agreement																								0	$0	$0	$0	$0	$0
	Nebraska Dept. of Environmental Quality																								0	$0	$0	$0	$0	$0
	City/County Health Dept. Noise Permit																								0	$0	$0	$0	$0	$0
																														$0
20	**PS&E Submittals**																													
	Draft PS&E Submittal																								0	$0	$0	$0	$0	$0
	Final PS&E Submittal																								0	$0	$0	$0	$0	$0

DAVIS DESIGN MAN-HOUR ESTIMATE - Parking Deck #3 APPENDIX ????

Task No	Description of Work Items - Tasks	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
																												$0
21	**Bidding Phase**																											
	Attend Pre-Bid Meeting																						0	$0	$0	$0	$0	$0
	CM Selection Process	8																					8	$1,296	$0	$1,296	$0	$1,296
	Answer Design Questions	4	40	40		16		4		4													108	$13,088	$0	$13,088	$0	$13,088
	Prepare Addenda																						0	$0	$0	$0	$0	$0
																												$14,384
22	**Construction Phase**																											
	Attend Pre-Construction Meeting		4					4		4													12	$1,560	$0	$1,560	$0	$1,560
	Attend Pre-Trade Installation Meetings		24			8		4		4													40	$5,040	$0	$5,040	$0	$5,040
	On Site Representation During Concrete Placement		80			80																	160	$20,400	$0	$20,400	$0	$20,400
	Attend Monthly Project Meetings	52	64										48										164	$20,808	$0	$20,808	$0	$20,808
	Review Shop Drawings		24		40	40		24		24													152	$18,200	$0	$18,200	$0	$18,200
	Prepare Change Orders	4	24		24			16		16													84	$9,912	$0	$9,912	$0	$9,912
	Prepare As Built Sheets		8		32	32		16		16													104	$12,352	$0	$12,352	$0	$12,352
	Answer Design Questions		16			16		8		8													48	$6,240	$0	$6,240	$0	$6,240
	Evaluate substitute "or equal" bids		2					2		2													6	$780	$0	$780	$0	$780
	Construction Admin, Site Visits (40 ea h) and Coordination												240										340	$33,320	$0	$33,320	$0	$33,320
	Review and Certify Pay Requests												40										40	$3,920	$0	$3,920	$0	$3,920
																												$132,532
	Total Manhours	513	836	792	256	492	312	300	124	212	176	40	52	428	0	0	0	0	0	0	0	0	4527					
	Total	$83,106	$99,600	$87,120	$22,016	$66,420	$27,456	$40,500	$10,912	$28,620	$15,488	$3,320	$3,276	$41,944	$0	$0	$0	$0	$0	$0	$0	$0	$529,778	$529,778	$0	$529,778	$0	$529,778
	Total Labor, OH & Profit	$83,106	$99,600	$87,120	$22,016	$66,420	$27,456	$40,500	$10,912	$28,620	$15,488	$3,320	$3,276	$41,944	$0	$0	$0	$0	$0	$0	$0	$0						$529,778

DAVIS DESIGN - West Façade Features

Overhead Rate :	0%
Profit :	0%

Personnel		Total Hr.	Salary $ Per Hr.	Labor Cost	Total Cost
Principal In Charge/Project Manager (Mike Wachal)	PIC/PM	16	$162.00	$2,592	$2,592
Project Architect	Proj Arch	80	$110.00	$8,800	$8,800
Architectect Designer, Andy Sorenson	Arch	160	$86.00	$13,760	$13,760
Architectural Designer, (Matt Metcalf - Principal)	AD	40	$162.00	$6,480	$6,480
Structural Engineer (Jim Luedke)	SE	40	$135.00	$5,400	$5,400
Structiral Designer (Steve Macdonald)	SD	40	$88.00	$3,520	$3,520
Mechanical Engineer (Todd Jedrzejczyk)	ME	0	$135.00	$0	$0
Mechanical Designer (Erik Ahlmann)	MD	0	$88.00	$0	$0
Electrical Engineer (Brian Meyers)	EE	24	$135.00	$3,240	$3,240
Electrical Designer (Ryan Ideus)	ED	40	$88.00	$3,520	$3,520
Interior Designer	ID	0	$83.00	$0	$0
Administrative	ADMIN	16	$63.00	$1,008	$1,008
Construction Administration (20% of toal hours)	CA	91	$98.00	$8,938	$8,938
Olsson Associates, Allowance for Zoning Issues	OA	1	$5,000.00	$5,000	$5,000
		0	$70.00	$0	$0
		0	$118.00	$0	$0
		0	$84.00	$0	$0
		0	$80.00	$0	$0
		0	$71.00	$0	$0
		0	$70.00	$0	$0
		0	$60.00	$0	$0
Expenses					**$5,000**
		548		**$62,258**	**$67,258**

1. This fee assumes a $500,000 to $650,000 construction budget range or less. If the project is above this range, Davis Design will negotiate the additional desgn fee for the difference above $650,000 for a change to our contract.

BOND RESOLUTION

OF

WEST HAYMARKET JOINT PUBLIC AGENCY
IN THE STATE OF NEBRASKA

PASSED

March 22, 2013

NOT TO EXCEED
$30,000,000
GENERAL OBLIGATION FACILITY BONDS

Resolution

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WEST HAYMARKET JOINT PUBLIC AGENCY

BOND RESOLUTION

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $30,000,000 AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION FACILITY BONDS IN ONE OR MORE SERIES; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; PROVIDING FOR THE APPLICATION OF REVENUES RECEIVED FROM THE CITY OF LINCOLN, NEBRASKA AND THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SUCH BONDS AS THEY BECOME DUE; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

BE IT RESOLVED BY THE BOARD OF THE WEST HAYMARKET JOINT PUBLIC AGENCY IN THE STATE OF NEBRASKA, AS FOLLOWS:

FINDINGS AND DETERMINATIONS

The Board (the **"Board"**) of the West Haymarket Joint Public Agency in the State of Nebraska (the **"Agency"**) hereby finds and determines as follows:

1. The Agency has been duly organized by The City of Lincoln, Nebraska (the **"City"**) and The Board of Regents of the University of Nebraska (the **"Regents**") pursuant to the provisions of (a) the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, herein referred to as the **"Act"**) and (b) Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, between The City of Lincoln, Nebraska (the "**City**") and The Board of Regents of the University of Nebraska (the "**Regents**"), as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency, dated January 20, 2011 (collectively, the **"JPA Agreement"**), between the City and the Regents, and is validly existing as a joint public agency of the State of Nebraska (the **"State"**). The Nebraska Secretary of State has issued a Certificate of Creation and notice of the creation thereof has been published as required by the Act.

2. The Agency is organized (a) for purposes of constructing, equipping, furnishing and financing public facilities in the West Haymarket Redevelopment Area (herein defined) of the City including but not limited to (1) a sports/entertainment arena (the "**Arena**"), (2) roads, streets and sidewalks, (3) a pedestrian overpass, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "**Facilities**"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on **Exhibit B** hereto, as the same may be amended from time to time, the **"Projects,"** and, individually, a **"Project"**).

3. The Agency has previously issued (a) $100,000,000 of its General Obligation Facility Bonds, Taxable Series 2010A (Build America Bonds – Direct Pay), (b) $67,965,000 of its General Obligation Facility Bonds, Taxable Series 2010B (Build America Bonds – Direct Pay), (c) $32,035,000

of its General Obligation Recovery Zone Facility Bonds, Taxable Series 2010C, and (d) $100,000,000 of its General Obligation Facility Bonds, Series 2011, for the purpose of paying a portion of the costs of the Projects ((a) through (d) collectively, the **"Existing Bonds"**), pursuant to bond resolutions of the Board (collectively, the **"Existing Resolutions"**).

4. It is necessary, desirable, advisable and in the best interests of the Agency and the Participants, that the Agency (a) undertake the Projects, (b) issue additional general obligation facility bonds in one or more series (the **"Bonds"**) for the purposes of paying (1) a portion of the costs of one or more Projects, including, without limitation, the purchase of general obligation bonds of the City issued to pay certain costs of one or more of such Projects, and (2) the costs of issuing the Bonds, and (c) levy taxes in an amount sufficient to pay the principal or redemption price of and interest on the Bonds.

5. Pursuant to the JPA Agreement, (a) the City has irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid hereunder, its authority to cause the levy of taxes within the taxing district of the City (the "**Agency Bond Levy**"), beginning in the year 2010 for collection in 2011, for the purpose of paying all or a portion of the costs of one or more Projects pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, solely for the purpose of paying the principal or redemption price of and interest on the Bonds and (b) the Agency Bond Levy shall be certified to the County as provided by law for levy and collection in such amounts, if any, as may be required to pay the principal or redemption price of and interest on the Bonds as the same become due.

6. The City and the Agency have entered into the Facilities Agreement (as defined herein), pursuant to which the City has agreed to maintain, operate and manage the Projects as provided therein, and which provides for the collection, deposit and application of the Revenues (as defined in the Facilities Agreement).

7. All conditions, acts, and things required by law to exist or to be done precedent to the issuance of the Bonds do exist and have been done in due form and time as required by law.

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. Unless the context shall clearly indicate some other meaning, for all purposes of this Resolution, all words and terms used in this Resolution which are defined in the Facilities Agreement shall have the respective meanings given to them in the Facilities Agreement. In addition to words and terms defined elsewhere herein, the following words and terms used in this Resolution have the following meanings:

"Act" means the Joint Public Agency Act, Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended.

"Agency" means the West Haymarket Joint Public Agency, a joint public agency duly organized and validly existing under the laws of the State, and its successors and assigns.

"**Agency Bond Levy**" means the authority of the City which is irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, to cause the levy of taxes within the taxing jurisdiction of the City, beginning in

the year 2010 for collection in 2011, for the purpose of paying the costs of the Projects pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which will be sufficient to pay the principal or redemption price of and interest on the Bonds when and as the same become due.

"Arena" has the meaning assigned in the Findings and Determinations hereof.

"Authorized Officer" means the Chair and the Secretary, or in the event that either the Chair or the Secretary is unavailable for any reason, any other member of the Board or the Treasurer or any other officer of the Agency authorized by the Board to execute documents for and on behalf of the Agency.

"Beneficial Owner" means any Person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

"**Board**" means the board of representatives of the Agency.

"Bond Counsel" means Gilmore & Bell, P.C., or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Agency.

"Bond Register" means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

"Bond" or **"Bonds"** means the bonds authorized by **Section 201** of this Resolution.

"Budget Act" means Sections 13-501 to 13-513, inclusive, Reissue Revised Statutes of Nebraska, as amended.

"Business Day" means a day other than a Saturday, Sunday or holiday on which the Registrar is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.

"Cede & Co." means Cede & Co., as nominee of The Depository Trust Company, New York, New York.

"City" means The City of Lincoln, Nebraska.

"**City Payment**" means a payment made by the City to the Agency pursuant to the Facilities Agreement for the purpose of paying the principal of and interest due on the Bonds on the next Interest Payment Date.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

"**Completion Date**" means the date established pursuant to **Section 504(b)** on which construction of the Projects is complete.

"Construction Fund" means the fund by that name created by **Section 501**, in which there shall be established such accounts as shall be determined by the Finance Director in accordance with the provisions of **Section 212**.

"Continuing Disclosure Undertaking" means a Continuing Disclosure Undertaking executed by the Agency and the City, dated the date of delivery of the Bonds, as originally executed and as amended from time to time in accordance with its terms.

"2013 Debt Service Account" means the account by that name created by **Section 501** in the Debt Service Fund, in which there shall be established such subaccounts as shall be determined by the Finance Director in accordance with the provisions of **Section 212**.

"**Debt Service Fund**" means the fund by that name established by the Facilities Agreement.

"Defaulted Interest" means interest on any Bond which is payable but not paid on any Interest Payment Date.

"Defeasance Obligations" means any of the following obligations:

(a) Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or Government Obligations that may be applied only to the principal or Redemption Price of and interest payments on such obligations;

(3) such cash and the principal of and interest on such Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) the obligations are rated in the highest rating category by Moody's Investors Service, Inc. (presently "Aaa") or Standard & Poor's Ratings Group (presently "AAA").

"Designated Office" means the corporate trust administration office maintained by the Paying Agent at which the Paying Agent discharges its obligations under this Resolution and which may be changed by the Paying Agent upon written notice to the Agency and to each Registered Owner.

"Existing Bonds" has the meaning assigned in the Findings and Determinations hereof.

"Existing Resolutions" has the meaning assigned in the Findings and Determinations hereof.

"Facilities Agreement" means the Facilities Agreement, dated September 8, 2010, as amended from time to time in accordance with its terms, between the City and the Agency, governing the acquisition, construction, equipping, furnishing, operation and management of the Projects, and the collection, deposit and application of the Revenues.

"**Finance Director**" means the Finance Director of the City, as the chief financial officer and treasurer of the Agency.

"Government Obligations" means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Agency.

"Interest Payment Date" means June 15 and December 15 of each year beginning on such date(s) determined pursuant to **Section 212** hereof.

"**JPA Agreement**" means the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, between the City and the Regents, as amended from time to time in accordance with its terms, including, without limitation, the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency, dated January 20, 2011, between the City and the Regents.

"Maturity" when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for optional or mandatory redemption or otherwise.

"Outstanding" means, when used with reference to the Bonds, as of any particular date of determination, all Bonds theretofore authenticated and delivered hereunder, except the following Bonds:

(a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 701** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered hereunder.

"Participants" means those financial institutions for which the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

"**Paying Agent**" means the paying agent designated in **Section 203** hereof.

"Permitted Investments" means any of the following securities, if and to the extent the same are at the time legal for investment of the Agency's funds:

(a) Government Obligations;

(b) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;

(c) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(d) repurchase agreements with any bank, bank holding company, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (a), (b) or (c) above and that have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the Agency; and

(e) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time deposits.

"Person" means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

"Project" and **"Projects"** have the meaning assigned in the Findings and Determinations as specified and identified in **Exhibit B**, attached hereto and made a part thereof by this reference, as the same may be amended and supplemented from time to time.

"Purchase Agreement" has the meaning assigned in **Section 211(b)** hereof.

"Purchaser" means (a) if a series of Bonds is sold in a public sale, the responsible bidder(s) offering to purchase such Bonds at the lowest true interest costs to the Agency at the public sale for the Bonds and (b) if a series of Bonds is sold in a negotiated sale, the senior managing underwriter.

"Record Date" for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) next preceding an Interest Payment Date.

"Redemption Date" when used with respect to any Bond to be redeemed means the date fixed for the redemption of such Bond pursuant to the terms of this Resolution.

"Redemption Price" when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Resolution.

"Regents" means The Board of Regents of the University of Nebraska.

"Registered Owner" when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

"Registrar" means Union Bank and Trust Company, Lincoln, Nebraska, and any successors or assigns.

"Replacement Bonds" means Bonds issued to Beneficial Owners in accordance with **Section 207**.

"Resolution" means this Resolution adopted by the governing body of the Agency, authorizing the issuance of the Bonds, as amended from time to time.

"Securities Depository" means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

"Special Record Date" means the date fixed by the Paying Agent pursuant to **Section 204** hereof for the payment of Defaulted Interest.

"**State**" means the State of Nebraska.

"Stated Maturity" means, when used with respect to any Bond, the date specified in such Bond and this Resolution as the fixed date on which the principal of such Bond is due and payable.

"Tax Agreement" means any Tax Compliance Agreement dated the date of its execution and delivery by the Agency and the City concerning the requirements of the Code with respect to any Tax-Exempt Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

"Taxable Bond" means any of a series of Bonds, the interest on which is determined by the Agency to be includable in gross income for federal income tax purposes.

"Tax-Exempt Bond" means any of a series of Bonds, the interest on which is determined by the JPA to be excludable from gross income for federal income tax purposes.

"**Treasurer**" means the Treasurer of the Agency.

"United States" means the United States of America.

"**West Haymarket Facilities**" has the meaning assigned in the Findings and Determinations hereof.

"**West Haymarket Redevelopment Area**" means the area in the City described in Exhibit A to the JPA Agreement, as the same may be amended from time to time by the City.

ARTICLE II

AUTHORIZATION OF BONDS

Section 201. Authorization of Bonds. The Agency is hereby authorized and directed to issue General Obligation Facility Bonds from time to time, in one or more series and which may be Taxable Bonds or Tax-Exempt Bonds, as determined and designated in accordance with **Section 212** hereof, in an aggregate principal amount not to exceed $30,000,000 for the purpose of paying (a) all or a portion of the costs of one or more Projects and (b) the costs of issuing the Bonds.

Section 202. Description of Bonds. The Bonds shall be entitled and designated as "Lincoln, Nebraska West Haymarket Joint Public Agency [Taxable/Tax-Exempt] General Obligation Facility Bonds" with such series designation and any additional designation as determined by the Finance Director pursuant to **Section 212** hereof. The Bonds shall consist of fully registered bonds, numbered from R-1 upward within each series in order of issuance, in denominations of $5,000 or any integral multiple thereof. The Bonds shall be in substantially the form set forth in **Exhibit A** attached hereto and shall be subject to registration, transfer and exchange as provided in **Section 205** hereof. All of the Bonds shall be dated the date of delivery thereof, shall become due and payable serially in the amounts on the Stated Maturities, subject to redemption and payment prior to their Stated Maturities as provided in **Article III** hereof, and shall bear interest at the rates per annum determined by the Finance Director in accordance with the provisions of **Section 212** hereof.

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from the date thereof or from the most recent Interest Payment Date to which interest has been paid or duly provided for.

Each of the Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be in substantially the form set forth in **Exhibit A** attached hereto.

Section 203. Designation of Paying Agent. The Agency hereby designates the Registrar as its paying agent for the payment of principal of and interest on the Bonds and bond registrar with respect to the registration, transfer and exchange of Bonds. The Paying Agent shall serve in such capacities under the terms of an agreement entitled "Bond Registrar and Paying Agent Agreement" between the Agency and the Paying Agent (the **"Registrar Agreement"**), substantially in the form attached hereto as **Exhibit C**, which is hereby ratified and approved. One or more Authorized Officers are hereby authorized to execute the Registrar Agreement in substantially the form presented but with such changes as such Authorized Officer shall deem appropriate or necessary.

The Agency will at all times maintain a Paying Agent meeting the qualifications herein described for the performance of the duties hereunder. The Agency reserves the right to appoint a successor Paying Agent by (a) filing with the Paying Agent then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent and appointing a successor, and (b) causing notice of the appointment of the successor Paying Agent to be given by first-class mail to each Registered Owner. No resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of Paying Agent.

Every Paying Agent appointed hereunder shall at all times be a commercial banking association or corporation or trust company organized and doing business under the laws of the United States or of a state of the United States, authorized under such laws to exercise trust powers and subject to supervision or examination by federal or state regulatory authority.

Section 204. Method and Place of Payment of Bonds. The principal or Redemption Price of and interest on the Bonds shall be payable in any coin or currency of the United States that on the respective dates of payment thereof is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity by check or draft to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the Designated Office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register.

Notwithstanding the foregoing provisions of this **Section 204**, any Defaulted Interest with respect to any Bond shall cease to be payable to the Registered Owner of such Bond on the relevant Record Date and shall be payable to the Registered Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as specified in this paragraph. The Agency shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Agency of such Special Record Date and, in the name and at the expense of the Agency, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first-class mail, postage prepaid, to each Registered Owner of a Bond entitled to such notice at the address of such Registered Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of the payment of principal or Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Agency.

Section 205. Registration, Transfer and Exchange of Bonds. The Agency covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the Designated Office. Each Bond when issued shall be registered in the name of the Registered Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this **Section 205**. Upon surrender of any Bond at the Designated Office, the Paying Agent shall transfer or exchange such Bond for a new Bond or Bonds in any authorized denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange. Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Owner thereof or by the Registered Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. The Agency shall pay the fees and expenses of the Paying Agent for the registration, transfer and exchange of Bonds provided for by this Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Paying Agent, are the responsibility of the Registered Owners of the Bonds. In the event any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Registered Owner hereunder or under the Bonds.

The Agency and the Paying Agent shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to **Section 303** hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption, or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Agency of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to **Section 204** hereof.

The Agency and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on such Bond and for all other purposes. All payments so made to any such Registered Owner or upon the Registered Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Agency nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Paying Agent, the Bond Register may be inspected and copied by the Registered Owners of 10% or more in aggregate principal amount of the Bonds then Outstanding or any designated representative of such Registered Owners whose authority is evidenced to the satisfaction of the Paying Agent.

Section 206. Execution, Registration, Authentication and Delivery of Bonds. Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be signed by the manual or facsimile signature of the Chair and attested by the manual or facsimile signature of the Secretary. In case any officer whose signature appears on any Bond ceases to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Chair and Secretary are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and, when duly executed and registered, to deliver the Bonds to the Paying Agent for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form set forth in **Exhibit A** attached hereto, which shall be manually executed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Paying Agent. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. Upon authentication, the Paying Agent shall deliver the Bonds to the Purchaser upon payment of the purchase price of the Bonds plus accrued interest thereon to the date of their delivery.

Section 207. Mutilated, Destroyed, Lost and Stolen Bonds. If (a) any mutilated Bond is surrendered to the Paying Agent or the Paying Agent receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Paying Agent such security or indemnity as may be required by the Paying Agent, then, in the absence of notice to the Paying Agent that such Bond has been acquired by a bona fide purchaser, the Agency shall execute and, upon the Agency's

request, the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Agency, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this **Section 207**, the Agency may require the payment by the Registered Owner of an amount sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this **Section 207** shall constitute a replacement of the prior obligation of the Agency, and shall be entitled to all the benefits of this Resolution equally and ratably with all other Outstanding Bonds.

Section 208. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Agency.

Section 209. Book-Entry Bonds; Securities Depository.

(a) The Bonds shall initially be registered to Cede & Co., as nominee for the Securities Depository, and no Beneficial Owner will receive any certificate representing its respective interest(s) in the Bonds, except in the event the Paying Agent issues Replacement Bonds as provided in **Section 209(b)** hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of the principal or Redemption Price of and interest on the Bonds to the Participants until and unless the Paying Agent authenticates and delivers Replacement Bonds to the Beneficial Owners as described in **Section 209(b)** hereof.

(b) (1) If the Agency determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Registered Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (2) if the Paying Agent receives written notice from Participants having interests in not less than 50% in aggregate principal amount of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Registered Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Paying Agent shall notify the Registered Owners of such determination or such notice and of the availability of certificates to Registered Owners requesting the same, and the Paying Agent shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under **Section 209(b)(1)(A)** or **(1)(B)** hereof, the Agency, with the consent of the Paying Agent, may select a successor securities depository in accordance with **Section 209(c)** hereof to effect

book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Paying Agent, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Agency, the Paying Agent or Registered Owners are unable to locate a qualified successor of the Securities Depository in accordance with **Section 209(c)** hereof, then the Paying Agent shall authenticate and cause delivery of Replacement Bonds to Registered Owners as provided herein. The Paying Agent may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing Replacement Bonds shall be paid for by the Agency.

(c) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the Agency may appoint a successor Securities Depository provided the Paying Agent receives written evidence satisfactory to the Paying Agent with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Paying Agent upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

Section 210. Preliminary and Final Official Statement. The Authorized Officers and the Finance Director, or any one of them, are hereby authorized to prepare and approve a Preliminary Official Statement relating to each series of Bonds with similar form and content as the preliminary official statements relating to the Existing Bonds, but with such changes and additions thereto as are necessary to conform to and describe the transaction as such Authorized Officer or Finance Director shall approve, in his or her sole discretion. The Authorized Officers and the Finance Director, or any one of them, are hereby further authorized to prepare and approve any supplements or amendments to the Preliminary Official Statement as is necessary in the reasonable judgment of the Purchaser and Bond Counsel to comply with the Agency's obligations under applicable securities laws and regulations. The Authorized Officers and the Finance Director, or any one of them, are hereby also authorized to prepare and approve a final Official Statement relating to such series of Bonds by supplementing, amending and completing the Preliminary Official Statement with such changes and additions thereto as are necessary to describe the final terms of the transaction. The use and public distribution of the final Official Statement by the Purchaser in connection with a reoffering of each series Bonds is hereby authorized. The Authorized Officers and the Finance Director, or any one of them, are hereby are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of each series of Bonds.

The Agency agrees to provide to the Purchaser within seven Business Days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 211. Sale of Bonds. Each series of Bonds shall be sold in a public or negotiated sale, as determined by the Finance Director pursuant to **Section 212** hereof.

(a) If sold at a public sale, a series of Bonds shall be sold to the responsible Purchaser offering to purchase such series of Bonds at the lowest true interest cost to the Agency pursuant to a

Notice of Sale in substantially the form attached hereto as **Exhibit D-1**, under which the Agency offers to sell such series of Bonds, upon the terms and conditions set forth therein and with such changes therein as shall be approved by the Finance Director. The purchase price for such series of Bonds shall be not less than 98.00% of the principal amount thereof and the underwriting discount shall not exceed 1.00%. The true interest cost on such series of Bonds issued as Taxable Bonds shall not exceed 6.00% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months. The true interest cost on such series of Bonds issued as Tax-Exempt Bonds shall not exceed 4.50% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months. The Finance Director is authorized to accept the bid of the Purchaser and to execute all other documents necessary to effectuate the sale of such series of Bonds to the Purchaser.

(b) If sold in a negotiated sale, a series of Bonds shall be sold upon the terms and conditions set forth in a Bond Purchase Agreement (the **"Purchase Agreement"**), in substantially the form attached hereto as **Exhibit D-2**. The purchase price for such series of Bonds shall be not less than 98.00% of the principal amount thereof and the underwriting discount shall not exceed 1.00%. The true interest cost on such series of Bonds issued as Taxable Bonds shall not exceed 6.00% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months. The true interest cost on such series of Bonds issued as Tax-Exempt Bonds shall not exceed 4.50% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months. The Finance Director is hereby authorized to execute and deliver the Purchase Agreement with such changes therein as such official deems appropriate, for and on behalf of the Agency, such officer's signature thereon being conclusive evidence of such official's and the Agency's approval thereof.

Section 212. Determination of Terms and Provisions of Bonds. The Finance Director shall determine whether the Bonds shall be sold in one or more series and whether such series shall be sold in a public sale or in a negotiated sale and, with respect to each series of Bonds, shall determine and fix (a) the dated date, which shall not be later than December 31, 2013; (b) the aggregate principal amount of such series of Bonds; provided, however, that the aggregate of all series of Bonds shall not exceed $30,000,000 (c) whether the Bonds shall be issued as serial bonds or term bonds or a combination of serial bonds and term bonds; (d) the series designation for each series of Bonds; (e) the rate or rates of interest to be borne by each maturity of Bonds within each series; (f) the principal amount of Bonds maturing in each year; (g) the mandatory sinking fund redemption dates and amount with respect to the Bonds in each year for which the Finance Director determines that a mandatory sinking fund redemption shall be made; (h) the initial Interest Payment Date for a series of Bonds; (i) the date upon which each series of Bonds will be subject to redemption at the option of the Agency and the Redemption Price of such series Bonds, which shall not exceed 104% of the principal amount being redeemed and the period(s) during which each Redemption Price is applicable; (j) the final maturity date of the Bonds, which shall be not later than December 31, 2045; (k) any additional accounts or subaccounts to be established within the funds created by **Section 501** hereof; (l) whether a series of Bonds is issued as Taxable Bonds or Tax-Exempt Bonds tax-exempt and (m) any other provisions related to the Bonds not set forth in this Resolution.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional and Mandatory Redemption of Bonds.

(a) ***Optional Redemption by Agency***. At the option of the Agency, Bonds or portions thereof may be called for redemption and payment prior to their Stated Maturity at any time on or after the date determined by the Finance Director in accordance with the provisions of **Section 212** hereof, as a whole

or in part at Redemption Prices determined by the Finance Director in accordance with the provisions of **Section 212** hereof, plus accrued interest thereon to the Redemption Date.

(b) ***Mandatory Redemption***. The Bonds issued as term bonds shall be subject to mandatory redemption and payment prior to their Stated Maturity pursuant to the mandatory redemption requirements of this **Section 301(b)** at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The City Payments which are to be deposited into the 2013 Debt Service Account in the Debt Service Fund shall be sufficient to redeem, and the Agency shall redeem on December 15 in each year, the principal amounts of such term bonds as determined by the Finance Director in accordance with the provisions of **Section 212** hereof.

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Agency may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on such mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on such mandatory Redemption Date from any Registered Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Agency under this **Section 301(b)** for any Term Bonds subject to mandatory redemption on such mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this **Section 301(b)**) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this **Section 301(b)**. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Agency to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this **Section 301(b)** shall be accordingly reduced. If the Agency intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Agency will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment.

Section 302. Selection of Bonds to Be Redeemed.

(a) The Paying Agent shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Paying Agent at least 45 days prior to the Redemption Date of written instructions of the Agency specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The Paying Agent may in its discretion waive such notice period so long as the notice requirements set forth in **Section 303** hereof are met.

(b) Bonds shall be redeemed only in the principal amount of $5,000 or any integral multiple thereof. When fewer than all of the Outstanding Bonds are to be redeemed, such Bonds shall be redeemed in such principal amounts and from such Stated Maturities as the Agency, in its sole and absolute discretion, may determine, and Bonds of less than a full Stated Maturity shall be selected by the Paying Agent in $5,000 units of principal amount in such equitable manner as the Paying Agent may determine.

(c) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then for all purposes in connection with such redemption, each $5,000

of face value shall be treated as though it were a separate Bond of the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond are selected for redemption, then upon notice of intention to redeem such $5,000 unit or units, the Registered Owner of such Bond or the Registered Owner's duly authorized agent shall present and surrender such Bond to the Paying Agent (1) for payment of the Redemption Price and interest to the Redemption Date of such $5,000 unit or units of face value called for redemption, and (2) for exchange, without charge to the Registered Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Registered Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as provided, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the $5,000 unit or units of face value called for redemption (and to that extent only).

Section 303. Notice and Effect of Call for Redemption. Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any redemption shall be given by the Paying Agent on behalf of the Agency by mailing a copy of an official redemption notice by first-class mail at least 30 days prior to the Redemption Date to the Purchaser and each Registered Owner of the Bonds to be redeemed at the address shown on the Bond Register.

All official notices of redemption shall be dated and shall contain the following information:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the Designated Office.

The failure of any Registered Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Agency shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on that date.

Official notice of redemption having been given as provided, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Agency defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same Stated Maturity in the

amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

The Paying Agent is also directed to comply with any mandatory or voluntary standards then in effect for processing redemptions of municipal securities established by the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

ARTICLE IV

SECURITY FOR AND PAYMENT OF BONDS

Section 401. Security for the Bonds. The Bonds shall be general obligations of the Agency payable as to both principal and interest from the General Account in the Revenue Fund, and to the extent such revenues are insufficient, from ad valorem taxes which may be levied upon all the taxable property in the City as provided in **Section 402** hereof. The full faith, credit and resources of the Agency are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 402. Levy and Collection of Property Tax. Pursuant to the JPA Agreement, the City has assigned and allocated to the Agency its authority to levy ad valorem property taxes for the purposes of paying the principal or redemption price of and interest on the Bonds. Pursuant to the Facilities Agreement, the Agency shall (a) collect all Revenues and (b) if an Agency Bond Levy is to be made for the following tax year, include in its next "proposed budget statement" (as defined in Section 13-504 of the Budget Act) the amount required by **Section 15** of the Facilities Agreement to be raised from the Agency Bond Levy for the following tax year and shall levy upon all of the taxable property within the City the Agency Bond Levy, in addition to all other taxes, sufficient in rate and amount to reimburse the City all amounts advanced by the City pursuant to the Facilities Agreement, the Agency hereby pledging such levy of taxes for such purpose.

The taxes referred to above shall be budgeted by the Agency in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as ad valorem taxes of the City are levied and collected. The proceeds derived from such taxes shall be used to reimburse the City for any loan to the Agency by the City under the Facilities Agreement.

ARTICLE V

ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF MONEY

Section 501. Establishment of Funds. There have been or shall be established in the treasury of the Agency the separate funds set forth in the Facilities Agreement to be held and administered by the Agency. There is hereby established in the treasury of the Agency the following accounts and subaccounts:

(a) 2013 Construction Account in the Construction Fund in which there shall be established such subaccounts as shall be determined by the Finance Director in accordance with the provisions of **Section 212** hereof.

(b) 2013 Debt Service Account, in which there shall be established the 2013 Capitalized Interest Account.

(c) Rebate Fund.

The Finance Director may establish one or more accounts in the funds set forth above, pursuant to the authority granted in **Section 212** hereof.

Section 502. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

(a) All accrued interest received from the sale of the Bonds shall be deposited in the 2013 Debt Service Account and applied in accordance with **Section 504**.

(b) Proceeds of the Bonds shall be deposited into such accounts or subaccounts established in **Section 501** hereof and such accounts or subaccounts as may be established by the Finance Director pursuant to the provisions of **Section 212** hereof in the amounts determined by the Finance Director.

(c) The proceeds of the Bonds which remain after the deposits required by **Sections 502(a)** and **(b)** hereof have been made shall be deposited in the 2013 Construction Account. All amounts on deposit in the 2013 Construction Account shall be applied in accordance with **Section 504(a)** hereof.

Section 503. Revenue Fund. The Agency shall deposit the Revenues, when received from the City in accordance with the Facilities Agreement, to be held and applied as provided in the Facilities Agreement.

Section 504. Application of Money in the 2013 Construction Account.

(a) Money in the 2013 Construction Account shall be used by the Agency solely for the purpose of (1) paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's architects and approved by the City and the Agency and (2) paying the costs and expenses of issuing the Bonds.

The Treasurer shall make a withdrawal from the 2013 Construction Account only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Nothing hereinbefore contained shall prevent the payment out of the 2013 Construction Account or another subaccount in the 2013 Construction Account of all costs and expenses incident to the issuance of the Bonds without a certificate from the Agency's architects.

(b) On the date on which the construction of all of the Projects all or a portion of the costs of which have been paid from the proceeds of the Bonds has been completed (the **"Completion Date"**) as certified by the Agency's architects, any surplus remaining in any fund or account in the 2013

Construction Account shall be transferred to and deposited in the 2013 Debt Service Account in the Debt Service Fund.

Section 505. Application of Money in the Debt Service Fund. The Agency shall make deposits into the 2013 Debt Service Account in the Debt Service Fund as provided in the Facilities Agreement.

Any money or investments remaining in the Debt Service Fund after the retirement of the indebtedness for which the Bonds were issued and all other indebtedness of the Agency shall be transferred and paid to the City.

Section 506. Application of Money in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Agreement. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the requirements of the Code, for payment to the United States of America, and neither the Agency nor the Registered Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this **Section 506** and the Tax Agreement.

(b) The Agency shall periodically determine the arbitrage rebate under Section 148(f) of the Code in accordance with the Tax Agreement, and the Agency shall make payments to the United States of America at the times and in the amounts determined under the Tax Agreement. Any money remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be released to the Agency.

(c) Notwithstanding any other provision of this Resolution, including in particular **Article VIII** hereof, the obligation to pay arbitrage rebate to the United States and to comply with all other requirements of this **Section 506** and the Tax Agreement shall survive the defeasance or payment in full of the Bonds.

Section 507. Deposits and Investment of Money. Money in each of the funds or accounts created by and referred to in this Resolution shall be deposited in a bank or banks or other legally permitted financial institutions that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the financial institutions holding such deposits as provided by the laws of the State. All money held in the funds created by this Resolution shall be kept separate and apart from all other funds of the Agency so that there shall be no commingling of such funds with any other funds of the Agency.

Money held in any fund referred to in this Resolution may be invested by the Treasurer at the direction of the Board, in accordance with this Resolution and the Tax Agreement, in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any fund shall be transferred to the appropriate account in the Construction Fund until the Completion Date, and thereafter shall accrue to and become a part of the fund which generated the earnings.

Section 508. Payments Due on Saturdays, Sundays and Holidays. If any payment on a Bond is due on a date which is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such payment date, and no interest shall accrue for the period after such payment date.

Section 509. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Agency to the Registered Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Resolution or on, or with respect to, such Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay to the Agency the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Agency, and the Registered Owner thereof shall be entitled to look only to the Agency for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Agency shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

ARTICLE VI

REMEDIES

Section 601. Remedies. The provisions of this Resolution, including the covenants and agreements herein contained, shall constitute a contract between the Agency and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in aggregate principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Registered Owner or Owners against the Agency and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Agency, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Bonds.

Section 602. Limitation on Rights of Registered Owners. The covenants and agreements of the Agency contained herein and in the Bonds shall be for the equal benefit, protection and security of the Registered Owners of any or all of the Bonds. All of the Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, or date of Maturity or right of prior redemption as provided in this Resolution. No one or more Registered Owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Bonds.

Section 603. Remedies Cumulative. No remedy conferred herein upon the Registered Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition

to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Registered Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceedings taken by any Registered Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Registered Owner, then, and in every such case, the Agency and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Registered Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

ARTICLE VII

DEFEASANCE

Section 701. Defeasance. When the principal or Redemption Price of and interest on any or all of the Bonds have been paid and discharged, then the requirements contained in this Resolution and the pledge of the Agency's faith and credit hereunder and all other rights granted hereby shall terminate with respect to such Bonds so paid and discharged. Bonds or the interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company having full trust powers, at or prior to the Stated Maturity or Redemption Date of such Bonds, in trust for and irrevocably appropriated thereto, money and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of such Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments, provided, however, that if any such Bonds are to be redeemed prior to their Stated Maturity, (a) the Agency has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the Agency has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to give such notice of redemption in compliance with **Section 302(a)** hereof. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Agency, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Registered Owners of the Bonds, and such money shall be and is hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or other bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Resolution.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 801. Tax Covenants.

(a) The Agency covenants and agrees that it will comply with the Tax Agreement.

(b) The foregoing covenant shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to **Article VII** hereof or any other provision of this Resolution, until the final maturity date of all Bonds Outstanding.

Section 802. Continuing Disclosure. The Agency hereby (a) authorizes and directs that an Authorized Officer or the Finance Director execute and deliver, on the date of issue of each series of Bonds, a Continuing Disclosure Undertaking in order for the Purchaser to comply with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended, in such form as shall be satisfactory to such Authorized Officer or the Finance Director, and (b) covenants and agrees that it will comply with and carry out all of the provisions of such Continuing Disclosure Undertaking. Notwithstanding any other provision of this Resolution, failure of the Agency to comply with any Continuing Disclosure Undertaking shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in a Continuing Disclosure Undertaking) or any Beneficial Owner or any Registered Owner of a Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Agency to comply with its obligations under this **Section 802.**

Section 803. Amendments. The rights and duties of the Agency and the Registered Owners, and the terms and provisions of the Bonds or of this Resolution, may be amended or modified at any time in any respect by resolution of the Agency with the written consent of the Registered Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Secretary, but no such modification or alteration shall:

(a) extend the maturity of any payment of principal or interest due upon any Bond;

(b) effect a reduction in the amount which the Agency is required to pay as principal of or interest on any Bond;

(c) permit preference or priority of any Bond over any other Bond; or

(d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Resolution.

Any provision of the Bonds or of this Resolution may, however, be amended or modified by resolution duly adopted by the governing body of the Agency at any time in any legal respect with the written consent of the Registered Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Registered Owners, the Agency may amend or supplement this Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Registered Owners.

Every amendment or modification of the provisions of the Bonds or of this Resolution, to which the written consent of the Registered Owners is given, as above provided, shall be expressed in a resolution adopted by the Board amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Resolution shall always be kept on file in the office of the Secretary, and shall be made available for inspection by the Registered Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Resolution, and upon payment of the

reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Resolution will be sent by the Secretary to any such Registered Owner or prospective purchaser.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Secretary a copy of such amendatory or supplemental resolution of the Agency, duly certified, as well as proof of any required consent to such modification by the Registered Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Agency shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Resolution which affects the duties or obligations of the Paying Agent under this Resolution.

Section 804. Notices, Consents and Other Instruments by Registered Owners. Any notice, consent, request, direction, approval or other instrument to be signed and executed by any Registered Owner may be in any number of concurrent writings of similar tenor and may be signed or executed by such Registered Owner in person or by an agent with written authorization. Proof of the execution of any such instrument or writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Resolution, and shall be conclusive in favor of the Agency and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Registered Owners of the requisite aggregate principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Resolution, Bonds owned by the Agency shall be disregarded and deemed not to be Outstanding under this Resolution, except that, in determining whether the Registered Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Registered Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as provided if the pledgee establishes to the satisfaction of the Registered Owners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Agency.

Section 805. Ratification of Prior Acts. The Board hereby approves, ratifies and confirms, in all respects, all actions taken by any officer of the Agency or Authorized Officer, in connection with the issuance and sale of the Bonds. Furthermore, the Board hereby approves, ratifies and confirms, in all respects, all actions taken by the Agency, any officer of the Agency or Authorized Officer with respect to the authorization and the issuance of the Existing Bonds.

Section 806. Further Authority. The officers of the Agency, including the Chair and Secretary, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 807. Severability. If any section or other part of this Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Resolution.

Section 808. Facilities Agreement; Inconsistencies. In the event that any provisions of this Resolution are inconsistent with the Facilities Agreement, the provisions of the Facilities Agreement shall govern.

Section 809. Governing Law. This Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 810. Effective Date. This Resolution shall take effect and be in full force from and after its passage by the Board as provided by law.

[The remainder of this page intentionally left blank.]

PASSED: March 22, 2013.

WEST HAYMARKET JOINT PUBLIC AGENCY IN THE STATE OF NEBRASKA

ATTEST:

By: _____
Chair

By: _____
Secretary

EXHIBIT A

(FORM OF BOND)

EXCEPT AS OTHERWISE PROVIDED IN THE RESOLUTION (REFERRED TO HEREIN), THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

Registered **Registered**
No. R-__ **$_____**

UNITED STATES OF AMERICA
STATE OF NEBRASKA
LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY

GENERAL OBLIGATION FACILITY BOND
SERIES 201__

Interest Rate	Maturity Date	Dated Date	CUSIP Number
	December 15, 20__	_____, 2013	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: **DOLLARS**

WEST HAYMARKET JOINT PUBLIC AGENCY (the **"Agency"**), a joint public agency duly organized and validly existing under and pursuant to (a) the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, the **"Act"**) and (b) the West Haymarket Joint Public Agency Agreement, dated as of April 1, 2010, duly authorized, executed and delivered by The City of Lincoln, Nebraska (the **"City"**) and The Board of Regents of the University of Nebraska (the **"Regents"**), as amended and restated from time to time, including, without limitation, the Amended and Restated West Haymarket Joint Public Agency Agreement, dated January 10, 2011, between the City and the Regents (collectively, the **"JPA Agreement"**), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount stated above on the Maturity Date shown above unless called for redemption prior to such Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months) from the Dated Date shown above or from the most recent interest payment date to which interest has been paid or duly provided for, payable semiannually on June 15 and December 15 in each year, beginning December 15, 2013, until the Principal Amount has been paid.

The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption by check or draft mailed to the person in whose name this Bond is registered at the maturity

or redemption date thereof, upon presentation and surrender of this Bond at the designated corporate trust administration office of **UNION BANK AND TRUST COMPANY** (the **"Paying Agent"**). The interest payable on this Bond on any interest payment date shall be paid to the person in whose name this Bond is registered on the registration books maintained by the Paying Agent at the close of business on the Record Date for such interest, which shall be the fifteenth day (whether or not a Business Day) preceding an interest payment date. Such interest shall be payable by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register. The principal or redemption price of and interest on this Bond shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon has been executed by the Paying Agent.

IT IS HEREBY DECLARED AND CERTIFIED that all acts, conditions and things required to be done and to exist precedent to and in the issuance of the Bonds have been done and performed and do exist in due and regular form and manner as required by the constitution and laws of the State of Nebraska; that the Agency has covenanted and agreed that it will cause to be levied and collected a direct annual tax, in addition to all other taxes, upon all taxable property in the City in accordance with the provisions of the Act and the JPA Agreement sufficient in rate and amount to pay the principal or redemption price of and interest on the Bonds when due; and that the total indebtedness of the Agency, including this Bond and the series of which it is one, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the **WEST HAYMARKET JOINT PUBLIC AGENCY** has caused this Bond to be executed by the manual or facsimile signature of the Chair of the Board and attested by the manual or facsimile signature of the Secretary of the Board.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____(facsimile signature)_____
Chair

ATTEST:

By: _____(facsimile signature)_____
Secretary

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within-mentioned Resolution.

Authentication Date: _____

UNION BANK AND TRUST COMPANY, Paying Agent

By: _____
Authorized Officer or Signatory

(FORM OF REVERSE SIDE OF BOND)

ADDITIONAL PROVISIONS

This Bond is one of an authorized series of bonds of the Agency designated "General Obligation Facility Bonds, Series _____," aggregating the principal amount of $30,000,000 (the **"Bonds"**), issued by the Agency for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket Redevelopment Area (herein defined) of the City including but not limited to a sports/entertainment arena (the "**Arena**"), roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively, the "**West Haymarket Facilities**"), and acquiring land and relocating existing businesses, to undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities, including, without limitation, the purchase of general obligation bonds issued by the City issued to pay certain costs of one or more of such purposes, and (b) paying the costs of issuing the Bonds, under the authority of and in full compliance with the constitution and laws of the State of Nebraska, and pursuant to the Act, the JPA Agreement and the Bond Resolution duly passed (the **"Resolution"**) and proceedings duly and legally had by the Board of the Agency. Reference is hereby made to the Act, the JPA Agreement, the Resolution and the Facilities Agreement, dated September 8, 2010 (the **"Facilities Agreement"**), between the City and the Agency, to all of the provisions of each of which any Registered Owner hereof by the acceptance hereof thereby assents, for a description of the nature and extent of the security for the Bonds, the terms and conditions upon which the Agency my issue obligations thereunder, definitions of terms, the funds, taxes and revenues pledged to the payment of the principal or redemption price of and interest on the Bonds, the nature and extent and manner of enforcement of the pledge, the rights and remedies of the Registered Owner hereof with respect thereto; the terms and conditions upon which this Bond is issued; and the rights, duties and obligations of the Agency. Certified copies of the Resolution and the JPA Agreement are on file at the office of the agency and at the Designated Office (defined in the Resolution) of the Paying Agent.

At the option of the Agency, Bonds or portions thereof maturing on or after December 15, 20___ may be redeemed and paid prior to maturity at any time on or after December 15, 20___, as a whole or in part in such principal amounts and from such maturity or maturities as the Agency may determine (Bonds of less than a full maturity to be selected in multiples of $5,000 principal amount in such equitable manner as the Paying Agent shall designate) at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest on such principal amount to the redemption date.

[The Bonds maturing on _____, 20___ are subject to redemption prior to maturity in part by lot by operation of a mandatory sinking fund upon payment of such principal amount thereof plus accrued interest thereon to such date of redemption, but without premium on December 15 in each of the years and in the principal amounts set forth as follows:

Selection of any such bonds maturing _____, 20___, or portions thereof, to be redeemed by operation of a mandatory sinking fund shall be in the sole discretion of the Registrar.]

Notice of redemption, unless waived, is to be given by the Paying Agent by mailing an official redemption notice by first-class mail at least 30 days prior to the redemption date to the original purchaser

of the Bonds and each registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register maintained by the Paying Agent. Notice of redemption having been given as provided, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Agency defaults in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

The Bonds constitute general obligations of the Agency payable as to both principal and interest from (a) the Revenues (as defined in the Facilities Agreement) and (b) ad valorem taxes which may be levied in accordance with the provisions of the Act and the JPA Agreement upon all the taxable property within the City sufficient in rate and amount to pay the principal or redemption price of and interest on this Bond when and as the same become due.

The Bonds are issuable in the form of fully registered Bonds in the denominations of $5,000 or any integral multiple thereof.

This Bond may be transferred or exchanged, as provided in the Resolution, only on the Bond Register kept for that purpose at the Designated Office of the Paying Agent, upon surrender of this Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Paying Agent duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Bond or Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Resolution and upon payment of the charges therein prescribed. The Agency and the Paying Agent may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Resolution. One Bond certificate with respect to each date on which the Bonds are stated to mature or with respect to each form of Bonds, registered in the nominee name of The Depository Trust Company (the **"Securities Depository"**), is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository's participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Agency and the Paying Agent will recognize the Securities Depository nominee, while the registered owner of this Bond, as the owner of this Bond for all purposes, including (a) payments of principal or redemption price of and interest on this Bond, (b) notices and (c) voting. Transfer of principal or redemption price and interest payments to participants of the Securities Depository, and transfer of principal or redemption price and interest payments to beneficial owners of the Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The Agency and the Paying Agent will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Bond, notwithstanding the provision hereinabove contained, payments of principal or redemption price of and interest on this Bond shall be made in accordance with existing arrangements among the Agency, the Paying Agent and the Securities Depository.

EXCEPT AS OTHERWISE PROVIDED IN THE RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE

OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

ASSIGNMENT

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

_____

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

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

Dated: _____

_____

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

Signature Guaranteed By:

_____

(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15))

By: _____

Title: _____

EXHIBIT B

DESCRIPTION OF PROJECTS

West Haymarket Facilities (consisting of the following Projects)

(1) a sports/entertainment arena (the "**Arena**")

(2) roads, streets and sidewalks

(3) a pedestrian overpass

(4) public plaza space

(5) sanitary sewer mains

(6) water mains

(7) electric transmission lines

(8) drainage systems

(9) flood control

(10) parking garages

(11) surface parking lots

Related Projects (consisting of the following Projects)

(1) acquisition of land and relocation of existing businesses

(2) environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities

EXHIBIT C

FORM OF
BOND REGISTRAR AND PAYING AGENT AGREEMENT

WEST HAYMARKET JOINT PUBLIC AGENCY
(the **"Agency"**)

and

UNION BANK AND TRUST COMPANY
as Registrar and Paying Agent (the **"Registrar")**

RECITALS

A. The Agency, a joint public agency duly organized and validly existing under the laws of the State of Nebraska, including, without limitation, the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the **"Act"**) and of the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency dated as of April 1, 2010 between The City of Lincoln, Nebraska (the "**City**") and The Board of Regents of the University of Nebraska (the "**Regents**"), as amended and restated in the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency, dated January 10, 2011, between the City and the Regents (the **"Agreement"**), has duly authorized the issuance of $[Principal Amount] principal amount of its General Obligation Facility Bonds, Series 2013, dated the date of delivery, _____, 2013 (collectively, the **"Bonds"**) pursuant to a Resolution (the **"Resolution"**) passed by its Board of Representatives (the **"Board"**) and requires the services of a bond registrar and paying agent for the Bonds.

