# AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
# TO BE HELD FRIDAY, July 12, 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 June 14, 2013 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. West Haymarket Progress Report (Paula Yancey)
   - Public Comment

5. WH 13-60 Resolution to approve the Amended Memorandum of Agreement by the West Haymarket Joint Public Agency pursuant to the Department of Environmental Quality by the Remedial Action Plan Monitoring Act to incorporate modifications to the property boundaries covered under the Voluntary Cleanup Program for the former Alter Scrap and JayLynn, LLC parcels. (Frank Uhlarik/Miki Esposito)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

6. WH 13-61 Resolution to approve an Adoption Agreement for Professional Services between Radiant Systems, Inc., NCR Corporation, and the West Haymarket Joint Public Agency regarding the purchase and installation of hardware and software for the Arena, pursuant to Bid No. 12-257, to bind Radiant Systems, Inc. as a party to the Agreement. (Canda Jellenc)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

7. WH 13-62 Resolution to approve and ratify the Letter Agreement between the West Haymarket Joint Public Agency and JACOR Contracting, Inc. for labor, equipment, materials and insurance for epoxy injection mock-ups of precast girders for the Pinnacle Bank Arena Pedestrian Bridge Project. (Paula Yancey)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

8. WH 13-63 Resolution to approve and ratify Lease Addendum #3 with CH Ltd. (as Landlord) which assigns the Lease for the use of the premises known as 200 Armour Bldg., 100 N. 8th Street, Lincoln, NE 68508, from Legends Sales & Marketing, LLC (as Tenant) to the West Haymarket Joint Public Agency. (Dan Marvin)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

9. WH 13-64 Resolution to approve the Theatrical Xenon Spotlights Contract with Theatrical Media Services Inc. for the furnishing and installation of the spotlights for the Pinnacle Bank Arena described in Bid No. 13-199. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

10. WH 13-65 Resolution to approve the Restroom Supplies Contracts with Cash-Wa Distribution Co. and Hillyard Inc. to provide and install Restroom Supplies as described in Bid No. 13-154 for the Pinnacle Bank Arena. (Canda Jellenc)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

11. WH 13-66 Resolution authorizing the Chairperson of the West Haymarket Joint Public Agency to enter into a Contract not exceeding the budgeted amount with the lowest bidder (or sole source provider as the case may be) for the furnishing and installation of a Cisco United Wireless Network to match the existing Cisco infrastructure. (Canda Jellenc)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

12. WH 13-67 Resolution authorizing the JPA's Chair or Purchasing Agent to enter into contracts or issue Purchase Orders respectively to the lowest bidder for the furnishing of the following Pinnacle Bank Arena FF&E items: (1) Remaining Furniture Items, Medical Tables, Outdoor Patio Burners; (2) Window Treatments; (3) Electrical Services Dis. Equip.; (4) Draping/Curtains; (5) Material Handling Equipment; (6) Sound and Lighting Equipment; (7) Small Tools, Storage Racks, Traffic Control; (8) Smallwares; (9) Kubota Utility Vehicles; (10) Café Express; and (11) Club Car Carryall. (Canda Jellenc)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

13. WH 13-68 Resolution to approve the Amended and Restated Facilities Agreement with the City of Lincoln, Nebraska. (Dan Marvin)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

14. WH 13-69 Resolution to approve Amendment No. 010.1 to the Agreement with DLR Group, Inc. dated September 1, 2010 providing for an increase in IPTV Architectural Coordination hours. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

15. WH 13-70 Resolution to approve the Guaranteed Price Amendment to the Construction Manager at Risk Agreement with Hausmann/Dunn, a joint venture, to establish $13,299,244 and $5,871,512 as the amount the Contract Sum shall not exceed for Precast Parking Deck Nos. 2 and 3, respectively. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

16. WH 13-71 Resolution to approve the West Haymarket Joint Public Agency Thermal Energy Service Rate Class 1 formula rate charges for all Rate Class 1 customers receiving energy services from the West Haymarket Joint Public Agency. (Chris Connolly)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

17. WH 13-72 Resolution to approve the Customer Energy Service Agreement between Project Oscar, LLC and the West Haymarket Joint Public Agency for Energy Services to the office/retail space at the Southwest Corner of Canopy Drive and P Street. (Chris Connolly)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

18. Set Next Meeting Date: Friday, July 26, 2013 at 3:00 p.m. in Room 303*

19. Motion to Adjourn

*If conflicting meeting ends early, this meeting will be held in City Council Chambers Room 112

# WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
# Board Meeting
# June 14, 2013

Meeting Began At: 3:00 P.M.

Meeting Ended At: 4:03 P.M.

Members Present: Chris Beutler, Doug Emery, 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 May 16, 2013**

Beutler asked for corrections or changes to the minutes of the May 16, 2013 meeting. Being none, Clare moved approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

**Item 4 -- Approval of May 2013 Payment Registers**

Steve Hubka, City Finance Director, presented the payment registers for May 2013. Hubka noted that the total is for $13,437,134. This total primarily consists of a payment to Hausmann Dunn for Parking Deck 1 and a payment to Mortenson for $10,125,000. This is the first time $10 million has been crossed in a Mortenson payment. They continue to monitor the cash and anticipate issuing the turnback tax bonds in mid to late July for roughly $25 million cash coming into the JPA. Responding to Clare, Hubka confirmed that we are on budget and all of the proper signatures are being obtained.

Hearing no public comment, Clare moved approval of the payment registers. Emery seconded the motion. Motion carried 3-0.

**Item 5 -- Review of May 2013 Expenditure Reports**

Hubka presented the May Job Cost Reports, consisting of reports for the Phase I, Phase II, and operating budget. He pointed out that they will be coming back on some reallocations on the Phase I budget. They also will be working on an operating budget for the next fiscal year that will be before the Board in August.

Beutler asked for public comment. No one came forward.

**Item 6 -- West Haymarket Progress Report**

Paula Yancey, PC Sports, welcomed Councilman Emery to the JPA. She distributed a project status update for the Pinnacle Bank Arena and associated infrastructure projects. The local participation report shows all the workers on the project, including professional and engineering workers. There have been 2,794 workers including 1,627 (59%) from Lincoln/Lancaster County and another 877 (31%) from Nebraska outside Lancaster County. In reviewing the 2,518 Davis Bacon construction employees, there have been 1,486 (59%) workers from Lincoln/Lancaster County and another 825 (33%) Nebraska workers from outside Lancaster County. There have been 413 contracts let with 304 or 74% going to Nebraska firms. Since there have not been any significant contracts let since the last progress report, the dollars continue to show $159 million out of $223 million as staying in Nebraska. Clare reflected on meeting with John Hinshaw, the Hamptons, and Mr. Wood early in the process at which time they stated that their goal was 75%. Therefore, it is great to see we are right on target with that goal.

Adam Hoebelheinrich, PC Sports, proceeded with the infrastructure progress update for the area around the arena. He displayed the following photos:

- West and east views of "R" Street give a good representation of the final look. The left image shows the Railyard, Canopy Lofts and the Arena. The right view shows the two parking garages (VIP and Deck 1) under construction.
- Deck 1 progress has been significant over the last month. They topped off on precast and now topped out with topping slabs. They are finishing the elevator work for an upcoming inspection.
- Deck 1 office work is ongoing. Approximate opening date for this garage will be August 1.
- DEC Phase III work continues with piping from "P" to "O" Streets to serve the Oscar Building and future developments to the south. Project Oscar groundbreaking was last week and a test pile was completed.
- Core area roadways are progressing. "N" Street and Pinnacle Arena Drive had significant pours with two additional lanes completed. Only major pours that remain are on "Q" Street and a parking lane for Amtrak, both of which are anticipated to be completed within the next two weeks.
- View of the colored intersection on Canopy and "P" Street looking north. Some specialty concrete was used to draw the attention and beautify the streets in this area.
- Canopy was started with the head houses set and over half of the structure up. They will paint and install the decking and roof.
- View west down "Q" from 7th Street. The Railyard, Hotel, and Deck 1 are shown on the right and the DEC is shown on the left.
- Update on TDP's progress. They are working on the exterior of the Railyard as shown in the left picture. In the right picture, it shows the Hotel and the Lofts that are getting close to a finished exterior.
- On the festival parking lot, in spite of the rain, large pours have been made and this shows the massive concrete that has been poured.
- This action shot shows the compaction of the parking lot subgrade for the next pour.
- This image shows the light pole installation in the festival parking area.
- Aerial photo of the Arena as of May 15, 2013.
- Overall aerial image of progress to date on the entire Haymarket site as of May 15, 2013.

New aerials are being taken today, which will reflect major progress since these last two shots were taken.

John Hinshaw, Mortenson Construction, gave an update on the Arena. He invited Councilman Emery to let him know when he would like to schedule a tour.

Milestones achieved this month include the following:

- Announced the August 14 opening a month and a half ago
- Painting on all levels continues
- Ceiling installation continues
- Bathroom fixtures and finishes continues
- Eight suites are 100% complete and architecture punch lists are done
- Fire alarm testing has started with bells and whistles going off
- All the retractable seating platforms are in and the seat installation has started on all levels
- Site paving and plantings are ongoing
- Large carpet installation is going on throughout the arena

Hinshaw reported that they hit a large milestone on safety today. They had one recordable incident in one year. That is a half million hours worked with only one injury. A picture showed the bend and stretch exercises that happen each morning at 7 a.m.

Hinshaw displayed photos of the following:

- Wide shot of retractable seat installation
- Section signage being installed by SignCo, a local company
- Another seating shot
- Loge box view nearing completion as millwork and carpet is installed
- Carpet installation in the Loge box area
- Carpet installation in premium level showing the millwork completion as well
- Bathroom fixtures nearing completion
- Suite finishes 100% in eight areas and completing quickly
- Suite seats installed with Pinnacle Bank logo on the end stanchion
- Stephens and Smith continuing the concourse concrete floor grinding and polishing
- Lobby floor terrazzo in a rough stage – to be polished
- Club lounge bars are ongoing
- Club lounge finishes showing copper ceiling
- Stephens and Smith finishing the colored concrete in the front
- Campbell's Nursery installing the plantings
- Curtain wall being installed by Glass Edge on Pinnacle Bank Garage wall

Pat McGrane came forward for public comment. He appears today to oppose the red N being placed on the outside of the arena. Although the agreements may be signed, the work is not complete. He is a Nebraska graduate, as are his three children, but the red N makes it look like University property. For visitors/tourists/teams coming to town it makes it look like the University built this arena, when it was actually the citizens of Lincoln paying through their taxes. It would be nice to have the sign say Pinnacle Bank – Citizens Arena. He is a voice of one, but he has talked to many others opposing that red N as well. There will still be the N on the basketball floor, but the N on the outside makes it look like University property while they are actually a tenant of the building.

Beutler thanked McGrane for his point of view and passed along that the contract has been entered into and now there is a contractual obligation to install the red N. McGrane understood, but since no installation has occurred, anything can be changed. He stated that is why there are lawyers available –

to change those contracts. McGrane relayed that Mr. Marvin gave him a nice explanation, but as he read about what was the left to do, he felt now was a good time to express his concern even though he may be behind on timing. Beutler thanked McGrane for his comments as he acknowledged also that it was the taxpayers of Lincoln who were the muscle behind the project. McGrane then asked when the arena tax ends. Beutler responded when it was paid for, to which Emery added that there is a sunset clause put on by the City Council. McGrane stated that he has heard of numerous upgrades being done with "extra" or "saved" funds. He stressed that those do not need to be spent by the JPA. They could be used to pay off the bonds or building financing early and give back to the taxpayers.

Jane Kinsey, Lincoln Watchdogs, seconded McGrane statement. She has previously asked that money be returned to the taxpayers rather than spending any extra or saved dollars. She stated that it will be interesting to see if the taxpayers get any money back.

**Item 7 -- WH 13-50 Resolution to approve and ratify the Consultant Agreement between Thornton Tomasetti, Inc. (TT) and the West Haymarket Joint Public Agency for structural engineering services not to exceed $50,000.00 with regard to the failure and partial collapse of a concrete bridge girder which supports the pedestrian bridge at the Pinnacle Bank Arena.**

Yancey informed the Board that this is a resolution to provide third party structural engineering services for the pedestrian bridge failure. This is in an amount not to exceed $50,000. TT is an international firm who will provide independent review for the JPA. Currently the team is reviewing all the testing and inspections since the event occurred. Any fixes are in progress or are being reviewed for future needs. TT will certify and confirm that the bridge will be structurally sound when completed. The intent is that the JPA be reimbursed for the cost of the contract once responsibility is determined.

Kinsey asked about the amount and what was included in the contract. Yancey explained this amount is to attend meetings, do review of all design documents, do onsite visits, do calculations, provide documentation, and consult with the team as needed. This amount is anticipated to provide the dollars needed to complete the contract. However, if more is needed, there will be an amendment come forward.

Emery continued that this is an independent set of eyes looking at the situation and should assure the public that someone other than those with project ties or investment is involved in the review. Yancey confirmed that was the case, as well as gives some greater degree of expertise.

In response to Kinsey, Yancey explained that Terracon is actually performing the tests that are being reviewed by TT and the team members. Once the final report is ready, it will be released to the public.

Kinsey asked if they are looking at other things or just the bridge. Yancey explained that they are an international firm and very well known who are only being asked to look at the bridge. Previously, they were hired by Mortenson for structural review of the foundation issues. Kinsey was not concerned with them being hired, but with the fact that it was not publicly stated that they were involved previously. Yancey believes they were mentioned in press conferences at the time, and can find those for Kinsey. Kinsey wondered about involving a third opinion that was not paid previously to which Yancey explained that the contractor has a third party and the design team has a third party, so there are basically about ten parties all reviewing what happened on the bridge. It is a very collaborative effort. Kinsey is worried about it being a little ingrown. Watchdogs has called for a check of everything involved in the project for safety. Yancey responded that they have had third party reviews previously, as well as have

the building inspectors that are onsite daily providing inspection and review of the site. She is not sure what another firm would be doing at this time.

Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

**Item 8 -- WH 13-51 Resolution to approve Amendment Nos. 003.1, 014 and 020 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency.**

Yancey came forward and explained that this item is for three amendments to the DLR Group contract for the arena architectural services. The first is a zero dollar amendment. There had been some savings from lease space with DLR, so they did some additional work at no additional cost on lobby art, renderings, and items on potential exterior art. Amendment No. 14 is for architectural services DLR performed on behalf of UNL for the fit out of their locker room. The amount is $20,000 and will be reimbursed to the JPA by UNL as was done with actual improvements. Amendment 20 is for graphic design services and a dedication wall plaque not to exceed $2,500. This was a small increase in their contract paid by contingency funds.

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

**Item 9 -- WH 13-52 Resolution to approve a Parking Garage Management Agreement between the West Haymarket Joint Public Agency and the City of Lincoln for management of parking garages designated as Deck 1, Deck 2 and Deck 3 in the West Haymarket Addition.**

Dan Marvin, JPA Secretary, stated that this resolution is for an agreement worked out with the Parking Enterprise Fund. This allows the Parking Enterprise Fund to contract with the residents of the Loft Apartments for long-term parking within Deck 1. In addition, we need to have Deck 1 available for football fall parking. The agreement provides direct and indirect costs billed against the revenue generated by the parking garage. The direct costs are primarily those associated with the Republic Parking contract maintained by the City. The indirect costs are for a couple of additional staff members within the Enterprise Fund for oversight within the Republic contract. They have looked at the annual cost structure and this is in line with national averages. The incoming money will be deposited in the West Haymarket JPA accounts. Then Republic bills would go against those accounts with additional funds retained for debt service.

Kinsey asked about the cash flow and the amount expected. Marvin detailed that the ballpark estimate is between $550 and $600 per parking garage stall. The national average is $641 per stall. There are 940 stalls in Deck 1. The provisions of the contract provide for annual renewal so that amount will be reviewed as other garages open. Hubka explained that the Parking Enterprise Fund will administer this with them billing the JPA. The City will be reimbursed for management and the JPA would be at risk for any deficit of cash flow. It is not set out as a separate parking enterprise within the JPA, but is part of the overall treasury of the JPA. He confirmed for Kinsey that City Finance is responsible for that management.

Responding to Clare's inquiry, Marvin confirmed that this is what was set out originally for budgeting. The City manages a number of parking garages currently and does not run deficits. Marvin continued that the lowest yield would be for monthly spaces at approximately $70 per month and reserved spaces for $85 month. Obviously, there will be an hourly rate consistent with other garages. For football, it will be around $15 a stall. They believe there is a significant parking demand created and absolutely

expect to run in the black. He confirmed Emery's statement that by using the administration currently in place we save overhead costs, as well as other costs to run a dual systems. We piggyback on an existing system.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 10 -- WH 13-53 Resolution to approve the following FF&E Arena Contracts: Commercial Washer and Dryer Contract with A.A. Horwath and Sons installation of washers and dryers pursuant to Bid No. 13-161 in the amount of $21,040.00; Two-Way Radio System Contract Agreement with Bear Communications, Inc., pursuant to Bid No. 13-166, in the amount of $123,607.00.**

Canda Jellenc, PC Sports, explained this resolution is for two bid items. A.A. Horwath and Sons is to provide one commercial washer and two commercial dryers for a total of $21,040. Bear Communications, Inc. is providing the two-way radio system for $123,607.

Both were bid through City Purchasing and were the low bidders. The funds are covered within the FF&E Budget.

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

**Item 11 -- WH 13-54 Resolution to approve a Contract Agreement between the West Haymarket Joint Public Agency and Commonwealth Electric for West Haymarket JPA Guide and Wayfinding Signs Project 87091B, pursuant to Bid No. 13-169, in the amount of $460,509.35.**

Yancey described this contract agreement with Commonwealth Electric. It provides vehicular and wayfinding signage to direct patrons to the new arena and the entire entertainment district. This was rebid through City Purchasing with Commonwealth being the low bidder. The total contract amount requested is $460,509.35.

Clare asked if this was in the original budget. Yancey responded that it was, however, the first bids were too high so they relooked at the bid package to modify it to be within the budget. Clare then asked if these would be used other than for the arena events and if there was any plan to have the City reimburse the JPA. Yancey explained these are static signs that will be used all over – green signs on highways, City vehicular signage with new district topper, etc. Some existing signs needed updated to include the arena and new development information. Currently, although there may be benefit, there is no plan to have the City reimburse JPA for this cost.

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

**Item 12 -- WH 13-55 Resolution authorizing the Purchasing Agent to issue purchase orders for the purchase of the following FF&E items for the Arena: Housekeeping Equipment (Bid No. 13-163), and Stanchions/Crowd Control (Bid No. 13-168).**

Jellenc stated that this is for three items. First is for housekeeping equipment including two bids. Tennant Sales and Service are providing three different commercial riding sweepers and scrubbers for a total award of $66,760.59. Amsan Omaha is also providing a compact riding scrubber for a total of $12,306.57. In addition, ProStanchions is providing the stanchions for crowd control for $26,357. All of these items were bid through City Purchasing, were low bidders, and dollars are included in the FF&E budget.

Clare inquired about the documents that usually are attached to these resolutions for review. Rick Peo, City Attorney's Office, explained that due to the short time constraints and short timeframe for delivery prior to opening, some of these bids were not awarded early enough to provide the actual signed agreements to the JPA Board. They could have provided the specifications. These are the type of items typically procured by the Purchasing Agent since they are in the budget. However, they felt it was appropriate to at least flag on the agenda so the Board knew what they are authorizing Purchasing to buy. There will be another similar item on today's agenda. Jellenc restated that the amounts are $466,760, $2,306 and $26,357. Peo verified this authorizes SMG as the operator or Purchasing to enter into a contract.

Clare understands and is sensitive to the issues. However, he asked if there was a policy or easy way to provide information beyond one page to allow the Board to continue to be transparent and provide oversight and governance. He recognizes there will be more of these types of resolutions in the near future. Peo responded that the items bid and amounts could be provided. It would have been easier to issue a general resolution to cover these types of purchases. Sometimes, multiple contracts can be negotiated for individual items within the specifications, which may take time. These are basic budgeted items to be purchased. They are trying to be more transparent and sensitive to the public's right to know, so are bringing these items to the Board for review at the meetings. Now we are getting close to the end and items need to move too quickly to have the information or contracts always ready prior to Board meetings. Emery asked if it was possible to include a "not-to-exceed" number in the information provided to the Board. Peo explained that, if bids come in higher, they will be rebid or revised to keep within budget. Jellenc said that they have not had to worry about those figures in the past as they have had the exact bid information by the meeting, but she can provide that information in the future.

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

**Item 13 -- WH 13-56 Resolution to approve Aid to Construction Agreement with TDP Phase One LLC and TDP Phase Two LLC.**

Peo detailed that in a previous redevelopment agreement between JPA, City of Lincoln, and TDP Phase One we agreed that tax increment financing dollars generated from their project would be utilized to buy down the debt service of the DEC plant. That buy down would then allow TDP Phase One to have a cost savings on their share of the financing costs as it is built, to be established in a formula coming up later. TDP Phase One then sold part of their interest to TDP Phase Two. It would be considered a family ownership. These tax dollars were mostly generated from the Hotel Hobson Place project and a small amount from the Canopy Lofts. None was from the Railyard. TDP Phase One and TDP Phase

Two said they did not want all the benefit going to Hobson Place and would like to reallocate how these dollars are spent based on the square footage of each of the projects. This Aid to Construction Agreement is an agreement between TDP Phase One, TDP Phase Two, and the JPA to acknowledge how they want to share the cost savings distribution.

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

**Item 14 -- WH 13-57 Resolution adopting the West Haymarket Joint Public Agency Thermal Energy Service Rate Class 2 formula rate charges for all Rate Class 2 customers receiving energy services from the West Haymarket Joint Public Agency.**

Chris Connolly, City Attorney's Office, explained that this resolution is to establish a rate class for the thermal energy services agreements. The reason we are dealing with Rate Class 2 at this time is because TDP is ready -- Rate Class 1 deals with the Oscar Project and will not be ready until July. This rate class reflects a pass through of all the costs incurred by JPA from DEC to operate the system, insurance, and administrative costs. That formula will be used for any other future customers that come on line and meet the qualifications for Rate Class 2. This will be incorporated into the agreement that comes up in the next item.

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

**Item 15 -- WH 13-58 Resolution to approve Rate Class 2 Customer Energy Service Agreements with TDP Phase One LLC, and TDP Phase Two LLC, for the delivery of thermal energy to the Railyard Premises, Canopy Loft Premises and Hyatt Regency Hotel Premises.**

Continuing from the last item, Connolly explained that this resolution reflects the actual agreement between the parties on how the Rate Class 2 Customer Energy Service Agreement with TDP would be handled. It is similar to the agreement with Oscar.

Kinsey asked if this means the JPA would be delivering thermal energy to these private corporations. Connolly detailed that JPA is the customer of DEC who will be generating the energy. The JPA will resell the energy to the private customers. Customers will be required, just like any other utility, to pay the bill in full. There is no risk involved.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 16 -- WH 13-59 Resolution authorizing the Chairperson to enter into a Furniture Contract Agreement with Office Interiors and Designs for Systems Office Furniture (Bid No. 13-105) and Sheppard's Business Interiors, Office Interiors & Design, All Makes Office Equipment and AOI Corporation for Arena Furniture (Bid No. 13-160).**

Jellenc stated that this authorizes the JPA Chair to enter into a furniture contract with the following vendors:

- Office Interiors and Designs for the systems office furniture for $137,792
- For arena furniture to three vendors:
    - Office Interiors and Designs - $18,099
    - Sheppard's Business Interiors - $154,986.75
    - AOI Corporation - $270,952.01

All of these vendors are local, were all bid through City Purchasing, and are within the FF&E budget. Clarifying for Emery, Jellenc explained that the FF&E stands for furniture, fixtures and equipment. Clare asked for same consideration as on the last item as to providing more detail to the Board, which Jellenc acknowledged.

Kinsey asked where the furniture will be located. Jellenc explained that the first one is for offices in the arena and the remaining items are for the arena itself. It includes tables and chairs in lounges, outdoor furniture, and some office chairs, etc. It is loose furniture pieces. Kinsey asked if there was a breakdown as to what goes in offices versus in the rest of the arena. Jellenc responded that there is information she can provide to Kinsey.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 17 -- Set Next Meeting Date**

The next meeting date is set for Friday, July 12, 2013 at 3:00 p.m. in Room 303.

**Item 18 -- Motion to Adjourn**

Emery made a motion to adjourn the meeting. Clare seconded the motion. The meeting adjourned at 4:03 p.m.

**Prepared by: Pam Gadeken, Public Works and Utilities**

# West Haymarket JPA Meeting

Date June 14, 2013

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| Name (Please Print) | Address | Phone/E-Mail |
|---|---|---|
| Pat McGrane | 5433 S. 31st Street Court | |
| Jane Kinsey | | |
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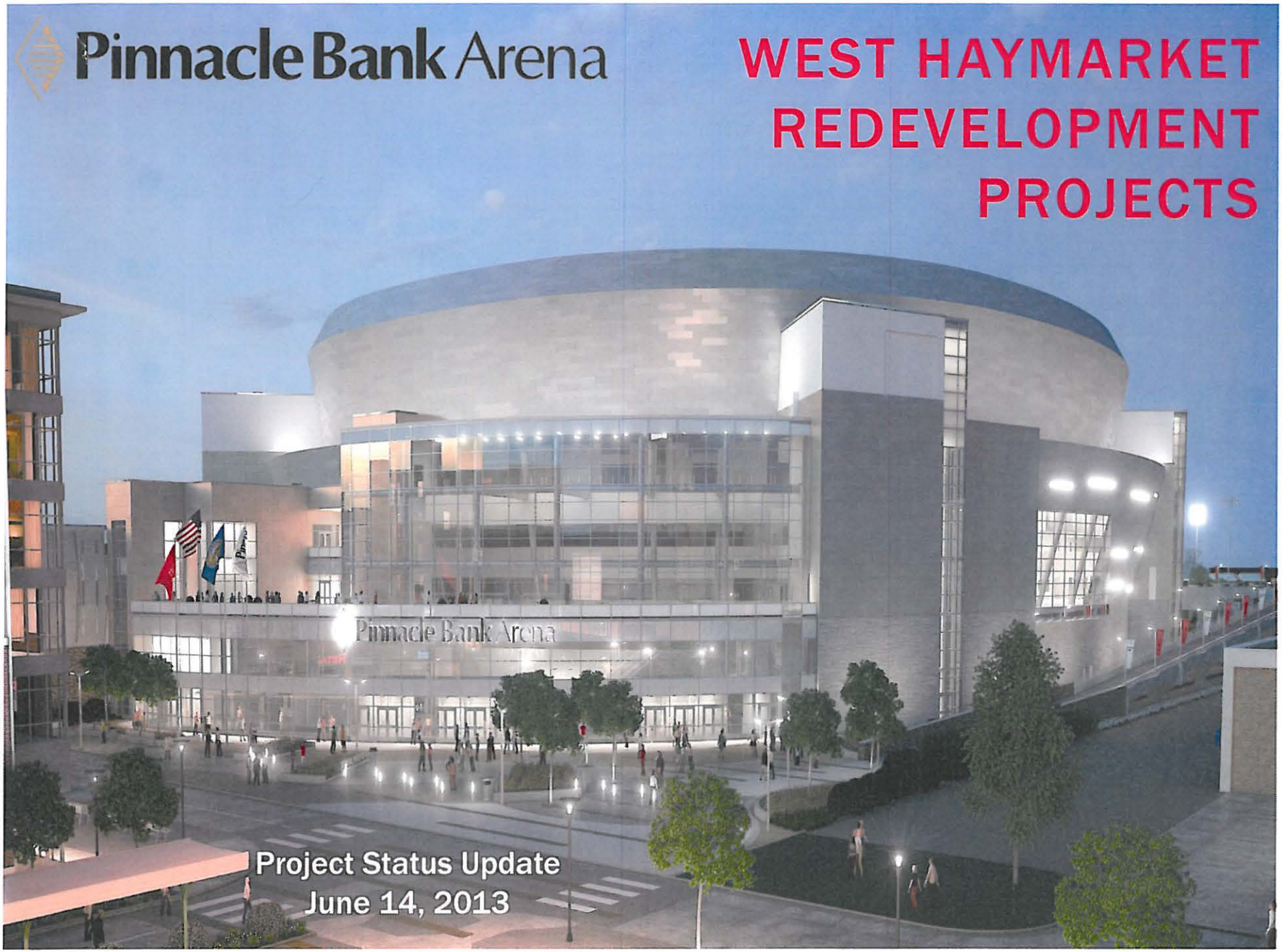
Pinnacle Bank Arena

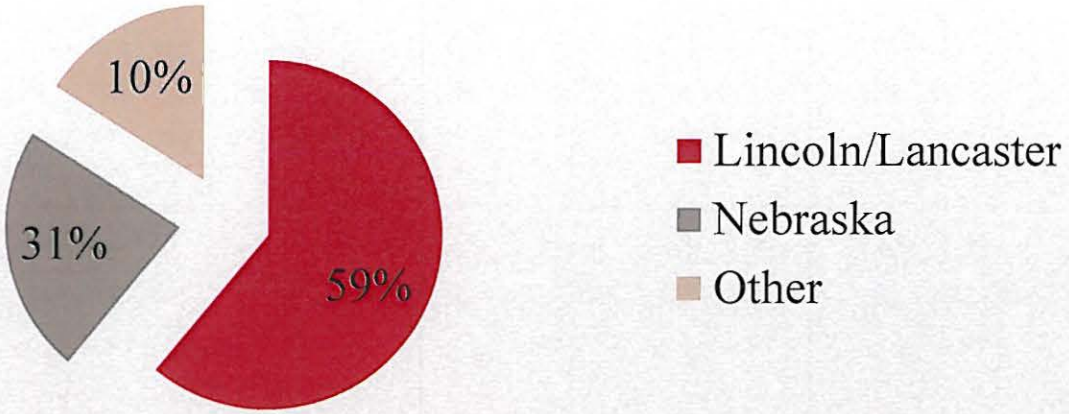
# WEST HAYMARKET REDEVELOPMENT PROJECTS




Project Status Update
June 14, 2013

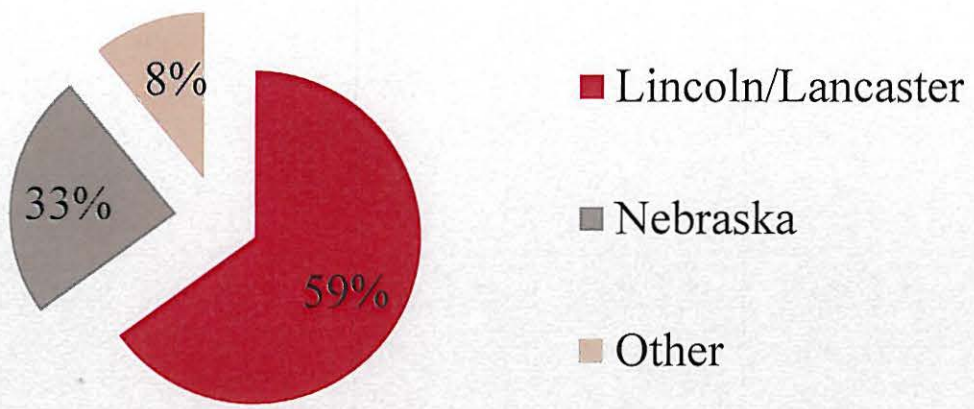
# West Haymarket Local Participation Report
# All Workers – Including Engineering and Professional Services
# Through May 2013

| | Total | Percentage |
|---|---|---|
| Lincoln/Lancaster County | 1627 | 59% |
| Nebraska | 877 | 31% |
| Other | 290 | 10% |
| | 2794 | 100% |



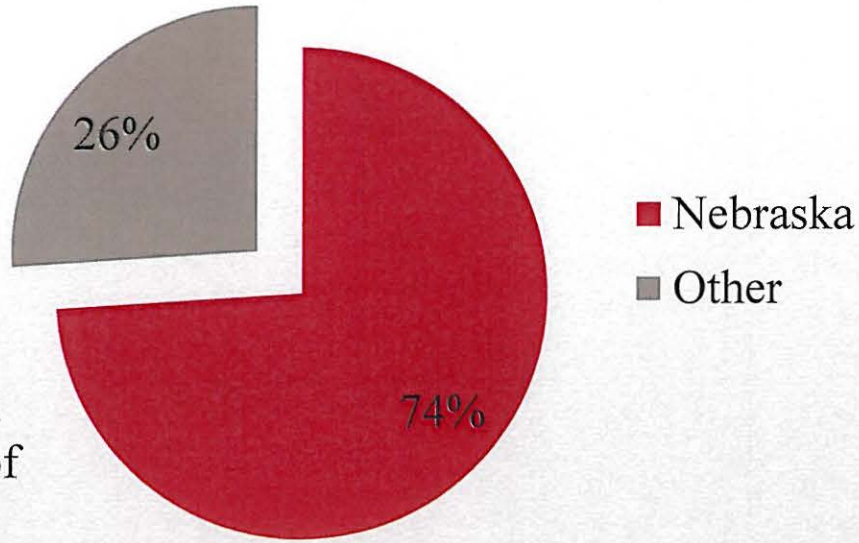
# West Haymarket Local Participation Report
# Davis Bacon / Construction Employees
# Through May 2013

| | Total | Percentages |
|---|---|---|
| Lincoln/Lancaster County | 1486 | 59% |
| Nebraska | 825 | 33% |
| Other | 207 | 8% |
| | 2518 | 100% |



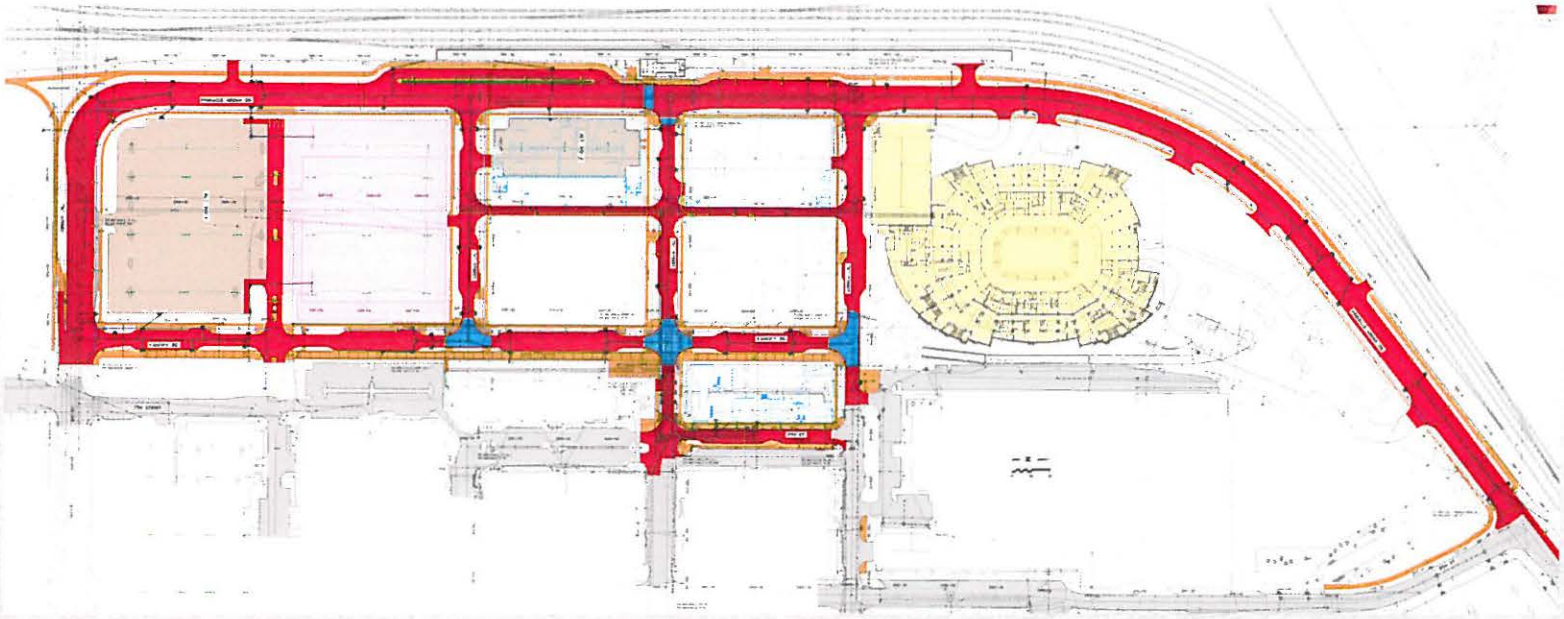
# West Haymarket
# Company Participation

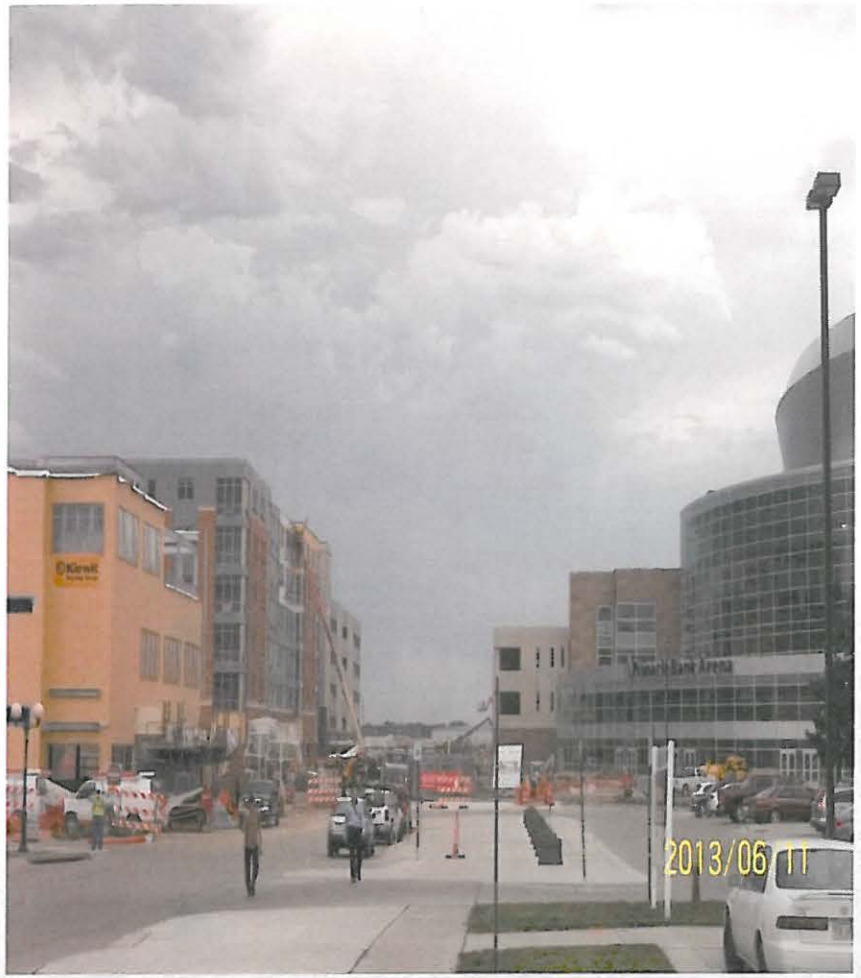
| | Total | Percentage |
|---|---|---|
| Nebraska Contracts | 304 | 74% |
| Other | 109 | 26% |
| | 413 | 100% |



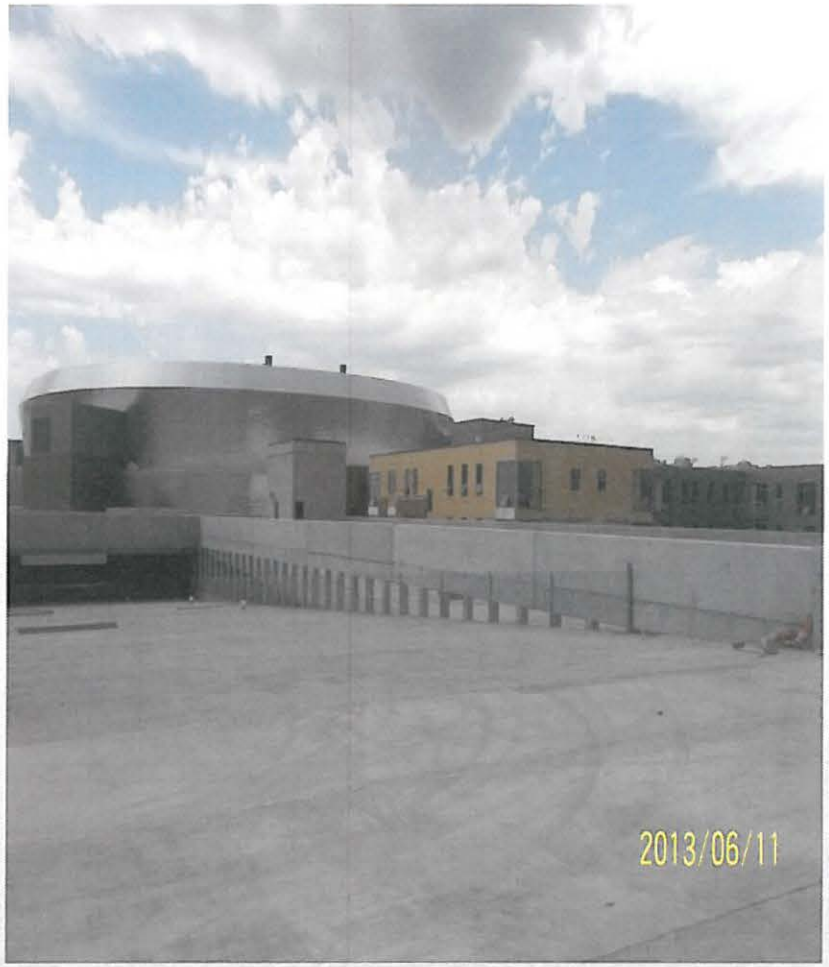

Approx. $159 Million Nebraska Dollars out of $223 Million

# Infrastructure Progress





# WEST AND EAST VIEWS OF "R" STREET

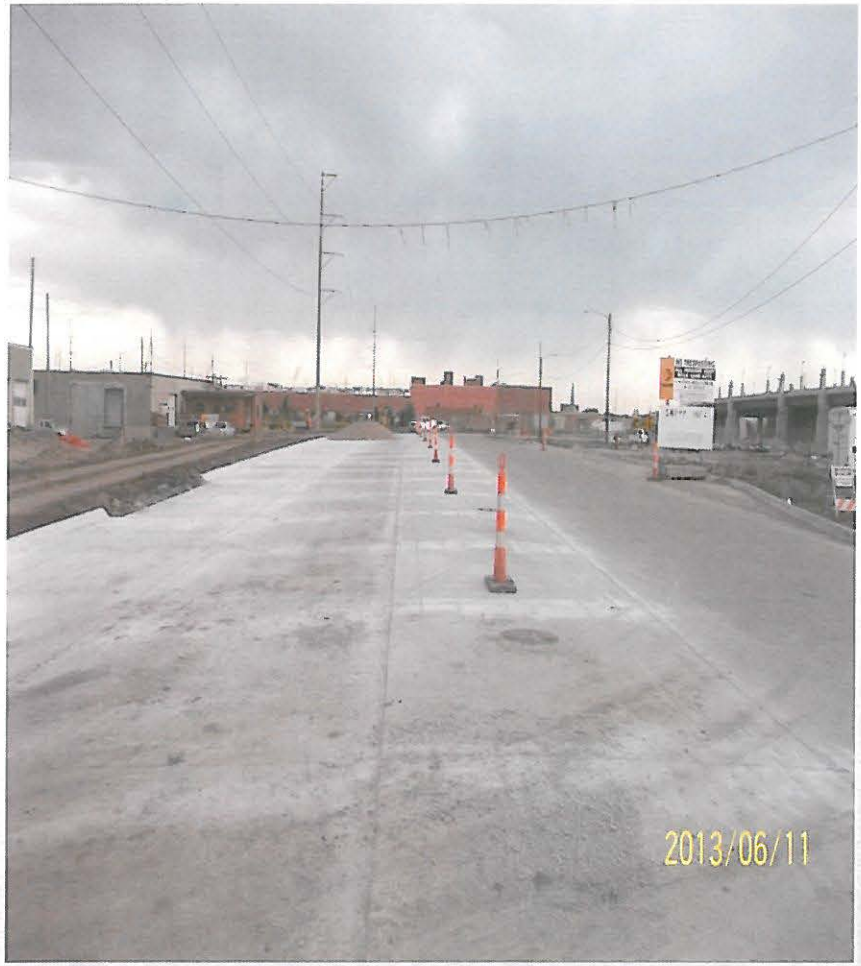



# WEST HAYMARKET DECK #1 PROGRESS

# WEST HAYMARKET DECK #1 OFFICE

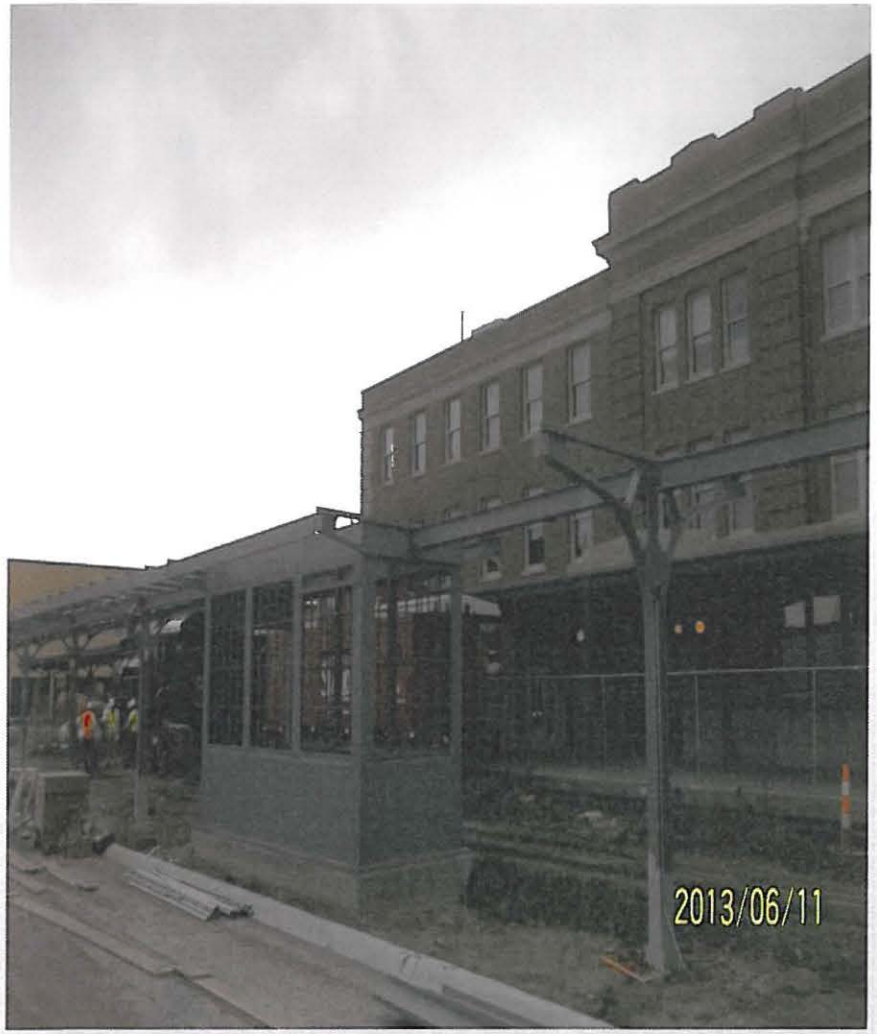
# DEC PROGRESS

# PROJECT OSCAR PROGRESS



# CORE AREA ROADWAY PROGRESS

# VIEW FROM CANOPY & "P" LOOKING NORTH



# CANOPY PROGRESS

# VIEW FROM 7th & "Q" LOOKING WEST

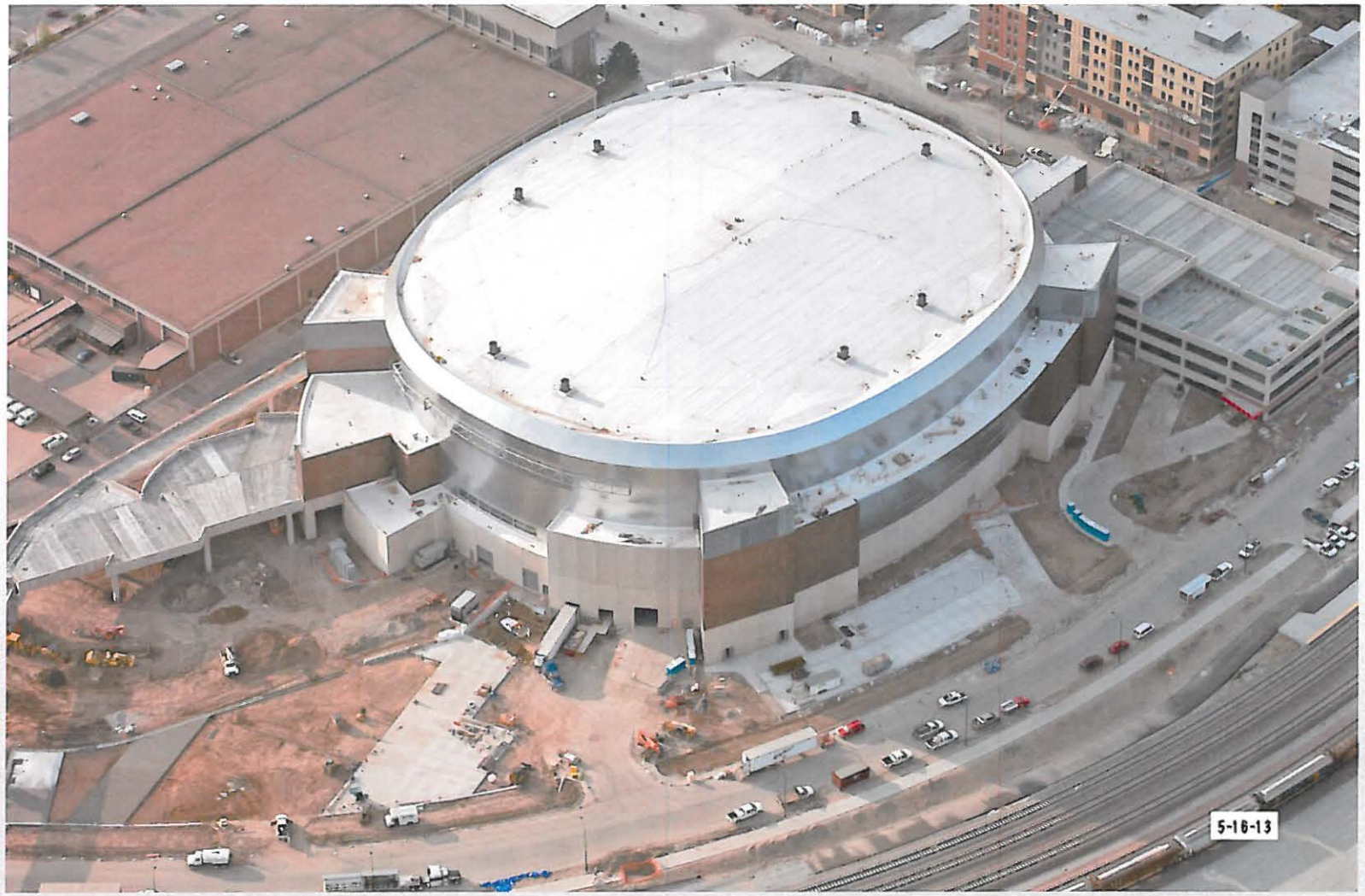
# TDP's RAILYARD, CANOPY LOFTS & HOBSON PLACE PROGRESS

# FESTIVAL PARKING LOT FROM TOP OF EMBANKMENT

# COMPACTING SUBGRADE FOR NEXT PARKING LOT POUR

# INSTALLATION OF FIRST PARKING LOT LIGHT POLE

# AERIAL 5-15-2013



# AERIAL
# 5-15-2013

# Presentation to the JPA

Pinnacle Bank Arena

June 14, 2013

Mortenson construction | HAMPTON CONSTRUCTION

# Milestones Achieved

- Arena opening August 14
- Painting on all levels continues
- Ceiling installation continues
- Bathroom fixtures and finishes
- 8 suites are 100% complete
- Fire alarm testing started
- All seating levels started, retractable seating installed
- Final punch list started
- Site paving and plantings started
- Carpet installation has started in large areas

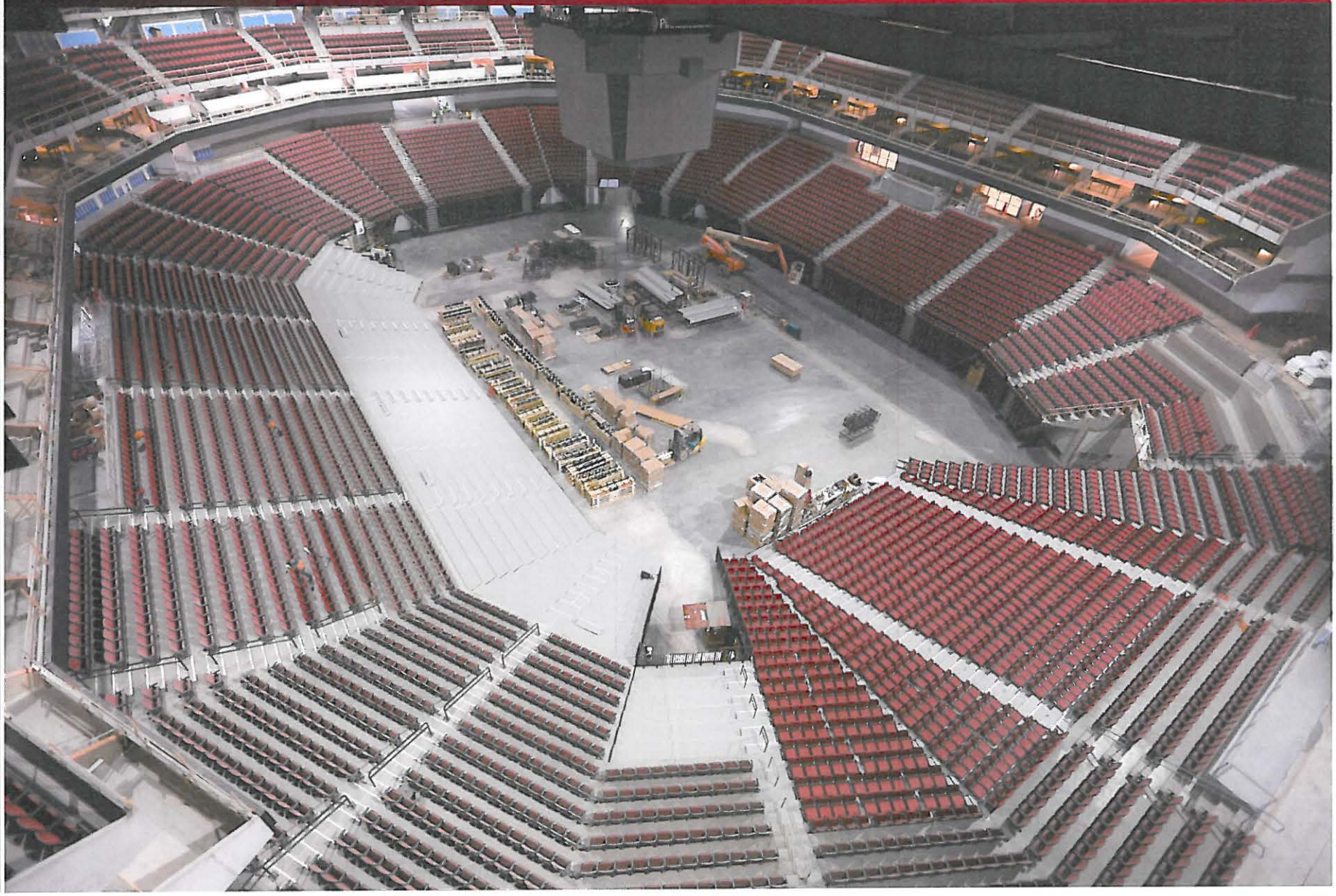
Mortenson construction | HAMPTON CONSTRUCTION

# Safety

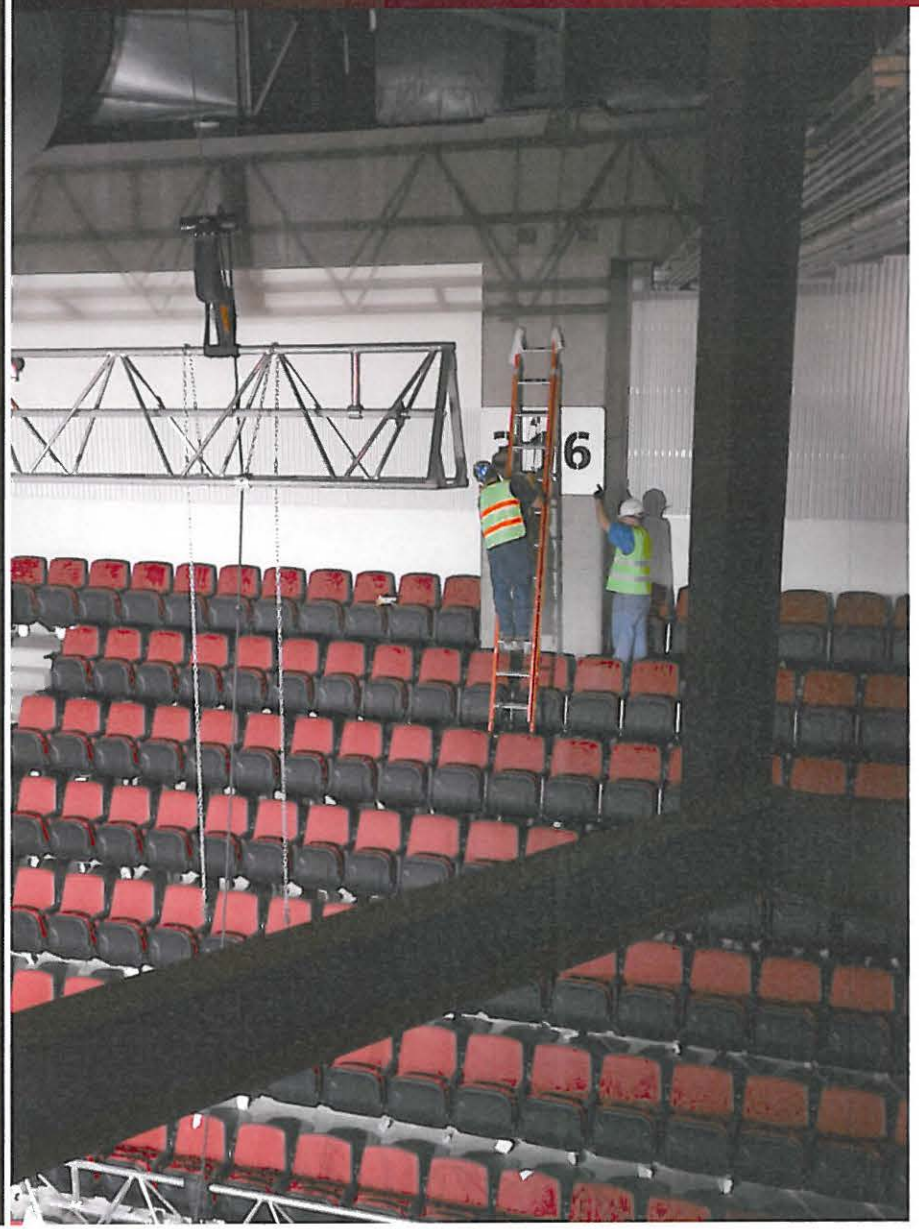
- Worked 156 consecutive days without a safety incident
- The Project averages over 350 Craft Workers daily
- 1 incident in last 373 days
- Mortenson Craft 1 full year with no incidents

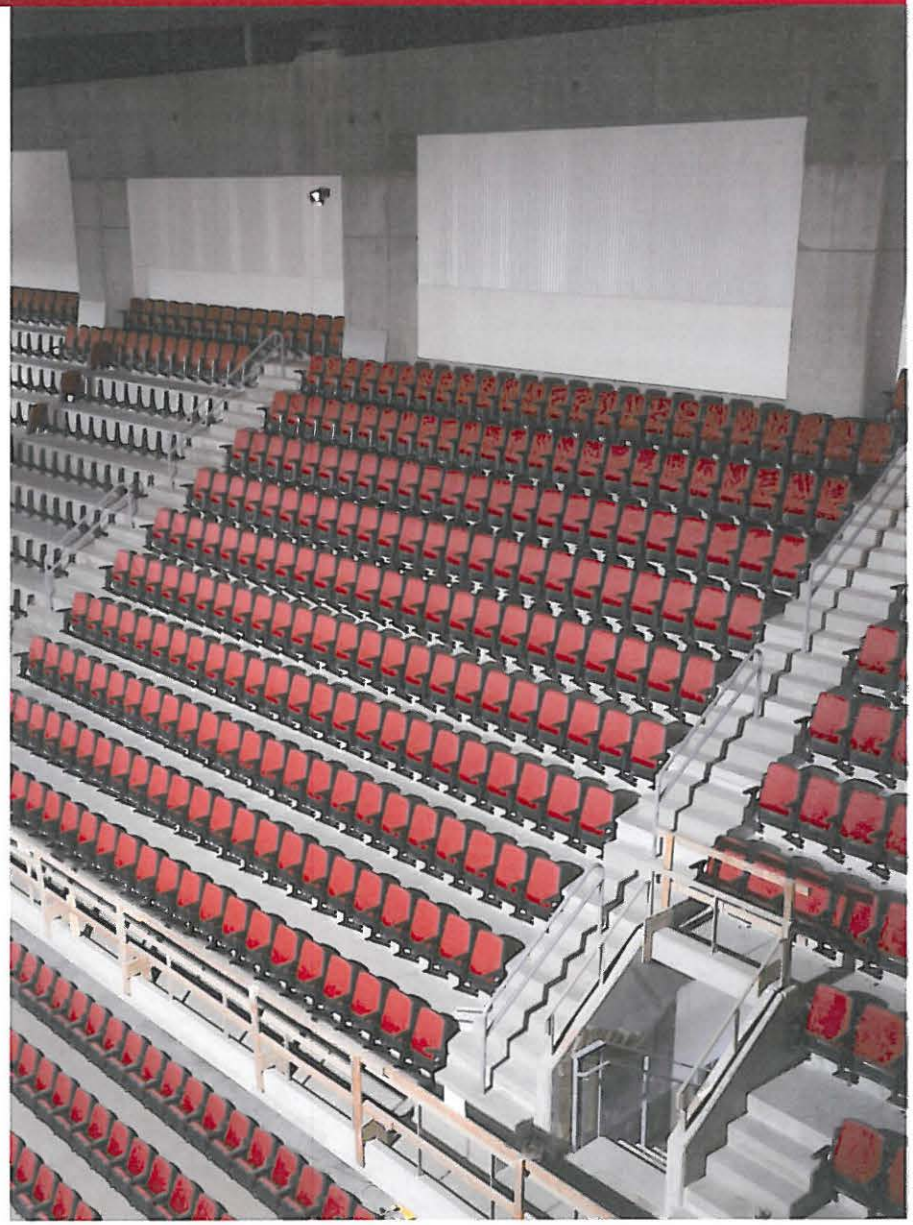
Mortenson construction | HAMPTON CONSTRUCTION

# Seat Installation

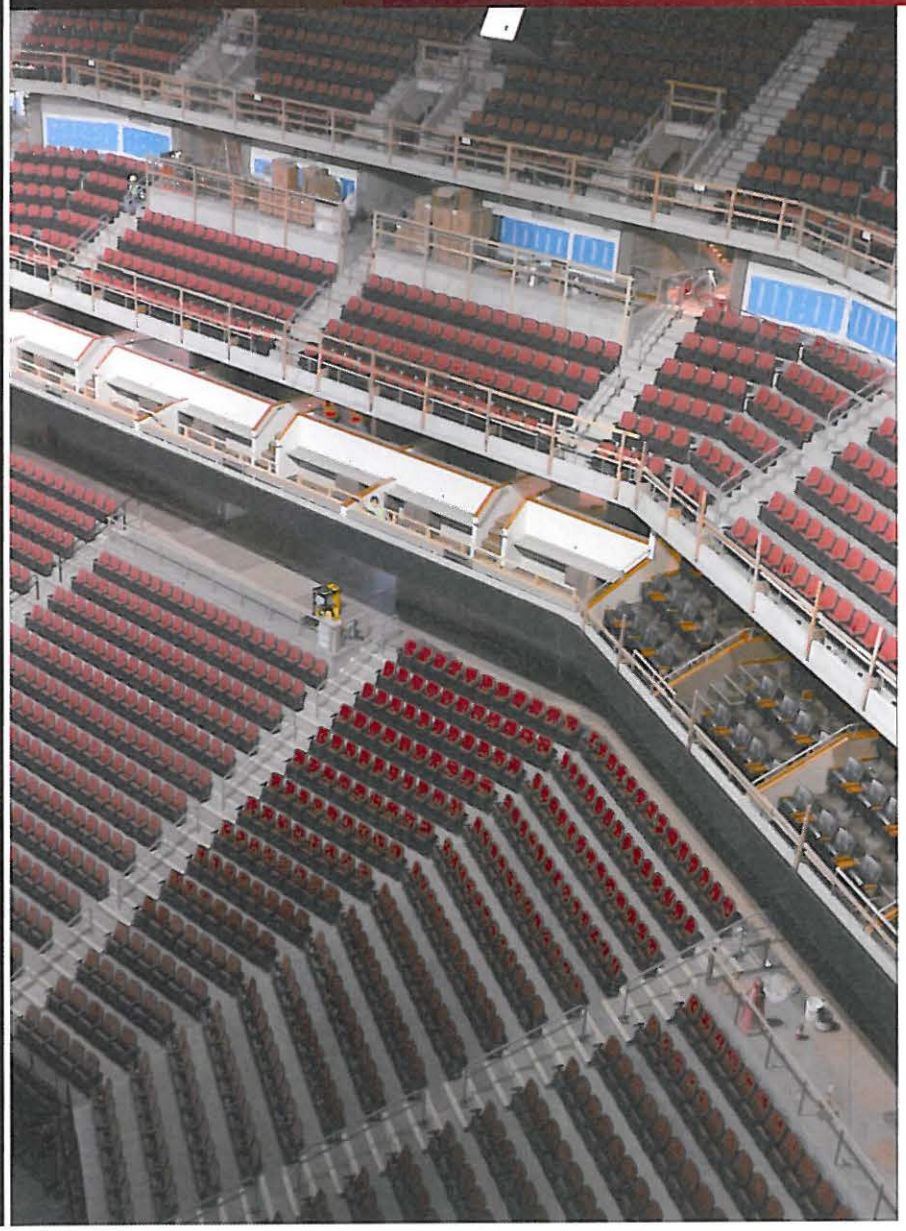


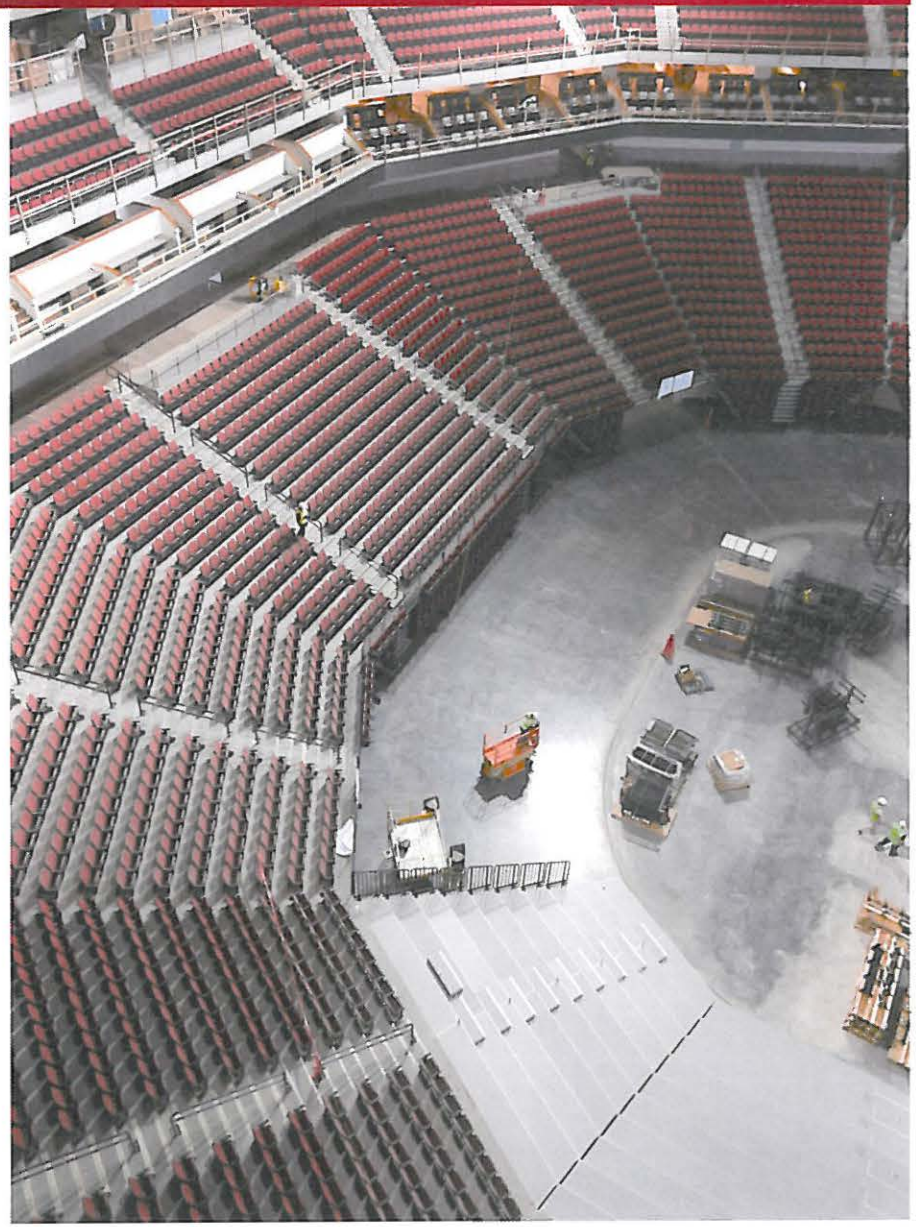
# Top deck signage and seating





# Seating nearly complete





# Loge Boxes

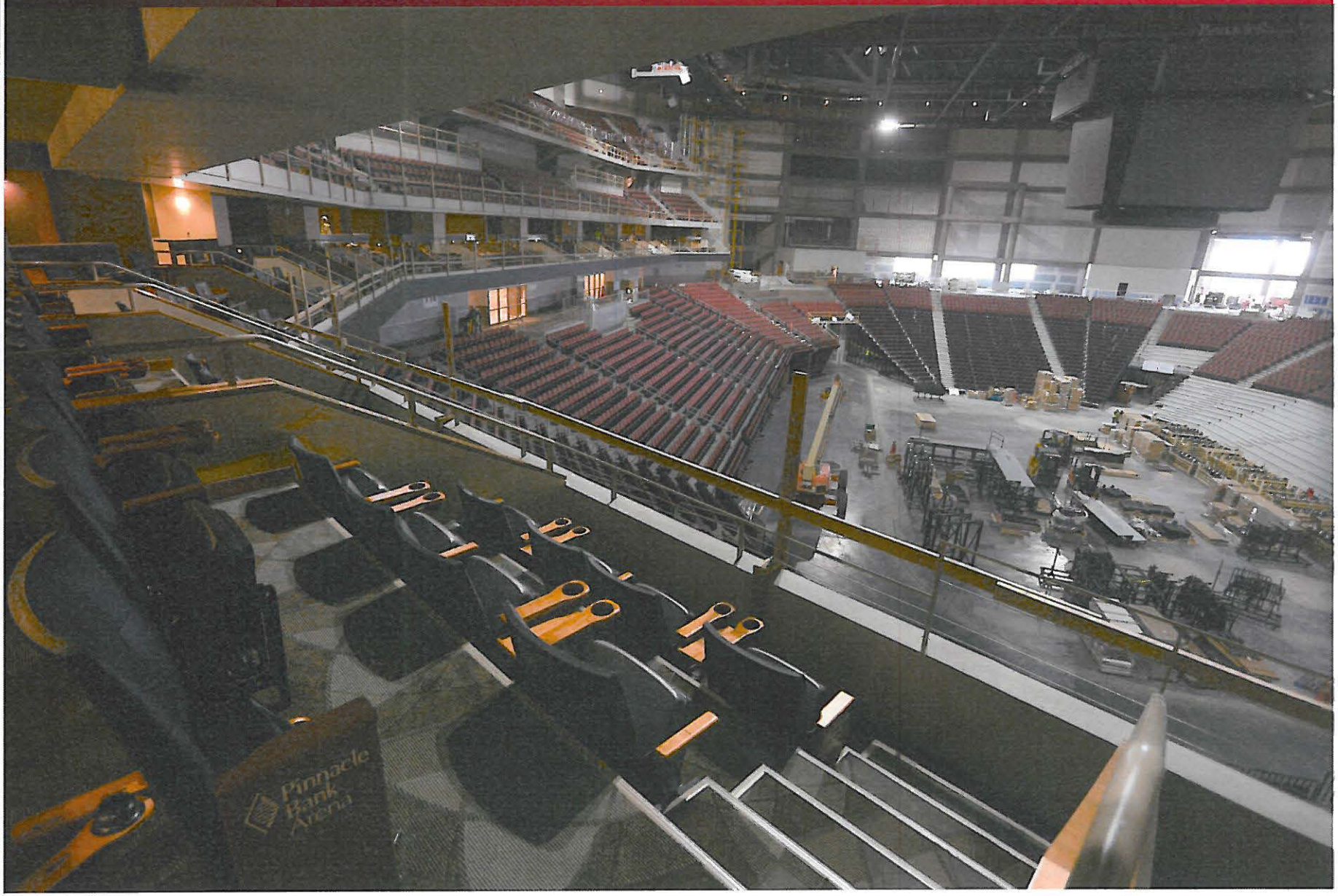
# Carpet Installation

# Carpet Installation

# Bathroom Fixtures

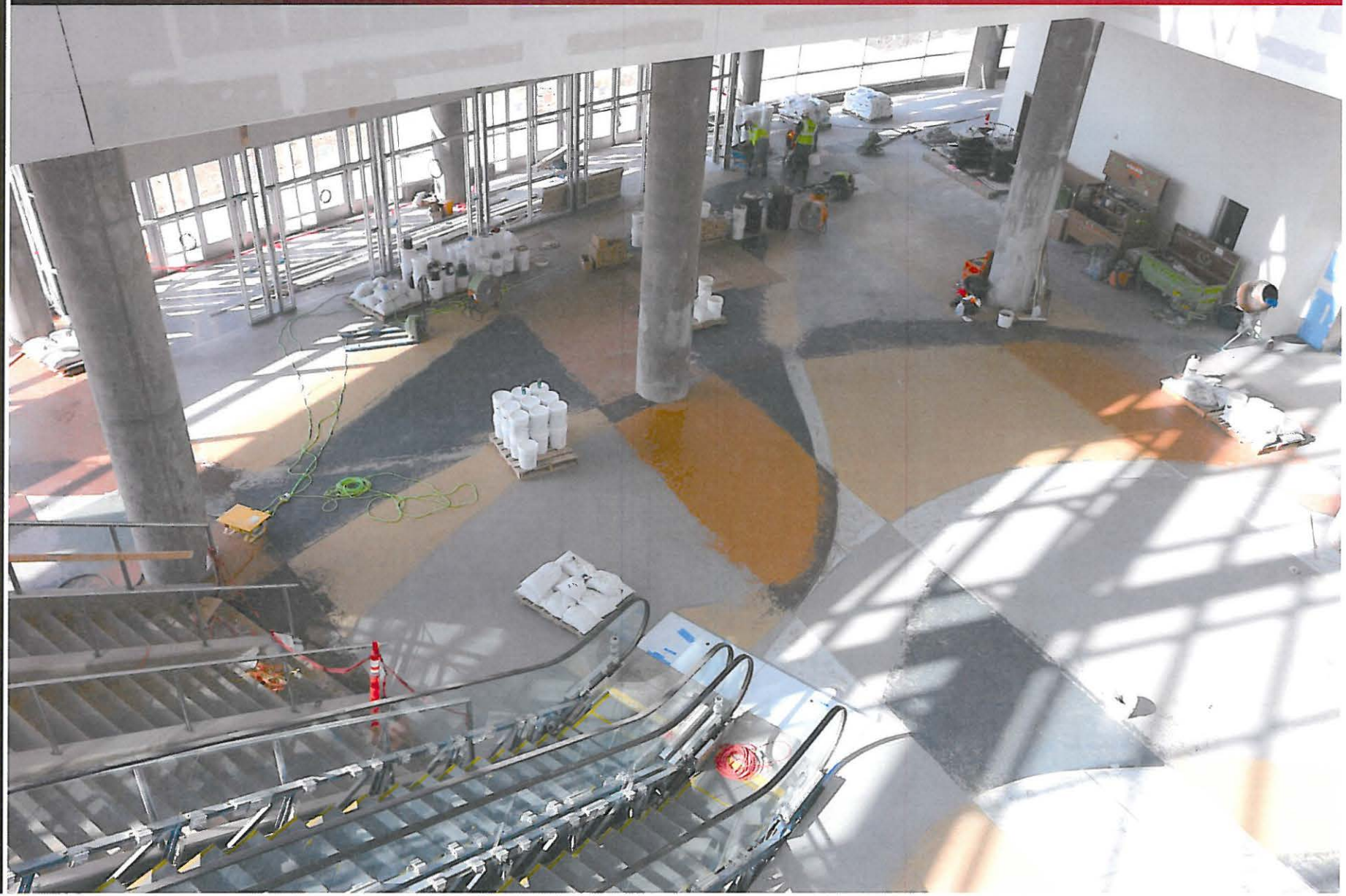
# Suite Finishes

# Suite Finishes



# Polished concrete

# Lobby Flooring



# Club Lounge finishes

# Club Lounge finishes

# Site Paving

# Site Plantings

# Garage curtain wall

WH 13-60 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Memorandum of Agreement by the West Haymarket Joint Public Agency, pursuant to the authority vested in the Department of Environmental Quality by the Remedial Action Plan Monitoring Act, to incorporate modifications to the property boundaries covered under the Voluntary Cleanup Program for the former Alter Scrap and JayLynn, LLC parcels, is hereby adopted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and the Memorandum of Agreement to Frank Uhlarik, Public Works & Utilities Department, for transmittal to the Nebraska Department of Environmental Quality.