B. The Registrar is a state banking corporation having trust powers duly organized and validly existing under the laws of the State of Nebraska and is willing to provide services as bond registrar and paying agent pursuant to the terms of this Agreement and the Resolution in consideration for the compensation described herein.

NOW, THEREFORE, the Agency and the Registrar do hereby covenant and agree as follows:

Section 1. The Registrar agrees that it shall maintain on behalf of the Agency books of record in which the registered owners of the Bonds and their registered addresses shall be duly recorded.

Section 2. The Registrar agrees that it shall serve as paying agent for the Agency for the payment of principal and interest falling due on the Bonds. The Agency shall, not later than the business day prior to each principal and/or interest payment date on the Bonds, deposit with the Registrar an amount sufficient to make such payment and the Registrar shall apply such deposit by mailing a check or draft to each of the registered owners of the Bonds as shown on the books of record maintained pursuant to **Section 1** hereof for the appropriate amount of interest due on each respective Bond and pay principal and interest upon presentation of each respective Bond in accordance with the terms of the Resolution. The provisions of this **Section 2** are subject to the provisions of **Section 15** hereof with respect to the Bonds while they are held in book-entry form.

Section 3. The Registrar hereby accepts and agrees to perform all duties directed by the Resolution to be performed by the "Registrar" as defined in the Resolution and the terms of the Resolution are hereby

incorporated by reference. The Registrar acknowledges receipt of a copy of the Resolution. The Registrar acknowledges that the Agency may make deposits of money or securities as provided in **Section 701** of the Resolution. In the event of any such deposit, the compensation provided for under this Agreement shall not be altered or abated.

Section 4. The Agency shall furnish to the Registrar a sufficient supply of forms in blank of the Bonds to be issued upon transfer or partial redemption, signed by the facsimile signatures of the Chair and the Secretary and shall renew such supply pursuant to **Section 205** of the Resolution upon request of the Registrar.

Section 5. The Registrar shall make the initial registration of the Bonds upon written directions from the original purchaser thereof designated in the Resolution.

Section 6. Transfer of the Bonds shall be registered and new Bonds issued in replacement thereof pursuant to the limitations prescribed in the Resolution, upon surrender to the Registrar of any outstanding Bond in form deemed by the Registrar properly endorsed for transfer with all necessary signatures guaranteed in such manner and form as the Registrar may require by a signature guarantor reasonably believed by the Registrar to be responsible, accompanied by such assurances as the Registrar shall deem necessary or appropriate to evidence the genuineness and effectiveness of each necessary signature and, if deemed appropriate by the Registrar, satisfactory evidence of compliance with all applicable laws relating to the collection of taxes. In registering transfer of the Bonds, the Registrar may rely upon the Uniform Commercial Code or any other statutes which in the opinion of counsel protect the Registrar and the Agency in not requiring complete documentation, in registering bonds without inquiry into adverse claims, in delaying registration for purposes of such inquiry or in refusing registration where in Registrar's judgment an adverse claim requires such refusal.

Section 7. Replacement Bonds for any of the Bonds damaged, lost or stolen shall be issued by the Registrar upon receipt of documentation complying with the requirements of Sections 10-127 to 10-130, inclusive, Reissue Revised Statutes of Nebraska, as amended, acceptable to the Registrar.

Section 8. As provided by law, the books of registration maintained by the Registrar shall not be deemed public records and shall be available for inspection solely pursuant to a court order or a subpoena of any governmental agency having jurisdiction to issue such subpoena.

Section 9. At least annually the Registrar shall give a report to the Agency accounting for all funds received and disbursements made. The Registrar shall maintain customary records in connection with its exercise of its duties under this Agreement and the Resolution.

Section 10. At any time the Registrar may apply to the Agency for instructions and may consult with the Agency's attorney or the Registrar's own counsel in respect to any matter arising in connection with its duties under this Agreement and the Resolution and the Registrar shall not be liable or accountable for any action taken or omitted by it in good faith in accordance with such instructions or with the opinion of such counsel. The Registrar may rely on any paper or document reasonably believed by it to be genuine and to have been signed by the proper person or persons.

Section 11. The Agency hereby agrees to pay any expenses reasonably incurred by the Registrar in connection with the performance of its duties under this Agreement and the Resolution, including counsel fees, and in addition shall pay to the Registrar the compensation for its services as set forth on **Exhibit A** attached hereto.

Section 12. Any corporation or association into which the Registrar may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall, ipso facto, be and become successor Registrar hereunder

and vested with all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 13. The Agency shall have the right to remove the Registrar only in the event of a material breach of the Registrar's duties under this Agreement and the Resolution. In such event the Board shall have the right to designate a successor and the Registrar hereby agrees that it shall turn over all of its records with respect to the Bonds to any such successor upon request by the Agency.

Section 14. This Agreement shall terminate when the Bonds have been paid in full. The Registrar shall have no duties with respect to the investment of money paid to it under this Agreement and the Resolution. Any deposit of such money shall be either fully insured by insurance of the Federal Deposit Insurance Corporation or fully secured in the manner required by law for deposit of funds of the Agency. Any such deposit may be in an account maintained with the Registrar or an affiliate of the Registrar.

Section 15. Under the terms of the Resolution, the Bonds are to be issued initially in book-entry form using the services of The Depository Trust Company (the **"Depository"**). All of the Bonds shall be registered in the name of Cede & Co., as nominee for the Depository, with one typewritten bond for each separately stated maturity. The Registrar shall pay semiannual interest for any Bond registered as of each Record Date in the name of Cede & Co. by wire transfer to the Depository in accordance with its procedures as in effect from time to time. The Registrar agrees that it will execute and observe the terms and conditions of the Letter of Representations (the **"Letter of Representations"**) as authorized by the Resolution. The Letter of Representations may be in the form of separate undertakings executed by the Registrar and the Agency in connection with services provided by the Depository.

The Registrar and the Agency may treat the Depository (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to registered owners under the Resolution, registering the transfer of Bonds, obtaining any consent or other action to be taken by registered owners and for all other purposes whatsoever, and neither the Registrar nor the Agency shall be affected by any notice to the contrary. Neither the Registrar nor the Agency shall have any responsibility or obligation to any participant of the Depository (**"Participant"**), any person claiming a beneficial ownership interest in the Bonds under or through the Depository or any Participant, or any other person which is not shown on the registration books of the Registrar as being a registered owner, with respect to the accuracy of any records maintained by the Depository or any Participant; the payment by the Depository or any Participant of any amount in respect of the principal or redemption price of or interest on the Bonds; any notice which is permitted or required to be given to registered owners under the Resolution; the selection by the Depository or any Participant of any person to receive payment in the event of a partial redemption of the Bonds; or any consent given or other action taken by the Depository as registered owner. The Registrar shall make all payments of the principal or redemption price of and interest on the Bonds only to the Depository, and all such payments shall be valid and effective to fully satisfy and discharge the Agency's obligations with respect to the principal or redemption price of and interest on the Bonds to the extent of the sum or sums so paid. Except under the conditions directed below, no person other than the Depository shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the Agency to make payments of principal or redemption price of and interest on the Bonds pursuant to the Resolution. Upon delivery by the Depository to the Registrar of written notice to the effect that the Depository has determined to substitute a new nominee in the place of Cede & Co., and subject to the provisions in the Resolution with respect to Record Dates, the term "Cede & Co." in this Agreement shall refer to such new nominee of the Depository. If the Depository gives notice to the Agency or the Registrar pursuant to the Letter of Representations that it will discontinue providing its services as securities depository with respect to the Bonds, the Agency shall either appoint a successor securities depository or terminate the book-entry system for the Bonds under the following conditions:

(a) Any successor securities depository must be a clearing agency registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and must enter into an agreement with the Agency and the Registrar agreeing to act as the depository and clearing agency for all the Bonds. After such agreement has become effective, the Depository shall present the Bonds for registration of transfer in accordance with **Section 205** of the Resolution and the Registrar shall register them in the name of the successor securities depository or its nominee. If a successor securities depository has not accepted such position prior to the effective date of the Depository's termination of its services, the book-entry system shall automatically terminate, except as provided below in this **Section 15**.

(b) If the Agency elects to terminate the book-entry system for the Bonds, it shall so notify the Registrar in writing. Thereafter, upon presentation of the Bonds, or any of them, by the Depository or its nominee to the Registrar for registration of transfer in accordance with **Section 205** of the Resolution, the Registrar shall register the transfer in accordance with such **Section 205** of the Resolution and all provisions of this **Section 15** shall immediately cease to be in effect, except as provided below.

The Agency may elect to terminate the book-entry system for the Bonds at any time by giving written notice to the Depository and the Registrar. On the effective date of such termination, the provisions of this **Section 15** shall cease to be in effect, except that the Registrar shall continue to comply with applicable provisions of the Letter of Representations with respect to Bonds as to which the Depository remains the registered owner. After such termination, the Registrar shall, upon presentation of Bonds by the Depository or its nominee for registration of transfer or exchange in accordance with **Section 205** of the Resolution make such transfer or exchange in accordance with such **Section 205**. Upon the appointment of a successor securities depository or termination of the book-entry system, the Registrar shall give notice of such event to the registered owners of Bonds (through the Depository) which notice shall state either (1) the name and address of the successor securities depository or (2) that Bonds may now be obtained by the beneficial owners of the Bonds, or their nominees, upon proper instructions being given to the Depository by the relevant Participant and compliance by the Depository with the provisions of the Resolution regarding registration of transfers. Notwithstanding any other provision of this Agreement to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of the Depository (or any successor nominee), all payments with respect to the principal or redemption price of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Depository as provided in the Letter of Representations. In connection with any notice or other communication to be provided to registered owners to the Resolution by the Agency or the Registrar with respect to any consent or other action to be taken by registered owners, the Agency or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

Section 16. If any one or more of the covenants or agreements to be performed by either the Agency or the Registrar shall be determined by a court of competent jurisdiction to be unenforceable, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements contained herein and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 17. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 18. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Agency and the Registrar have each caused this Agreement to be executed by their duly authorized officers as of _____, 2013.

WEST HAYMARKET JOINT PUBLIC AGENCY

ATTEST:

By: _____
Chair

By: _____
Secretary

UNION BANK AND TRUST COMPANY

By: _____
Title:

EXHIBIT D-1

FORM OF
NOTICE OF SALE

$_____**

LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)
GENERAL OBLIGATION FACILITY BONDS
SERIES 2013

OFFICIAL NOTICE OF SALE

The Lincoln, Nebraska West Haymarket Joint Public Agency General Obligation Facility Bonds, Series 2013 (the **"Bonds"**), are being offered for sale in accordance with this Official Notice of Sale. Bids for the purchase of the Bonds will be received on behalf of the West Haymarket Joint Public Agency (the **"Agency"**) on the AICauction website (**"AICauction"**) at website address "www.aicauction.com" on **_____, 2013** between __:__ a.m. and __:__ a.m., Eastern Time or such other date and time as may be established by the Chair or her designee and communicated by Thomson Municipal Market Monitor (TM3) or on AICauction not less than 20 hours prior to the time bids are to be received. To bid, bidders must have (a) completed the registration form on the AICauction website, and (b) requested and received admission to the Agency's auction as described herein. The use of the AICauction shall be at the bidder's risk and expense, and the Agency shall have no liability with respect thereto.

_____, 2013

* Estimated, subject to change. Amounts may be increased or decreased after submission of bids as described under **"ADJUSTMENT OF PRINCIPAL AMOUNTS."**

BOOK-ENTRY
OFFICIAL NOTICE OF SALE

$_____*
LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)
GENERAL OBLIGATION FACILITY BONDS
SERIES 2013

Notice is hereby given that all-or-none bids will be received by the West Haymarket Joint Public Agency (the **"Agency"**) for the purchase of $_____* aggregate principal amount of Lincoln, Nebraska West Haymarket Joint Public Agency General Obligation Facility Bonds, Series 2013 (the **"Bonds"**), only on the AICauction website (**"AICauction"**) at website address "www.aicauction.com" between __:__ a.m. and __:__ a.m. Eastern Time on **_____, _____, 2013,** or on such other date and time as may be established by the Chair or her designee. The principal maturities of the Bonds, or any other provisions of this Official Notice of Sale may be amended by the Agency and communicated by Thomson Municipal Market Monitor (TM3) or through AICauction not less than 20 hours prior to the time the bids are to be received. To bid, bidders must have (a) completed the registration form on the AICauction website, and (b) requested and received admission to the Agency's auction as described under the heading **"REGISTRATION AND ADMISSION TO BID"** below. Use of the AICauction shall be at the bidder's risk and expense, and the Agency shall have no liability with respect thereto. All capitalized terms used herein which are not otherwise defined shall have the respective meanings set forth in the Preliminary Official Statement hereinafter identified.

FORM, MATURITY AND PAYMENT OF BONDS

The Bonds shall be issued in fully registered form in the denominations of $5,000 each or integral multiples thereof; shall be dated the date of delivery thereof (the **"Dated Date,"** currently anticipated to be _____, 2013); will bear interest from their Dated Date, payable on June 15 and December 15 of each year, commencing December 15, 2013, and shall mature on _____ in the years as set forth below in the approximate principal amounts set forth below:

Year	Principal Amount*	Year	Principal Amount*
	$		$

* Estimated, subject to change. Amounts may be increased or decreased after submission of bids as described under **"ADJUSTMENT OF PRINCIPAL AMOUNTS."**

Bonds of any maturities may be designated as term bonds; provided, however that no more than four term bond maturities may be specified in any bid.

BOOK-ENTRY SYSTEM

The Bonds will be initially registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (**"DTC"**) under DTC's Book-Entry system of registration. Purchasers of interests in the Bonds (the **"Beneficial Owners"**) will not receive physical delivery of bond certificates and ownership by the Beneficial Owners of the Bonds will be evidenced by book-entry notations only. See **"APPENDIX __ – BOOK-ENTRY SYSTEM"** to the Preliminary Official Statement with respect to the Bonds posted on AICauction (the **"Preliminary Official Statement"**). As long as Cede & Co. is the registered owner of the Bonds as nominee of DTC, payments of principal and interest will be made directly to DTC which will in turn remit such payments to the DTC participants for subsequent disbursement to the Beneficial Owners.

ADJUSTMENT OF PRINCIPAL AMOUNTS

The amount of Bonds maturing in each year may be increased or decreased by no more than 10% so long as the aggregate principal amount of the Bonds does not exceed $_____.

In the event of such adjustment, no rebidding or recalculation of the bids for the Bonds will be permitted or required. The purchase price of the Bonds will be computed by taking the adjusted par amount of the Bonds and either subtracting the aggregate original issue discount or adding the aggregate original issue premium, as applicable, computed on the adjusted par amounts of each maturity of the Bonds and the prices provided by the underwriters. The Bonds of each maturity, as adjusted, will bear interest at the same rate and must have the same initial reoffering yields as specified for that maturity immediately after award of the Bonds by the successful bidder for the Bonds. However, the award will be made to the bidder whose bid produces the lowest true interest cost, calculated as specified below, solely on the basis of the Bonds offered, without taking into account any adjustment in the amount of Bonds pursuant to this paragraph.

TERM BOND OPTIONS

Any bidder may, at its option, specify that the stated maturities of the Bonds will consist of not to exceed four (4) term bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof (a **"Term Bond"**) as designated in the bid of such bidder. In the event that the bid of the successful bidder specifies that any maturity of the Bonds will be a Term Bond, such Term Bond will be subject to mandatory sinking fund redemption on December 15, in each applicable year, in the principal amount for such year as set forth under the heading **"FORM, MATURITY AND PAYMENT OF BONDS,"** or as adjusted as provided herein, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

OPTIONAL REDEMPTION

The Bonds are subject to optional redemption at the option of the Agency in whole or in part at any time on or after _____, 20__ in the principal amounts and from the maturity or maturities selected by the Agency and by lot integral multiples of $5,000 within a maturity at a redemption price

equal to 100% of the principal amount being redeemed, plus accrued interest on such principal amount to the date of redemption.

AUTHORITY AND PURPOSE

The Bonds are being issued under the authority of, and in full compliance with, the Constitution and statutes of the State of Nebraska, including, without limitation, (a) the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the **"Act"**) and (b) Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, between The City of Lincoln, Nebraska (the "**City**") and The Board of Regents of the University of Nebraska (the "**Regents**"), as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency, dated January 10, 2011 (collectively, the **"JPA Agreement"**), between the City and the Regents. The Bonds were authorized by the Bond Resolution adopted by the Board on March 22, 2013 (the **"Bond Resolution"**), for the purpose of paying (1) all or a portion of the costs of one or more Projects (hereinafter defined), including, without limitation, the purchase of general obligation bonds of the City issued to pay certain costs of one or more of such Projects, and (2) the costs of issuing the Bonds. The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena, (2) roads, streets and sidewalks, (3) a pedestrian overpass, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the **"West Haymarket Facilities"**), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the constructing, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized in the Bond Resolution, as the same may be amended from time to time, the **"Projects,"** and, individually, a **"Project"**).

SECURITY AND SOURCE OF PAYMENT

General

The principal or redemption price of and interest on the Bonds are general obligations of the Agency payable, unless paid from other sources, from taxes levied by the Agency on all taxable property in the City without limitation as to rate or amount pursuant to the provisions of the JPA Act and the JPA Agreement. See **"NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION"** in the Official Statement.

JPA Agreement

Under the JPA Agreement, the City has irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid under the Bond Resolution, its authority pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, to cause the levy of taxes within the City (the **"Agency Bond Levy"**), beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the Project in an amount to be levied solely for the purpose of paying the principal or redemption price of and interest on the Bonds. The Agency Bond Levy is unlimited as to both rate and amount and, if levied, (a) would be levied on all the taxable property within the corporate limits of the City and (b) would not affect the ability of the City to levy property taxes.

The JPA Agreement obligates the Agency to certify the Agency Bond Levy to The County of Lancaster, Nebraska in its budget statement as provided in the Nebraska Budget Act, Sections 13-501 to 13-513, Reissue Revised Statutes of Nebraska, as amended, for levy and collection in such amounts, if any, as may be required to pay the principal or redemption price of and interest on the Bonds as the same become due. No further action is required to implement the Agency Bond Levy. All taxes collected under the Agency Bond Levy shall be credited to the Agency as soon as practicable.

Facilities Agreement

The Facilities Agreement provides that in the event that 30 days prior to the payment date of any principal or interest on the Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest at a rate equal to the current interest rate received by the City on its investment pool (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon, shall be repaid to the City (a) first, from the first receipts of Revenues, and (b) second, from taxes levied and collected by the Agency pursuant to the provisions of the Facilities Agreement. If the projected actual Available Revenues (defined to be all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund) for the fiscal year are less than the budgeted Available Revenues for such fiscal year by $1,000,000 or more, the Agency is obligated to implement the Agency Bond Levy. See **"THE AGENCY," "SECURITY," "NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION," "APPENDIX __ - SUMMARY OF PRINCIPAL DOCUMENTS - JPA Agreement"** and **"- Bond Resolution," "APPENDIX __ – PROJECTED CASH FLOWS"** in the Official Statement.

Operating Agreement

Pursuant to a Memorandum of Understanding, dated as of March 31, 2010 (the **"MOU"**), between the City and The Board of Regents of the University of Nebraska (the **"Regents"**), the Regents have agreed to lease the Arena to play the University of Nebraska-Lincoln men's and women's varsity basketball home games for a term of 30 years which is anticipated to begin on September 1, 2013. The terms of the MOU will be formalized through an Operating Agreement between the City and the Regents, which is expected to be executed and delivered by the parties by November, 2011. Other than the payment of rent for its use of the Arena pursuant to the Operating Agreement, the Regents have no obligation for any payments to the Agency, including, without limitation, payment of the principal or redemption price of and interest on the Bonds. See **"APPENDIX __ - SUMMARY OF PRINCIPAL DOCUMENTS - Operating Agreement"** in the Official Statement.

INTEREST RATES

Bidders shall specify rates of interest on the basis of a 360-day year consisting of twelve (12) thirty (30) day months, expressed in multiples of 1/8 or 1/20 of 1% per annum, with the same single interest rate for any one maturity. The use of split or supplemental interest coupons will not be considered and a zero rate or blank rate will not be permitted. All Bonds maturing on the same date shall bear the same rate of interest.

CERTIFICATION AS TO REOFFERING PRICES

To provide the Agency with the information necessary to comply with Section 148 of the Internal Revenue Code of 1986, as amended (the **"Code"**), the successful bidder will be required to complete, execute and deliver to the Agency prior to the delivery of the Bonds, a certificate (the **"Closing Certificate"**) containing the following: (a) the initial offering price and interest rate for each maturity of the Bonds; and (b) representations that (1) all of the Bonds of each maturity were offered to the public in a bona fide public offering at the initial offering prices on the date the successful bidder's bid was accepted (the **"Sale Date"**), and (2) on the Sale Date the successful bidder reasonably expected that at least 10% of each maturity of the Bonds would be sold to the public at prices not higher than the initial offering prices. For purposes of the preceding sentence "public" means persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. A form of the Closing Certificate is attached hereto as **Exhibit B**. In the alternative, if any maturity of Bonds is not reoffered for sale, the Closing Certificate may instead provide that the successful bidder has purchased such maturity for its own account in a capacity other than as an underwriter or wholesaler, and currently has no intent to reoffer such maturity for sale.

At the request of the Agency, the successful bidder will provide information explaining the factual basis for the successful bidder's Closing Certificate. This agreement by the successful bidder to provide such information will continue to apply after the issue date of the Bonds if (1) the Agency requests the information in connection with an audit or inquiry by the Internal Revenue Service or the Securities and Exchange Commission or (2) the information is required to be retained by the Agency pursuant to future regulation or similar guidance from the Internal Revenue Service, the Securities and Exchange Commission or other federal or state regulatory authority. Nothing contained in this paragraph will compel the bidder to disclose to the Agency information identifying the purchaser of any bond in violation of the bidder's general policy of protecting client confidentiality.

GOOD FAITH DEPOSIT

The successful bidder will be required to wire $1,000,000 to the Agency as bid security (the "Deposit") by __:__ p.m., Eastern Time, on _____, 2013. The Agency will contact the successful bidder to provide wire instructions for the bid security. The Deposit will be retained by the Agency and: (a) will be applied, without allowance for interest, against the purchase price when the Bonds are actually delivered to and paid for by such successful bidder; or (b) will be retained by the Agency as liquidated damages if the bidder defaults with respect to the bid; or (c) will be returned to the bidder with interest at the rate of 1% per annum if the Bonds are not issued by the Agency for any reason which does not constitute a default by the bidder. The balance of the purchase price shall be paid in Federal Funds.

REGISTRATION AND ADMISSION TO BID

To bid, bidders must first visit the AICauction website to register, if necessary, and request admission to bid on the Bonds. Bidders will be notified prior to the scheduled bidding time of their eligibility to bid. Only NASD-registered broker-dealers and dealer banks with DTC clearing arrangements will be eligible to bid. The Agency will determine whether any request for admission is granted. Bidders who have previously registered with MuniAuction may call MuniAuction at (412) 391-5555, extension 370 (auction support) for their ID Number or password.

BIDDING PROCEDURES

All bids must be submitted on the AICauction at www.aicauction.com. No telephone, facsimile, telegraph or personal delivery bids will be accepted. Bidders may change and submit bids as many times as they like during the auction; provided, however, each submitted bid, other than a bidder's initial bid, must result in a lower true interest cost (**"TIC"**), when compared to the immediately preceding bid of such bidder. The last bid submitted by a bidder before the end of the auction will be compared to all other final bids submitted by others to determine the winning bidder. During the bidding, no bidder will see any other bidder's bid, but each bidder will see their rank order (i.e., leader, cover, third, etc.). During the bidding, bidders will be able to see whether any bid has been submitted for the Bonds.

Bidders should verify the accuracy of their final bids and compare them to the winning bids reported on the AICauction Observation Page immediately after the auction.

RULES OF AICAUCTION

The Rules of AICauction can be viewed on AICauction and are incorporated herein by reference. If the Rules of AICauction conflict with this Official Notice of Sale, this Official Notice of Sale shall govern. In addition to the requirements of this Official Notice of Sale, bidders must comply with the Rules of AICauction set forth below:

(a) A bidder submitting a winning bid is irrevocably obligated to purchase the Bonds at the rates and prices of the winning bid, if acceptable to the Agency. The Bonds are not officially awarded to the winning bidder until its bid is formally accepted by the Agency. The Agency anticipates awarding the Bonds within an hour after the close of bidding.

(b) Neither Ameritas Investment Corp. (**"AIC"**) nor MuniAuction (the **"Auction Administrator"**) is responsible for technical difficulties that result in loss of a bidder's internet connection with AICauction, a delay in the transmission of a bid, or any other technical problems.

(c) If for any reason a bidder is disconnected from the Auction Page during the auction after having submitted a winning bid, such bid is valid and binding upon the bidder unless the Agency exercises its right to reject bids as set forth herein.

(d) Bids generating error messages are not accepted until the error is corrected and the bid is received prior to the deadline.

(e) Bidders accept and agree to abide by all terms and conditions specified in this Official Notice of Sale including any amendment hereto (the **"Amendments"**).

(f) Neither AIC nor the Auction Administrator is responsible to any bidder for any defect or inaccuracy in this Official Notice of Sale, the Amendments, or the Preliminary Official Statement as each appears on AICauction.

(g) Only bidders who request and receive admission to an auction may submit bids. AIC and the Auction Administrator reserve the right to deny access to AICauction to any bidder,

whether registered or not, at any time and for any reason whatsoever, in their sole and absolute discretion.

(h) Neither AIC nor the Auction Administrator is responsible for protecting the confidentiality of a bidder's AICauction password.

(i) If a new leading bid is submitted with two minutes or less remaining for the auction, the auction will be automatically extended by two minutes from the time such new leading bid was received by AICauction. The auction end time will be extended indefinitely until a single leading bid remains the leading bid for at least two minutes.

(j) If two bids submitted in the same auction by the same or different bidders result in the same TIC, the first bid received by AICauction prevails. Any change to a submitted bid constitutes a new bid regardless of whether there is a corresponding change in the TIC or yield to maturity.

(k) Bidders must compare their final bids to those shown on the Observation Page immediately after the bidding period ends, and any disagreement with the final results shown on the Observation Page must be reported to AICauction within 15 minutes after the bidding period ends. Regardless of the final results reported by AICauction, Bonds are definitively awarded to winning bidders only upon official award by the Agency. If, for any reason, the Agency fails to (1) award the Bonds to the winner reported by AICauction or (2) deliver Bonds to winning bidder(s) at settlement, none of AIC, the Auction Administrator, or the Agency will be liable for damages.

TERMS OF BID AND BASIS OF AWARD

Proposals must be unconditional for the purchase of all of the Bonds. The aggregate purchase price, inclusive of (a) net original issue discount or premium and (b) underwriter's discount, may not be greater than 105.0% nor less than 98.00% of the principal amount of the Bonds, and the underwriting discount shall not exceed 1.50%. No bid offering to purchase the Bonds with true interest cost on the Bonds exceeding 4.75% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months, will be considered.

Subject to the timely receipt of the good faith deposit set forth above, the Bonds will be awarded to the bidder offering to purchase all of the Bonds at the lowest TIC. The TIC is the discount rate (expressed as a per annum percentage rate) which, when used in computing the present value of all payments of principal and interest to be paid on the Bonds, as of the Dated Date, produces an amount equal to the aggregate price bid, including adjustments for premium or discount, if any. Present value will be computed on the basis of semiannual compounding and a 360-day year of twelve 30-day months. For purposes hereof, sinking fund installments for any Term Bonds shall be considered as serial maturities. The TIC must be calculated to six (6) decimal places. Bidders are requested to supply an estimate of the TIC for the Bonds on the Official Bid Form or the AICauction website, computed as specified herein on the basis of their respective bids, which shall be considered as informative only and not binding on either the bidder or the Agency. The Agency will compute TIC for each bid, based on the bid price and the interest rates specified, and the Agency's computation will be conclusive. If there is any discrepancy between the TIC specified by a bidder and the actual TIC computed by the Agency, the TIC computed by the Agency will govern, and the bidder will be bound by its specified bid price and interest rates. If two or more proper bids produce equal values for the lowest TIC, the Treasurer of

the Agency will determine in his or her discretion which bid, if any, will be accepted, and such determination will be final.

THE AGENCY RESERVES THE RIGHT TO REJECT ALL BIDS OR ANY BID NOT CONFORMING TO THIS OFFICIAL NOTICE OF SALE OR NOT SUBMITTED IN THE FORM OF THE OFFICIAL BID FORM. THE AGENCY ALSO RESERVES THE RIGHT TO WAIVE, IF PERMITTED BY LAW, ANY IRREGULARITY OR INFORMALITY IN ANY PROPOSAL. THE AGENCY SHALL NOT REJECT ANY CONFORMING BID, UNLESS ALL CONFORMING BIDS ARE REJECTED.

VERIFICATION; RIGHT OF REJECTION

Bidders should verify the accuracy of their final bids and compare them to the winning bids reported on the AICauction Observation Page immediately after the auction.

The Agency reserves the right to reject any and all bids, to waive any irregularity or informality in any bid, to take any action adjourning or postponing the sale of the Bonds or to take any other action the Agency may deem to be in its best interest.

OPTIONAL BOND INSURANCE

The Agency has **not** applied for any policy of municipal bond insurance with respect to the Bonds. If the Bonds qualify for municipal bond insurance, and any bidder desires to purchase such policy, such indication and the name of the desired insurer must be set forth on the bidder's Official Bid Form. The Agency specifically reserves the right to reject any bid specifying municipal bond insurance, even though such bid may result in the lowest TIC to the Agency. All costs associated with the issuance of such policy and associated ratings and expenses (other than the independent rating requested by the Agency) shall be paid by the successful bidder. Failure of the municipal bond insurer to issue the policy after the award of the Bonds shall not constitute cause for failure or refusal by the successful bidder to accept delivery of the Bonds.

STANDARD FILINGS AND CHARGES

The winning bidder will be required to make the standard filings and maintain the appropriate records routinely required pursuant to MSRB Rules G-8, G-11 and G-36. The winning bidder will be required to pay the standard MSRB charge for Bonds purchased. In addition, those who are members of the Bond Market Association (**"BMA"**) will be required to pay BMA's standard charge per bond.

CUSIP NUMBERS AND DTC ELIGIBILITY

It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such number on any Bonds nor any error with respect thereto shall constitute cause for failure or refusal by the successful bidder to accept delivery of and pay for the Bonds in accordance with their agreement to purchase the Bonds. **All expenses in relation to the printing of CUSIP numbers on the Bonds shall be paid for by the Agency; provided, however, that it shall be the responsibility of the successful bidder to timely obtain and pay for the assignment of such CUSIP numbers.**

It is anticipated that the Bonds will be issued in book-entry only form and eligible for custodial deposit with DTC; however, it will be the responsibility of the successful bidder to obtain such eligibility. Failure of the successful bidder to obtain DTC eligibility shall not constitute cause for failure or refusal by the successful bidder to accept delivery of and pay for the Bonds in accordance with its agreement to purchase the Bonds.

DELIVERY OF BONDS

The Agency will pay the cost of preparing the Bonds. Delivery of and payment for the Bonds will be made on or about _____, 2013 (the **"Date of Delivery"**) in New York, New York, or such other time and place mutually acceptable to the successful bidder and the Agency. Payment of the full purchase price, less the Deposit, shall be made to the Agency at the closing, in Federal Reserve Funds of the United States of America, without cost to the Agency.

The legal opinion of Gilmore & Bell, P.C., Lincoln, Nebraska (**"Bond Counsel"**) will be furnished without charge to the successful bidder at the time of delivery of the Bonds. A supplemental legal opinion of Bond Counsel concerning certain matters concerning the Official Statement will also be provided to the successful bidder without charge.

There will also be furnished at the time of delivery of the Bonds, a certificate or certificates (which may be included in a consolidated closing certificate) relating to the accuracy and completeness of the Official Statement; and stating, among other things, that there is no litigation or administrative action or proceeding pending or, to the knowledge of the Agency, threatened, at the time of delivery of the Bonds, (a) to restrain or enjoin or seeking to restrain or enjoin the issuance and delivery of the Bonds or (b) affecting the validity of the Bonds, and that the Preliminary Official Statement has been deemed by the Agency to be a "final official statement" for purposes of SEC Rule 15c2-12(b)(3) and (4).

The successful bidder will be responsible for the clearance or exemption with respect to the status of the Bonds for sale under the securities or "Blue Sky" laws of the several states and the preparation of any surveys or memoranda in connection with such sale.

DISCLOSURE; AMENDMENTS TO NOTICE OF SALE; NOTIFICATION OBLIGATIONS OF PURCHASER

This Official Notice of Sale is not intended as a disclosure document and bidders are required to obtain and carefully review the Preliminary Official Statement before submitting a bid.

This Official Notice of Sale may be amended from time to time after its initial publication by publication of Amendments on the Amendment Page or by Thomson (TM3) Municipal Market Monitor

not less than 20 hours prior to the time bids are to be received. Each bidder will be charged with the responsibility of obtaining any Amendments and complying with the terms thereof.

The successful bidder shall verify in writing to the Agency its bid by executing **Exhibit A** hereto and attaching a printed copy of its winning bid as reported on the Observation Page.

OFFICIAL STATEMENT

The Agency shall furnish at its expense within seven Business Days after the Bonds have been awarded to the successful bidder, or at least five Business Days before closing, whichever is earlier, up to 100 copies of the final Official Statement, which, in the judgment of the financial advisor to the Agency will permit the successful bidder to comply with applicable SEC and MSRB rules. The Agency will at its expense ship the final Official Statements to no more than five separate addresses. The successful bidder may arrange for additional copies of the final Official Statement or shipment to additional addresses at its expense.

CONTINUING DISCLOSURE

In order to assist bidders in complying with SEC Rule 15c2-12, the Agency and the City will undertake to provide, or cause to be provided, certain financial information and operating data and to provide notices of certain material events. The Agency and the City have covenanted to provide certain financial information and operating data relating to the Agency by not later than _____ of each year (the **"Annual Report"**), commencing _____, 2013, and to provide notices of the occurrence of certain enumerated events, if material. The Annual Report and notices of material events will be filed by the Agency and the City or the dissemination agent with the Electronic Municipal Market Access established by the Municipal Securities Rulemaking Board or any successor thereto, or any other conduit entity recognized, authorized or approved by the Securities and Exchange Commission for the submission of Annual Reports and Material Events notices. The proposed form of such undertaking is contained in the Preliminary Official Statement. A copy of the undertaking will be made available to the successful bidder by facsimile transmission prior to the delivery of the Bonds and will be included in the transcript of proceedings relating to the issuance of the Bonds.

DISCLOSURE INFORMATION

The Preliminary Official Statement, as supplemented and amended by this Official Notice of Sale, is "deemed final" (except for permitted omissions) by the Agency in accordance with SEC Rule 15c2-12 and is available only on AICAuction at www.aicauction.com. The Official Bid Form is also available only on AICauction at www.aicauction.com. Questions concerning the Preliminary Official Statement may be addressed to Steve Hubka, Treasurer, West Haymarket Joint Public Agency, 555 South 10th Street, Lincoln, Nebraska 68508, (402) 441-7411 (shubka@lincoln.ne.gov) or to the financial advisor to the Agency, Ameritas Investment Corp., 5900 "O" Street, First Floor, Lincoln, Nebraska, 68510, (402) 467-6948, Attention: Scott Keene (skeene@ameritas.com), before a bid is submitted. Any questions concerning AICauction should be directed to MuniAuction, Inc. at (412) 391-5555, extension 370 (auction support).

WEST HAYMARKET JOINT PUBLIC AGENCY

By: /s/ Steve Hubka
Treasurer

[EXHIBIT A TO FORM OF NOTICE OF SALE]

OFFICIAL BID FORM

$_____*

LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)
GENERAL OBLIGATION FACILITY BONDS,
SERIES 2013

West Haymarket Joint Public Agency _____, 2013
555 South 10th Street
Lincoln, Nebraska 68508

Ladies and Gentlemen:

On behalf of the undersigned and any underwriting syndicate which we have formed and lead, and in accordance with the terms and conditions of the attached Official Notice of Sale, dated _____, 2013, which is hereby made a part of this proposal, we offer to purchase all of the $_____* Lincoln, Nebraska West Haymarket Joint Public Agency General Obligation Facility Bonds, Series 2013 (the **"Bonds"**). We will pay as the purchase price thereof, the aggregate sum of _____ _____ _____Dollars ($_____)[1], in immediately available Federal Funds. The Bonds will be dated the date of delivery thereof, and shall bear interest from such date and shall be payable semiannually commencing on June 15 and December 15 of each year, beginning December 15, 2013, until maturity or prior redemption. The Bonds shall mature on _____ in the years and be subject to mandatory sinking fund redemption (if Term Bonds are specified by the bidder) in the amounts, and bear interest at the respective interest rates per annum, all as stated in the following schedule:

Year	Principal Amount*[1]	Annual Rate of Interest	Price[2]	Year	Principal Amount*[1]	Annual Rate of Interest	Price[2]
	$				$		

* Preliminary, subject to change.
(1) Subject to adjustment as provided in the Official Notice of Sale.
(2) Subject to restrictions as provided in the Official Notice of Sale.

Bonds of any maturities may be designated as Term Bonds; provided, however, that no more than four Term Bond maturities may be specified in any bid.

The principal installments for the Bonds indicated above, shall be applied for the mandatory retirement of up to four (4) Term Bonds maturing in the years and amounts and bearing interest as follows:

$_____ Term Bonds maturing on _____, 20___ at _____% per annum to yield _____% per annum

$_____ Term Bonds maturing on _____, 20___ at _____% per annum to yield _____% per annum

$_____ Term Bonds maturing on _____, 20___ at _____% per annum to yield _____% per annum

$_____ Term Bonds maturing on _____, 20___ at _____% per annum to yield _____% per annum

Subject to your acceptance of our Official Bid, we agree to make a bona fide public offering of all the Bonds at yields not lower than those set forth in the above maturity schedule. Our calculation, made as provided in the Official Notice of Sale, of the true interest cost to the Agency is _____%. This estimate is for information purposes only and is not binding on the Agency or the undersigned.

In accordance with the Official Notice of Sale, $_____ will be wired to the Agency by __:__ p.m., Eastern Time, on _____, 2013 (the **"Deposit"**). The Deposit will be applied or returned in accordance with the provisions of the Official Notice of Sale.

It shall be a condition of our obligation as the successful bidder to accept delivery of, and pay for, the Bonds that, contemporaneously with, or before accepting, the Bonds and paying for them, we shall receive the Closing Documents specified in the Official Notice of Sale.

We hereby acknowledge receipt of the Preliminary Official Statement for the Bonds "deemed final" (except for permitted omissions) by the Agency.

We hereby request that _____ copies of the Official Statement (and any supplement thereto) be furnished to us in accordance with the Official Notice of Sale.

We agree to provide a list of all syndicate members by facsimile transmission upon notification of our successful bid. Receipt of such list shall be a condition precedent to the award of the Bonds.

If we elect to obtain a policy of bond insurance for the Bonds, the policy will be issued by _____.

It is understood and agreed that an award will be made for all or none of the Bonds and that the principal amount of the Bonds and our purchase price as bid may be adjusted as provided in the Official Notice of Sale, the terms of which are incorporated herein by reference.

If the foregoing is acceptable to you, please signify by signing and returning a copy of this Official Bid Form to the undersigned bidder whereupon it will become a binding agreement between us.

Respectfully submitted,

_____
Bidder

By: _____

Accepted and agreed to _____, 2013

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Treasurer

(No addition or alteration, except as provided above, is to be made to this Official Bid Form and it must not be detached from the attached Official Notice of Sale.)

[EXHIBIT B TO FORM OF NOTICE OF SALE]

CLOSING CERTIFICATE
[UNDERWRITER]

$_____
LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)
GENERAL OBLIGATION FACILITY BONDS
SERIES 2013

Dated: Date of Delivery ([Closing Date], 2013)

_____, acting on behalf of itself and the syndicate selling group, if any, created by it as purchaser (the **"Purchaser"**) of the above-described bonds (the **"Bonds"**) being issued on the date of this Closing Certificate pursuant to the Bond Resolution of the Agency (as amended and supplemented from time to time, the **"Resolution"**), certifies and represents as follows:

1. Receipt for Bonds. The Purchaser acknowledges receipt on the date of this Closing Certificate of the Bonds consisting of fully registered bonds in authorized denominations in a form acceptable to the Purchaser.

2. Public Offering. The initial offering price and interest rate for each maturity of the Bonds is attached to this Closing Certificate as **Schedule I.** All of the Bonds of each maturity were offered to the public in a bona fide public offering at the initial offering prices on the date our bid was accepted (the **"Sale Date"**). On the Sale Date, the Purchaser reasonably expected that at least 10% of each maturity of the Bonds would be sold to the public at prices not higher than the initial offering prices. For purposes of this paragraph, "public" means persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The aggregate offering price of the Bonds is $_____, plus accrued interest, if any. At the request of the Agency, the Purchaser will provide information explaining the factual basis for the Purchaser's certifications in this paragraph if (1) the Agency requests the information in connection with an audit or inquiry by the Internal Revenue Service or the Securities and Exchange Commission or (2) the information is required to be retained by the Agency pursuant to future regulation or similar guidance from the Internal Revenue Service, the Securities and Exchange Commission or other federal or state regulatory authority. Nothing contained in this paragraph will compel the bidder to disclose to the Agency information identifying the purchaser of any bond in violation of the Purchaser's general policy of protecting client confidentiality.

3. Book-Entry Form. The Purchaser has taken all actions necessary to qualify the Bonds as book-entry bonds with The Depository Trust Company (**"DTC"**), New York, New York, and has received verbal confirmation from DTC that the Bonds have been issued in book-entry form.

This Closing Certificate may be relied upon by the Agency in executing and delivering the Federal Tax Certificate, and by Gilmore & Bell, P.C., Bond Counsel, in rendering its opinion relating to the exclusion of the interest on the Bonds from gross income for Nebraska tax purposes.

Dated: [Closing Date], 2013.

[PURCHASER NAME]

By: _____
Title:

EXHIBIT D-2

FORM OF
BOND PURCHASE AGREEMENT

GILMORE & BELL, P.C.
DRAFT #1

$_____
WEST HAYMARKET JOINT PUBLIC AGENCY
GENERAL OBLIGATION FACILITY BONDS
SERIES 2013

[Sale Date], 2013

BOND PURCHASE AGREEMENT

Board of Representatives
West Haymarket Joint Public Agency
Lincoln, Nebraska

Ladies and Gentlemen:

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, the undersigned, [Underwriter Name] (the **"Purchaser"**), hereby offers to purchase $_____ aggregate principal amount of General Obligation Facility Bonds, Series 2013 (the **"Bonds"**), to be issued by the West Haymarket Joint Public Agency in the State of Nebraska (the **"Agency"**) under and pursuant to a resolution adopted by the Board of Representatives of the Agency (the **"Board"**) on March 22, 2013 (the **"Resolution"**). Capitalized terms used herein shall have the meanings set forth in the Resolution unless some other meaning is plainly indicated.

This offer is made subject to acceptance of this Bond Purchase Agreement by the Agency on or before 11:59 p.m., Central time, on [Sale Date], 2013.

SECTION 1. AGENCY'S REPRESENTATIONS AND WARRANTIES

By acceptance hereof, the Agency hereby represents and warrants to the Purchaser as follows:

(a) The Agency is a political subdivision and a public body corporate and politic duly organized and existing under the laws of the State of Nebraska (the "**State**") and is authorized and empowered pursuant to (1) the Constitution and statutes of the State, including, without limitation, the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "**JPA Act**") and (2) the Joint Public Agency Agreement Creating the West Haymarket Joint Public

Agency, dated as of April 1, 2010, between The City of Lincoln, Nebraska (the "**City**") and The Board of Regents of the University of Nebraska (the "**Regents**"), as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency, dated January 10, 2011 (collectively, the **"JPA Agreement"**), between the City and the Regents, to issue and sell the Bonds pursuant to the Resolution for the purposes specified therein.

(b) The Agency has complied with all provisions of (1) the Constitution and the laws of the State, including, without limitation, the JPA Act, and (2) the JPA Agreement and has full power and authority to consummate all transactions contemplated by this Bond Purchase Agreement, the Resolution, the JPA Agreement and the Facilities Agreement, dated September 8, 2010 (the **"Facilities Agreement"**) between the City and the Agency, and all authorizations, approvals, consents and orders of any governmental authority (including, without limitation, the City), legislative body, board, agency or official having jurisdiction over the subject matter have been duly obtained timely as required (except for any approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Bonds).

(c) The Agency has duly authorized by all necessary action to be taken by the Agency (1) the adoption and performance of the Resolution; (2) the execution, delivery and performance of the Bonds, this Bond Purchase Agreement, the Facilities Agreement, the Tax Agreement, the Registrar Agreement, and the Continuing Disclosure Undertaking; (3) the approval of the Official Statement (hereinafter defined); (4) the execution and performance of any and all such other agreements and documents as may be required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Resolution, the JPA Agreement, the Facilities Agreement, the Tax Agreement, the Registrar Agreement, the Continuing Disclosure Undertaking, this Bond Purchase Agreement and the Official Statement (collectively, the **"Bond Documents"**); and (5) the carrying out, giving effect to and consummation of the transactions contemplated by the Bond Documents. Executed counterparts of the Resolution and all such other agreements and documents specified herein will be delivered to the Purchaser by the Agency at the Closing Time (hereinafter defined).

(d) The Bond Documents, when adopted or executed and delivered by the Agency, as appropriate, will be the legal, valid and binding obligations of the Agency enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the Agency and further subject to the availability of equitable remedies.

(e) The Bonds have been duly authorized by the Agency, and when issued, delivered and paid for as provided for herein and in the Resolution, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding general obligations of the Agency. issued pursuant to the JPA Act, the JPA Agreement, the Facilities Agreement and the Resolution, enforceable in accordance with their terms and entitled to the benefits and security of the Resolution and the Facilities Agreement (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the Agency and further subject to the availability of equitable remedies). Pursuant to the JPA Agreement, the City has assigned and allocated to the Agency its authority to levy ad valorem property taxes for the purposes of paying the principal or redemption price of and interest on the Bonds (the "**Agency Bond Levy**"). The Bonds shall be payable as to both principal and interest from General Account of the Revenue Fund, and to the extent such revenues are insufficient, from the Agency Bond Levy as provided in the Facilities Agreement.

(f) The adoption or execution and delivery, as appropriate, of the Bond Documents and the Bonds and compliance with the provisions thereof, will not conflict with or constitute on the part of the Agency a violation or breach of, or a default under, any existing law, regulation, court or administrative decree or order, or any agreement, resolution, mortgage, lease or other instrument to which it is subject or by which it is or may be bound.

(g) The adoption of the Resolution and the execution and delivery of the Bonds and the Bond Documents and the other agreements contemplated hereby and by the Official Statement(hereinafter defined) , and compliance with the provisions thereof, will not conflict with or constitute on the part of the Agency a breach of or a default under any existing law, court or administrative regulation, decree or order or any resolution, agreement, indenture or other instrument to which the Agency is subject or by which it is or may be bound nor will such execution and delivery or performance and compliance with the terms thereof result in the creation or imposition of any lien, charge or other encumbrance of any nature whatsoever upon any of its property or assets except as provided in the Bonds, the JPA Agreement, the Resolution and the Facilities Agreement. The Agency is not, or with the giving of notice or lapse of time or both would not be, in violation of or in default under any indenture, mortgage, deed of trust, loan agreement, bonds or other agreement or instrument to which the Agency is a party or by which it is or may be bound, except for violations and defaults which individually and in the aggregate are not material to the Agency and will not be material to the holders of the Bonds. As of the Closing Time (hereinafter defined), no event will have occurred and be continuing which with the lapse of time or the giving of notice, or both, would constitute an event of default under the Resolution or the Bonds.

(h) The information contained in the Preliminary Official Statement, dated _____, 2013 (the **"Preliminary Official Statement"**), as amended and supplemented by the Official Statement, dated [Sale Date], 2013 (the **"Final Official Statement"**), and in any amendment or supplement thereto that may be authorized for use by the Agency with respect to the Bonds (collectively, the **"Official Statement"**), relating to (1) the organization, operations, and financial and other affairs of the Agency, (2) the financial statements referred to in **Section 1(j)** hereof, (3) application by the Agency of the proceeds to be received by it from the sale of the Bonds, and (4) the Agency's participation in the transactions contemplated by the Bond Documents is, and as of the Closing Time (hereinafter defined) will be, true, correct and complete in all material respects and does not omit and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(i) For the purpose of enabling the Purchaser to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, promulgated under the Securities Exchange Act of 1934, as amended (the **"1934 Act"**), the Agency hereby deems the information contained in the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), such as offering prices, interest rates, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, identity of the underwriters and other terms of the Bonds depending on such matters.

(j) The financial statements (1) of the Agency for the fiscal year ended August 31, 2012, audited by BKD, LLP, contained in Appendix __ of the Official Statement, and (2) of the City for the fiscal year ended August 31, 2012, audited by BKD LLP, contained in Appendix __ of the Official Statement, except as noted therein, present fairly and accurately the financial condition of the City as of the date indicated and the results of its operations for the period specified, and such financial statements are prepared in conformity with generally accepted accounting principles consistently applied in all material respects for the periods involved.

(k) The Agency has not, since its inception, incurred any material liabilities and there has been no material adverse change in the condition of the Agency, financial or otherwise, other than as set forth in the Official Statement.

(l) The Agency is authorized under Section 13-2531, Reissue Revised Statutes of Nebraska, as amended, to incur indebtedness and issue and sell bonds of the Agency to evidence such indebtedness for lawful purposes.