Adopted this _____ day of _____, 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

_____
Doug Emery

**BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF**

**THE WEST HAYMARKET**
**JOINT PUBLIC AGENCY**

# MEMORANDUM OF AGREEMENT (AMENDED)

This Amended Memorandum of Agreement (Amended Agreement) is entered into voluntarily by the West Haymarket Joint Public Agency pursuant to the authority vested in the Department of Environmental Quality (DEQ) by the Remedial Action Plan Monitoring Act (RAPMA), Neb. Rev. Stat. § 81-15,181 et seq. (Reissue 2000), the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 1999, Cum. Supp. 2002), and all rules and regulations promulgated thereunder.

## FINDINGS

1. The DEQ is the agency of the State of Nebraska authorized pursuant to Neb. Rev. Stat. § 81-1504(1) to exercise exclusive general supervision, administration, and enforcement of NEPA, and all rules, regulations, and orders promulgated thereunder, including the issuance of orders requiring the adoption of remedial action to prevent, control, or abate land and water pollution, and to encourage voluntary cooperation by persons to achieve the purposes of NEPA. The DEQ is further authorized pursuant to Neb. Rev. Stat. §§ 81-15,183 through 81-15,185 to administer RAPMA.

2. The West Haymarket Joint Public Agency (JPA) is a political subdivision exercising governmental powers within the area known as the West Haymarket Redevelopment Area. With principal offices at 555 S. 10th Street, Suite 205, Lincoln, Nebraska, the JPA is the party executing this Agreement. The JPA is a "person" within the meaning of Neb. Rev. Stat. § 81-1502(10).

3. The property that is the subject of this Agreement is located in Lincoln, Lancaster County, Nebraska, and is more particularly described in the attached amended RAPMA application. The Site encompasses approximately 11.27 acres.

4. The JPA has conducted an environmental investigation of the Site and has submitted information to the DEQ that evidences that "land pollution," as defined by Neb. Rev. Stat. § 81-15,182(1), and "water pollution," as defined by Neb. Rev. Stat. § 81-15,182(2), exists at the Site.

5. Pursuant to Neb. Rev. Stat. § 81-15,184, JPA has submitted to the DEQ an application (initial application) for oversight of the remedial action it plans to conduct at the Site, as well as a nonrefundable application fee of $2,000. In addition, JPA has posted an initial deposit of $3,000 to be used by the DEQ to cover the DEQ's direct and indirect costs related to technical review, oversight, guidance, and other activities associated with remedial action or long-term institutional controls at the Site. DEQ executed the initial application on June 10, 2012. An amended RAPMA application reflecting the change in the total acreage of the properties to be addressed under the RAPMA is hereby submitted as an attachment to this Amended Agreement. No additional fees are being submitted with this amended application. The DEQ shall review and approve or deny the amended application and notify JPA accordingly in writing. If the application is denied, the notification will state the reason for the denial. If the DEQ determines

that an application does not contain adequate information, the DEQ shall return the application to JPA. JPA will have sixty (60) days to resubmit the required information or the application will be deemed denied.

## AGREEMENT

6. The intent of this Agreement is to allow JPA to voluntarily conduct remedial action in accordance with RAPMA and to seek a determination from the DEQ that no further remedial action is required at the Site pursuant to Paragraph 23 of this Agreement.

7. JPA agrees to perform all remedial action at the Site in accordance with NEPA and all rules and regulations promulgated thereunder. JPA shall be responsible for obtaining any necessary permits, licenses, access and other authorizations required under this Agreement. Nothing in this Agreement shall be deemed to impose any additional liabilities or obligations on JPA, other than those specifically stated herein. Nothing shall relieve JPA from complying with all other applicable federal, state and local laws, rules and regulations.

8. JPA agrees to maintain insurance coverage, including self-insurance, sufficient to cover any potential risks to JPA employees, agents, and contractors, performing the actions under this Agreement.

9. Nothing in this Agreement, including any document the DEQ issues as agreed to herein, shall be interpreted to constitute a release or waiver of liability for any of the conditions which existed at the Site before, during, or after execution of this Agreement nor limit the DEQ's authority to respond to such conditions. DEQ shall have the authority to respond to such conditions in addition to requiring further remedial action from JPA under the circumstances described in Paragraph 23 of this Agreement. JPA reserves the right to raise any and all defenses, to any action brought by DEQ for conditions that existed on the Site prior to acquisition by JPA.

10. JPA neither admits nor denies that it caused land or water pollution at the Site in violation of Neb. Rev. Stat. § 81-1506(1)(a), but agrees that DEQ may file an action against JPA if it fails to comply with or terminates this Agreement. JPA waives any affirmative defenses regarding jurisdiction. However, nothing in this Agreement shall constitute a waiver of JPA's right to contest the authority of the DEQ to take any enforcement action against JPA, other than an action to enforce this Agreement.

11. Remedial Action Plan. Within ninety days of approval of the application, JPA shall provide to DEQ a complete Remedial Action Plan (RAP) for the proposed project that conforms to all federal and state environmental standards and substantive requirements and that is subject to review and approval of the DEQ. DEQ approval shall be void upon failure to comply with the approved RAP or willful submission of false, inaccurate, or misleading information by JPA. DEQ shall not commence technical review, oversight, guidance, or other activities associated with the RAP until this Agreement is executed and JPA has submitted a complete RAP to the DEQ.

    The RAP shall, at a minimum, include the following:

    a. Documentation regarding the investigation of land pollution or water pollution including, when appropriate, information indicating that JPA holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

b. A Remedial Action Work Plan which describes the remedial action measures to be taken to address the land or water pollution; and

c. Project monitoring reports, appropriate engineering, scientific, and financial feasibility data, and other data and information as may be required by the DEQ.

New information about the presence of land pollution or water pollution at the Site may require additional action. Therefore, JPA shall submit any subsequent work plans on a schedule agreed to by JPA and the DEQ.

12. If JPA believes any such data or information is protected by a privilege, it will retain the data and information and notify the DEQ of the nature of the document and the privilege claimed. JPA may also request that the DEQ keep data or information contained in any submission confidential, pursuant to Title 115 - Rules of Practice and Procedure.

13. Upon receipt of the RAP, the DEQ shall review and approve or disapprove the RAP and notify JPA of its decision in writing. If the RAP is disapproved, the notification shall state the reason for disapproval. DEQ will provide JPA an opportunity to resubmit the RAP.

    If the DEQ intends to approve the RAP, DEQ shall issue a public notice of its intent pursuant to § 81-15,185 in a local newspaper of general circulation in the area affected and make the RAP available to the public. The public shall have thirty days from the date of publication during which any person may submit written comments to the DEQ regarding the proposed remedial action. Such person may also request or petition the Director of Environmental Quality, in writing, for a hearing and state the nature of the issues to be raised. The Director shall hold a public hearing if the comments, request, or petition raise legal, policy, or discretionary questions of general application and significant public interest exists.

    Within six (6) months after the RAP is approved by the DEQ, JPA shall begin implementation of the RAP. The RAP shall be completed within twenty-four (24) months of approval by the DEQ, excluding long-term operation, maintenance, and monitoring activity, unless the DEQ grants an extension of time. An approved RAP is not enforceable unless the DEQ can demonstrate that the applicant has failed to fully implement the approved RAP. The DEQ may require further action if such action is authorized by other state statutes administered by the DEQ.

14. The DEQ and its authorized representatives and contractors shall have access at all reasonable times to the Site and any related lands, to the extent access is controlled by or granted to JPA for the purpose of conducting technical review, oversight, guidance, or other activities associated with remedial action at the Site.

15. JPA shall notify the DEQ at least ten (10) days before any scheduled well drilling, installation of equipment, or sampling for the purpose of affording the DEQ the opportunity to collect split samples. If either party is collecting samples, the other party or its authorized representative shall be allowed to take split samples of all samples collected.

16. In addition to any other obligation required by law, JPA shall notify the DEQ immediately upon knowledge of any condition posing an immediate threat to human health and welfare or the environment. In the event that any action or occurrence under this Agreement causes or threatens an emergency situation or presents an imminent threat to human health or welfare or the environment, JPA shall promptly take all appropriate action to prevent, abate, or minimize such emergency or imminent threat in accordance with applicable law. Nothing in this paragraph shall

be deemed to limit the authority of the DEQ or State of Nebraska to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release from the Site.

17. Unless otherwise directed by the DEQ, JPA shall submit two copies of all documents required by this Agreement to the person identified below, who shall be DEQ's contact for the Site and for all matters concerning this Agreement:

Mike Felix
Nebraska Department of Environmental Quality
P.O. Box 98922
1200 "N" Street, Suite 400
Lincoln, NE 68509-8922
Phone: (402) 471-3388
Fax: (402) 471-2909
E-mail: Mike.Felix@nebraska.gov

18. Unless otherwise directed, the contact for JPA for all matters concerning this Agreement shall be:

Frank Uhlarik
City of Lincoln PW&U
555 S. 10th St., Suite 203
Lincoln, Nebraska 68508
Phone: (402) 441-7588
Fax: (402) 441-7590
fuhlarik@lincoln.ne.gov

19. If the costs incurred by DEQ exceed the initial deposit, an additional amount agreed upon by the DEQ and JPA may be required prior to proceeding. The DEQ shall prepare a summary of all costs and submit an invoice to JPA. Within thirty (30) days of receiving the invoice, JPA shall submit to the DEQ a check payable to the "Department of Environmental Quality, State of Nebraska" for the amount of the invoice. JPA will not be released from their obligations under this Agreement until all DEQ costs are paid. For sites requiring institutional controls extending beyond the termination of this agreement, JPA must fully fund, or make arrangements with DEQ to fund, required long-term oversight. Prior to issuance of an NFA letter for the site, a lump sum will be negotiated between the parties based upon reasonable rates over a defined period of time to cover the costs for long-term NDEQ oversight for any activity and use limitations identified in the environmental covenant as a component of the proposed remedial actions in the RAP. Long-term NDEQ oversight activity includes, but is not limited to, costs to review annual compliance reports, periodic on-site inspections, and review of property transfers. Any balance of funds not reserved for oversight of institutional controls remaining after the mutual termination of this Agreement shall be refunded to JPA by the DEQ.

20. JPA may terminate this Agreement provided JPA:

a. Notifies the DEQ in writing of its intention to terminate this Agreement;

b. Submits to the DEQ full payment of any outstanding costs incurred by the DEQ pursuant to this Agreement; and

c. Leaves the property in no worse condition, from a human health and environment perspective, than when JPA initiated this Agreement.

d. Provides sufficient funding, using a mechanism approved by the Department, to cover the Department's long-term oversight of any indicated institutional controls pursuant to Paragraph 19 above.

21. The DEQ will cease review of any submittals under this Agreement on the date it receives JPA written notice of intent to terminate. The DEQ will then prepare a summary of all costs and provide it to JPA. Once the DEQ determines that JPA has fully complied with all the requirements set forth in (a) through (c) above, the Agreement shall be deemed terminated. The DEQ reserves the right to unilaterally terminate this Agreement if JPA:

a. Violates any terms or conditions or fails to fulfill any obligations of the RAP, including submission of an acceptable RAP within a reasonable period of time;

b. Fails to address an imminent and significant harm to public health and welfare or the environment in a timely and effective manner;

c. Fails to initiate the RAP within six (6) months after approval by the DEQ;

d. Fails to complete the RAP within twenty-four (24) months after approval by the DEQ, excluding long-term operation, maintenance, and monitoring activity, unless the DEQ grants an extension of time; and

e. Violates any terms or conditions of this Agreement.

The DEQ shall notify JPA in writing of its intention to terminate this Agreement and include the reason for termination. The DEQ will also include a summary of all outstanding costs owed to the DEQ. The DEQ reserves the right to suspend this Agreement for any reason. The DEQ will not consider any of the unapproved work performed during any suspension to be eligible for consideration under RAPMA.

22. Within sixty (60) days after completion of the RAP, JPA shall schedule and conduct a pre-certification inspection to be attended by JPA and the DEQ. If the pre-certification inspection is satisfactory, JPA shall submit to the DEQ a Final Remedial Action Report within thirty (30) days, including certification by a registered professional engineer that the RAP has been completed in material satisfaction of the requirements of this Agreement. If the pre-certification inspection is unsatisfactory, the DEQ shall, acting reasonably, identify any additional remedial actions necessary to satisfy this Agreement. JPA shall perform any additional remedial actions identified by DEQ prior to the submission of the Final Remedial Action Report.

23. Provided that JPA: (1) completes the remedial action in accordance with the RAP; (2) is in compliance with all provisions of this Agreement; (3) is in compliance with all state and federal laws, rules and regulations; (4) agrees to impose and enforce any institutional controls the parties mutually deem appropriate and necessary at the Site; and (5) has remitted all outstanding costs and payment of anticipated long-term oversight costs pursuant to Paragraph 19 above to the DEQ, the DEQ may issue a letter to JPA a letter stating that no further action need be taken at the Site

related to any land pollution or water pollution for which remedial action has been taken in accordance with the RAP. Such letter shall provide that the DEQ may require JPA to conduct additional remedial action in the event that any monitoring conducted at or near the Site or other circumstance indicates that (a) contamination is reoccurring, (b) additional contamination is present which was not previously identified under RAPMA, or (c) additional contamination is present for which remedial action was not taken according to the RAP. As a condition of issuance of the no further action letter, the DEQ may require payment of ongoing direct and indirect costs of oversight of any ongoing long-term operation, maintenance, and monitoring at the Site.

24. This Agreement shall not be construed as an acceptance of liability by the State of Nebraska for activities conducted pursuant to RAPMA. JPA, who is proceeding under RAPMA shall indemnify and hold harmless the State of Nebraska for any further action required by the federal Environmental Protection Agency relating to land pollution or water pollution by JPA for the remedial action.

25. This Agreement shall be governed and interpreted under the laws of the State of Nebraska. The powers conferred by the RAPMA shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby, and the act shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

26. This Agreement shall be binding on each party, its successors and assignees subject to the right of termination in Paragraphs 20 and 21. No change in the ownership or corporate or business status of any party, or of the Site shall alter any signatory's responsibilities under this Agreement.

27. By entering into this Agreement, JPA certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the DEQ all information known to JPA and to the best of its knowledge and belief, disclosed information in the possession or control of its officers, employees, contractors and agents which relates in any way to any existing land or water pollution or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site. This Agreement shall be null and void upon willful submission of false, inaccurate, or misleading information by JPA.

28. This Agreement shall become effective upon execution by both parties and may only be modified or amended by an agreement in writing signed by both parties.

29. Signatures. The undersigned representatives of the parties certify that they are fully authorized to enter into the terms and conditions of this Agreement.

**NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY**

Date: _____ By: _____

_____
Title

**WEST HAYMARKET JOINT PUBLIC AGENCY**

Date: _____ By: _____

_____
Title

# Nebraska Department of Environmental Quality

## Remedial Action Plan Monitoring Act Application Form and Instructions for Participation in the Voluntary Cleanup Program

**INSTRUCTIONS**

**Please type or print legibly. Incomplete applications and/or applications not accompanied by the non-refundable $2,000 application fee and the signed Written Agreement with the $3,000 initial deposit, will be returned to the applicant. If any of the information requested is not applicable, enter "NA" in the blank provided.**

More detailed instructions and a list of abbreviations follow the application form.

**SECTION A – SITE INFORMATION**

Name: West Haymarket Redevelopment Area - South (WHRS)
Address: Refer to Attachment 1
City: Lincoln State: NE Zip: _____
County: Lancaster
Latitude: _____ Longitude: _____
Latitude/Longitude Source: Google Earth
Latitude/Longitude Reference Location (e.g., center of property): _____
Center of each parcel - refer to Attachment 2
Quarter (10 acre) _____ Quarter (40 acre) _____ Quarter (160 acre) _____
Section _____ Township _____ Range _____
Lot or Subdivision (if applicable): Refer to Attachment 2
Property Size (acres): Refer to Attachment 2
Current Land Use: Refer to Attachment 2

Future Land Use: Refer to Attachment 2

Will this project protect human health and the environment? ☒ Yes ☐ No Please explain.
Refer to Attachment 2

Will this project promote economic development? ☒ Yes ☐ No Please explain.
Refer to Attachment 2

Will this project enable the creation or, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes? ☒ Yes ☐ No Please explain.
Refer to Attachment 2

➔ **Attach a map or site diagram.**

## SECTION B – APPLICANT INFORMATION

Name: Dan Marvin Title: Executive Director/ Secretary JPA
Organization: City of Lincoln, NE, West Haymarket Joint Public Agency
Address: 555 South 10th Street, Suite 300
City: Lincoln State: NE Zip: 68508
Telephone: Fax:
E-mail:
Applicant's Relationship to or Interest in the Site: Owner

## SECTION C – OWNER INFORMATION

☒ If Applicant is Facility Owner, check box and skip to Land Owner subsection (below).

**Facility Owner**
Name: Title:
Organization:
Address:
City: State: Zip:
Telephone: Fax:
E-mail:

☒ If Applicant is Land Owner, check box and skip to Section D.

**Land Owner**
Name: Title:
Organization:
Address:
City: State: Zip:
Telephone: Fax:
E-mail:

## SECTION D – DESIGNATED POINT OF CONTACT

☐ If Applicant is Designated Point of Contact, check box and skip to Section E.

Name: Frank Uhlarik Title: Environmental Compliance Administrator
Organization: City of Lincoln
Address: 555 South 10th Street, Suite 208
City: Lincoln State: NE Zip: 68508
Telephone: 402-441-7588 Fax: 402-441-7590
E-mail: fuhlarik@lincoln.ne.gov

## SECTION E – NATURE OF POTENTIAL CONTAMINATION

Current and historical land use with corresponding years of operation and dates of known releases

Check all known or potential sources of contamination on site:

| Feature and land use | Dates of operation |
|---|---|
| [X] Aboveground Storage Tank | Bulk oil & FMGP storage - Late 1800's to 1900's |
| [X] Underground Storage Tank | Unknown - Removed 1998 (Alter Property) |
| [X] Drum | No specific dates known |
| [X] Other Container | No specific dates known |
| [ ] Aboveground Pipeline | |
| [ ] Underground Pipeline | |
| [ ] Lagoon or Pond | |
| [ ] Seepage Pit or Dry Well | |
| [ ] Septic Tank or Lateral Field | |
| [X] Surface Spill or Discharge | No specific dates known |
| [X] Adjacent Property | Railroad operations since late 1880's |
| [ ] Drip Tank | |
| [ ] Pit | |
| [ ] Grain Storage Facility | |
| [ ] Formerly Used Defense Site | |
| [X] Salvage Yard | Approximately 1949 to current |
| [ ] Dry Cleaners | |
| [ ] Landfill | |
| [X] Former Manufactured Gas Plant | Late 1800's to early 1900's |
| [ ] Gas Station | |
| [ ] Methamphetamine Laboratory | |
| [ ] Mine Scarred Land | |
| [ ] Source Unknown | |
| [ ] Other | |

Check all known chemical products, hazardous substances, pollutants or contaminants used, managed or released, on site:

| | | |
|---|---|---|
| [ ] Acids/Bases | [ ] Paint/Paint Wastes | [ ] Sludge |
| [ ] Fertilizers | [X] PCBs | [ ] Solvents/Degreasers |
| [ ] Inorganics | [ ] Pesticides | [ ] Fumigants |
| [X] Metals | [X] Petroleum Products | [X] Other Waste products of manufactured gas facility |

Check all known and potentially contaminated media on site:

| | | |
|---|---|---|
| Surface Soil (0-3') | [X] Confirmed | [ ] Potential |
| Subsurface Soil | [X] Confirmed | [ ] Potential |
| Surface Water | [ ] Confirmed | [ ] Potential |
| Sediment | [ ] Confirmed | [ ] Potential |
| Groundwater | [X] Confirmed | [ ] Potential |

Identify known contaminants, maximum concentration detected, and media impacted (attach additional pages as needed):

| *Contaminant* | *Maximum Concentration* | *Units* | *Media* |
|---|---|---|---|
| Refer to Attachment 2 | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**SECTION F – REGULATORY HISTORY**

| | | | | |
|---|---|---|---|---|
| 1. | Does the property meet the following CERCLA §101(39) brownfield site definition? "Real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant." | ☒Yes | ☐No | ☐Unknown |
| 2. | Is or was the property, or any part thereof, a permitted or interim status hazardous waste management facility regulated under RCRA? If so, complete the permit information at the end of this section. | ☐Yes | ☒No | ☐Unknown |
| 3. | Has a CERCLA investigation (Preliminary Assessment and/or Site Inspection) been conducted at the property? If so, provide explanation at the end of this section. | ☐Yes | ☒No | ☐Unknown |
| 4. | Is the property subject to a planned, or ongoing CERCLA removal action? Has a CERCLA removal occurred at the site? If so, provide explanation at the end of this section | ☐Yes | ☒No | ☐Unknown |
| 5. | Is or was the property, or any part thereof, investigated for, proposed for, or listed on the Superfund National Priorities List, as established under CERCLA? If so, provide explanation at the end of this section. | ☐Yes | ☒No | ☐Unknown |
| 6. | Is or was the property, or any part thereof, subject to (enforcement action) a unilateral administrative order, court order, administrative order on consent, or consent decree under CERCLA? If so, provide explanation at the end of this section. | ☐Yes | ☒No | ☐Unknown |
| 7. | Is or was the property, or any part thereof, subject to (enforcement action) a unilateral administrative order, court order, administrative order on consent, consent decree, or permit under RCRA, CWA, TSCA or SWDA? If so, provide explanation at the end of this section. | ☐Yes | ☒No | ☐Unknown |
| 8. | Is or was the property, or any part thereof, subject to enforcement action under city, county, state, federal or other environmental laws? If so, provide explanation at the end of this section. | ☐Yes | ☒No | ☐Unknown |
| 9. | Is or was the property, or any part thereof, the subject to corrective action under RCRA 3004(u) or 3008(h) to which a corrective action permit or order has been issued or modified requiring the implementation of corrective measures? If so, provide explanation at the end of this section. | ☐Yes | ☒No | ☐Unknown |

10. Is or was the property, or any part thereof, the subject of environmental orders or agreements with city, county, state, or federal environmental agencies? If so, provide explanation at the end of this section. ☐Yes ☒No ☐Unknown

11. Is or was the property, or any part thereof, a land disposal unit(s) with closure notification submitted and closure plan or permit? If so, provide explanation at the end of this section. ☐Yes ☒No ☐Unknown

12. Is or was the property, or any part thereof, subject to the jurisdiction, custody, or control of federal government? If so, provide explanation at the end of this section. ☐Yes ☒No ☐Unknown

13. Does or did the property, or any part thereof, have PCB contamination subject to remediation under TSCA? If so, provide explanation at the end of this section. ☐Yes ☐No ☒Unknown

14. Has the property owner received assistance from the EPA Leaking Underground Storage Tank program for a response activity on this property, or any part thereof? ☐Yes ☒No ☐Unknown

15. Are or were activities conducted at the property, or any part thereof, requiring classification as a Nebraska or EPA Hazardous Waste Generator? If so, provide the hazardous waste generator identification number at the end of this section. ☐Yes ☒No ☐Unknown

16. Has the property ever been a Nebraska Title 118 investigation site? ☐Yes ☒No ☐Unknown

Use the following space for additional information related to the questions listed in Section F. Begin answers with the question number to which it relates. List any identification numbers and permits, with dates of permit issuance and expiration.:

#13 - Remediation under TSCA has been completed for a parcel of property adjacent to Block 11, Outlet C and PCB remediation under TSCA may be necessary on this property. Further characterization of this property will be conducted

## SECTION G – INVESTIGATION/REMEDIAL ACTION STATUS

Identify the type of environmental investigations performed to date at the site.

| Date | Title | Type of Investigation | Investigator |
|---|---|---|---|
| 1989 | Neiden Iron & Metal | Phase I ESA | Remediation Technology |
| 1993 | Neiden Iron & Metal | Phase II ESA | Grams Env. Management |
| 1998 | Neiden Iron & Metal | Site Inspection | Remediation Technology |
| 1999 | Neiden Iron & Metal | UST Closure Report | RDG Geosciences |
| 2007 | Alter Property | Phase I ESA | HWS |
| 2008 | Alter Scrap Metal | Phase II ESA | HWS |
| 2010 | Alter Trading Corp | Phase I TBA | Seagull |
| 2011 | Alter Trading Corp | Phase I TBA | Seagull |

Does contamination at the site pose an immediate risk to human health or the environment? ☐Yes ☒No ☐Unknown

Does contamination at the site impact or threaten to impact public or private drinking water supplies? ☐Yes ☒No ☐Unknown

Identify and briefly describe any institutional controls that are already in place or proposed for the site.

None

Identify any other remedial actions already implemented at the site.

During 1999 PCB contaminated soil was excavated from the North Yard of the Alter property (west half of Block 7, Lot 4).

## SECTION H – ACCESS

The undersigned certify that the applicant holds or can acquire title to all lands or has the necessary easements and right-of-way for the project and related lands. ☒Yes ☐No

Facility Owner Signature: _____ Date: _____

Land Owner Signature: _____ Date: _____

## SECTION I – VERIFICATION

I verify that the foregoing information on this application and accompanying documents, estimates, and schedules is true and accurate to the best of my knowledge and belief. I understand that participation in the Voluntary Cleanup Program is voluntary, and I agree to comply with all state and federal standards and regulations.

I also verify that if additional funds beyond the fee submitted with this application are required to cover oversight costs for NDEQ, I will provide these additional funds.

_____ _____

Applicant (signature required) Date

## SECTION J– APPLICATION SUBMITTAL

| | | |
|---|---|---|
| **$2,000 NON-REFUNDABLE APPLICATION FEE ATTACHED** | ☐Yes | ☒No |
| **SIGNED WRITTEN AGREEMENT ATTACHED** | ☒Yes | ☐No |
| **$3,000 REFUNDABLE INITIAL DEPOSIT ATTACHED** | ☐Yes | ☒No |

Return completed application, application fee, written agreement and initial deposit, and any other attachments to:

**Nebraska Department of Environmental Quality**
**Suite 400, 1200 N Street, The Atrium**
**P.O. Box 98922**
**Lincoln, NE 68509-8922**

**Attention: Remediation Section**

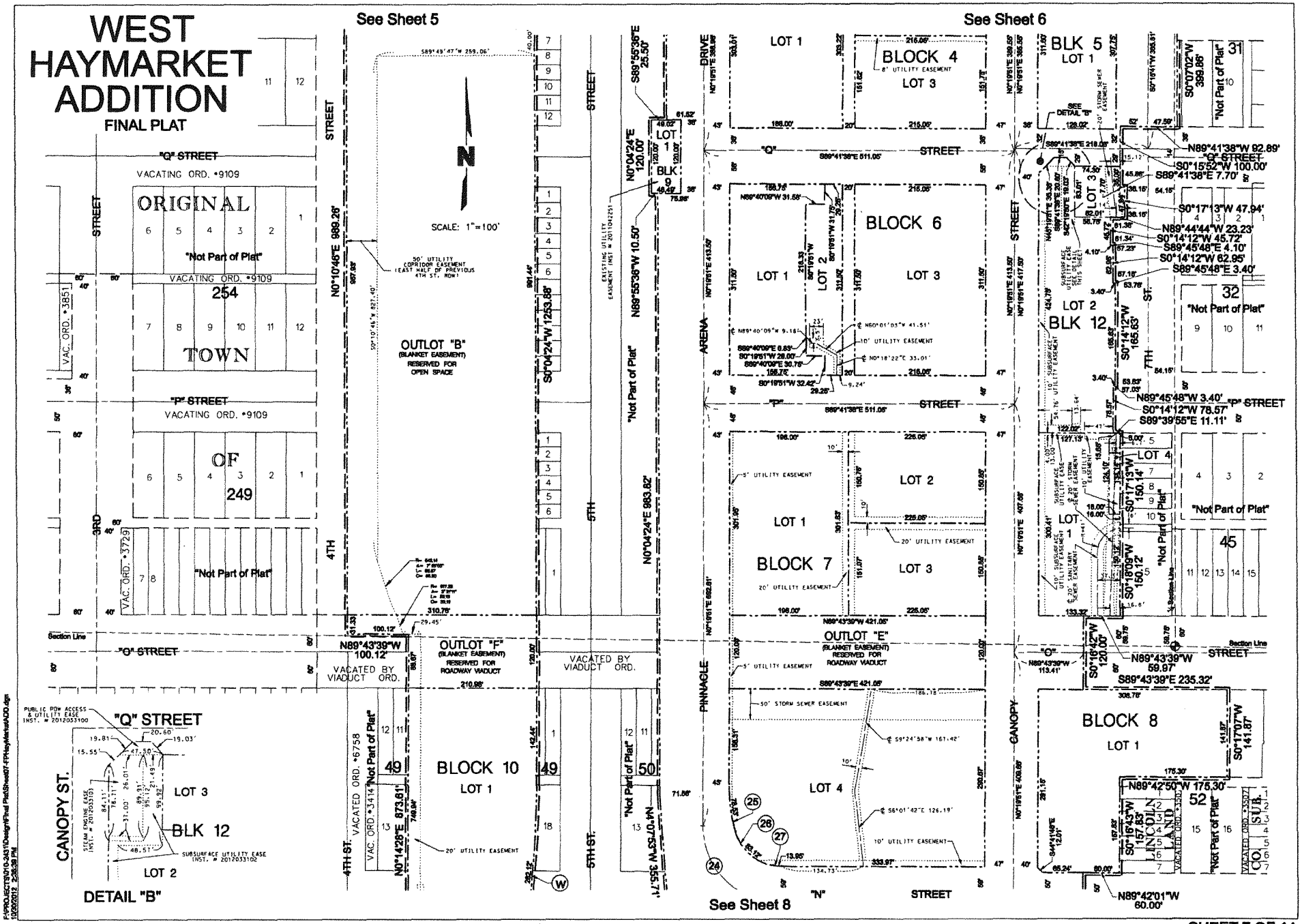
If you have questions or need additional information, please call the VCP Coordinator at (402) 471-3388.

**Attachment 1**

**Site Maps**

# WEST HAYMARKET ADDITION

## FINAL PLAT



# WEST HAYMARKET ADDITION

## FINAL PLAT

See Sheet 7

SCALE: 1"=100'

BLOCK 10
LOT 1

BLOCK 11
LOT 1

LOT 2

OUTLOT "C"
RESERVED FOR FUTURE DEVELOPMENT

OUTLOT B

OUTLOT A

JACOBSON ADD.

MIDLAND RECYCLING ADD.

ORIGINAL TOWN OF LINCOLN

LAND SUB.

LINCOLN CO.

"N" STREET

"M"

"L"

"K"

4TH STREET

5TH STREET

6TH STREET

7TH STREET

VACATED ORD. *9041

VACATED ORD. *9376

VACATED ORD. *9336

VAC. ORD. *19525

VACATED ORD. *19434

VACATED ORD. *19525

VAC. ORD. *5992

VAC. ORD. NO. 13871

VAC.ORD.NO.14757

VAC.ORD. *16720

VACATED ORD. *5932

VACATED ORD. *14602

VACATED ORD. *14602

VAC. ORD. *5007

VAC. ORD. *19770

"Not Part of Plat"

N0°14'26"E 873.81'

S8°02'50"W 1.82'

N4°07'53"W 355.71'

N11°36'59"E 202.17'

S0°16'43"W 50.00'

S0°15'36"W 50.00'

N89°44'29"W 94.34'

N89°44'06"W 31.81'

N0°12'18"E 137.04'

N24°55'20"E 196.09'

N21°25'15"E 74.24'

N22°25'18"E 148.14'

S46°58'05"W 275.06'

S50°10'20"W 130.75'

S0°16'54"W 0.52'

N89°43'19"W 3.60'

N0°18'04"E 40.55'

N0°17'35"E 48.03'

S49°10'15"W 132.75'

S0°17'41"W 3.69'

S67°30'15"W 41.35'

S33°37'53"W 59.86'

N89°43'34"W 61.10'

S0°16'54"W 23.85'

20' UTILITY EASEMENT

10' UTILITY EASEMENT

40' UTILITY EASEMENT

50' UTILITY CORRIDOR EASEMENT (SOUTH HALF OF PREVIOUS "N" ST. ROW)

F:\PROJECTS\010-2431\Design\Final Plat\SHEET08-FPHaymarketADD.dgn
10/26/2012 2:53:38 PM

200709-8

**Attachment 2**

**SECTION A- SITE INFORMATION**

**Latitude/Longitude:** 40.812967 / -96.712648

**Lot or Subdivision:** Block 7, Lot 4, West Haymarket Subdivision

- Property size: 2.76 acres
- Current Land Use: West portion-vacant, East portion- parking lot
- Future Land Use: Residential, public roadway, public parking, bike trail

**Latitude/Longitude:** 40.812090 / -96.712618

**Lot or Subdivision:** Block 11, Lot 1 and Outlot C

- Property size: 8.51 acres
- Current Land Use: Vacant
- Future Land Use: Mixed use (residential/retail), public roadway, parking and bike trail

**N Street Right-of-Way**

- The portion of N Street south of Block 7, Lot 4, West Haymarket Subdivision, lying between Pinnacle Drive and Canopy Street.

**Will this project protect human health and the environment?-** Yes

The JPA is conducting the assessment in accordance with the requirements of the Nebraska Department of Environmental Quality (NDEQ) Voluntary Cleanup Program (VCP) which ensures cleanup of the properties prior to development. The VCP establishes risk-based cleanup levels for the protection of human health and environment for contaminants in soil and ground water.

**Will this project promote economic development?-** Yes

Several economic analysis (Crandall Arambula, 2004, O'Sullivan, 2009) have been completed regarding the economic benefits of the WHRA. These studies conclude that redeveloping the area uses roadways, private shops, hotels, offices and housing will generate significant economic benefits through an extended tax base. In addition higher property values around the fringe of the WHRA will result from the cleanup of these properties.

**Will this project enable the creation or preservation of or addition to parks, greenways, undeveloped property, other recreational property or other property used for nonprofit purposes?-** Yes

In addition to developable parcels future use of the property includes public roadways, green-space and pedestrian/bicycle trails.

## SECTION E- NATURE OF POTENTIAL CONTAMINATION

**Current and historical land use with corresponding years of operation and dates of known releases.**

Historical records show Block 11, Lot 1 and Outlot C and the west portion of Block 7, Lot 4 was used for bulk oil storage and railroad operations as far back as the 1880's. Scrap recycling operations began in the early 1930's and continues to this day. Railroad and oil storage operations may have contributed to the contamination detected at this property but the scrap yard operations are the primary source. Scrap yard activities included a lead smelting operation, recycling of automobiles and appliances dismantling engines and electrical transformers.

A manufactured gas plant was operated on the south-central portion of Block 7, Lot 4 from the late 1800's to the early 1900's at which time the lumber yard operations began and continued until recently. Contamination on this portion of Lot 4 is primarily from the manufactured gas plant operations.

No information has been found of documented releases at either of these properties however several soil and ground water investigations have been conducted at areas of interest which document environmental contamination of both properties.

**Known contaminants, maximum concentration detected, and media impacted**

| Contaminant | Maximum Concentration | |
|---|---|---|
| **Metals** | **Soil (mg/kg)** | **Ground Water (mg/l)** |
| Arsenic | 80.2 | 0.0257 |
| Barium | 620 | 1.12 |
| Cadmium | 44.4 | 0.00332 |
| Chromium | 176 | 0.128 |
| Lead | 5090 | 0.0883 |
| Mercury | 2.67 | ND |
| Selenium | ND | 0.0314 |
| Silver | 6.30 | ND |
| | | |
| **Petroleum Hydrocarbons** | **Soil (mg/kg)** | **Ground Water (mg/l)** |
| TPH (diesel fuel) | 4,200 | 0.642 |
| TPH (motor oil) | 3,390 | ND |
| TPH (gasoline) | 51.9 | ND |
| | | |
| **PCB** | **Soil (mg/kg)** | **Ground Water (mg/l)** |
| | 8,440 | 0.00166 * |
| | | |
| **VOC** | **Soil (mg/kg)** | **Ground Water (mg/l)** |
| Acetone | 0.131 | 0.00486 |
| Benzene | 190 | 0.0956 |
| Bromodichloromethane | 0.0018 | ND |
| 2-Butanone (MEK) | 0.0232 | ND |
| n-Butylbenzene | 0.00283 | 0.00027 |
| Carbon Disulfide | 0.020 | 0.0061 |
| Chloroform | 0.00185 | 0.00029 |
| 1,3-Dichlorobenzene | 0.000264 | ND |
| Cis-1,2,Dichloroethene | 0.000691 | ND |
| Ethylbenzene | 55.2 | 0.702 |
| Hexane | 0.0146 | ND |
| Isopropylbenzene | 0.00227 | ND |
| P-Isopropyltoluene | 0.00107 | ND |
| Methylene Chloride | 31.9 | 0.0008 |
| Methyl tert-Butyl Ether | 0.00122 | ND |
| Naphthalene | 1,470 | 4.27 |
| n-Propylbenzene | 0.00186 | ND |
| Toluene | 405 | 0.0034 |
| Trichlorofluoromethane | 0.000352 | ND |
| 1,2 4-Trimethylbenzene | 0.0157 | ND |
| 1,3,5-Trimethylbenzene | 0.0103 | ND |
| 1,1,2-Trichloroethane | 4.77 | ND |
| Xylenes | 376 | 0.268 |
| 1,1-Dichloroethane | ND | 0.00078 |
| 1,1-Dichloroethene | ND | 0.00128 |
| 1,2,3-Trichlorobenzene | ND | 0.00061 |
| 1,2,4-Trichlorobenzene | ND | 0.00047 |
| 1,2-Dichloroethane | ND | 0.150 |
| Chloromethane | ND | 0.0002 |
| Hexachlorobutadiene | ND | 0.00106 |
| Hexane | 0.275 | 0.00038 |

| Contaminant | Maximum Concentration | |
|---|---|---|
| **VOC** | **Soil (mg/kg)** | **Ground Water (mg/l)** |
| MTBE | ND | 0.00074 |
| Styrene | 134 | ND |
| | | |
| **SVOC** | **Soil (mg/kg)** | **Ground Water (mg/l)** |
| 2-Methylnaphthalene | 463 | 0.198 |
| Acenapthene | 50.6 | 0.173 |
| Acenaphthylene | 207 | 0.042 |
| Flourine | 26.2 | ND |
| Flourene | ND | 0.103 |
| Anthracene | 172 | 0.034 0. |
| Phenanthrene | 624 | 0.150 |
| Pyrene | 364 | 0.08 |
| Fluoranthene | 151 | 0.047 |
| Benzo (a ) anthracene | 123 | 0.017 |
| Chrysene | 110 | 0.018 |
| Indeno(1,2,3-ed) pyrene | 50.8 | 0.000022 |
| Benzo (b) fluoranthene | 103 | 0.011 |
| Benzo (k) fluoranthene | 31.7 | 0.0000078 |
| Benzo (a) pyrene | 123 | 0.018 |
| Benzo (c) pyrene | 28.0 | ND |
| Dibenzo (a,h) anthracene | 4.34 | 0.000018 |
| 1,2 Dichlorobenzene | 0.0629 | 0.0009 |
| 2-Methylophenol (o-cresol) | ND | 0.000226 |
| Benzo (g,h,i) perylene | 62.8 | 0.0000272 |
| Benzl alcohol | ND | 0.000311 |
| Bis (2-ethylhexyl) phthalate | ND | 0.00155 |
| Di-n-butyl phthalate | ND | 0.000645 |
| Indeno (1,2,3-c,d) pyrene | ND | ND |
| 2.4,5-Trichlorophenol | 0.111 | ND |
| 2,4,6-Trichlorophenol | 0.114 | ND |
| 4,6-Dinitro-2-methylphenol | 0.0222 | ND |
| Butyl benzyl phthalate | 3.93 | ND |
| Carbazole | 20.6 | ND |
| Dibenzofuran | 2.41 | 0.0012 |
| Diethyl phthalate | 2.91 | ND |
| Dimethyl phthalate | 2.58 | ND |
| Di-n-butyl phthalate | 1.48 | 0.0014 |
| N-Nitrosdiphynlamine | 0.132 | ND |
| Pyridine | 0.0388 | ND |
| 4-Chloroaniline | ND | 0.020 |

* Ground water re-sampled by JPA on 5-7-2011. PCB confirmed to be below detection limits.

## SECTION G- INVESTIGATION / REMEDIAL ACTION STATUS

### Types of Environmental investigations/remedial actions performed to date

| Date | Report Title | Type of Investigation | Investigator |
|---|---|---|---|
| 1989 | Neiden Iron & Metal | Phase I ESA | Remediation Technologies |
| 1993 | Neiden Iron & Metal | Phase II ESA | Grams Environmental |
| 1998 | Neiden Iron & Metal | Site Inspection | CPI Environmental Services |
| 1999 | Neiden Iron & Metal | Removal / Remediation<br>• 300 tons soil containing PCB<br>• 50 tons soil PCB > 50ppm<br>• In-situ treatment of soil with metals<br>• Soil PCB < 10 ppm covered with concrete pad | CPI Environmental Services |
| 1998 | Neiden Iron & Metal | UST Closure | RDG Geosciences |
| 1999 | Neiden Iron & Metal | Tier 1 UST Site Assessment | RDG Geosciences |
| 2007 | Alter Scrap | Phase I ESA | HWS |
| 2008 | Alter Scrap` | Phase II ESA | HWS |
| 2007 | Jaylynn LLC | Phase I ESA | HWS |
| 2008 | Jaylynn LLC | Phase II ESA | HWS |
| 2010 | Alter Scrap | Phase I TBA | Seagull Environmental |
| 2010 | Alter Scrap | Phase II TBA | Seagull Environmental |
| 2010 | Jaylynn LLC | Phase I TBA | Seagull Environmental |
| 2010 | Jaylynn LLC | Phase II TBA | Seagull Environmental |
| 2011 | Alter Scrap/ BNSF Transfer Property PCB Characterization and Cleanup | PCB Characterization and Cleanup Plan | Olsson/Benesch |

# Nebraska Department of Environmental Quality

## Preliminary RAC Determination Worksheet for VCP Sites

**Note:** The purpose of this worksheet is to aid a user of the NDEQ VCP Guidance Document in the preliminary determination of the likely Remedial Action Class (RAC) designation a contaminated site would receive from NDEQ, based on groundwater use within the area surrounding the facility. Knowledge of the probable RAC will be necessary for a user to determine appropriate remediation goals and evaluate potential cleanup technologies where groundwater contamination is a concern. **The conclusions reached by a user of this worksheet are to be considered preliminary only and subject to a final, official RAC determination by the NDEQ as part of its review of the VCP Remedial Action Plan.** Detailed information regarding RACs may be found in Nebraska Title 118 – Ground Water Quality Standards and Use Classification, Appendix A, Step 8, pages A-4 – A-6.

| | | |
|---|---|---|
| Has a public or private drinking water supply well been impacted by contamination from the VCP site? | | No |
| Is the groundwater contaminant plume within 1000 feet of a public drinking water supply well? | | No |
| Is the groundwater contaminant plume within 500 feet of a private drinking water supply well? | | No |
| Has groundwater in the area around the contaminant plume been zoned or purchased by a local government for the purpose of developing a public drinking water supply well or well field? | | No |
| Is the groundwater contaminant plume within a designated wellhead protection area, as defined by the NDEQ through the Nebraska Wellhead Protection Program? | | No |

***If any of the questions above have been answered "Yes," the release is classified as RAC-1.***

**RAC-3 Determination**

| | Yes | No |
|---|---|---|
| Is groundwater within the area of the contaminant plume of poor natural or background quality compared to the numerical standards of Title 118, Chapter 4? | ✓ | |
| Is groundwater in the area of the contaminant plume found under hydrogeologic conditions that make development of a public or private drinking water supply unlikely? | ✓ | |

***If either of the previous two questions have been answered "Yes," the release may be considered RAC-3.***

**RAC-2 Determination**

***If all of the above questions have been answered "No," then the release will likely be considered RAC-2.***

**PRELIMINARY RAC DETERMINATION**

For the purpose of preparing the VCP site Remedial Action Plan, the groundwater contaminant plume associated with the facility under consideration is preliminarily assigned the following RAC designation (circle one):

***RAC-1*** ***RAC-2*** ***RAC-3***

WH 13-61 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Adoption Agreement for Professional Services between Radiant Systems, Inc., NCR Corporation, and the West Haymarket Joint Public Agency regarding the purchase and installation of hardware and software for the Arena, pursuant to Bid No. 12-257, to bind Radiant is hereby adopted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and the Adoption Agreement to Rick Peo, City Attorney's Office, for transmittal to the parties.

Adopted this _____ day of _____, 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

_____
Doug Emery

**WEST HAYMARKET JOINT PUBLIC AGENCY**

**REQUEST FOR PROPOSAL BID NO. 12-257**

**CONTRACT FOR PROFESSIONAL SERVICES**

**ADOPTION AGREEMENT**

This Adoption Agreement is hereby made effective _____, 20__ among Radiant Systems, Inc. located at 3925 Brookside Parkway, Alpharetta, GA 30022 ("Radiant"), NCR Corporation, and West Haymarket Joint Public Agency ("JPA").

1. NCR Corporation and JPA have entered into a JPA Contract for Professional Services Agreement (Bid No. 12-257) dated December 20, 2012 ("Agreement"), which is incorporated by reference.

2. By execution of this Adoption Agreement, NCR Corporation, Radiant and JPA agree that purchases of products or services by JPA from Radiant will be governed by the terms and conditions of the Agreement. All rights and benefits accruing to, and all duties and obligations pertaining to, NCR Corporation in the Agreement shall accrue to and bind Radiant in the same manner and to the same extent, and Radiant hereby affirmatively assumes all such duties and obligations of NCR Corporation.

3. Any notices to Radiant required under the Agreement will be sent to the Radiant address listed above.

**AGREED TO AND ACCEPTED BY:**

**RADIANT SYSTEMS, INC.**

By: _____

Printed: Chris Dunn

Title: V.P.

Date: 6/14/13

**WEST HAYMARKET JOINT PUBLIC AGENCY**

By: _____

Printed: _____

Title: _____

Date: _____

**AGREED TO AND ACCEPTED BY:**

**NCR CORPORATION**

By: _____

Printed: Douglas Owens

Title: Divisional CFO

Date: 6/05/13

WH 13-62 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Letter Agreement between the West Haymarket Joint Public Agency and JACOR Contracting, Inc. for labor, equipment, materials and insurance for epoxy injection mock-ups of precast girders for the Pinnacle Bank Arena Pedestrian Bridge Project (previously approved by Administrative Order 13-16) is hereby approved and ratified.

The City Clerk is directed to return a copy of this Resolution to Chris Connolly, City Attorney's Office, for transmittal to JACOR.

Adopted this _____ day of _____, 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

_____
Doug Emery

# WEST HAYMARKET JOINT PUBLIC AGENCY

## ADMINISTRATIVE ORDER NO. 13-16

BY VIRTUE OF THE AUTHORITY DELEGATED TO ME by Resolution No. WH00514 pursuant to Article IV, Section 4 of the Rules of Governance of the West Haymarket Joint Public Agency:

The attached Letter Agreement between the West Haymarket Joint Public Agency and JACOR Contracting, Inc. for labor, equipment, materials and insurance for epoxy injection mock-ups of precast girders for the Pinnacle Bank Arena Pedestrian Bridge Project as set out in the Letter Agreement, is hereby approved and I have executed the same on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to send a copy of this Administrative Order and the Letter Agreement to Chris Connolly, Assistant City Attorney, for transmittal to JACOR Contracting, Inc. and for ratification by the West Haymarket Joint Public Agency.

Dated this 26th day of June, 2013.

Chris Beutler, Chair
West Haymarket Joint Public Agency

Approved as to Form & Legality:

JPA Counsel

JACOR
CONTRACTING, INC.
(816) 483-7330 • FAX (816) 483-7335

Date: June 24, 2013

To: Mr. Caleb Swanson
PC Sports
311 North 8th Street, Suite 102
Lincoln, Nebraska 68508

Re: Pinnacle Arena Pedestrian Bridge
West Haymarket
Lincoln, Nebraska

Mr. Swanson:

As requested, we have prepared this (TME) Proposal to furnish all labor, equipment, materials and provide all insurance for the following Scope of Work on the above referenced Project.

**TIME, MATERIAL & EQUIPMENT QUOTE (TME)**

A. EPOXY INJECTION MOCK-UPS OF PRECAST GIRDER'S

INCLUSIONS:

- Furnish craftsman to drill ports, apply bonder and manifold injection, as directed.
- Furnish materials and equipment, as requested.
- All work shall be done in strict accordance of owner's direction.

EXCLUSIONS:

- Any railroad closures/permits or associated fee's.
- Engineering or shop drawings.
- Bonds, permits and testing.
- Security personnel.
- Bonds, permits and testing.

ASSUMPTIONS:

- Owner shall be responsible for locating of all embedded steel, tendons, ducts etc.
- Owner shall be responsible for all coring, echo scanning and ground penetrating radar to locate embedded cracks and verification of epoxy injection penetration.
- JACOR cannot be held responsible for any damage associated with the epoxy injection process.

A. SCHEDULE: Work shall be started within 3 days after notice to proceed.

B. PRICE: OPEN ENDED (TME) CONTRACT BASED ON THE FOLLOWING:

PRICE NOTES: Final Invoice shall reflect actual man-hours, materials and equipment consumed during the Project using the charge rates below:

- Craftsman Labor Rate (Regular Time) - $74.00 / Man Hour
- Craftsman Labor Rate (1.5 Overtime) - $98.85 / Man Hour
- Craftsman Labor Rate (2.0 Overtime) - $124.65 / Man Hour
- Superintendent Labor Rate (Regular Time) - $88.00 / Man Hour
- Company Truck - $60.00 / Day (excluding fuel)
- Pre-Diem - $75.00/Man Day
- Injection Machine - $150.00/Day
- Materials – Invoice Plus 15%
- Equipment Rental – Invoice Plus 15%
- Misc. Supplies, Disposable Equipment, Fuel, etc. – Invoice Plus 15%

D. CONDITIONS & QUALIFICATIONS

1. This Proposal shall become a part of the Contract Documents.
2. Progress Invoices will be submitted at the end of each month. All progress Invoices shall be paid within 30 days of Invoice date.
3. Any unpaid Invoice shall bear interest at the rate of 1.5% per month until paid in full. In the event JACOR engages legal counsel for collection of any sums due herein or in defense of any action brought by Purchaser, all Jacor costs of collection or defense, including reasonable attorney fees, shall be paid by Purchaser.
4. JACOR shall provide its standard limits of insurance (sample attached). Additional insurance required by Purchaser shall be at its sole cost and expense.
5. The Owner shall supply at its sole cost and expense all water and electricity necessary for the performance of JACOR's Scope of Work.
6. The Owner shall arrange for all permitting, closure and safety of the work area, to include closure to pedestrian and vehicular traffic during performing of JACOR's work.
7. This Proposal shall remain valid for a period not to exceed 15 days, after which it shall automatically expire.
8. All JACOR work areas will be left broom clean of all debris associated with its Scope of Work.
9. All of the work area shall be made available to JACOR at the same time.

Thank you for this opportunity to be of service.

Sincerely,

**JACOR CONTRACTING, INC.**

Ted A. Jacques
President

Acceptance: By its signature below, Purchaser accepts this Proposal as a binding contract. No modifications shall become a part of this contract unless specifically agreed to in writing by JACOR Contracting, Inc.

1. Owner shall have the right to suspend or terminate work done under this agreement at any time for convenience or other reason. In the event of suspension or termination, Jacor shall be paid for all work done up to the point of suspension or termination.

2. Jacor shall provide copies of, or access to, all books and records of Jacor relating to any work done under this agreement for audit or other purposes for a period of 3 years after completion of the work.

3. Jacor shall comply with the federal immigration verification system set forth in Neb. Rev. Stat. Sections 4-108 through 4-114.

4. Jacor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

5. This agreement is subject to ratification by the West Haymarket Joint Public Agency Board.

PURCHASER:

By: _____

Title: Mayor Chris Beutler
Chair of West Haymarket Joint Public Agency

Date Accepted: June 24, 2013

WH 13-63 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Lease Addendum #3 with CH, Ltd. (as Landlord) which assigns the Lease for the use of the premises known as 200 Armour Bldg., 100 N. 8th Street, Lincoln, NE 68508, from Legends Sales & Marketing, LLC (as Tenant) to the West Haymarket Joint Public Agency is hereby approved and ratified.

The City Clerk is directed to return a copy of this Resolution to Rick Peo, City Attorney's Office, for transmittal to the parties.

Adopted this _____ day of _____, 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

_____
Doug Emery

# LEASE ADDENDUM #3

This Lease Addendum continues the original Lease Agreement, and any previous Lease Addendum(s)/Extension(s), between CH, Ltd., a Nebraska Corporation, hereinafter referred to as the "Landlord", and the "Tenant" listed below, subject to modifications as provided. All other provisions of the original Lease Agreement and any previous Lease Addendum(s)/Extension(s) shall be in effect.

The purpose of this Lease Addendum #3 is to assign the Lease from Legends Sales & Marketing, LLC to the West Haymarket Joint Public Agency.

**Tenant:** Legends Sales & Marketing, LLC

**Date of Execution of Lease Addendum:** _____

**Original Date of Execution of Lease Agreement:** December 23, 2010

**Date(s) of Execution of previous Lease Addendum(s)/Extensions:**

| | |
|---|---|
| Lease Addendum #1: | December 23, 2010 |
| Lease Addendum #2: | May 24, 2012 |

**Section 1.5 Commencement Date of Lease Addendum:** Immediately

**Section 1.9 Security Deposit:**

Upon execution of this Lease Addendum #3, the West Haymarket Joint Public Agency shall deliver the sum of $2750.00, which shall constitute the Security Deposit. Section 5 of the original Lease Agreement, along with any subsequent amendments, contains additional terms related to and concerning the Security Deposit.

**Section 5 Security Deposit:**

On execution of the original Lease Agreement, dated December 23, 2010, Landlord collected a Security Deposit in the sum of $2750.00, from CSL Marking Group, LLC, tenant party to the original Lease Agreement. Ben Wrigley and Bill Rhoda, as principals of CSL Marketing Group, LLC, request that Landlord relinquish said Security Deposit to Ben Wrigley and Bill Rhoda upon the assignment of the Lease Agreement under this Lease Addendum #3.

Pursuant to Section 5.1 of the original Lease Agreement, Landlord shall relinquish said Security Deposit, less any deductions outlined in Section 5 of the original Lease Agreement, to CSL Marketing Group, LLC, upon performance of the following preceding conditions:

1. Landlord must previously secure payment of Security Deposit, as outlined above in Section 1.9, from West Haymarket Joint Public Agency.
2. Ben Wrigley and Bill Rhoda must certify, in a written statement which is signed and dated by both, that no other entity, aside from CSL Marketing Group, LLC is entitled to the Security Deposit being returned.

**Section 22. Assignment of Lease:**

Execution of this Lease Addendum #3 shall assign all rights and responsibilities from Legends Sales & Marketing, LLC, and Chad Estis, President, to West Haymarket Joint Public Agency and Dan Marvin, Secretary.

Subsequent to execution of Lease Addendum #3, West Haymarket Joint Public Agency, shall refer to "Tenant" in Lease documents. Dan Marvin, Secretary, shall execute this Lease Addendum #3 on behalf of West Haymarket Joint Public Agency, and thereby accept the rights and responsibilities Legends Sales & Marketing, LLC has enjoyed prior to the date of this Lease Addendum #3. West Haymarket Joint Public Agency shall provide the appropriate resolution affirming Dan Marvin's authority to sign this Lease Addendum #3.

IN WITNESS WHEREOF, Landlord, Legends Sales & Marketing, LLC, and West Haymarket Joint Public Agency have executed this Lease Addendum as of the date first above written.

LANDLORD: CH, LTD.

Jon A. Camp, President

Legends Sales & Marketing, LLC

Chad Estis, President

CSL Marketing Group, LLC

Ben Wrigley, Principal
Bill Rhoda, Principal

West Haymarket Joint Public Agency

Dan Marvin, Secretary

July 1 , 2013

Mr. Jon Camp
CH, LTD.

Dear Mr. Jon Camp:

This letter is to reaffirm that Bill Rhoda and Benham Wrigley have the rights to the security deposit originally paid by CSL Marketing Group as it relates to the office space in Lincoln, Nebraska. It would be greatly appreciated if you could issue a check in the full amount of the security deposit to Bill Rhoda at the following address:

**Bill Rhoda**
**7501 Lone Star, Suite 200**
**Plano, Texas 75024**

Should you have any questions as it relates to this letter or the security deposit, please call me at (972) 491-6900.

Sincerely,

Bill Rhoda Benham Wrigley

WH 13-64 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Theatrical Xenon Sportlights Contract between the West Haymarket Joint Public Agency and Theatrical Media Servcies, Inc. for the furnishing and installation of the spotlights for the Pinnacle Bank Arena, pursuant to Bid No. 13-199, 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 West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and the Theatrical Xenon Spotlights Contract to Rick Peo, City Attorney's Office, for transmittal to the parties.

Adopted this _____ day of _____, 2013.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**
**Bid No. 13-199**

# THEATRICAL XENON SPOTLIGHTS CONTRACT

THIS THEATRICAL XENON SPOTLIGHTS CONTRACT ("Contract") is made and entered into as of this _____ day of _____, 2013, by and between **THEATRICAL MEDIA SERVICES, INC.,** hereinafter called "Vendor," and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called "JPA."

## RECITALS

WHEREAS, JPA has caused to be prepared, in accordance with law, THEATRICAL XENON Spotlights Specifications ("Specifications") and other Contract Documents for the furnishing and installation of the 2,000 watt and 3,000 watt spotlights herein described, including instructing JPA personnel on the proper uses, operations, and maintenance of the spotlights, and has approved and adopted said documents and has caused to be published an Invitation to Bid advertisement for and in connection with the Contract.

WHEREAS, the Vendor, in response to such advertisement, has submitted to the JPA, in the manner and in the time specified, a sealed Supplier Response in accordance with the terms of said advertisement and the Specifications for the spotlights.

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Proposal Bid Forms submitted in response to such advertisement, and as a result of such canvass has determined and declared the Vendor to be the lowest and best bidder for the furnishing and installation of the above-referenced spotlights, including part #1323/4-legged rigid base for Item No. 3, 1295 ELT ¾K Xenon, for the total sum of One Hundred Seventeen Thousand Six Hundred Twelve and 00/100ths Dollars ($117,612.00). Copies of the Bid Opportunity Detail, Invitation to Bid, Specifications, Addendums, if any, and Supplier Response (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, JPA desires to engage Vendor for the furnishing and installation of the spotlights on the terms and conditions herein provided.

WHEREAS, Vendor hereby represents that Vendor is willing and able to furnish the spotlights and to perform the installation and instruction in accordance with this Contract.

NOW, THEREFORE, in consideration of the above Recitals and the below mutual covenants and agreements the Parties hereto, the Vendor and JPA do hereby agree as follows:

**SCOPE OF SERVICES**. The Vendor shall deliver and install the spotlights as described in the Bid Documents and shall do everything required by this Contract. Vendor shall furnish all labor, materials, equipment, services, shipping, loading, packing and cleanup that is necessary for the Vendor's performance of this Contract.

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

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

Vendor further agrees to pay the prevailing wages set forth in the Building Construction Including Work on Industrial Sites General Wage Decision, NE130058 dated 06/14/2013 ("Effective Wage Decision"). Said Effective Wage Decision is included in the Other Attached Contract Documents (Exhibit D). Vendor agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the design and installation of the System. Vendor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Vendor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

**COMPENSATION.** JPA agrees to pay to Vendor for the delivery and installation of the spotlights and instruction the amount of $117,612.00 set forth in the Supplier Response and Vendor agrees to accept said amount as full compensation therefor. Vendor represents that said amount includes Vendor'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 spotlights or this Contract. Vendor 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 delivery and installation of the spotlights under this Contract shall be commenced as soon as possible and said spotlights shall be coordinated with the Pinnacle Bank Arena Construction Manager at Risk's schedule in order to meet the opening of the Pinnacle Bank Arena. Failure to meet the terms of the Contract on or before the Completion Date may result in forfeiture of the performance bonds or deposit of any; shall be deemed a breach of this Contract.

**INDEMNIFICATION**. Vendor 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.** Vendor 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. Vendor agrees to provide all types of insurance required by the JPA. Vendor will furnish coverages against any and all perils required by the JPA.

**NON-RAIDING CLAUSE.** Vendor 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 as provided in Section 11 of the Instructions to Proposers.

**FAIR EMPLOYMENT**. In connection with the performance of work under this Contract, Vendor 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 Vendor shall maintain Fair Labor Standards in the performance of this Contract as required by Chapter 73, Nebraska Revised Statues, as amended.

**ASSIGNABILITY.** The Vendor 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 Vendor 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 VENDOR**. Vendor covenants that Vendor 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. Vendor further covenants that in the performance of this Contract, no person having any such interest shall be employed or retained by Vendor under this Contract.

**INDEPENDENT CONTRACTOR.** The JPA is interested only in the results produced by this Contract. Vendor has sole and exclusive charge and control of the manner and means of performance. Vendor shall perform as an independent contractor and it is expressly understood and agreed that Vendor 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 Vendor.

**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 Vendor is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Vendor 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 Vendor 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 Vendor 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 Vendor is an individual or sole proprietor, the Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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. Exhibit C – Intentionally Omitted.
4. Other Attached Contract Documents - Exhibit D.
   a. Commentary to Accompany Construction Bonds.
   b. Construction Performance Bond.
   c. Construction Payment Bond.
   d. Executive Order No 83319.
   e. 29 C.F.R. § 5.5(a) Contract Provisions.
   f. Effective Wage Decision.
   g. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
5. 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 Vendor 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, Vendor and JPA do hereby execute this Contract as of the Execution Date set forth above.

**VENDOR:** **THEATRICAL MEDIA SERVICES, INC.**

By: _____
President

**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*
*6-21-2013*

CITY OF LINCOLN NEBRASKA

LANCASTER COUNTY NEBRASKA

Return to Login • Supplier Registration

# Bid Opportunity Detail

**Bid Number** 13-199 (Theatrical Xenon Spotlights for Pinnacle Bank Arena)
**Close Date & Time** 6/18/2013 12:00:00 PM Central
**Bid Duration** 18 days 21 hours 25 minutes 47 seconds

## Bid Information

| | |
|---|---|
| **Bid Type** | Bid |
| **Issue Date & Time** | 5/30/2013 2:34:12 PM Central |
| **Close Date & Time** | 6/18/2013 12:00:00 PM Central |
| **Bid Status** | Unsealed |
| **Bid Notes** | |

## Contact Information

| | |
|---|---|
| **Contact Name** | Vince Mejer Purchasing Agent |
| **Address** | Purchasing<br>440 S. 8th St.<br>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 | Acrobat (PDF) | PDF Invitation to Bid |
| Bid Tabulation by Supplier Spreadsheet | Excel 2007 (XLS) | Bid Tabulation by Supplier Spreadsheet |
| Bid Tabulation by Line Item Spreadsheet | Excel 2007 (XLS) | Bid Tabulation by Line Item Spreadsheet |

## Bid Attachments

| Location | File Name | Description |
|---|---|---|
| Header | 13-199 Adv.pdf (30KB) | Notice to Bidders |
| Header | JPA Insurance March 2012.pdf (236KB) | Insurance Requirements |
| Header | Empl_Class_Act_EO.pdf (288KB) | Employee Classification Act, Executive Order 83319 |
| Header | Empl_Class_Act_Aff.pdf (52KB) | Employee Classification Act Affidavit |
| Header | 13-199 Specs.pdf (26KB) | Specifications |
| Header | Spotlights Contract - SAMPLE with Exhibits.pdf (3.04MB) | Sample Contract |

**EXHIBIT A TO CONTRACT AGREEMENT**

**Advertise 1 time**
**Wednesday, June 5, 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 pm, Tuesday, June 18, 2013** for providing the following:

## Pinnacle Bank Arena Theatrical Xenon Spotlights
## Re-Bid No. 13-199

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 (402) 441-7416 or vmejer@lincoln.ne.gov

**EXHIBIT A TO CONTRACT AGREEMENT**

**PINNACLE BANK ARENA**
**LINCOLN, NE**
**INVITATION FOR BID**
**THEATRICAL XENON SPOTLIGHTS**
**SPECIFICATIONS**
**BID NO. 13-199**

1. **SCOPE**
   - 1.1 The furnishing and installation of Xenon Spotlights.
   - 1.2 Units specified
     - 1.2.1 2000 Watt Strong Super Trooper Long throw or Equal
     - 1.2.2 3000 Watt Strong Gladiator IV or Equal
   - 1.3 The facility personnel responsible for use of lights shall be instructed and trained by a quality factory representative.
   - 1.4 Costs shall include all labor, materials, tool, equipment, transportation, licenses, services

2. **REFERENCES**
   - 2.1 Provide company history for Xenon spotlights in the Stadium and Arena industry, including years of operation and client/employee growth.
   - 2.2 Provide information on five (5) recent projects of similar size or scope that have completed by your company.
   - 2.3 Provide the project name and a client point of contact for each with name, title, and address and phone number.
   - 2.4 Describe the firm's ability to support the schedule and delivery requirements.
     - 2.4.1 Describe the firm's customer support program for resolution of warranty items.

3. **MANUFACTURER**
   - 3.1 Complete and full construction of the spotlight system including attachments of fasteners, and finish shall be completed by a qualified manufacture's representative.
   - 3.2 Manufacturer of Lights system must be ISO 9001:2000 Certified to assure quality control of materials provided.
   - 3.3 Materials or brands other than those listed must be submitted and approved by the Owner.

4. **INSTALLATION AND TRAINING**
   - 4.1 Manufacturer shall provide at no cost to the owner, a qualified representative during the initial installation to instruct the owner's personnel on the proper uses and operations and maintenance of the spotlights.
   - 4.2 Service technician shall be trained and certified by the manufacturer.
   - 4.3 This technician shall commission the system as follows:
     - 4.3.1 Safety lamp each spotlight.

4.3.2 Mechanically adjust each spotlight to correct any misalignment

4.3.3 Trim the light output of each spotlight to maximize the intensity with a flat field.

4.3.4 Davis Bacon Rates apply.

## 5. SUBMITTALS

5.1 Specification - Submit manufacturers complete system specification sheets.

5.2 Maintenance Literature - Upon completion of installation, provide "Assembly and Disassembly - Storage and Care" Guide to the owner or individuals in charge and responsible for the upkeep of the system.

5.3 Vendor shall attach to the bid an itemized list of parts and part numbers breaking down each light listed.

## 6. WARRANTY

6.1 The manufacturer is to warrant the system supplied will be free from manufacturing defects for a period of one (1) year.

## 7. 2000 WATT SPOTLIGHT DESIRED

7.1 The items specified shall be Strong SUPER TROOPER LONG THROW or APPROVED EQUAL.

7.2 **Throw Capabilities**:

7.2.1 Adjusted for flat field (approximately 70%) with a 2,000 watt xenon lamp the unit shall produce a continuous range of illumination from 2,880,000 beam candlepower in Flood focus to 12,280,000 beam candlepower in Spot focus.

7.2.1.1 The Field diameter at a 200 foot throw shall be continuously adjustable from 27.6 feet (7.9 degrees) in Flood focus to 13 feet (3.7 degrees) in Spot focus.

7.2.1.2 With full iris the Field diameter in spot focus shall be 40 inches (1.0 degrees).

7.3 **Light Source**:

7.3.1 High efficiency Xenon lamphouse with deep ellipsoidal metal reflector. This lamphouse shall accept each of the following lamps:

7.3.1.1 1,000 watt xenon.

7.3.1.2 1,600 watt xenon.

7.3.1.3 2,000 watt xenon.

7.4 **Lens System**:

7.4.1 A trombone style one handed zoom focus mechanism shall simultaneously adjust both the rear and front lenses throughout the zoom range from spot to flood.

7.4.1.1 All lenses shall use high-grade photo-optical glass.

7.4.1.2 Six-filter self cancelling color boomerang with color filters.

7.5 **Electrical Specification:**

7.5.1 The model #6200091 solid-state switching power supply shall transform the incoming AC voltage to low voltage DC 60 kHz.

square wave current, continuously adjustable from 50 to 75 amps.

7.5.2 The power supply shall be a separate unit from the Spotlight, connected by a factory supplied cable with mil spec connectors.

7.5.3 Analog DC ammeter.

7.5.4 Lamp operation elapsed hour meter.

7.5.5 Forced-air cooling by internally wired blower.

7.5.6 ON/OFF ignition switch.

7.5.7 Lamp field focus controls and centering joystick to adjust the xenon lamp's focal position relative to the reflector in three dimensions without the use of tools.

7.6 **Dimensions:**

7.6.1 Overall Spotlight Length - 77 ½".

7.6.2 Overall Stand Width - 45".

7.6.3 Overall Height - 62" (adjustable in two increments of four inches each.)

7.7 **Accessory:**

7.7.1 The Spotlight shall incorporate a rounded shield on top to reduce light leak and protect the operator's forearm from heat.

7.8 **Maximum Downward Tilt**:

7.8.1 45-degree min.

7.9 **Maximum Upward Tilt**:

7.9.1 25-degree min.

7.10 **Horizontal Sweep**:

7.10.1 360-degree.

7.11 **Safety Listing**:

7.11.1 Equipment shall be Listed and Labeled by an OSHA recognized NRTL (Nationally Recognized Testing Laboratory) as follows:

7.11.2 The solid-state switching xenon Power Supply shall meet ANSI/UL 1012 for Power Supplies.

## 8. 3000 WATT SPOTLIGHT DESIRED

8.1 The items specified shall be Strong Gladiator IV or APPROVED EQUAL.

8.1.1 **Throw Capabilities**:

8.1.1.1 Adjusted for flat field (approximately 70%) with a 4,000 watt xenon lamp the unit shall produce a continuous range of illumination from Flood focus to 44,280,000 beam candlepower in Spot focus.

8.1.1.2 The Field diameter at a 400 foot throw shall be continuously adjustable from Flood focus to 24.4 feet (3.5 degrees) in Spot focus.

8.1.1.3 With full iris the Field diameter in spot focus shall be 58 inches (0.69 degrees).

8.1.2 **Light Source**:

8.1.2.1 High efficiency Xenon lamphouse with deep ellipsoidal metal reflector.

8.1.2.2 This lamphouse shall accept each of the following lamps:

8.1.2.2.1 2,500 watt xenon.
8.1.2.2.2 3,000 watt xenon.
8.1.2.2.3 4,500 watt xenon, which can be adjusted down to 3,500 watts.

8.1.3 **Lens System**:

8.1.3.1 A trombone style one handed zoom focus mechanism shall simultaneously adjust both the rear and front lenses throughout the zoom range from spot to flood.

8.1.3.2 All lenses shall use high-grade photo-optical glass.

8.1.3.3 Six-filter self cancelling color boomerang with color filters.

8.1.4 **Electrical Specification**:

8.1.4.1 The model #6200092 solid-state switching power supply shall transform the incoming AC voltage to low voltage DC 60 kHz. square wave current, continuously adjustable from 50 to 150 amps.

8.1.4.2 The power supply shall be a separate unit from the Spotlight, connected by a factory supplied cable with mil spec connectors.

8.1.4.2.1 Switchable analog DC ammeter/ voltmeter.

8.1.4.2.2 Lamp operation elapsed hour meter.

8.1.4.2.3 Forced-air cooling by internally wired blower.

8.1.4.2.4 ON/OFF ignition switch.

8.1.4.2.5 Lamp field focus controls and centering joystick to adjust the xenon lamp's focal position relative to the reflector in three dimensions without the use of tools.

8.1.5 **Dimensions**:

8.1.5.1 Overall Spotlight Length - 81".

8.1.5.2 Overall Stand Width - 45".

8.1.5.3 Overall Height - 69" (adjustable in two increments of four inches each.)

8.1.6 **Accessory**:

8.1.6.1 The Spotlight shall incorporate a clipboard spring latch and dry marker white strip on the lens tube chassis to accommodate operator notes.

8.1.7 **Maximum Downward Tilt**:

8.1.7.1 56-degree min.

8.1.8 **Maximum Upward Tilt:**

8.1.8.1 45-degree min.

8.1.9 **Horizontal Sweep**:

8.1.9.1 360-degree.

8.1.10 **Safety Listing:**

8.1.10.1 Equipment shall be Listed and Labeled by an OSHA recognized NRTL (Nationally Recognized Testing

Laboratory) as follows:

8.1.10.2 The Spotlight shall meet ANSI/UL 1573 for Stage and Studio Lighting Units.

8.1.10.3 The solid-state switching Xenon Power Supply shall meet ANSI/UL 1012 for Power Supplies.

## 9. PROJECT DESCRIPTION

9.1 Project Description and Construction Team:

9.1.1 Owner: West Haymarket JPA (Joint Public Agency).

9.1.2 Arena Operator: SMG.

9.1.3 JPA Program Manager: PC Sports.

9.1.4 Project Architect: DLR Group.

9.1.5 Contractor: Mortenson Construction.

9.2 **Project Location**:

Pinnacle Bank Arena
600 R Street
Lincoln, NE 68508

9.3 **Type of Construction**:

9.3.1 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.

9.3.2 The attached garage is approximately 280 spaces and is a three-level precast structure.

## 10. CONTRACT

10.1 The Vendor contract will need to be approved by the JPA at a formal board meeting.

10.1.1 A notice to proceed will follow the approval.

## 11. QUALIFICATIONS

11.1 All productions must include a one (1) year warranty free from any and all manufacturing defects.

11.2 The manufacturer must list five (5) similar type facilities that have opened in the past three (3) years in which the Xenon Spotlights are currently in use.

## 12 SECURITY

12.1 Access will be restricted only to those having business on the site.

12.2 Further security of this Vendor's material, equipment, and plant must be provided by this Vendor.

## 13. SAFETY MEASURES

13.1 All persons must wear safety helmets, eye wear, appropriate gloves and comply with the arena contractor's safety requirements.

13.2 The Vendor is to comply with all applicable sections of governing federal, state and all local city authorities, unless otherwise specified.

13.3 In the event of conflict between any of the provisions of municipal by-laws, state acts or federal codes, the most restrictive shall apply.

## 14. USE OF WORK AREA

14.1 Delivery of supplies, equipment and/or materials to the site shall be along routes designated by the Arena Contractor or his representative.

14.2 The Vendor must obtain prior approval from the Owner or his representative of areas proposed for temporary storage, stockpiling, equipment, maintenance or operations.

14.3 Working areas shall be chosen by the Owner or his representative in cooperation with the Arena Contractor.

14.4 The Vendor shall be responsible for repairing, at no cost to the Owner, all damages caused by the work of the Contract.

## 15. DISCREPANCIES AND OMISSIONS

15.1 Vendor finding discrepancies in, or omissions from the 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.

15.2 **Direct Inquiries To:**
Vince M. Mejer
440 S. 8th Street, Suite 200
Fax: 402.441.6513
Vmejer@lincoln.ne.gov

## 16. ORAL INSTRUCTIONS

16.1 Proposals shall not contain any recapitulation of work to be done.

16.2 No oral or telephonic proposals or modifications will be considered.

16.3 Neither the Owner nor the JPA Program Manager shall be responsible for oral instructions.

## 17. ERRORS IN BIDS

17.1 Owner will not entertain requests for gratuitous payments arising from errors alleged to have been made in Bid that he has accepted.

## 18. ALTERNATIVE, SEPARATE AND ITEMIZED PRICES

18.1 Where separate and itemized prices are requested, it is agreed that such prices may be accepted at any time within a period of ninety (90) days after closing date for prices.

## 19. CO-OPERATION, CONSTRUCTION AND INTERFACING WITH OTHER CONTRACTORS

19.1 Insure that all trades co-operate with each other to insure that work will be carried out expeditiously and will be satisfactory in all respects at completion.

19.2 Insure that all examine the Plans and Specifications covering the work of all other sections.

19.3 This Vendor shall coordinate his work with the work of other Contractors at the site and shall not commit or permit any act which will interfere with the performance of the work of other Contractors.

19.3.1 Where this Vendor's work adjoins that of other Contractors, he shall confer with them as required and so arrange his work that there shall be no discrepancies when the whole work is completed.

19.3.2 If this Vendor fails to cooperate with or coordinate his work with the work of other contractors, he shall not make any claim founded on delays which have resulted from such failure and he shall save the Owner harmless from all claims made by other Contractors which are founded on delays caused by such failure.

19.4 If any part of the work depends on its proper execution or results upon the work of other contractors, this Vendor shall report promptly advise the Owner in writing any defects in the work of such other Contractors that interfere with the proper execution of the work.

19.5 Should the Vendor fail to inspect and report, he shall have no claim against the Owner by reason of defective or unfinished work of any other Contractor except as to latent defects no reasonably observable at the time of the commencement of the Vendor's work.

19.6 The Vendor shall be responsible for any and all damages caused by his or her negligence or failure to coordinate his work with that of other Contractors and any additional expenses arising therefrom.

19.7 There may be other Contractors or forces of the Owner working in the same area where work under this Contract will be performed.

19.7.1 The Owner or his designated representative will use his or her best efforts to assist with coordination of work of all Contractors so as to minimize interference with or suspension of work of any other Contractor.

19.7.2 These coordination efforts shall be consistent with orderly and expeditious performance and completion of the project as a whole.

19.8 The Vendor must anticipate that this work may be interfered with or suspended from time to time on account of concurrent performance of the work by other contractors.

19.8.1 This Contractor shall, if requested by the Owner of his designated representative, arrange his work under the Contract with the work being performed by other Contractors.

19.8.2 Furthermore, the Owner or his designated representative may direct that certain facilities be used mutually by the Contractor and other persons.

19.9 Prior to the commencement of the work, the Vendor accompanied by the Owner or his designated representative, shall inspect all previous works executed by other trades and shall report his approval promptly in writing.

19.10 If any part of the work executed is unsatisfactory, this Vendor shall so report in writing to the Owner or his designated representative prior to the commencement of his work.

19.11 If the necessity for corrective work is established, the Owner or his designated representative will proceed with these corrections.

19.12 Should the Vendor fail so to inspect and report as mentioned above, he will become responsible for all uncorrected works executed by other trades, and he shall have no claim against the Owner by reason of defective or

unfinished work of any other Contractor, and he shall correct the work as required at this own expense.

19.13 All Scope of Work for this Package will need to be coordinated with the main arena contractor's schedule (Mortenson).