(m) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Agency, threatened against or affecting the Agency (or, to its knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bond Documents or the validity of the Bonds, the Bond Documents or any other agreement or instrument to which the Agency is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Bond Documents.

(n) The Agency has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Agency is a bond issuer whose arbitrage certifications may not be relied upon.

Any certificate signed by any of the authorized officials of the Agency and delivered to the Purchaser in connection with the Closing shall be deemed a representation and warranty by the Agency to the Purchaser as to the statements made therein.

SECTION 2. COVENANTS AND AGREEMENTS OF THE AGENCY

The Agency covenants and agrees with the Purchaser for the time period specified, and if no period is specified, for so long as any of the Bonds remain outstanding, as follows:

(a) To cooperate with the Purchaser and its counsel in any reasonable endeavor to qualify the Bonds for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States of America (the **"United States"**) as the Purchaser may reasonably request; provided that nothing contained herein shall require the Agency to file written consents to suit or written consents to service of process in any jurisdiction in which such consent may be required by law or regulation so that the Bonds may be offered or sold. The Agency consents to the use of drafts of the Preliminary Official Statement, the Preliminary Official Statement and drafts of the Final Official Statement prior to the availability of the Final Official Statement by the Purchaser in obtaining such qualification. The Purchaser shall pay all expenses and costs (including legal, registration and filing fees) incurred in connection therewith.

(b) If, prior to the earlier of (1) 90 days after the "end of the underwriting period" (as defined in Rule 15c2-12 under the 1934 Act) or (2) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case earlier than 25 days after the end of the underwriting period, any event shall occur as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein, in light of the circumstances existing when the Official Statement is delivered to a purchaser, not materially misleading, or the Official Statement is required to be amended or supplemented to comply with law, the Agency shall promptly prepare and furnish, at the expense of the Agency, to the Purchaser and to the dealers (whose names and addresses the Purchaser will furnish to the Agency) to which Bonds may have been sold by the Purchaser and to any other dealers upon request, such amendments or supplements to the Official Statement as may be necessary so that the statements in the Official Statement as so amended or

supplemented will not, in light of the circumstances existing when the Official Statement is delivered to a purchaser of the Bonds, be misleading or so that the Official Statement will comply with law.

(c) Within seven business days after the date of this Bond Purchase Agreement or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, the Agency shall provide to the Purchaser sufficient copies of the Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(b)(4) under the 1934 Act, and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

(d) From the date hereof until the Closing Time (hereinafter defined), the Agency shall furnish the Purchaser with a copy of any proposed amendment or supplement to the Official Statement for review and shall not to use any such proposed amendment or supplement to which the Purchaser reasonably objects.

(e) The proceeds of the Bonds will be used as provided in the Resolution for the purpose of paying (1) all or a portion of the costs of one or more Projects (as defined in the Resolution), including, without limitation, the purchase of general obligation bonds of the City issued to pay certain costs of one or more of such Projects, and (2) certain costs of issuing the Bonds.

SECTION 3. COVENANTS AND AGREEMENTS OF THE PURCHASER

The Purchaser intends to make an initial bona fide public offering of all of the Bonds at the prices set forth in **Schedule I** attached hereto; provided, however, that the Purchaser may subsequently change such offering price or prices. The Purchaser agrees to notify the Agency of such changes, if such changes occur prior to Closing, but failure to so notify shall not invalidate such changes. The Purchaser may offer and sell the Bonds to certain dealers (including dealers depositing Bonds into investment trusts) at prices lower than the principal amount thereof.

SECTION 4. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations, warranties, covenants and agreements contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, at the Closing Time (hereinafter defined) the Purchaser agrees to purchase from the Agency and the Agency agrees to sell to the Purchaser the Bonds at a purchase price of $_____, representing the par amount of the Bonds ($_____), [plus/less an original issue premium/discount in the amount of $_____, and] less an underwriting discount of $_____. The Bonds shall be issued under and secured as provided in the Resolution and the Facilities Agreement, and the Bonds shall have the maturities and interest rates and be subject to redemption as set forth in **Schedule 1** attached hereto and the Official Statement.

Payment for the Bonds shall be made by federal wire transfer or certified in immediately available federal funds payable to the order of the Agency for the account of the Agency, at the offices of Gilmore & Bell, P.C., Wells Fargo Center, Suite 710, 1248 "O" Street, Lincoln, Nebraska, at 10:00 a.m., local time, on [Closing Date], 2013, or such other place, time or date as shall be mutually agreed upon by the Agency and the Purchaser. Upon such payment, the Bonds shall be delivered and released upon the instructions of the Purchaser to The Depository Trust Company, New York, New York. The date of such delivery and payment is herein called the **"Closing Date,"** and the hour and date of such delivery and payment is herein called the **"Closing Time."**

The delivery of the Bonds shall be made in definitive form, as fully registered bonds (in such denominations as the Purchaser shall specify in writing at least 48 hours prior to the Closing Time) duly

executed and authenticated and bearing CUSIP numbers (provided neither the printing of a wrong number on any Bond nor the failure to print a number thereon shall constitute cause to refuse delivery of any Bond); provided, however, that the Bonds may be delivered in temporary form. If delivered in definitive form, the Bonds shall be available for examination and packaging by the Purchaser at least 24 hours prior to the Closing Time.

SECTION 5. USE OF OFFICIAL STATEMENT

The Agency hereby ratifies and confirms the Purchaser's use of the Preliminary Official Statement; and the Agency authorizes, and will make available, the Official Statement for the use by the Purchaser in connection with the sale of the Bonds.

SECTION 6. CONDITIONS TO THE PURCHASER'S OBLIGATIONS

The Purchaser's obligations hereunder shall be subject to the due performance by the Agency of its obligations and agreements to be performed hereunder at or prior to the Closing Time and to the accuracy and completeness of the Agency's representations and warranties contained herein, as of the date hereof and as of the Closing Time, and are also subject to the following conditions:

(a) The Bonds and the Bond Documents shall have been duly authorized, executed and delivered in the form heretofore approved by the Purchaser with only such changes therein as shall be mutually agreed upon by the Purchaser and the Agency.

(b) At the Closing Time, the Purchaser shall receive:

(1) The opinion, in form and substance satisfactory to the Purchaser, dated as of the Closing Date, of Gilmore & Bell, P.C., Bond Counsel, relating to the valid authorization and issuance of the Bonds, the due adoption of the Resolution by the Board, the exclusion of interest on the Bonds from gross income for federal income tax purposes and certain other matters;

(2) Certified copies of the Resolution and such other resolutions or ordinances, as may be appropriate, of the Agency authorizing or approving the execution and delivery of Bond Documents and the Bonds, together with certificates dated the Closing Date to the effect that such resolutions have not been modified, amended or repealed;

(3) Certified copies of an ordinance of the City approving the issuance of the Bonds, together with a certificate dated the Closing Date to the effect that such ordinance has not been modified, amended or repealed.

(4) A certificate of the Agency, satisfactory in form and substance to the Purchaser, dated as of the Closing Date, to the effect that (A) since the date of the Preliminary Official Statement there has not been any material adverse change in the business, properties, financial condition or results of operations of the Agency, whether or not arising from transactions in the ordinary course of business, from that set forth in the Preliminary Official Statement, and except in the ordinary course of business or as set forth in the Preliminary Official Statement, the Agency has not incurred any material liability; (B) there is no action, suit, proceeding or, to the knowledge of the Agency, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the Agency, threatened against or affecting the Agency, its officers or its property or, to the best of the knowledge of the Agency, any basis

therefor, wherein an unfavorable decision, ruling or finding would adversely affect the Agency, the transactions contemplated by the Bond Documents or the validity or enforceability of the Bonds or the Bond Documents, which are not disclosed in the Official Statement; (C) to the knowledge of the Agency, the information contained in the Official Statement (except for the material under the headings "TAX MATTERS" and "UNDERWRITING" and in Appendices __ and __) is true in all material respects and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (D) the Agency has authorized, by all necessary action, the execution, delivery, receipt and due performance of the terms and provisions of the Bonds, the Bond Resolution, the Bond Documents, and any and all such other agreements and documents as may be required to be executed, delivered and received by the Agency to carry out, give effect to and consummate the transactions contemplated hereby and by the Official Statement; and (E) the representations and warranties of the Agency set forth herein were accurate and complete as of the date hereof and are accurate and complete as of the Closing Time;

(5) Evidence satisfactory to the Purchaser that an IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) will be completed and timely filed with the IRS;

(6) A letter from Standard & Poor's Ratings Group and from Moody's Investors Service to the effect that the Bonds have been assigned a rating of no lower than "___" and "____," respectively, which ratings shall be in effect as of the date of Closing.

(7) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Purchaser, as the Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Resolution, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Purchaser.

SECTION 7. CONDITIONS TO THE AGENCY'S OBLIGATIONS

The obligations of the Agency hereunder are subject to the Purchaser's performance of its obligations hereunder. If the Agency is unable to satisfy the conditions to the obligations of the Underwriter contained in this Bond Purchase Agreement, or if the obligations of the Purchaser are terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and neither the Purchaser nor the Agency shall be under further obligation hereunder except their respective obligations with respect to payment of expenses as provided in **Section 10** hereof.

SECTION 8. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligations hereunder to purchase the Bonds (which cancellation shall not constitute a default for purposes of **Section 3** hereof) by notifying the Agency in writing or by facsimile of its election to make such cancellation prior to the Closing Time, if at any time prior to the Closing Time:

(a) The Preliminary Official Statement deemed by the Agency to be "final" pursuant to **Section 1(i)** hereof is thereafter amended or supplemented in a manner that may, in the reasonable judgment of the Purchaser, have a material adverse effect on the marketability of the Bonds;

(b) A committee of the House of Representatives or the Senate of the Congress of the United States shall have pending before it legislation which, if enacted in its form as introduced or as amended, would have the purpose or effect of imposing federal income taxation upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds;

(c) A tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation shall be favorably reported by such a committee or be introduced, by amendment or otherwise, in or be passed by the House of Representatives or the Senate, or be recommended to the Congress of the United States for passage by the President of the United States, or be enacted by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon interest received on obligations of the general character of the Bonds, or the Bonds, which, in the Purchaser's opinion, materially and adversely affects the market price of the Bonds;

(d) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the legislature of the State or by any other governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State shall be rendered which, in the Purchaser's opinion, materially and adversely affects the market price of the Bonds, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State;

(e) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the Securities Act of 1933, as amended (the **"1933 Act"**), the 1934 Act or the Trust Indenture Act of 1939, as amended;

(f) Legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act;

(g) Any event shall have occurred, or information become known, which, in the Purchaser's opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement as originally circulated, or has the effect that the Preliminary Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading;

(h) Additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange;

(i) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the

Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Purchaser;

(j) Any general banking moratorium shall have been established by federal, New York or State authorities;

(k) A material default has occurred with respect to the obligations of, or proceedings have been instituted under the Federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a city or state which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds;

(l) Any proceeding shall be pending or threatened by the Securities and Exchange Commission against the Agency; or

(m) A war involving the United States shall have been declared, or any conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred, which, in the Purchaser's opinion, materially adversely affects the market price of the Bonds.

SECTION 9. INDEMNIFICATION

The Agency agrees, to the extent legally permitted, to indemnify and hold harmless the Purchaser, any director, officer, employee or controlling person of the Purchaser within the meaning of Section 15 of the 1933 Act (collectively, the **"Indemnified Parties"**), against any and all losses, claims, damages, liabilities or expenses whatsoever caused by any untrue statements or misleading statement or allegedly misleading statement of a material fact contained in the Official Statement or caused by any omission or alleged omission from the Official Statement of any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading; provided that the Agency shall have no indemnification obligation with respect to any statement or omission in the information contained in the Official Statement under the heading **"UNDERWRITING."**

In case any action shall be brought against one or more of the Indemnified Parties based upon the Official Statement and in respect of which indemnity may be sought against the Agency, the Indemnified Parties shall promptly notify the Agency in writing and the Agency shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Agency. The Agency shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Agency or if there be a final judgment for the plaintiff in any such action against the Agency or any of the Indemnified Parties, with or without the consent of the Agency, the Agency agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 10. PAYMENT OF EXPENSES

Whether or not the Bonds are sold by the Agency to the Purchaser (unless such sale be prevented at the Closing Time by the Agency's default), the Agency shall be under no obligation to pay any expenses incident to the performance of the obligations of the Purchaser hereunder. All expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds (including, without

limitation, the fees and disbursements of Gilmore & Bell, P.C., Bond Counsel, rating agency fees and Registrar's fees) shall be paid by the Agency from the proceeds of the Bonds unless such sale be prevented at the Closing Time by the Purchaser's default. The Purchaser shall pay from its underwriting fee all expenses and costs for the printing, photocopying, execution and delivery of the Official Statement, closing and registration fees (e.g. DTC), and all of the Purchaser's out-of-pocket expenses.

SECTION 11. NOTICE

Any notice or other communication to be given under this Bond Purchase Agreement may be given by mailing or delivering the same in writing to the applicable person, as follows:

(a) If to the Agency: 555 South 10th Street, Lincoln, Nebraska 68508, Attention: Steve Hubka, Interim Finance Director

(b) If to the Purchaser: [Underwriter Name], [Underwriter Address], Attention: _____.

SECTION 12. APPLICABLE LAW: NONASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State. This Bond Purchase Agreement shall not be assigned.

SECTION 13. EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

SECTION 14. RIGHTS HEREUNDER

This Bond Purchase Agreement is made for the benefit of the Agency and the Purchaser and no other person including any purchaser of the Bonds shall acquire or have any rights hereunder or by virtue hereof.

SECTION 15. EFFECTIVE DATE

This Bond Purchase Agreement shall become effective upon acceptance hereof by the Agency.

[The remainder of this page intentionally left blank.]

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Purchaser. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement prior to the date and time specified on page 1 hereof and returning it to the undersigned.

Very truly yours,

[UNDERWRITER NAME]

By: _____
[Title]

Accepted and agreed to as of
the date first above written.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Treasurer

SCHEDULE 1

MATURITIES, INTEREST RATES, SALES PRICES AND REDEMPTION PROVISIONS OF THE BONDS

Maturity Date	Principal Amount	Interest Rate	Price
	,000		
	,000		
	,000		
	,000		
	,000		
	,000		
	,000		
	,000		
	,000		
	,000		
	,000		
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	,000		
	,000		
	,000		
	,000		
	,000		
	,000		

Optional Redemption. Bonds are subject to redemption prior to maturity in whole or in part, on or after _____, 20__ in the principal amounts and from the maturity or maturities selected by the Agency, and by lot in integral multiples of $5,000 within a maturity, at a redemption price equal to [100]% of the principal amount being redeemed, together with accrued interest thereon to the redemption date.

[*Sinking Fund Redemption of Bonds.* The Bonds maturing December 15 in the years _____ are subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements set forth below at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date. Selection of any Bonds maturing December 15, _____ or portions thereof to be redeemed shall be in the sole discretion of the Registrar.]

WH 13-29 Introduce: 3-22-13

RESOLUTION NO. WH- _____

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

That the attached West Haymarket Joint Public Agency Phase II Budget Summary is hereby approved.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

WHJPA Phase II Budget
Summary

Code	Description	I Original Budget March 22, 2013
	TOTAL PHASE II BUDGET	
Design and Construction		
70090	General Coordination	$360,000.00
70092	Parking	$26,935,000.00
70105	Bond Related Costs	$422,597.19
	Total Design and Construction	**$27,717,597.19**
Owner Contingency		
	Owner Contingency	$1,364,750.00
	Total Owner Contingency	**$1,364,750.00**
	Total Phase II Budget	**$29,082,347.19**

WH 13-30 Introduce: 3-22-13

RESOLUTION NO. WH- _____

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

That the attached Contract between the West Haymarket Joint Public Agency and Lift Solutions, Inc. for purchase of forklifts for the Pinnacle Bank Arena, pursuant to Bid No. 13-063, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Agreement to Lift Solutions, Inc., Attn: Craig Zegers, 14616 Shepard Street, Omaha, NE 68138.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
BID NO. 13-063

PURCHASE OF FORKLIFTS FOR PINNACLE BANK ARENA

THIS JPA PURCHASE OF FORKLIFTS FOR PINNACLE BANK ARENA ("Contract") is made and entered into as of this _____ day of _____, 2013, by and between **LIFT SOLUTIONS, INC.**, hereinafter called "Provider," and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called "JPA."

RECITALS

WHEREAS, JPA has caused to be prepared, in accordance with law, Forklift Equipment Specifications and other Contract Documents for the procurement and delivery (including a two-hour operating training class at delivery and a two-hour refresher course six months after delivery) (collectively "Delivery") of the forklifts herein described and has approved and adopted said documents and has caused to be published a Notice to Bidders advertisement for and in connection with the Contract.

WHEREAS, the Provider, in response to such advertisement, has submitted to the JPA, in the manner and in the time specified, a sealed Supplier Response and two quotations for the forklifts to be provided in accordance with the terms of said advertisement and the Forklift Equipment Specifications.

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Supplier Responses submitted in response to such advertisement, and as a result of such canvass has determined and declared the Provider to be the lowest bidder for the Delivery of the forklifts for the total sum of Seventy-Five Thousand Nine Hundred Thirty-Two and 00/100ths Dollars ($75,932.00). Copies of the Bid Opportunity Detail, Notice to Bidders, the Forklift Equipment Specifications, the Supplier Response and two quotations (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, JPA desires to engage Provider for the Delivery of the forklifts on the terms and conditions herein provided.

WHEREAS, Provider hereby represents that Provider is willing and able to Deliver the forklifts in accordance with this Contract.

NOW, THEREFORE, in consideration of the above Recitals and the below mutual covenants and agreements the Parties hereto, the Provider and JPA do hereby agree as follows:

SCOPE OF SERVICES. The Provider shall Deliver the forklifts meeting the Forklift Equipment Specifications prepared by the JPA as described in the Supplier Response and shall do everything required by this Contract. Provider shall furnish all labor, materials, equipment, and services that is necessary for the Provider's performance of this Contract.

COMPENSATION. JPA agrees to pay to Provider for the Delivery of the forklifts the sum of $75,932.00 as set forth in the Supplier Response and Provider agrees to accept said amount as full compensation therefor. Provider represents that said amount includes Provider's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to the forklifts or this Contract. Provider shall defend suits on claims for infringement or any patent, copyright, trademark or other intangible rights in any way related to this Contract.

TIME OF COMPLETION. The furnishing and ordering of the forklifts under this Contract shall be commenced as soon as necessary in order for said forklifts to be timely delivered which shall be no sooner than August 1, 2013, but no later than September 1, 2013 ("Delivery Date"). Failure to meet the terms of the Contract by the Delivery Date may result in forfeiture of the supply bond or deposit, if any, and shall be deemed a breach of this Contract.

INDEMNIFICATION. Provider agrees to defend, indemnify and hold harmless JPA to the same extent and under the same terms and conditions as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts attached hereto as Exhibit B.

INSURANCE. Provider shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts attached hereto as Exhibit B, except that the required commercial general liability coverage shall be reduced to $1,000,000 per occurrence and $2,000,000 aggregate. Provider agrees to provide all types of insurance required by the JPA. Provider will furnish coverages against any and all perils required by the JPA.

NON-RAIDING CLAUSE. Provider shall not engage the services of any person or persons presently in the employ of the JPA for work covered by this Contract without the written consent of the JPA.

TERMINATION OF CONTRACT.

A. This Contract may be terminated by the Provider if the JPA fails to adequately perform any material obligation required by this Contract ("Default"). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from the Provider specifying the nature of the Default.

B. The JPA may terminate this Contract, in whole or part, for any reason for the JPA's own convenience upon at least ten days written notice to the Provider.

If the Contract is terminated by either the JPA or Provider as provided in A or B above, Provider shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Contract amount, up until the date of termination.

Provider hereby expressly waives any and all claims for damages or compensation arising under this Contract except as set forth in this paragraph in the event of termination.

FAIR EMPLOYMENT. In connection with the performance of work under this Contract, Provider agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122, as amended.

FAIR LABOR STANDARDS. The Provider shall maintain Fair Labor Standards in the performance of this Contract as required by Chapter 73, Nebraska Revised Statues, as amended.

ASSIGNABILITY. The Provider shall not assign any interest in this Contract, delegate any duties or work required under this Contract, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the JPA thereto; provided, however, that claims for money due or to become due to the Provider from JPA under this Contract may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

INTEREST OF PROVIDER. Provider covenants that Provider presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Provider further covenants that in the performance of this Contract, no person having any such interest shall be employed or retained by Provider under this Contract.

INDEPENDENT CONTRACTOR. The JPA is interested only in the results produced by this Contract. Provider has sole and exclusive charge and control of the manner and means of performance. Provider shall perform as an independent contractor and it is expressly understood and agreed that Provider is not an employee of the JPA and is not entitled to any benefits to which JPA employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave and/or injury leave.

NEBRASKA LAW. This Contract shall be construed and interpreted according to the laws of the State of Nebraska.

INTEGRATION. This Contract represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Contract.

AMENDMENT. This Contract may be amended or modified only in writing signed by both the JPA and Provider.

SEVERABILITY. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

FEDERAL IMMIGRATION VERIFICATION.

A. If the Provider is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Provider agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Provider shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Provider shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

B. If the Provider is an individual or sole proprietor, the Provider agrees to complete the United States Citizenship Attestation Form as provided by the JPA and attach it to the Contract.

C. Public Benefits Eligibility Status Check. If the Provider is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, the Provider agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached. The Provider agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, the Provider shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at the JPA's request. For information on the SAVE program, go to www.uscis.gov/SAVE.

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

1. Bid Documents – Exhibit A.
2. Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012) - Exhibit B.
3. Supply Bond – Exhibit C.

4. Other Non-Attached Contract Documents:
   a. 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.
   b. Any Bid Documents and/or Bid Attachments listed in the Bid Opportunity Detail not attached as part of Exhibit A.

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.

REPRESENTATIONS. Each party hereby certifies, represents and warrants to the other party that the execution of this Contract is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, Provider and JPA do hereby execute this Contract as of the Execution Date set forth above.

PROVIDER: **LIFT SOLUTIONS, INC.**

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
3-11-2013

CITY OF LINCOLN NEBRASKA

LANCASTER COUNTY NEBRASKA

Return to Login • Supplier Registration

Bid Opportunity Detail

Bid Number 13-063 (Purchase of Forklifts for Pinnacle Bank Arena)
Close Date & Time 2/20/2013 12:00:00 PM Central
Bid Duration 16 days 1 hour 48 minutes 30 seconds

Bid Information

Bid Type	Bid
Issue Date & Time	2/4/2013 10:11:29 AM Central
Close Date & Time	2/20/2013 12:00:00 PM Central
Bid Status	Unsealed
Bid Notes	

Contact Information

Contact Name	Vince Mejer Purchasing Agent
Address	Purchasing 440 S. 8th St. Lincoln, NE 68516 USA
Department	Purchasing
Floor/Room	Suite 200
Contact Phone	1 (402) 441-8314
Contact Fax	1 (402) 441-6513
Contact Email	vmejer@lincoln.ne.gov

Bid Documents

Document	Format	Description
Invitation Document	Adobe (PDF)	PDF Invitation to Bid
Bid Tabulation by Supplier Spreadsheet	Spreadsheet (XLS)	Bid Tabulation by Supplier Spreadsheet
Bid Tabulation by Line Item Spreadsheet	Spreadsheet (XLS)	Bid Tabulation by Line Item Spreadsheet

Bid Attachments

Location	File Name	Description
Header	13-063 City Clerk.pdf (9KB)	NOTICE TO BIDDERS
Header	13-063.pdf (16KB)	Specifications

Advertise 1 time
Wednesday, February 6, 2013

City of Lincoln/Lancaster County
Purchasing Division
NOTICE TO BIDDERS

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 p.m., Wednesday, February 20, 2013** for the following project:

Purchase of Forklifts
For Pinnacle Bank Arena
Bid No. 13-063

Bidders must be registered on the City/County's E-Bid site in order to respond to the above Bid. To Register go to: lincoln.ne.gov (type: e-bid - in search box, then click "Supplier Registration")

Once registered, vendors will receive e-mail bid notification, first acknowledging registration, then approval of registration. Upon e-mail notification of registration approval, you may go to the E-Bid site to respond to this bid. Questions concerning this bid process may be directed to City/County Purchasing at (402) 441-8314 or 441-7410 or **vmejer@lincoln.ne.gov**

FORKLIFT EQUIPMENT
FOR
PINNACLE BANK ARENA

SPECIFICATIONS
BID NO.: 13-063

1. **GENERAL INFORMATION**
   - 1.1 The following is the approved new Forklift equipment.
   - 1.2 This specification is used to establish the minimum acceptable standards for the new Forklift equipment.
     - 1.2.1 See instructions to bidders Section 8 Brand Names.
   - 1.3 If bidding an alternate, all specifications sheets for the equipment must be submitted for review with bid.
     - 1.3.1 Failure to include equipment specification sheets will be considered as a no-bid.
   - 1.4 The successful bidder will be required to provide product data for review and approval prior to award.
   - 1.5 Units shall be delivered with full fluids and fuels ready to use.

2. **MODEL P7000 CATERPILLAR PNEUMATIC FORKLIFT TRUCK MODEL P7000-LE LP - QUANTITY 1**
   - 2.1 Class V
   - 2.2 Capacity 7,000 pounds
   - 2.3 Fuel LP
   - 2.4 LPTNK ST33 - Steel LP tank horizontal fill 33.5#
   - 2.5 5M35C47 - 186" MFH Triplex Mast
     - 2.5.1 90.5" OAL
     - 2.5.2 42.5" FFH
     - 2.5.3 6 degree forward/back tilt
     - 2.5.4 48" high load backrest
     - 2.5.5 39.5" wide ITA Class III carriage
   - 2.6 3VTRI P35 - Single Function Internal Hosing for a Triplex Mast
     - 2.6.1 Three section control valve
     - 2.6.2 Hydraulic function controls with three levers
   - 2.7 SSH039 P35 - 39.5" ITA Class III Integral Sideshifter - includes 48" high load backrest
   - 2.8 FKHP48-35 - 2.0"x4.9"x48" ITA Class III hook type pallet forks
   - 2.9 BULAS P35 - Amber strobe light mounted below OHG
   - 2.10 RLMRL P35 - Premium Work Light Package
     - 2.10.1 2 Rear view mirrors mounted to OHG
     - 2.10.2 Rear LED working light mount to left rear OHG leg with guard
   - 2.11 DRWPIN P35 - Drawbar pin
   - 2.12 SDBKT P35 - Swing down LPG tank bracket
   - 2.13 STRSS P35 - Solid Soft Ride Pneumatic Steer Tires - 6.5x10
     - 2.13.1 To include 4-piece, heavy duty rims
   - 2.14 DRSS250S P35 - Solid soft ride pneumatic drive tires- 250x15
   - 2.15 FIRE EXT P35 - Fire extinguisher
   - 2.16 TC-1930 - Tinted thermoformed overhead guard cover
   - 2.17 Fork extensions - 72" long slide on fork extensions
   - 2.18 Machine length from rear of machine to fork face - 110"

2.19 Machine width across drive tires - 51"
2.20 Machine height to top of overhead guard - 84.5"
2.21 Engine
  2.21.1 LP fuel
  2.21.2 Four cylinder
  2.21.3 Minimum cubic inch 152
  2.21.4 Minimum horse power 61.0 @ 2700 RPM
2.22 Transmission
2.23 Single speed powershift
2.24 Level directional control
2.25 Hydrostatic power steering
2.26 Machine Operator Seat Presence Detection System
  2.26.1 Audible and visual seat belt reminder
  2.26.2 Audible and visual park brake reminder
  2.26.3 Transmission interlock to prevent machine from going into gear without operator in seat
  2.26.4 Hydraulic interlock to prevent use of hydraulic functions without operator in seat
2.27 Machine directional control indicator arrows on dash
2.28 Two overhead guard mounted forward facing LED headlights
2.29 LED stop/tail/backup lights mounted on rear of overhead guard
2.30 Vinyl suspension seat with seat belt
2.31 Computer adjustable travel speed ability-speed control
2.32 Machine underbelly screen
2.33 Operator convenience tray mounted on hood
2.34 Heavy duty rubber floor mat
2.35 Warranty
  2.35.1 24-Month unlimited hour warranty
  2.35.2 3 Year 6,000 extended power train warranty
2.36 Manufacturers Recommended Maintenance Intervals up to 500 hours
  2.36.1 First PM service no charge
  2.36.2 To include two hour operator training class to cover machine daily checks and correct machine operations at delivery time of machine.
  2.36.3 To include two hour refresher course six months after delivery or equivalent of all of above.

3. MODEL P4000 CATERPILLAR PNEUMATIC FORKLIFT TRUCK MODEL P4000-LE LP - QUANTITY 2

3.1 Class V
3.2 Capacity 4,000 pounds
3.3 Fuel LP
3.4 LPTNK ST33 - Steel LP tank horizontal fill 33.5#
3.5 5M30C48 - 188" MFH Triplex Mast
  3.5.1 84.5" OAL
  3.5.2 36" FFH
  3.5.3 6 degree forward/back tilt
  3.5.4 48" high load backrest
  3.5.5 39.5" wide ITA Class III carriage

3.6 3VTRI P25 - Single Function Internal Hosing for a Triplex Mast
- 3.6.1 Three section control valve
- 3.6.2 Hydraulic levers control

3.7 SS39 P25 - 39.5" ITA Class III Integral Sideshifter - includes load backrest
3.8 FKHP48-25 - 1.6"x3.9"x48" ITA Class III hook type pallet forks
3.9 BULAS P25 - Amber strobe light mounted below OHG
3.10 RLMRL P25 - Premium Work Light Package
- 3.10.1 2 rear view mirrors mounted to OHG
- 3.10.2 Rear LED working light mount to left rear OHG leg with guard

3.11 DRWPIN P25 - Drawbar pin
3.12 SDBKT P25 - Swing down LPG tank bracket
3.13 STRSS P25 - Solid Soft Ride Pneumatic Steer Tires - 6.00x9
- 3.13.1 To include 4-piece, heavy duty rims

3.14 DRSS7S P25 - Solid soft ride pneumatic drive tires- 7.00x12
3.15 FIRE EXT P25 - Fire extinguisher
3.16 TC-1930 - Tinted thermoformed overhead guard cover
3.17 Fork Extensions - 72" long slide on fork extensions
3.18 Machine length from rear of machine to fork face - 98.0"
3.19 Machine width across drive tires - 45.5"
3.20 Machine height to top of overhead guard - 83.0"
3.21 Engine
- 3.21.1 LP fuel
- 3.21.2 Four cylinder
- 3.21.3 Minimum cubic inch 152
- 3.21.4 Minimum horse power 61 @ 2700 RPM

3.22 Transmission
- 3.22.1 Single speed powershift
- 3.22.2 Level directional control

3.23 Hydrostatic power steering
3.24 Machine Operator Seat Presence Detection System
- 3.24.1 Audible and visual seat belt reminder
- 3.24.2 Audible and visual park brake reminder
- 3.24.3 Transmission interlock to prevent machine from going into gear without operator in seat
- 3.24.4 Hydraulic interlock to prevent use of hydraulic functions without operator in seat

3.25 Machine directional control indicator arrows on dash
3.26 Two overhead guard mounted forward facing LED headlights
3.27 LED stop/tail/backup lights mounted on rear of overhead guard
3.28 Vinyl suspension seat with seat belt
3.29 Computer adjustable travel speed ability-speed control
3.30 Machine underbelly screen
3.31 Operator convenience tray mounted on hood
3.32 Heavy duty rubber floor mat

4. COMPANY INFORMATION

4.1 Provide company history for Forklifts, including years of operation and client/employee growth.

4.2 Describe the firm's ability to support the schedule and delivery requirements.

4.2.1 Describe the firm's customer support program for resolution of warranty items.

4.3 Provide information on five (5) recent projects of similar facilities that have utilized its equipment begin proposed within the last three (3) years.

4.4 The above shall be attached in the Response Attachment Section.

5. PROJECT DESCRIPTION

5.1 Project Description and Construction Team:

- Owner: West Haymarket JPA (Joint Public Agency)
- JPA Program Manager: PC Sports
- Arena Operator: SMG Management / SAVOR
- Project Architect: DLR Group
- Arena Contractor: Mortenson Construction

5.2 Project location:

Pinnacle Bank Arena
600 R Street
Lincoln, NE 68508

5.3 Type of Construction:

5.3.1 The project consist of a 16,000 seat arena of approximately five levels to include: Event Level, Main Concourse, Premium Suite Level, Upper Concourse and the catwalk level.

5.3.2 The attached garage is approximately 280 spaces and is a three-level precast structure.

6. QUALIFICATIONS

6.1 All proposers must state the location that the proposed products are manufactured, assembled or produced.

6.2 The manufacturer must have an established reputation in the line with the equipment proposed.

7. SHIPMENT OF PRODUCT

7.1 Shipment of product is to be coordinated with the Arena Operator, PC Sports and Mortenson Construction.

7.2 Product must be delivered no sooner than **August 1, 2013** but no later than **September 1, 2013.**

7.3 Pinnacle Bank Arena 600 R Street, Lincoln, NE 68508.

8. SECURITY

8.1 Access will be restricted only to those having business on the site.

9. USE OF WORK AREA

9.1 Delivery of supplies, equipment and/or materials to the site shall be along routes designated by the Arena Contractor or Arena Operator.

9.2 The Vendor must obtain prior approval from the Owner or his representative of areas proposed for temporary storage, stockpiling, equipment, maintenance or operations.

9.3 Working areas shall be chosen by the Owner or his representative in cooperation with the Arena Contractor.

9.4 The Vendor shall be responsible for repairing, at no cost to the Owner, all Images caused by the work of the Contract.

10. DISCREPANCIES AND OMISSIONS

10.1 The Vendor finding discrepancies in, or omissions from the drawings, specifications or other documents, or having any doubt as to meaning or intent of any part thereof, shall at once notify the JPA's Purchasing Agent in writing, he will send written instructions in the form of an Addendum.

10.2 Direct inquiries to:

Vince M. Mejer
440 S. 8th Street, Suite 200
Fax: 402.441.6513
vmejer@lincoln.ne.gov

11. ERRORS IN BIDS

11.1 Owner will not entertain requests for gratuitous payments arising from errors alleged to have been made in Bid that he has accepted.

12. BID SUBMITTAL

12.1 Contractor shall submit bid documents and all supporting material via e-bid.

12.2 All inquiries regarding the Forklifts Specifications shall be directed via e-mail or faxed request to Vince M. Mejer, Purchasing Agent (vmejer@lincoln.ne.gov) or Fax: (402) 441-6513.

12.2.1 These inquiries and/or responses shall be distributed to prospective Vendor electronically as addenda.

12.2.2 The Purchasing Office shall only reply to written inquiries received within five (5) calendar days of bid opening.

12.3 No direct contact is allowed between Vendor and other City or JPA Staff through the bid process.

12.3.1 Failure to comply with this directive may result in the Vendor bid being rejected.

City of Lincoln/Lancaster County (Lincoln Purchasing)
Supplier Response

Bid Information

Bid Creator	Vince Mejer Purchasing Agent
Email	vmejer@lincoln.ne.gov
Phone	1 (402) 441-8314
Fax	1 (402) 441-6513
Bid Number	13-063
Title	Purchase of Forklifts for Pinnacle Bank Arena
Bid Type	Bid
Issue Date	02/04/2013
Close Date	2/20/2013 12:00:00 PM CST
Need by Date	

Contact Information

Address	Purchasing 440 S. 8th St. Lincoln, NE 68516
Contact	Vince Mejer Purchasing Agent
Department	Purchasing
Building	
Floor/Room	Suite 200
Telephone	1 (402) 441-8314
Fax	1 (402) 441-6513
Email	vmejer@lincoln.ne.gov

Ship to Information

Address	
Contact	
Department	
Building	
Floor/Room	
Telephone	
Fax	
Email	

Supplier Information

Company	Lift Solutions Inc
Address	14616 Shepard St Omaha, NE 68138
Contact	Craig Zegers
Department	
Building	
Floor/Room	
Telephone	1 (402) 330-1690
Fax	1 (402) 330-8097
Email	czegers@lsi.bz
Submitted	2/19/2013 1:08:42 PM CST
Total	$75,932.00

Signature _____

Supplier Notes

If you have any questions please call me on my cell phone at 402-619-0289. Thanks,

Bid Notes

Bid Activities

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
2	Performance/Payment Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
3	Specifications	I acknowledge reading and understanding the specifications and attachments.	Yes
4	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes
5	Contact	Name of person submitting this bid:	Craig Zegers
6	Electronic Signature	Please check here for your electronic signature.	Yes

Line Items

#	Qty	UOM	Description	Response
1	1	EA	Forklift, Caterpillar P7000-LE LP or Equal	$28,286.00
	Item Notes:			
	Supplier Notes: Please see original quote in the response attachments.			
2	2	EA	Forklift, Caterpillar P4000-LE LP or Equal	$23,823.00
	Item Notes:			
	Supplier Notes: Please see original quote in the response attachments.			
			Response Total:	$75,932.00

LIFT SOLUTIONS, INC.

CROWN NISSAN FORKLIFT

TO :	**City of Lincoln** 440 S. 8th Street Lincoln, NE 68508	**SHIP TO :**	**Pinnacle Bank Arena** 600 R Street Lincoln, NE 68508
Attention :	Vince Mejer		

Date : 2/19/2013
Quotation : CZ 00151
Prepared By : Craig Zegers

We are pleased to submit the following quotation for your consideration

Description of Equipment and Materials

(1) Nissan PF70LP - LP Gas - 7,000# Capacity @ 24" LC, Pneumatic Tire - Engine Powered Trucks

Standard Equipment

EPA Tier II/CARB Certified - Nissan Electronic Fuel Injected Engine
3-Way Catalytic Converter
Electronic Concentrated Control System (ECCS) Engine
U.L. Approved
Two-Stage - Engine and Transmission Protection System
Cushioned Stability Control
Seat Actuated Operator Presence System
Auto-Mast Lock and Return-to-Neutral
Seat Belt Warning System
Horn and Back-Up Alarm
Parking Brake With Warning Buzzer
5-Piece Reinforced Overhead Guard
Headlights - OHG Mounted
Multi Function LCD Display Including: Hour Meter, Clock, and Calendar, Operator Security PIN Access, On-board Diagnostics and Programmable Service Reminder, Speedometer and F/N/R Transmission Indicator, Warning Lights and Engine Coolant Temperature Gauge, Air Cleaner and Low Coolant Level Warning, Low Fuel Warning Light
Full Suspension - Operator Restraint Seat
Infinitely Adjustable Tilt Steering Wheel
Hydrostatic Power Steering
Automatic Transmission
Drawbar Pin
Single Lift/Tilt Control Lever with 3-Spool Valve
48" High Load Backrest
Pneumatic Drive Tires: 250 x 15 - 16PR
Pneumatic Steer Tires: 6.50 x 10-10PR

LIFT SOLUTIONS, INC.

CROWN NISSAN FORKLIFT

Engine	Nissan K25 LP Engine
Mast - PF Series	Triplex OHL 84.4" MFH 187.0" FL 59.0"
Tilt	6 Deg Forward/6 Deg Back
Side Shifter	40.2" Wide - Integral Mount
Load Backrest	48" High
Forks	Standard Length 48" Thick 1.5" Width 4.0"
Hose Reeving	Single Internal Hose Reeving
Hydraulic Control Lever	Separate Lift and Tilt Control Levers
Control Valve	3 Spool Valve
Drive Tires	Solid Pneumatic-Shape 7.00 x 12
Steer Tires	Solid 6.00 x 9
LP Fuel Tank	33# Steel w/Horizontal Fill Valve
LP Fuel Tank Bracket	Ergonomic Swing-Down
Seat	Full Suspension - Vinyl
Warning Light	Strobe Light - Amber
Environmental Protection	Debris Protection Package
Overhead Guard Cover	Tinted Polycarbonate
Radiator	Standard
Paint	Standard Color
Warranty	Unlimited Hour – 24 Months
Extended Warranty	**Safeguard Plus III - 60 Months/10000 Hours**

Other Nissan Equipment
Back Up Alarm
Fire Extinguisher - 2½ Lb ABC
Floorboard Mat - Rubber
LED Headlights - OHG Mounted
LED Light - Rear Drive
LED Lights - Turn, Stop and Back-Up
Mirrors - Rear View (2)
Parts Manual Packet
Convenience Tray Mounted on Hood
72" L Slide-On Fork Extensions

14616 Shepard Street
Omaha, NE 68138
402-330-1690
Fax: 402-330-8097

924 Claude Road
Grand Island, NE 68803
308-384-7538
Fax: 308-384-4773

4730 South York
Sioux City, IA 51106
712-255-3083
Fax: 712-255-3299

3701 North Cliff Avenue
Sioux Falls, SD 57104
402-330-1690
Fax: 402-330-8097

LIFT SOLUTIONS, INC.

CROWN NISSAN FORKLIFT

Total Equipment And Accessories :	**Price Each**	**Price Extended**
Unit Total Including Accessories:	$ 28,286.00	
Total Equipment And Accessories		$ 28,286.00
	Total Price :	**$ 28,286.00**

FOB: **Delivered**
Esitimated Date of Delivery: **Monday August 5, 2013**
Terms: **Net 10 Days or Per lease agreement**

Add-On Option

Optiview Triplex 185" Mast Add: $655.00
Nissan Exclusive – Increases Visibility and Reduces Product Damage
(Please See Attached Sheet for Pictures)

Nissan Incentive Rebate
$500 Per Forklift Applied by Customer Through Nissan

The information contained within this proposal is the property of Lift Solutions Inc and is confidential and proprietary. Unauthorized disclosure could be harmful to Lift Solutions Inc, and by acceptance, prospective buyer agrees not to publish, copy or reproduce the contents without the expressed written consent of Lift Solutions Inc. City of Lincoln agrees not to use any such information for any other purpose than for the consideration of a Lift Solutions Inc supplied system and will return any or all information contained herein to Lift Solutions Inc upon request.

ACCEPTED BY SELLER:

NAME _Lift Solutions Inc.___ TITLE __Account Representative____

(This Quotation shall become a contract only upon signature by the Sales Manager or Seller at its business offices.)

QUOTATION SUBMITTED BY: ___Craig Zegers_____
(Salesperson)

ACCEPTED BY BUYER: _____

COMPANY NAME: _____

BY: _____

TITLE: _____

(SIGNATURE OF AUTHORIZED OFFICER OR REPRESENTATIVE REQUIRED)

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LIFT SOLUTIONS, INC.

CROWN NISSAN FORKLIFT

TO :	**City of Lincoln** 440 S. 8th Street Lincoln, NE 68508	**SHIP TO :**	**Pinnacle Bank Arena** 600 R Street Lincoln, NE 68508
Attention :	Vince Mejer		

Date : 2/19/2013
Quotation : CZ 00152
Prepared By : Craig Zegers

We are pleased to submit the following quotation for your consideration

Description of Equipment and Materials

(2) Nissan PFU40LP - LP Gas - K25 Engine - 4,000# Capacity @ 24" LC, Pneumatic Tire - Engine Powered Trucks

Standard Equipment

EPA Tier II/CARB Certified - Nissan Electronic Fuel Injected Engine
3-Way Catalytic Converter
Electronic Concentrated Control System (ECCS) Engine
Two-Stage - Engine and Transmission Protection System
U.L. Approved
Cushioned Stability Control
Seat Actuated Operator Presence System
Auto-Mast Lock and Return-to-Neutral
Seat Belt Warning System
Horn and Back-Up Alarm
Parking Brake With Warning Buzzer
5-Piece Reinforced Overhead Guard
Headlights - OHG Mounted
Multi Function LCD Display Including: Hour Meter, Clock, and Calendar, Operator Security PIN Access, On-board Diagnostics and Programmable Service Reminder, Speedometer and F/N/R Transmission Indicator, Warning Lights and Engine Coolant Temperature Gauge, Air Cleaner and Low Coolant Level Warning, Low Fuel Warning Light
Full Suspension - Operator Restraint Seat
Infinitely Adjustable Tilt Steering Wheel
Hydrostatic Power Steering
Automatic Transmission
Drawbar Pin
Single Lift/Tilt Control Lever with 3-Spool Valve
48" High Load Backrest
Pneumatic Drive Tires: 7.00 x 12-12PR
Pneumatic Steer Tires: 6.00 x 9-10PR

LIFT SOLUTIONS, INC.

CROWN NISSAN FORKLIFT

Engine	Nissan K25 LP Engine
Mast - PF Series	Triplex OHL 84.4" MFH 187.0" FL 59.0"
Tilt	6 Deg Forward/6 Deg Back
Side Shifter	40.2" Wide - Integral Mount
Load Backrest	48" High
Forks	Standard Length 48" Thick 1.5" Width 4.0"
Hose Reeving	Single Internal Hose Reeving
Hydraulic Control Lever	Separate Lift and Tilt Control Levers
Control Valve	3 Spool Valve
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LP Fuel Tank Bracket	Ergonomic Swing-Down
Seat	Full Suspension - Vinyl
Warning Light	Strobe Light - Amber
Environmental Protection	Debris Protection Package
Overhead Guard Cover	Tinted Polycarbonate
Radiator	Standard
Paint	Standard Color
Warranty	Unlimited Hour – 24 Months
Extended Warranty	**Safeguard Plus III - 60 Months/10000 Hours**

Other Nissan Equipment
Back Up Alarm
Fire Extinguisher - 2½ Lb ABC
Floorboard Mat - Rubber
LED Headlights - OHG Mounted
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LED Lights - Turn, Stop and Back-Up
Mirrors - Rear View (2)
Parts Manual Packet
Convenience Tray Mounted on Hood
72" L Slide-On Fork Extensions

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Sioux Falls, SD 57104
402-330-1690
Fax: 402-330-8097

LIFT SOLUTIONS, INC.

CROWN NISSAN FORKLIFT

Total Equipment And Accessories :	**Price Each**	**Price Extended**
Unit Total Including Accessories:	$ 23,823.00	
Total Equipment And Accessories		$ 47,646.00
	Total Price :	**$ 47,646.00**

FOB: **Delivered**
Esitimated Date of Delivery: **Monday August 5, 2013**
Terms: **Net 10 Days or Per lease agreement**

Add-On Option

Optiview Triplex 193" Mast Add: $655.00 Per Unit
Nissan Exclusive – Increases Visibility and Reduces Product Damage
(Please See Attached Sheet for Pictures)

Nissan Incentive Rebate
$500 Per Forklift Applied by Customer Through Nissan

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ACCEPTED BY SELLER:

NAME _Lift Solutions Inc.__ TITLE __Account Representative____

(This Quotation shall become a contract only upon signature by the Sales Manager or Seller at its business offices.)

QUOTATION SUBMITTED BY: ___Craig Zegers_____
(Salesperson)

ACCEPTED BY BUYER: _____

COMPANY NAME: _____

BY: _____

TITLE: _____
(SIGNATURE OF AUTHORIZED OFFICER OR REPRESENTATIVE REQUIRED)

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Fax: 712-255-3299

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Sioux Falls, SD 57104
402-330-1690
Fax: 402-330-8097

Bid Request Number	13-063	**Organization**	Lincoln Purchasing
Title	Purchase of Forklifts for Pinnacle Bank	**Bid Creator**	Vince Mejer Purchasing Agent
Description		**Email**	vmejer@lincoln.ne.gov
Bid Type	Bid	**Phone**	1 (402) 441-8314
Issue Date	2/4/2013 10:11:29 AM Central	**Fax**	1 (402) 441-6513
Close Date	2/20/2013 12:00:00 PM Central		

Responding Suppliers

Name	City	State	Response Submitted	Lines Responded	Response Total
MH Equipment	LaVista	NE	2/20/2013 11:57:42 AM CST	2	**$0.00**
Lift Solutions Inc	Omaha	NE	2/19/2013 1:08:43 PM CST	2	**$75,932.00**
NMC, Inc	Lincoln	NE	2/18/2013 8:54:33 AM CST	2	**$92,888.00**

Response Notes

Supplier	Line	Notes
MH Equipment	Header	This Freight is estimated to be on these lifts and not to exceed but if all 3 trucks are awarded then price could be less that MH Equipment would pass onto customer (City of Lincoln)
	1	This Lift is a Hyster H70FT (7000lb Pneumatic Lift Truck) Built in the United States.
	2	This Lift is a Hyster H40FT (4000lb Pneumatic Lift Truck) Built in the United States.
	1 Alt 1	This Lift is a Hyster H70FT (7000lb Pneumatic Lift Truck) Built in the United States.
	2 Alt 1	This Lift is a Hyster H40FT (4000lb Pneumatic Lift Truck) Built in the United States.
Lift Solutions Inc	Header	If you have any questions please call me on my cell phone at 402-619-0289. Thanks,
	1	Please see original quote in the response attachments.
	2	Please see original quote in the response attachments.
NMC, Inc	1	Unit Bid Price For P7000-LE LP Is Per Bid Spec.
	2	Unit Bid Price For P4000-LE LP Is Per Bid Spec.

Bid No. 13-063

Specification Responses						MH Equipment		Lift Solutions Inc		NMC, Inc	
Line	**Description**	**Mfgr**	**MfgNo**	**UOM**	**QTY**	**Unit**	**Extended**	**Unit**	**Extended**	**Unit**	**Extended**
1	Forklift, Caterpillar P7000-LE L			EA	1			**$28,286.00**	**$28,286.00**	**$35,834.00**	**$35,834.00**
2	Forklift, Caterpillar P4000-LE L			EA	2			**$23,823.00**	**$47,646.00**	**$28,527.00**	**$57,054.00**
					Total		**$0.00**		**$75,932.00**		**$92,888.00**

Alternate Responses

Line	**Description**	**Mfgr**	**MfgNo**	**UOM**	**QTY**	**Unit**	**Extended**	Supplier
1 Alt 1	**This Freight is estimated to be $1,296.06 on this lift alone but if all 3 trucks are awarded then price could be less that MH Equipment would pass onto customer (City of Lincoln)**	**Hyster**	**H70FT**	**EA**	1	**$28,518.55**	**$28,518.55**	MH Equipment
2 Alt 1	**This Freight is estimated to be $2442.12 on this lift alone but if all 3 trucks are awarded then price could be less that MH Equipment would pass onto customer (City of Lincoln)**	**Hyster**	**H40FT**	**EA**	2	**$51,267.70**	**$102,535.40**	MH Equipment

Bid No. 13-063

Specification Responses		MH Equipment	Lift Solutions Inc	NMC, Inc
Line	**Attribute Name**	**Response**	**Response**	**Response**
Header	Instructions to Bidders	Yes	Yes	Yes
Header	Performance/Payment Bonds	Yes	Yes	Yes
Header	Specifications	Yes	Yes	Yes
Header	Tax Exempt Certificate Forms	Yes	Yes	Yes
Header	Contact	Jason McIntosh	Craig Zegers	Alan Bramhall
Header	Electronic Signature	Yes	Yes	Yes

EXHIBIT B

Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012)

Approved by Law
3-11-2013

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 OMMISSION 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 of 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 or 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.