19.13.1 This will be done in more detail once a Vendor is selected and delivery/install time lines are established.

THEATRICAL
MEDIA
SERVICES, INC

LIGHTING INSTALLATION REFERENCES

RAPID CITY CENTRAL HIGH SCHOOL
433 8th Street
Rapid City, SD 57701
605-394-4021
E-mail: Justin.Speck@k12.sd.uc
Point of Contact: Justin Speck
Type of Project: Lighting System Install

SMITHVILLE PERFORMING ARTS CENTER
645 South Commercial Avenue
Smithville, MO 64089
816-532-0405
E-mail: stjohnt@smithville.k12.mo.us
Point of Contact: Taylor St. John
Type of Project: Lighting System Install

ALFONZA W. DAVIS MIDDLE SCHOOL
8050 N 129th Avenue
Omaha, NE 68142
402-522-9144
E-mail: craigl@millerelect.com
Point of Contact: Craig Langfeldt
Type of Project: Lighting System Install

SHAW CENTER FOR THE PERFORMING ARTS
1 University Place
Lamoni, IA 50140
641-784-5274
E-mail: jwatley@graceland.edu
Point of Contact: Jon Whatley
Type of Project: Lighting System Install

LAVACA PERFORMING ARTS CENTER
701 S. Davis Street
Lavaca, AR 72941
479-651-2173 Cell
E Mail: chase@firstlavaca.com
Point Of Contact: Chase Carter
Type of Project: Auditorium Sound System, Lighting System, Theatrical Rigging / Curtains, Video System

SKUTT HIGH SCHOOL
3131 S. 156th Street
Omaha, NE 68130
402-333-0818
402-659-5043 Cell
Point Of Contact: Mark Schnitler
Type of Project: Auditorium Sound System, Lighting System Up Grade

THE LOFT THEATRE
15841 Manley Rd.
Manely, NE 68403
402-267-5482
Point Of Contact: Kevin Colbert
Type of Project: Lighting System Install

BOY'S TOWN AUDITORIUM
13628 Flanagan Blvd.
Boy's Town, NE 68010
402-498-1136
Point Of Contact: John Kava
Type of Project: Lighting System Install

TREYNOR HIGH SCHOOL
102 East Main Street
Treynor, IA 51575
512-487-3804
rjensen@treynor.k12.ia.us
Point Of Contact: Roger Jensen
Type of Project: Lighting System Install

CROSS COUNTY HIGH SCHOOL
1270 123rd Road
Stromsburg, NE 68666
402-764-5521
Point Of Contact: Drama Teacher
Type of Project: Lighting System Install

GROSS CATHOLIC HIGH SCHOOL
7700 South 43rd Street
Bellevue, NE 68147
402-734-2000
Point Of Contact: Drama Teacher
Type of Project: Lighting System Install

GRETNA HIGH SCOOL
11335 South 204th Street
Gretna, NE 68028
402-332-3936
Point Of Contact: Drama Teacher
Type of Project: Lighting System Install

# City of Lincoln/Lancaster County (Lincoln Purchasing)
# Supplier Response

| Bid Information | | Contact Information | | Ship to Information |
|---|---|---|---|---|
| Bid Creator | Vince Mejer Purchasing Agent | Address | Purchasing<br>440 S. 8th St.<br>Lincoln, NE 68516 | Address |
| Email | vmejer@lincoln.ne.gov | | | |
| Phone | 1 (402) 441-8314 | Contact | Vince Mejer<br>Purchasing Agent | Contact |
| Fax | 1 (402) 441-6513 | | | |
| | | | Purchasing | Department |
| Bid Number | 13-199 | Department | | Building |
| Title | Theatrical Xenon Spotlights for Pinnacle Bank Arena | Building | | |
| | | | Suite 200 | Floor/Room |
| Bid Type | Bid | Floor/Room | | Telephone |
| Issue Date | 05/30/2013 | Telephone | 1 (402) 441-8314 | Fax |
| Close Date | 6/18/2013 12:00:00 PM CT | Fax | 1 (402) 441-6513 | Email |
| Need by Date | | Email | vmejer@lincoln.ne.gov | |

## Supplier Information

| | |
|---|---|
| Company | Theatrical Media Services |
| Address | 7510 Burlington Street<br><br>Omaha, NE 68127 |
| Contact | Rachel Beacom |
| Department | |
| Building | |
| Floor/Room | |
| Telephone | 1 (402) 5925522 |
| Fax | 1 (402) 5920094 |
| Email | rbeacom@tmsomaha.com |
| Submitted | 6/13/2013 4:11:31 PM CT |
| Total | $117,612.00 |

Signature _____

## Supplier Notes

Optional Equipment:
Part #49 - Wheel kit for 1322 base - $136.74 (per set), Part #50 - Heavy duty wheel kit w/ levelers for 1323 base - $988.68 (per set), Part #51 - 1322 base holddown - $56.25 (per set)

## Bid Notes

## Bid Activities

## Bid Messages

Please review the following and respond where necessary



**EXHIBIT A TO CONTRACT AGREEMENT**

| # | Name | Note | Response |
|---|---|---|---|
| 1 | Instructions to Bidders | I acknowledge reading and understanding the Instructions to Bidders. | Yes |
| 2 | Insurance Requirements | I acknowledge reading and understanding the Insurance Requirements. | Yes |
| 3 | Specifications | I acknowledge reading and understanding the specifications and attachments. | Yes |
| 4 | Performance and Payment Bonds | I acknowledge that a Performance Bond and a Payment Bond in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job. | Yes |
| 5 | 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 |
| 6 | Vendor Responses | I have attached to this bid my additional information per the specifications. | Yes |
| 7 | References | I have attached my References to the Response Attachment section of this bid. | Yes |
| 8 | Sample Contract | I acknowledge reading and understanding the sample contract. | Yes |
| 9 | Employee Class Act EO | I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319. | Yes |
| 10 | Employee Class Act Affidavit | I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract. | Yes |
| 11 | Contact | Name of person submitting this bid: | Rachel Beacom |
| 12 | Electronic Signature | Please check here for your electronic signature. | Yes |

## Line Items

| # | Qty | UOM | Description | Response |
|---|---|---|---|---|
| 1 | 6 | ea | 2,000 Watt Spotlights per specifications | $10,335.00 |
| | Item Notes: | | | |
| | Supplier Notes: 1290 XLT 2K Xenon Inc. #1322 base, int PSU | | | |
| 2 | 6 | ea | Spotlight Lamps 2,000 Watt Xenon | $505.00 |
| | Item Notes: | | | |
| | Supplier Notes: Osram XBO2000WHS OFR or compatible | | | |
| 3 | 4 | ea | 3,000 Watt Spotlights per Specifications | $12,545.00 |
| | Item Notes: | | | |
| | Supplier Notes: 1295 ELT 3/4K Xenon, inc base, ext elec PSU | | | |
| | 1295 is available w #1322 /3 legged folding or #1323 /4 legged rigid base - specify choice on PO | | | |
| 4 | 4 | ea | Spotlight Lamps 3,000 Watt Xenon | $598.00 |
| | Item Notes: | | | |
| | Supplier Notes: Osram XBO3000WHS OFR or compatible | | | |
| 5 | 1 | Lump Sum | System commissioning service by a factory trained and authorized technician | $0.00 |
| | Item Notes: | | | |
| | Supplier Notes: Included at no additional charge. | | | |
| | | | Response Total: | $117,612.00 |



**EXHIBIT A TO CONTRACT AGREEMENT**

# EXHIBIT B

## Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012)

*Approved by Law*
*6-21-2013*

**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

## Intentionally Omitted

*Approved by Law*
*6-21-2013*

# EXHIBIT D

## Other Contract Documents

*Approved by Law*
*6-21-2013*

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

Owner (Name and Address):
**West Haymarket Joint Public Agency**
**555 South 10th St.**
**Lincoln, NE 68508**

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp.Seal)

Signature:_____
Name and Title: Name and Title:

Signature:_____

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practiceable after the amount is determined tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; an d

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a satutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

Owner (Name and Address):
**West Haymarket Joint Public Agency**
**555 South 10th St.**
**Lincoln, NE 68508**

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:

   2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:

   4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.

   4.2 Claimants who do not have a direct contract with the Contractor:

   1.Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and

   2.Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

   3.Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

   6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

   6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

   By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

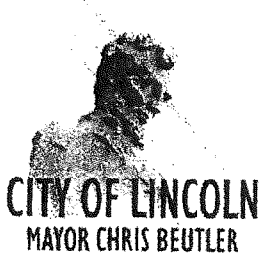
    15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

    15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

    15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

smart # 10070200
7-26-10/law/tb




# CITY OF LINCOLN
# EXECUTIVE ORDER

NO. 083319

WHEREAS, there is concern over the inappropriate competitive advantages in the public bidding process for local publicly funded construction and delivery service contracts resulting from the misclassification of individuals performing construction labor services as "independent contractors" rather than "employees"; such "independent contractors" are commonly referred to as "1099 workers" due to the IRS form they receive rather than a W-4 which an employee receives;

WHEREAS, this misclassification of such individuals as "independent contractors" rather than as "employees" eliminates any obligation to pay these individuals legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit such individuals would typically receive if properly classified as employees;

WHEREAS, this misclassification of individuals performing construction labor services for the contractor as "independent contractors" rather than "employees" is a violation of federal and state law, but is difficult to enforce once public construction or delivery service contracts have been bid, awarded, and entered into;

WHEREAS, the use of public funds to compensate contractors who unlawfully avoid their obligation to pay legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit is not in the public interest; and

**EXHIBIT D**

WHEREAS, the Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912 (effective July 15, 2010) provides that any contract entered into between a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat. § 4-114 requirements that the contractor register and use a federal immigration employment verification system to determine the work eligibility status of new employees physically performing services in the State of Nebraska, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to § 48-2912 of the Employee Classification Act.

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, I hereby establish the following policy as to the bid and award of contracts to contractors for construction and delivery services with the City of Lincoln:

The Purchasing Agent shall immediately include in the City of Lincoln's notice to bidders for construction contracts that all contractors submitting bids in response to the notice shall affirmatively certify to the Purchasing Agent that all individuals hired to perform construction or delivery labor services for the contractor under the contract shall be properly classified as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under federal and state law (including the requirements of the State of Nebraska Employee Classification Act), and that the contractor will comply with all legal obligations with respect to these employees (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes). The



**EXHIBIT D**

notice to bidders shall further provide that contractors may use affidavits required pursuant to the Employee Classification Act for this purpose, but that a failure to make the affirmative certification to the Purchasing Agent shall render the bidder ineligible for award of the contract.

The Purchasing Agent shall immediately include the following provisions in contracts for construction or delivery services:

(1) Contractor agrees that each individual performing services for the contractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that contractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(2) Contractor understands and agrees that failure to classify each individual hired to perform services under the contract as an employee rather than as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the contract by the City.

(3) Contractor additionally agrees to include the following provisions in each subcontract entered into with a subcontractor as part of the contractor's contract with the City:

(a) Subcontractor agrees that each individual performing services for the subcontractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that subcontractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay,

workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(b) Subcontractor understands and agrees that subcontractor's failure to properly classify individuals hired to perform services under the subcontract as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the subcontract by the contractor.

(4) Contractor agrees that if subcontractor fails to or is suspected of failing to properly classify each individual hired pursuant to the subcontract as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or fails to comply with legal obligations with respect to the subcontractor's employee, the contractor shall take appropriate corrective action including, but not limited to, reporting the suspected violation of the State of Nebraska Employee Classification Act to the Nebraska Department of Labor or rescission of the subcontract by the contractor. Written notification of the corrective action shall be submitted to the City of Lincoln Purchasing Department. Contractor understands and agrees that contractor's failure to take appropriate corrective action shall be considered a breach of the contractor's contract with the City of Lincoln and is a grounds for rescission of the contract by the City.

(5) The City of Lincoln shall notify the Nebraska Department of Labor of any contractor or subcontractor it has determined is in breach of contract due to the terms of this order.

(6) Any contractor or subcontractor who shall have been determined by the Nebraska Department of Labor to have knowingly provided a false affidavit to the City of Lincoln

under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period of time, in accordance with Lincoln Municipal Code § 2.18.030(n)(1) or (2).

(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 5 of Neb. Rev. Stat. § 48-604 and is otherwise valid under federal and state law and is not intended to circumvent lawful obligations under federal and state law or city contractual requirements.

The City Clerk is directed to send a copy of this Executive Order to Vince Mejer, City Purchasing Agent, for his record.

Dated this 28 day of July, 2010.

Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney



**EXHIBIT D**

## EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, I, _____, herein below known as the Contractor, state under oath and swear as follows:

1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.

2.The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.

3. The Contractor has complied with Neb Rev Stat 4-114.

4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.

5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to section 12 of this Act.

6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska )
) ss.
County of _____ )

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this ____ day of _____, 20__.

_____
Notary Public

**EXHIBIT D**

29 C.F.R. § 5.5

Code of Federal Regulations Currentness
Title 29. Labor
Subtitle A. Office of the Secretary of Labor
Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)
Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

**§ 5.5 Contract provisions and related matters.**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when

Exhibit D

the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract,

Exhibit D

the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

Exhibit D

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the

name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

| Paragraph | OMB Control Number |
|---|---|
| (a)(1)(ii)(B) | 1215-01 |
| (a)(1)(ii)(C) | 1215-01 |
| (a)(1)(iv) | 1215-01 |
| (a)(3)(i) | 1215-0140, 1215-00 |
| (a)(3)(ii)(A) | 1215-01 |
| (c) | 1215-0140, 1215-00 |

[29 FR 100, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 30 FR 13136, Oct. 15, 1965; 36 FR 19304, Oct. 2, 1971; 40 FR 30481, July 21, 1975; 41 FR 10063, March 9, 1976; 47 FR 145, Jan. 5, 1982; 51 FR 12265, April 9, 1986; 54 FR 4243, Jan. 27, 1989; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 61 FR 68641, Dec. 30, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 74 FR 2862, Jan. 16, 2009]

SOURCE: 48 FR 19541, April 29, 1983; 51 FR 12265, April 9, 1986; 61 FR 40716, Aug. 5, 1996; 65 FR 80278, Dec. 20, 2000; 73 FR 77511, Dec. 19, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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Exhibit D

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General Decision Number: NE130058 06/14/2013 NE58

Superseded General Decision Number: NE20120065

State: Nebraska

Construction Type: Building
BUILDING CONSTRUCTION INCLUDING WORK ON INDUSTRIAL SITES

County: Lancaster County in Nebraska.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---|---|
| 0 | 01/04/2013 |
| 1 | 03/22/2013 |
| 2 | 04/19/2013 |
| 3 | 05/24/2013 |
| 4 | 06/14/2013 |

CARP0444-002 07/01/2012

| | Rates | Fringes |
|---|---|---|
| CARPENTER (Drywall Hanging Only) | $ 21.18 | 9.98 |

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ELEC0265-003 09/01/2012

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN | | |
| Zone 1 | $ 25.77 | 9.96 |
| Zone 2 | $ 26.07 | 9.96 |
| Zone 3 | $ 26.37 | 9.96 |
| Zone 4 | $ 26.77 | 9.96 |

ZONE DEFINITIONS:
Zone 1: 0 to 35 miles from the main Post Office in Lincoln
Zone 2: 36 to 50 miles from the main Post Office in Lincoln
Zone 3: 51 to 75 miles from the main Post Office in Lincoln
Zone 4: 76 miles and over from the main Post Office in Lincoln

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ELEV0028-001 01/01/2013

| | Rates | Fringes |
|---|---|---|
| ELEVATOR MECHANIC | $ 39.09 | 25.185+a+b |

FOOTNOTE:
a. Vacation Pay: 8% for persons with 5 or more years of service, 6% for persons with less than 5 years of service.
b. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after

**EXHIBIT D TO CONTRACT AGREEMENT**

Thanksgiving, and Christmas Day.

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ENGI0571-004 10/01/2012

| | Rates | Fringes |
|---|---|---|
| OPERATOR: Crane | $ 27.03 | 9.59 |
| OPERATOR: Forklift | $ 21.65 | 9.59 |

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IRON0021-002 06/01/2012

| | Rates | Fringes |
|---|---|---|
| IRONWORKER, STRUCTURAL | $ 26.37 | 11.95 |

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LABO1140-003 01/01/2013

| | Rates | Fringes |
|---|---|---|
| LABORER (Mason Tender, Brick & Hod) | $ 17.03 | 8.95 |

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* PLUM0464-007 06/01/2013

| | Rates | Fringes |
|---|---|---|
| PIPEFITTER (Including HVAC Pipe Installation) | $ 32.94 | 14.59 |

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SHEE0003-002 07/01/2012

| | Rates | Fringes |
|---|---|---|
| SHEET METAL WORKER (Excludes Installation of HVAC Duct) | $ 31.71 | 13.34 |

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SUNE2011-032 10/27/2011

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER | $ 24.44 | 0.00 |
| CARPENTER | $ 18.50 | 1.80 |
| CEMENT MASON/CONCRETE FINISHER | $ 15.73 | 2.06 |
| ELECTRICIAN (Alarm Installation) | $ 19.68 | 4.12 |
| ELECTRICIAN (Low Voltage Wiring) | $ 20.15 | 4.84 |
| FORM WORKER | $ 14.97 | 2.06 |
| LABORER: Common or General | $ 12.03 | 0.00 |
| OPERATOR: Backhoe/Excavator/Trackhoe | $ 20.68 | 4.93 |
| OPERATOR: Bobcat/Skid | | |

**EXHIBIT D TO CONTRACT AGREEMENT**

Steer/Skid Loader.....$ 21.72 2.10

OPERATOR: Loader.....$ 19.27 4.00

PAINTER: Brush, Roller and
Spray.....$ 14.26 0.00

PLUMBER, Excludes HVAC Pipe
Installation.....$ 22.89 6.04

ROOFER.....$ 13.57 0.77

SHEET METAL WORKER (HVAC Duct
Installation Only).....$ 21.89 6.30

TRUCK DRIVER, Includes Dump
and Tandem Truck.....$ 14.09 2.49

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the

rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

*§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.*

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20___.

By: _____

Title:_____

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On _____, 20___, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

_____
Notary Public

(S E A L)

WH 13-65 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Restroom Supplies Constracts with Cash-Wa Distribution Co. and Hillyard Inc. to provide and install Restroom Supplies, pursuant to Bid No. 13-154, for the Pinnacle Bank Arena are hereby adopted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contracts on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and each Contract to Rick Peo, City Attorney's Office, for transmittal to the parties.

Adopted this _____ day of _____, 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

_____
Doug Emery

# RESTROOM SUPPLIES CONTRACT

**Bid No. 13-154**

THIS RESTOOM SUPPLIES CONTRACT ("Contract") is made and entered into as of this _____ day of _____, 2013, by and between **CASH-WA DISTRIBUTING CO.,** hereinafter called "Vendor," and the **CITY OF LINCOLN, NEBRASKA,** hereinafter called "City."

## RECITALS

WHEREAS, City has caused to be prepared, in accordance with law, Specifications and other Contract Documents from qualified Restroom Supply Dealers to provide and install Restroom Supplies as hereinafter described and has approved and adopted said documents and has caused to be published an Invitation to Bid advertisement for and in connection with the Contract.

WHEREAS, the Vendor, in response to such advertisement, has submitted to the City, in the manner and in the time specified, a sealed Supplier Response in accordance with the terms of said advertisement and the Specifications for Restroom Supplies.

WHEREAS, City, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the bids submitted in response to such advertisement, and as a result of such canvass has determined and declared the Vendor to be the lowest and best bidder for the provision and installation of Line Items 4, 5, 16, 19, and 20 of the above-referenced Restroom Supplies Line Items for the total sum of $3,869.204 as shown on the Addendum (including credits for Line Items 4, 5 and 10). Copies of the Bid Opportunity Detail, Invitation to Bid, Specifications, Addendum, if any, and Supplier Response (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, City desires to engage Vendor to provide and install Restroom Supplies on the terms and conditions herein provided.

WHEREAS, Vendor hereby represents that Vendor is willing and able to provide and install the Restroom Supplies in accordance with this Contract.

NOW, THEREFORE, in consideration of the above Recitals and the below mutual covenants and agreements the Parties hereto, the Vendor and City do hereby agree as follows:

**SCOPE OF SERVICES**. The Vendor shall provide and install the Restroom Supplies as described in the Bid Documents and shall do everything required by this Contract. Vendor shall furnish all labor, materials, equipment, services, shipping, loading, packing and cleanup that is necessary for the Vendor's performance of this Contract.

**COMPENSATION.** City agrees to pay to Vendor for the provision and installation of the Restroom Supplies the amount of $3,869.204 set forth in the Supplier Response and Vendor agrees to accept said amount as full compensation therefor. Vendor represents that said amount includes Vendor'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 Restroom Supplies or this Contract. Vendor shall defend suits on claims for infringement or any patent, copyright, trademark or other intangible rights in any way related to this Contract.

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

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

Vendor further agrees to pay the prevailing wages set forth in the Building Construction Including Work on Industrial Sites General Wage Decision, NE130058 dated 06/14/2013 ("Effective Wage Decision"). Said Effective Wage Decision is included in the Other Attached Contract Documents (Exhibit D). Vendor agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the design and installation of the System. Vendor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Vendor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

**NEB. REV. STAT. § 77-1323 CERTIFIED STATEMENT.** Vendor, pursuant to the requirements of Neb. Rev. Stat. § 77-1323, has executed the Certified Statement attached hereto as part of Exhibit D certifying that all equipment to be used in performance of the design and installation of the System, except that acquired since the assessment date has been assessed for the current year. Vendor understands and acknowledges that under Neb. Rev. Stat. §77-1324, any person, partnership, limited liability company, association, or corporation falsifying any statement required by Neb. Rev. Stat. § 77-1323 shall be guilty of a Class IV misdemeanor.

**TIME OF COMPLETION**. The Restroom Supplies shall be delivered and installed no later than fourteen (14) days after execution of this contract. Failure to meet the terms of the Contract on or before the Completion Date may result in forfeiture of the performance bonds or deposit of any; shall be deemed a breach of this Contract.

**INDEMNIFICATION**. Vendor agrees to defend, indemnify and hold harmless City to the same extent and under the same terms and conditions as required by the Insurance Requirements for All City Contracts attached hereto as Exhibit B.

**INSURANCE.** Vendor shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Insurance Requirements for All City Contracts attached hereto as Exhibit B. Vendor agrees to provide all types of insurance required by the City. Vendor will furnish coverages against any and all perils required by the City.

**NON-RAIDING CLAUSE.** Vendor shall not engage the services of any person or persons presently in the employ of the City for work covered by this Contract without the written consent of the City.

**TERMINATION OF CONTRACT**. This Contract may be terminated by the following:

A. Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.

B. Termination for Cause. The City may terminate the Vendor for cause if the Vendor:

1. Refuses or fails to supply the proper labor, materials and equipment necessary to provide the services outlined in the Contract.
2. Disregards Federal, State or local laws, ordinances, regulations, resolution or orders.
3. Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default, the City will provide the Vendor written notice of such breach or default and allow the Vendor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the Contract shall terminate.

**FAIR EMPLOYMENT**. In connection with the performance of work under this Contract, Vendor 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 Vendor shall maintain Fair Labor Standards in the performance of this Contract as required by Chapter 73, Nebraska Revised Statues, as amended.

**ASSIGNABILITY.** The Vendor 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 City thereto; provided, however, that claims for money due or to become due to the Vendor from City under this Contract may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

**INTEREST OF VENDOR**. Vendor covenants that Vendor 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. Vendor further covenants that in the performance

of this Contract, no person having any such interest shall be employed or retained by Vendor under this Contract.

**INDEPENDENT CONTRACTOR.** The City is interested only in the results produced by this Contract. Vendor has sole and exclusive charge and control of the manner and means of performance. Vendor shall perform as an independent contractor and it is expressly understood and agreed that Vendor is not an employee of the City and is not entitled to any benefits to which City 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 City and Vendor.

**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 Vendor is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Vendor 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 Vendor 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 Vendor 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 Vendor is an individual or sole proprietor, the Vendor agrees to complete the United States Citizenship Attestation Form as provided by the City and attach it to the Contract.

C. Public Benefits Eligibility Status Check. If the Vendor 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 Vendor 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 Vendor 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 Vendor 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 City'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. Insurance Requirements for all City Contracts - Exhibit B.
3. Exhibit C – Intentionally Omitted.
4. Other Attached Contract Documents - Exhibit D.
   a. Commentary to Accompany Construction Bonds.
   b. Construction Performance Bond.
   c. Construction Payment Bond.
   d. Executive Order No 83319.
   e. 29 C.F.R. § 5.5(a) Contract Provisions.
   f. Effective Wage Decision.
   g. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
5. 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 Vendor and City 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, Vendor and City do hereby execute this Contract as of the Execution Date set forth above.

**VENDOR:** **CASH-WA DISTRIBUTING CO.**

By: _____
Title: _____

**CITY:** **CITY OF LINCOLN, NEBRASKA**

By: _____
Chris Beutler, Mayor of Lincoln

# EXHIBIT A

## Bid Documents

*Approved by Law*
*6-24-13*

Return to Login • Supplier Registration

## Bid Opportunity Detail

**Bid Number** 13-154 (Restroom Supplies for Pinnacle Bank Arena)
**Close Date & Time** 5/21/2013 12:00:00 PM Central
**Time Left** 17 days 22 hours 56 minutes 5 seconds

### Bid Information

| | |
|---|---|
| **Bid Type** | Bid |
| **Issue Date & Time** | 5/1/2013 8:20:32 AM Central |
| **Close Date & Time** | 5/21/2013 12:00:00 PM Central |
| **Bid Status** | Issued |
| **Bid Notes** | |

### Contact Information

| | |
|---|---|
| **Contact Name** | Vince Mejer Purchasing Agent |
| **Address** | Purchasing<br>440 S. 8th St.<br>Lincoln, NE 68508 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 | Acrobat (PDF) | PDF Invitation to Bid |

### Bid Attachments

| Location | File Name | Description |
|---|---|---|
| Header | 13-154 City Clerk.pdf (1KB) | Notice to Bidders |
| Header | Instructions to Bidders JPA - B 09-19-11.pdf (26KB) | Instructions to Bidders |
| Header | JPA Insurance March 2012.pdf (236KB) | Insurance Requirements |
| Header | EEO.pdf (5KB) | Equal Employment Opportunity |
| Header | Term Prov.pdf (4KB) | Termination for Convenience Cause |
| Header | Affirm act.pdf (3KB) | Affirmative Action |
| Header | JPA Bonding.pdf (392KB) | Sample Bonding & Neb. Rev. Stat. 77-1323. |
| Header | Empl_Class_Act_EO.pdf (1KB) | Employee Classification Act, Executive Order 83319 |
| Header | Empl_Class_Act_Aff.pdf (52KB) | Employee Classification Act Affidavit |
| Header | 13-154 spec.pdf (24KB) | Specifications |
| Header | 13-154 draw.pdf (4.89MB) | Arena Drawings |

**Advertise 1 time**
**Wednesday, May 1, 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 pm, Tuesday, May 21, 2013** for providing the following:

### Restroom Supplies
### for
### Pinnacle Bank Arena
### Bid No. 13-154

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 (402) 441-7417 or vmejer@lincoln.ne.gov

**EXHIBIT A TO CONTRACT AGREEMENT**

**RESTROOM SUPPLIES**
**FOR**
**PINNACLE BANK ARENA**

**SPECIFICATIONS**
**BID NO. 13-154**

1. **INSTRUCTIONS**
   - 1.1 City of Lincoln and SMG hereinafter referred to as SMG, requests bids from qualified Restroom Supply Dealers, hereinafter referred to as Vendors, to provide restroom supplies for the Pinnacle Bank Arena located at 400 Pinnacle Arena Drive Lincoln, NE.
   - 1.2 Vendors must submit an electronic response on the City/County Purchasing E-bid System prior to the date and time listed in the specifications.
     - 1.2.1 Bid received after the specified day and hour will not be accepted.
   - 1.3 All inquiries regarding these specifications shall be directed via e-mail or faxed written request to Vince M. Mejer, Purchasing Agent (vmejer@lincoln.ne.gov) or Fax: 402-441-6513.
     - 1.3.1 All inquiries must be received by the Purchasing Office five (5) days prior to closing date and time.
     - 1.3.2 These inquiries and/or responses shall be distributed as an electronic addenda through the City/County E-bid System.
     - 1.3.3 Vendors are not allowed to discuss this bid with any employee of the arena, elected official or project manager other than the City/County Purchasing Staff through the award process.
       - 1.3.3.1 Failure to follow this requirement may result in immediate disqualification of your bid.
     - 1.3.4 Plans of the facility and layout drawings for the areas being furnished are attachments to this RFP.
   - 1.4 These specifications were developed around Hillyard, Tork and Rubbermaid; items equaling or exceeding these specifications are acceptable.

2. **COMPETITION INTENDED**
   - 2.1 It is the City of Lincoln's intent that this bid is to permit competition among the interested Vendors.
   - 2.2 It shall be the Vendors responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this bid to a single source.
     - 2.2.1 Such notification must be received by the Purchasing Agent not later than five (5) days prior to the date set for acceptance of bid.

3. **PROJECT DESCRIPTION**

3.1 The SMG is requesting bids for Restroom Supplies for use within the arena.

3.2 Specific brands and model numbers may have been listed for all products in order to give a base line for the type and quality of product being requested.

3.2.1 The SMG will accept equivalent brands and models provided the Vendor submits specific information that proves an equivalent or higher range of quality.

3.2.1.1 Failure to supply information for equivalent brands will be reason to dismiss bids.

3.2.2 Information on each product being proposed and equivalency shall be included in the item notes.

3.3 Vendors must provide warranty information on all the products they are bidding

3.3.1. Products with a warranty of less than one year will not be considered.

3.4. A staging area will be available at the facility prior to installation.

3.4.1 The amount of space and the date of staging will be provided to the awarded Vendor upon contract execution.

3.5 The intent of this bid and resulting contract is to select a single firm offering the lowest price and a firm fixed discount structure from manufacturer's list price schedules for Restroom Supplies as specified herein.

3.6 Restroom Supplies must be delivered and installed by July 1, 2013.

4. **PRICING AND RESPONSE REQUIREMENTS**

4.1 Vendors shall follow these instructions for the pricing of each item being requested:

4.1.1 The Specifications lists items for each floor of the facility with a Line Item that lists the areas to be furnished.

4.1.2 The price being proposed must be for the same type of Restroom Supplies (not necessarily the brand or model) and accessories as listed in the plans and Attachments.

4.1.3 The Vendor shall list the Brand and Model of Restroom Supplies being proposed in the Supplier Notes of each Line Item.

4.1.4 In addition to pricing in the Line Items, the Vendor shall provide information as attachments which includes product description, model and brand, and price that will correspond with the Line Items in the E-bid System.

4.1.5 The finishes on the Restroom Supplies shall comply closely with the products specified.

4.2 The SMG reserves the right to award this bid on an all or nothing basis or on a line item basis.

4.2.1 Vendors can give further "discounted" pricing on all products, if awarded the entire proposal.

4.3 The specifications lists for the installation of the Restroom Supplies throughout the building.

4.3.1 Vendor shall list the cost for each type of Restroom Supply in the Line Item Unit Price.

4.3.2 Vendor shall list the number of hours to complete the assembly and installation of each type of Restroom Supply in their written response.

4.4 Vendor shall complete the notes which requests the discounted amount from list price on the Restroom Supply being bid.

4.5 All pricing provided in the proposal shall include delivery and installation to the Arena initial hardware.

4.6 The SMG is tax exempt and the awarded Vendor/s shall receive a Form 13 upon contract award.

4.7 The SMG shall have the option to purchase additional hardware and supplies for this location for a period of two (2) years following project completion with the same pricing and terms as outlined in the Vendors proposal and subsequent contract, unless other wise stated.

4.8 Vendor shall provide a complete breakdown of the delivery time lines for each type of Restroom Supply being requested (ie. Toilet Paper Dispenser, Paper Towel Dispenser, Soap Dispenser, Deodorize, Seat Cover Dispenser, Hand Sanitizer Dispenser, etc.) in the notes section.

4.9.1 Delivery cannot be made without prior authorization from the Project Manager (PC Sports).

## 5. SCOPE OF SERVICES

5.1 All bids must be made on the basis of and either meet or exceed the requirements contained herein.

5.2 The SMG intends to enter into a requirements contract, to procure Restroom Supplies and related products and support services.

5.2.1 For the purpose of this bid, Restroom Supplies shall consist of Paper Dispensers, Soap/Hand Sanitizer Dispensers and Deodorizer and all materials needed to install these dispensers and the products contained therein.

5.2.2 The successful proposer shall be required to offer technical, design, reconfiguration assistance; and ordering, delivery and installation services to various specified locations.

## 6. GENERAL STANDARDS

6.1 This bid covers Restroom Supplies designed to provide paper products and hygienic supplies to the attendees of events.

6.2 The Restroom Supplies shall consist of dispensers that shall be mounted meeting the requirements specified herein.

6.3 All dispensers shall be of a design, material and workmanship to withstand hard, daily usage over an extended life with a minimum of maintenance and repair.

6.3.1 All dispensers shall be mounted to assure safety, good appearance, and provide for a safe working position.

6.3.2 All dispensers shall be mounted identically to all similar dispensers to maintain a strict measure of uniformity.

6.4 The bidder shall certify that the consumables offered, shall remain available for a minimum period of five (5) years.

6.5 Bidder shall warrant their products against defects in materials and workmanship for a period of not less than two (2) years from the date of installation acceptance.

7. **MOUNTING**

7.1 Mounting shall be performed to provide uniform level of all dispensers at heights determined with SMG, PC Sports and Mortenson Construction.

7.1.1 A percentage of all dispensers shall be hung at heights that comply with ADA Standards.

7.1.2 All items shall be surfaced mounted.

7.1.3 Any items that require bracket mounting in wall tile, the vendor is to protect the tile from cracking at drilled locations.

7.1.4 Any tiles that are damaged are to be replaced at the vendor's expense.

7.2 In all food prep areas any and all items are to be sealed at wall in accordance with the local health department.

8. **PAPER TOWEL DISPENSERS**

8.1 Shall be black in color.

8.2 Shall measure 14'6"H x 13.2"W x 8.1"D.

8.3 Shall use no-touch dispensing.

8.4 No special tools will be needed to adjust sheet length.

8.5 LED refill and low battery light indicators.

8.6 Shall be lockable.

9. **TOILET PAPER DISPENSER**

9.1 Shall be black in color.

9.2 Shall measure 10.1"H x 17.0W" x 5.7"D.

9.3 Shall hold 2 rolls of paper with roll width of 3.55" and length of 751 feet.

9.4 Shall be lockable.

10. **SOAP/SANITIZER DISPENSER**

10.1 Shall be black in color.

10.2 Shall be a touch free dispenser.

10.3 Shall measure 10.75"H x 6.25"W x 3.75"D.

10.4 Foam output shall be 0.4 mL per press.

10.5 Gel output shall be 1.0 mL per press.

10.6 Shall be lockable.

11. **SHAMPOO AND BODY GEL DISPENSER**

11.1 Shall be black in color.

11.2 Shall measure 10.75"H x 6.25"W x 3.75"D.

11.3 Foam output shall be 0.4 mL per press.

11.4 Gel output shall be 1.0 mL per press.

11.5 Shall be lockable.

12. **TOILET SEAT COVER DISPENSER**
    - 12.1 Shall be smoke/gray in color.
    - 12.2 Shall measure 16.375"W x 2.5"D x 11.75"H.
    - 12.3 Shall hold minimum 250 seat covers.

13. **AEROSOL ODOR CONTROL DISPENSER**
    - 13.1 Shall be white in color.
    - 13.2 Shall measure 3.56"W x 8.75"H.
    - 13.3 Shall have a Liquid Crystal display Screen to show.
        - 13.3.1 Battery Life.
        - 13.3.2 Cartridge Refill.
    - 13.4 Control odors in 6,000 cubic feet of space.
    - 13.5 Minimum two spray intervals.
    - 13.6 Shall be lockable.
    - 13.7 Shall last approximately 180 days between refills.

14. **PAPER TOWEL STOCK TYPE A**
    - 14.1 Shall be natural in color.
    - 14.2 Shall be 7.75"W x 700'L.
    - 14.3 Shall be single Ply.
    - 14.4 Shall be packaged 6 Rolls/Case.
    - 14.5 Shall be made with 100% recycled material.
    - 14.6 Shall be Ecologo and Green Seal Certified.
    - 14.7 Initial stock shall be minimum of 6 rolls per dispenser.
    - 14.8 Price per case/gross shall be guaranteed for minimum of two (2) years.

15. **PAPER TOWEL STOCK TYPE B**
    - 15.1 Shall be white in color.
    - 15.2 Shall be 7.75"W x 525'L.
    - 15.3 Shall be two-ply.
    - 15.4 Shall be packaged 6 Rolls/Case.
    - 15.5 Shall be made with 100% recycled material.
    - 15.6 Shall be Ecologo Certified.
    - 15.7 Initial stock shall be 6 rolls per dispenser.
    - 15.8 Price per case/gross shall be guaranteed for minimum of two (2) years.

16. **TOILET PAPER STOCK TYPE A**
    - 16.1 Shall be white in color.
    - 16.2 Shall be 3.55"W x 751'L.
    - 16.3 Shall be two-ply.
    - 16.4 Shall be packaged 12 Rolls/Case.
    - 16.5 Shall be made with 100% recycled material.
    - 16.6 Shall be EcoLogo Certified.
    - 16.7 Shall be EPA compliant containing a minimum of 20% post-consumer waste.
    - 16.8 Initial stock shall be 12 rolls per dispenser.
    - 16.9 Price per case/gross shall be guaranteed for minimum of two (2) years.

17. **TOILET PAPER STOCK TYPE B**
    - 17.1 Shall be white in color.
    - 17.2 Shall be 3.55"W x 751'L.
    - 17.3 Shall be two-ply.
    - 17.4 Shall be packaged 12 Rolls/Case.
    - 17.5 Initial stock shall be 12 rolls per dispenser
    - 17.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

18. **HAND SOAP STOCK**
    - 18.1 Shall be 1000 mL containers.
    - 18.2 Refill containers must be sealed.
    - 18.3 Shall be packaged 3 per case.
    - 18.4 Initial Stock shall be 3 per dispenser.
    - 18.5 Vendor to submit samples of fragrances for final choice.
    - 18.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

19. **SANITIZER STOCK**
    - 19.1 Shall be 1000 mL containers.
    - 19.2 Refill containers must be sealed.
    - 19.3 Shall be packaged 3 per case.
    - 19.4 Initial Stock shall be 3 per dispenser.
    - 19.5 Shall be an alcohol based sanitizer formulated to be used without water.
    - 19.6 Shall be colorless with a pleasant scent.
    - 19.7 pH concentrate shall be between 6.25 and 7.25.
    - 19.8 Price per case/gross shall be guaranteed for minimum of two (2) years.

20. **HAIR AND BODY WASH GEL**
    - 20.1 Shall be 1250 mL containers.
    - 20.2 Refill containers must be sealed.
    - 20.3 Shall be packaged 4 per case.
    - 20.4 Initial Stock shall be 4 per dispenser.
    - 20.5 Must contain more then 70% USDA certified Biobased product.
    - 20.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

21. **TOILET SEAT COVER STOCK**
    - 21.1 Shall be white in color.
    - 21.2 Shall be in a package count of 250.
    - 21.3 Initial stock shall be 2 packages per dispenser.
    - 21.4 Case quantity shall be 20.
    - 21.5 Price per case/gross shall be guaranteed for minimum of two (2) years.

22. **AEROSOL ODOR CONTROL STOCK**
    - 22.1 Shall be packaged 4 per case.
    - 22.2 Initial stock to be 2 per dispenser.
    - 22.3 Vendor to submit samples of fragrances for final choice.
    - 22.4 Price per case/gross shall be guaranteed for minimum of two (2) years.

## 23. FLAT URINAL SCREEN

23.1 Shall be white in color.
23.2 Shall be flexible to fit any urinal contour.
23.3 Shall be impregnated with deodorant with a natural fragrance.
23.4 Shall be packaged 12 per case.
23.5 Initial stock shall be 3 per urinal.
23.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

## 24. SAFETY

24.1 All contractors and subcontractors performing services for the SMG are required and shall comply with all Occupational Safety and Health Administration (OSHA), State, and local laws.
24.2 Also all contractors and subcontractors shall be responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site area under this contract.
24.3 Contractor to follow SMG's general contractors safety requirements (Mortenson Construction).

## 25. OVERVIEW OF THE EVALUATION PROCESS

25.1 The General Contract Terms and Conditions set forth certain criteria which will be used in the receipt of bid and selection of the successful firm.
25.2 Product line (quality, stability, variety, degree of end-product manufactured by proposer, and product warranty, etc.).
25.3 Level of services offered including design assistance, installation, training and orientation available via your firm or the manufacturer.
25.4 Order placement, delivery and installation (i.e., order placement system, expedite shipments, delays, purchase order expediting and status reporting system, etc.)
25.5 Credentials and related experience.
25.6 Cost; (i.e., price schedule, and discounts off list price, volume incentives, etc.).
25.7 Compliance with the contract and proposal terms and conditions.
25.8 The SMG may conduct interviews and request product demonstrations with one or more of the top ranked firms, usually the top two or three depending upon the number of bid received.

## 26. INSTALLATION REQUIREMENTS

26.1 The SMG will require the installation of dispensers being bid, however, has the option to use its own staff if costs exceed budget.
26.2 Installation companies must meet the SMG's Insurance Requirements that are attached to the Ebid Bid Attachments.

## 27. REQUIREMENTS

27.1 General Statement of Qualifications which includes the following:
- 27.1.1 Company name, address and telephone number.
- 27.1.2 Number of years established and former names of firm.
- 27.1.3 Types of services particularly qualified to perform.
- 27.1.4 Key personnel who will work on this project, relevant experience and length of service with the company.
- 27.1.5 Number of staff usually and currently employed.

27.1.6 List of completed projects of similar scope to this project.

27.1.6.1 This should include detailed project examples/descriptions and photographs/images.

27.1.6.2 Descriptions should include list of references including name, title and contact information, phone number and email address.

27.1.6.3 Willingness and capability to meet the required scope of services and time requirements expressed.

27.1.7 Other additional material as required in these Specifications.

27.2 Please limit submittals to information directly related to the products being proposed.

27.3 The proposed total price of the project will be an award consideration.

27.4 Bidders must complete and submit the electronic portion (Attributes and Line and Item sections) of this proposal on the E-bid system.

27.4.1 The electronic response of this proposal will include information such as proposal requirements, attachments and addendum acknowledgments.

27.4.2 Electronic submittal must be submitted before the closing date and time of this bid.

27.5 Vendor may include any "Value Added" services offered if their company is chosen for award.

## 28. SELECTION PROCESS AND AWARD CONSIDERATIONS

28.1 The selection and award process will include the following steps.

| | | |
|---|---|---|
| 28.1.1 | Issue Bid - | May 1, 2013. |
| 28.1.2 | Last Day for Questions - | May 13, 2013 |
| 28.1.3 | Receive Bid - | May 21, 2013 |
| 28.1.4 | Issue Purchase orders/contracts | May 31, 2013 |
| 28.1.5 | Complete Delivery and Installation - | July 1, 2013 |

28.2 The criteria for determining the level of responsiveness of each proposal include, but are not limited to:

28.2.1 The ability, capacity and skill of the Vendor to deliver the necessary elements to meet the requirement of the RFP.

28.2.2 The ability, capacity and skill of the Vendor to understand the project and meet deadlines.

28.2.3 The experience, professional integrity, efficiency, character, and judgment of the Vendor.

28.2.4 Vendor's prior experience for projects with similar scope and scale.

28.2.5 The quality of Vendor's performance (management and technical) on projects, including the ability to establish and meet project schedules.

28.2.6 The detailed price list.

# 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 | 13-154 Addendum 2 |
| Title | Restroom Suppies for Pinnacle Bank Arena |
| Bid Type | Bid |
| Issue Date | 05/01/2013 |
| Close Date | 5/21/2013 12:00:00 PM CT |
| Need by Date | |

## Contact Information

| | |
|---|---|
| Address | Purchasing<br>440 S. 8th St.<br>Lincoln, NE 68508 |
| Contact | Vince Mejer<br>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 | Pinnacle Bank Arena<br><br>Lincoln, NE 68508 |
| Contact | |
| Department | |
| Building | |
| Floor/Room | |
| Telephone | |
| Fax | |
| Email | |

## Supplier Information

| | |
|---|---|
| Company | Cash-Wa Distributing Co. |
| Address | 2500 State Fair Park Drive<br><br>Lincoln , NE 68501 |
| Contact | |
| Department | |
| Building | |
| Floor/Room | |
| Telephone | 1 (402) 4663663 219 |
| Fax | 1 (402) 4667352 |
| Email | |
| Submitted | 5/20/2013 10:00:23 AM CT |
| Total | $12,842.796 |

Signature _____

## Supplier Notes

allowences for dispensers will be included on seperate line for installation cost.

## Bid Notes

## Bid Activities

## Bid Messages

Please review the following and respond where necessary



**EXHIBIT A TO CONTRACT AGREEMENT**

| # | Name | Note | Response |
|---|---|---|---|
| 1 | Instructions to Bidders | I acknowledge reading and understanding the Instructions to Bidders. | Yes |
| 2 | Insurance Requirements | I acknowledge reading and understanding the Insurance Requirements. | Yes |
| 3 | Specifications | I acknowledge reading and understanding the specifications. | Yes |
| 4 | Drawings | I acknowledge reading and understanding the Project Drawings. | Yes |
| 5 | 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 |
| 6 | Tax Exempt Certification 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. | Yes |
| 7 | Employee Class Act EO | I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319. | Yes |
| 8 | Employee Class Act Affidavit | I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract. | Yes |
| 9 | Delivery | Delivery and Installation shall be complete by July 1, 2013 | yes |
| 10 | Quantities | I acknowledge that the quantities listed for each line item are an estimated yearly amount. The City does not guarantee any dollar amount or order quantities for the term of the contract. | Y |
| 11 | Contact | Name of person submitting this bid: | Bob Kruse |
| 12 | Electronic Signature | Please check here for your electronic signature. | Yes |
| 13 | Agreement to Addendum No. 1 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. <br>Reason: Attached Addendum No. 1. | Yes |
| 14 | Agreement to Addendum No. 2 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. <br>Reason: Attached Addendum No. 2. | Yes |

## Line Items

| # | Qty | UOM | Description | Response |
|---|---|---|---|---|
| 1 | 190 | EA | Toilet Paper Dispenser Type "A" | $0.00 |

Item Notes: See Description in Specification Section 9 for complete list of requirements for item.

Supplier Notes: allowences for dispensers will be included on seperate line totalling $570.00 towards installation cost.

| 2 | 82 | EA | Toilet Paper Dispenser Type "B" | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 9 for complete list of requirements for item.

Supplier Notes: allowences for dispensers will be included on seperate line totalling $246.00towards installation cost.

| 3 | 218 | EA | Soap/Sanitizer Dispenser | No Bid |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 10 for complete list of requirements per item.

Supplier Notes:

| 4 | 93 | EA | Paper Towel Dispenser Paper Type "A" | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 8 for complete list of requirements for item.

Supplier Notes: allowences for dispensers will be included on seperate line totalling $465.00 towards installation cost.

| 5 | 32 | EA | Paper Towel Dispenser Paper Type "B" | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 8 for complete list of requirements for item.

Supplier Notes: allowences for dispensers will be included on seperate line totalling $160.00 towards installation cost.

| 6 | 74 | EA | Urinal Screen | No Bid |
|---|---|---|---|---|

Item Notes: For item 23 in Specifications

Supplier Notes:

| 7 | 65 | EA | Aerosol Odor Control Dispenser | No Bid |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 13 for complete list of requirements for item.

Supplier Notes:

| 8 | 102 | EA | Hand Sanitizer Dispenser | No Bid |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 10 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 9 | 8 | EA | Shampoo and Body Gel Dispenser | No Bid |

Item Notes: See Description in Specification Section 11 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 10 | 285 | EA | Toilet Seat Cover Dispensers | $0.00 |

Item Notes: See Description in Specification Section 12 for complete list of requirements for item.

Supplier Notes: allowences for dispensers will be included on seperate line totalling $864.00 towards installation cost.

| | | | | |
|---|---|---|---|---|
| 11 | 2,280 | Rolls | Toilet Paper Stock Type "A" | $2.278 |

Item Notes: See Description in Specification Section 16 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 12 | 984 | Rolls | Toilet Paper Stock Type "B" | $2.328 |

Item Notes: See Description in Specification Section 17 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 13 | 654 | EA | Hand Soap | No Bid |

Item Notes: See Description in Specification Section 18 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 14 | 306 | EA | Hand Sanitizer | No Bid |

Item Notes: See Description in Specification Section 19 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 15 | 32 | EA | Hair and Body Wash | No Bid |

Item Notes: See Description in Specification Section 20 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 16 | 570 | PKG | Toilet Seat Cover Stock | $2.642 |

Item Notes: See Description in Specification Section 21 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 17 | 130 | EA | Aerosol Odor Control Stock | No Bid |

Item Notes: See Description in Specification Section 22 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 18 | 222 | EA | Flat Urinal Stock | No Bid |

Item Notes: See Equipment Description sheet in Bid Section 23 for complete list of requirements per unit.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 19 | 558 | Rolls | Paper Towel Stock Type "A" | $4.748 |

Item Notes: See Description in Specification Section 14 for complete list of requirements for item.

Supplier Notes:

| | | | | |
|---|---|---|---|---|
| 20 | 192 | Rolls | Paper Towel Stock Type "B" | $6.265 |

Item Notes: See Description in Specification Section 15 for complete list of requirements for item.

Supplier Notes:

Response Total: $12,842.796

Bid No 13-154 Addendum

| Specification Responses | | | | | Amsan Omaha | Cash-Wa | | Hillyard | | LOW BID | Tentative Winning Bid | Notes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Line | Description | UOM | QTY | | Extended | Unit | Extended | Unit | Extended | | | |
| ~~1~~ | ~~Toilet Paper Dispenser Type "A"~~ | ~~EA~~ | ~~0~~ | ~~190~~ | ~~NO BID~~ | | ~~$ (570.0000)~~ | ~~$ -~~ | ~~$ -~~ | ~~$ (570.0000)~~ | ~~$ -~~ | ~~Hillyard (only get item 2 for all dispensers)~~ |
| 2 | Toilet Paper Dispenser Type "B" | EA | 272 | 82 | NO BID | | $ (246.0000) | $ - | $ - | $ (1,088.0000) | $ - | Hillyard (only get item 2 for all dispensers) |
| 3 | Soap/Sanitizer Dispenser | EA | 218 | | NO BID | NO BID | NO BID | $ - | $ - | $ (654.0000) | $ - | Hillyard (when added with install cost is less then EGAN |
| 4 | Paper Towel Dispenser Paper Type "A" | EA | 93 | | NO BID | | $ (465.0000) | $ - | $ - | $ (465.0000) | $ (465.0000) | Cash-Wa bid exactly per spec |
| 5 | Paper Towel Dispenser Paper Type "B" | EA | 32 | | NO BID | | $ (160.0000) | $ - | $ - | $ (160.0000) | $ (160.0000) | Cash-Wa bid exactly per spec |
| 6 | Urinal Screen | EA | 74 | | NO BID | NO BID | NO BID | $ 0.7700 | $ 56.9800 | $ 53.2800 | $ 56.9800 | Hillyard (National states it is an all or nothing bid) |
| ALT 6 | Urinal Screen - Green in color Morning Fresh Scent | EA | 74 | | | | | | | | | |
| 7 | Aerosol Odor Control Dispenser | EA | 65 | | $ 2,802.8000 | NO BID | NO BID | $ 28.3300 | $ 1,841.4500 | $ - | $ 1,841.4500 | Hillyard |
| 8 | Hand Sanitizer Dispenser | EA | 102 | | NO BID | NO BID | NO BID | $ - | $ - | $ (306.0000) | $ - | Hillyard (when added with install cost is less then EGAN |
| ALT 8 | Hand Sanitizer - Almond | EA | 102 | | | | | | | | | |
| 9 | Shampoo and Body Gel Dispenser | EA | 8 | | NO BID | NO BID | NO BID | $ - | $ - | $ (24.0000) | $ - | Hillyard |
| ALT 9 | Shampoo and Body Gel Dispenser - Almond in color | EA | 8 | | NO BID | NO BID | NO BID | | | $ - | | |
| 10 | Toilet Seat Cover Dispensers | EA | 285 | | NO BID | | $ (864.0000) | $ 6.0000 | $ 1,710.0000 | $ (864.0000) | $ (864.0000) | Cash-Wa need to see sample |
| ~~11~~ | ~~Toilet Paper Stock Type "A"~~ | ~~Rolls~~ | ~~0~~ | ~~####~~ | ~~NO BID~~ | ~~$ 2.2780~~ | ~~$ -~~ | ~~$ 1.0200~~ | ~~$ -~~ | ~~$ -~~ | ~~$ -~~ | ~~Hillyard - need to see sample~~ |
| 12 | Toilet Paper Stock Type "B" | Rolls | 3264 | 984 | NO BID | $ 2.3280 | $ 7,598.5920 | $ 1.0200 | $ 3,329.2800 | $ 3,329.2800 | $ 3,329.2800 | Hillyard - need to see sample |
| 13 | Hand Soap | EA | 654 | | NO BID | NO BID | NO BID | $ 9.4500 | $ 6,180.3000 | $ 4,139.8200 | $ 6,180.3000 | Hillyard (when added **with** install cost is less then EGAN |
| ALT 13 | Hand Soap | EA | 654 | | NO BID | NO BID | NO BID | | | $ - | | |
| 14 | Hand Sanitizer | EA | 306 | | NO BID | NO BID | NO BID | $ 12.2000 | $ 3,733.2000 | $ 2,910.0600 | $ 3,733.2000 | Hillyard (when added with install cost is less then EGAN |
| ALT 14 | Hand Sanitizer | EA | 306 | | NO BID | NO BID | NO BID | | $ - | $ - | | |
| 15 | Hair and Body Wash | EA | 32 | | NO BID | NO BID | NO BID | $ 5.0300 | $ 160.9600 | $ 160.9600 | $ 160.9600 | Hillyard |
| 16 | Toilet Seat Cover Stock | PKG | 570 | | NO BID | $ 2.6420 | $ 1,505.9400 | $ 4.6100 | $ 2,627.7000 | $ 785.1500 | $ 1,505.9400 | Cash-Wa need to see sample (national is all or nothing and EGAN is high when you add to cost of dispensers) |
| 17 | Aerosol Odor Control Stock | EA | 130 | | NO BID | NO BID | NO BID | $ 5.9800 | $ 777.4000 | $ 683.1500 | $ 777.4000 | Hillyard |
| 18 | Flat Urinal Stock | EA | 222 | | NO BID | NO BID | NO BID | $ 0.7700 | $ 170.9400 | $ 159.8400 | $ 170.9400 | Hillyard (National states it is an all or nothing bid) |
| 19 | Paper Towel Stock Type "A" | Rolls | 558 | | NO BID | $ 4.7480 | $ 2,649.3840 | $ 6.7000 | $ 3,738.6000 | $ 2,649.3840 | $ 2,649.3840 | Cash-Wa need to see sample |
| 20 | Paper Towel Stock Type "B" | Rolls | 192 | | NO BID | $ 6.2650 | $ 1,202.8800 | $ 7.6600 | $ 1,471.2000 | $ 1,202.8800 | $ 1,202.8800 | Cash-Wa need to see sample |
| | | | | | | | | | | | | |
| | | | Total | | $ 2,802.8000 | | $ 10,651.7960 | | $ 25,682.3300 | $ 11,952.8040 | $ 20,119.7140 | |

Total $ 3,869.2040 $ 16,250.5100

EXHIBIT A TO CONTRACT AGREEMENT

# EXHIBIT B

## Insurance Requirements for all City Contracts

*Approved by Law*
*6-24-13*

# INSURANCE REQUIREMENTS
# FOR ALL CITY CONTRACTS

## 1. GENERAL PROVISIONS

A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.

B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, 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.

C. **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.

D. **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.

E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and 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 the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.

F. **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.)

## 2. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage**. The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City 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.

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 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. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

| Coverage | Min Amt | Notes |
|---|---|---|
| General | $2,000,000 | Aggregate |
| Products and Completed Operations | $2,000,000 | Aggregate |
| Personal and Advertising Injury | $1,000,000 | |
| Each Occurrence | $1,000,000 | |
| 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 the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- 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.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) 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).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

**D. Vehicle liability insurance coverage.**

- The Contractor shall provide reaonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific 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. 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 $2,000,000 per occurrence, $6,000,000 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.

F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of $3,000,000 each occurrence and aggregate.

G. **City included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City 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 documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City 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 the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

## 3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:

(1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:

- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and

- is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.

(2) 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 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 the City, 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 the City and related to the Contract; and

(2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.

D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City 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 the City without the express written consent of the City.

**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 the City.

**5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

A. The Contractor shall promptly notify the City 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 the City 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 the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City'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 the City 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 the City, 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 City’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 the City.

# EXHIBIT C

**Intentionally Omitted.**

*Approved by Law*
*6-24-13*

# EXHIBIT D

## Other Contract Documents

*Approved by Law*
*6-24-13*

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

---

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

Owner (Name and Address):
**West Haymarket Joint Public Agency**
**555 South 10th St.**
**Lincoln, NE 68508**

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp.Seal)

Signature:_____
Name and Title: Name and Title:

Signature:_____

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practiceable after the amount is determined tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; an d

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a satutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

Owner (Name and Address):
**West Haymarket Joint Public Agency**
**555 South 10th St.**
**Lincoln, NE 68508**

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:

   2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:

   4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.

   4.2 Claimants who do not have a direct contract with the Contractor:

   1.Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and

   2.Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

   3.Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

   6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

   6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

   By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

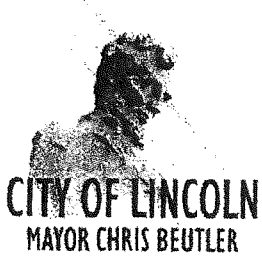
    15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

    15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

    15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

smart # 10070200
7-26-10/law/tb




# CITY OF LINCOLN
# EXECUTIVE ORDER

NO. 083319

WHEREAS, there is concern over the inappropriate competitive advantages in the public bidding process for local publicly funded construction and delivery service contracts resulting from the misclassification of individuals performing construction labor services as "independent contractors" rather than "employees"; such "independent contractors" are commonly referred to as "1099 workers" due to the IRS form they receive rather than a W-4 which an employee receives;

WHEREAS, this misclassification of such individuals as "independent contractors" rather than as "employees" eliminates any obligation to pay these individuals legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit such individuals would typically receive if properly classified as employees;

WHEREAS, this misclassification of individuals performing construction labor services for the contractor as "independent contractors" rather than "employees" is a violation of federal and state law, but is difficult to enforce once public construction or delivery service contracts have been bid, awarded, and entered into;

WHEREAS, the use of public funds to compensate contractors who unlawfully avoid their obligation to pay legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit is not in the public interest; and

**EXHIBIT D**

WHEREAS, the Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912 (effective July 15, 2010) provides that any contract entered into between a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat. § 4-114 requirements that the contractor register and use a federal immigration employment verification system to determine the work eligibility status of new employees physically performing services in the State of Nebraska, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to § 48-2912 of the Employee Classification Act.

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, I hereby establish the following policy as to the bid and award of contracts to contractors for construction and delivery services with the City of Lincoln:

The Purchasing Agent shall immediately include in the City of Lincoln's notice to bidders for construction contracts that all contractors submitting bids in response to the notice shall affirmatively certify to the Purchasing Agent that all individuals hired to perform construction or delivery labor services for the contractor under the contract shall be properly classified as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under federal and state law (including the requirements of the State of Nebraska Employee Classification Act), and that the contractor will comply with all legal obligations with respect to these employees (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes). The



**EXHIBIT D**

notice to bidders shall further provide that contractors may use affidavits required pursuant to the Employee Classification Act for this purpose, but that a failure to make the affirmative certification to the Purchasing Agent shall render the bidder ineligible for award of the contract.

The Purchasing Agent shall immediately include the following provisions in contracts for construction or delivery services:

(1) Contractor agrees that each individual performing services for the contractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that contractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(2) Contractor understands and agrees that failure to classify each individual hired to perform services under the contract as an employee rather than as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the contract by the City.

(3) Contractor additionally agrees to include the following provisions in each subcontract entered into with a subcontractor as part of the contractor's contract with the City:

(a) Subcontractor agrees that each individual performing services for the subcontractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that subcontractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay,

workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(b) Subcontractor understands and agrees that subcontractor's failure to properly classify individuals hired to perform services under the subcontract as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the subcontract by the contractor.

(4) Contractor agrees that if subcontractor fails to or is suspected of failing to properly classify each individual hired pursuant to the subcontract as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or fails to comply with legal obligations with respect to the subcontractor's employee, the contractor shall take appropriate corrective action including, but not limited to, reporting the suspected violation of the State of Nebraska Employee Classification Act to the Nebraska Department of Labor or rescission of the subcontract by the contractor. Written notification of the corrective action shall be submitted to the City of Lincoln Purchasing Department. Contractor understands and agrees that contractor's failure to take appropriate corrective action shall be considered a breach of the contractor's contract with the City of Lincoln and is a grounds for rescission of the contract by the City.

(5) The City of Lincoln shall notify the Nebraska Department of Labor of any contractor or subcontractor it has determined is in breach of contract due to the terms of this order.

(6) Any contractor or subcontractor who shall have been determined by the Nebraska Department of Labor to have knowingly provided a false affidavit to the City of Lincoln

under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period of time, in accordance with Lincoln Municipal Code § 2.18.030(n)(1) or (2).

(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 5 of Neb. Rev. Stat. § 48-604 and is otherwise valid under federal and state law and is not intended to circumvent lawful obligations under federal and state law or city contractual requirements.

The City Clerk is directed to send a copy of this Executive Order to Vince Mejer, City Purchasing Agent, for his record.

Dated this 28 day of July, 2010.

Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney



**EXHIBIT D**

## EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, I, _____, herein below known as the Contractor, state under oath and swear as follows:

1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.

2.The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.

3. The Contractor has complied with Neb Rev Stat 4-114.

4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.

5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to section 12 of this Act.

6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska )
) ss.
County of _____ )

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this ____ day of _____, 20__.

_____
Notary Public

**EXHIBIT D**

29 C.F.R. § 5.5

Code of Federal Regulations Currentness
Title 29. Labor
Subtitle A. Office of the Secretary of Labor
Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)
Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

**§ 5.5 Contract provisions and related matters.**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when

Exhibit D

the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract,

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the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

Exhibit D

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the

name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

| Paragraph | OMB Control Number |
|---|---|
| (a)(1)(ii)(B) | 1215-01 |
| (a)(1)(ii)(C) | 1215-01 |
| (a)(1)(iv) | 1215-01 |
| (a)(3)(i) | 1215-0140, 1215-00 |
| (a)(3)(ii)(A) | 1215-01 |
| (c) | 1215-0140, 1215-00 |

[29 FR 100, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 30 FR 13136, Oct. 15, 1965; 36 FR 19304, Oct. 2, 1971; 40 FR 30481, July 21, 1975; 41 FR 10063, March 9, 1976; 47 FR 145, Jan. 5, 1982; 51 FR 12265, April 9, 1986; 54 FR 4243, Jan. 27, 1989; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 61 FR 68641, Dec. 30, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 74 FR 2862, Jan. 16, 2009]

SOURCE: 48 FR 19541, April 29, 1983; 51 FR 12265, April 9, 1986; 61 FR 40716, Aug. 5, 1996; 65 FR 80278, Dec. 20, 2000; 73 FR 77511, Dec. 19, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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Exhibit D

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General Decision Number: NE130058 06/14/2013 NE58

Superseded General Decision Number: NE20120065

State: Nebraska

Construction Type: Building
BUILDING CONSTRUCTION INCLUDING WORK ON INDUSTRIAL SITES

County: Lancaster County in Nebraska.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---|---|
| 0 | 01/04/2013 |
| 1 | 03/22/2013 |
| 2 | 04/19/2013 |
| 3 | 05/24/2013 |
| 4 | 06/14/2013 |

CARP0444-002 07/01/2012

| | Rates | Fringes |
|---|---|---|
| CARPENTER (Drywall Hanging Only) | $ 21.18 | 9.98 |

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ELEC0265-003 09/01/2012

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN | | |
| Zone 1 | $ 25.77 | 9.96 |
| Zone 2 | $ 26.07 | 9.96 |
| Zone 3 | $ 26.37 | 9.96 |
| Zone 4 | $ 26.77 | 9.96 |

ZONE DEFINITIONS:
Zone 1: 0 to 35 miles from the main Post Office in Lincoln
Zone 2: 36 to 50 miles from the main Post Office in Lincoln
Zone 3: 51 to 75 miles from the main Post Office in Lincoln
Zone 4: 76 miles and over from the main Post Office in Lincoln

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ELEV0028-001 01/01/2013

| | Rates | Fringes |
|---|---|---|
| ELEVATOR MECHANIC | $ 39.09 | 25.185+a+b |

FOOTNOTE:
a. Vacation Pay: 8% for persons with 5 or more years of service, 6% for persons with less than 5 years of service.
b. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after

**EXHIBIT D TO CONTRACT AGREEMENT**

Thanksgiving, and Christmas Day.

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ENGI0571-004 10/01/2012

| | Rates | Fringes |
|---|---|---|
| OPERATOR: Crane | $ 27.03 | 9.59 |
| OPERATOR: Forklift | $ 21.65 | 9.59 |

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IRON0021-002 06/01/2012

| | Rates | Fringes |
|---|---|---|
| IRONWORKER, STRUCTURAL | $ 26.37 | 11.95 |

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LABO1140-003 01/01/2013

| | Rates | Fringes |
|---|---|---|
| LABORER (Mason Tender, Brick & Hod) | $ 17.03 | 8.95 |

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* PLUM0464-007 06/01/2013

| | Rates | Fringes |
|---|---|---|
| PIPEFITTER (Including HVAC Pipe Installation) | $ 32.94 | 14.59 |

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SHEE0003-002 07/01/2012

| | Rates | Fringes |
|---|---|---|
| SHEET METAL WORKER (Excludes Installation of HVAC Duct) | $ 31.71 | 13.34 |

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SUNE2011-032 10/27/2011

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER | $ 24.44 | 0.00 |
| CARPENTER | $ 18.50 | 1.80 |
| CEMENT MASON/CONCRETE FINISHER | $ 15.73 | 2.06 |
| ELECTRICIAN (Alarm Installation) | $ 19.68 | 4.12 |
| ELECTRICIAN (Low Voltage Wiring) | $ 20.15 | 4.84 |
| FORM WORKER | $ 14.97 | 2.06 |
| LABORER: Common or General | $ 12.03 | 0.00 |
| OPERATOR: Backhoe/Excavator/Trackhoe | $ 20.68 | 4.93 |
| OPERATOR: Bobcat/Skid | | |

**EXHIBIT D TO CONTRACT AGREEMENT**

Steer/Skid Loader.....$ 21.72 2.10

OPERATOR: Loader.....$ 19.27 4.00

PAINTER: Brush, Roller and
Spray.....$ 14.26 0.00

PLUMBER, Excludes HVAC Pipe
Installation.....$ 22.89 6.04

ROOFER.....$ 13.57 0.77

SHEET METAL WORKER (HVAC Duct
Installation Only).....$ 21.89 6.30

TRUCK DRIVER, Includes Dump
and Tandem Truck.....$ 14.09 2.49

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the

rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

*§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.*

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20___.

By: _____

Title:_____

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On _____, 20___, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

_____
Notary Public

(S E A L)

# RESTROOM SUPPLIES CONTRACT

**Bid No. 13-154**

THIS RESTOOM SUPPLIES CONTRACT ("Contract") is made and entered into as of this _____ day of _____, 2013, by and between **HILLYARD, INC.,** hereinafter called "Vendor," and the **CITY OF LINCOLN, NEBRASKA,** hereinafter called "City."

## RECITALS

WHEREAS, City has caused to be prepared, in accordance with law, Specifications and other Contract Documents from qualified Restroom Supply Dealers to provide and install Restroom Supplies as hereinafter described and has approved and adopted said documents and has caused to be published an Invitation to Bid advertisement for and in connection with the Contract.

WHEREAS, the Vendor, in response to such advertisement, has submitted to the City, in the manner and in the time specified, a sealed Supplier Response in accordance with the terms of said advertisement and the Specifications for Restroom Supplies.

WHEREAS, City, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the bids submitted in response to such advertisement, and as a result of such canvass has determined and declared the Vendor to be the lowest and best bidder for the provision and installation of Line Items 2, 3, 6, 7, 8, 9, 12, 13, 14, 15, 17, and 18 of the above-referenced Restroom Supplies Line Items for the total sum of Sixteen Thousand Two Hundred Fifty and 51/100ths Dollars ($16,250.51) as shown on the Bid No. 13-154 Addendum (includes increased quantities for Line Items 2 and 12). Copies of the Bid Opportunity Detail, Invitation to Bid, Specifications, Addendums, if any, and Supplier Response (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, City desires to engage Vendor to provide and install Restroom Supplies on the terms and conditions herein provided.

WHEREAS, Vendor hereby represents that Vendor is willing and able to provide and install the Restroom Supplies in accordance with this Contract.

NOW, THEREFORE, in consideration of the above Recitals and the below mutual covenants and agreements the Parties hereto, the Vendor and City do hereby agree as follows:

**SCOPE OF SERVICES**. The Vendor shall provide and install the Restroom Supplies as described in the Bid Documents and shall do everything required by this Contract. Vendor shall furnish all labor, materials, equipment, services, shipping, loading, packing and cleanup that is necessary for the Vendor's performance of this Contract.

**COMPENSATION.** City agrees to pay to Vendor for the provision and installation of the Restroom Supplies the amount of $6,250.51 set forth in the Supplier Response and Vendor agrees to accept said amount as full compensation therefor. Vendor represents that said amount includes Vendor'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 Restroom Supplies or this Contract. Vendor shall defend suits on claims for infringement or any patent, copyright, trademark or other intangible rights in any way related to this Contract.

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

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

Vendor further agrees to pay the prevailing wages set forth in the Building Construction Including Work on Industrial Sites General Wage Decision, NE130058 dated 06/14/2013 ("Effective Wage Decision"). Said Effective Wage Decision is included in the Other Attached Contract Documents (Exhibit D). Vendor agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the design and installation of the System. Vendor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Vendor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

**NEB. REV. STAT. § 77-1323 CERTIFIED STATEMENT.** Vendor, pursuant to the requirements of Neb. Rev. Stat. § 77-1323, has executed the Certified Statement attached hereto as part of Exhibit D certifying that all equipment to be used in performance of the design and installation of the System, except that acquired since the assessment date has been assessed for the current year. Vendor understands and acknowledges that under Neb. Rev. Stat. §77-1324, any person, partnership, limited liability company, association, or corporation falsifying any statement required by Neb. Rev. Stat. § 77-1323 shall be guilty of a Class IV misdemeanor.

**TIME OF COMPLETION**. The Restroom Supplies shall be delivered and installed no later than fourteen (14) days after execution of this contract. Failure to meet the terms of the Contract on or before the Completion Date may result in forfeiture of the performance bonds or deposit of any; shall be deemed a breach of this Contract.

**INDEMNIFICATION**. Vendor agrees to defend, indemnify and hold harmless City to the same extent and under the same terms and conditions as required by the Insurance Requirements for All City Contracts attached hereto as Exhibit B.

**INSURANCE.** Vendor shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Insurance Requirements for All City Contracts attached hereto as Exhibit B. Vendor agrees to provide all types of insurance required by the City. Vendor will furnish coverages against any and all perils required by the City.

**NON-RAIDING CLAUSE.** Vendor shall not engage the services of any person or persons presently in the employ of the City for work covered by this Contract without the written consent of the City.

**TERMINATION OF CONTRACT**. This Contract may be terminated by the following:

A. Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.

B. Termination for Cause. The City may terminate the Vendor for cause if the Vendor:

1. Refuses or fails to supply the proper labor, materials and equipment necessary to provide the services outlined in the Contract.
2. Disregards Federal, State or local laws, ordinances, regulations, resolution or orders.
3. Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default, the City will provide the Vendor written notice of such breach or default and allow the Vendor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the Contract shall terminate.

**FAIR EMPLOYMENT**. In connection with the performance of work under this Contract, Vendor 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 Vendor shall maintain Fair Labor Standards in the performance of this Contract as required by Chapter 73, Nebraska Revised Statues, as amended.

**ASSIGNABILITY.** The Vendor 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 City thereto; provided, however, that claims for money due or to become due to the Vendor from City under this Contract may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

**INTEREST OF VENDOR**. Vendor covenants that Vendor 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. Vendor further covenants that in the performance

of this Contract, no person having any such interest shall be employed or retained by Vendor under this Contract.

**INDEPENDENT CONTRACTOR.** The City is interested only in the results produced by this Contract. Vendor has sole and exclusive charge and control of the manner and means of performance. Vendor shall perform as an independent contractor and it is expressly understood and agreed that Vendor is not an employee of the City and is not entitled to any benefits to which City 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 City and Vendor.

**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 Vendor is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Vendor 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 Vendor 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 Vendor 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 Vendor is an individual or sole proprietor, the Vendor agrees to complete the United States Citizenship Attestation Form as provided by the City and attach it to the Contract.

C. Public Benefits Eligibility Status Check. If the Vendor 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 Vendor 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 Vendor 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 Vendor 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 City'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. Insurance Requirements for all City Contracts - Exhibit B.
3. Exhibit C – Intentionally Omitted.
4. Other Attached Contract Documents - Exhibit D.
   a. Commentary to Accompany Construction Bonds.
   b. Construction Performance Bond.
   c. Construction Payment Bond.
   d. Executive Order No 83319.
   e. 29 C.F.R. § 5.5(a) Contract Provisions.
   f. Effective Wage Decision.
   g. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
5. 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 Vendor and City 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.

**<u>REPRESENTATIONS</u>.** 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, Vendor and City do hereby execute this Contract as of the Execution Date set forth above.

**VENDOR:** **HILLYARD, INC.**

By: _____
President

**CITY:** **CITY OF LINCOLN, NEBRASKA**

By: _____
Chris Beutler, Mayor of Lincoln

# EXHIBIT A

## Bid Documents

*Approved by Law*
*6-24-13*

Return to Login • Supplier Registration

## Bid Opportunity Detail

**Bid Number** 13-154 (Restroom Supplies for Pinnacle Bank Arena)
**Close Date & Time** 5/21/2013 12:00:00 PM Central
**Time Left** 17 days 22 hours 56 minutes 5 seconds

### Bid Information

| | |
|---|---|
| **Bid Type** | Bid |
| **Issue Date & Time** | 5/1/2013 8:20:32 AM Central |
| **Close Date & Time** | 5/21/2013 12:00:00 PM Central |
| **Bid Status** | Issued |
| **Bid Notes** | |

### Contact Information

| | |
|---|---|
| **Contact Name** | Vince Mejer Purchasing Agent |
| **Address** | Purchasing<br>440 S. 8th St.<br>Lincoln, NE 68508 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 | Acrobat (PDF) | PDF Invitation to Bid |

### Bid Attachments

| Location | File Name | Description |
|---|---|---|
| Header | 13-154 City Clerk.pdf (1KB) | Notice to Bidders |
| Header | Instructions to Bidders JPA - B 09-19-11.pdf (26KB) | Instructions to Bidders |
| Header | JPA Insurance March 2012.pdf (236KB) | Insurance Requirements |
| Header | EEO.pdf (5KB) | Equal Employment Opportunity |
| Header | Term Prov.pdf (4KB) | Termination for Convenience Cause |
| Header | Affirm act.pdf (3KB) | Affirmative Action |
| Header | JPA Bonding.pdf (392KB) | Sample Bonding & Neb. Rev. Stat. 77-1323. |
| Header | Empl_Class_Act_EO.pdf (1KB) | Employee Classification Act, Executive Order 83319 |
| Header | Empl_Class_Act_Aff.pdf (52KB) | Employee Classification Act Affidavit |
| Header | 13-154 spec.pdf (24KB) | Specifications |
| Header | 13-154 draw.pdf (4.89MB) | Arena Drawings |

**Advertise 1 time**
**Wednesday, May 1, 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 pm, Tuesday, May 21, 2013** for providing the following:

### Restroom Supplies
### for
### Pinnacle Bank Arena
### Bid No. 13-154

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 (402) 441-7417 or vmejer@lincoln.ne.gov

**EXHIBIT A TO CONTRACT AGREEMENT**

**RESTROOM SUPPLIES**
**FOR**
**PINNACLE BANK ARENA**

**SPECIFICATIONS**
**BID NO. 13-154**

1. **INSTRUCTIONS**
   - 1.1 City of Lincoln and SMG hereinafter referred to as SMG, requests bids from qualified Restroom Supply Dealers, hereinafter referred to as Vendors, to provide restroom supplies for the Pinnacle Bank Arena located at 400 Pinnacle Arena Drive Lincoln, NE.
   - 1.2 Vendors must submit an electronic response on the City/County Purchasing E-bid System prior to the date and time listed in the specifications.
     - 1.2.1 Bid received after the specified day and hour will not be accepted.
   - 1.3 All inquiries regarding these specifications shall be directed via e-mail or faxed written request to Vince M. Mejer, Purchasing Agent (vmejer@lincoln.ne.gov) or Fax: 402-441-6513.
     - 1.3.1 All inquiries must be received by the Purchasing Office five (5) days prior to closing date and time.
     - 1.3.2 These inquiries and/or responses shall be distributed as an electronic addenda through the City/County E-bid System.
     - 1.3.3 Vendors are not allowed to discuss this bid with any employee of the arena, elected official or project manager other than the City/County Purchasing Staff through the award process.
       - 1.3.3.1 Failure to follow this requirement may result in immediate disqualification of your bid.
     - 1.3.4 Plans of the facility and layout drawings for the areas being furnished are attachments to this RFP.
   - 1.4 These specifications were developed around Hillyard, Tork and Rubbermaid; items equaling or exceeding these specifications are acceptable.

2. **COMPETITION INTENDED**
   - 2.1 It is the City of Lincoln's intent that this bid is to permit competition among the interested Vendors.
   - 2.2 It shall be the Vendors responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this bid to a single source.
     - 2.2.1 Such notification must be received by the Purchasing Agent not later than five (5) days prior to the date set for acceptance of bid.

3. **PROJECT DESCRIPTION**

3.1 The SMG is requesting bids for Restroom Supplies for use within the arena.

3.2 Specific brands and model numbers may have been listed for all products in order to give a base line for the type and quality of product being requested.

3.2.1 The SMG will accept equivalent brands and models provided the Vendor submits specific information that proves an equivalent or higher range of quality.

3.2.1.1 Failure to supply information for equivalent brands will be reason to dismiss bids.

3.2.2 Information on each product being proposed and equivalency shall be included in the item notes.

3.3 Vendors must provide warranty information on all the products they are bidding

3.3.1. Products with a warranty of less than one year will not be considered.

3.4. A staging area will be available at the facility prior to installation.

3.4.1 The amount of space and the date of staging will be provided to the awarded Vendor upon contract execution.

3.5 The intent of this bid and resulting contract is to select a single firm offering the lowest price and a firm fixed discount structure from manufacturer's list price schedules for Restroom Supplies as specified herein.

3.6 Restroom Supplies must be delivered and installed by July 1, 2013.

4. **PRICING AND RESPONSE REQUIREMENTS**

4.1 Vendors shall follow these instructions for the pricing of each item being requested:

4.1.1 The Specifications lists items for each floor of the facility with a Line Item that lists the areas to be furnished.