EXHIBIT C

Supply Bond

Approved by Law
3-11-2013

Bond No. _____

SUPPLY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **Lift Solutions, Inc.**, as **Principal**, and _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Nebraska, as **Surety**, are held and firmly bound unto the **West Haymarket Joint Public Agency,** as **Obligee**, in the penal sum of **Seventy-five Thousand Nine Hundred Thirty-two and 00/100ths Dollars ($75,932.00)**, lawful money of the United States of America and to the faithful payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators (or, assigns), firmly by this presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That:

WHEREAS, Principal has entered into the West Haymarket Joint Public Agency (JPA) Purchase of Forklifts for Pinnacle Bank Arena Contract ("Contract") dated _____, 2013, (an original of which is on file in the Office of the City Clerk of the City of Lincoln, Nebraska) which provided for the procurement and delivery of the forklifts for Pinnacle Bank Arena as set forth in the Bid Specifications.

NOW, THEREFORE, if Principal shall timely procure and deliver the forklifts in accordance with the Contract, as require the execution of this Supply Bond, then this obligation shall become void, otherwise to remain in full force and effect. In the event Principal shall be declared by the Obligee to be in default under the above obligation, the Obligee may relet or otherwise complete the purchase and delivery of the forklifts. Surety shall promptly indemnify and save harmless the Obligee to the limit of the penal amount of this bond from any loss, including but not limited to the Obligee's reasonable cost of such reletting or completion including the increased cost, if any, for the purchase and delivery of the forklifts and delay damages due to the Principal's failure to timely procure and deliver the forklifts.

Signed and dated this ____ day of _____, 2013.

Lift Solutions, Inc., Principal

By: _____
Name: _____
Title: _____

_____, Surety

By: _____
Title: Attorney-in-Fact

(Accompany this Bond with Attorney-in-Fact's authority from Surety to execute this bond, certified to include the date of the Bond)

WH 13-31 Introduce: 3-22-13

RESOLUTION NO. WH- _____

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

That the attached West Haymarket Redevelopment Agreement (P Street and Canopy Street Project) between the West Haymarket Joint Public Agency, the City of Lincoln, Nebraska and Project Oscar LLC, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Redevelopment Agreement on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Agreement to Rick Peo, Chief Assistant City Attorney, for transmittal to the parties.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

WEST HAYMARKET
REDEVELOPMENT AGREEMENT
(P Street and Canopy Street Project)

THIS WEST HAYMARKET REDEVELOPMENT AGREEMENT (P Street and Canopy Street Project) ("**Redevelopment Agreement**") is entered into as of the ____ day of _____ 2013, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "**City**"), the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska (hereinafter referred to as "**JPA**"), and PROJECT OSCAR, LLC, a Nebraska limited liability company (hereinafter referred to as "**Redeveloper**").

RECITALS

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan, as amended (the "**Redevelopment Plan**"), pursuant to the Community Development Law of the State of Nebraska, Chapter 18, Article 21, Sections 18-2101-18-2144, as supplemented by and including Sections 18-2147 to 18-2153, Reissue Revised Statutes of Nebraska, 1943, as amended as may be amended from time to time ("**Community Redevelopment Law**"). The Redevelopment Plan provides for the West Haymarket Redevelopment Project in an area generally bounded on the west by the BNSF and UP railroad lines, by approximately 7th Street on the east, the south interior roadway of Haymarket Park and the Bereuter Pedestrian Bridge on the north, and "M" Street on the south ("**West Haymarket Redevelopment Area**") as shown on Exhibit A. A copy

of the Redevelopment Plan, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the "**City Clerk**").

B. Redeveloper has submitted a proposal for Redeveloper Improvements (defined below) designated as the "**P Street and Canopy Street Project**" to acquire property owned by the JPA located in the West Haymarket Redevelopment Area and legally described as the east 215.05 feet of Lot 2, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, and to construct certain Redeveloper Improvements (defined below) thereon ("**Project Site**"). The Project Site and the east 215.05 feet of Lot 3, Block 7, West Haymarket Addition are to be replatted as Lots 2 and 3, West Haymarket 1st Addition.

C. The Project Site is located immediately east of the site ("Deck 3 Site") for the Deck 3 JPA Parking Garage ("**Deck 3**"), which is shown on Exhibit B and legally described as Lot 1, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska. The Deck 3 Site and the west 10 feet of Lots 2 and 3, Block 7, West Haymarket Addition are to be replatted as Lot 1, West Haymarket 1st Addition.

D. The Redeveloper's P Street and Canopy Street Project provides for the JPA to provide secondary access to the Project Site through a twenty (20) foot wide public access easement permitting two way vehicular access and pedestrian access ("**Access Easement**") as described on Exhibit "C.

E. The Redevelopment Project area for the P Street and Canopy Street Project ("**Redevelopment Project Area**") is shown on Exhibit D.

F. The Redeveloper undertakings ("**Redeveloper Undertakings**") for the P Street and Canopy Street Project consist of the following activities:

(1) Land acquisition of the Project Site;

(2) Demolition and removal of hard surface areas and improvements, site grading and environmental site remediation and improvements (collectively "**Site Preparation**");

(3) Design and construction of a five-story building containing approximately 80,000 square feet of office space; approximately 9,900 square feet of retail and related exterior improvements, including, but not limited to, ten (10) surface parking stalls and trash receptacles and storage areas on the Project Site abutting the Access Easement that have a screen wall as shown on Exhibit E and an outdoor plaza ("**Plaza**") and outdoor courtyard ("**Courtyard**") as shown on Exhibit M (collectively "**New Building**").

(4) Design and construction of a skywalk bridge over the Access Easement connecting the New Building and Deck 3 ("**Skywalk Bridge**").

(5) Design and construction and installation of certain upgraded improvements to the New Building and Project Site to the greater good of the community, which are beyond the requirements of City standards, regulations or codes consisting of Plaza Enhancements, Façade Enhancements and Energy Enhancements (collectively "**Public Enhancements**") as defined in Section 302.B below.

The New Building, Skywalk Bridge, and the Public Enhancements are hereinafter collectively referred to as the "**Private Improvements**." The Private Improvements are sometimes collectively referred to as the "**Redeveloper Improvements.**"

G. City Public Improvements. The City public improvements ("**City Public Improvements**") shall consist of the City's purchase and/or installation of such redevelopment project improvements (as defined in Section 18-2103(12) of the Community Development Law) which the City determines to be beneficial for the elimination of substandard and blighted

conditions during the Tax Increment Period (defined below) to be located in the Redevelopment Project Area.

H. Streetscape. JPA public improvements shall consist of the JPA's design and construction of certain streetscape improvements to P Street and Canopy Street that abut the Project Site including but not limited to decorative hardscape, landscaping, and pedestrian lighting ("**Streetscape**").

I. The JPA and the District Energy Corporation (**"DEC"**) have entered into an Energy Services Agreement dated October 1, 2011 wherein the JPA and DEC agreed for the DEC to construct a district energy plant and provide Energy Services (as defined in the Energy Services Agreement) to the Arena and certain other buildings and facilities in the West Haymarket Redevelopment Area, including the New Building.

J. Under the Energy Services Agreement, the JPA is and will remain the DEC's sole customer and it is the JPA's responsibility to split off the proportional cost of the DEC bill to the Arena and the other buildings and facilities, including the New Building receiving heating and cooling from the Energy Services provided by the DEC to the JPA.

K. This Redevelopment Agreement implements the P Street and Canopy Street Project and sets forth the terms and conditions for the Project.

L. *Neb. Rev. Stat.* §18-2107 (Reissue 2007) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

M. The City and JPA are willing to support the above described redevelopment of the Project Site provided Redeveloper is willing to (1) restrict the use of the Project Site to certain approved uses, (2) agree to covenants and conditions regarding compulsory maintenance and

upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions, and (3) agree to covenants and conditions regarding environmental use restrictions.

N. Pursuant to *Neb. Rev. Stat.* §18-2147, et seq., the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the P Street and Canopy Street Project for the benefit of any public body shall be divided, for a period not to exceed fifteen (15) years after the Effective Date as identified herein as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the Redevelopment Project Area valuation as of January 1 of the year prior to the year that the ad valorem taxes are to be divided shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and

- That portion of the ad valorem tax on real property as provided in the redevelopment contract or bond resolution in the Redevelopment Project Area in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle and the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority ("**TIF Indebtedness**") for financing or refinancing in whole or in part, the P Street and Canopy Street Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in the Redevelopment Project Area shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the "**Ad Valorem Tax Provision**" or the "**Tax Increment Provision**."

O. The Redeveloper is willing to enter into this agreement provided TIF Proceeds (defined below) are available to be used to pay for or reimburse the Redeveloper for Redeveloper Priority Expenses which are more particularly described Section 703.A below and summarized on Exhibit L, Sources and Uses of TIF. In order to pay for or reimburse Redeveloper for Redeveloper Priority Expenses, the City intends to issue tax increment financing indebtedness to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision.

P. The parties mutually agree that the redevelopment of the Project Site is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I.

EVIDENCE OF REDEVELOPER'S ABILITY

Section 101. Evidence of Redeveloper's Ability.

A. Evidence of Redeveloper's Financial Ability to Construct Private Improvements. Redeveloper shall, within sixty (60) days following the date of this Agreement, state the amount and source of debt financing which has been obtained or irrevocably committed to Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City. Evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan.

B. Timely Submittal of Evidence. Timely submittal of financial information required in subsection A above in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Redevelopment Agreement.

Section 102. Evidence of Redeveloper's Ability to Timely Commence Construction of the Private Improvements. Redeveloper shall, prior to Closing (defined below) of the Project Site, provide satisfactory documentation to the JPA that Redeveloper has entered into a construction contract and is ready, willing and able to timely commence construction of the Private Improvements as provided in Section 302.D.1 below. Submittal of such information and documentation in a form satisfactory to the City shall be a condition precedent to the requirement of the JPA to proceed with its obligation to convey the Redevelopment Project Area to Redeveloper under this Redevelopment Agreement.

ARTICLE II

CLOSING

Section 201. Conveyance of Project Site. The JPA agrees to sell and Redeveloper agrees to buy the Project Site prior to the start of construction of the Private Improvements. The purchase price for the Project Site shall be the sum arrived at by multiplying the square footage of the Project Site times $15.00/square foot ("**Purchase Price**"). The City agrees to assist in such acquisition of the Project Site by providing a grant of TIF Proceeds (defined below) to the Redeveloper to be used to buy down the purchase price ("**Land Purchase Assistance**") which assistance is essential to implementation of the Redevelopment Project.

A. Administrative Plat. Redeveloper shall cause Olsson Associates ("**Engineer**") to prepare and obtain the necessary final approval of an administrative final plat ("West Haymarket 1st Addition) which replats (i) Lot 1, Block 7 and the west 10 feet of Lots 2 and 3, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska as Lot 1, West Haymarket 1st Addition with an east-west dimension of 206.00 feet, and replats the east 215.05 feet of Lots 2 and 3, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska as Lots 2 and 3, West Haymarket 1st Addition, respectively. In the event the City places any conditions to the

approval of the administrative plat, then JPA, at its expense, shall be required to comply with such administrative plat conditions. At Closing, JPA will reimburse the Redeveloper one half (1/2) of the Engineer's cost to prepare and obtain the City's approval of the administrative plat.

Section 202. Closing.

A. Closing Date. The conveyance and delivery of the Project Site by the JPA to the Redeveloper shall occur at closing ("**Closing**") which shall be as soon as possible after the date of this Agreement but shall not be later than April 1, 2013, unless the parties mutually agree to another Closing date ("**Closing Date**"). If the Closing on the Project Site does not occur by the Closing Date, neither party shall have any further obligations with respect to the P Street and Canopy Street Project.

B. Closing Contingencies.

1. Redeveloper Closing Contingencies. Redeveloper's obligation to close shall be contingent upon the following:

(i) Receipt of the written indemnification from JPA described in Section 404 (C) below;

(ii) Redeveloper's acceptance of the "clean" fill confirmation, environmental covenants, and Operations and Maintenance Plan regarding the Project Site as described in Section 404 A. (1), (2) and (3);

(iii) Execution and delivery of the Redeveloper Energy Services Agreement between the Redeveloper and JPA pursuant to Section 302 A. 2 (c);

(iv) City approval of the Administrative Final Plat of West Haymarket 1st Addition which in part replats the Project Site as Lot 2, West Haymarket 1st Addition;

(v) Execution and delivery of the Access Easement between the JPA and Redeveloper pursuant to Section 309 B; and

(vi) Execution and delivery of the Skywalk Bridge Easement between the JPA and Redeveloper pursuant to Section 309 D.

(vii) Availability of city water, city sanitary sewer, city storm sewer, electrical, cable/data and natural gas utilities within the public right-of-way and/or within the Access Easement or other Easement abutting the Project Site.

2. JPA Closing Contingencies. The JPA's obligation to close shall be contingent upon the following:

(i) In order to construct Deck 3 as provided in Section 501 below, it will be necessary for the JPA to issue bonds or other evidence of indebtedness (**"JPA Parking Garage Bond"**) as provided for in Article VI of the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency ("**JPA Creation Agreement**") entered into as of April 1, 2010 between the City and the Board of Regents of the University of Nebraska. The JPA's obligation to close and the JPA's obligation to issue the JPA Parking Garage Bonds and to construct Deck 3 is contingent upon the question of whether the JPA should issue such bonds or indebtedness first being presented to and approved by the Mayor and City Council of the City of Lincoln as provided in Article VI of the JPA Creation Agreement.

(ii) Execution and delivery of the Redeveloper Service Agreement between the Redeveloper and the JPA pursuant to Section 302A.2.(c).

C. Closing Documents.

1. Deliveries at Closing by the JPA. At Closing, the JPA shall deliver to Redeveloper, and Redeveloper shall accept from the JPA, the following:

(a) A Special Warranty Deed conveying to Redeveloper fee simple title to the Project Site, subject to the Permitted Exceptions. JPA shall pay Nebraska Documentary Stamp taxes, if not exempt, relating to the transfer of the Project Site. For purposes hereof,

"**Permitted Exceptions"** shall mean (i) covenants, conditions and restrictions of record which shall be approved by Redeveloper if they do not unreasonably interfere with Redeveloper's intended use of the Project Site; (ii) taxes not yet due and payable; (iii) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which JPA is willing to and does so remove at Closing; (iv) title exceptions caused by the acts or omissions of Redeveloper; (v) easements, licenses and use restrictions granted under this Redevelopment Agreement; and (vi) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by Redeveloper. Risk of loss or damage to the Project Site shall rest with the JPA until the time of delivery of possession at Closing.

(b) Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Redeveloper's Title Commitment, including the JPA executing at Closing an affidavit on the title insurance company's form which will remove all standard exceptions to Buyer's title insurance policy, including without limitations (i) representing that there are no unpaid special assessments levied against the Property as of the Closing, except as provided in Section 203 below, (ii) representing that there are no outstanding unpaid bills for labor, material, or utilities furnished to the Project Site as of the Closing, and (iii) agreeing to indemnify and hold harmless the Redeveloper and title insurance company against all payments and expenses, including court costs and attorney's fees, if the above representations prove inaccurate in whole or in part.

2. Documents to be Delivered by Redeveloper. At Closing, Redeveloper shall deliver to the JPA, and the JPA shall accept from Redeveloper such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Redeveloper's Title Commitment.

3. Evidence of Title. The Redeveloper shall obtain (i) a title commitment (the "**Title Commitment**") from Nebraska Land Title & Abstract for an ALTA owner's title insurance policy issued by Old Republic National Title Insurance Company, or another title insurance company duly authorized to do business in Nebraska acceptable to Redeveloper (the "**Title Company**") covering title to the Project Site and showing fee simple title in the JPA and (ii) an ALTA Survey of the Project Site by the Engineer to be coordinated with the Title Commitment. A copy of the Title Commitment and ALTA Survey shall be delivered to the City Attorney's Office no later than thirty (30) days prior to Closing and shall include copies of the underlying exception documents which affect the Project Site. Redeveloper agrees to review the Title Commitment and ALTA Survey and advise the JPA whether the Title Commitment and ALTA Survey discloses exceptions to title, title matters or encroachments other than Permitted Exceptions or discloses matters that render title to the Project Site unmarketable. Redeveloper shall notify JPA of such title defects within fifteen (15) days after receipt of the Title Commitment and Survey. JPA shall have ten (10) days after written notice of such defects from Redeveloper to have the exceptions removed from the Title Commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or defects. Provided, however, in the event that JPA shall be unable or unwilling to correct such title defects within the ten (10) day period, Redeveloper shall have the option, by written notice delivered to JPA and the City to either (i) terminate this Redevelopment Agreement or (ii) take title to the Project Site subject to such exceptions or defects. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Redevelopment Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event Redeveloper elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions.

JPA will reimburse the Redeveloper the cost of the ALTA Survey. Redeveloper and the JPA shall each pay one-half of the cost of the owner's title insurance policy.

C. Inspection and Testing. The JPA, prior to acquiring title to the Project Site, conducted ASTM Phase I and any necessary ASTM Phase II Environmental Site Assessments in order to satisfy the "**All Appropriate Inquiry**" requirement under CERCLA Section 9601(40)(B)(i) for qualification as a bona fide prospective purchaser pursuant to 42 USC § 9601(40). These Site Assessment reports are available at: *http://www.haymarketnow.com/ documents/reports/environmental_reports*.

1. Environmental Tests. The Redeveloper by a separate agreement has been granted the right prior to the Closing, at its own expense, to enter the Project Site to undertake an environmental audit, testing, samplings, clean-up soil tests, core drillings, engineering tests and studies, and floodplain analysis (collectively "**Tests**") of and affecting Project Site. A copy of the results of the Tests shall be provided to the JPA and City as soon as such Test results are reasonably available. Prior to the Closing, the Redeveloper shall have the right to notify JPA and City that based upon the results of the Tests, the Redeveloper has determined, in its sole discretion, that the condition of the Project Site is not suitable for its intended uses. In the event of such notice from the Redeveloper to the JPA and the City on or before the Closing, Redeveloper shall have the option, by written notice delivered to JPA and the City to terminate this Redevelopment Agreement. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Redevelopment Agreement shall be deemed terminated, and the parties shall have no further obligation to one another.

Section 203. Property Taxes and Assessments. All real and personal property taxes, if any, for the year in which Closing occurs shall be prorated as of the Closing Date, and all prior years' taxes, interest and other charges, if any, shall either be exempt or paid in full by

the JPA at or prior to Closing. If no tax values have been established by the Lancaster County Assessor for the Project Site created by the West Haymarket subdivision, the tax proration shall be based on the Purchase Price for the Project Site and the most recent Lancaster County tax levy. Title hereunder shall be delivered free and clear of all special assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the date of this Agreement; provided that, the special assessments of the type described in Section 306 below that are not exempt shall be prorated, if any, for the year in which Closing occurs shall, and all prior years' assessments, if any, shall either be exempt or paid in full by the JPA at or prior to Closing.

Section 204. Title and Possession of Project Site. At the Closing, title to and possession of the Project Site shall be conveyed by the JPA to Redeveloper under the terms and conditions set forth herein.

Section 205. JPA's Option to Purchase Project Site. In the event Redeveloper fails to timely commence construction of the Private Improvements in accordance with Section 302.D, the JPA, subject to the Redeveloper's right to cure in Section 1001 and/or for delay of performance for cause beyond the control of the Redeveloper pursuant to Section 1003, shall be entitled, at its option, to purchase the Project Site upon payment to the Redeveloper the Purchase Price set forth in Section 201.

Section 206. Full Disclosure. The parties represent that no party was used as an agent or finder to bring about this sale. JPA and the City acknowledge that Zachary Wiegert of Wiegert Properties, LLC is a licensed Real Estate Broker in the State of Nebraska and is a principal of the managing partner of the Redeveloper. Joshua J Berger and Jordan J. Berger are licensed Real Estate Brokers in the State of Nebraska and are employees of the managing partners of the Redeveloper.

Section 207. Right to Effectuate Exchange. JPA and the City acknowledge that the Redeveloper may undertake an Internal Revenue Code Section 1031 tax deferred exchange of their interest in the all or any portion of the Project Site. The Redeveloper's rights and obligations under this Agreement may be assigned to facilitate such exchange(s) under an assignment and assumption agreement approved and consented to by the JPA and the City. Each party agrees to cooperate with the other party and any assignee of the other party to enable the Redeveloper to qualify for such exchange(s); provided that such cooperation shall not require the JPA or the City to incur any additional costs or liability and the JPA and the City shall be able to realize all intended benefits of this Redevelopment Agreement.

ARTICLE III

CONSTRUCTION OF REDEVELOPER IMPROVEMENTS

Section 301. Private Improvements - Schematic Drawings; Exterior Drawings & Specifications; Final Exterior Construction Documents; Approval; Changes.

A. Conceptual Plans and Drawings. Overall conceptual plans and drawings ("**Project Schematic Drawings**") shall be based upon the West Haymarket Integrated Development Plan - July 30, 2009 ("**IDP**"), a copy of which is on file in the office of the City's Director of Planning. The Project Schematic Drawings shall serve as the basis for development of the plans and specifications for the Private Improvements. The Project Schematic Drawings attached as Exhibit E have been reviewed and approved by the Mayor.

B. Design Development Plans. Design development plans and specifications ("**Design Development Plans**") will be prepared by Redeveloper for the Private Improvements to be constructed by Redeveloper on the Project Site. Such Design Development Plans shall be based upon the Project Schematic Drawings and shall show all the exterior of the Private Improvements to be constructed by Redeveloper as part of the P Street and Canopy Street Project

and shall also include a site plan (**"Site Plan"**) and elevation views of the exterior of the Private Improvements ("**Exterior Drawings**") and the construction materials to be used for such exterior walls.

The Exterior Drawings shall be submitted to the Historic Preservation Commission and the Urban Design Committee, in accordance with the submittal requirements in Section 4.36.040 of the Lincoln Municipal Code, for their joint review and submittal of their recommendation to the City no later than thirty (30) days following Redeveloper's submittal of the Exterior Drawings. The Exterior Drawings shall be approved if they are in substantial conformity with the Project Schematic Drawings and this Redevelopment Agreement.

In addition, ingress and egress to and from the Project Site from the public streets as shown on the Site Plan shall be subject to City approval based upon Chapter 14.75 of the Lincoln Municipal Code and the City's Access Management Policy. The Site Plan and the Exterior Drawings shall be submitted to the Mayor for his review and approval, which will not be unreasonably withheld.

C. Exterior Construction Documents. Upon approval of the Exterior Drawings by the City, taking into account the recommendations of the Historic Preservation Commission and the Urban Design Committee, Redeveloper shall prepare or have prepared the exterior construction documents ("**Exterior Construction Documents**") which shall be submitted to the Mayor for his review and approval, which will not be unreasonably withheld. The Exterior Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Exterior Drawings, and in substantial conformity with this Redevelopment Agreement.

D. Historic Preservation Commission/Urban Design Committee Failure to Act. In the event the Historic Preservation Commission and/or the Urban Design Committee fail to

submit their recommendation to the City as provided for in subparagraph B above within forty-five (45) days after receipt of the submittal, then Redeveloper may submit such documents directly to the City for its review and approval.

E. Approval. City, acting through the Mayor, shall so approve or reject the Exterior Drawings and Exterior Construction Documents within fourteen (14) days after receipt of the applicable documents and/or any report and recommendation of the Historic Preservation Commission and/or Urban Design Committee. Such Exterior Drawings and Exterior Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Project Schematic Drawings, and in substantial conformity with this Redevelopment Agreement. Failure of the City to reject the applicable documents within said fourteen (14) days shall be deemed as approval. If the City rejects the applicable plans, the City shall deliver to Redeveloper notice thereof accompanied by an explanation of the reasons for such rejection based on the standards for this P Street and Canopy Street Project. If rejected, Redeveloper shall work with the Architect to submit corrected Exterior Drawings and Exterior Construction Documents, as applicable, within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Exterior Drawings and Exterior Construction Documents shall be approved or rejected as provided above for original submittals.

F. Approval Limitation. Approval of the Exterior Drawings and Exterior Construction Documents is not a substitute for and does not eliminate the requirement that Redeveloper apply for and receive necessary building permits for construction of the Private Improvements.

G. Changes. If the Site Plan, Exterior Drawings, or Exterior Construction Documents are substantially and materially modified after City approval, any such modification shall be resubmitted to the City in accordance with this Section 301.

Section 302. Construction of Private Improvements.

A. Construction. Redeveloper at its own cost and expense shall, through a minimum investment of Fourteen Million and No/100 Dollars ($14,000,000.00), construct the Private Improvements as described in Recital F above in conformity with the approved Exterior Construction Documents, building permits and this Redevelopment Agreement.

1. Architecture. All Private Improvements shall have consistent architectural features, detailing, and design elements in accordance with the Project Schematic Drawings and the IDP. All accessory building walls, screening walls or fences shall use the same primary material, color, and detailing as on the main building.

2. Energy Efficiency.

(a) General. Construction of the Private Improvements shall utilize energy efficient building practices. Redeveloper shall use the standard established by U.S. Green Building Council through its Leadership in Energy and Environmental Design ("**LEED**") Green Building Rating Systems as a guideline for the design and construction of the Private Improvements.

(b) Heating and Cooling. JPA, at its expense, (i) will cause the DEC to extend the DEC heating and cooling piping from the DEC Plant under the Access Easement area to the point where the DEC piping is joined with the Redeveloper's service piping ("**Point of Delivery**") at the New Building, including DEC making the service tap connection, to the New Building and (ii) will cause DEC to design and install all other DEC equipment and controls needed in order for the DEC to deliver energy services to the New Building, on or before

October 1, 2013 and in accordance with DEC requirements. The Point of Delivery, including service tap location and location of the meter shall be in a reasonable location as determined by DEC in coordination with the Redeveloper.

(c) Redeveloper Energy Services Agreement. Redeveloper agrees to purchase all Energy Services as defined in the Energy Services Agreement for the Private Improvements from the JPA, subject to the terms and conditions of a Redeveloper Energy Services Agreement between JPA and the Redeveloper, which shall be prepared and negotiated with terms and conditions reasonably acceptable to JPA and the Redeveloper as soon as reasonably possible and entered into between JPA and the Redeveloper prior to Closing Date (defined below), provided, however, Redeveloper understands and acknowledges that such terms and conditions shall include Redeveloper agreeing to pay Redeveloper's allocated share of the Demand Charge – Facilities Financing, the Demand Charge – Other, and the Commodity Charge the DEC will charge the JPA on a monthly basis for Energy Services under the Energy Services Agreement between DEC and the JPA.

3. Height of Private Improvements. Private Improvements constructed in the Redevelopment Project Area shall have a maximum height of 75 feet. The minimum height of the Private Improvements shall be of a sufficient height to adequately screen the adjacent JPA Garage, but in no event less than 65 feet.

4. Landscaping. All mechanical units and condensing units shall be visually screened from public view. Large trash receptacles for business use and any outside storage areas shall be screened on three sides with a masonry screen wall. Redeveloper shall submit a landscape plan to the Mayor for his review and approval which will not be unreasonably withheld.

5. Staging. Redeveloper, City, and JPA agree to assist and cooperate to provide adequate staging for all JPA Projects and other Redevelopment Projects within the West Haymarket Redevelopment Area. The ~~current~~ staging plan showing the staging area for the P Street and Canopy Street Project and the other JPA and West Haymarket Redevelopment Projects as a whole is reflected on Exhibit K. The Redeveloper and its contractor, subcontractors and material suppliers, shall have a right of entry subject to the terms and conditions of Exhibit K to exclusively use the surface and air right space of the Staging Areas 1, 2 and 3 during the construction of the Private Improvements, without additional consideration. Staging Area 4 shall not be available for staging, without the prior written permission of PC Sports or JPA, which permission shall not be unreasonably withheld.

B. Construction of Public Enhancements. Redeveloper shall, at its own cost and expense, subject to reimbursement with available TIF Proceeds as set forth in this Redevelopment Agreement, construct the Plaza Enhancements, Façade Enhancements and Energy Enhancements. The City shall not have any obligation to reimburse Redeveloper for the cost of the Plaza Enhancements, Façade Enhancements and Energy Enhancements in excess of available TIF Proceeds as provided for in this Redevelopment Agreement. Redeveloper shall use its own funds to fund any Plaza Enhancements, Façade Enhancements and Energy Enhancements costs that exceed the TIF Proceeds that are lawfully available and granted to Redeveloper under this Redevelopment Agreement. To the extent required by law, the Public Enhancements shall be competitively bid, subject to Section 1121.

1. For the purposes of this Redevelopment Agreement, the "**Plaza Enhancements**" shall consist of and include all the common areas and amenities located within the Plaza including, but not limited to, the landscaping, hardscape, permanent seating, permanent

furnishings, canopies, and related improvements and equipment, subject to the Plaza License described in Exhibit I.

2. For the purpose of this Redevelopment Agreement, "**Façade Enhancements**" shall be the vertical exterior façade of the New Building as shown on Exhibit E, excluding signage.

3. For the purpose of this Redevelopment Agreement, "**Energy Enhancements**" shall consist of the following: Redeveloper aid to construction payment ("Aid to Construction Project") made to the JPA on or before April 30, 2013, or another date mutually acceptable to the parties, for the capital costs of the DEC plant and related piping improvements on the DEC side of the Point of Delivery to serve the Private Improvements and Redeveloper construction and/or upgrade to the energy, cooling, heating, lighting, insulation, controls, equipment, hardware and/or software improvements and systems made to the Private Improvements for the greater good of the community and which are beyond the requirements of City standards, regulations, or codes.

C. Permits and Approvals. Redeveloper agrees to secure all permits and licenses necessary for construction of the Private Improvements and its intended use of the Project Site including, but not limited to, necessary building permits and inspections.

D. Commencement and Completion Deadline for Private Improvements. The Redeveloper anticipates the commencement of the Private Improvements on or before April 1, 2013. The Redeveloper shall commence the Private Improvements on the Project Site within ninety (90) days following Closing of the Project Site and shall use its best efforts to substantially complete the Private Improvements on or before August 1, 2014 ("**Estimated Completion Date**") and will substantially complete the Private Improvements on or before August 31, 2014 ("**Completion Date**").

Section 303. Payment of Costs for Private Improvements. Redeveloper agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Redevelopment Agreement, and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements in accordance with all the provisions of this Redevelopment Agreement relating to the obligations of Redeveloper to construct said improvements. If requested by City, the Redeveloper shall, in addition to this promise to pay, obtain and supply the City with lien waivers in favor of the Redeveloper from all persons, firms, or organizations performing any work on the Private Improvements or furnishing any materials, equipment, or supplies for construction of the said improvements. In addition, the City shall be entitled to inspect at reasonable times all records of the Redeveloper or its agents regarding such lien waiver procedures.

Section 304. Redeveloper's Certificate of Completion of Improvements.

A. Promptly upon substantial completion by Redeveloper of the Private Improvements in accordance with all provisions of the this Redevelopment Agreement, and promptly after the Redeveloper provides the City with the proper documentation that

Redeveloper's contractor or his or her subcontractors who performed labor or supplied materials, equipment or supplies in the prosecution of the Private Improvements have been properly paid, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private Improvements. If the work has been completed in conformance with this Redevelopment Agreement, the City shall execute and deliver to Redeveloper the City's acceptance to the Redeveloper's Certificate of Completion of Improvements, the form of which is attached hereto as Exhibit F. The acceptance to the Redeveloper's Certificate of Completion of Improvements by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Redevelopment Agreement with respect to the obligations of Redeveloper and its successors and assigns to construct the Private Improvements. As used herein, the term "completion" shall mean substantial completion of the required Private Improvements. Substantial completion is the stage in the construction progress of the Private Improvements when they are sufficiently complete in accordance with the Exterior Construction Documents and when the Redeveloper has secured a temporary or permanent certificate of occupancy so that the Redeveloper can occupy or utilize the Private Improvements for their intended use. With respect to the retail and office components of the Private Improvements, substantial completion need not include the tenant finish improvements required for occupancy by such tenants.

B. The Redeveloper's Certificate of Completion of Improvements shall be recorded by Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska against the Project Site. If the City shall refuse or fail to execute the acceptance to a Redeveloper's Certificate of Completion of Improvements after a final inspection has been requested and performed, the City shall, within fourteen (14) days provide Redeveloper with a written statement indicating in what particulars Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Redevelopment Agreement or is

otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such acceptance.

Section 305. <u>Duty to Maintain</u>. Redeveloper at its own cost and expense shall, following construction of the Private Improvements, keep the same in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of the buildings including the routine and reasonable preventive maintenance of the buildings and their service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes. With regard to the Façade Enhancements and the Plaza Enhancements, the Redeveloper shall not, except for ordinary or necessary maintenance, undertake or allow to be undertaken any material change to the Façade Enhancements and the Plaza Enhancements including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the Façade Enhancements and the Plaza Enhancements that alters their state from the Construction Documents, wear and tear excepted.

Section 306. <u>Business Improvement District</u>. Redeveloper understands and acknowledges that the City intends to create, pursuant to Neb. Rev. Stat. §§ 19-4015 to 19-4038 (Business Improvement District Act), one or more business improvement districts, similar to the Downtown Maintenance District and Downtown Business Improvement District and the Core

Business Improvement District Overlay (i.e. Management Districts) approved by Ordinance Nos. 17271, 18684 and 18683, respectively, within the West Haymarket Redevelopment Area, the boundaries of which include the Project Site. Redeveloper is supportive of the City's intention and as an inducement for the City to proceed with creation of said business improvement district(s), the Redeveloper agrees to and does hereby waive its right to protest the creation of the district(s), provided the work to be performed and the specific improvements proposed to be made or maintained for such districts and the method of assessment to pay the cost and expenses thereof are substantially the same as the Downtown Maintenance District and the Downtown Business Improvement District and the Core Business Improvement District Overlay.

Section 307. Construction Administration. Redeveloper shall be responsible for all components of the Private Improvements constructed by Redeveloper including construction management, coordination of contractors and regulatory permitting and other requirements. Redeveloper and its contractor(s) shall reasonably cooperate with other JPA contractors performing work in the West Haymarket Redevelopment Area including, but not limited to, Redeveloper's scheduling of its work to provide for a smooth sequence of operations. The JPA shall insert a similar duty of cooperation in its contracts for construction of the JPA's West Haymarket Project improvements. The Redeveloper will be solely responsible for payment of all construction costs for the Private Improvements. With the City's consent and approval, which shall not be unreasonably withheld, Redeveloper and its general contractor shall be entitled, subject to the terms and conditions of the Staging Plan (Exhibit K), to make use of the designated West Haymarket Redevelopment Areas not needed for the staging or construction of other JPA West Haymarket Projects and/or JPA/City Public Improvements as staging areas for construction of the Private Improvements.

Section 308. Cost Certification. Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to reimbursement for the cost to construct the Redeveloper Priority Expenses. Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for reimbursement of Redeveloper Priority Expenses. The City shall approve or reject the request for reimbursement with reasons stated, based on the review within ten (10) days of receipt of the same; provided, however, the City shall generally approve requests for reimbursement made by Redeveloper that are consistent with Section 601 of this Redevelopment Agreement. Once the Redeveloper Priority Expense evidence or invoices have been approved by the City, the City shall pay such expense to Redeveloper within two (2) business days from the Project Account (defined below) established by the City for the Project.

Section 309. Grant of Easements, Licenses and Consents.

A. Construction Easements. Redeveloper will grant or convey to the City without additional consideration any necessary permanent and/or temporary construction easements on, over or across the Project Site as may be required to construct any of the City Public Improvements being constructed by the JPA and/or City.

B. Access Easement**.** JPA will grant to the Redeveloper on or before the Closing Date a twenty (20) foot wide non-exclusive public Access Easement, without additional consideration in the form attached hereto as Exhibit C. Redeveloper shall cause the Engineer to prepare the legal descriptions of the Access Easement Premises as generally shown on Exhibit C. JPA will reimburse the Redeveloper one-half (1/2) of the Engineer's cost to prepare said legal descriptions.

C. Façade Easement. Redeveloper shall grant to the City a Façade Easement in the form attached hereto as Exhibit G related to certain Façade Enhancements.

D. Skywalk Bridge Easement. The JPA agrees to convey to Redeveloper a Skywalk Bridge Easement over portions of Lots 1 and 2, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska, to be replatted as Lot 1, West Haymarket 1st Addition for the Skywalk Bridge connecting the New Building to the JPA Parking Garage (Deck 3). The Skywalk Bridge Easement shall be in the form attached hereto as Exhibit H. JPA, at its expense, will cause the design and construction of the Deck 3's footings, foundation and exterior walls to permit the connection of the Skywalk Bridge to Deck 3. Redeveloper, at its expense, shall cause the Engineer to prepare the legal descriptions of the Skywalk Bridge Easement Premises as generally shown on Exhibit H.

E. Plaza License. Redeveloper will grant the City a license to use the Plaza and the Plaza Enhancements in the form attached hereto as Exhibit I. Redeveloper, at its expense, shall cause the Engineer to prepare the legal descriptions of the Plaza License Premises as generally shown on Exhibit I.

F. Consent. Except as the same may otherwise be prohibited by the City's building codes, the City hereby consents without additional consideration to the placement, improvements and usage of the following activities or improvements over or across the platted utility easement located on the south ten (10) feet of the Project Site ("**South Utility Easement**"): (i) the door swing onto said South Utility Easement for the first floor doors of the New Building to permit ingress and egress to and from the New Building; (ii) a minimum of a five feet wide sidewalk between all or a portion of the length of said area to permit ingress and egress between the New Building and "Canopy Street right of way and/or the Access Easement area; (iii) placement of trash and recycling storage containers, (iv) electric transformers and related building equipment and appurtenances, (v) bicycle storage, and/or (vi) outdoor dining within said area (collectively "Permitted Uses and Activities"). .

Section 310. South Utility Easement Release. The parties will use their best efforts to explore the future need for and possibility of releasing the South Utility Easement. In the event, the City determines that the South Utility Easement is not necessary, then the City agrees to release said South Utility Easement, without additional consideration and file said release with the Register of Deeds Office at the expense of the Redeveloper; provided that, the New Building exterior wall face (except for footings and Permitted Uses and Activities) will be subject to a ten (10) foot setback from the south side of the Project Site property line.

Section 311. Design and Construction of Streetscape. JPA, subject to reimbursement as provided in Section 703 B. (Use of TIF Proceeds) below shall (1) design or cause the Streetscape to be designed in accordance with the City's Standard Specifications, (2) submit or cause final construction documents to be submitted to the Director of the Public Works and Utilities Department for review and approval, (3) install and construct or cause the Streetscape to be competitively bid, installed and constructed pursuant to the City's executive order construction process, and (4) pay for or cause to be paid construction inspection, staking and testing of the Streetscape as part of the construction and inspection process.

ARTICLE IV.

SECURITY AND RESTRICTIONS

Section 401. Penal Bond.

A. Penal Bond Amount. Pursuant to *Neb. Rev. Stat.* § 18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Private Improvements, a penal bond in an amount of Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00) with a corporate surety authorized to do business in the State of Nebraska. The form of the Penal Bond is attached hereto as Exhibit J. Such penal bond shall stay in place until the City executes the Certificate of Completion of Improvements for the Private Improvements and shall be conditioned upon Redeveloper or Redeveloper's contractor at all times making payment of all amounts lawfully due to all persons supplying or furnishing Redeveloper, Redeveloper's contractor, or his or her subcontractors with labor or materials performed or used in the prosecution of the Private Improvements. Proof of such penal bond shall be supplied to the City prior to the construction of the Private Improvements.

B. Payment and Performance Bond Alternative. The City shall accept, in lieu of the requirements in Section 401.A. above, a payment bond supplied by Redeveloper's general contractor meeting the requirements of Neb. Rev. Stat. §52-141 (Reissue 2010) and a lien waiver from the general contractor. The penal amount of the bond shall be Two Million Five Hundred Thousand Dollars ($2,500,000). As required by Neb. Rev. Stat. § 52-141, recorded notice of the bond must be filed of record against the Project Site. If this alternative is used, proof of said payment and recording shall be provided to the City prior to the start of construction of the Private Improvements. The lien waiver shall be provided upon completion of the Private Improvements.

C. Security Acceptable to the City Attorney. The City shall accept, in lieu of the requirements in Section 401.A. or B. above, a letter of credit, escrow, or other security agreement in the amount of $2,500,000 approved by the City Law Department. If this alternative is used, proof of said security shall be provided to the City prior to the start of construction of the applicable Private Improvements.

Section 402. Indemnification. Redeveloper agrees to indemnify and hold the City harmless to the extent of any payments in connection with carrying out construction of the Private Improvements the City may be required to make for failure of Redeveloper or Redeveloper's contractor to make payments of all amounts lawfully due to all persons supplying or furnishing Redeveloper's contractor or his or her subcontractors with labor or materials performed or used in construction of Private Improvements.

Section 403. Use Restrictions. Redeveloper hereby represents and agrees that neither all nor any portion of the Redevelopment Project Area shall be used, directly or indirectly, for the following uses:

(a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;

(b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises); except that up to 50% of the overall retail space contained in the Private Improvements may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00

p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(c) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

(d) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

(f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

(g) at least 50% of the leasable retail square footage on any block face will have users whose minimum normal hours of operation, six days a week, are from 11:00 a.m. to 8:00 p.m.;

(h) no freestanding cell towers, excluding a cell antenna on top of the New Building located on the Project Site.

Section 404. **Environmental.**

A. Environmental Site Preparation. The City and/or the JPA, at its expense, shall complete all site improvements necessary to provide Redeveloper with a pad site on the Project Site on or before the Closing Date that is environmentally ready for construction in accordance with the below Environmental Use Restrictions ("**Environmental Site Improvements**"). Said Environmental Site Improvements shall be limited to conducting all agreed upon remedial actions for the East Flank of the West Haymarket Redevelopment Site North ("**WHRSN"**) (which includes Lot 2, Block 7 West Haymarket Addition) identified in the Investigation Report/Remedial Action Plan prepared by the Alfred Benesh Company which was submitted to and approved by NDEQ. Said Environmental Site Improvements shall be performed in compliance with the NDEQ's Voluntary Cleanup Program in order to insure that the U.S. Environmental Protection Agency (EPA) is barred from any administrative or judicial enforcement action under CERCLA Sections 106 and 107. *See* 42 USC Chapter 103 §9628(b). Remedial actions for the East Flank include:

(1) Receive confirmation following substantial completion of all grading, roadway and utility work in the East Flank that the final grade in the East Flank achieved a minimum of three feet of "clean" fill cover over the original grade at the site and/or original grade has a hard surface final cover (roadway, building pad site/parking, etc.).

(2) Record a deed restriction or environmental covenant over this area prohibiting use of groundwater as a drinking water source (essentially preventing any entity from installing a drinking water well at the site). Since some residual soil contamination will remain in place below the clean fill and hard surfaces which serve as an engineered control, the restriction or covenant must include maintaining the integrity of the engineered controls. This

restriction/covenant will be established in accordance with the Nebraska Uniform Environmental Covenants Act (Neb. Rev. Stat. §§76-2601 to 76-2613 (or UECA)).

(3) Establish an Operations and Maintenance (O&M) Plan to ensure compliance with the covenants and to prescribe routine inspection, maintenance, and documentation requirements to be performed by the City/JPA to protect the integrity of all engineering controls.

B. Redeveloper Bona Fide Prospective Purchaser Status. Notwithstanding Paragraph A above, Redeveloper understands, acknowledges and agrees that in order to qualify as a bona fide prospective purchaser for the purposes of CERCLA and other environmental laws, Redeveloper must perform the CERCLA "all appropriate inquiry" before acquiring the Project Site and thereafter comply with the post-acquisition due diligence requirements in 42 USC § 9601(40) including, but not limited to, the following land use restrictions and institutional controls:

(1) The Project Site shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes as set forth in the Investigation Report/Remedial Action Plan prepared by Alfred Benesch Company on behalf of the JPA.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) Prior to beginning vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use, will require the approval of NDEQ (collectively "**Environmental Use Restrictions**").

C. Indemnification. The JPA shall, from and after the conveyance of the Project Site to Redeveloper, indemnify and hold Redeveloper harmless from and against any claim, demand, cost or liability arising out of or attributable to the environmental condition of the Project Site conveyed to Redeveloper by the JPA, except to the extent such claim, demand, cost or liability arises out of, or is attributable to the Redeveloper's failure to comply with the post-acquisition due diligence requirements in 42 USC § 9601(40) and/or the above Environmental Use Restrictions.

D. No Further Action Letter. JPA is in the process of obtaining a "**No Further Action Letter**" by the Nebraska Department of Environmental Quality ("**NDEQ**") verifying that based upon NDEQ's investigation and required remediation, the area of concern or areas of concern at that Project Site, as applicable, and at any other site to which a discharge originating at the Project Site has migrated, or that any contaminants present at the Project Site or that have migrated from the Project Site have been remediated in accordance with applicable remediation statutes, rules and guidance and all applicable permits and authorizations. JPA expects to receive the No Further Action Letter upon completion of certain roadway and infrastructure work in the West Haymarket Redevelopment Area. JPA will use its best efforts to complete such work and

obtain the No Further Action Letter from NDEQ as soon as reasonably possible and provide the Redeveloper an original or certified copy of the No Further Action Letter.

Section 405. Article IV - Run with the Land. It is intended that each of the restrictions set forth in Section 403 and Section 404 shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the Project Site, and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The use restrictions set forth in this Section shall survive Closing. At Closing, the Redeveloper shall record permanent covenants against the Project Site with respect to the use restrictions set forth in this Section in the form attached hereto as Exhibit N.

ARTICLE V.

JPA RESPONSIBILITIES

Section 501. Construction of Parking Garage Improvements. The JPA, at its own cost and expense, shall construct Deck 3 as a six (6) story high public parking garage with approximately 947 parking stalls to help satisfy the parking needs of the West Haymarket Redevelopment Area and the Private Improvements. JPA shall use its commercially reasonable efforts to substantially complete Deck 3 on or before the Estimated Completion Date of the Private Improvements and will substantially complete Deck 3 on or before the Completion Date. In the event JPA does not substantially complete Deck 3 on or before the Completion Date, the City and JPA agree that the City will provide alternate parking at market rates to the Redeveloper for the parking as described in Section 601 through the use of surface parking lots in the West Haymarket Redevelopment Area until Deck 3 is substantially completed. The JPA shall cause the number of stalls it deems necessary in Deck 3 to be devoted to accommodate short-term parkers for retail and office uses in the area.

Section 502. Operation of Deck 3. The City, acting through its parking garage operator, shall operate Deck 3 on behalf of JPA. The City shall cause the number of stalls its deems necessary in Deck 3 to be devoted to accommodate short-term parkers for retail and commercial uses in the area.

ARTICLE VI

PARKING RIGHTS

Section 601. Office & Retail Monthly Parking; Redeveloper's Right to Lease. Upon opening of Deck 3 and after completion of the Private Improvements, Redeveloper for the sole use of its tenants shall have the right to lease the following parking in Deck 3:

A. Reserved Parking Stalls. For office and retail uses, up to ten (10) fully reserved parking stalls ("**Reserved Parking**").

(1) The Reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, including all Husker football games, Husker basketball games, Husker baseball/softball games, Haymarket Park events, and West Haymarket Arena events (collectively "**Events**"). The Reserve Parking shall be signed and located on the north end of the first floor gated and nested area (west bay).

(2) The Reserved Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other reserved parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the reserved parking rights granted to reserved parkers in similar City garages and in particular shall be subject to regular and timely payment of the reserved parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that

Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the reserved rate paid by the Redeveloper.

B. Monthly Parking Stalls. For office and retail uses, up to three hundred fifty (350) parking stalls ("**Monthly Parking**").

(1) Two hundred sixty (260) of the Monthly Parking stalls need not be signed or otherwise designated as reserved parking and may be located in any of the Deck 3 parking stalls allocated for monthly parkers.

(2) Approximately sixty-three (63) of the Monthly Parking stalls will be signed and located within the third floor gated and nested area (west bay).

(3) The balance of the three hundred fifty (350) Monthly Parking stalls (approximately twenty-seven (27)) will be signed and located on the north end of the first floor gated and nested area (west bay).

(4) The first and third floor nested areas will be gated from 7:00 a.m. to 5:00 p.m. during the weekday; but the gate will be open for transient and Event parking after 5:00 p.m. The JPA shall cause its parking garage operator to take reasonable efforts to ensure that the first and third floor nested areas are cleared of transient and Event parkers by 7:00 a.m. the next morning.

(5) The Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that

Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the monthly rate paid by the Redeveloper.

(6) Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in Deck 3 in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology in calculating overall parking demand. The City's shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in Deck 3. If space is not available, every effort will be made to accommodate monthly parking in the next available facility.

C. Football & Events Parking. Up to ninety (90) of the Monthly Parking permits may include the right to park in Deck 3 for Nebraska home football games and Arena events ("**Football & Events Parking**") at the Football & Event Parking Rate (defined below). The Football & Events Parking will not be in assigned stalls. Rather, stalls will be occupied on a first come, first serve basis; provided that an eligible Monthly Parking parker who is already parked for their employment, shall not be required to re-park for the Football & Events Parking.