4.1.2 The price being proposed must be for the same type of Restroom Supplies (not necessarily the brand or model) and accessories as listed in the plans and Attachments.

4.1.3 The Vendor shall list the Brand and Model of Restroom Supplies being proposed in the Supplier Notes of each Line Item.

4.1.4 In addition to pricing in the Line Items, the Vendor shall provide information as attachments which includes product description, model and brand, and price that will correspond with the Line Items in the E-bid System.

4.1.5 The finishes on the Restroom Supplies shall comply closely with the products specified.

4.2 The SMG reserves the right to award this bid on an all or nothing basis or on a line item basis.

4.2.1 Vendors can give further "discounted" pricing on all products, if awarded the entire proposal.

4.3 The specifications lists for the installation of the Restroom Supplies throughout the building.

4.3.1 Vendor shall list the cost for each type of Restroom Supply in the Line Item Unit Price.

4.3.2 Vendor shall list the number of hours to complete the assembly and installation of each type of Restroom Supply in their written response.

4.4 Vendor shall complete the notes which requests the discounted amount from list price on the Restroom Supply being bid.

4.5 All pricing provided in the proposal shall include delivery and installation to the Arena initial hardware.

4.6 The SMG is tax exempt and the awarded Vendor/s shall receive a Form 13 upon contract award.

4.7 The SMG shall have the option to purchase additional hardware and supplies for this location for a period of two (2) years following project completion with the same pricing and terms as outlined in the Vendors proposal and subsequent contract, unless other wise stated.

4.8 Vendor shall provide a complete breakdown of the delivery time lines for each type of Restroom Supply being requested (ie. Toilet Paper Dispenser, Paper Towel Dispenser, Soap Dispenser, Deodorize, Seat Cover Dispenser, Hand Sanitizer Dispenser, etc.) in the notes section.

4.9.1 Delivery cannot be made without prior authorization from the Project Manager (PC Sports).

## 5. SCOPE OF SERVICES

5.1 All bids must be made on the basis of and either meet or exceed the requirements contained herein.

5.2 The SMG intends to enter into a requirements contract, to procure Restroom Supplies and related products and support services.

5.2.1 For the purpose of this bid, Restroom Supplies shall consist of Paper Dispensers, Soap/Hand Sanitizer Dispensers and Deodorizer and all materials needed to install these dispensers and the products contained therein.

5.2.2 The successful proposer shall be required to offer technical, design, reconfiguration assistance; and ordering, delivery and installation services to various specified locations.

## 6. GENERAL STANDARDS

6.1 This bid covers Restroom Supplies designed to provide paper products and hygienic supplies to the attendees of events.

6.2 The Restroom Supplies shall consist of dispensers that shall be mounted meeting the requirements specified herein.

6.3 All dispensers shall be of a design, material and workmanship to withstand hard, daily usage over an extended life with a minimum of maintenance and repair.

6.3.1 All dispensers shall be mounted to assure safety, good appearance, and provide for a safe working position.

6.3.2 All dispensers shall be mounted identically to all similar dispensers to maintain a strict measure of uniformity.

6.4 The bidder shall certify that the consumables offered, shall remain available for a minimum period of five (5) years.

6.5 Bidder shall warrant their products against defects in materials and workmanship for a period of not less than two (2) years from the date of installation acceptance.

7. **MOUNTING**

7.1 Mounting shall be performed to provide uniform level of all dispensers at heights determined with SMG, PC Sports and Mortenson Construction.

7.1.1 A percentage of all dispensers shall be hung at heights that comply with ADA Standards.

7.1.2 All items shall be surfaced mounted.

7.1.3 Any items that require bracket mounting in wall tile, the vendor is to protect the tile from cracking at drilled locations.

7.1.4 Any tiles that are damaged are to be replaced at the vendor's expense.

7.2 In all food prep areas any and all items are to be sealed at wall in accordance with the local health department.

8. **PAPER TOWEL DISPENSERS**

8.1 Shall be black in color.

8.2 Shall measure 14'6"H x 13.2"W x 8.1"D.

8.3 Shall use no-touch dispensing.

8.4 No special tools will be needed to adjust sheet length.

8.5 LED refill and low battery light indicators.

8.6 Shall be lockable.

9. **TOILET PAPER DISPENSER**

9.1 Shall be black in color.

9.2 Shall measure 10.1"H x 17.0W" x 5.7"D.

9.3 Shall hold 2 rolls of paper with roll width of 3.55" and length of 751 feet.

9.4 Shall be lockable.

10. **SOAP/SANITIZER DISPENSER**

10.1 Shall be black in color.

10.2 Shall be a touch free dispenser.

10.3 Shall measure 10.75"H x 6.25"W x 3.75"D.

10.4 Foam output shall be 0.4 mL per press.

10.5 Gel output shall be 1.0 mL per press.

10.6 Shall be lockable.

11. **SHAMPOO AND BODY GEL DISPENSER**

11.1 Shall be black in color.

11.2 Shall measure 10.75"H x 6.25"W x 3.75"D.

11.3 Foam output shall be 0.4 mL per press.

11.4 Gel output shall be 1.0 mL per press.

11.5 Shall be lockable.

12. **TOILET SEAT COVER DISPENSER**
    - 12.1 Shall be smoke/gray in color.
    - 12.2 Shall measure 16.375"W x 2.5"D x 11.75"H.
    - 12.3 Shall hold minimum 250 seat covers.

13. **AEROSOL ODOR CONTROL DISPENSER**
    - 13.1 Shall be white in color.
    - 13.2 Shall measure 3.56"W x 8.75"H.
    - 13.3 Shall have a Liquid Crystal display Screen to show.
        - 13.3.1 Battery Life.
        - 13.3.2 Cartridge Refill.
    - 13.4 Control odors in 6,000 cubic feet of space.
    - 13.5 Minimum two spray intervals.
    - 13.6 Shall be lockable.
    - 13.7 Shall last approximately 180 days between refills.

14. **PAPER TOWEL STOCK TYPE A**
    - 14.1 Shall be natural in color.
    - 14.2 Shall be 7.75"W x 700'L.
    - 14.3 Shall be single Ply.
    - 14.4 Shall be packaged 6 Rolls/Case.
    - 14.5 Shall be made with 100% recycled material.
    - 14.6 Shall be Ecologo and Green Seal Certified.
    - 14.7 Initial stock shall be minimum of 6 rolls per dispenser.
    - 14.8 Price per case/gross shall be guaranteed for minimum of two (2) years.

15. **PAPER TOWEL STOCK TYPE B**
    - 15.1 Shall be white in color.
    - 15.2 Shall be 7.75"W x 525'L.
    - 15.3 Shall be two-ply.
    - 15.4 Shall be packaged 6 Rolls/Case.
    - 15.5 Shall be made with 100% recycled material.
    - 15.6 Shall be Ecologo Certified.
    - 15.7 Initial stock shall be 6 rolls per dispenser.
    - 15.8 Price per case/gross shall be guaranteed for minimum of two (2) years.

16. **TOILET PAPER STOCK TYPE A**
    - 16.1 Shall be white in color.
    - 16.2 Shall be 3.55"W x 751'L.
    - 16.3 Shall be two-ply.
    - 16.4 Shall be packaged 12 Rolls/Case.
    - 16.5 Shall be made with 100% recycled material.
    - 16.6 Shall be EcoLogo Certified.
    - 16.7 Shall be EPA compliant containing a minimum of 20% post-consumer waste.
    - 16.8 Initial stock shall be 12 rolls per dispenser.
    - 16.9 Price per case/gross shall be guaranteed for minimum of two (2) years.

17. **TOILET PAPER STOCK TYPE B**
    - 17.1 Shall be white in color.
    - 17.2 Shall be 3.55"W x 751'L.
    - 17.3 Shall be two-ply.
    - 17.4 Shall be packaged 12 Rolls/Case.
    - 17.5 Initial stock shall be 12 rolls per dispenser
    - 17.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

18. **HAND SOAP STOCK**
    - 18.1 Shall be 1000 mL containers.
    - 18.2 Refill containers must be sealed.
    - 18.3 Shall be packaged 3 per case.
    - 18.4 Initial Stock shall be 3 per dispenser.
    - 18.5 Vendor to submit samples of fragrances for final choice.
    - 18.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

19. **SANITIZER STOCK**
    - 19.1 Shall be 1000 mL containers.
    - 19.2 Refill containers must be sealed.
    - 19.3 Shall be packaged 3 per case.
    - 19.4 Initial Stock shall be 3 per dispenser.
    - 19.5 Shall be an alcohol based sanitizer formulated to be used without water.
    - 19.6 Shall be colorless with a pleasant scent.
    - 19.7 pH concentrate shall be between 6.25 and 7.25.
    - 19.8 Price per case/gross shall be guaranteed for minimum of two (2) years.

20. **HAIR AND BODY WASH GEL**
    - 20.1 Shall be 1250 mL containers.
    - 20.2 Refill containers must be sealed.
    - 20.3 Shall be packaged 4 per case.
    - 20.4 Initial Stock shall be 4 per dispenser.
    - 20.5 Must contain more then 70% USDA certified Biobased product.
    - 20.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

21. **TOILET SEAT COVER STOCK**
    - 21.1 Shall be white in color.
    - 21.2 Shall be in a package count of 250.
    - 21.3 Initial stock shall be 2 packages per dispenser.
    - 21.4 Case quantity shall be 20.
    - 21.5 Price per case/gross shall be guaranteed for minimum of two (2) years.

22. **AEROSOL ODOR CONTROL STOCK**
    - 22.1 Shall be packaged 4 per case.
    - 22.2 Initial stock to be 2 per dispenser.
    - 22.3 Vendor to submit samples of fragrances for final choice.
    - 22.4 Price per case/gross shall be guaranteed for minimum of two (2) years.

## 23. FLAT URINAL SCREEN

23.1 Shall be white in color.
23.2 Shall be flexible to fit any urinal contour.
23.3 Shall be impregnated with deodorant with a natural fragrance.
23.4 Shall be packaged 12 per case.
23.5 Initial stock shall be 3 per urinal.
23.6 Price per case/gross shall be guaranteed for minimum of two (2) years.

## 24. SAFETY

24.1 All contractors and subcontractors performing services for the SMG are required and shall comply with all Occupational Safety and Health Administration (OSHA), State, and local laws.
24.2 Also all contractors and subcontractors shall be responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site area under this contract.
24.3 Contractor to follow SMG's general contractors safety requirements (Mortenson Construction).

## 25. OVERVIEW OF THE EVALUATION PROCESS

25.1 The General Contract Terms and Conditions set forth certain criteria which will be used in the receipt of bid and selection of the successful firm.
25.2 Product line (quality, stability, variety, degree of end-product manufactured by proposer, and product warranty, etc.).
25.3 Level of services offered including design assistance, installation, training and orientation available via your firm or the manufacturer.
25.4 Order placement, delivery and installation (i.e., order placement system, expedite shipments, delays, purchase order expediting and status reporting system, etc.)
25.5 Credentials and related experience.
25.6 Cost; (i.e., price schedule, and discounts off list price, volume incentives, etc.).
25.7 Compliance with the contract and proposal terms and conditions.
25.8 The SMG may conduct interviews and request product demonstrations with one or more of the top ranked firms, usually the top two or three depending upon the number of bid received.

## 26. INSTALLATION REQUIREMENTS

26.1 The SMG will require the installation of dispensers being bid, however, has the option to use its own staff if costs exceed budget.
26.2 Installation companies must meet the SMG's Insurance Requirements that are attached to the Ebid Bid Attachments.

## 27. REQUIREMENTS

27.1 General Statement of Qualifications which includes the following:
- 27.1.1 Company name, address and telephone number.
- 27.1.2 Number of years established and former names of firm.
- 27.1.3 Types of services particularly qualified to perform.
- 27.1.4 Key personnel who will work on this project, relevant experience and length of service with the company.
- 27.1.5 Number of staff usually and currently employed.

27.1.6 List of completed projects of similar scope to this project.

27.1.6.1 This should include detailed project examples/descriptions and photographs/images.

27.1.6.2 Descriptions should include list of references including name, title and contact information, phone number and email address.

27.1.6.3 Willingness and capability to meet the required scope of services and time requirements expressed.

27.1.7 Other additional material as required in these Specifications.

27.2 Please limit submittals to information directly related to the products being proposed.

27.3 The proposed total price of the project will be an award consideration.

27.4 Bidders must complete and submit the electronic portion (Attributes and Line and Item sections) of this proposal on the E-bid system.

27.4.1 The electronic response of this proposal will include information such as proposal requirements, attachments and addendum acknowledgments.

27.4.2 Electronic submittal must be submitted before the closing date and time of this bid.

27.5 Vendor may include any "Value Added" services offered if their company is chosen for award.

## 28. SELECTION PROCESS AND AWARD CONSIDERATIONS

28.1 The selection and award process will include the following steps.

| | | |
|---|---|---|
| 28.1.1 | Issue Bid - | May 1, 2013. |
| 28.1.2 | Last Day for Questions - | May 13, 2013 |
| 28.1.3 | Receive Bid - | May 21, 2013 |
| 28.1.4 | Issue Purchase orders/contracts | May 31, 2013 |
| 28.1.5 | Complete Delivery and Installation - | July 1, 2013 |

28.2 The criteria for determining the level of responsiveness of each proposal include, but are not limited to:

28.2.1 The ability, capacity and skill of the Vendor to deliver the necessary elements to meet the requirement of the RFP.

28.2.2 The ability, capacity and skill of the Vendor to understand the project and meet deadlines.

28.2.3 The experience, professional integrity, efficiency, character, and judgment of the Vendor.

28.2.4 Vendor's prior experience for projects with similar scope and scale.

28.2.5 The quality of Vendor's performance (management and technical) on projects, including the ability to establish and meet project schedules.

28.2.6 The detailed price list.

# 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 | 13-154 Addendum 2 |
| Title | Restroom Suppies for Pinnacle Bank Arena |
| Bid Type | Bid |
| Issue Date | 05/01/2013 |
| Close Date | 5/21/2013 12:00:00 PM CT |
| Need by Date | |

## Contact Information

| | |
|---|---|
| Address | Purchasing<br>440 S. 8th St.<br>Lincoln, NE 68508 |
| Contact | Vince Mejer<br>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 | Pinnacle Bank Arena<br><br>Lincoln, NE 68508 |
| Contact | |
| Department | |
| Building | |
| Floor/Room | |
| Telephone | |
| Fax | |
| Email | |

## Supplier Information

| | |
|---|---|
| Company | Hillyard Inc. |
| Address | 11619 Centennial Road<br><br>La Vista, NE 68128 |
| Contact | Joe Wilson |
| Department | |
| Building | |
| Floor/Room | |
| Telephone | 402 (580) 5191 |
| Fax | 402 (733) 8403 |
| Email | jwilson@hillyard.com |
| Submitted | 5/20/2013 10:56:46 AM CT |
| Total | $25,682.33 |

Signature _____

## Supplier Notes

## Bid Notes

## Bid Activities

## Bid Messages

Please review the following and respond where necessary



**EXHIBIT A TO CONTRACT AGREEMENT**

| # | Name | Note | Response |
|---|---|---|---|
| 1 | Instructions to Bidders | I acknowledge reading and understanding the Instructions to Bidders. | Yes |
| 2 | Insurance Requirements | I acknowledge reading and understanding the Insurance Requirements. | Yes |
| 3 | Specifications | I acknowledge reading and understanding the specifications. | Yes |
| 4 | Drawings | I acknowledge reading and understanding the Project Drawings. | Yes |
| 5 | 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 |
| 6 | Tax Exempt Certification 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. | Yes |
| 7 | Employee Class Act EO | I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319. | Yes |
| 8 | Employee Class Act Affidavit | I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract. | Yes |
| 9 | Delivery | Delivery and Installation shall be complete by July 1, 2013 | yes |
| 10 | Quantities | I acknowledge that the quantities listed for each line item are an estimated yearly amount. The City does not guarantee any dollar amount or order quantities for the term of the contract. | Y |
| 11 | Contact | Name of person submitting this bid: | Aaron Nehls & Paul Harris |
| 12 | Electronic Signature | Please check here for your electronic signature. | Yes |
| 13 | Agreement to Addendum No. 1 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. <br>Reason: Attached Addendum No. 1. | Yes |
| 14 | Agreement to Addendum No. 2 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. <br>Reason: Attached Addendum No. 2. | Yes |

## Line Items

| # | Qty | UOM | Description | Response |
|---|---|---|---|---|
| 1 | 190 | EA | Toilet Paper Dispenser Type "A" | $0.00 |

Item Notes: See Description in Specification Section 9 for complete list of requirements for item.

Supplier Notes: Dispensers will be no charge with the completion of the lease paperwork. Dispensers will also be installed at no charge. Dispenser being bid is Georgia Pacific 56790 (2 roll vertical)

| 2 | 82 | EA | Toilet Paper Dispenser Type "B" | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 9 for complete list of requirements for item.

Supplier Notes: Dispensers will be no charge with the completion of the lease paperwork. Dispensers will also be installed at no charge. Dispenser being bid is Georgia Pacific 56784 (2 roll horizontal)

| 3 | 218 | EA | Soap/Sanitizer Dispenser | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 10 for complete list of requirements per item.

Supplier Notes: Dispensers - no charge and installed provided Hillyard product is being purchased.

| 4 | 93 | EA | Paper Towel Dispenser Paper Type "A" | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 8 for complete list of requirements for item.

Supplier Notes: Dispensers will be no charge with the completion of the lease paperwork. Dispensers will also be installed at no charge. Dispenser being bid is Georgia Pacific 59462

| 5 | 32 | EA | Paper Towel Dispenser Paper Type "B" | $0.00 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 8 for complete list of requirements for item.

Supplier Notes: Dispensers will be no charge with the completion of the lease paperwork. Dispensers will also be installed at no charge. Dispenser being bid is Georgia Pacific 59462

| 6 | 74 | EA | Urinal Screen | $0.77 |
|---|---|---|---|---|

Item Notes: For item 23 in Specifications

Supplier Notes: 12 per case - case price $9.18

| 7 | 65 | EA | Aerosol Odor Control Dispenser | $28.33 |
|---|---|---|---|---|

Item Notes: See Description in Specification Section 13 for complete list of requirements for item.

Supplier Notes: Dispensers will be installed at no charge.

| | | | | |
|---|---|---|---|---|
| 8 | 102 | EA | Hand Sanitizer Dispenser | $0.00 |

Item Notes: See Description in Specification Section 10 for complete list of requirements for item.

Supplier Notes: Dispensers - no charge and installed provided Hillyard product is being purchased.

| | | | | |
|---|---|---|---|---|
| 9 | 8 | EA | Shampoo and Body Gel Dispenser | $0.00 |

Item Notes: See Description in Specification Section 11 for complete list of requirements for item.

Supplier Notes: Dispensers - no charge and will be installed provided Hillyard product is purchased.

| | | | | |
|---|---|---|---|---|
| 10 | 285 | EA | Toilet Seat Cover Dispensers | $6.00 |

Item Notes: See Description in Specification Section 12 for complete list of requirements for item.

Supplier Notes: Dispensers packed 10 per case. No instalation included.

| | | | | |
|---|---|---|---|---|
| 11 | 2,280 | Rolls | Toilet Paper Stock Type "A" | $1.02 |

Item Notes: See Description in Specification Section 16 for complete list of requirements for item.

Supplier Notes: Georgia Pacific 19375 Eco certified white 2 ply tissue packed 36 rolls per case 1,000' per roll. Case price $36.74 pricing to be held for 1 year with a max escalator of 5% for years 2 and 3.

| | | | | |
|---|---|---|---|---|
| 12 | 984 | Rolls | Toilet Paper Stock Type "B" | $1.02 |

Item Notes: See Description in Specification Section 17 for complete list of requirements for item.

Supplier Notes: Georgia Pacific 19375 Eco certified white 2 ply tissue packed 36 rolls per case 1,000' per roll. Case price $36.74 pricing to be held for 1 year with a max escalator of 5% for years 2 and 3.

| | | | | |
|---|---|---|---|---|
| 13 | 654 | EA | Hand Soap | $9.45 |

Item Notes: See Description in Specification Section 18 for complete list of requirements for item.

Supplier Notes: 3 - 1,000ml sealed cartridges per case - case price $28.35. Pricing will be held for a period of 2 years

| | | | | |
|---|---|---|---|---|
| 14 | 306 | EA | Hand Sanitizer | $12.20 |

Item Notes: See Description in Specification Section 19 for complete list of requirements for item.

Supplier Notes: 3 - 1,000ml sealed cartidges per case - case price $36.60. Pricing will be held for a period of 2 years

| | | | | |
|---|---|---|---|---|
| 15 | 32 | EA | Hair and Body Wash | $5.03 |

Item Notes: See Description in Specification Section 20 for complete list of requirements for item.

Supplier Notes: 4 - 1,250ml sealed cartridges per case - case price $20.12. Pricing will be held for a period of 2 years

| | | | | |
|---|---|---|---|---|
| 16 | 570 | PKG | Toilet Seat Cover Stock | $4.61 |

Item Notes: See Description in Specification Section 21 for complete list of requirements for item.

Supplier Notes: Georgia Pacific 57046 packed 10 packs 500 per pack. Case price $47.06

| | | | | |
|---|---|---|---|---|
| 17 | 130 | EA | Aerosol Odor Control Stock | $5.98 |

Item Notes: See Description in Specification Section 22 for complete list of requirements for item.

Supplier Notes: Packed 4 per case - case price $23.92. Pricing will be held for a period of 2 years.

| | | | | |
|---|---|---|---|---|
| 18 | 222 | EA | Flat Urinal Stock | $0.77 |

Item Notes: See Equipment Description sheet in Bid Section 23 for complete list of requirements per unit.

Supplier Notes: 12 per case - case price $9.18. Pricing will be held for a period of 2 years

| | | | | |
|---|---|---|---|---|
| 19 | 558 | Rolls | Paper Towel Stock Type "A" | $6.70 |

Item Notes: See Description in Specification Section 14 for complete list of requirements for item.

Supplier Notes: Georgia Pacific Enmotion Towel Natural 89480 - 6 rolls 800' per roll. Case price $40.22. Pricing will be held for 1 year with a max escalator of 5% for years 2 and 3.

| | | | | |
|---|---|---|---|---|
| 20 | 192 | Rolls | Paper Towel Stock Type "B" | $7.06 |

Item Notes: See Description in Specification Section 15 for complete list of requirements for item.

Supplier Notes: Georgia Pacific Enmotion Towel White 89460 - 6 rolls 800' per roll. Case price $42.40. Pricing will be held for 1 year with a max escalator of 5% for years 2 and 3.

Response Total: $25,682.33

Bid No 13-154 Addendum

| Specification Responses | | | | | Amsan Omaha | Cash-Wa | | Hillyard | | LOW BID | Tentative Winning Bid | Notes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Line | Description | UOM | QTY | | Extended | Unit | Extended | Unit | Extended | | | |
| ~~1~~ | ~~Toilet Paper Dispenser Type "A"~~ | ~~EA~~ | ~~0~~ | ~~190~~ | ~~NO BID~~ | | ~~$ (570.0000)~~ | ~~$ -~~ | ~~$ -~~ | ~~$ (570.0000)~~ | ~~$ -~~ | ~~Hillyard (only get item 2 for all dispensers)~~ |
| 2 | Toilet Paper Dispenser Type "B" | EA | 272 | 82 | NO BID | | $ (246.0000) | $ - | $ - | $ (1,088.0000) | $ - | Hillyard (only get item 2 for all dispensers) |
| 3 | Soap/Sanitizer Dispenser | EA | 218 | | NO BID | NO BID | NO BID | $ - | $ - | $ (654.0000) | $ - | Hillyard (when added with install cost is less then EGAN |
| 4 | Paper Towel Dispenser Paper Type "A" | EA | 93 | | NO BID | | $ (465.0000) | $ - | $ - | $ (465.0000) | $ (465.0000) | Cash-Wa bid exactly per spec |
| 5 | Paper Towel Dispenser Paper Type "B" | EA | 32 | | NO BID | | $ (160.0000) | $ - | $ - | $ (160.0000) | $ (160.0000) | Cash-Wa bid exactly per spec |
| 6 | Urinal Screen | EA | 74 | | NO BID | NO BID | NO BID | $ 0.7700 | $ 56.9800 | $ 53.2800 | $ 56.9800 | Hillyard (National states it is an all or nothing bid) |
| ALT 6 | Urinal Screen - Green in color Morning Fresh Scent | EA | 74 | | | | | | | | | |
| 7 | Aerosol Odor Control Dispenser | EA | 65 | | $ 2,802.8000 | NO BID | NO BID | $ 28.3300 | $ 1,841.4500 | $ - | $ 1,841.4500 | Hillyard |
| 8 | Hand Sanitizer Dispenser | EA | 102 | | NO BID | NO BID | NO BID | $ - | $ - | $ (306.0000) | $ - | Hillyard (when added with install cost is less then EGAN |
| ALT 8 | Hand Sanitizer - Almond | EA | 102 | | | | | | | | | |
| 9 | Shampoo and Body Gel Dispenser | EA | 8 | | NO BID | NO BID | NO BID | $ - | $ - | $ (24.0000) | $ - | Hillyard |
| ALT 9 | Shampoo and Body Gel Dispenser - Almond in color | EA | 8 | | NO BID | NO BID | NO BID | | | $ - | | |
| 10 | Toilet Seat Cover Dispensers | EA | 285 | | NO BID | | $ (864.0000) | $ 6.0000 | $ 1,710.0000 | $ (864.0000) | $ (864.0000) | Cash-Wa need to see sample |
| ~~11~~ | ~~Toilet Paper Stock Type "A"~~ | ~~Rolls~~ | ~~0~~ | ~~####~~ | ~~NO BID~~ | ~~$ 2.2780~~ | ~~$ -~~ | ~~$ 1.0200~~ | ~~$ -~~ | ~~$ -~~ | ~~$ -~~ | ~~Hillyard - need to see sample~~ |
| 12 | Toilet Paper Stock Type "B" | Rolls | 3264 | 984 | NO BID | $ 2.3280 | $ 7,598.5920 | $ 1.0200 | $ 3,329.2800 | $ 3,329.2800 | $ 3,329.2800 | Hillyard - need to see sample |
| 13 | Hand Soap | EA | 654 | | NO BID | NO BID | NO BID | $ 9.4500 | $ 6,180.3000 | $ 4,139.8200 | $ 6,180.3000 | Hillyard (when added **with** install cost is less then EGAN |
| ALT 13 | Hand Soap | EA | 654 | | NO BID | NO BID | NO BID | | | $ - | | |
| 14 | Hand Sanitizer | EA | 306 | | NO BID | NO BID | NO BID | $ 12.2000 | $ 3,733.2000 | $ 2,910.0600 | $ 3,733.2000 | Hillyard (when added with install cost is less then EGAN |
| ALT 14 | Hand Sanitizer | EA | 306 | | NO BID | NO BID | NO BID | | $ - | $ - | | |
| 15 | Hair and Body Wash | EA | 32 | | NO BID | NO BID | NO BID | $ 5.0300 | $ 160.9600 | $ 160.9600 | $ 160.9600 | Hillyard |
| 16 | Toilet Seat Cover Stock | PKG | 570 | | NO BID | $ 2.6420 | $ 1,505.9400 | $ 4.6100 | $ 2,627.7000 | $ 785.1500 | $ 1,505.9400 | Cash-Wa need to see sample (national is all or nothing and EGAN is high when you add to cost of dispensers) |
| 17 | Aerosol Odor Control Stock | EA | 130 | | NO BID | NO BID | NO BID | $ 5.9800 | $ 777.4000 | $ 683.1500 | $ 777.4000 | Hillyard |
| 18 | Flat Urinal Stock | EA | 222 | | NO BID | NO BID | NO BID | $ 0.7700 | $ 170.9400 | $ 159.8400 | $ 170.9400 | Hillyard (National states it is an all or nothing bid) |
| 19 | Paper Towel Stock Type "A" | Rolls | 558 | | NO BID | $ 4.7480 | $ 2,649.3840 | $ 6.7000 | $ 3,738.6000 | $ 2,649.3840 | $ 2,649.3840 | Cash-Wa need to see sample |
| 20 | Paper Towel Stock Type "B" | Rolls | 192 | | NO BID | $ 6.2650 | $ 1,202.8800 | $ 7.6600 | $ 1,471.2000 | $ 1,202.8800 | $ 1,202.8800 | Cash-Wa need to see sample |
| | | | | | | | | | | | | |
| | | | Total | | $ 2,802.8000 | | $ 10,651.7960 | | $ 25,682.3300 | $ 11,952.8040 | $ 20,119.7140 | |

Total $ 3,869.2040 $ 16,250.5100

EXHIBIT A TO CONTRACT AGREEMENT

# EXHIBIT B

## Insurance Requirements for all City Contracts

*Approved by Law*
*6-24-13*

# INSURANCE REQUIREMENTS
# FOR ALL CITY CONTRACTS

## 1. GENERAL PROVISIONS

A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.

B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, 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.

C. **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.

D. **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.

E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and 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 the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.

F. **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.)

## 2. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage**. The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City 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.

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 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. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

| Coverage | Min Amt | Notes |
|---|---|---|
| General | $2,000,000 | Aggregate |
| Products and Completed Operations | $2,000,000 | Aggregate |
| Personal and Advertising Injury | $1,000,000 | |
| Each Occurrence | $1,000,000 | |
| 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 the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- 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.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) 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).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

**D. Vehicle liability insurance coverage.**

- The Contractor shall provide reaonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific 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. 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 $2,000,000 per occurrence, $6,000,000 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.

F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of $3,000,000 each occurrence and aggregate.

G. **City included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City 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 documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City 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 the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

## 3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:

(1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:

- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and

- is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.

(2) 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 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 the City, 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 the City and related to the Contract; and

(2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.

D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City 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 the City without the express written consent of the City.

**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 the City.

**5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

A. The Contractor shall promptly notify the City 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 the City 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 the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City'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 the City 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 the City, 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 City’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 the City.

# EXHIBIT C

**Intentionally Omitted.**

*Approved by Law*
*6-24-13*

# EXHIBIT D

## Other Contract Documents

*Approved by Law*
*6-24-13*

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

Construction Performance Bond
Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the re-writing of construction bond forms was to make them more understandable to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default settings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

---

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

Owner (Name and Address):
**West Haymarket Joint Public Agency**
**555 South 10th St.**
**Lincoln, NE 68508**

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp.Seal)

Signature:_____
Name and Title: Name and Title:

Signature:_____

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practiceable after the amount is determined tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; an d

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a satutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

---

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

Owner (Name and Address):
**West Haymarket Joint Public Agency**
**555 South 10th St.**
**Lincoln, NE 68508**

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:

   2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:

   4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.

   4.2 Claimants who do not have a direct contract with the Contractor:

   1.Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and

   2.Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

   3.Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

   6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

   6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

   By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

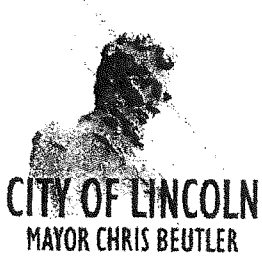
    15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

    15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

    15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

smart # 10070200
7-26-10/law/tb




# CITY OF LINCOLN
# EXECUTIVE ORDER

NO. 083319

WHEREAS, there is concern over the inappropriate competitive advantages in the public bidding process for local publicly funded construction and delivery service contracts resulting from the misclassification of individuals performing construction labor services as "independent contractors" rather than "employees"; such "independent contractors" are commonly referred to as "1099 workers" due to the IRS form they receive rather than a W-4 which an employee receives;

WHEREAS, this misclassification of such individuals as "independent contractors" rather than as "employees" eliminates any obligation to pay these individuals legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit such individuals would typically receive if properly classified as employees;

WHEREAS, this misclassification of individuals performing construction labor services for the contractor as "independent contractors" rather than "employees" is a violation of federal and state law, but is difficult to enforce once public construction or delivery service contracts have been bid, awarded, and entered into;

WHEREAS, the use of public funds to compensate contractors who unlawfully avoid their obligation to pay legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit is not in the public interest; and

**EXHIBIT D**

WHEREAS, the Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912 (effective July 15, 2010) provides that any contract entered into between a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat. § 4-114 requirements that the contractor register and use a federal immigration employment verification system to determine the work eligibility status of new employees physically performing services in the State of Nebraska, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to § 48-2912 of the Employee Classification Act.

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, I hereby establish the following policy as to the bid and award of contracts to contractors for construction and delivery services with the City of Lincoln:

The Purchasing Agent shall immediately include in the City of Lincoln's notice to bidders for construction contracts that all contractors submitting bids in response to the notice shall affirmatively certify to the Purchasing Agent that all individuals hired to perform construction or delivery labor services for the contractor under the contract shall be properly classified as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under federal and state law (including the requirements of the State of Nebraska Employee Classification Act), and that the contractor will comply with all legal obligations with respect to these employees (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes). The



**EXHIBIT D**

notice to bidders shall further provide that contractors may use affidavits required pursuant to the Employee Classification Act for this purpose, but that a failure to make the affirmative certification to the Purchasing Agent shall render the bidder ineligible for award of the contract.

The Purchasing Agent shall immediately include the following provisions in contracts for construction or delivery services:

(1) Contractor agrees that each individual performing services for the contractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that contractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(2) Contractor understands and agrees that failure to classify each individual hired to perform services under the contract as an employee rather than as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the contract by the City.

(3) Contractor additionally agrees to include the following provisions in each subcontract entered into with a subcontractor as part of the contractor's contract with the City:

(a) Subcontractor agrees that each individual performing services for the subcontractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that subcontractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay,

workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(b) Subcontractor understands and agrees that subcontractor's failure to properly classify individuals hired to perform services under the subcontract as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the subcontract by the contractor.

(4) Contractor agrees that if subcontractor fails to or is suspected of failing to properly classify each individual hired pursuant to the subcontract as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or fails to comply with legal obligations with respect to the subcontractor's employee, the contractor shall take appropriate corrective action including, but not limited to, reporting the suspected violation of the State of Nebraska Employee Classification Act to the Nebraska Department of Labor or rescission of the subcontract by the contractor. Written notification of the corrective action shall be submitted to the City of Lincoln Purchasing Department. Contractor understands and agrees that contractor's failure to take appropriate corrective action shall be considered a breach of the contractor's contract with the City of Lincoln and is a grounds for rescission of the contract by the City.

(5) The City of Lincoln shall notify the Nebraska Department of Labor of any contractor or subcontractor it has determined is in breach of contract due to the terms of this order.

(6) Any contractor or subcontractor who shall have been determined by the Nebraska Department of Labor to have knowingly provided a false affidavit to the City of Lincoln

under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period of time, in accordance with Lincoln Municipal Code § 2.18.030(n)(1) or (2).

(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 5 of Neb. Rev. Stat. § 48-604 and is otherwise valid under federal and state law and is not intended to circumvent lawful obligations under federal and state law or city contractual requirements.

The City Clerk is directed to send a copy of this Executive Order to Vince Mejer, City Purchasing Agent, for his record.

Dated this 28 day of July, 2010.

Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney



**EXHIBIT D**

## EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, I, _____, herein below known as the Contractor, state under oath and swear as follows:

1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.

2.The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.

3. The Contractor has complied with Neb Rev Stat 4-114.

4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.

5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to section 12 of this Act.

6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska )
) ss.
County of _____ )

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this ____ day of _____, 20__.

_____
Notary Public

**EXHIBIT D**

29 C.F.R. § 5.5

Code of Federal Regulations Currentness
Title 29. Labor
Subtitle A. Office of the Secretary of Labor
Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)
Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

**§ 5.5 Contract provisions and related matters.**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when

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the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract,

Exhibit D

the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the

name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

| Paragraph | OMB Control Number |
|---|---|
| (a)(1)(ii)(B) | 1215-01 |
| (a)(1)(ii)(C) | 1215-01 |
| (a)(1)(iv) | 1215-01 |
| (a)(3)(i) | 1215-0140, 1215-00 |
| (a)(3)(ii)(A) | 1215-01 |
| (c) | 1215-0140, 1215-00 |

[29 FR 100, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 30 FR 13136, Oct. 15, 1965; 36 FR 19304, Oct. 2, 1971; 40 FR 30481, July 21, 1975; 41 FR 10063, March 9, 1976; 47 FR 145, Jan. 5, 1982; 51 FR 12265, April 9, 1986; 54 FR 4243, Jan. 27, 1989; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 61 FR 68641, Dec. 30, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 74 FR 2862, Jan. 16, 2009]

SOURCE: 48 FR 19541, April 29, 1983; 51 FR 12265, April 9, 1986; 61 FR 40716, Aug. 5, 1996; 65 FR 80278, Dec. 20, 2000; 73 FR 77511, Dec. 19, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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Exhibit D

>

General Decision Number: NE130058 06/14/2013 NE58

Superseded General Decision Number: NE20120065

State: Nebraska

Construction Type: Building
BUILDING CONSTRUCTION INCLUDING WORK ON INDUSTRIAL SITES

County: Lancaster County in Nebraska.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

| Modification Number | Publication Date |
|---|---|
| 0 | 01/04/2013 |
| 1 | 03/22/2013 |
| 2 | 04/19/2013 |
| 3 | 05/24/2013 |
| 4 | 06/14/2013 |

CARP0444-002 07/01/2012

| | Rates | Fringes |
|---|---|---|
| CARPENTER (Drywall Hanging Only) | $ 21.18 | 9.98 |

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ELEC0265-003 09/01/2012

| | Rates | Fringes |
|---|---|---|
| ELECTRICIAN | | |
| Zone 1 | $ 25.77 | 9.96 |
| Zone 2 | $ 26.07 | 9.96 |
| Zone 3 | $ 26.37 | 9.96 |
| Zone 4 | $ 26.77 | 9.96 |

ZONE DEFINITIONS:
Zone 1: 0 to 35 miles from the main Post Office in Lincoln
Zone 2: 36 to 50 miles from the main Post Office in Lincoln
Zone 3: 51 to 75 miles from the main Post Office in Lincoln
Zone 4: 76 miles and over from the main Post Office in Lincoln

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ELEV0028-001 01/01/2013

| | Rates | Fringes |
|---|---|---|
| ELEVATOR MECHANIC | $ 39.09 | 25.185+a+b |

FOOTNOTE:
a. Vacation Pay: 8% for persons with 5 or more years of service, 6% for persons with less than 5 years of service.
b. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after

**EXHIBIT D TO CONTRACT AGREEMENT**

Thanksgiving, and Christmas Day.