(1) The City projects that Deck 3, in addition to Nebraska football games, will be totally filled for the largest 20 Arena Events per year. To be sure the City does not lose parking revenues, the Football & Event Parking Rate will be the sum of (i) the twenty (20) largest Arena events per year (subject to adjustment as provided below), times the City's published Deck 3 Arena Event parking rate per Arena event for the upcoming year and (ii) the City's published Deck 3 Nebraska Football Game season parking rate for all games for the upcoming year. The pre-paid Deck 3 Football & Events Parking will be paid to the City on a

monthly basis amortized over a twelve (12) month period ("**Football & Event Parking Rate**"). Each party reserves the right on the fifth anniversary of the Football & Events Parking and every five years thereafter, to request an increase or decrease in the projected number of Arena Events in which Deck 3 will be totally filled based upon the average number of per year Arena Events in which Deck 3 was totally filled during the prior five (5) years and to increase or decrease the Football & Event Parking Rate accordingly.

D. Duration. The parking rights outlined in this Section 601 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue in the West Haymarket Redevelopment Area.

Section 602. Failure to Exercise Parking Rights. If Redeveloper does not exercise any or all of the above rights to lease parking stalls upon opening of Deck 3, Redeveloper shall have the following continuing right to lease parking stalls:

> If Reserved Parking, Monthly Parking and Event Parking permits are not available when requested to meet any or all requests by Redeveloper, the City shall place any such unfilled request for permits at the head of the applicable Reserved Parking, Monthly Parking and Event Parking waiting list to be compiled by the City or its agent operating the Deck 3 (collectively "**Waiting Lists**"). Notwithstanding the above, Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing Reserved Parking, Monthly Parking and Event Parking permit to accommodate Redeveloper's request for parking permits.

ARTICLE VII.

TAX AGREEMENT

Section 701. Valuation of Project Site. The City intends to use the Tax Increment Provision to generate a tax increment in the estimated amount of Two Million Two Hundred and

Six Thousand Six Hundred Sixty-Two and No/l00 Dollars ($2,206,662.00) which tax increment revenues ("**TIF Tax Revenues**") when collected shall be used to pay debt service of the TIF Indebtedness to be incurred as provided below. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Development Law which will be attributable to the construction of the Private Improvements and redevelopment contemplated under this Redevelopment Agreement. The TIF Tax Revenues which are to be used to pay debt service for the TIF Indebtedness will be derived from the increased valuation from redeveloping the Project Site as provided in this Redevelopment Agreement.

Redeveloper further agrees not to contest any taxable valuation assessed for the Project Site which does not exceed Ten Million Eight Hundred and Eighteen Thousand One Hundred and Sixty and No/100 Dollars ($10,818,160.00) commencing the first tax year following the completion of the Private Improvements and continuing for a period of not to exceed fifteen (15) years after the Effective Date or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter.

Section 702. TIF. Issuance of TIF Indebtedness. Not earlier than thirty (30) days following the later date of the approval and execution of this Redevelopment Agreement or the date the issuance of the TIF Bond (defined below) has been authorized, which date is after the remonstrative period in Neb. Rev. Stat § 18-2142.01 or as soon thereafter as is practicable, the City shall issue TIF Indebtedness as follows: (i) "**TIF Bond A**" in the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00) to be purchased by the City or other purchaser ("**TIF Bond Purchaser A**") and receive TIF Proceeds from the TIF Bond Purchaser A to be deposited into a City or Lender fund account (the "**Project Account A**") for payment of the City's TIF Bond A cost of issuance and to fund the City Public Improvements set forth in the

Second Priority in Section 703 A. below and (ii) "**TIF Bond B**" in the sum of One Million Nine Hundred and Forty-Eight Thousand Three Hundred Forty-Seven and No/l00 Dollars ($1,948,347.00) to be purchased by the Redeveloper or Redeveloper's Lender ("**TIF Bond Purchaser B**") and receive TIF Proceeds from the TIF Bond Purchaser to be deposited into a City or Lender fund account (the "**Project Account B**") for payment of the City's TIF Bond B cost of issuance and the Eligible Project Costs in the Second Priority and Third Priority set forth in Section 703 B. below. TIF Bond A and TIF Bond B are individually and collectively referred to herein as "**TIF Bond**" and TIF Bond Purchaser A and TIF Bond Purchaser B are individually and collectively referred to herein as "**TIF Bond Purchaser**". The total dollar amount of the TIF Bond is the estimated amount of the tax increment to be generated on the Project Site and Private Improvements based upon an estimated taxable valuation of $10,818,160.00 after completion of the Private Improvements. The Redeveloper or Redeveloper's Lender, shall have the option to buy TIF Bond A and be the TIF Bond Purchaser A as a separate TIF Bond or recombine TIF Bond A and TIF Bond B into one TIF Bond.

Section 703. Use of TIF Proceeds.

A. TIF Bond A. TIF Proceeds from the sale of the TIF Bond A shall be expended in the following priority in accordance with those cost estimates listed on Exhibit L. Only costs incurred after the execution of this Redevelopment Agreement by all parties hereto shall be eligible for payment.

FIRST PRIORITY: Reimburse the City for cost of issuance of the TIF Indebtedness including bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves;

SECOND PRIORITY: Fund the Project Account A for the City Public Improvements.

B. TIF Bond B. TIF Proceeds from the sale of the TIF Bond B shall be expended in the following priority in accordance with those cost estimates listed on Exhibit "L". Only costs incurred after the execution of this Redevelopment Agreement by all parties hereto shall be eligible for payment.

FIRST PRIORITY: Reimburse the City for cost of issuance of the TIF Indebtedness including bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves;

SECOND PRIORITY: Reimburse JPA for the Streetscape; and

THIRD PRIORITY: Reimburse the Redeveloper for the costs of the Land Purchase Assistance, Plaza Enhancements; Façade Enhancements for the use of those materials which exceed the requirements of the IDP and applicable Downtown Design Standards and for Energy Enhancements.

The Third Priority Items are hereinafter referred to as the "**Redeveloper Priority Expenses**." The cost for the Uses items in Exhibit "L" are estimates and reimbursement will be based upon the actual design, inspections, project administration, construction and implementation costs. The Redeveloper is authorized to reduce or increase the scope, scale, size or phasing of a Third Priority item or items so long as the overall available Total TIF Uses amount is not exceeded. In the event there is not enough available Grant Funds (defined below) from TIF Proceeds to complete the Third Priority item(s) as shown above, then the Redeveloper is authorized to reduce the scope, scale, size or phasing of a Third Priority item or items or eliminate a Third Priority item or items.

C. Authority of City Finance Director. Subject to the terms of this Redevelopment Agreement, the City Finance Director on behalf of the City shall have the authority to determine the timing of issuance of the TIF Indebtedness and all other details of the TIF Indebtedness, TIF

Bond, TIF Tax Revenues, Project Account and Grant of Funds for the eligible TIF Cost of the Redeveloper Undertakings; provided that, the semi-annual TIF Tax Revenues shall first be applied toward payment of the annual debt service of the TIF Bond A and then applied toward payment of the annual debt service on the TIF Bond B. Thereafter, any remaining unencumbered TIF Tax Revenues shall be allocated between the debt service of the TIF Bond A and the TIF Bond B based upon the prorated principal amount of the TIF Bond A and TIF Bond B.

Section 704. Debt Service for TIF Indebtedness. The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the TIF Bond Purchaser the principal of and/or interest on the TIF Bond with interest as provided in the TIF Bond Ordinance(s) with interest at a rate not to exceed nine percent (9.0%) per annum. Any unpaid debt service on the TIF Indebtedness (including interest) is not payable from any other source whatsoever and shall not constitute a general obligation or debt of the City.

A. Redeveloper Purchased TIF Bond; Deferral/Forgiveness of Tax Increment Deficiency. If the Redeveloper purchases the TIF Bond, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site which impedes the City's ability to pay debt service on the TIF Bond, shall be borne entirely by the Redeveloper without recourse of any kind against the City. Specifically, in the event of and to the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Bond, the Redeveloper agrees to defer payment of the same for each year that there exists a deficiency in such TIF Tax Revenues during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse Redeveloper for all sums deferred plus interest (at the same

interest rate of the then outstanding TIF Bond) if and when TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service. In the event the TIF Bond is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness on such Bond shall be forgiven.

B. Lender Purchased TIF Bond; Redeveloper Payment of Tax Increment Deficiency. If Redeveloper's Lender purchases the TIF Bond, the Redeveloper shall be liable to cover any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and Private Improvements located thereon. Specifically, in the event of and to the extent of any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, Redeveloper agrees to pay the City the amount of said deficiency within thirty (30) days following receipt of a written request for such payment from the City. If Redeveloper is required to pay any such deficiency, the City shall reimburse Redeveloper for all sums paid by Redeveloper for such purposes plus interest (at the same interest rate of the then outstanding TIF Bond) to the extent TIF Tax Revenues do become available during the Tax Increment Period (defined below) from the Ad Valorem Provision to meet current debt service and reimburse Redeveloper for such deficiency payments. In the event that any deficiency payments made by Redeveloper as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Redeveloper agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

C. Adjustments for any Payments of Tax Increment Deficiency. If Redeveloper makes one or more payments to cover a deficiency in the required debt service payments on the TIF Bond as provided in paragraph A and paragraph B of Section 704, the City shall maintain a record of the aggregate amount of said payments, which shall include interest (at the same

interest rate of the then outstanding TIF Bond) ("**Redeveloper's Aggregate Deficiency Payments**"). If the TIF Tax Revenues from the Tax Increment Provision for any year exceeds the amount necessary to meet current debt service of the TIF Indebtedness, then the excess TIF Tax Revenues shall be paid to Redeveloper and deducted from the Redeveloper's Aggregate Deficiency Payments until Redeveloper's Aggregate Deficiency Payments have been fully reimbursed.

Section 705. Grant of Funds.

A. Grant of Funds. In order to support redevelopment of this P Street and Canopy Street Project and as an inducement for Redeveloper to construct the Private Improvements and JPA to construct the Streetscape, the City agrees to the extent allowed by law and then only to the extent funds are lawfully available from issuance of the TIF Indebtedness from TIF Bond B ("**TIF Proceeds B**"), to pay on behalf of or make a grant of funds ("**Grant Funds B**") first to JPA in the total amount of the Streetscape and then to the Redeveloper up to the total amount of the remaining TIF Proceeds, less the amounts expended on the First Priority Item, to pay the Land Purchase Assistance and reimburse Redeveloper for the cost of the other Redeveloper Priority Expenses. In order to receive reimbursement from Grant Funds, the Redeveloper shall submit authentic and satisfactory documentation to the City to verify the Private Improvements have been substantially completed and that the expenditures were made for eligible Redeveloper Priority Expenses. The City shall maintain a record of all expenditures of the TIF Proceeds to determine the total amount of TIF Proceeds expended on Redeveloper Priority Expenses.

B. Reimbursement of Grants. Subject to Section 1001 (Remedies) below, Redeveloper agrees to repay the City for the aid to construction and any grant or grants of funds

to Redeveloper as provided for in Section 703 B (Use of TIF Proceeds) and Section 705A (Grant of Funds) above in the event Redeveloper fails to substantially complete the Private Improvements as provided in Section 302.D (Commencement and Completion Deadline for Private Improvements) above and, upon such repayment of the of the grant funds, this Redevelopment Agreement shall be null and void in regards to Redeveloper's obligation to construct the Private Improvements located upon the Project Site. Subject to Section 1001 (Remedies) below, in the event Redeveloper fails to maintain the Private Improvements as provided in Section 305 (Duty to Maintain) above, then said Redeveloper shall reimburse the City 1/15 of the grant funds granted Redeveloper for construction of the Private Improvements as provided for in Section 705 A (Grant of Funds) above, for each year a Redeveloper fails to maintain the Private Improvements.

Section 706. **Excess TIF Tax Revenues**. Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Project Site not needed or required to pay for the TIF Indebtedness or for the repayment of Redeveloper's Aggregate Deficiency Payments, as set forth in Section 704, shall be maintained in the Project Account B and shall be used to reimburse the City for eligible public expenditures.

Section 707. **Restriction on Transfer**. Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to Redeveloper the Redeveloper's Certificate of Completion of the Private Improvements, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "**Tax Increment Period**"), convey the Project Site to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries.

Section 708. **Agreement to Pay Taxes**. Redeveloper agrees to pay all real property taxes levied upon the Project Site and Private Improvements prior to the times such taxes

become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Project Site and improvements for tax purposes except as provided in Section 701.

Section 709. **Damage or Destruction of Redeveloper's Property**. During the Tax Increment Period, Redeveloper agrees to keep the Project Site and the Private Improvements (during construction and after completed) insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable value (less footings and foundations) but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section 709 may, at Redeveloper's option, be carried under an insurance policy or pursuant to a master policy of insurance or so called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to use reasonable efforts to restore the Private Improvements to their prior condition within eighteen (18) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

Section 710. **Condemnation**. In the event that during the Tax Increment Period all or a substantial portion of the Project Site and Private Improvements is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay real estate taxes upon that portion condemned, the City

shall be entitled to claim against the condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

Section 711. **Termination of Provisions**. The provisions of this Article VII shall terminate upon the end of the Tax Increment Period.

ARTICLE VIII.

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 801. **Limitation Upon Encumbrance of Property**. Prior to issuance of the Redeveloper's Certificate of Completion of Improvements by the City for the Private Improvements, neither Redeveloper nor any successors in interest to Redeveloper shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien upon the Project Site and Private Improvements, whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to such Project Site and Private Improvements, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Redeveloper Improvements, and to finance, operate, maintain, repair, replace and insure said Redeveloper Improvements. All such mortgages, financial encumbrances, or monetary liens shall be subject to the terms and conditions of this Redevelopment Agreement and shall be recorded in the appropriate public records in a timely manner following their execution.

Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the Project Site and Redeveloper Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Site and Redeveloper Improvements whether by voluntary act of Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the Project Site and Redeveloper Improvements and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the Clerk of the district court pursuant to Neb. Rev. Stat. § 52-142 to avoid or prevent foreclosure of such encumbrance or lien.

Section 802. **Mortgage Holder Obligations.** Each mortgage holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Redeveloper Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the holder of the mortgage; nor in favor of any person who subsequently obtains title to the Project Site or any part thereof from the holder of the mortgage; provided, however, no person, including the holder of a mortgage authorized by this Redevelopment Agreement, may devote the Private Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement.

Section 803. **Copy of Notice of Default to Mortgage Holder**. Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the Register of Deeds of Lancaster County, Nebraska or as provided to the City by such mortgage holder.

Section 804. **Mortgage Holder's Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 803, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand as referred to in Section 803, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Redevelopment Agreement.

Section 805. **City's Option to Purchase Property.** In any case where the holder of any mortgage obtains title to the Project Site and any Private Improvements as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper's Certificate of Completion of Improvements for the Private Improvements, the City shall (and any additional mortgage instrument made after the date of this Redevelopment Agreement with respect to the Project Site prior to issuance by the City of the Redeveloper's Certificate of Completion of Improvements shall so provide) be entitled, at its option, to a conveyance to it of the Project Site upon payment to such holder of an amount equal to the sum of:

(1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

(2) All expense with regard to foreclosure;

(3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of the Project Site;

(4) The depreciated cost of any improvement made by such holder;

(5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and

(6) All other reasonable holding costs actually incurred as to the Project Site.

The City's option shall remain in force for ninety (90) days after the date the holder of any mortgage obtains title to said Project Site and notifies the City, unless the City waives the option prior to the end of such 90-day period.

In the event the City exercises its option under this Section, then the City shall also be required to repay in full any and all outstanding TIF Bonds and TIF indebtedness and shall be entitle to receive the TIF Proceeds.

Section 806. <u>Mortgage Rights Applicable to Other Forms of Encumbrance</u>. The rights and obligations of this Redevelopment Agreement relating to mortgages of the Project Site prior to issuance of the Redeveloper's Certificate of Completion of Improvements for the Private Improvements thereon shall apply to any other type of encumbrance on the Project Site, and any of the stated rights, obligations, and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance, all of which shall be as duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

Section 807. <u>Termination of Provisions</u>. The provisions of this Article VIII shall terminate upon issuance by the City to the Redeveloper the Redeveloper's Certificate of Completion of Improvements for all the Private Improvements.

ARTICLE IX.

REPRESENTATIONS

Section 901. <u>Development of Project</u>. Redeveloper represents and agrees that its undertakings, pursuant to this Redevelopment Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

Section 902. <u>Restrictions on Assignments of Rights or Obligations</u>. Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion of Improvements by the City, there shall be no sale or transfer of Redeveloper or assignment of its rights or obligations under this Redevelopment Agreement to any party without the prior written approval of the City Administration, other than mortgages and involuntary transfers by reason of death, insolvency, or incompetency. The City shall be entitled to require, except as otherwise provided in this Redevelopment Agreement, as conditions to any such approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Redevelopment Agreement by Redeveloper;

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds of Lancaster County, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Redevelopment Agreement and agreed to be subject to all of the conditions and restrictions to which Redeveloper is subject. No transfer of, or change with respect to ownership in Redeveloper's interest in the Project Site or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Redevelopment Agreement with respect to the Project Site and

the construction of the Private Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Redeveloper in writing; and

D. Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Proposal for Redevelopment; provided that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion. The restrictions set forth in this Section 902 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion of Improvements by the City.

Section 903. **Change in Scope, Termination of Project**. City and Redeveloper agree that any material change in the scope of the P Street and Canopy Street Project including termination of the entire Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Sources and Uses of Funds for the Project and, if applicable, the costs incurred by the respective parties to date. Notwithstanding the foregoing, in the event that Redeveloper is unable through no fault of Redeveloper to obtain

the necessary governmental approvals and permits from the City prior to Closing to construct the Private Improvements as reflected on the Project Schematic Drawings, Redeveloper may terminate this Redevelopment Agreement by delivering written notice to the City.

ARTICLE X.

REMEDIES

Section 1001. In General. Except as otherwise provided in this Redevelopment Agreement, in the event of any default in or breach of this Redevelopment Agreement, or any of its terms or conditions by the City, the JPA, Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the aggrieved party, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such thirty (30) day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

Section 1002. Other Rights and Remedies; No Waiver by Delay. The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Redevelopment Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Redevelopment

Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

Section 1003. <u>Delay in Performance For Causes Beyond Control of Party ("Force Majeure").</u> For the purpose of any provisions of this Redevelopment Agreement, the City, the JPA, and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

Section 1004. <u>Rights and Remedies Cumulative</u>. The rights and remedies of the parties to this Redevelopment Agreement, whether provided by law or by this Redevelopment Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Redevelopment Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

ARTICLE XI.

MISCELLANEOUS

Section 1101. <u>Conflicts of Interest; City Representatives Not Individually Liable</u>. No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Redevelopment Agreement.

Section 1102. <u>Persons Authorized to Issue Approvals</u>. For purposes of this Redevelopment Agreement and the approvals and disapprovals required hereunder, Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, or the Mayor, or the Director of the Department of Urban Development or its successor as authorized in this Redevelopment Agreement, as constituting the approval or disapproval required by the City. The Mayor is hereby authorized to amend or modify the Order of Priority and use of TIF Proceeds for the Priority items as shown in Section 703 A. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of Zach Wiegert as constituting the approval or disapproval of Redeveloper.

Section 1103. <u>Equal Employment Opportunity</u>. Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Redevelopment Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Redeveloper because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race,

religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 1104. <u>Notices and Demands</u>. A notice, demand, or other communication under this Redevelopment Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as follows:

If to the City:	Mayor 555 South 10th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10th Street Lincoln, Nebraska 68508
If to the JPA:	Mayor 555 South 10th Street Lincoln, Nebraska 68508
With a copy to:	City Attorney 555 South 10th Street Lincoln, Nebraska 68508
If to Redeveloper:	Project Oscar, LLC Attn: Zachary A. Wiegert 11422 Miracle Hills Drive, Suite 400 Omaha, NE 68154
With a copy to:	Dinwoodey L.L.C. Attn: Jeffrey K. Woodbury 2733 E. Parleys Way, Suite 300 Salt Lake City, UT 84109

With a copy to:	Tetrad Real Estate, LLC c/oTetrad Corporation Attn: W. David Scott 11422 Miracle Hills Drive, Suite 400 Omaha, NE 68154
With a copy to:	Wiegert Development, LLC c/o Wiegert Properties, LLC Attn: Zachary A. Wiegert 11422 Miracle Hills Drive, Suite 400 Omaha, NE 68154
With a copy to:	Olsson Associates Attn: Todd Lorenzen 1111 Lincoln Mall Lincoln, NE 68508
With a copy to:	Seacrest & Kalkowski, PC, LLO Attn: Kent Seacrest 1111 Lincoln Mall, Suite 350 Lincoln, NE 68508

or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

Section 1105. <u>Approval Not Unreasonably Withheld and Timely Approval</u>. Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Redevelopment Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Redevelopment Agreement submits any item to another party to this Redevelopment Agreement for approval pursuant to this Redevelopment Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period

specified for such approval or disapproval, then such failure shall constitute approval of such item.

Section 1106. Access to Project Site. Redeveloper shall permit the representatives of the City to enter Project Site at any and all reasonable times, as the City may deem necessary for the purposes of this Redevelopment Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements. Similarly, the City shall permit Redeveloper such entry upon the public rights of way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for in this section. The City's right of access granted under this Section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

Section 1107. Termination of Provisions; Provisions Run With the Land. This Redevelopment Agreement shall run with the Project Site and shall inure to and bind the parties and their successors in interest. Except as otherwise provided herein, the provisions and covenants of this Redevelopment Agreement shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion of Improvements for the Private Improvements.

Section 1108. Federal Immigration Verification System Requirements. In accordance with *Neb. Rev. Stat*. §§ 4-108 through 4-114, the Redeveloper agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324a, otherwise known

as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Redeveloper shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 USC 1324b. The Redeveloper shall require any contractor constructing the Private Improvements on behalf of Redeveloper to comply with the provisions of this section.

Section 1109. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Redevelopment Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 1110. Mutual Cooperation. The parties agree to mutually cooperate in constructing the various improvements each is to construct in the West Haymarket Redevelopment Area so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time.

Section 1111. Integrated Contract; Severance of Provisions; Interpretation; Governing Law. It is intended by the parties that this Redevelopment Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Redevelopment Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Redevelopment Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The parties agree that any grant paid hereunder to the Redeveloper as reimbursement for the cost of the City Public Improvements are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and

that such grant funds are not under the dominion and control of the Redeveloper and should not be construed as income to the Redeveloper under the Internal Revenue Code Section 61 (I.R.C. § 61). This Redevelopment Agreement shall be construed and governed by the laws of the State of Nebraska.

Section 1112. <u>Definitions</u>.

A. For the purpose of this Redevelopment Agreement, the term "holder" in reference to a mortgage shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.

B. The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

C. The term "minimum investment" shall include all costs incurred by Redeveloper when constructing the Private Improvements and Public Enhancements, including but not limited to construction costs, fees, financing costs, and land costs.

Section 1113. <u>Audit</u>. Redeveloper shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Redevelopment Agreement, as allowed by law. City shall be subject to audit by Redeveloper with regard to the collection, disbursement, and/or funding of any of the uses set forth in Section 703 B. and shall make available to Redeveloper and/or any auditor working on behalf of Redeveloper copies of all financial and performance-related records and materials germane to this Redevelopment Agreement and the use of the Tax Increment Financing Proceeds for the Priority Expenses described in Section 703 B.

Section 1114. Effective Date of Ad Valorem Tax Provision. The Effective Date of the Ad Valorem Tax Provision of the Private Improvements portion of the P Street and Canopy Street Project shall be the date of Closing or July 1, 2013, whichever is earlier (the "**Effective Date**"). The City will deliver written notice to the County Assessor on or before August 1, 2013 to divide the property taxes in the Project Area and use the last certified valuation for 2012 to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147 (3) of the Nebraska Revised Statutes.

Section 1115. Expiration. Except as otherwise provided herein, this Redevelopment Agreement shall expire upon the expiration of the Tax Increment Period.

Section 1116. Recording. A Memorandum of this Redevelopment Agreement (in the form attached hereto as Exhibit N shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site, at the Redeveloper's expense.

Section 1117. Representations and Warranties of Parties.

A. Redeveloper represents and warrants to City as follows:

i. Organization; Power; Good Standing. Redeveloper is a Nebraska limited liability company, duly organized and validly existing in good standing under the laws of Nebraska. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Redevelopment Agreement and perform the obligations hereunder.

ii. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's

rights generally, or by judicial discretion in connection with the application of equitable remedies.

iii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by Redeveloper has been duly authorized by all necessary action by Redeveloper and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Redeveloper, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Redeveloper is a party.

B. City represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by City has been duly authorized by all necessary action by the City and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to the City, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the City is a party.

C. JPA represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by JPA has been duly authorized by all necessary action by JPA and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to JPA, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which JPA is a party.

Section 1118. Counterparts. This Redevelopment Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

Section 1119. Successors and Assigns. The provisions of this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

Section 1120. Purpose of Agreement. This Redevelopment Agreement has been entered into by the City to provide financing for the P Street and Canopy Street Project, an approved redevelopment project as defined in Neb. Rev. Stat. § 18-2103(12) within the Lincoln Center Redevelopment Plan.

Section 1121. Certain Public Enhancements and City Public Improvements. Notwithstanding any contrary provisions herein, certain Public Enhancements and City Public

Improvements will include design costs, improvements and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Public Enhancements and City Public Improvements with the New Building and Skywalk. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor's competitive bids for said Public Enhancements and City Public Improvements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same. Where reasonable and appropriate, Redeveloper shall utilize unit price or itemized contracts specifically showing the eligible items or quantities prior to letting or entering into the same. Overhead, overtime, incentive, office, mobilization, administration or similar generalized charges shall be allowed only as authorized by the City in advance of incurring the same. Redeveloper agrees to assist and make any and all pertinent documents available for inspection and copying by the City or its auditors in support of the same.

Section 1122. Courtyard. The New Building will have an outdoor area that will be accessible from the Plaza as shown on Exhibit M for use by the Redeveloper, and its tenants and tenants' customers, clients and visitors as outdoor dining, retail and/or open space ("**Courtyard**"). Such Courtyard is shown on Exhibit M.

Section 1123. Authority. The Mayor is hereby authorized to take such action as the Mayor may deem necessary or advisable in order to carry out this Agreement, including, but not limited to, the authority to make ministerial alterations, changes or additions to the Agreement and the Exhibits.

Section 1124. Exhibits. The following Exhibits are attached to this Redevelopment Agreement and are incorporated herein by this reference:

Exhibit A -West Haymarket Redevelopment Area
Exhibit B - Project Site Map and Legal Description
Exhibit C – Access Easement
Exhibit D -Map of the Redevelopment Project Areas
Exhibit E -Project Schematic Drawings
Exhibit F - Certificate of Completion of Improvements
Exhibit G - Façade Easement
Exhibit H - Skywalk Bridge Easement
Exhibit I - Plaza License
Exhibit J - Penal Bond
Exhibit K - Staging Plan
Exhibit L - Sources and Uses of Funds
Exhibit M – Map of the Plaza and Courtyard

Exhibit N - Memorandum of Redevelopment Agreement and Use Restrictions

[SIGNATURE AND NOTARY PAGES TO FOLLOW]

Executed by City this _____ day of _____, 2013.

"**City**"

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor of Lincoln

"**JPA**"

WEST HAYMARKET JOINT PUBLIC AGENCY

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City of Lincoln, Nebraska.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives, on behalf of the Joint Public Agency.

_____
Notary Public

Executed by Redeveloper this _____ day of _____, 2013.

"Redeveloper"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

EXHIBIT A

West Haymarket Redevelopment Area

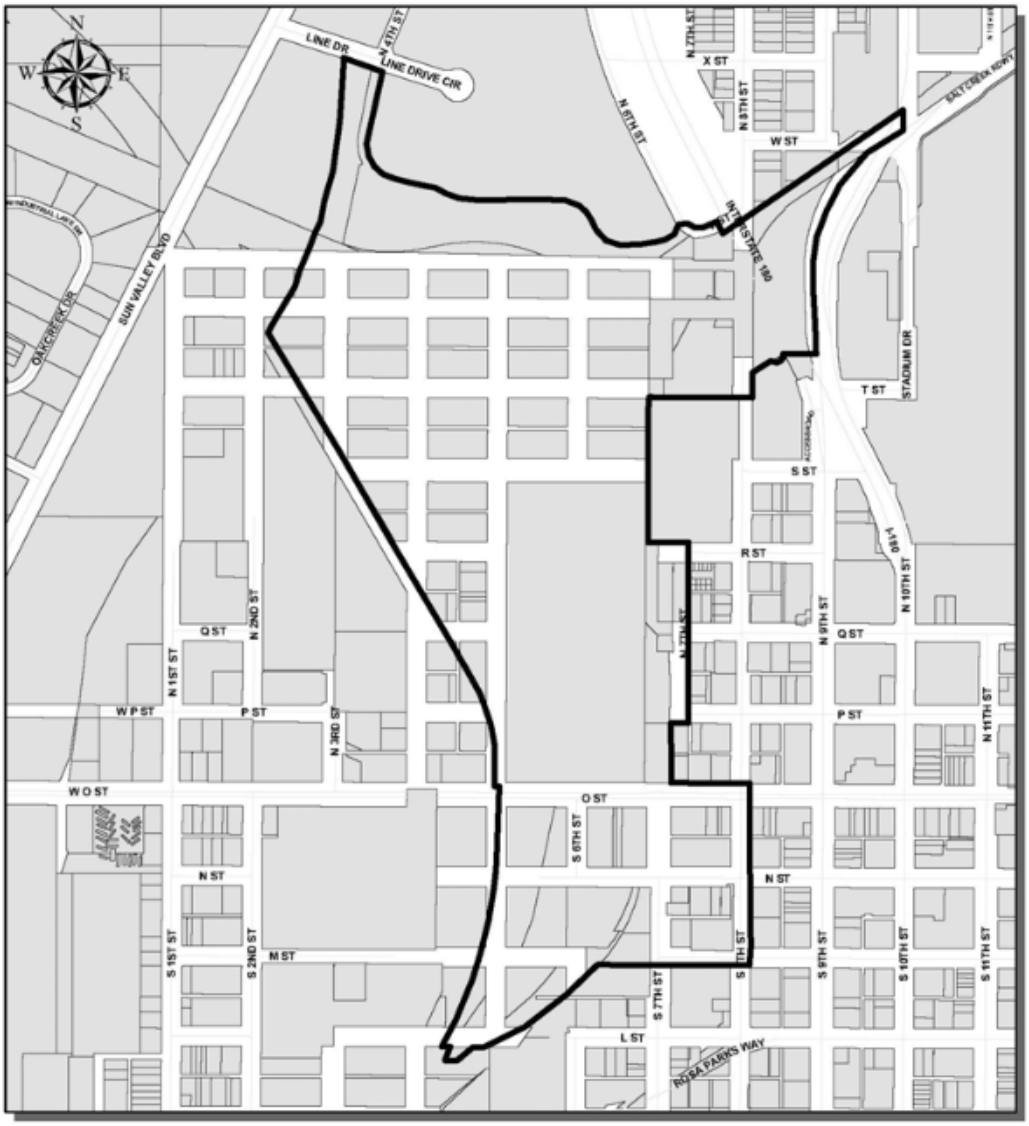


Exhibit IV-141

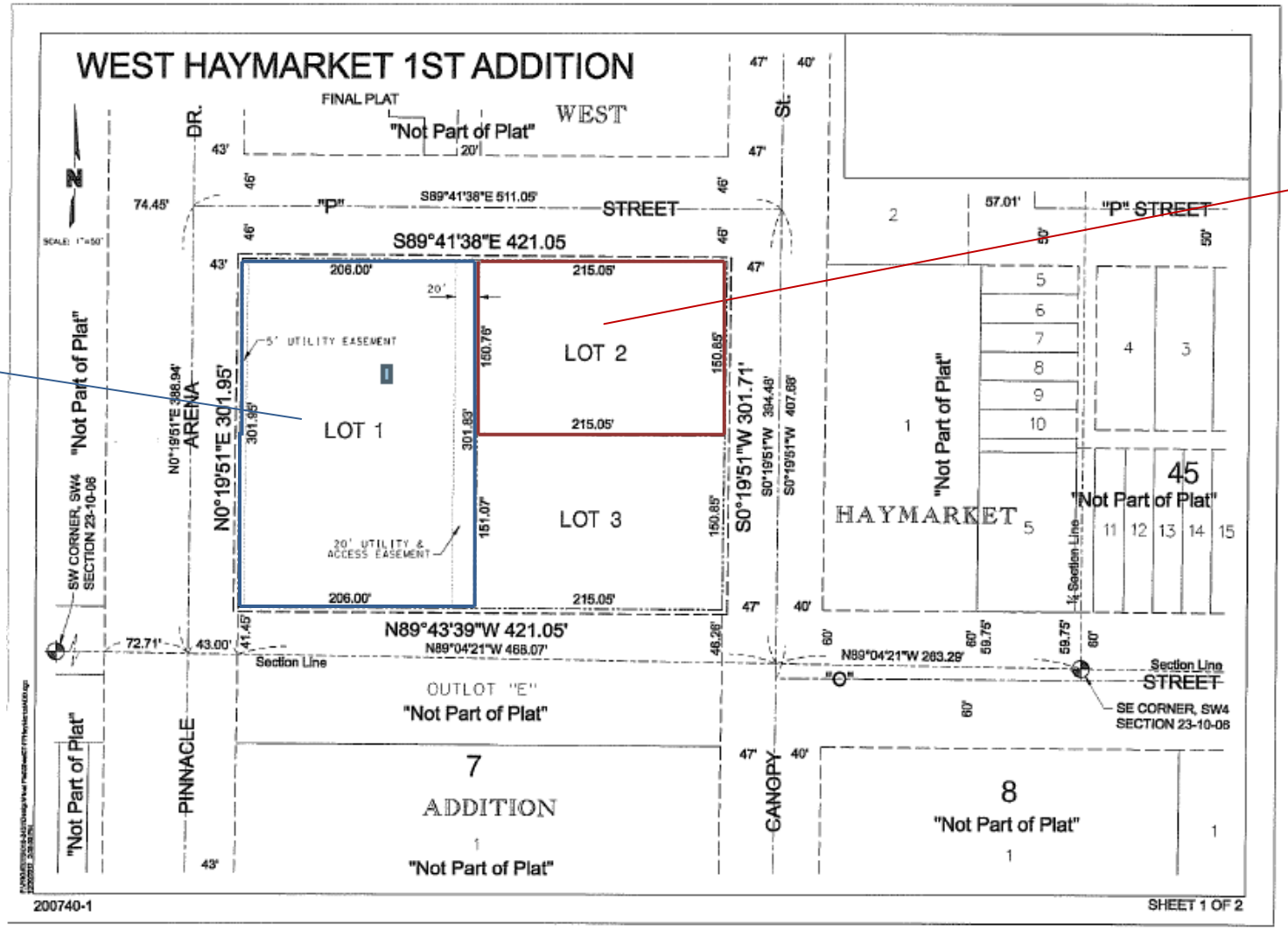
West Haymarket Redevelopment Project Area

Project Area Parcels Streets

City of Lincoln
Urban Development GIS
Printed 8/2007

EXHIBIT B

Project Site Legal Description



Project Site

Deck 3
JPA
Parking
Garage

Deck 2
JPA Parking
Garage

Deck 3
JPA Parking
Garage

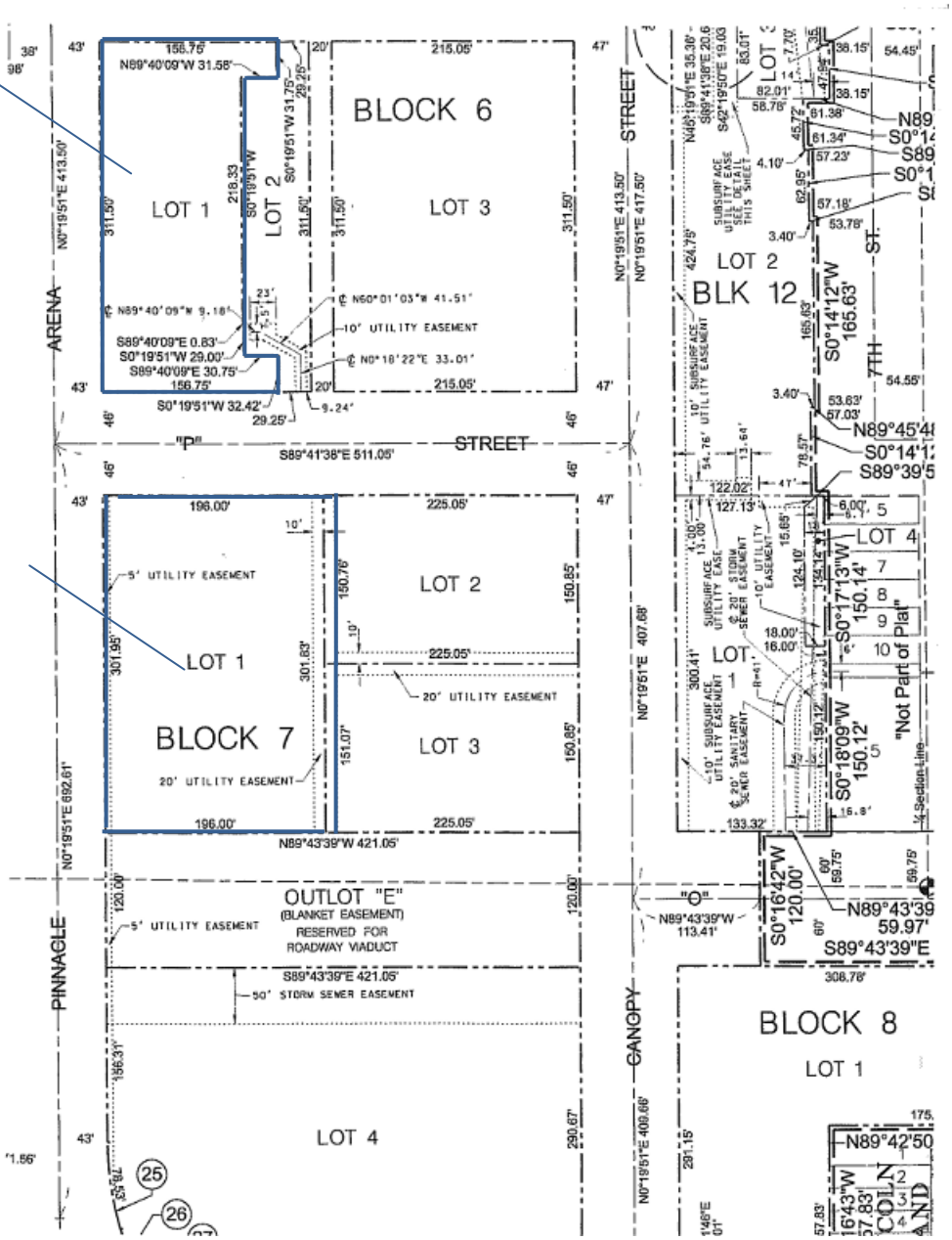


EXHIBIT C

ACCESS EASEMENT

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

ACCESS EASEMENT

THIS ACCESS EASEMENT is made and entered into this ____ day of _____, 2013 by and between the WEST HAYMARKET JOINT PUBLIC AGENCY, herein called "**JPA** or "**Grantor**", and PROJECT OSCAR, LLC, a Nebraska limited liability company, herein called "**Redeveloper**".

RECITALS

A. The JPA is the current owner of Lot 1 ("**Lot 1**") and Lot 3 ("**Lot 3**"), West Haymarket 1st Addition, and Lot 4 ("**Lot 4**"), Block 7, West Haymarket Addition, and Outlot E, Block 7, West Haymarket Addition (**"Outlot E"**), all in Lincoln, Lancaster County, Nebraska.

B. Redeveloper is the owner of Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska.

C. JPA and Redeveloper have entered into a Redevelopment Agreement for the Redeveloper's development of Lot 2, West Haymarket 1st Addition (**"Project Site"**) and the construction thereon of a new building (**"New Building"**) consisting of approximately 80,000 square feet of office space and 9,900 square feet of retail space.

D. Redeveloper is desirous of obtaining secondary vehicular/pedestrian access from P Street and Canopy Street to the Project Site to enable motor vehicle deliveries to the New Building and the JPA is willing to grant such secondary access.

NOW, THEREFORE, in consideration of the above Recitals and performance of the covenants and agreements between Redeveloper and JPA in the Redevelopment Agreement, it is hereby agreed as follows:

1. JPA does hereby grant and convey unto Redeveloper, its successors and assigns a permanent non-exclusive easement for two-way vehicular access and pedestrian access in, upon, and over all of the following described property to wit:

"**North Section Easement Premises":** The east twenty (20) feet of Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska

and

"South Section Easement Premises 1":

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E" & LOT 4, BLOCK 7, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FROM THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF SOUTH 14 DEGREES 03 MINUTES 08 SECONDS EAST, A DISTANCE OF 90.81 FEET TO A POINT; THENCE SOUTH 0 DEGREES 15 MINUTES 31 SECONDS WEST, A DISTANCE OF 322.73 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 44 MINUTES 29 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 15 MINUTES 31 SECONDS EAST, A DISTANCE OF 320.22 FEET TO A POINT; THENCE NORTH 14 DEGREES 03 MINUTES 08 SECONDS WEST, A DISTANCE OF 93.40 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 20.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,272 SQUARE FEET MORE OF LESS.

(collectively "**Easement Premises**") for the purpose of permitting motor vehicle and pedestrian ingress and egress to the Project Site from P Street and "N" Street. The Easement Premises (North Section Easement Premises and South Section Easement Premises 1) is shown on Exhibit 1, which is attached hereto and incorporated herein by this reference.

Notwithstanding the above, the JPA shall reserve the right at any time to remove the Easement Premises from Lot 4 and change the above-described portion of Outlot E by filing an amendment to this Easement Agreement which shall remove and delete South Section Easement 1 with the following South Section Easement 2:

"South Section Easement Premises":

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E", WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT "E"; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 60.49 FEET TO A POINT; THENCE NORTH 89 DEGREES 39 MINUTES 55 SECONDS WEST, A DISTANCE OF 235.05 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 85.88 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 34.05 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 25.43 FEET TO A POINT; THENCE SOUTH 89 DEGREES 39 MINUTES 55 SECONDS EAST, A DISTANCE OF 201.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.35 ACRES OR 15,084 SQUARE FEET MORE OF LESS.

for the purpose of permitting motor vehicle and pedestrian ingress and egress to the Project Site between "P" Street and Canopy Street. South Section Easement Premises 2 is shown on Exhibit 2, which is attached hereto and incorporated herein by this reference.

Upon filing said amendment to this Easement Agreement the **Easement Premises** shall include the North Section Easement Premises and South Section Easement Premises 2.

The Easement Premises is subject to the following terms and conditions:

(1) The Easement Premises is subject to the utility easement on the east twenty (20) feet of Lot 1 and the utility easement on south ten (10) feet of Lot 2 and the north ten (10) feet of Lot 3, dedicated on the final plat of West Haymarket 1st Addition, filed of record with the Lancaster County Register of Deeds as Instrument No. 2013_____ on _____, 2013, and the blanket utility easement over Outlot E, dedicated in the final plat of West Haymarket Addition filed of record with the Lancaster County Register of Deeds as Instrument No. 2012057225 on November 9, 2012.

(2) Responsibility for the cost of construction, maintenance, or repair of the Easement Premises shall rest with JPA and no responsibility thereof shall accrue to the Redeveloper by reason of the benefits from this Easement. The services to be provided by the Grantor shall include hard surface repairs and replacement, but not snow removal and cleaning.

(3) This Easement shall be permanent and shall be appurtenant to and run the Project Site.

(4) This Easement shall be exclusively used by Redeveloper for motor vehicle and pedestrian ingress and egress.

JPA covenants that JPA is the owner of the Easement Premises and has legal right, title and capacity to grant the Easement granted herein.

JPA is granting the uses herein specified without divesting the JPA of title and ownership of the right to use and enjoy the Easement Premises for any purpose except the construction thereof of permanent buildings, subject only to the right of Redeveloper to use the same for the purposes herein expressed, and subject to any easements of record heretofore granted to other parties.

It is further agreed that this Access Easement shall be filed with the office of the Register of Deeds of Lancaster County, Nebraska, and indexed against Lots 1-3, West Haymarket 1st Addition, and Outlot E, Block 7, West Haymarket Addition, Lincoln, Lancaster County, Nebraska and shall thereafter run with the land and be finding upon all parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, JPA has executed this Easement as of this ____ day of _____, 2013.

"**JPA**"

West Haymarket Joint Public Agency
a political subdivision and body corporate
politic of the State of Nebraska

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

"Redeveloper"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

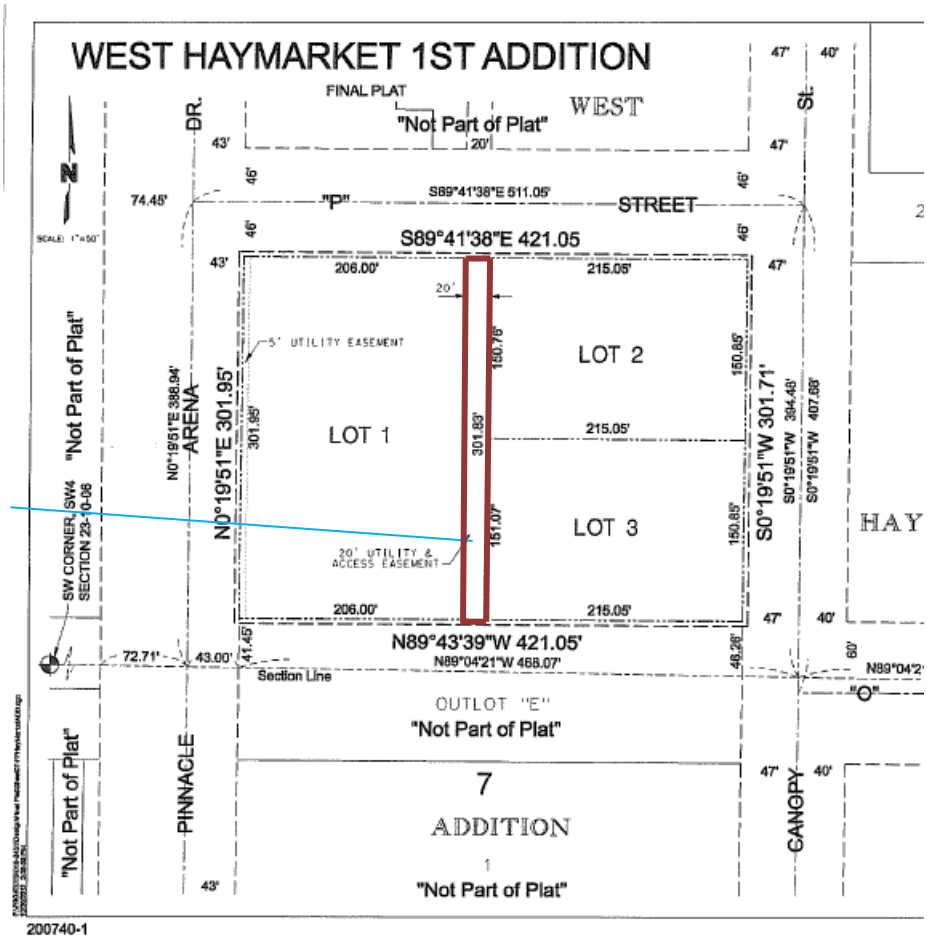
(Seal)

_____
Notary Public

Exhibit 1

North Section Easement Premises

Access Easement

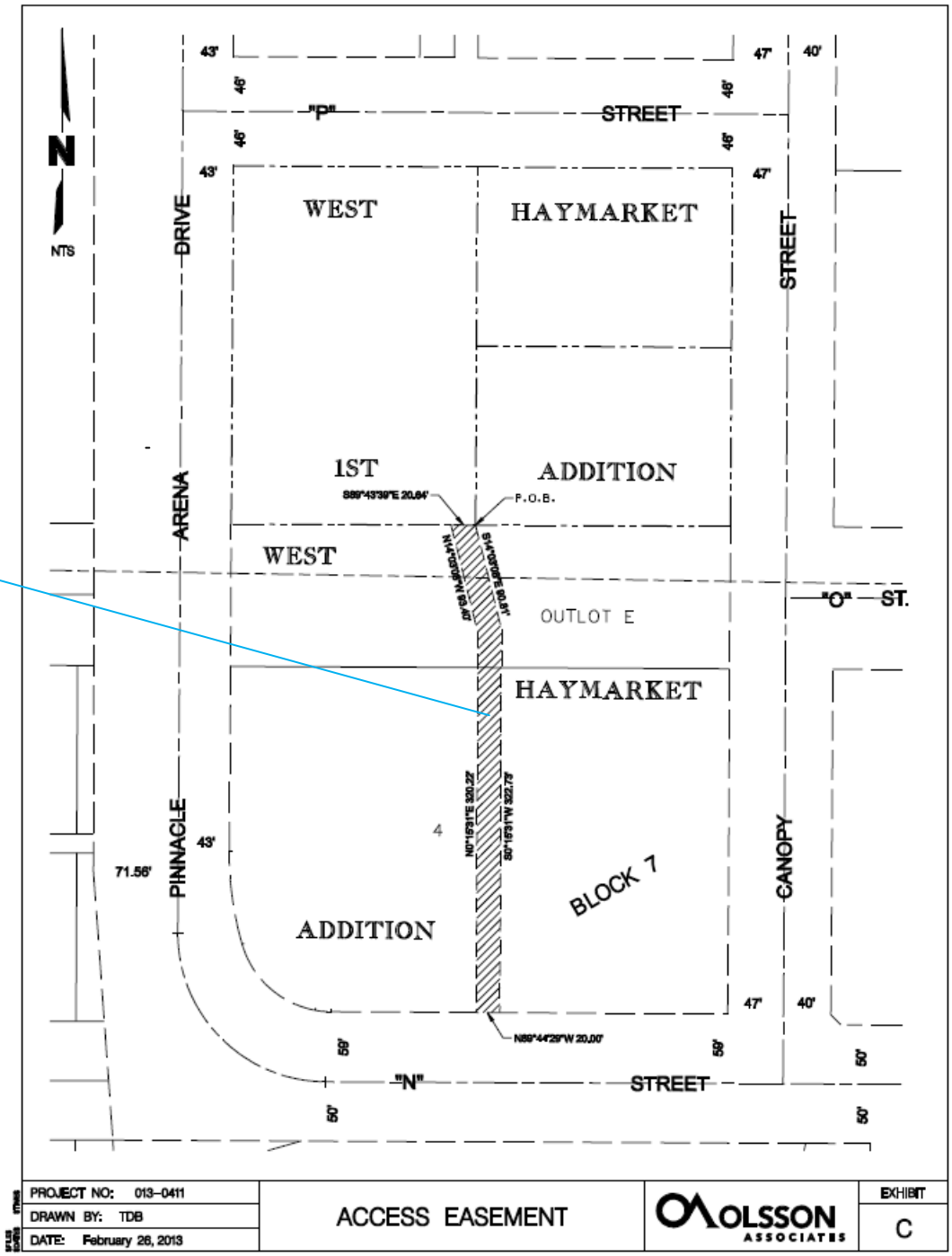


North Section Easement Premises

The east twenty (20) feet of Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County Nebraska.

South Section Easement Premises 1

Access Easement



South Section Easement Premises 1

PERMANENT EASEMENT

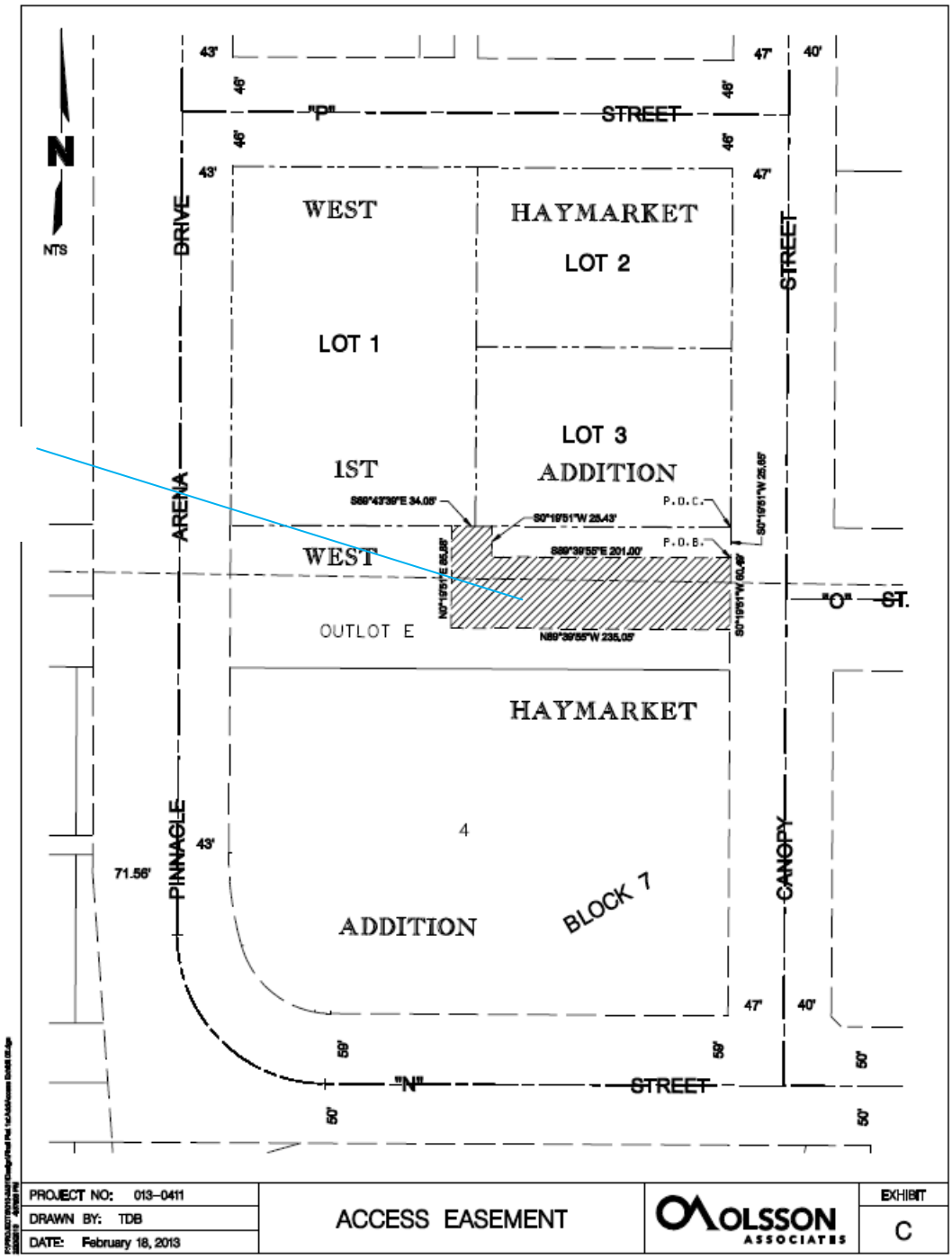
A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E" & LOT 4, BLOCK 7, WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING FROM THE SOUTHEAST CORNER OF LOT 1, WEST HAYMARKET 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF SOUTH 14 DEGREES 03 MINUTES 08 SECONDS EAST, A DISTANCE OF 90.81 FEET TO A POINT; THENCE SOUTH 0 DEGREES 15 MINUTES 31 SECONDS WEST, A DISTANCE OF 322.73 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 4; THENCE NORTH 89 DEGREES 44 MINUTES 29 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 15 MINUTES 31 SECONDS EAST, A DISTANCE OF 320.22 FEET TO A POINT; THENCE NORTH 14 DEGREES 03 MINUTES 08 SECONDS WEST, A DISTANCE OF 93.40 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 20.64 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,272 SQUARE FEET MORE OF LESS.

South Section Easement Premises 2

Access Easement



South Section Easement Premises 2

PERMANENT EASEMENT

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF OUTLOT "E", WEST HAYMARKET ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID OUTLOT "E"; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 25.65 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID OUTLOT "E", A DISTANCE OF 60.49 FEET TO A POINT; THENCE NORTH 89 DEGREES 39 MINUTES 55 SECONDS WEST, A DISTANCE OF 235.05 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 85.88 FEET TO A POINT ON THE NORTH LINE OF SAID OUTLOT "E"; THENCE SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID OUTLOT "E", A DISTANCE OF 34.05 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 25.43 FEET TO A POINT; THENCE SOUTH 89 DEGREES 39 MINUTES 55 SECONDS EAST, A DISTANCE OF 201.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.35 ACRES OR 15,084 SQUARE FEET MORE OF LESS.

EXHIBIT D

Map of the Redevelopment Project Area

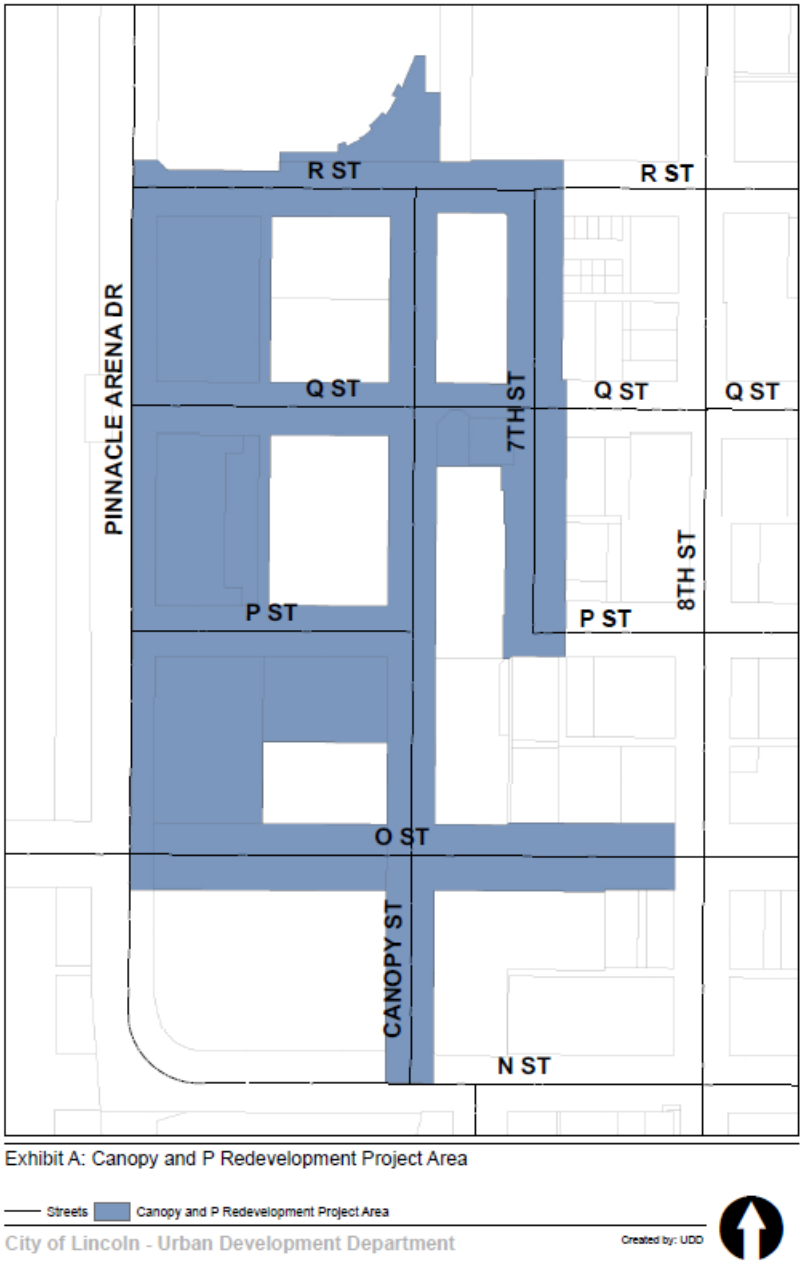


EXHIBIT E

PROJECT SCHEMATIC DRAWINGS

car associates

oscar associates

EXHIBIT F

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

Return the Original to:

Project Oscar, LLC
Attn: Zachary A. Wiegert
11422 Miracle Hills Drive, Suite 400
Omaha, NE 68154

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned Redeveloper certifies, represents and warrants to the City of Lincoln, Nebraska, ("**City**") the conclusive determination and certification with regard to the following real property situated in the City of Lincoln, Lancaster County, Nebraska, to wit:

> Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska,

that the Private Improvements required to be constructed by the undersigned "**Redeveloper**" upon the above described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated as of the _____ day of _____, 2013, between the City, the West Haymarket Joint Public Agency ("**JPA**"), and the Redeveloper, as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the _____ day of _____, 2013 between the City, JPA and Redeveloper and recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska.

"Redeveloper"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

ACCEPTED by the City of Lincoln, Nebraska, this _____ day of _____, 201___.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by Chris Beutler, Mayor of the City of Lincoln.

_____
Notary Public

EXHIBIT G

FAÇADE EASEMENT AGREEMENT

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

FAÇADE EASEMENT AGREEMENT

THIS FAÇADE EASEMENT AGREEMENT (the "**Agreement**") is made this as of this ____ day of _____, 2013 by and between Project Oscar, LLC, a Nebraska limited liability company ("**Grantor**"), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska ("**Grantee**").

RECITALS

A. Grantor owns certain real estate located in Lincoln, Lancaster County, Nebraska, legally

described as:

Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Property**").

B. Grantor entered into a Redevelopment Agreement, dated as of _____, 2013 between the Grantor as Redeveloper, the Grantee as the City and the West Haymarket Joint Public Agency ("**JPA**"), as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the _____ day of _____, 2013 between the Grantor, Grantee and JPA and recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska (the "**Redevelopment Agreement**") for the redevelopment and renovation of the Property.

C. Pursuant to the Redevelopment Agreement, to ameliorate the blighted and substandard conditions of the Property and to enhance the aesthetics of the new building constructed on the Property (the "**New Building**"), Grantor agreed to make certain improvements to the vertical exterior façade of the New Building (the "**Façade**") for the benefit of the public. Under the Redevelopment Agreement Grantor is receiving tax increment financing from Grantee to make certain public improvements including, but not limited to the improvements to the Façade.

D. This Agreement sets forth the parties' rights and obligations with respect to the Façade.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Grantor and Grantee do now hereby agree as follows:

1. Façade. In consideration of the benefits received by Grantor under the Redevelopment Agreement, Grantor hereby agrees to subject the façade of the Property to the restrictions described herein.

2. Façade Restrictions. Grantor agrees to observe and comply with the following restrictions:

a. Grantor shall not demolish, remove or raze the Façade during the term of this Agreement.

b. Grantor shall not undertake, or allow to be undertaken, any material changes to the Façade, without the express written consent of Grantee. Changes to the Façade include, but are not limited to:

(i) Any material change in the Façade, including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the Façade;

(ii) Any significant reconstruction, repair, repainting or refinishing of

any Façade feature that alters its state from the existing condition.

c. This section shall not preclude Grantor from implementing any ordinary or necessary maintenance as set forth in Section 3 below or permitted signage.

3. Façade Maintenance. Grantor shall perform all ordinary and/or necessary maintenance and repairs on the Façade to maintain its appearance and structural soundness and to prevent any deterioration of the Façade.

4. Specification of Work. In the event Grantor desires to make any material changes to the Façade, Grantor shall give Grantee copies of the plans, designs, elevations, specifications and documents relating to the change or work, including specification of all materials, colors and construction techniques to be used in any such work and photographs of the subject area as it appears at the time of the request.

5. Casualty Damage. In the event that the Building or any part thereof shall be damaged by fire or other casualty, then Grantor shall use reasonable effort to reconstruct the Façade to the condition required under this Agreement. If the Building is damaged to such an extent that Grantor determines that reconstruction of said Building is not feasible and provides Grantee with a statement from an independent engineer to the same effect, then this Agreement shall be void and of no further force or effect with respect to said Building.

6. Inspection. Grantee shall be permitted to have reasonable access to the Property to inspect the Façade for the purpose of determining conformance with this Agreement.

7. Term. The term of this Agreement shall be fifteen (15) years from the date of completion of the improvements to the Façade. Provided, however, this Agreement shall terminate at any earlier date that the Redevelopment Agreement is terminated and is no longer in effect.

8. Public Access. Grantor acknowledges and agrees that the general public shall have the regular and substantial opportunity to view the Façade from the streets, sidewalks and other property near the Building. Grantor shall have no obligation under this Agreement to allow the general public to view the interior of the Building.

9. Indemnification. Grantor shall defend, indemnify and hold Grantee harmless from and against any liability, claims, suits, demands, judgments (including costs, expenses and attorneys fees), resulting from actions or claims by third parties or defaults under this Agreement by Grantor arising out of the conveyance of or possession of the Façade Easement.

10. Binding Effect. This Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heir, executors, administrators, successors and assigns of Grantor.

[SIGNATURE PAGE FOLLOWS]

This Façade Easement Agreement is effective as of the date first stated above.

"Grantor"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

GRANTOR ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

"Grantee"

THE CITY OF LINCOLN, Nebraska,
a municipal corporation

Attest: _____ By: _____
City Clerk Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

EXHIBIT H

SKYWALK BRIDGE EASEMENT

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

SKYWALK BRIDGE EASEMENT

That the **WEST HAYMARKET JOINT PUBLIC AGENCY**, herein called "**JPA**", record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, duly paid, the receipt whereof is hereby acknowledged, and the further consideration of the performance of the covenants and agreements by Redeveloper as hereinafter set out and expressed, does hereby GRANT, REMISE and RELINQUISH unto PROJECT OSCAR, LLC, a Nebraska limited liability company, and its successors and assigns, (collectively "**Redeveloper**"), the RIGHT, PRIVILEGE and NONEXCLUSIVE PERPETUAL SKYWALK BRIDGE EASEMENT to permit the design, construction, reconstruction, inspection, support, footings, connection, operation, maintenance, repair and replacement of a private skywalk bridge connecting the Redeveloper's New Building located on Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska ("**New Building Property**") and the JPA Parking Garage ("**Deck 3**") located on Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska ("**Deck 3 Property**"), and to permit pedestrian ingress and egress from the New Building over and through the JPA Parking Garage (Deck 3) including Deck 3 vertical access between street level and the private skywalk bridge and to permit the construction, maintain, repair and replace said skywalk bridge (collectively "**Easement**").

The **"Easement Premises**" includes: (i) the width and location for said skywalk bridge and area necessary to construction, maintain, repair and replace said skywalk bridge between the New Building and the JPA Parking Garage (Deck 3) ("Skywalk Bridge Permanent Easement Area") and (ii) the pedestrian vertical access between street level and the Skywalk Bridge Permanent Easement ("Vertical Access Permanent Easement Area") and is shown on Exhibit A

Said Easement shall run with the land, New Building Property and Deck 3 Property for the benefit the New Building Property.

TO HAVE AND TO HOLD UNTO THE REDEVELOPER, its successors and assigns, so long as the JPA Parking Garage (Deck 3) is used as a parking garage and so long as the private skywalk bridge shall be in existence, subject to early termination as provided below, together with the right of ingress and egress, for the purpose of designing constructing, reconstructing, inspecting, supporting, connecting, operating, maintaining, repairing and replacing the skywalk bridge and appurtenances thereto, located thereon, in whole or in part, at the will of Redeveloper, it being the intention of the parties hereto that JPA is hereby granting the uses herein specified without divesting JPA of title and ownership of the rights to use and enjoy the above described JPA Parking Garage (Deck 3).

This Easement shall be subject to the following terms and conditions:

(1) Prior to commencement of construction, reconstruction or repair of the skywalk bridge, Redeveloper shall submit for the JPA's review and approval, architectural and engineering plans for the construction, reconstruction or repair of the skywalk bridge.

(2) Redeveloper shall cause the skywalk bridge to be constructed, reconstructed or repaired in substantial conformance with the skywalk bridge construction plans as approved by the JPA.

(3) Responsibility for the cost of the private skywalk bridge and corridors within the New Building shall rest with the Redeveloper and no responsibility thereof shall accrue to the JPA by reason of the Redeveloper's benefits from this Easement. The services to be provided by the Redeveloper shall include, but not be limited to, the design, construction, reconstruction, inspection, support, connection, operation, maintenance, repair and replacement of a private skywalk bridge connecting the New Building and the JPA Parking Garage (Deck 3).

(4) Redeveloper shall indemnify, defend and save harmless the JPA or its representatives from all claims, demands, suits, actions, payments, liability, and judgments, including reasonable attorney's fees arising out of the activities of Redeveloper or of Redeveloper's contractors or their agents, employees or invitees, in constructing, maintaining, operating, repairing or reconstructing the skywalk bridge, or the negligent or wrongful use of the Easement by Redeveloper or Redevelopers employees, invitees or agents. In this connection Redeveloper shall maintain during the life of this Easement, Commercial General Liability Insurance, naming and protecting Redeveloper and the JPA against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury; liability, and (3) property damage which may arise from work under this Easement whether such work be by Redeveloper or by any contractor, or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such insurance shall be a combined single limit of $2,000,000 and $5,000,000 aggregate.

i. The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto including contractual liability; and

ii. The property damage coverage shall include a Broad Form Property Damage Endorsement and shall include the following extensions of coverage: Contractual Liability, Products Liability and/or Completed Operation.

The coverage required herein shall be subject to review and the minimum coverage amounts may be increased at any time by the JPA after a public hearing. At all times the Redeveloper shall keep on file with the City Clerk for the City of Lincoln, Nebraska a current certificate of insurance signed by a qualified agent of an insurance company licensed to do business in the State of Nebraska and approved by the City Attorney for the City of Lincoln, Nebraska for conformance with this section evidencing the existence of valid and effective policies of insurance naming the JPA as an additional insured for the coverage required herein, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, the deductibles or self-insurance retainers of each policy, and a copy of an endorsement placed on each policy requiring thirty (30) days' notice by mail to the City Clerk before the insurer may cancel the policy for any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements placed on such policies or the declaration page of such policies.

(5) This Easement shall be permanent and shall be appurtenant to and run with the New Building Property. The JPA shall have the right to determine the location of the access corridor through the JPA Parking Garage (Deck 3).

(6) Upon completion of construction of the skywalk bridge the Redeveloper shall be responsible for managing, maintaining, operating, repairing, and cleaning the skywalk bridge, the same to be done in a good and workmanlike manner.

(7) This Easement shall not be released, terminated, revoked, amended, or modified, in any manner, without the express written consent of the City of Lincoln and the Redeveloper. Any purported release, termination, revocation, amendment, or modification of this Easement without such written consent shall be null and void and of no force or effect.

(8) JPA, at its expense, will cause the design and construction of Deck 3's footings, foundation and exterior walls to permit the connection of the skywalk bridge to Deck 3.

(9) Notwithstanding any contrary provision herein, the City shall reserve all its rights to acquire by voluntary negotiation, and, if necessary, by the exercise of the power of eminent domain and payment of just compensation for the skywalk bridge and terminate this Easement for public purposes after the adoption by it of

a resolution or ordinance declaring that the acquisition of skywalk bridge and terminate this Easement is necessary for such purposes.

THIS INSTRUMENT, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.

IN WITNESS WHEREOF, we have hereunto set our hands as of this ____ day of _____, 2013.

"**JPA**"

West Haymarket Joint Public Agency
a political subdivision and body corporate
politic of the State of Nebraska

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

"Redeveloper"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

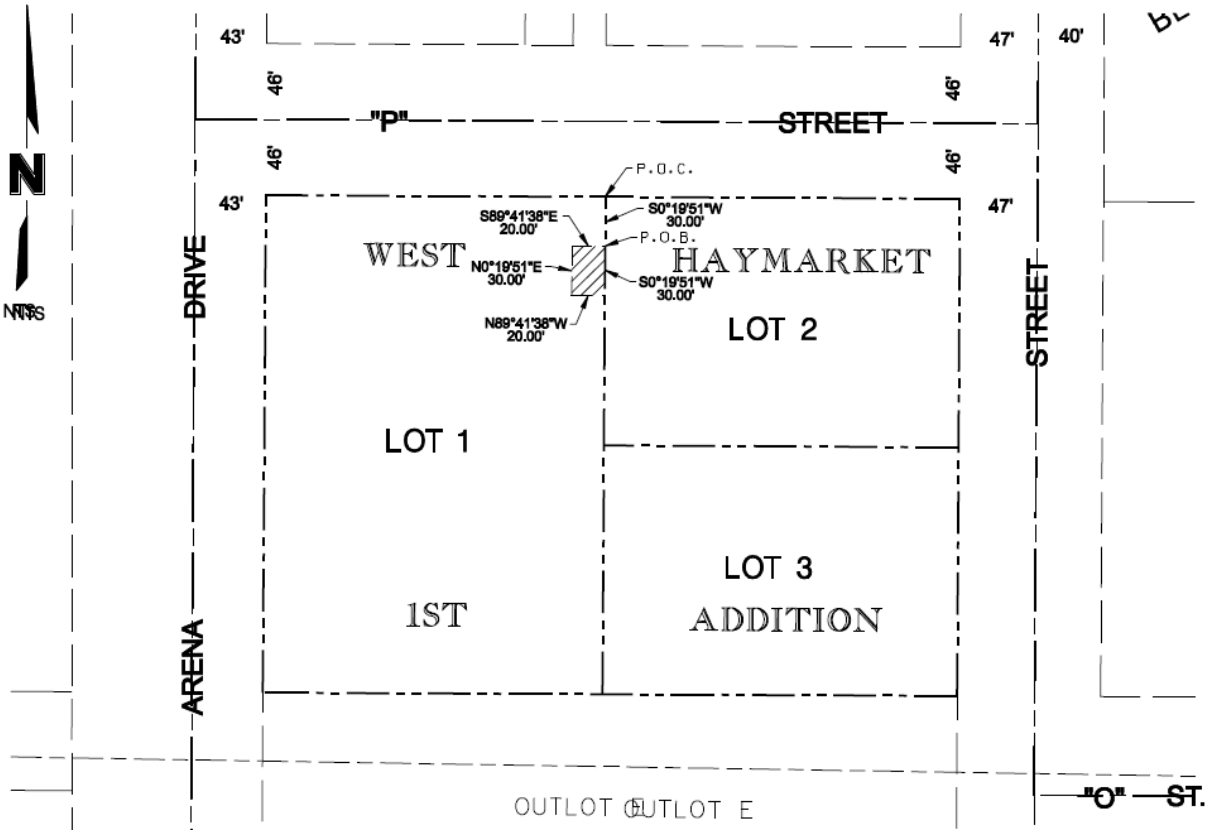
On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

Exhibit “A”

Skywalk Bridge Permanent Easement Area



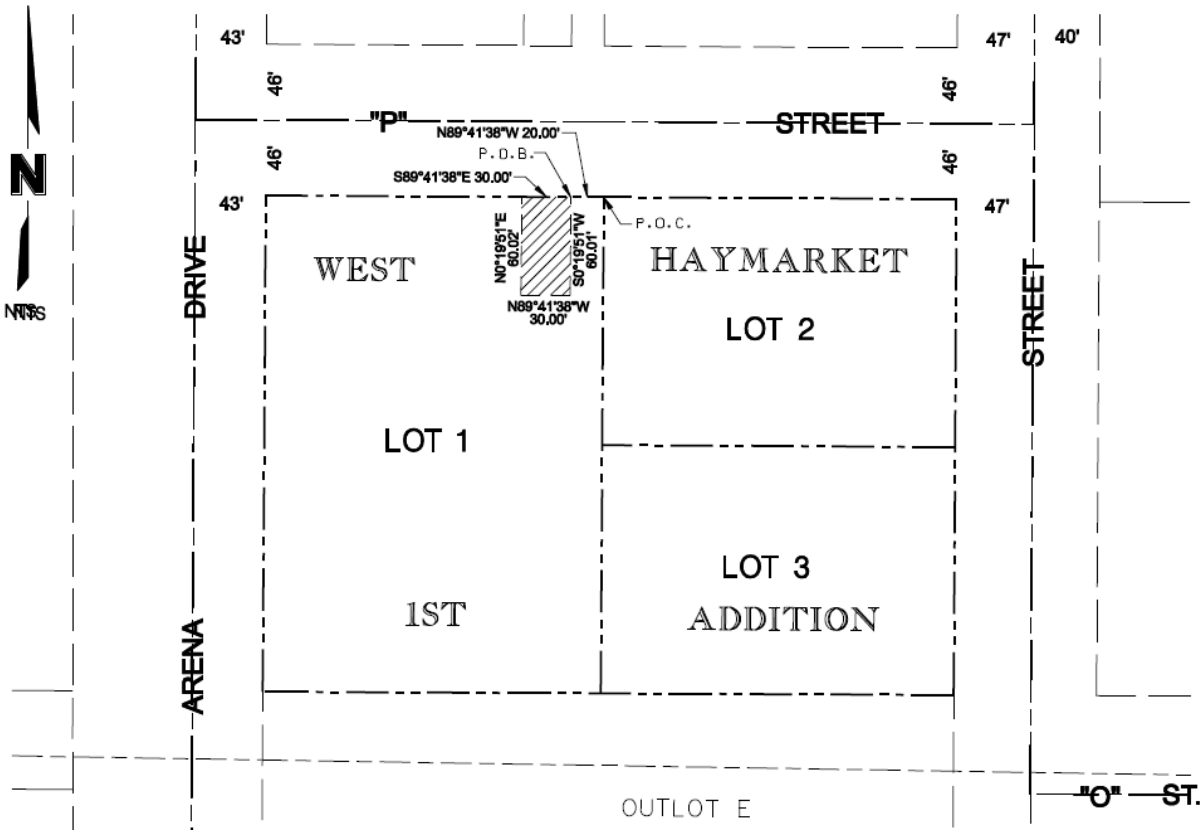
Legal Description

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 30.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 41 MINUTES 38 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 30.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 41 MINUTES 38 SECONDS EAST, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.01 ACRES OR 600 SQUARE FEET MORE OF LESS.

Vertical Access Permanent Easement Area



Legal Description

A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 41 MINUTES 38 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 60.01 FEET TO A POINT; THENCE NORTH 89 DEGREES 41 MINUTES 38 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 60.02 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 1; THENCE SOUTH 89 DEGREES 41 MINUTES 38 SECONDS EAST, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.04 ACRES OR 1,800 SQUARE FEET MORE OF LESS.

EXHIBIT I

PLAZA LICENSE AGREEMENT

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

PLAZA LICENSE AGREEMENT

THIS PLAZA LICENSE AGREEMENT (the "**Agreement**") is made as of this ____ day of _____, 2013 by and between PROJECT OSCAR, LLC, a Nebraska limited liability company, ("**Grantor**"), and the City of Lincoln, Nebraska, a municipal corporation ("**Grantee**").

RECITALS

A. Grantor owns or will own certain real estate located in Lincoln, Lancaster County, Nebraska, legally described as Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Property**").

B. Grantor has identified an area of the Property that are accessible by the general public for nonexclusive limited uses, as defined in this Agreement. Such area include the outdoor plaza ("**Plaza**"), located on the Property as described on the attached Exhibit 1.

D. Grantor has identified an area of the Property that is accessible by the Grantor and its tenants for nonexclusive limited uses as an outdoor plaza ("Courtyard"), located on the Property as described on the attached Exhibit 2.

E. Grantor entered into the West Haymarket Redevelopment Agreement (the "**Redevelopment Agreement**") for, inter alia, the redevelopment of certain Redevelopment Areas in the West Haymarket, including the Property, dated as of _____, 2013 between the Grantor as Redeveloper, the Grantee as the City and the West Haymarket Joint Public Agency ("**JPA**"), as evidenced by a Memorandum of the Redevelopment Agreement and Use Restrictions, dated as of the _____ day of _____, 2013 between the Grantor, Grantee and JPA and

recorded as Instrument No. _____ in the office of the Register of Deeds for Lancaster County, Nebraska.

D. Pursuant to the Redevelopment Agreement, and to ameliorate the blighted and substandard conditions of the Property, Grantor agrees to grant a nonexclusive limited license for the Grantee and its permittees to use the Plaza. Under the Redevelopment Agreement, Grantor is utilizing tax increment financing facilitated by Grantee to improve the Plaza provided that the general public is granted certain rights to have access to the Plaza as described hereunder.

E. This Agreement sets forth the parties' rights and obligations with respect to the license of the Plaza.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Grantor and Grantee do now hereby agree as follows:

1. General Conditions of Use.

a. Subject to the terms of this Agreement, Grantor hereby grants to Grantee for the benefit of the public a permanent limited, nonexclusive license to use the Plaza during the useful life of the Plaza. This license shall permit the Grantee and the general public rights for use of the Plaza in a manner that does not unreasonably interfere with Grantor's or any other permittee or authorized person's nonexclusive use of the Plaza, Courtyard or Property.

b. Nothing in this Agreement is intended to permit any of the following enumerated or similar activities by the permittees in the Plaza: loitering, demonstrating, picketing, soliciting, begging, camping, littering, sunbathing, carrying firearms, engaging in any illegal, offensive, indecent, obscene, vulgar, lewd or disorderly speech, dress or conduct, or otherwise disturbing the peace ("**Prohibited Activities**").

c. Grantor shall have the right to implement use restrictions, rules or regulations, subject to Grantee’s approval which shall not be unreasonably withheld, which may include the right to deny access to the Plaza to persons who are disorderly or intoxicated or engaging in any of the Prohibited Activities.

d. The rights and the license granted herein for the Plaza shall be in effect from 6:00 a.m. to 10:00 p.m. each day or the closing hours of the retail uses located on the Property, whichever is later, (the "Authorized Hours"). Provided, however, Grantor reserves the right to extend or decrease the Authorized Hours on certain specific days or for specific events if Grantor has a reasonable necessity or justifiable cause to do so. Grantor may deny access to the Plaza during the hours that do not constitute the Authorized Hours.

e. Notwithstanding any contrary provision herein, the Grantor and its tenants shall have the right to restrict the public from having access to the Plaza for private special

events, up to twenty (20) days per year. "**Private Special Events**" shall mean events formally sponsored by the Grantor or its tenants that require additional personnel or barriers to restrict or control access to the Plaza; provided that, the Property's building's entryways and Courtyard shall not be blocked nor barricaded. Grantor and Grantee shall mutually agree upon a calendar that outlines the permitted dates for the Private Special Events.

f. The Grantee and its designated users shall have the right restrict the public from having access to the Plaza for city special events, up to ten (10) days per year. "**City Special Events**" shall mean events formally sponsored by the Grantee or its designated users that require additional personnel or barriers to restrict or control access to the Plaza; provided that, the Property's building's entryways and Courtyard shall not be blocked nor barricaded. Grantor and Grantee shall mutually agree upon a calendar that outlines the permitted dates for the City Special Events. After each City Special Events, the Grantee or its sponsoring user, at their expense, shall be responsible to immediately clean up and remove all trash and event items and restore the Plaza to its pre-event condition.

g. Grantor shall not deny access to the Plaza to any persons based on their age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability or veteran status.

h. Grantor shall have the ability to deny access to the Plaza to any persons under the legal drinking age during certain hours or Private Special Events and City Special Events (collectively "**Special Events**") where the Plaza constitutes a licensed premises for liquor license purposes.

i. Guide dogs or other animals specifically trained to assist persons utilizing the Plaza shall be permitted. Persons may bring other animals, birds, or other living creatures ("**Other Animals**") into the Plaza, subject to the Grantor's rules and regulations; provided however, Grantor shall not prohibit dogs being offered for adoption during City Special Events.

j. The Grantee, to the fullest extent permitted by law, agrees to indemnify, save, and hold harmless the Grantor , its tenants, managers, members, officers, agents and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and reasonable attorneys' fees (if permitted by applicable law) arising out of, claimed on account of, or in any manner predicated upon losses, damages, bodily injury, death, or property loss/damage resulting from, related to, caused by, or arising out of the City Special Events or the Grantee or its entities hosting or sponsoring a City Special Event (collectively "**City Special Event Sponsor**"), or their members, directors, officers, agents, servants, employees, contractors, invited quests, visitors, Other Animals, or others who may be on the Plaza for City Special Events (collectively "**City Special Event Parties**"). This section will not require Grantee to indemnify, defend, or hold harmless Grantor for any losses, claims, damages, and expenses arising out of ore resulting from the sole

negligence of the Grantor.

Grantee further agrees that it shall require any and all City Special Event Sponsor to maintain General Liability Insurance, at its own expense, during the of City Special Event's set-up, event, take-down, clean up, removal of all trash and event items, and restoration of the Plaza to its pre-event condition, naming and protecting said City Special Event Sponsor, the Grantee, and the Grantor, along with their members, directors, officers, agents, servants, employees, tenants, and visitors as additional insured against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury, and (d) property damage which may arise from the City Special Events whether caused by or as a result of the City Special Event Sponsor, or the City Special Event Parties. The minimum acceptable limits of liability to be provided by such insurance shall be $1,000,000 for each Occurrence and $3,000,000 aggregate. The minimum amount of liability insurance coverage is subject to reasonable review and increases by the Grantor and Grantee every five (5) years based upon the reasonably comparable to the liability coverage generally carried by other owners of buildings similar to the Property. The Grantee hereby agrees to deliver or cause the City Special Event Sponsor to deliver to the Grantor within ten (10) days of the City Special Events, a copy of the certificate or certificates of insurance evidencing the purchase of such insurance in a form reasonably acceptable to the Grantor, and including such endorsements necessary to afford additional insured status.

k. The Plaza shall at all times remain the private property of the Grantor and nothing in this Agreement or the granting of this License shall be deemed to create or constitute a public forum, limited or otherwise.

l. Grantor shall, at its own cost and expense, perform all ordinary and/or necessary maintenance and repairs on the Plaza.

2. Mutual Cooperation. The parties specifically agree to mutual cooperation in modifying the terms and conditions of this License to avoid unintended consequences for all parties.

3. Binding Effect. Unless defined within, this Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heirs, executors, administrators, successors and assigns of Grantor.

[SIGNATURE PAGES TO FOLLOW]

"**Grantor**"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company, Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, Member

By: TETRAD CORPORATION, a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

GRANTOR ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

"**Grantee**"

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor

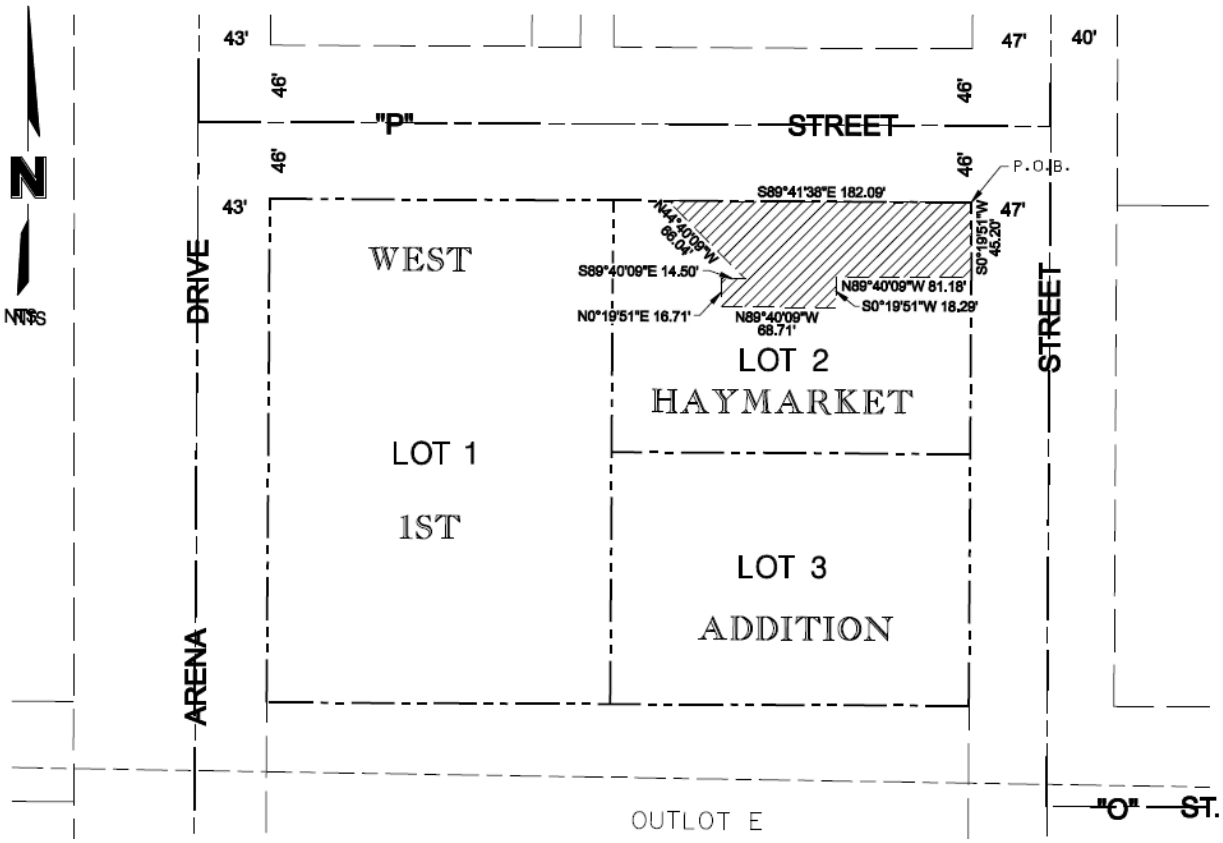
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

Exhibit 1

Plaza



Plaza License Area Legal Description

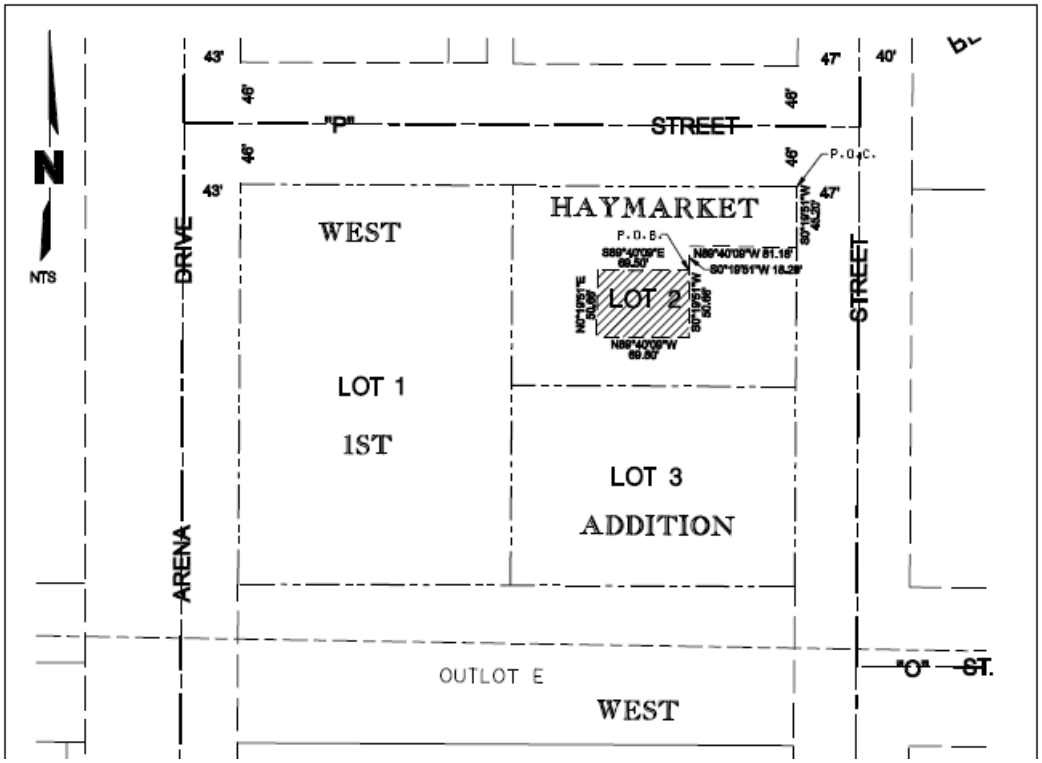
A LEGAL DESCRIPTION FOR A TRACT OF LAND FOR EASEMENT PURPOSES COMPOSED OF A PORTION OF LOT 2, WEST HAYMARKET 1ST ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 45.20 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 81.18 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 18.29 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 68.71 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 16.71 FEET TO A POINT; THENCE SOUTH 89 DEGREES 40 MINUTES 09 SECONDS EAST, A DISTANCE OF 14.50 FEET TO A POINT; THENCE NORTH 44 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 66.04 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 2; THENCE SOUTH 89 DEGREES 41 MINUTES 38 SECONDS EAST, A DISTANCE OF 182.09 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.19 ACRES OR 8,441 SQUARE FEET MORE OF LESS.

Exhibit 2

Court Yard



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COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 19 MINUTES 51 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 45.20 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 81.18 FEET TO A POINT; THENCE SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 18.29 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0 DEGREES 19 MINUTES 51 SECONDS WEST, A DISTANCE OF 50.66 FEET TO A POINT; THENCE NORTH 89 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 69.50 FEET TO A POINT; THENCE NORTH 0 DEGREES 19 MINUTES 51 SECONDS EAST, A DISTANCE OF 50.66 FEET TO A POINT; THENCE SOUTH 89 DEGREES 40 MINUTES 09 SECONDS EAST, A DISTANCE OF 69.50 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 0.08 ACRES OR 3,521 SQUARE FEET MORE OF LESS.

EXHIBIT J

Bond No. _____

PENAL BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **Project Oscar, LLC**, a Nebraska limited liability company, as **Principal**, and _____, a corporation organized under the laws of the State of _____ and authorized to transact business in the State of Nebraska, as **Surety**, are held and firmly bound unto the **City of Lincoln, Nebraska**, as **Obligee**, for the use of all persons entitled thereto, under Neb. Rev. Stat. § 18-2151, in the penal sum of **Two Million Five Hundred Thousand Dollars ($2,500,000.00),** lawful money of the United States of America and to the faithful payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators or, assigns, firmly by this presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That,

WHEREAS, Principal has entered into the City of Lincoln Redevelopment Agreement (P Street and Canopy Street Project), dated _____, 2013 (an original of which is on file in the Office of the City Clerk of the City of Lincoln, Nebraska) which provided in part for the building and construction of Private Improvements as defined in said Redevelopment Agreement to be funded in part by tax increment financing pursuant to the Nebraska Community Development Law, upon the condition that Principal at all times promptly make payment of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials used in the prosecution of said Private Improvements provided for in the Redevelopment Agreement.

NOW, THEREFORE, if Principal shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing the Principal, its contractor and/or subcontractors with labor or materials in the prosecution of the Private Improvements as require the execution of this Penal Bond, then this obligation shall become void, otherwise to remain in full force and effect. In the event Principal shall be declared by the Obligee to be in default under the above obligation, Surety shall promptly indemnify and save harmless the Obligee to the extent any payment in connection with the carrying out of the prosecution of the Private Improvements provided for in the Redevelopment Agreement which Obligee may be required to make under the law, provided that the aggregate liability of Surety of any default(s) hereunder by the Principal shall in no event exceed the penal sum of this Bond.

All persons who have supplied or furnished the Principal, its Contractors and/or Subcontractors with labor or materials in the prosecution of the Private Improvements provided for in the Redevelopment Agreement shall have the direct right of action under this bond subject to the Obligee's priority.

[SIGNATURE PAGE FOLLOWS]

Signed and dated this ___ day of _____, 2013.

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

EXHIBIT K

Staging Plan and Map

STAGING PLAN – TERMS AND CONDITIONS

1. The foregoing West Haymarket Construction, Staging, and Parking Coordination Plan (Effective 4/1/13) is not considered a final document but a working drawing. If the JPA determines changes are needed consideration will be given to the effect on all projects in order to limit impacts to the extent reasonably feasible.
2. There will need to be a high level of coordination and teamwork in order to accomplish all projects in the area.
3. All non-building site areas (roads, staging areas, parking lots, etc.) are to be left in the same or better condition vs. before their use.
4. Access roads have been installed for everyone's use and should be maintained as such. Any project causing damage to the access road will be required to repair the road.
5. If additional rock/material is requested for access roads or construction entrances, the project requesting additional rock will be required to add additional rock at its own cost and expense.
6. The temp power location on "Q" is meant to serve the DEC, Deck 1, and TDP Projects. It will remain in place until no longer needed for those projects.
7. Useable soil spoils from foundation and utilities work may be able to stay on site and provide a savings to both the JPA and the project involved. PC Sports shall be called prior to hauling soil spoils off site.
8. Each project is to have and execute a SWPPP program. Special attention needs to be paid to track off cleanup and any potential run-off.
9. If any fences, job trailers, or items that are not easily moved are to be located in the staging or ROW areas their location must be coordinated with PC Sports. If such fences, job trailers or items need to be relocated it will be at no additional cost to the JPA.
10. Prior to moving to the staging site, a proposed site laydown plan is to be sent to PC Sports for review and approval.
11. The JPA may require a screened joint site fence to be assembled between the Canopy and Pinnacle Arena Drive from "O" to "Q" in order to screen off construction after the Arena is open. Each project will be responsible to cover the costs of their sections of the fence.

EXHIBIT K

MAP OF STAGING AREAS

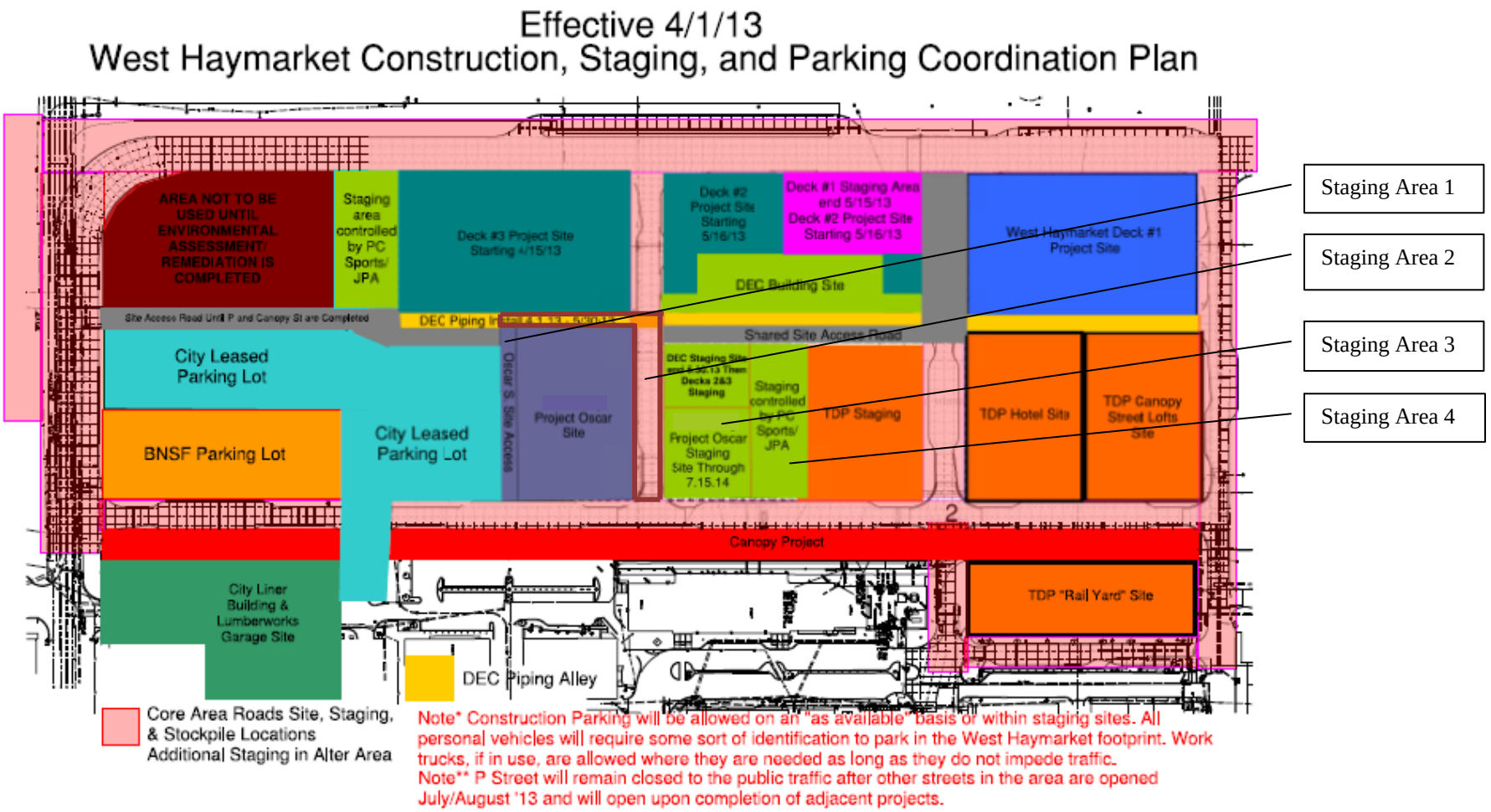


EXHIBIT L

SOURCES AND USES OF TIF

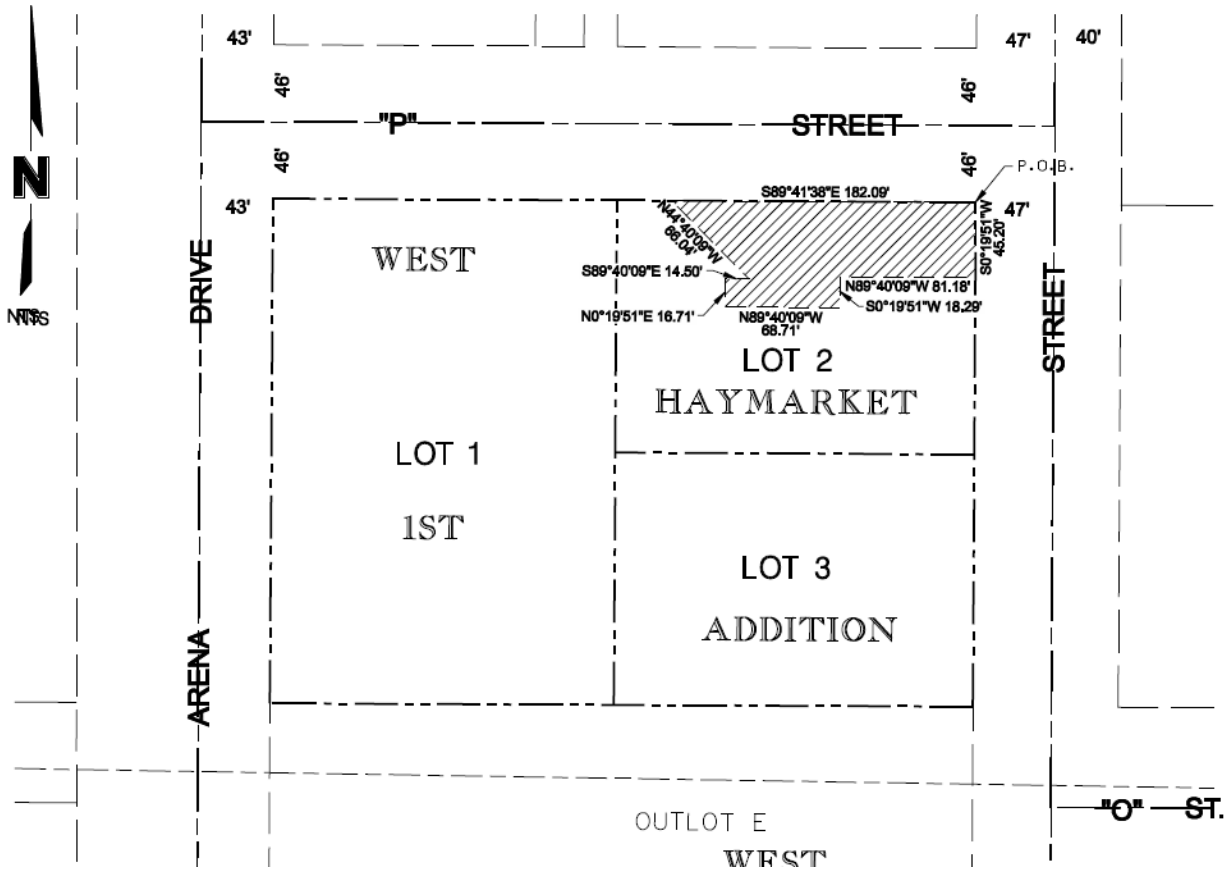
TIF: Uses and Sources of Funds					
#		Priorities	Description	Total TIF Uses	Total TIF Sources
a.	TIF Bond A	1	Issuance Costs		
b.					
c.		2	City Public Improvements	$300,000	$300,000
d.	TIF Bond B	1	Issuance Costs	15,000	
e.			Capitalized Interest	157,384	172,384
f.		2	Streetscape	206,000	206,000
g.		3	Land Purchase Assistance	486,604	
h.			Plaza Enhancements	162,000	
i.			Façade Enhancements	545,000	
j.			Energy Enhancements	376,359	$1,569,963
k.			**Total**	**$2,248,347**	**$2,248,347**

Notes:

1. Above uses include design, inspections, and project administration.
2. Streetscape will be implemented pursuant to the City's master plan (subject to changes for an outdoor restaurant). The Streetscape TIF would be used to fund (i) the Streetscape in the "P" Street and Canopy Street ROW abutting the Project Site.

EXHIBIT M

PLAZA DESCRIPTON



COURTYARD DESCRIPTION

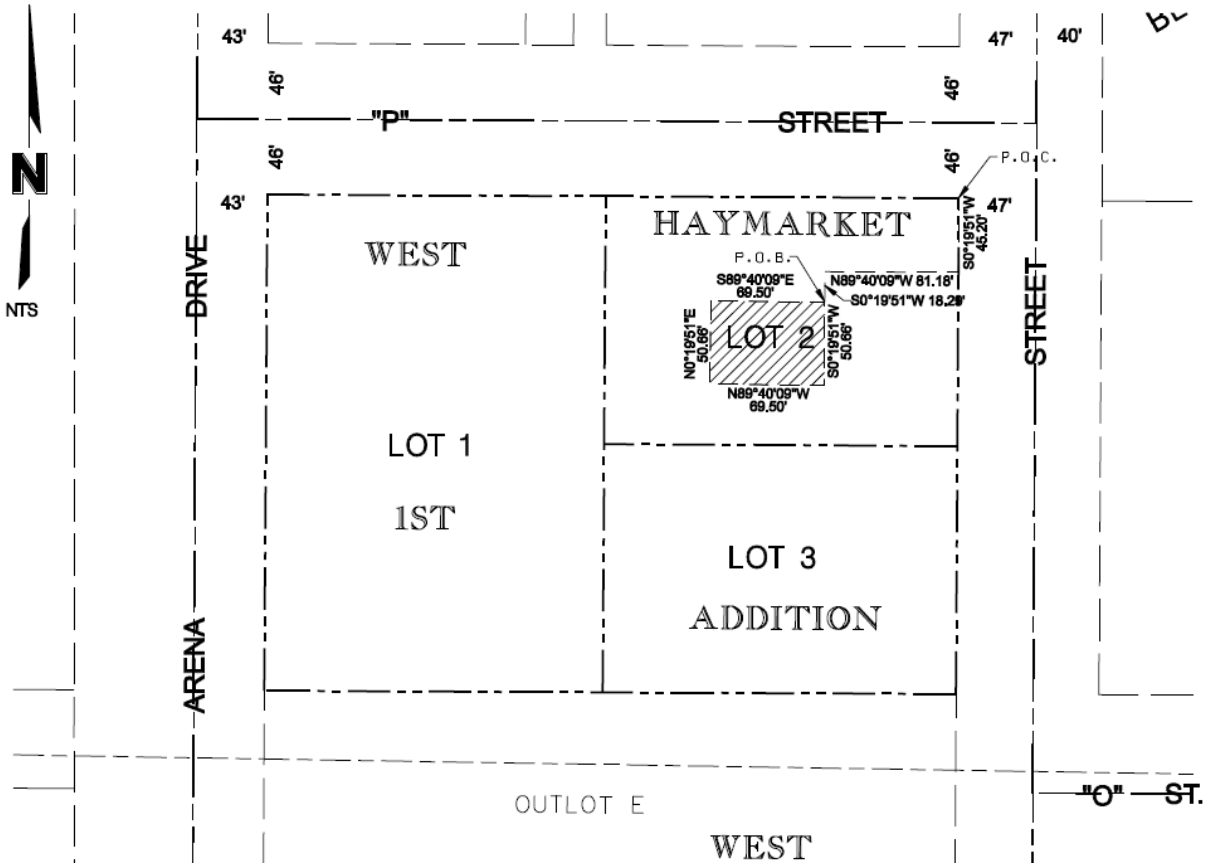


EXHIBIT N

MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS

Return the Original to:

City Attorney's Office
Attention: Rick Peo
555 South 10th Street
Lincoln, NE 68508

MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS

This Memorandum of Redevelopment Agreement & Use Restrictions ("**Memorandum**") is made as of this ___ day of _____, 2013 by and between the City of Lincoln, Nebraska, a municipal corporation ("**City**"), the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska ("**JPA**"), and Project Oscar, LLC, a Nebraska limited liability company ("**Redeveloper**").

1. **Redevelopment Agreement**. The City, JPA, and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements being made by the City in the Redevelopment Area and the private improvements being made to real property owned by Redeveloper and legally described as:

Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Project Site**").

2. **Parking Deck 3**. JPA will be constructing a parking garage immediately west of the Project Site, and legally described as:

Lot 1, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (the "**Deck 3 Site**").

3. **Tax Increment Financing**. The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the City of the private improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Project Effective

Date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to make the public improvements as described in the Redevelopment Agreement.

4. **Remaining Terms**. The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

5. **Use Restrictions of the Property**. Redeveloper hereby represents and agrees that neither all nor any portion of the Project Site shall be used, directly or indirectly, for the following uses:

(a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;

(b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises); except that up to 50% of the overall retail space contained in the Private Improvements may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00 p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(c) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

(d) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

(f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;

(g) at least 50% of the leasable retail square footage on any block face will have users whose minimum normal hours of operation, Monday through Saturday, are from 11:00 a.m. to 8:00 p.m.;

(h) no cell towers.

6. Environmental Use Restrictions on the Property. Redeveloper hereby represents and agrees that the Project Site is subject to the following Environmental Use Restrictions:

(1) The Project Site shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) Prior to beginning vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use, will require the approval of the Nebraska Department of Environmental Quality ("**NDEQ**").

It is intended that each of the restrictions set forth herein shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the Project Site and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

7. Office & Retail Monthly Parking; Redeveloper's Right to Lease. Upon opening of Deck 3 on the Deck 3 Site and after completion of the Private Improvements, Redeveloper for the sole use of its tenants shall have the right to lease the following parking in Deck 3:

A. Reserved Parking Stalls. For office and retail uses, up to ten (10) fully reserved parking stalls ("**Reserved Parking**").

(1) The Reserved Parking shall be for 24 hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, including all Husker football games, Husker basketball games, Husker baseball/softball games, Haymarket Park events, and West Haymarket Arena events (collectively "**Events**"). The Reserve Parking shall be signed and located on the north end of the first floor gated and nested area (west bay).

(2) The Reserved Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other reserved parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the reserved parking rights granted to reserved parkers in similar City garages and in particular shall be subject to regular and timely payment of the reserved parking charges as the same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the reserved rate paid by the Redeveloper.

B. Monthly Parking Stalls. For office and retail uses, up to three hundred fifty (350) parking stalls ("**Monthly Parking**").

(1) Two hundred sixty (260) of the Monthly Parking stalls need not be signed or otherwise designated as reserved parking and may be located in any of the Deck 3 parking stalls allocated for monthly parkers.

(2) Approximately sixty-three (63) of the Monthly Parking stalls will be signed and located within the third floor gated and nested area (west bay).

(3) The balance of the three hundred fifty (350) Monthly Parking stalls (approximately twenty-seven (27)) will be signed and located on the north end of the first floor gated and nested area (west bay).

(4) The first and third floor nested areas will be gated from 7:00 a.m. to 5:00 p.m. during the weekday; but the gate will be open for transient and Event parking after 5:00 p.m. The JPA shall cause its parking garage operator to take reasonable efforts to ensure that the first and third floor nested areas are cleared of transient and Event parkers by 7:00 a.m. the next morning.

(5) The Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of the monthly parking charges as the

same may from time to time be established or revised by the City. Redeveloper agrees that Redeveloper shall not charge its tenants for use of said parking stalls a fee in excess of the monthly rate paid by the Redeveloper.

(6) Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in Deck 3 in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology in calculating overall parking demand. The City's shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in Deck 3. If space is not available, every effort will be made to accommodate monthly parking in the next available facility.

C. Football & Events Parking. Up to ninety (90) of the Monthly Parking permits may include the right to park in Deck 3 for Nebraska home football games and Arena events ("**Football & Events Parking**") at the Football & Event Parking Rate (defined below). The Football & Events Parking will not be in assigned stalls. Rather, stalls will be occupied on a first come, first serve basis; provided that an eligible Monthly Parking parker who is already parked for their employment, shall not be required to re-park for the Football & Events Parking.

(1) The City projects that Deck 3, in addition to Nebraska football games, will be totally filled for the largest 20 Arena Events per year. To be sure the City does not lose parking revenues, the Football & Event Parking Rate will be the sum of (i) the twenty (20) largest Arena events per year (subject to adjustment as provided below), times the City's published Deck 3 Arena Event parking rate per Arena event for the upcoming year and (ii) the City's published Deck 3 Nebraska Football Game season parking rate for all games for the upcoming year. The pre-paid Deck 3 Football & Events Parking will be paid to the City on a monthly basis amortized over a twelve (12) month period ("**Football & Event Parking Rate**"). Each party reserves the right on the fifth anniversary of the Football & Events Parking and every five years thereafter, to request an increase or decrease in the projected number of Arena Events in which Deck 3 will be totally filled based upon the average number of per year Arena Events in which Deck 3 was totally filled during the prior five (5) years and to increase or decrease the Football & Event Parking Rate accordingly.

D. Duration. The parking rights outlined in this Section 8 shall survive the expiration of the fifteen (15) year tax increment capture period and shall continue so long as the Private Improvements continue in the West Haymarket Redevelopment Area.

[SIGNATURE PAGES TO FOLLOW]

Executed by the City this _____ day of _____, 2013.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

_____
City Clerk

_____
Chris Beutler, Mayor

"**JPA**"

WEST HAYMARKET JOINT PUBLIC AGENCY

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives.

_____
Notary Public

Executed by Redeveloper this _____ day of _____, 2013.

"**Redeveloper**"

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By: _____
W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

REDEVELOPER ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared W. DAVID SCOTT, to me personally known, who being by me duly sworn did say that he is the President of TETRAD CORPORATION, a Wyoming corporation, Sole Member of TETRAD REAL ESTATE, LLC, a Wyoming limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

STATE OF NEBRAKSA)
) ss.
COUNTY OF _____)

On the _____ day of _____, ____, before me personally appeared ZACHARY A. WIEGERT, to me personally known, who being by me duly sworn did say that he is the Manager of WIEGERT DEVELOPMENT, LLC, a Nebraska limited liability company, a Member of S2W DEVELOPMENT, LLC, a Wyoming limited liability company, Manager of MAKING HAY, LLC, a Nebraska limited liability company, Manager of PROJECT OSCAR, LLC, a Nebraska limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its Operating Agreement, on behalf of the limited liability company.

(Seal)

_____
Notary Public

WH 13-32 Introduce: 3-22-13

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 17 to the Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency, Haymarket Infrastructure Design Project No. 870000, to include the remainder of the design for parking garage Deck 2 and to provide professional services during construction, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 17 on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Agreement to Olsson Associates, 1111 Lincoln Mall, Lincoln, NE 68508.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

AMENDMENT NO. 17
to AGREEMENT for ENGINEERING SERVICES
between OLSSON ASSOCIATES
dba LINCOLN HAYMARKET INFRASTRUCTURE TEAM and the
WEST HAYMARKET JOINT PUBLIC AGENCY
HAYMARKET INFRASTRUCTURE DESIGN PROJECT
Project No. 870204

This Contract Amendment is made by and between Olsson Associates, dba Lincoln Haymarket Infrastructure Team, hereinafter called ENGINEER, and the West Haymarket Joint Public Agency, hereinafter called JPA, this _____ day of _____2013 and approved by Resolution No. _____.

WHEREAS, it is the mutual desire of the parties hereto to amend the Agreement to provide professional services associated with the Haymarket Infrastructure Design Contract which was entered into on November 18, 2010 under Resolution WH-12, hereinafter called the existing Agreement. The description of work to be added to the existing Agreement under this Amendment generally shall include Final Design and Construction Services for Parking Deck No. 2 located between "P" Street and "Q" Street adjacent to Pinnacle Arena Drive. This project has previously been completed to the 30% design level. This Amendment provides for the remainder of design and professional services during construction of the Parking Deck. A detailed breakdown of scope of services for the construction phase services is included in the attachment(s) as shown below:

- Parking Garage No. 2 – Appendix A-18

The fee for Final Design and professional services during construction is $680,984. This increases the top limit fee for Project A-18 from $186,700 to $867,684. With this additional work, the total contract amount for all work increases from $10,510,133 to $11,191,117.

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described herein.

This AMENDMENT shall be deemed a part of, and shall be subject to all terms and conditions of the existing Agreement. Except as modified above, the existing Agreement shall remain in full force and effect.

West Haymarket Joint Public Agency

_____

Title:_____

Engineer – Olsson Associates dba
Lincoln Haymarket Infrastructure Team

By: _____ By: _____

Title: S. V. P. Title: CFO

F:\Projects\010-2431\Documents\Contracts\Amendment No. 17 - Deck 2\Amendment No. 17 cover.doc

Exhibit A

Parking Garage No. 2 – Final Design and Construction Services

APPENDIX A-18
Scope of Services

HAYMARKET INFRASTRUCTURE PROJECT
PARKING DECK #2 PROJECT

JPA Project Number 870204

General Description of Scope of Services

This scope of services generally includes services related to the preliminary and final design of the "Parking Deck #2". This garage is located directly south of Parking Deck #1 and is approximately 690 stalls. The facility is to be a parking deck only. The parking deck is an "Event" garage and will be designed to accommodate the rapid loading and unloading of the vehicles during an event. The design of the garage will include design collaboration with the entire arena development team. Davis Design has included the fees for AGA Consulting Inc., to provide functional design, traffic flow, ticket booths, and other design and quality control items. Davis Design has already provided the preliminary design for Deck #2 to the 1st submittal stage. This proposal reflects the remaining design to complete the remainder of the design and the construction.

The following are the task items that are included as part of the scope of services for the South Parking Garage.

Task 1. Project Management

a. *Project Management*

The Design Team Project Manager will serve as point of contact, maintain project schedule and budget, and be responsible for coordinating work of the design team for this project. This work will include providing regular progress reports to support invoicing and updates on design schedule. Project Management efforts will follow appropriate guidance as given in the City of Lincoln's website "Guiding Principles and Procedures (GP&P)"

b. *Coordination with Others*

The Design Team will coordinate their design with agencies and/or Consultants that are involved with this project or adjacent projects. Coordination includes one-on-one meetings with the agencies, other Consultants and utilities. Special care shall be taken to coordinate with the entire arena development stakeholders.

Task 2. General Project Meetings

a. *Progress Meetings*

The Design Team Project Manager and appropriate design staff will schedule and attend progress meetings for this individual project. The Design Team will create and distribute a meeting agenda at least 48 hours prior to all progress meetings. This scope estimates 10 progress meetings.

b. Review Meetings

The Design Team Project Manager will schedule and attend review meetings to receive the JPA's review comments from the first and second submittals.

c. Plan-in-Hand

The Design Team will schedule and attend a plan-in-hand meeting. This meeting is to be held following the review period of the first submittal.

TASK 3. Survey

A brief grade verification survey is included.

TASK 4. Utility Coordination

Utility coordination work is included with the project management hours.

Task 5. Public Involvement

a. One-on-One, Small Group Meetings

The Design Team will meet with individuals or key stakeholders who may be significantly affected by the project. This will include one-on-one meetings with the CM at Risk, City Parking, Business Groups from the Haymarket, and other key stakeholders as identified by the City or Program Manager. The Design Team will notify the Program Manager of all proposed stakeholder meetings and invite the Program Manager to the meetings.

Task 6. Drainage Analysis

Drainage analysis for this project is included in the design work for the new parking structure and this project does not include design for offsite storm sewers or other drainage items.

Task 7. ITS Design

a. ITS Design

ITS and Parking Management/Monitoring is not included in this proposal

Task 8. First Submittal

a. 1st Submittal:

The design for the first submittal has already been completed by Davis Design. This proposal recognizes and utilizes this work already completed. Davis Design has already provided all of the functional design and layout, grading issues, entrances and exits locations, co-location issues with the DEC, and many other items. The work completed on the Deck #2 to date was

completed to a point where the design of the DEC on the same site could proceed. Therefore; this proposal re-uses all of the prior work completed.

Task 9. Geotechnical Evaluation

a. *Design Recommendations*

A geotechnical report and recommendations has already been completed, and will be used in the design of the foundation system.

b. *Deep Foundation Inspections*

Scope for deep foundation and footing inspections is included as described in the attached scope of services.

Task 10. Environmental / Historical Review

Environmental or Historic Review work is not included as part of this Project.

Task 11. Existing Water Main or Wastewater Relocation

Water mains and wastewater work within the public right-of-way will be completed under the site preparation projects and/or the core area roadway and utility project. Design of service connections to the new mains, if required will be part of the design for the new parking structure.

Task 12. Future Parking & Connectivity Structures

a. *Structural System of the Parking Garage*

Deck #2 has been designed as a precast concrete structure. This system will be used in the remainder of the design.

b. *Connectivity to Adjacent Development:*

Deck 2 will need to coordinate an elevator/stair/connectivity tower and bridge into the parking deck facility. Davis Design has included coordination issues with the architect and developer of the adjacent lot. The design of the future walkway or skywalk is not included in this scope of work. However; Davis Design will coordinate a possible future location for a skywalk and provide the necessary coordination to make sure that the JPA and future development can add this item later if required.

c. *Connectivity to Future Parking Deck to the South (Parking Deck #3):*

The future Parking Deck to the south may or may not have any type of connectivity to the first garage for pedestrians, vehicles, or utilities. Davis Design will discuss and plan for this issue during design. Future accommodations may be designed into this parking deck.

Task 13. Water Main Design

New/Replacement Water Main Design is not included in this scope of work.

Task 14. Wastewater Design

New/Replacement Wastewater Design is not included in this scope of work.

Task 15. Right-of-Way

Right-of-way design is not included in this scope of work.

Task 16. Streetscape and Landscape Design

a. *Coordination with Project Streetscape Design*

The design team will coordinate with the streetscape design that is being completed under Project A-7.

b. *Landscape Design*

The design team will coordinate with the landscape design that is being completed under Project A-7.

Task 17. Second Submittal

a. *Second Submittal Design*

The Design Team shall prepare project base files and plan sheets in accordance with the City of Lincoln CADD standards. All sheets that will be included in the final plan set will be included in the second submittal. This includes, but not limited to, the following sheets:

- Cover Sheet
- Site Grading plan
- Site Construction Plan (Utilities, Roads, etc.)
- Geometric Plan of the garage.
- Architectural Floor Plans
- Architectural Elevations
- Architectural Cross Sections
- Architectural Details
- Finish and Door Schedules
- Structural Foundation Plans
- Structural Framing Plans
- Structural Details and General notes
- Plumbing Plans
- Sprinkler System
- HVAC Plans
- Electrical Lighting and Power Plans
- Traffic Control Equipment
- Signage Equipment and Location Plans
- ITS Coordination and Plans
- Phasing Plans as Required
- Specification Book

b. Cost Estimates

The Design Team shall prepare an updated total project cost estimate. This shall include, the total project including all items noted above in the finished plans.

c. Specifications

The Design Team will submit the final contract specifications with the second submittal.

Task 18. Quality Assurance / Quality Control (QA / QC)

The Design Team will give a copy of their QA / QC plan to the Program Manager and the JPA Project Management Team at the start of the project. The Design Team will submit in writing that this plan has been used during the project at each submittal with the name of the person responsible for performing the QA / QC aspects.

Task 19. Permit Applications / Agreements

The Design Team shall prepare and submit on behalf of the JPA the following permits, agreements, certifications, and forms. The Design Team shall copy the Program Manager and JPA Project Management Team on all applications being submitted.

- ❑ Floodplain Permit
- ❑ SWPPP - NPDES Permit

Task 20. PS&E Submittals

a. Draft PS&E Submittal

The Design Team shall submit a draft PS&E package to the JPA Project Management Team for final review. The package will include the plan set, project specifications, and a total project cost estimate.

b. Final PS&E Submittal

Upon incorporating review comments into the plan set and project specifications, the Design Team shall prepare and submit all drawings, specifications, and an updated total project cost estimate to the JPA Project Management Team for the final PS&E review. Upon JPA acceptance of the PS&E plans, the Design Team shall submit the bid package to the JPA Project Management Team. The bid package includes sealed bond drawings, sealed special provisions, and an electronic file with final bid items and quantities.

Task 21. Bidding Phase

a. Attend Pre-Bid Meeting and answer questions

b. Answer Design Questions

c. Addenda to be prepared by JPA Purchasing Representatives

Task 22. Construction Phase

a. *Attend Pre-Construction Meeting*

b. *Review Shop Drawings and material submittals*

c. *Prepare Revision Sheets*

d. *Answer Design Questions and Consultation to clarify plans/specifications*

e. *Evaluate Substitute "or equal" Bids items as requested by the Program Manager*

f. *Conduct Site Visits as requested by the Program Manager and at regular intervals.*

Appendix 18 Combined (OA & Davis) Project Fee Parking Deck #2 JPA Project 870204			
Task No.	Task Description		Fee Estimate
1	Project Management		$16,200.00
2	General Project Meetings		$972.00
3	Survey		$3,456.00
4	Utility Coordination		$0.00
5	Public Involvement		$0.00
6	Drainage Analysis		$0.00
7	Traffic Control & ITS		$0.00
8	First Submittal		$0.00
9	Geotech. - Deep Found. Insp. (Benesch)		$39,776.00
10	Environmental/Historical Review		$0.00
11	Water Main/Wastewater Relocation		$0.00
12	Future Parking & Connectivity Structures		$0.00
13	Water Main Design		$0.00
14	Wastewater Design		$0.00
15	Right-of-Way		$0.00
16	Landscape Design		$0.00
17	Second Submittal		$0.00
18	QA/QC		$0.00
19	Permit Applications		$6,752.00
20	PS&E Submittals		$0.00
21	Bidding Phase		$0.00
22	Construction Phase		$0.00
	Expenses (Subconsultant - Davis)		$613,828.00
		Total Project Cost	$680,984.00

1. The fees above are for a Precast Concrete Parking Structure. In the event an alternate structural system is used, additional design fees will be required.

Appendix 18 Davis Design Project Fee Parking Deck #2 JPA Project 870204			
Task No.	Task Description		Fee Estimate
1	Project Management		$33,786.00
2	General Project Meetings		$19,296.00
3	Survey		$0.00
4	Utility Coordination		$0.00
5	Public Involvement		$0.00
6	Drainage Analysis		$0.00
7	Traffic Control & ITS		$0.00
8	First Submittal		$0.00
9	Geotechnical Investigation		$0.00
10	Environmental/Historical Review		$0.00
11	Water Main/Wastewater Relocation		$0.00
12	Future Parking & Connectivity Structures		$33,144.00
13	Water Main Design		$0.00
14	Wastewater Design		$0.00
15	Right-of-Way		$0.00
16	Landscape Design		$3,258.00
17	Second Submittal		$271,076.00
18	QA/QC		$10,520.00
19	Permit Applications		$0.00
20	PS&E Submittals		$0.00
21	Bidding Phase		$35,112.00
22	Construction Phase		$154,636.00
	Expenses		$53,000.00
		Total Project Cost	$613,828.00

Note: 1. The fees above are for a Precast Concrete Parking Structure. In the event an alternate structural system is used, additional design fees will be required.

DAVIS DESIGN PAY RATES (BASED ON HOURLY RATE SCHEDULE PER CLASSIFICATION)

Overhead Rate :	0%
Profit :	0%

Personnel		Total Hr.	Salary $ Per Hr.	Labor Cost	Total Cost
Principal In Charge/Project Manager	PIC/PM	636	$165.00	$104,940	$104,940.00
Project Architect	Proj Arch	854	$122.00	$104,188	$104,188.00
Architect, AIA	Arch	618	$110.00	$67,980	$67,980.00
Architectural Designer	AD	160	$87.00	$13,920	$13,920.00
Structural Engineer	SE	576	$138.00	$79,488	$79,488.00
Structural Designer	SD	320	$87.00	$27,840	$27,840.00
Mechanical Engineer	ME	344	$138.00	$47,472	$47,472.00
Mechanical Designer	MD	120	$87.00	$10,440	$10,440.00
Electrical Engineer	EE	276	$138.00	$38,088	$38,088.00
Electrical Designer	ED	124	$87.00	$10,788	$10,788.00
Interior Designer	ID	88	$82.00	$7,216	$7,216.00
Administrative	ADMIN	42	$62.00	$2,604	$2,604.00
Construction Administration	CA	468	$98.00	$45,864	$45,864.00
Sinclair Hille - Design Achitect - Principal	SHA-Arch	0	$135.00	$0	$0.00
Sinclaire Hille - CADD Tech	SHA-CADD	0	$70.00	$0	$0.00
		0	$118.00	$0	$0.00
		0	$84.00	$0	$0.00
		0	$80.00	$0	$0.00
		0	$71.00	$0	$0.00
		0	$70.00	$0	$0.00
		0	$60.00	$0	$0.00
Expenses					**$53,000.00**
		4,626		**$560,828**	**$613,828.00**

TOTAL EXPENSES					
Expenses	**Amount**		**$ Ea.**		**Cost**
Design					
Parking Consultant, AGA, Functional Design Services	1	L.S.	$28,000		$28,000.00
Travel, mileage, Expenses, AGA only	1	L.S.	$3,000		$3,000.00
Signage Consultant, Pictoform, Signage Design	1	L.S.	$15,000		$15,000.00
Travel, mileage, Expenses, Signage Consultant only	1	L.S.	$2,000		$2,000.00
Misc Office Printing Expenses (bid sets not included)	1	L.S.	$5,000		$5,000.00
		L.S.			$0.00
		L.S.			$0.00
		L.S.			
Aerial Mapping (DTM)		L.S.			$0.00
		L.S.	$0		$0.00
Geotechnical Borings and Report		L.S.			$0.00
			Sub Total		**$53,000.00**
Survey Expenses					
Public Involvement Expenses					
			Total		**$53,000.00**

DAVIS DESIGN MAN-HOUR ESTIMATE - Parking Deck #2, APPENDIX A-18

Task No	Description of Work Items / Tasks	PIC/PM	Proj Arch	Arch	AD	SE	SD	ME	MD	EE	ED	ID	ADMIN	CA	Total Manhours	Total Labor Fee	Overhead 0.00%	Total (A+B)	Profit 0.00%	Total Fee (A+B+C)	
1	**Project Management**																				
	Kick Off Meeting	2	4	2				2		2			2		14	$1,714	$0	$1,714	$0	**$1,714.00**	
	Project Management	120													120	$19,800	$0	$19,800	$0	**$19,800.00**	
	Coordination with Others	32	32	8				8		8					88	$12,272	$0	$12,272	$0	**$12,272.00**	
	Design Memorandum														0	$0	$0	$0	$0	**$0.00**	
	Condemnation Hearings																				
																					$33,786.00
2	**General Project Meetings**																				
	Progress Meetings (8 Meetings)	32	32					16		16					96	$13,600	$0	$13,600	$0	**$13,600.00**	
	Review Meetings														0	$0	$0	$0	$0	**$0.00**	
	Plan-in-Hand														0	$0	$0	$0	$0	**$0.00**	
	Coordination Mtntgs, DEC, Developers	16	16					8							40	$5,696	$0	$5,696	$0	**$5,696.00**	
																					$19,296.00
3	**Survey**																				
																					$0.00
4	**Utility Coordination**																				
																					$0.00
5	**Public Involvement**																				
	Public Involvement Planning Meetings														0	$0	$0	$0	$0	**$0.00**	
	Public Involvement Plan														0	$0	$0	$0	$0	**$0.00**	
	Database Development/Maintenance														0	$0	$0	$0	$0	**$0.00**	
	Key Stakeholder Outreach														0	$0	$0	$0	$0	**$0.00**	
	City Council Meetings														0	$0	$0	$0	$0	**$0.00**	
	Open House (2)														0	$0	$0	$0	$0	**$0.00**	
	One-on-One Small Group Meetings														0	$0	$0	$0	$0	**$0.00**	
	Newletters/Infrmation Materials														0	$0	$0	$0	$0	**$0.00**	
	Web Site Development														0	$0	$0	$0	$0	**$0.00**	
	Final PI Report/Documentation														0	$0	$0	$0	$0	**$0.00**	
																					$0.00
6	**Drainage Analysis**																				
																					$0.00
7	**Traffic Control & ITS**																				
																					$0.00
8	**First Submittal**																				
																					$0.00
9	**Geotechnical Investigation**																				
	Data Research														0	$0	$0	$0	$0	**$0.00**	
	Design Recommendations														0	$0	$0	$0	$0	**$0.00**	
	Geotechnical Report														0	$0	$0	$0	$0	**$0.00**	
	Deep Foundation Design Assistance and Pile Tests														0	$0	$0	$0	$0	**$0.00**	
																					$0.00
10	**Environmental/Historical Review**																				
	NEPA Environmental Review														0	$0	$0	$0	$0	**$0.00**	
	Traffic Noise Study														0	$0	$0	$0	$0	**$0.00**	
	Hazardous Material Review														0	$0	$0	$0	$0	**$0.00**	
	Wetlands and Habitat Investigation														0	$0	$0	$0	$0	**$0.00**	
	Wetland Permitting														0	$0	$0	$0	$0	**$0.00**	
	Historical / Archeological Investigation														0	$0	$0	$0	$0	**$0.00**	
	Impacts to Misc. Environmental Resources														0	$0	$0	$0	$0	**$0.00**	

DAVIS DESIGN MAN-HOUR ESTIMATE - Parking Deck #2, APPENDIX A-18

Task #	Description of Work Items / Tasks	PIC/PM	Proj Arch	Arch	AD	SE	SD	ME	MD	EE	ED	ID	ADMIN	CA	Total Manhours	Total Labor Fee	Overhead 0.00%	Total (A+B)	Profit 0.00%	Total Fee (A+B+C)	
	Prepare Draft Environmental Review														0	$0	$0	$0	$0	**$0.00**	
	Endangered Species Review														0	$0	$0	$0	$0	**$0.00**	
	Public Land Impacts (4F or 6F)														0	$0	$0	$0	$0	**$0.00**	
																					$0.00
11	**Water Main/Wastewater Relocation**																				
	Water Main/Wastewater Relocation														0	$0	$0	$0	$0	**$0.00**	
																					$0.00
12	**Future Parking & Connectivity Structures**																				
	Connection														0	$0	$0	$0	$0	**$0.00**	
	Planning for Connection to Hotel, Not Incldng skywalk	24	40	80		40		8		8		0			200	$25,368	$0	$25,368	$0	**$25,368.00**	
	Planning for Future Parking Sturcture #3 lot, to the South	16	24					8		8					56	$7,776	$0	$7,776	$0	**$7,776.00**	
	Connections to Future North Garage														0	$0	$0	$0	$0	**$0.00**	
																					$33,144.00
13	**Water Main Design**																				
																					$0.00
14	**Wastewater Design**																				
																					$0.00
15	**Right-of-Way**																				
																					$0.00
16	**Landscape Design**																				
	Landscape Design, Coordination with Streetscape	**2**	**24**												26	$3,258	$0	$3,258	$0	**$3,258.00**	
																					$3,258.00
17	**Second Submittal**																				
	60%, 90%, and 100% Complete Construciton Documents														0	$0	$0	$0	$0	**$0.00**	
	Geometric Sheets		4	24											28	$3,128	$0	$3,128	$0	**$3,128.00**	
	Civil Grading Plan														0	$0	$0	$0	$0	**$0.00**	
	Civil Site Plan														0	$0	$0	$0	$0	**$0.00**	
	Civil Utility Plan														0	$0	$0	$0	$0	**$0.00**	
	Architectural Sheets	80	240	360	160							40			880	$99,280	$0	$99,280	$0	**$99,280.00**	
	Structural Design Sheets, Deep Foundations	16				100	120								236	$26,880	$0	$26,880	$0	**$26,880.00**	
	Structural Design Sheets, 850 Stalls, Precast Structure	24				240	200								464	$54,480	$0	$54,480	$0	**$54,480.00**	
	Mechanical Design Sheets							80	40						120	$14,520	$0	$14,520	$0	**$14,520.00**	
	Plumbing Design Sheets							80	80						160	$18,000	$0	$18,000	$0	**$18,000.00**	
	Electrical Design Sheets									100	100				200	$22,500	$0	$22,500	$0	**$22,500.00**	
	Trafic Control Sheets			8								16			24	$2,192	$0	$2,192	$0	**$2,192.00**	
	Signage Sheets			8						8	8	16			40	$3,992	$0	$3,992	$0	**$3,992.00**	
	ITS sheets			8						8	8	16			40	$3,992	$0	$3,992	$0	**$3,992.00**	
	Specifications		60					24		8	8		24		124	$13,920	$0	$13,920	$0	**$13,920.00**	
	Preliminary Construction Phasing														0	$0	$0	$0	$0	**$0.00**	
	Cost Estimates	40	4					4		4					52	$8,192	$0	$8,192	$0	**$8,192.00**	
	Special Provisions														0	$0	$0	$0	$0	**$0.00**	
																					$271,076.00
18	**QA/QC**																				
	Plan Review	40												40	80	$10,520	$0	$10,520	$0	**$10,520.00**	
																					$10,520.00
19	**Permit Applications**																				
	404 Permit														0	$0	$0	$0	$0	**$0.00**	

DAVIS DESIGN MAN-HOUR ESTIMATE - Parking Deck #2, APPENDIX A-18

Task #	Description of Work Items / Tasks	PIC/PM	Proj Arch	Arch	AD	SE	SD	ME	MD	EE	ED	ID	ADMIN	CA	Total Manhours	Total Labor Fee	Overhead 0.00%	Total (A+B)	Profit 0.00%	Total Fee (A+B+C)	
	Floodplain Permit														0	$0	$0	$0	$0	**$0.00**	
	SWPPP														0	$0	$0	$0	$0	**$0.00**	
	NPDES Permit														0	$0	$0	$0	$0	**$0.00**	
	Railroad Permit														0	$0	$0	$0	$0	**$0.00**	
	Railroad Agreement														0	$0	$0	$0	$0	**$0.00**	
	Railroad Insurance														0	$0	$0	$0	$0	**$0.00**	
	NDOR Use of Right of Way Permit														0	$0	$0	$0	$0	**$0.00**	
	NDOR Agreement														0	$0	$0	$0	$0	**$0.00**	
	Lancaster County Utility Permit														0	$0	$0	$0	$0	**$0.00**	
	Lancaster County Inter-local Agreement														0	$0	$0	$0	$0	**$0.00**	
	Nebraska Dept. of Environmental Quality														0	$0	$0	$0	$0	**$0.00**	
	City/County Health Dept. Noise Permit														0	$0	$0	$0	$0	**$0.00**	
																					$0.00
20	**PS&E Submittals**																				
	Draft PS&E Submittal														0	$0	$0	$0	$0	**$0.00**	
	Final PS&E Submittal														0	$0	$0	$0	$0	**$0.00**	
																					$0.00
21	**Bidding Phase**																				
	Attend Pre-Bid Meeting	8	8					4		4					24	$3,400	$0	$3,400	$0	**$3,400.00**	
	CM Selection Process and Participation	32	8												40	$6,256	$0	$6,256	$0	**$6,256.00**	
	Answer Design Questions	16	80					4		4					104	$13,504	$0	$13,504	$0	**$13,504.00**	
	Prepare Addenda		32	24				16		16			16		104	$11,952	$0	$11,952	$0	**$11,952.00**	
																					$35,112.00
1	**Construction Phase**																				
	Attend Pre-Construction Meeting	4	4					4		4					16	$2,252	$0	$2,252	$0	**$2,252.00**	
	Attend Pre-Trade Installation Meetings	16	24			8		4		4					56	$7,776	$0	$7,776	$0	**$7,776.00**	
	On Site Representation During Concrete Placement		80			80									160	$20,800	$0	$20,800	$0	**$20,800.00**	
	Attend Monthly Project Meetings	64	64											48	176	$23,072	$0	$23,072	$0	**$23,072.00**	
	Review Shop Drawings		24	40		60		32		32					188	$24,440	$0	$24,440	$0	**$24,440.00**	
	Prepare Change Orders	4	24	24				16		16					84	$10,644	$0	$10,644	$0	**$10,644.00**	
	Prepare As Built Sheets		8	32		32		16		16					104	$13,328	$0	$13,328	$0	**$13,328.00**	
	Answer Design Questions		16			16		8		8					48	$6,368	$0	$6,368	$0	**$6,368.00**	
	Evaluate substitute "or equal" bids		2					2		2					6	$796	$0	$796	$0	**$796.00**	
	Construction Admin, Site Visits (40 each) and Coordination	48												340	388	$41,240	$0	$41,240	$0	**$41,240.00**	
	Review and Certify Pay Requests													40	40	$3,920	$0	$3,920	$0	**$3,920.00**	
																					$154,636.00
	Total Manhours	636	854	618	160	576	320	344	120	276	124	88	42	468	4626						
	Total	$104,940	$104,188	$67,980	$13,920	$79,488	$27,840	$47,472	$10,440	$38,088	$10,788	$7,216	$2,604	$45,864	$560,828	$560,828	$0	$560,828	$0	**$560,828.00**	
	Total Labor, OH & Profit	$104,940	$104,188	$67,980	$13,920	$79,488	$27,840	$47,472	$10,440	$38,088	$10,788	$7,216	$2,604	$45,864						**$560,828.00**	

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Alfred Benesch & Company
825 J Street
Lincoln, NE 68508
www.benesch.com
P 402-479-2200

January 7th & March 7th, 2013

Mr. John S. Olsson
Lincoln Haymarket Infrastructure Team
Olsson Associates
1111Lincoln Mall
Lincoln, NE. 68508

REFERENCE: Cost Estimate for Construction Observation & Testing
I. Deck #2 Parking Garage:
A. Pile Load Tests Monitoring and Assessment of Pile Attainment
B. Production Piling Installation Inspection
C. Grade Beam Excavation Inspection
D. Floor Subgrade Inspection & Testing
West Haymarket Development Project
Approximately "P" to "Q" Streets & 5th to 6th Streets
West Haymarket Area; Lincoln, Nebraska

Dear Mr. Olsson:

Alfred Benesch and Company (Benesch) is pleased to submit to the Lincoln Haymarket Infrastructure Team (LHIT), a proposal for the providing of geotechnical engineering services consisting of the providing of construction observation and testing services for the proposed Deck #2 Parking Garage. Specifically speaking, these construction observation, monitoring and testing services will include but not be limited to (1) performance of pile installation and load testing services, assessment of pile load test data to verify attainment of the design pile bearing capacity; (2) providing of production pile installation observation and testing to verify attainment of both adequate bearing in the Dakota sandstone bedrock formation and pile grout strength; (3) inspection of grade beam excavations; and (4) inspection and testing of the floor subgrade materials for the on-grade lower level floor construction. For the sake of preparing this cost estimate assumptions had to be made as to the duration of time that these services. As a Contractor has not been selected to date, Benesch assumed approximately 2/3 the time assumed when preparing the cost estimate for the Deck #1 Parking Garage Structure. Davis Design provided Benesch with the number of piling proposed for installation on the project and that the fact that a compression pile load test is required for this structure. Assumptions made as to the duration of time required to perform the construction observation, monitoring and testing services are presented in Attachment A-1 Scope of Services and Fee Estimate. It has been assumed that these construction observation, monitoring and testing services will be performed during the 2013 calendar year.

CONSTRUCTION OBSERVATION, MONITORING AND TESTING SERVICES

Assumptions made when preparing the estimated cost associated with the providing of the test and production pile installation inspection, monitoring and testing services presented in Attachment A-1 SCOPE OF SERVICES AND FEE ESTIMATE are as follows:

(1) TEST & PRODUCTION PILE INSTALLATION, CONSTRUCTION EQUIPMENT CALIBRATION, MONITORING, AND LOAD TEST AND PILE INSTALLATION REPORTING: For the sake of preparing the cost estimate for providing of these services it was assumed that Benesch would be required to provide approximately twenty-three (23) 11-hour-days of installation monitoring time for the proposed test pile and 231 production piles proposed for the Deck #2 project. It was assumed that one-set of grout cubes would be fabricated and tested for each of 22 days of pressure-grouted auger-cast test and production pile installation. Observation services would include sampling and testing of the grout materials used to construct the auger-cast pile foundation systems for Deck #2. Additionally, it is assumed that Benesch will be required to provide Special Inspection Services (SIS) consisting of inspecting steel cages scheduled to be installed within Deck #2 production piles that will be subject to uplift loading

conditions. As for the Deck #1 structure, it was assumed that Benesch would be requested to (1) inspect grade beam excavations, however, it was requested to assume that sampling and testing of concrete utilized for their construction would be handled via another package, (2) inspect and test floor subgrade materials constructed on the project, (3) reinspect and perform compaction testing on floor subgrade materials prior to construction of the at-grade lower level floor, however, Benesch was asked to assume that sampling and testing of concrete utilized for the at grade floor construction would be performed under another package. Benesch was directed to assume that we would be requested to attend 8 weeks of construction progress meetings which was predicated on the assumption that will be required for piling installation, grade beam construction and at-grade floor construction.

TIME SCHEDULE

It has been assumed that the construction observation, monitoring and testing services discussed herein would be performed during the 2013 calendar year.

CONSTRUCTION OBSERVATION AND TESTING SERVICES FEE ESTIMATE

Benesch's estimate of the amount of work involved in the construction observation, monitoring and testing services discussed herein is provided in Attachments A-1. The estimated total fee presented in Attachment A-1 is $39,776.10. The total fee for these services will not exceed $39,776.10 without the LHIT's express authorization. The cost for additional services required on the project or credit for services not required will be computed using the unit rates presented in Attachments A-1. The cost for services not discussed in this submittal will be charged using the unit rates presented in future cost estimates (if requested) that LHIT may solicit of Benesch.

EXECUTION OF CONTRACT

These services will be performed in accordance with our current in-place contract agreement. BENESCH appreciates having the opportunity to present this proposal and to continue the on-going relationship that we have had with the LHIT and the JPA on the West Haymarket Project. Please do not hesitate to contact us at your convenience if any clarification or additional information is required.

Respectfully submitted,
ALFRED BENESCH & COMPANY

Gary E. Proskovec

Gary E. Proskovec, P.E.
Geotechnical Engineering Services Director

GEP/gep
Enclosure
P1311312
LHITDeck#2TestAndProductionPilingInstallAndMonitoring_GradeBeamAndFloorSubgrTstngGeotProp01_07_13Amend03_07_13B.doc

Orig. (via e-mail):	Lincoln Haymarket Infrastructure Team
1pc. (via e-mail):	OA Consulting– Mr. John S. Olsson
1pc (via e-mail).:	Benesch – Mr. Jim Linderholm

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Attachment A-1 Scope of Services And Fee Est.

Deck #2 Test Pile Install. Load Test Monitoring and Bearing Capacity Confirmation, Prod. Pile Install. Observation; Grade Beam Exc. and Floor Subgrade Inspections

Item No.	Description		Unit Price	Amount
I.	**Deck No. 2 Pile Installation Equipment Calibration; Test Pile Installation and Load Test Monitoring;**			
	& Production Piling Inspection and Reporting:			
	(Assumes 1 compression pile load test, no uplift pile load tests, & reporting of load test results.)			
	(Assumes 20 eleven-hour-days for installation of approx. 231 production piles for the Deck #2 parking garage			
	(Assumes 12 grout cylinders fabricated for the "test" pile and one set of 4 grout cylinders fabricated for			
	each of the 20 days of production pile installation.)			
	A. Personnel (2013 piling installation):			
	1. Project Scientist II (Geotechnical)	256 hr.	$ 67.50 /hr.	$ 17,280.00
	2. Project Engineer II	56 hr.	$ 103.00 /hr.	$ 5,768.00
	3. Sr. Project Manager	8 hr.	$ 167.00 /hr.	$ 1,336.00
	4. Vehicle			
	a. Daily Rate (to nearest 1/4 th day)	22 day	$ 45.00 /day	$ 990.00
	b. Vehicle Mileage	220 mi.	0.75 /mi.	$ 165.00
	B. Auger-cast pile grout sampling and testing of grout cylinders (includes slump, air-content and temp.):			
	1. Grout cylinder mold usage	92 ea.	$ 2.55 ea.	$ 234.60
	(assumed 21 pours and 92 molds)			
	2. Compression test of hardened grout cylinder specimen	72 ea.	$ 15.00 ea.	$ 1,080.00
	3. Handling Charge for Reserve Cylinder	20 ea.	$ 7.00 ea.	$ 140.00
	4. Grout Fabrication (21 pours):			
	a. Field/Lab Technician II	42 hr.	$ 58.00 /hr.	$ 2,436.00
	C. Auger-cast pile steel inspection (Assumes 6 inspection trips):			
	1. SIS Technical Specialist	6 hr.	$ 75.50 /hr.	$ 453.00
	2. SIS Field/Lab Technician I	24 hr.	$ 58.00 /hr.	$ 1,392.00
	3. Vehicle			
	a. Daily Rate (to nearest 1/4th day)	4 day	$ 45.00 /day	$ 180.00
	b. Vehicle Mileage	150 mi.	0.75 /mi.	$ 112.50
	Subtotal I:		**$ 31,567.10**	
II.	**Fill Compaction Testing as Fill is Constructed Up To Floor Subgrade Level:**			
	(Assumed 4 days of subgrade soils compaction testing required)			
	A. Personnel:			
	1. Field/Lab Technician II	32 hr.	$ 58.00 /hr.	$ 1,856.00
	2. Project Engineer II	3 hr.	$ 103.00 /hr.	$ 309.00
	3. Sr. Project Manager	1 hr.	$ 167.00 /hr.	$ 167.00
	B. Nuclear Moisture/Density Gauge	20 hr.	$ 11.00 /hr.	$ 220.00
	C. Vehicle			
	a. Daily Rate (to nearest 1/4th day)	4 day	$ 45.00 /day	$ 180.00
	b. Vehicle Mileage	70 mi.	0.75 /mi.	$ 52.50
	Subtotal I:		**$ 2,784.50**	

Item No.	Description		Unit Price	Amount
III.	**Floor Subgrade Inspection & Compaction Testing Immediately Prior to Pouring 5 Slab-On-Grade Segments:**			
	(Assumed Five Inspection Trips Prior to Each of Five Floor Pours)			
	Floor Subgrade Inspections:			
	A. Personnel:			
	1. Field/Lab Technician II	16 hr.	$ 58.00 /hr.	$ 928.00
	2. Project Engineer II	4 hr.	$ 103.00 /hr.	$ 412.00
	3. Sr. Project Manager	1 hr.	$ 167.00 /hr.	$ 167.00
	B. Nuclear Moisture/Density Gauge	10 hr.	$ 11.00 /hr.	$ 110.00
	C. Vehicle			
	a. Daily Rate (to nearest 1/4th day)	2.5 day	$ 45.00 /day	$ 112.50
	b. Vehicle Mileage	20 mi.	0.75 /mi.	$ 15.00
	Concrete Sampling And Testing: (As of March 9th, 2013 assumed 0 pours)			
	1. Concrete cylinder mold usage	0 ea.	$ 2.55 ea.	$ -
	(assumed 5 pours and 20 molds)			
	2. Compression test of hardened concrete specimens	0 ea.	$ 15.00 ea.	$ -
	3. Handling Charge for Reserve Cylinder	0 ea.	$ 7.00 ea.	$ -
	4. Concrete Specimen Fabrication & Plastic Concrete Testing During Pours (Assumed 4 hours/pour):			
	a. Field/Lab Technician II	0 hr.	$ 58.00 /hr.	$ -
	5. Vehicle			
	a. Daily Rate (to nearest 1/4th day)	0.0 day	$ 45.00 /day	$ -
	b. Vehicle Mileage	0 mi.	0.75 /mi.	$ -
	Subtotal III:		**$ 1,744.50**	
IV.	**Grade Beam Excavation Inspections and Concrete Sampling & Testing:**			
	(Assumed 10 Excavation Inspections; and Concrete Sampling & Testing):			
	Excavation Inspections:			
	A. Personnel:			
	1. Project Scientist II (Geotechnical)	20 hr.	$ 67.50 /hr.	$ 1,350.00
	2. Project Engineer II	3 hr.	$ 103.00 /hr.	$ 309.00
	3. Sr. Project Manager	1 hr.	$ 167.00 /hr.	$ 167.00
	B. Back-Saver Soil Probe	12 hr.	$ 6.00 /hr.	$ 72.00
	C. Vehicle			
	a. Daily Rate (to nearest 1/4th day)	2.5 day	$ 45.00 /day	$ 112.50
	b. Vehicle Mileage	50 mi.	0.75 /mi.	$ 37.50
	Concrete Sampling And Testing: (As of March 9th, 2013 asked to assume 0 pours)			
	1. Concrete cylinder mold usage	ea.	$ 2.50 ea.	$ -
	(assumed 14 pours and 56 molds)			
	2. Compression test of hardened concrete specimens	ea.	$ 15.00 ea.	$ -
	3. Handling Charge for Reserve Cylinder	ea.	$ 7.00 ea.	$ -
	4. Concrete Specimen Fabrication:			
	a. Field/Lab Technician II	hr.	$ 58.00 /hr.	$ -

Attachment A-1; Scope of Services and Fee Estimate (cont'd.)

Item No.	Description		Unit Price	Amount
IV.	**Grade Beam Excavation Inspections and Concrete Sampling & Testing: (continued)**			
	Concrete Sampling And Testing: (Assumed 14 pours)			
	5. Vehicle			
	a. Daily Rate (to nearest hour)	day	$ 45.00 /day	$ -
	b. Vehicle Mileage	mi.	0.75 /mi.	$ -
	Subtotal III:		**$ 2,048.00**	
V.	**Weekly Construction Meeting Attendance and Follow-up Consultation:**			
	(Assumed 4 weeks of construction progress meetings - Within the 2013 Calendar Year)			
	A. Personnel:			
	1. Project Scientist II	0 hr.	$ 67.50 /hr.	$ -
	2. Project Engineer II	4 hr.	$ 103.00 /hr.	$ 412.00
	4. Sr. Project Manager	6 hr.	$ 167.00 /hr.	$ 1,002.00
	5. Vehicle:			
	a. Trip Rate (to nearest 1/4th day)	2 day	$ 45.00 /day	$ 90.00
	b. Vehicle Mileage	40 mi.	0.70 /mi.	$ 28.00
	Subtotal II:		**$ 1,532.00**	
VI.	**Special Project Consultation and Meetings**			
	1. Personnel			
	a. Senior Project Manager	hr.	$ 167.00 /hr.	$ -
	b. Project Manager I	hr.	$ 143.00 /hr.	$ -
	c. Project Engineer II	hr.	$ 103.00 /hr.	$ -
	d. Project Scientist II (Geotechnical)	hr.	$ 67.50 /hr.	$ -
	h. Field/Lab Technician II	hr.	$ 58.00 /hr.	$ -
	Subtotal IX:		**$ -**	
VII.	**Reimbursables**			
	A. Copying Charges, Permits, HNU Unit Charges, etc.	Est.	@ cost	$ 100.00
	Subtotal X:		**$ 100.00**	
		Estimated Total:		**$ 39,776.10**

WH 13-33 Introduce: 3-22-13

RESOLUTION NO. WH- _____

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

That Chris Beutler, as Chairperson of the JPA, is hereby authorized to execute a Fourth Amendment to the Master Development Agreement between BNSF Railway Company (BNSF) and the JPA for the exchange of properties between BNSF and the JPA needed for the JPA West Haymarket Project and the BNSF track relocation. Said Fourth Amendment shall be substantially in the form attached hereto, subject to minor revised terms and conditions approved by the legal counsel of the JPA.

BE IT FURTHER RESOLVED that Chris Beutler, as Chairperson of the JPA, is further authorized to execute required deeds and other closing documents for the exchange on behalf of the JPA.

The City Clerk is directed to return a fully executed original of the Agreement to Rick Peo, Chief Assistant City Attorney, for transmittal to the parties.

Adopted this _____ day of March, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

FOURTH AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO MASTER DEVELOPMENT AGREEMENT ("**Fourth Amendment**") is dated to be effective the _____ day of _____, 2013 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), 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.* ("**JPA**").

RECITALS

A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, and in support of the plans of the City (defined below) and JPA to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**"), BNSF and the City of Lincoln, Nebraska, a Nebraska municipal corporation ("**City**") entered into, among other agreements, (i) that certain Master Development Agreement dated October 18, 2010 (as amended by that certain First Omnibus Amendment to Master Development Agreement and Construction Agreement dated December 29, 2010 [the "**First Amendment**"], that certain Second Amendment to Master Development Agreement dated January 28, 2011 [the "**Second Amendment**"], and that certain Third Amendment to Master Development Agreement dated December 18, 2012 [the "**Third Amendment**"], the "**Master Agreement**"), and (ii) that certain Exchange Agreement between BNSF and City dated October 18, 2010 (as amended from time to time, the "**Exchange Agreement**"). With BNSF's consent, the City subsequently assigned, and JPA assumed, all of the City's right, title and interest in and to the Master Agreement and the Exchange Agreement.

B. BNSF and JPA have jointly completed the First Closing, the Second BNSF Closing, the Third City Closing, the Fourth City Closing, and the Fifth City Closing (with the Fourth City Closing and the Fifth City Closing combined as the Final Closing, as described in the third amendment to the Exchange Agreement), each as defined in the Exchange Agreement. Subsequent to the Final Closing, BNSF and JPA identified certain small parcels and interests in such parcels that should be exchanged between the parties, but were not specifically referenced in the Exchange Agreement. BNSF has not yet been quitclaimed certain small portions of the Transferred BNSF Property to JPA, and JPA has not yet quitclaimed an easement for railroad and related purposes for certain small portions of the Replacement BNSF Property to BNSF. Accordingly, BNSF and JPA desire to amend the Master Agreement to, among other things, provide for such quitclaims, in accordance with the terms and conditions set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I. **Quitclaim of Final Transferred BNSF Property.** BNSF shall quitclaim its interest, if any, in that certain Transferred BNSF Property to JPA described or depicted on **Exhibit "A"** attached hereto and incorporated herein by reference on _____, 2013 (the "**Additional Property Exchange Date**"). Such quitclaim shall be in the form of quitclaim attached hereto as **Exhibit "B"** and incorporated herein by reference.

Article II. **Quitclaim of Easement Interest for Final Replacement BNSF Property.** On the Additional Property Exchange Date, JPA shall quitclaim an easement for railroad and related purposes to BNSF for that certain Replacement BNSF Property described or depicted on **Exhibit "C"** attached hereto and incorporated herein by reference. Such quitclaim shall be in the form of easement attached hereto as **Exhibit "D"** and incorporated herein by reference.

Article III. **Ratification.** Except as expressly modified by this Fourth Amendment, all of the terms and provisions of the Master Agreement are hereby reaffirmed and remain in full force and effect. As of the Effective Date, this Fourth Amendment shall constitute a part of the Master Agreement. All capitalized terms in this Fourth Amendment shall have the same meaning as given in the Master Agreement unless otherwise specifically defined herein. If there is a conflict between the terms and provisions of the Master Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the terms and provisions of this Fourth Amendment, the terms and provisions of this Fourth Amendment shall control.

Article IV. **Miscellaneous.** This Fourth Amendment (i) shall be binding upon and inure to the benefit of BNSF and JPA and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents.

IN WITNESS WHEREOF, BNSF and JPA have executed this Fourth Amendment to the Master Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date above.

BNSF:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

JPA:

West Haymarket Joint Public Agency, a Nebraska joint public agency

By: _____

Name: _____

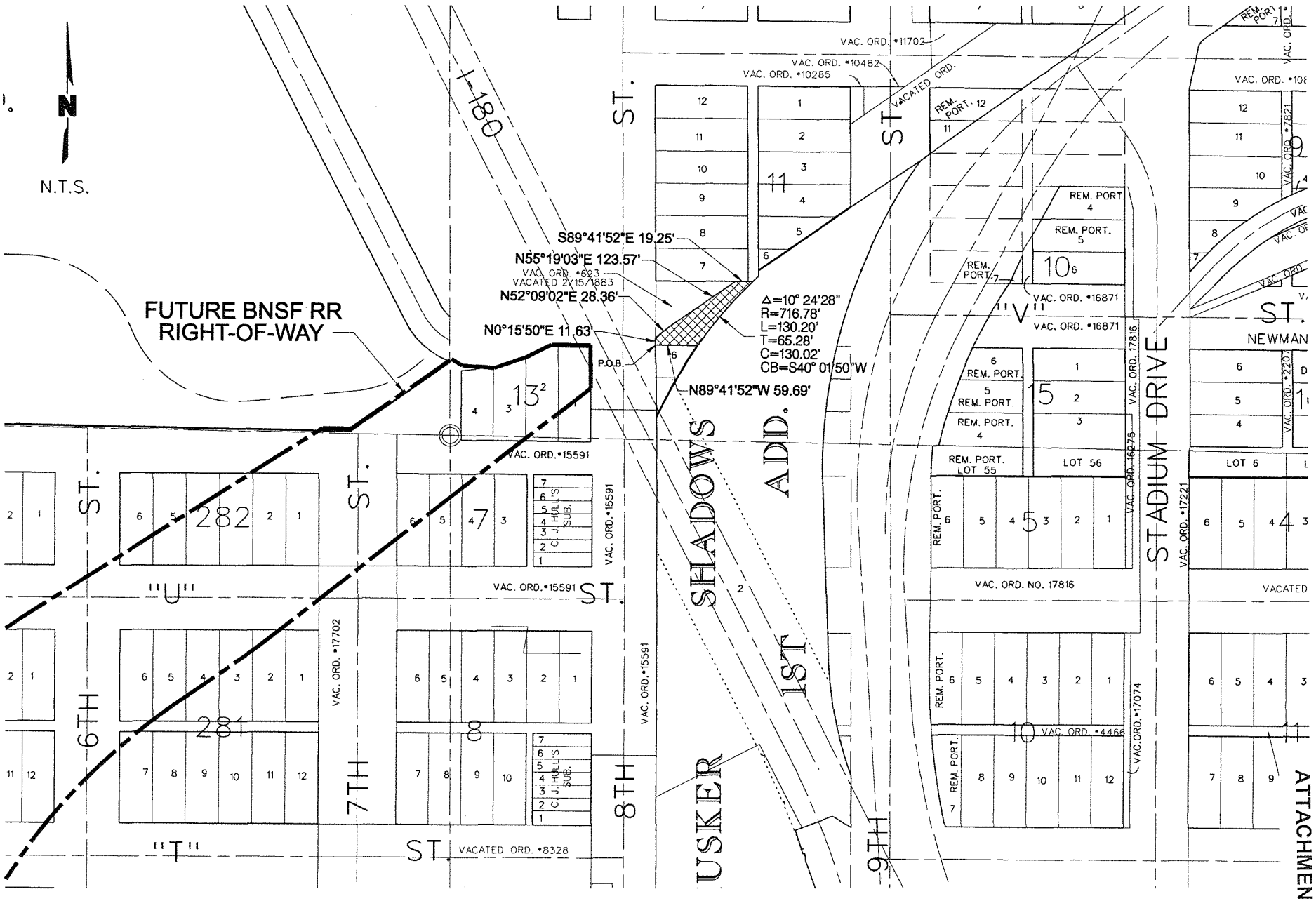
Title: _____

Date: _____

EXHIBIT "A"

Final Transferred BNSF Property

[attach prior to execution]



PROJECT NO: 008-0645	TRANSFER OF VACATED "V" STREET TO THE JPA	OLSSON ASSOCIATES
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160
DATE: January 2nd, 2013		

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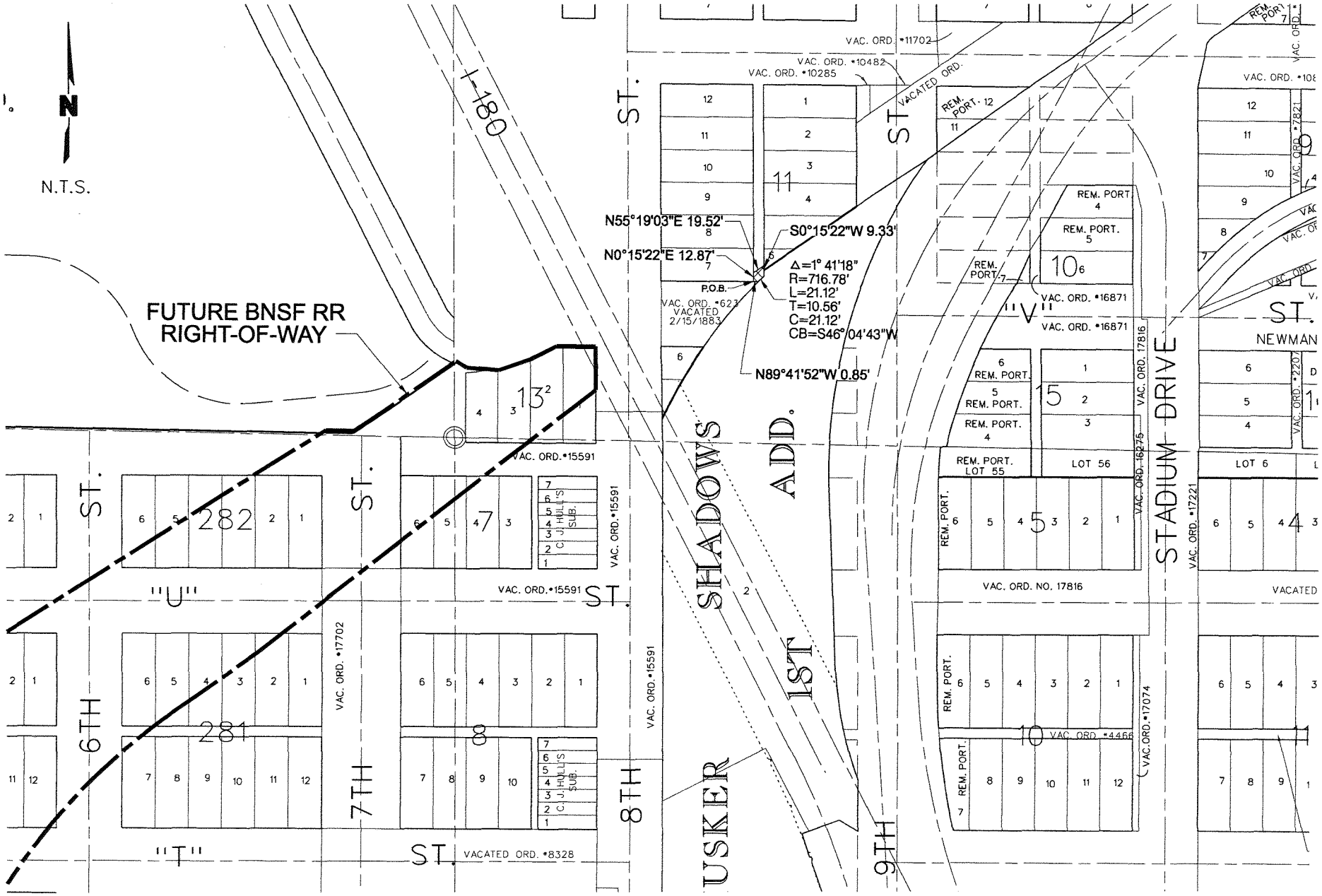
ATTACHMENT "D"

LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PART OF VACATED "V" STREET (ORD. # 623), LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM, LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 14, NORTH LINCOLN ADDITION, SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF VACATED "V" STREET AND THE EAST RIGHT-OF-WAY LINE OF 8TH STREET; THENCE ON AN ASSUMED BEARING OF NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID 8TH STREET, A DISTANCE OF 11.63 FEET TO A POINT; THENCE NORTH 52 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 28.36 FEET TO A POINT; THENCE NORTH 55 DEGREES 19 MINUTES 03 SECONDS EAST, A DISTANCE OF 123.57 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "V" STREET; THENCE SOUTH 89 DEGREES 41 MINUTES 52 SECONDS EAST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "V" STREET, A DISTANCE OF 19.25 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE SOUTHWESTERLY A DISTANCE OF 130.20 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 716.78 FEET AND A CENTRAL ANGLE OF 10 DEGREES 24 MINUTES 28 SECONDS , WITH A CHORD BEARING OF SOUTH 40 DEGREES 01 MINUTES 50 SECONDS WEST, AND A CHORD DISTANCE OF 130.02 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF VACATED "V" STREET; THENCE NORTH 89 DEGREES 41 MINUTES 52 SECONDS WEST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID VACATED "V" STREET, A DISTANCE OF 59.69 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 4,506 SQUARE FEET (0.10 ACRES) MORE OR LESS.



PROJECT NO: 008-0645	TRANSFER OF NORTH/SOUTH ALLEY BLK 11 NORTH LINCOLN ADD. TO THE JPA	OLSSON ASSOCIATES	Exhibit
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	A
DATE: January 2nd, 2013			

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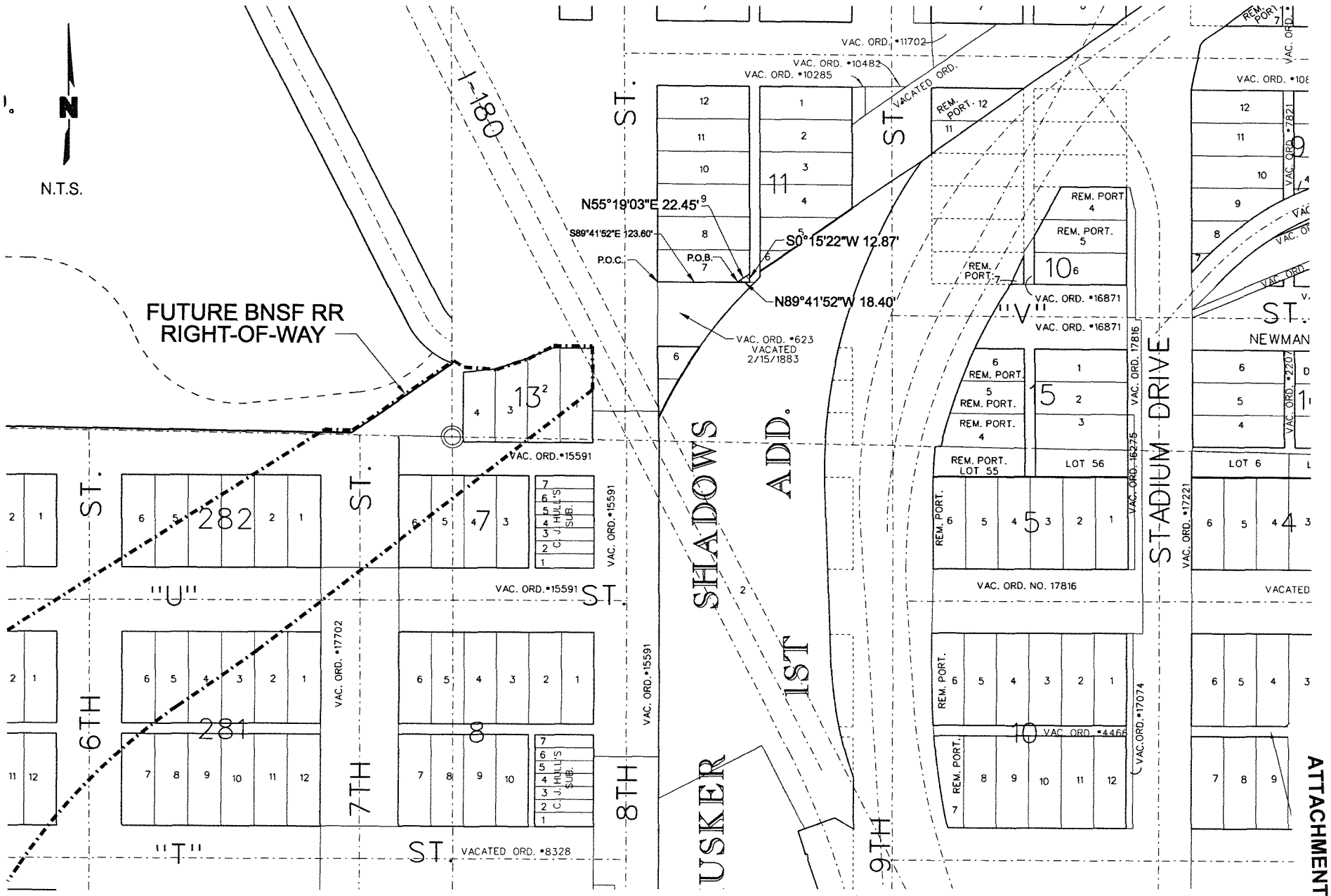
ATTACHMENT "E"

LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PART OF THE NORTH/SOUTH ALLEY WITHIN BLOCK 11, NORTH LINCOLN ADDITION, LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM, LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 7, BLOCK 11, NORTH LINCOLN ADDITION, SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF VACATED "V" STREET AND THE WEST RIGHT-OF-WAY LINE OF THE NORTH/SOUTH ALLEY WITHIN BLOCK 11; THENCE ON AN ASSUMED BEARING OF NORTH 0 DEGREES 15 MINUTES 22 SECONDS EAST, ALONG THE WEST RIGHT-OF-WAY LINE OF SAID NORTH/SOUTH ALLEY, A DISTANCE OF 12.87 FEET TO A POINT; THENCE NORTH 55 DEGREES 19 MINUTES 03 SECONDS EAST, A DISTANCE OF 19.52 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID NORTH/SOUTH ALLEY; THENCE SOUTH 0 DEGREES 15 MINUTES 22 SECONDS WEST, A DISTANCE OF 9.33 FEET TO A POINT OF NON-TANGENT CURVATURE; THENCE SOUTHWESTERLY A DISTANCE OF 21.12 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 716.78 FEET AND A CENTRAL ANGLE OF 1 DEGREES 41 MINUTES 18 SECONDS , WITH A CHORD BEARING OF SOUTH 46 DEGREES 04 MINUTES 43 SECONDS WEST, AND A CHORD DISTANCE OF 21.12 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "V" STREET; THENCE NORTH 89 DEGREES 41 MINUTES 52 SECONDS WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "V" STREET, A DISTANCE OF 0.85 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 184 SQUARE FEET (0.004 ACRES) MORE OR LESS.



PROJECT NO: 008-0645	TRANSFER OF A PORTION OF LOT 7 TO JPA	OLSSON ASSOCIATES
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160
DATE: January 24th, 2011		Exh A

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ATTACHMENT "F"

LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PART OF LOT 7, BLOCK 11, NORTH LINCOLN ADDITION, LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM, LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF LOT 7, BLOCK 11, NORTH LINCOLN ADDITION, SAID POINT BEING ON THE NORTH LINE OF VACATED "V" STREET; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 41 MINUTES 52 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LOT 7, SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "V" STREET, A DISTANCE OF 123.60 FEET TO THE POINT OF BEGINNING; THENCE NORTH 55 DEGREES 19 MINUTES 03 SECONDS EAST, A DISTANCE OF 22.45 FEET TO A POINT ON THE EAST LINE OF SAID LOT 7; THENCE SOUTH 0 DEGREES 15 MINUTES 22 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 12.87 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7, SAID POINT ALSO BEING ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "V" STREET; THENCE NORTH 89 DEGREES 41 MINUTES 52 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 7, SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF VACATED "V" STREET, A DISTANCE OF 18.40 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 118 SQUARE FEET (0.003 ACRES) MORE OR LESS.

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EXHIBIT "B"

Form of Quitclaim Deed

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that **BNSF RAILWAY COMPANY**, a Delaware corporation, of 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "**Grantor**", for Ten and No/100 Dollars ($10.00) and other good and valuable consideration, to it duly paid, the receipt whereof is hereby acknowledged, has quitclaimed, and by these presents does quitclaim, without any covenants of warranty whatsoever and without recourse to Grantor, its successors and assigns, unto 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.*, whose mailing address is 555 South 10th Street, Lincoln, Nebraska 68508 Attn: City Attorney, hereinafter called "**Grantee**", and to its successors and assigns forever, all its right, title, interest, estate, claim and demand, if any, both at law and in equity of, in and to that real property (exclusive of any improvements thereon), and all of Grantor's reversionary and/or other real estate claims, ordinance rights, licenses, easements, and interest in and to all vacated streets and alleys in, on, across, abutting or adjoining such real property subject, however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, located in the County of Lancaster, State of Nebraska, hereinafter called "**Property**", being more particularly described on **EXHIBIT A** attached hereto and by this reference made a part hereof.

Grantee's interest shall be subject to a reservation to Grantor of:

1. The Grantor Reserved Rights (defined below), which Grantor Reserved Rights may be exercised by Grantor as deemed necessary or advisable by Grantor and without charge and without notification to Grantee; provided, however, Grantor's exercise of the Grantor Reserved Rights shall not materially interfere with Grantee's and Grantee's successor's and permitted assign's use and occupancy of the Property. The Grantor Reserved Rights shall be binding upon Grantee and its successors and assigns.

2. The following interests in the Property, which are referred to herein collectively as the "**Grantor Reserved Rights**":

(i) All existing longitudinal easements and licenses for pipelines, telecommunications (including without limitation, fiber optic cables or lines, communications equipment, control systems and various types of cables), power, water or other utilities with third parties and all easements and licenses that cross multiple properties (collectively, the "**Longitudinal Agreements**") and rights to the revenues or fees (collectively, "**License Fees**") attributable to any Longitudinal Agreements involving Grantor or the Property of whatever nature. Grantor and Grantee agree that Grantor shall reserve 100% of its rights to License Fees and this Deed shall not alter or otherwise affect such rights.

(ii) For any or all personal property located on the Property that is necessary for Grantor's railroad operations or otherwise, as determined by Grantor in Grantor's sole discretion and the remaining personal property does not materially interfere with Grantee's intended use of the Property, as determined by Grantee in Grantee's sole discretion, Grantor may request that Grantee, at Grantee's election, either (i) permit Grantor to enter upon the Property, upon notice to Grantee, to remove and relocate such improvements to a location off of the Property, such removal and relocation to be at Grantee's sole cost and expense, or (ii) promptly obtain and for no monetary consideration, a permanent easement from Grantee to Grantor in form and substance acceptable to Grantor for ingress and egress, site preparation, construction, reconstruction, inspection, use, operation, maintenance, repair and replacement (collectively, the "**Operation**") of such improvements. If Grantor elects to remove and relocate such improvements, then Grantor shall have a reasonable amount of time for the Operation of such improvements prior to such removal and relocation.

(iii) For any or all personal property located on the Property that is necessary for Grantor's railroad operations or otherwise, as determined by Grantor in Grantor's sole discretion, and the remaining personal property materially interferes with Grantee's intended use of the Property, as determined by Grantee in Grantee's sole discretion, Grantor shall have the right to enter upon the Property, upon notice to Grantee, to remove and relocate such improvements to a location off of the Property, such removal and relocation to be at Grantee's sole cost and expense. If Grantor elects to remove and relocate such improvements, then Grantor shall have a reasonable amount of time for the Operation of such improvements prior to such removal and relocation.

3. The right of Grantor to quitclaim to Grantee via a bill of sale all of Grantor's improvements left on the Property after the date of this Deed which are not covered by the above-described Grantor Reserved Rights. Grantor shall have no further obligations with respect to such improvements upon such quitclaim.

Grantee covenants and agrees as follows:

(a) Any improvements constructed or altered on the Property after the date of this Deed shall be constructed or altered in such a manner to provide adequate drainage of water away from any of Grantor's railroad tracks on nearby property, except as may be expressly provided under a separate written agreement between Grantor and Grantee with regards to storm water mitigation.

(b) Notwithstanding anything else in this Deed to the contrary, Grantee acknowledges and affirms that Grantor may not hold fee simple title to the Property, that Grantor's interest in all or part of the Property, if any, may rise only to the level of an easement for railroad purposes. Grantee accepts Grantor's interest in the Property, if any, on this basis and expressly releases Grantor, its successors and assigns from any claims that Grantee or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Property. In light of Grantor's disclosure that it may not hold a fee interest in all or part of the Property, Grantee agrees to indemnify, defend and hold Grantor harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on Grantor as the result of any person or entity claiming an interest in any portion of the Property or claiming that Grantor did not have the right to transfer all or part of the Property to Grantee.

(c) Grantee has been allowed to make an inspection of the Property. Grantee acknowledges that the Property has been used for industrial or commercial purposes and that there are environmental impacts. Grantee will exercise due care and address the environmental impacts in accordance with appropriate standards acceptable to the State of Nebraska at its sole cost. Any

development of the Property shall be designed and constructed in such a way that the environmental condition is not exacerbated or Hazardous Substances (defined below) are not released into improvements or the environment in excess of applicable standards or would otherwise create a nuisance. Any and all costs or expenses of development, including costs or expenses attributable in any manner to the environmental condition of the Property, shall be at Grantee's sole cost without recourse to or reimbursement from Grantor. **GRANTEE IS ACCEPTING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING THE PROPERTY**, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances, wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the existence of any leases, easements, permits, orders, licenses, or other agreements, affecting the Property.

(d) Grantee acknowledges that portions of the Property are subject to certain environmental remediation under applicable laws and regulations administered and enforced by the Nebraska Department of Environmental Quality (NDEQ Files #062076; UG #07116-MBS-1100). Grantor understands and acknowledges that under applicable NDEQ laws and regulations, Grantor is deemed the responsible party and that it retains responsibility for this on-going environmental remediation as between Grantor and the NDEQ. However, as between Grantee and Grantor, Grantee shall be solely responsible for all such environmental remediation, and Grantee agrees to assume and perform such environmental remediation, provided that Grantor agrees as the party responsible to NDEQ to: (i) designate Grantee (or at Grantee's discretion, Grantee's contractor) as Grantor's designated representative; (ii) allow Grantee to submit a more aggressive remedial action work plan (prepared by Grantee or Grantee's contractor) for completing Grantor's environmental obligations, subject to the review and approval of NDEQ; (iii) allow Grantee or Grantee's contractor to carry out such remedial action work plan as proposed and approved; (iv) allow Grantee or Grantee's contractor, as Grantor's designated representative, to submit requests for and receive direct reimbursement for the approved remedial actions from NDEQ Title 200 funds, or other such available funds; and (v) following completion of such remedial actions, provide Grantee the NDEQ-issued "No Further Action" letter for the property. If NDEQ Title 200 funds are unavailable or insufficient for any reason to complete all remediation, Grantee shall nevertheless be solely responsible for all costs of remediation as between Grantee and Grantor, and Grantee's release and indemnity obligations set forth herein shall include such remediation and any funding shortfalls. Following completion of remediation, Grantee shall cooperate with Grantor to cause NDEQ to look solely to Grantee thereafter. Grantee further acknowledges that Grantor plans to excavate materials from adjacent properties. Grantee shall be responsible for testing, managing, and transporting such material to the Property for stockpiling and future usage, including any necessary treatment and disposal, and Grantee's foregoing release and indemnity expressly includes such excavated materials.

(e) Grantee represents and warrants to Grantor that Grantee has not relied and will not rely on, and Grantor is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by Grantor or any agent representing or purporting to represent Grantor, to whomever made or given, directly or indirectly, orally or in writing.

(f) If improvements belonging to a third party are discovered on the Property after the date of this Deed, and Grantor determines it has a known license or similar agreement with such third party, then Grantor agrees, at no cost to Grantor, to assign such license or similar agreement to Grantee; provided, however, if such improvements are not covered by an agreement with Grantor, and/or a license or similar agreement cannot be located by Grantor, then Grantor shall notify Grantee of such in writing. Upon such assignment or notification, Grantor shall have no further obligations with respect to such improvements.

(g) The Property shall henceforth be used solely for commercial, industrial, office, hotel, residential (with no ground floor dwelling units), public park or plaza, open or green space, parking, or recreational purposes and the groundwater will not be used for drinking water or irrigation purposes.

(h) Except as expressly provided herein, Grantor shall have no obligations with respect to any improvements or other materials remaining on the Property on or after Grantor's quitclaim of the Property to Grantee. Except with respect to the Removed Tracks & Ties, Grantor shall not be responsible for removal or disposal of tracks or ties, or any costs of track and tie removal or disposal, for or from the Property.

(i) To the fullest extent permitted by law, Grantee waives its municipal immunity and its sovereign immunity with respect to Grantor for matters arising out of or related to this Deed and the property conveyance contemplated herein, including, without limitation, for environmental and other conditions of the Property. Any lawful waiver of Grantee's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of Grantee's municipal immunity and its sovereign immunity pursuant to separate agreements between Grantor and Grantee.

(j) To the fullest extent permitted by law, Grantee assumes the risk that Hazardous Substances or other adverse violations of Environmental Laws may affect the Property and other land acquired and/or developed by Grantee as part of the acquisition of the Property, and to the fullest extent allowed by law hereby indemnifies, defends and holds harmless and hereby waives, releases and discharges forever Grantor and Grantor's officers, directors, employees and agents (collectively, "**Grantor Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees to the extent permitted by law) of any and every kind or character, known or unknown, arising from or in any way related to Hazardous Substances or other adverse violations of Environmental Laws of the Property and any other land acquired and/or developed by Grantee as part of the acquisition of the Property, including the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property or such other property (collectively, the "**Grantor Losses**"). "Grantor Losses" shall include without limitation (i) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (ii) capital expenditures necessary to cause Grantor's remaining property or the operations or business of Grantor on its remaining property to be in compliance with the requirements of any Environmental Law, and (iii) losses for injury or death of any person, and (iv) losses arising under any Environmental Law enacted after transfer. The rights of Grantor under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of Grantee to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property or such other property. **ALL INDEMNITY OBLIGATIONS OF GRANTEE UNDER THIS SECTION (i) SHALL INCLUDE GRANTOR LOSSES**

CAUSED BY GRANTOR PRIOR TO THE DATE OF THIS DEED, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE OF GRANTOR, but shall exclude all cost, liability, or expense actually incurred by Grantor arising out of the condition of such property to the extent such condition is caused, contributed to, exacerbated or aggravated by Grantor after the date of conveyance.

(k) For purposes of this Deed:

(i) "**Environmental Law(s)**" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

(ii) "**Hazardous Substance(s)**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

(iii) "**Environmental Matters**" means matters relating to the generation, manufacture, use, storage, handling, transportation and/or disposal of Hazardous Substances, or conditions with respect to the atmosphere, soil, surface and ground waters, wetlands, stream sediments, vegetation, endangered species and storm water runoff or discharge.

The covenants and agreements set forth in paragraphs (a) through (k), above, shall be binding upon Grantee and its heirs, successors and assigns, and shall be covenants running with the land benefiting Grantor and its heirs, successors and assigns.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns, forever.

[*Signature pages follow*]

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on _____, 2013, to be effective, however, as of the ___ day of _____, 2013 (the "**Effective Date**").

BNSF RAILWAY COMPANY

By: _____
Kurt A. Geringer
Its: General Director - Real Estate

ATTEST:

By: _____
Patricia Zbichorski
Its: Assistant Secretary

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on _____, 2013 by Kurt A. Geringer and Patricia Zbichorski, as the General Director - Land Revenue Management and Assistant Secretary, respectively, of **BNSF Railway Company**, a Delaware corporation, on behalf of said corporation.

{Seal}

_____
Notary Public

ACCEPTED AS OF THE EFFECTIVE DATE SET FORTH ABOVE:

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Name: Chris Beutler
Title: Chairperson

ATTEST:

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA §
§ **ss.**
COUNTY OF LANCASTER §

On this ____ day of _____, 2013, before me, the undersigned, a Notary Public in and for said County, personally came Chris Beutler and _____ of 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.*, to me personally known to be the Chairperson and _____, respectively, and are the identical persons whose names are affixed to the above conveyance, and acknowledged the acceptance thereof to be their voluntary act and deed as such officers and the voluntary act and deed of said corporation and that the Corporate seal of the said corporation was thereto affixed by its authority.

Witness my hand and Notarial Seal at _____ in said county the day and year last above written.

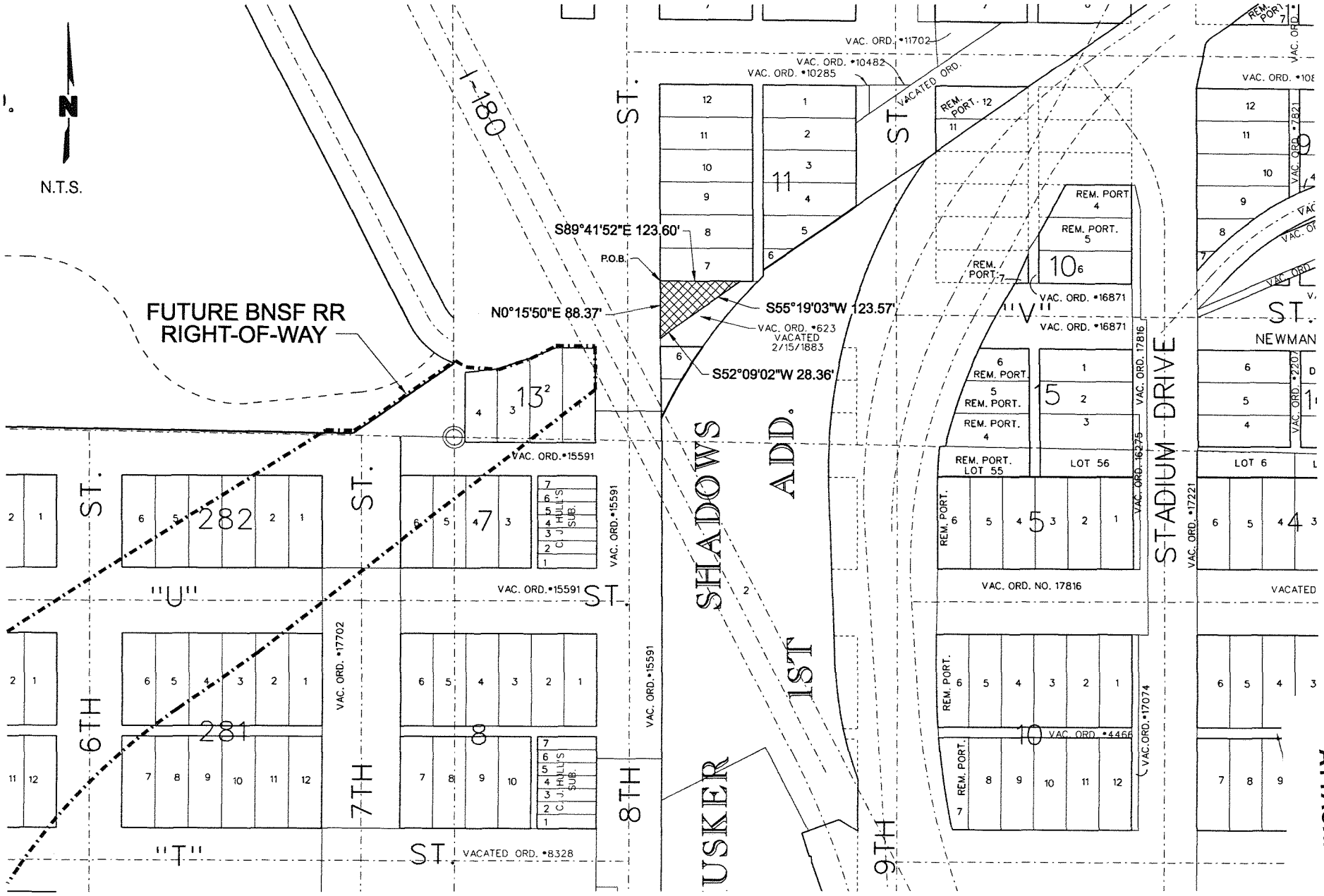
_____
Notary Public

My commission expires:_____

EXHIBIT "C"

Final Replacement BNSF Property

[attach prior to execution]



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1/24/2011 11:49:50 AM

PROJECT NO: 008-0645	TRANSFER OF VACATED "V" STREET TO BNSF	OLSSON ASSOCIATES
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160
DATE: January 24th, 2011		

ATTACHMENT "G"

LEGAL DESCRIPTION

A TRACT OF LAND COMPOSED OF A PART OF VACATED "V" STREET (ORD. # 623), LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM, LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 7, BLOCK 11, NORTH LINCOLN ADDITION, SAID POINT BEING ON THE NORTH LINE OF VACATED "V" STREET; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 41 MINUTES 52 SECONDS EAST, ALONG THE SOUTH LINE OF SAID LOT 7, SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF SAID VACATED "V" STREET, A DISTANCE OF 123.60 FEET TO A POINT; THENCE SOUTH 55 DEGREES 19 MINUTES 03 SECONDS WEST, A DISTANCE OF 123.57 FEET TO A POINT; THENCE SOUTH 52 DEGREES 09 MINUTES 02 SECONDS WEST, A DISTANCE OF 28.36 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF 8TH STREET; THENCE NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID 8TH STREET, A DISTANCE OF 88.37 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 5,364 SQUARE FEET (0.12 ACRES) MORE OR LESS.

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EXHIBIT "D"

Form of Easement

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the **WEST HAYMARKET JOINT PUBLIC AGENCY**, ("**Grantor**"), for Ten and No/100 Dollars ($10.00) and other good and valuable consideration, to it duly paid by **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address for purposes of this instrument is 2650 Lou Menk Drive, Fort Worth, Texas 76131-2830, ("**Grantee**"), the receipt whereof is hereby acknowledged, and the promises of the Grantee hereinafter specified, does hereby quitclaim unto Grantee, subject to the terms and conditions hereinafter set forth, a perpetual exclusive **EASEMENT** for railroad and related purposes in and to the premises situated in Lancaster County, State of Nebraska, to-wit (the "**Premises**"), being more particularly described on **EXHIBIT A** attached hereto and by this reference made a part hereof.

This Easement Agreement is executed by Grantor and accepted by Grantee subject to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, if any do in fact exist, but only to the extent that the same do in fact exist, of third parties in connection with those items set out and listed on **EXHIBIT B** hereto (herein called the "**Permitted Encumbrances**") and the terms and conditions set forth below:

1. Grantor on behalf of itself, its successors and assigns, covenants and agrees as follows:

1.1 The grant of the Easement from Grantor to Grantee is expressly subject to Grantor's continuing obligations (including without limitation Grantor's indemnity and environmental cleanup obligations) under any and all separate agreements between Grantor and Grantee related to the Premises, the West Haymarket District and/or Downtown Lincoln (including without limitation that certain Master Development Agreement, Exchange Agreement and Construction and Maintenance Agreement between Grantor and Grantee all dated as of October 18, 2010, being collectively referred to hereinafter as the "**West Haymarket Agreements**"), which obligations under the West Haymarket Agreements expressly survive the grant of the Easement from Grantor to Grantee pursuant to this Easement Agreement. In addition to and not in limitation of the foregoing, Grantor expressly acknowledges and agrees that Grantor's indemnification obligations under the West Haymarket Agreements shall not be limited or restricted by Grantee's acceptance of the Permitted Encumbrances pursuant to this Easement Agreement.

1.2 To the fullest extent permitted by law, Grantor waives its municipal immunity and its sovereign immunity with respect to Grantee for matters arising out of or related to this Easement Agreement and the Easement grant contemplated herein, including, without limitation, for environmental and other conditions of the Premises. Any lawful waiver of Grantor's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of Grantor's municipal immunity and its sovereign immunity pursuant to the West Haymarket Agreements.

1.3 Grantor shall not construct any additional structures or grant any additional uses within the Premises that will interfere with the uses of the Premises by Grantee as described above.

2. Grantee represents and warrants to Grantor that Grantee has not relied and will not rely on, and Grantor is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Premises or relating thereto made or furnished by Grantor or any agent representing or purporting to represent Grantor, to whomever made or given, directly or indirectly, orally or in writing. **EXCEPT WITH RESPECT TO ENVIRONMENTAL MATTERS, ENVIRONMENTAL CONDITION AND AS OTHERWISE PROVIDED IN THE WEST HAYMARKET AGREEMENTS, GRANTEE IS ACCEPTING THE PREMISES ON AN "AS-IS WITH ALL FAULTS" BASIS**.

3. Grantor and Grantee further covenant and agree, on behalf of themselves and their respective successors and assigns, as follows:

3.1 Grantor hereby grants to Grantee an exclusive right and option (the "**Acquisition Right**") to acquire all of Grantor's right, title, interest, estate, claim and demand, if any, both at law and in equity of, in and to the Premises (collectively, the "**Grantor Interests**") at any time during the life of this Easement, subject to the terms of **Section 3.2** below. Grantee may exercise the Acquisition Right by giving written notice thereof to Grantor at any time during the life of this Easement. Within thirty (30) days after Grantor's receipt of such notice, Grantor shall, for no additional consideration, quitclaim the Grantor Interests to Grantee by a quitclaim deed in form and substance acceptable to the parties. Such quitclaim deed shall expressly incorporate the provisions of **Sections 1.1, 1.2 and 1.3** above and such provisions shall not merge into the quitclaim deed.

3.2 Notwithstanding anything herein to the contrary, if the period for Grantee's exercise of the Acquisition Right in **Section 3.1** above shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing like or similar time limits, then such terms shall continue only for the period of twenty-one (21) years after the death of the last survivor of the lineal descendants of Elizabeth II, Queen of England, living as of the Effective Date (defined below), but in no event more than ninety (90) years after the Effective Date.

4. Prior to the Effective Date, pursuant to that certain Quitclaim Deed (Vacated Streets and Alleys) dated October 22, 2010, Grantee heretofore quitclaimed to Grantor all of Grantee's right, title, interest, estate, claim and demand, if any, both at law and in equity of, in and to all vacated streets and alleys comprising any part of the Premises. Accordingly, this Easement from Grantor to Grantee expressly includes such vacated streets and alleys as part of the Premises.

5. This Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee.

6. Should Grantee, its successors and assigns, abandon use of the Premises for railroad and related purposes, and notifies Grantor writing that Grantee has abandoned the Premises, the same shall revert to Grantor, its successors and assigns.

The covenants and agreements set forth above shall be binding upon Grantor and Grantee and their respective heirs, successors and assigns, and shall be covenants running with the land benefiting Grantor and Grantee and their respective heirs, successors and assigns.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for its use and enjoyment for the purposes aforesaid and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed by its authorized representative, and its seal to be affixed hereto on the ____ day of _____, 2013 (the "**Effective Date**").

GRANTOR:

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

By: _____
Chris Beutler
Chairperson

{Seal}

STATE OF NEBRASKA §
§
COUNTY OF LANCASTER §

The foregoing instrument was acknowledged before me this _____, 2013, by Chris Beutler, the Chairperson of **West Haymarket Joint Public Agency**, a political subdivision of the State of Nebraska, on behalf of the political subdivision.

{Seal}

_____
Notary Public

GRANTEE:

BNSF RAILWAY COMPANY

By: _____
Mark D. Ude
Its: AVP, Corporate Real Estate Development

ATTEST:

By: _____
Patricia Zbichorski
Its: Assistant Secretary

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on _____, 2013 by Mark D. Ude and Patricia Zbichorski, as the AVP, Corporate Real Estate Development and Assistant Secretary, respectively, of **BNSF Railway Company**, a Delaware corporation, on behalf of said corporation.

{Seal}

_____
Notary Public