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ENGI0571-004 10/01/2012

| | Rates | Fringes |
|---|---|---|
| OPERATOR: Crane | $ 27.03 | 9.59 |
| OPERATOR: Forklift | $ 21.65 | 9.59 |

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IRON0021-002 06/01/2012

| | Rates | Fringes |
|---|---|---|
| IRONWORKER, STRUCTURAL | $ 26.37 | 11.95 |

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LABO1140-003 01/01/2013

| | Rates | Fringes |
|---|---|---|
| LABORER (Mason Tender, Brick & Hod) | $ 17.03 | 8.95 |

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* PLUM0464-007 06/01/2013

| | Rates | Fringes |
|---|---|---|
| PIPEFITTER (Including HVAC Pipe Installation) | $ 32.94 | 14.59 |

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SHEE0003-002 07/01/2012

| | Rates | Fringes |
|---|---|---|
| SHEET METAL WORKER (Excludes Installation of HVAC Duct) | $ 31.71 | 13.34 |

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SUNE2011-032 10/27/2011

| | Rates | Fringes |
|---|---|---|
| BRICKLAYER | $ 24.44 | 0.00 |
| CARPENTER | $ 18.50 | 1.80 |
| CEMENT MASON/CONCRETE FINISHER | $ 15.73 | 2.06 |
| ELECTRICIAN (Alarm Installation) | $ 19.68 | 4.12 |
| ELECTRICIAN (Low Voltage Wiring) | $ 20.15 | 4.84 |
| FORM WORKER | $ 14.97 | 2.06 |
| LABORER: Common or General | $ 12.03 | 0.00 |
| OPERATOR: Backhoe/Excavator/Trackhoe | $ 20.68 | 4.93 |
| OPERATOR: Bobcat/Skid | | |

**EXHIBIT D TO CONTRACT AGREEMENT**

Steer/Skid Loader.....$ 21.72 2.10

OPERATOR: Loader.....$ 19.27 4.00

PAINTER: Brush, Roller and
Spray.....$ 14.26 0.00

PLUMBER, Excludes HVAC Pipe
Installation.....$ 22.89 6.04

ROOFER.....$ 13.57 0.77

SHEET METAL WORKER (HVAC Duct
Installation Only).....$ 21.89 6.30

TRUCK DRIVER, Includes Dump
and Tandem Truck.....$ 14.09 2.49

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the

rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

*§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.*

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20___.

By: _____

Title:_____

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

On _____, 20___, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

_____
Notary Public

(S E A L)

WH 13-66 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Chairperson of the West Haymarket Joint Public Agency is hereby authorized to enter into a Contract not exceeding the budgeted amount of $475,000 with the lowest bidder or sole source provider as the case may be for the furnishing and installation of a Cisco United Wireless Network to match the existing Cisco infrastructure (RFP No. 13-236).

Adopted this _____ day of _____, 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

_____
Doug Emery

**Advertise 1 time**
**Wednesday, July 3, 2013**

# REQUEST FOR PROPOSALS (RFP)
# NOTICE TO PROPOSERS

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Wednesday, July 17, 2013** for providing the following:

## High Density Wireless Architecture (WiFi)
## for
## Pinnacle Bank Arena
## RFP No. 13-236

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")

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) 441-8309 or (402) 441-7417 or rwalla@lincoln.ne.gov

# SPECIFICATIONS
# HIGH DENSITY WIRELESS ARCHITECTURE (WIFI)
# PINNACLE BANK ARENA
# REQUEST FOR PROPOSALS 13-236

1. **SUPPLEMENTAL INSTRUCTIONS**

1.1 The West Haymarket JPA is requesting proposals for providing High Density Wireless Architecture (WiFi) at the new Pinnacle Bank Arena.

1.2 All companies wishing to be considered for this project shall have a minimum of 5 years experience on projects of similar size and requirements.

1.3 Vendors shall submit a written response to the City Purchasing office and via the E-Bid system prior to the close of the RFP.

1.3.1 To meet written response requirements, Vendor shall provide an original and 5 copies to the City of Lincoln Purchasing Department prior to the close of the RFP.

1.3.2 The outside of the box shall state RFP Number 13-236 and be addressed as follows and sent to:

City of Lincoln Purchasing Department
Vince Mejer - Purchasing Agent
440 South 8th Street, Suite 200
Lincoln, NE 68508

1.3.3 Vendors must also complete and submit the electronic portion (Attributes and Line Item sections) of this proposal on the E-Bid system.

1.3.3.1 Electric submittal must be submitted before the closing date and time of this bid.

1.4 All inquiries regarding the specifications and drawings shall be directed via e-mail or fax to Vince Mejer, Purchasing Agent at vmejer@lincoln.ne.gov or fax to 402-441-6513.

1.4.1 All inquiries and responses will be distributed to all prospective Vendors electronically as an addenda, if necessary.

1.4.2 The City shall only reply to written inquiries received within five (5) calendar days of the RFP opening.

1.4.3 Any communication with City staff, Arena Personnel, or elected officials during the RFP and award process, other than the Purchasing Department is prohibited and may result in the rejection of the proposal.

1.5 Any deviations from the specifications must be outlined by the Vendor on company letterhead and included in the Vendors written response.

1.6 This project is exempt from State and Local taxes.

1.6.1 A Form 13 and Form 17 will be provided to the awarded Vendor.

1.7 All construction work related to this project shall be performed under the terms of the specifications and the City of Lincoln Municipal Building Codes.

1.8 Vendor is responsible for obtaining and paying for all permits and fees required for the completion of this project.

1.9 Vendors who score highest by the Selection Committee in the RFP process may be requested to discuss their products, experience and overall approach to the project during an in-person interview.

1.9.1 The City reserves the right to not conduct or limit the number of interviews of candidates based on the evaluation of the written RFP.

1.10 Following the written and personal interview stage of the process, an award recommendation will be made and a contract executed by both parties.

1.11 The City reserves the right to request additional information from any Vendor or their references following receipt of the RFP closing.

1.12 Vendors will be required to meet the JPA's Insurance requirements, and provide a performance and payment bond in the amount of 100% of the contract total, made payable to the JPA's at time of contract execution from the awarded Vendor.

1.13 Vendors must submit a Bid Bond in the amount of 5% of the total cost of the project, made payable to the JPA prior to the closing of the RFP.

1.14 Vendor shall submit a list of previous projects of similar scale, completed within the past 5 years as part of their written response.

- 1.14.1 Include information on each venue such as capacity, size, location, value of the project, and scope of the project in terms of type of service installed.
- 1.14.2 Provide the contact name, phone number and email address for each project referenced.

1.15 Vendor shall provide all pricing, fees and/or charges associated with providing this service as part of the written response.

- 1.15.1 A list of estimated quantities for equipment needed to interface with the Cisco equipment already installed in the facility is the proposal page.
  - 1.15.1.1 Any deviation in the estimated quantities must be outlined in the Vendor's written proposal.

1.16 A Prebid Meeting will be held on Tuesday, July 9 2013 at 1:00 p.m. at Mortenson Construction, 440 North 8th St., Lincoln, NE 68508.

- 1.16.1 Following the initial meeting there will be a tour through the Pinnacle Bank Arena, which is still an active construction site and all rules must be followed:
  - 1.16.1.1 Long Pants, Hard Soled Shoes, Hard Hats, Safety Vests, Gloves and Safety Glasses must be worn.
- 1.16.2 This will be the only opportunity to view the facility during the RFP process.

1.17 System must be installed, tested and operational by **August 14, 2013.**

- 1.17.1 If you are unable to meet this deadline you must provide an alternate date in your written response.

## 2. PROJECT SCOPE

2.1 High-density wireless architecture for Pinnacle Bank Arena.

2.2 Supply a solution within the venue designed to provide the increased coverage and capacity needed to accommodate data service offload.

2.3 The solution must seamlessly integrate with current Cisco switching infrastructure and fully compatible with Cisco Connected Stadium.

2.4 Fans must have reliable access to an increased array of data applications that work well over a high-capacity Wi-Fi network.

2.5 Solution must provide integration for creating more engaging mobile applications to enhance the fan experience.

- 2.5.1 Network design: VLANs, DHCP, ACLs, switchports, host names and IP addressing
- 2.5.2 WLAN controllers (WLC): 2 WLCs
- 2.5.3 Guest access: network internet firewall configuration; 3rd party certificate configuration
- 2.5.4 Access points (AP): 209 - Cisco 3602i, 3602e, 3502p, and 1152 Access points
- 2.5.5 Management system: Cisco Prime Network Control System (NCS)
- 2.5.6 Context-aware, location-based services: Mobility Services Engine (MSE)
- 2.5.7 Wireless security: one (1), new NPS
- 2.5.8 Testing: a final acceptance test
- 2.5.9 Coverage Validation Survey: 209 estimated APs
- 2.5.10 Testing/Tuning
  - 2.5.10.1 Three (3) Professional events at full capacity
- 2.5.11 Knowledge Transfer: for Customer on WLAN components/features
- 2.5.12 Documentation: administrative details and reports

## 3. DISCOVERY AND DESIGN

3.1 Review the role of the WLAN

3.2 Security model required for the WLAN

3.3 Define SSID naming schemes

3.4 Security mechanisms to be applied to each level of access

3.5 Define Virtual LAN (VLAN) and access list requirements

3.6 AAA server details
  3.6.1 EAP Type Authentication: user and/or machine
3.7 Third party certificates
3.8 Map/floor plan suitable for NCS
3.9 MSE services
3.10 Identify IP addresses to be assigned to WLAN components
3.11 Define naming conventions to be assigned to WLAN components
3.12 Review current Cable structure and provide a plan for cabling of the access points.

## 4. IMPLEMENTATION

4.1 Network infrastructure
  4.1.1 Create VLANs for wireless clients
  4.1.2 Create necessary ACLs to control access for each wireless VLAN
  4.1.3 Create DHCP scopes for wireless clients
  4.1.4 Configure switchports for WLAN components' connectivity
4.2 Network firewall configuration
  4.2.1 Adjusting the firewall to allow wireless traffic to the internet
  4.2.2 Guest or internal users
4.3 WLAN controller
  4.3.1 General configuration of IP addresses, management info, interfaces, mobility group, NTP, SNMP
  4.3.2 Create and configure WLANs with appropriate security models
  4.3.3 Set AP parameters
  4.3.4 Create AP groups
  4.3.5 Configure connections to NCS
  4.3.6 Configure connections to one (1), new NPS
  4.3.8 Create and configure Guest WLAN(s) with appropriate security models
  4.3.9 Configure a basic, HTML, web authentication page for guest access to the WLAN
  4.3.10 The Guest Access web page will be configured with the Customer-provided certificate.
4.4 Access points
  4.4.1 General configuration of:
    4.4.1.1 Host names
    4.4.1.2 IP addresses
    4.4.1.3 Management info
    4.4.1.4 Radio interfaces
    4.4.1.5 Provisioning of preferred and prioritized controllers
    4.4.1.6 Add to AP group
    4.4.1.7 AP mode
4.5 Cisco prime network control system (NCS)
  4.5.1 Install software on purchased hardware appliance
  4.5.2 Apply Customer-purchased licenses
  4.5.3 Configure communication between NCS and the WLC(s)
  4.5.4 Import WLC configurations
  4.5.5 Import Customer-provided, floor plan images
  4.5.6 Place access points onto Maps
  4.5.7 Configure Administrative Settings and Background Tasks
4.6 Cisco mobility services engine (MSE)
  4.6.1 General configuration of:
    4.6.1.1 Host name
    4.6.1.2 IP address
    4.6.1.3 Administrative user name and password
    4.6.1.4 Connection to NCS server(s)
    4.6.1.5 Service enablement
    4.6.1.6 Licensing

4.6.2 Configure Context-Aware service
4.6.2.1 Define map inclusion and exclusion areas
4.6.2.2 Define map rail areas
4.6.2.3 Create event definitions

4.7 Authentication authorization accounting (AAA) server
4.7.1 WLC
4.7.2 Add AAA server(s) to the WLC(s) for 802.1x user authentication
4.7.2.1 Configure WLANs with correct AAA server
4.7.3 AAA RADIUS
4.7.4 Add WLC(s)
4.7.5 Add NCS
4.7.5.1 Configure access policies
4.7.6 NCS
4.7.6.1 Configure NCS to use the AAA server

4.8 Implement additional cable to the structured cabling system to connect the wireless access points to your design.
4.8.1 All cabling must follow BISCI, Ansi, Osha and all other state, local and Federal guidelines for low voltage cabling.
4.8.2 All cable runs must be labled following systems currently in use at the Pinnacle Bank Arena.

## 5. COVERAGE VALIDATION SURVEY

5.1 Perform a single, passive walk-through of the facility using AirMagnet Survey software to generate coverage maps and validate the RF coverage of 209 estimated access points.

## 6. WLAN TESTING

6.1 Authentication for each SSID
6.2 Access control for each SSID
6.3 Device roaming
6.4 Data access
6.5 Call quality
6.6 Context-Aware precision and accuracy
6.7 Coverage throughout each location
6.8 Clean Air Spectrum Intelligence

## 7. KNOWLEDGE TRANSFER

7.1 Provide up to 8 hours of knowledge transfer on the settings and features for the following:
7.1.1 WLC
7.1.1.1 Monitor Summary, APs, Statistics, Rogues, and Clients
7.1.1.2 WLAN
7.1.1.3 Wireless, Access Points, all APs, Radios
7.1.1.4 Security Overview and Security Signature Events Summary
7.1.1.5 Trap Log information and Message Logs
7.1.1.6 Maintaining code, configuration files, time and date
7.1.1.8 Overview of Lobby Ambassador functionality for guest access
7.1.2 NCS
7.1.2.1 Overview and customization of the Home page (General, Client, Security, etc.)
7.1.2.2 Monitor Summary, Maps, WLCs, APs, Clients, RRM, Alarms, Events
7.1.2.3 Reports creation, saving, running, and scheduling
7.1.2.4 Overview of Configure menu: WLCs, APs, and templates
7.1.2.5 Administration including Background Tasks
7.1.2.6 Overview of Lobby Ambassador functionality for guest access
7.1.2.7 Overview of the configuration of Context-Aware

7.2 Final turnover documentation shall include:
- 7.2.1 Electronic documentation showing the location of access points
- 7.2.2 Electronic documentation showing all locations of all cable pulls in TR closets with patch locations.
- 7.2.3 All manuals, cut sheets and support documents for all hardware used in this installation shall be provided in PDF format..
- 7.2.4 Electronic documentation shall be provided in CAD and PDF format for drawings.

## 8. TESTING/TUNING

8.1 Engineer(s) present at three (3), events after installation

- 8.1.1 Testing/Tuning may include the following:
  - 8.1.1.1 Adjustment of DHCP/DNS scopes and/or settings
  - 8.1.1.2 Adjustment of firewall settings
  - 8.1.1.3 Tuning/Adjusting WLC(s) setting(s)
  - 8.1.1.4 Recommendation for addition, move, or subtraction of Access Points
  - 8.1.1.5 Recommendation for antenna downtilt/angle adjustments

## 9. EVALUATION FACTORS

9.1 The City shall evaluate each proposal based on the Vendors ability to provide services as outlined in this document and in any other documents attached to the RFP.

9.2 Experience in the area of providing similar WiFi service to large venues which are equal to, or exceed the size of the Pinnacle Bank Arena.

9.3 Reference information from previous contracts.

9.4 Proposal thoroughness and organization.

## 10. COMPANY INFORMATION

10.1 Provide company history for WIFI, including years of operation and client/employee growth.

10.2 Describe the firm's ability to support the schedule and delivery requirements.

- 10.2.1 Describe the firm's customer support program for resolution of warranty items.

10.3 Provide information on five (5) recent projects of similar facilities that have utilized its equipment begin proposed within the last three (3) years.

10.4 The above shall be attached in the Response Attachment Section.

## 11. PROJECT DESCRIPTION

11.1 Project Description and Construction Team:
- 11.1.1 Owner: West Haymarket JPA (Joint Public Agency)
- 11.1.2 JPA Program Manager: PC Sports
- 11.1.3 Arena Operator: SMG Management / SAVOR
- 11.1.4 Project Architect: DLR Group
- 11.1.5 Arena Contractor: Mortenson Construction

11.2 Project Location:

Pinnacle Bank Arena
600 R Street
Lincoln, NE 68508

11.3 Type of Construction:
- 11.3.1 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.
- 11.3.2 The attached garage is approximately 280 spaces and is a three-level precast structure.

## 12. QUALIFICATIONS

12.1 All proposers must state the location that the proposed products are manufactured, assembled or produced.

12.2 The manufacturer must have an established reputation in the line with the equipment proposed.

## 13. SHIPMENT OF PRODUCT

13.1 Shipment and installation of product is to be coordinated with the Arena Operator, PC Sports and Mortenson Construction.

13.2 Product must be installed no later than August 14, 2013 Unless authorized.

13.3 Pinnacle Bank Arena 600 R Street, Lincoln, NE 68508.

## 14. SECURITY

14.1 Access will be restricted only to those having business on the site.

## 15. USE OF WORK AREA

15.1 Delivery of supplies, equipment and/or materials to the site shall be along routes designated by the Arena Contractor or Arena Operator.

15.2 The Vendor must obtain prior approval from the Owner or his representative of areas proposed for temporary storage, stockpiling, equipment, maintenance or operations.

15.3 Working areas shall be chosen by the Owner or his representative in cooperation with the Arena Contractor.

15.4 The Vendor shall be responsible for repairing, at no cost to the Owner, all Images caused by the work of the Contract.

## 16. DISCREPANCIES AND OMISSIONS

16.1 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.

16.2 Direct inquiries to:

Vince M. Mejer
440 S. 8th Street, Suite 200
Fax: 402.441.6513
vmejer@lincoln.ne.gov

## 17. ERRORS IN BIDS

17.1 Owner will not entertain requests for gratuitous payments arising from errors alleged to have been made in Bid that he has accepted.

# Proposal Sheet

| Line No. | Mfg. Part | Description | Quantity | Unit | Unit Price | Amount |
|---|---|---|---|---|---|---|
| 1. | AIR-CAP3602I-A-K9 | Cisco Aironet 3602I IEEE 802.11n 450 Mbps Wireless Access Point - PoE Ports | 86 | ea. | | $0.00 |
| 2. | AIR-MSE-3355-K9 | Cisco Mobility Services Engine 3355 Hardware | 1 | ea. | | $0.00 |
| 3. | AIR-CAS-12KC-K9= | Cisco Context-Aware Software - License - 12000 Client - Standard | 1 | ea. | | $0.00 |
| 4. | AIR-CAP3502P-A-K9 | Cisco Aironet 3502P IEEE 802.11n 300 Mbps Wireless Access Point - PoE Ports | 80 | ea. | | $0.00 |
| 5. | AIR-CAP3602E-A-K9 | Cisco Aironet 3602E IEEE 802.11n 450 Mbps Wireless Access Point - PoE Ports | 29 | ea. | | $0.00 |
| 6. | AIR-ANT25137NP-R4 | Cisco Antenna - 13 dBi - Patch | 14 | ea. | | $0.00 |
| 7. | AIR-ANT25137NP-R | Cisco Aironet Antenna - 13 dBi - Wireless Data Network Outdoor - Patch | 1 | ea. | | $0.00 |
| 8. | AIR-ANT2566P4W-R | Cisco MIMO 4-Element Antenna - 6 dBi - Outdoor Wireless Data Network - Patch | 101 | ea. | | $0.00 |
| 9. | AIR-CT5508-250-K9 | Cisco Aironet 5508 Wireless LAN Controller - 8 x SFP (mini-GBIC) 1 x Expansion Slot | 2 | ea. | | $0.00 |
| 10. | L-PI12-LF-100 | Cisco Prime Infrastructure Lifecycle License 100 Count | 2 | ea. | | $0.00 |
| 11. | WS-C2960S-24PD-L | Cisco Catalyst WS-C2960S-24PD-L Managed Ethernet Switch | 1 | ea. | | $0.00 |
| 12. | C2960S-STACK | Cisco FlexStack Module Network Stacking Module | 1 | ea. | | $0.00 |
| 13. | CON-SNTP-MSE3355 | Cisco Cisco SMARTnet Extended Service - 24 x 7 x 4 Hour - Maintenance - Physical Service Cisco SMARTnet - 1 Year US | 1 | ea. | | $0.00 |
| 14. | CON-SAU-A12KCK9 | Cisco Software Application Support Plus Upgrades (SAU) - 1 Year - Technical - Electronic Service SW APP SUP + UPG to PI 1.2 LIFECYCLE | 1 | ea. | | $0.00 |
| 15. | CON-SNT-CT08250 | Cisco SMARTnet - 1 Year - 8 x 5 Next Business Day - Maintenance on 2 AIR-CT5508 | 1 | ea. | | $0.00 |
| 16. | CON-SNTP-MSE3355 | Cisco Cisco SMARTnet Extended Service - NBD Maintenance - Physical Service Cisco SMARTnet - 3 Year US | 1 | ea. | | $0.00 |
| 17. | CON-SAU-A12KCK9 | Cisco Software Application Support Plus Upgrades (SAU) 3 Year - Technical - Electronic Service SW APP SUP + UPG to PI 1.2 LIFECYCLE | 1 | ea. | | $0.00 |
| 18. | CON-SNT-CT08250 | Cisco SMARTnet - 3 Year - 8 x 5 Next Business Day - Maintenance on 2 AIR-CT5508 | 1 | ea. | | $0.00 |
| 19. | CON-SNTP-MSE3355 | Cisco Cisco SMARTnet Extended Service - 24 x 7 x 4 Hour - Maintenance - Physical Service Cisco SMARTnet - 3 Year US | 1 | ea. | | $0.00 |
| 20. | CON-SAU-A12KCK9 | Cisco Software Application Support Plus Upgrades (SAU) 3 Year - Technical - Electronic Service SW APP SUP + UPG to PI 1.2 LIFECYCLE | 1 | ea. | | $0.00 |
| 21. | CON-SNT-CT08250 | Cisco SMARTnet - 3 Year - 24X7X4 Hour- Maintenance on 2 AIR-CT5508 | 1 | ea. | | $0.00 |
| | | Total | | | | $0.00 |

Signature:

Printed Name:

Company:

Address:

City, State Zip:

Email Address:

Phone Number:

Number of days to complete ARO:

WH 13-67 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Chairperson and Purchasing Agent of the West Haymarket Joint Public Agency are hereby authorized to enter into Contracts or issue Purchase Orders, respectively, as applicable not exceeding the budgeted amount to the lowest bidder for the furnishing of the following Pinnacle Bank Arena FF&E items: (1) $80,000 - Remaining Furniture Items, Medical Tables, Outdoor Patio Burners; (2) $20,000 - Window Treatments; (3) $50,000 - Electrical Services Dis. Equip.; (4) $20,000 - Draping/Curtains; (5) $140,000 - Material Handling Equipment; (6) $175,000 - Sound and Lighting Equipment; (7) $125,000 - Small Tools, Storage Racks, Traffic Control; (8) $275,000 - Smallwares; (9) $52,569.53 - 2 Kubota Utility Vehicles; (10) $14,350 - Café Express; and (11) $7,896 - Club Car Carryall.

The City Clerk is directed to return a copy of this Resolution to Rick Peo, City Attorney's Office, for transmittal to the parties.

Adopted this _____ day of _____, 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

_____
Doug Emery

WH 13-68 Introduce: 7-12-13

RESOLUTION NO. WH - _____

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

That the attached Amended and Restated Facilities Agreement between the City of Lincoln, Nebraska and the West Haymarket Joint Public Agency is hereby approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Facilities Agreement on behalf of the West Haymarket Joint Public Agency.

Adopted this ___ day of July, 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

_____
Doug Emery

**AMENDED AND RESTATED**
**FACILITIES AGREEMENT**

This **AMENDED AND RESTATED FACILITIES AGREEMENT,** dated as of _____, 2013 (the **"Facilities Agreement"**), is made by and between the **WEST HAYMARKET JOINT PUBLIC AGENCY** (the **"Agency"**), and **THE CITY OF LINCOLN, NEBRASKA** (the **"City"**).

## RECITALS

**1.** The Agency is a joint public agency created pursuant to the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated in the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 10, 2011, (the **"JPA Agreement"**) executed and delivered by the Participants specified therein (the **"Participants"**) in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended, the **"Act"**).

**2.** The City is a city of the primary class, duly created and existing pursuant to the provisions of Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its Charter adopted by the electors of the City in accordance with the provisions of Article XI, Section 2 of the Nebraska Constitution.

**3.** 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 (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 facilities, (10) parking garages and (11) surface parking lots (collectively, the **"Facilities"**), and (b) (1) acquiring land and relocating existing businesses, and (2) undertaking environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on **Exhibit A** hereto, as the same may be amended from time to time, the **"Projects**,**"** and, individually, a **"Project"**), (c) issuing bonds to finance the same (the **"Bonds"**), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

**4.** The Agency and the City have determined that it is necessary, desirable, advisable and in the best interests of the Agency and the City that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes.

**5.** The Agency and the City have further determined that it is necessary, desirable, advisable and in the best interests of the Agency and the City that (a) the Arena Project be operated, maintained and managed by the City, and (b) that the Arena Project and parking garages constructed as Infrastructure Projects ("Parking Garages") be owned by the Agency for so long as any Bonds are outstanding, and title to the other Infrastructure Projects transferred to the City as such Projects are completed.

**6.** The Agency and the City have agreed upon the terms pursuant to which the Agency will construct, equip, and furnish the Projects to advance the public health, safety and welfare of the City and its residents, and the City will operate, maintain and manage the Arena Project and that such agreement should be reduced to writing. The following words and phrases used in this Facilities Agreement shall have the following meanings, unless the context or use indicates another or different meaning or intent:

**"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.

"**Arena"** has the meaning assigned in the Recitals.

**"Arena Improvements"** has the meaning assigned in **Section 6(b).**

**"Arena Manager"** means any entity with which the City contracts to manage the Arena.

**"Arena Project"** means, collectively, those Projects described on **Exhibit A** which collectively constitute the Arena and the related parking improvements consisting of the surface parking lot northwest of the BNSF tracks, the parking garage adjacent to the Arena and the surface parking lot on the Arena site.

**"Arena Sources of Funds"** means state aid, developer contributions, occupation taxes, the turn back tax, Arena rent, concessions, premium seating, naming rights, signage, tickets, interest, tax increment revenues, parking revenues, state and federal environmental funds and private donations.

**"Available Revenues"** means 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.

**"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.

**"Bonds"** means any indebtedness issued by the Agency the proceeds of which are used to pay any of the costs of acquiring, constructing, equipping or furnishing any of the Projects, authorized to be issued by a Resolution of the Agency and any indebtedness of the Agency issued to refund, directly or indirectly, any Bonds.

"**City**" means The City of Lincoln, Nebraska.

"**Clerk**" means the Clerk of the City.

"**Compliance Procedure**" means the Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds attached hereto as **Exhibit B**, as it may be amended from time to time.

**"Construction Fund"** means any of the funds designated as such by a Resolution of the Agency and any accounts or subaccounts created therein into which the net proceeds from the sale of a series of Bonds issued by the Agency shall be deposited.

**"Consultant's Report"** means a written report of an individual consultant or accountant or firm of consultants or accountants, selected by the Agency and acceptable to the City and the Agency, having

the skill and experience necessary to render the particular report, certification or service required by this Facilities Agreement and having a favorable reputation for such skill and experience, which individual or firm shall have no interest in the Agency or the City, and, in the case of an individual, shall not be a member, officer or employee of the Agency or any Participant, and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a member, officer or employee of the Agency or any Participant.

**"Costs of Construction"** means, with respect to each Project:

(a) Obligations incurred for labor and material and to contractors, builders and materialmen in connection with such Project or any part thereof;

(b) The cost of acquiring rights, rights-of-way, easements or other interests in land as may be deemed necessary or convenient for the construction and operation of such Project;

(c) Taxes or other municipal or governmental charges lawfully levied or assessed against such Project or against any property acquired therefor, or payments required in lieu thereof, in each case during the period of construction, and premiums on insurance;

(d) Costs of installing utility services or connections thereto or relocation thereof;

(e) Costs of fidelity and indemnity bonds;

(f) Costs of fixed and moveable equipment;

(g) Expenses incurred in enforcing any remedy against a contractor or subcontractor in respect of default;

(h) Costs of site acquisition, preparation and landscaping;

(i) Fees and expenses of architects, engineers, consultants, surveyors, and inspectors and costs of issuance of the Bonds; and

(j) Any other costs, directly incurred in the acquisition, purchase, construction, equipping, furnishing and completion of such Project.

**"Debt Service Fund"** means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

**"Depreciation and Replacement Fund"** means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

**"Depreciation Fund Requirement"** means an amount equal to 2% of the original construction cost of the Arena Project, as determined by the Finance Director of the City.

**"Facilities Agreement"** means this Facilities Agreement and all amendments and supplements thereto.

**"Infrastructure Project"** means all of the Projects excluding the Arena Project.

**"JPA Agreement"** means the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 20, 2011, between the Participants specified therein, as the same may be amended from time to time.

**"Non-Qualified User"** means any person or entity other than a Qualified User.

**"Operation and Maintenance Fund"** means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

**"Operational Increment"** means, for any fiscal year, the amount negotiated between the City and the Arena Manager and budgeted to pay operation and maintenance expenses of the Arena to the extent revenues received by the Arena Manager are insufficient for such purposes.

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

**"Resolution"** means any resolution or other authorizing document of the Agency pursuant to which a series of Bonds is issued to finance or refinance any portion of the costs of any Project.

**"Revenue Fund"** means the fund created hereunder and designated as such pursuant to **Section 11** hereof and in which there is established a General Account and a Private Account.

**"Revenues"** has the meaning set forth in **Exhibit B** attached hereto.

**"Site"** means the real estate indicated on **Exhibit A** attached hereto, as amended and supplemented from time to time, to be acquired by the Agency.

**"Surplus Fund"** means the fund created hereunder and designated as such pursuant to **Section 11** hereof, and in which there is established an Arena Account and an Infrastructure Account.

**"West Haymarket Facilities"** has the meaning as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

**NOW THEREFORE**, the City and the Agency, in consideration of the mutual covenants and agreements contained herein, and contained in the JPA Agreement, do hereby covenant and agree as follows:

**Section 1. Agency to Provide Projects.** The Agency hereby agrees that it will acquire title to the Site and acquire, construct, equip and furnish all of the Projects for the City on the Site and in accordance with final plans and specifications to be approved by the City.

The Agency shall, upon completion of the plans and specifications and approval thereof by the City, proceed to take bids and award contracts in compliance with bidding procedures of the County Purchasing Act to the extent required to complete each Project. Contracts for the acquisition, construction, equipping and furnishing of each Project shall be entered into in the name of the Agency.

The City hereby acknowledges that the costs of constructing, equipping and furnishing any Project may exceed the amount of money to be deposited in the Construction Fund, which fund contains

and will contain money only from the proceeds of sale of the Bonds issued by the Agency. The City currently anticipates that it will have on hand funds sufficient to make up any difference between the cost for completing the acquisition, construction, equipping and furnishing of such Project and the money in the Construction Fund. The City agrees that it shall pay from its own funds any amounts necessary to make up any difference between the total amount of such estimated cost and the money in the Construction Fund.

The Agency agrees that any contractor which provides work on any Project shall provide performance and payment bonds and builders' risk insurance, all as specified in **Section 7** hereof.

The City agrees that the Agency shall not be obligated to pay for any work, whether by change order or otherwise, in excess of the amount of funds in the Construction Fund.

The ownership of, in and to the Arena Project acquired pursuant to this Agreement, including any and all improvements and other property, shall vest in the Agency for so long as any Bonds remain outstanding. The Agency shall not transfer, encumber or sell the Arena Project or any portion thereof without the approval of the City. At such time as no Bonds remain outstanding, the Agency shall convey the Arena Project to the City for the sum of $1.00 and other good and valuable consideration.

The ownership of, in and to the tangible portions of the Infrastructure Project shall vest in the City as provided in **Section 5**.

Upon completion of the acquisition, construction, equipping and furnishing of each Project, the Agency shall furnish to the City a complete description of all property, both real and personal, covered by this Agreement.

**Section 2. Payment of Costs of Construction.** The City and the Agency agree that all Costs of Construction shall be paid out of the Construction Fund or other available funds of the City. Disbursement requisitions to any contractor or vendor to be paid from the appropriate accounts and/or subaccounts in the Construction Fund for Costs of Construction of each Project or to any provider of equipment and furnishings, including the final requisition, shall be approved by the City and the Agency, and such requisitions and evidence of approval thereof shall be submitted to the City Treasurer for payment as provided herein, and shall be accompanied by the Agency's Program Manager's or architect's certificate if the requisition is for a payment due to any contractor. Requisition approvals by the Agency shall be evidenced by the Chair of the Agency and the Agency Treasurer pursuant to Section 13-2527(1), Reissue Revised Statutes of Nebraska, as amended.

Money in any Account in the Construction Fund shall be used by the Agency solely for the purpose of paying the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's engineers or architects and on file in the office of the Clerk, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's engineers or architects.

The City Treasurer shall make a withdrawal from an account or subaccount in the Construction Fund only upon a duly authorized and executed order of the City 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 Facilities Agreement 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.

Money in a costs of issuance account shall be disbursed upon a duly authorized and executed order of the City solely to pay the costs of issuance of the series of Bonds for which such costs of issuance account has been established. Nothing contained herein or in any Resolution shall prevent the payment out of any costs of issuance account of all costs and expenses incident to the issuance of a related series of Bonds without a certificate from the Agency's architects.

**Section 3. Certificate of Acceptance.** Upon completion of any Project and acceptance thereof by the Agency, the fact of such completion and acceptance shall be evidenced by a Certificate of Completion signed by the Chairperson of the Agency. Upon completion and acceptance of such Project together with all other Projects, the costs of which are to be paid from such account in the Construction Fund, any amount remaining in such account in the Construction Fund after payment of all costs of completion of such Project and all other Projects the costs of which are to be paid from such account in the Construction Fund, shall be transferred to the Debt Service Fund and applied to the payment of debt service on the applicable Bonds.

**Section 4. Dispute Resolution.** Any dispute with any contractor concerning the construction of any Project or interpretation of any contract shall not be adjusted and settled by the Agency in an amount in excess of the money in the Construction Fund without the City's approval, and in such event, the City shall be liable and make payment to such contractor and all other persons for any judgment, claim or liability in connection with such Project in excess of the money in the Construction Fund.

**Section 5. Ownership and Management of Parking Garages; Transfer or Dedication of Infrastructure Project to the City.**

(a) Parking Garages.

(1) Ownership. The ownership of and in the premises for the Parking Garages and the parking garage improvements constructed thereon pursuant to this Agreement shall vest in the Agency for so long as any of the Bonds remain outstanding. At such time as no Bonds remain outstanding, the Agency shall convey the Parking Garages to the City for the sum of One Dollar ($1.00) and other good and valuable consideration.

(2) Management of Parking Garages. The City shall contract with the Agency for the City to undertake the maintenance, operation, and management of the Parking Garages on behalf of the Agency in the same manner as the City undertakes to maintain, operate and repair the City's downtown parking garages.

(b) Infrastructure Projects.

(1) Design and Construction. The Agency or City shall provide all necessary personnel to design, engineer, construct and complete each Infrastructure Project in the same manner as comparable City facilities. The Director of Public Works of the City is hereby designated as the chief official responsible for any design, engineering, construction and completion of the Infrastructure Project by the City. All City personnel assisting with the designing, engineering, construction or completion of the Infrastructure Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(2) Transfer or Dedication. The Agency, except as provided in (a) above, will in consideration of the City's transfer of all the net proceeds from the City's issuance of its general

obligation bonds after payment of costs of issuance thereof, in an aggregate original stated principal amount not to exceed $25,000,000 pursuant to Ordinance No. 19843 adopted on March 4, 2013 by the City Council for the City of Lincoln, Nebraska, transfer or dedicate such portion of each Infrastructure Project which is of the type customarily publicly dedicated to the City. The Agency agrees that said proceeds shall be used by the Agency solely for the purpose of paying for the cost to acquire, construct, improve, or equip the Arena Project as an eligible facility under the Convention Center Facilities Financing Act (Neb. Rev. Stat. §§ 13-2601 to 13-2613 (Reissue 2012)). The transfer or dedication of such portion of the Infrastructure Project shall be made as and when completed to be maintained, operated and managed as City facilities and the Agency shall execute and deliver to the City any and all documents as may be requested by the City for such purpose. Prior to the City's acceptance of such transfer or dedication of any portion of any Infrastructure Project to the City, the Director of Public Works and Utilities of the City shall review and approve the design and construction of such Infrastructure Project as having been designed and constructed in substantially the same manner as comparable City facilities.

**Section 6. City to Maintain, Operate and Manage the Arena Project.** The City undertakes to maintain, operate and manage the Arena Project. In such connection the following terms shall apply:

(a) The City shall provide or contract for all necessary personnel, materials and supplies to maintain, operate and manage the Arena Project as an entertainment/sports arena and related facilities. Except for Qualified Use Agreements (as defined in **Exhibit B** hereto), the City will not enter into any lease or contract with respect to the use, operation or management of the Arena without first obtaining a Special Tax Opinion (as defined in **Exhibit B** hereto). All City personnel assisting with the operation of the Arena Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(b) Any improvements to the Arena Project may be made from time to time as determined by the City to be necessary, desirable or advisable (the **"Arena Improvements"**). The Agency shall contract for work on such Arena Improvements with contracts to be awarded and entered into pursuant to the County Purchasing Act, Section 23-3111, Reissue Revised Statutes of Nebraska, as amended. All costs of such Arena Improvements shall be paid by the Agency from Agency funds available for such purposes, including, without limitation, the Arena Account in the Surplus Fund established hereunder.

(c) The City shall establish rates, fees and charges which are to apply to the use of the Arena Project and shall adjust such rates, fees and charges from time to time as it deems appropriate, just and equitable. The City shall annually, or at such other intervals as the City deems appropriate, submit a report to the Agency detailing the proposed rates, projected revenues based on the same and the proposed expenses.

(d) The Agency shall pay to the City the fees and charges, based upon actual costs and budgeted annually, as the same shall be amended from time to time.

(e) In exercising its authority and carrying out its duties and functions the City shall not discriminate against any employee, applicant for employment, contractor, potential contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

**Section 7. Insurance.** The City or Agency shall maintain, or cause to be maintained, insurance upon the Arena Project and the operation thereof as follows:

(a) insurance against fire, theft and extended coverage risks (including vandalism and malicious mischief) in an amount not less than the full insurable value of the Arena Project;

(b) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Projects with limits of not less than one million dollars for any person for any number of claims arising out of a single occurrence, five million dollars for all claims arising from a single occurrence, and any greater limits of liability which may be established by Section 13-926, Reissue Revised Statutes of Nebraska, as amended, or any other applicable provision of the Nebraska Political Subdivision Tort Claims Act (the **"Act"**), and excess insurance with limits of not less than two million dollars for any liability which may not be limited by the Act. Such general public liability insurance may be subject to a deductible amount not in excess of $500,000.00.

(c) workers' compensation insurance coverage as required by the laws of the State of Nebraska;

(d) performance bond coverage and labor and materials payment bond coverage for the construction of the Improvements in the full amount of the contract or contracts for construction of the Improvements.

All such insurance shall show the City and the Agency as insureds as their respective interests may appear. Insurance required in (a) and (d) above shall be payable to the Agency. The cost of any and all such insurance shall be treated as a cost of operation and maintenance of the Projects.

**Section 8. Utilities and Other Impositions.** The City shall provide for the payment of all utility charges, taxes (if any) and other impositions related to the Projects or the operation thereof and all such charges or impositions shall be treated as a cost of operation and maintenance of the Arena Project and be paid from the Operation and Maintenance Fund established hereunder, or if the balance thereof is insufficient for such purposes, by the City. Because the Projects will be used for governmental purposes and not for financial gain or profit, under present law the Projects will not be subject to real estate or personal property taxes. It is understood and agreed, however, that the City agrees to pay any taxes and assessments, general and special, and all other impositions, ordinary and extraordinary, of every kind and nature which might be levied or assessed on the Projects and any improvements hereafter constructed.

**Section 9. Use of Projects.** As long as any Bonds remain outstanding, the proceeds of which were used to acquire, construct, equip, or furnish any of the Projects, the City and Agency shall not use any of the Projects, or allow the use thereof, in any manner inconsistent with use for the general municipal purposes of the Agency or the City.

**Section 10. Issuance of Bonds; Debt Service.** To pay the Costs of Construction of one or more Projects and the costs of issuance thereof, the Agency agrees to issue Bonds pursuant to one or more Resolutions and to deposit the proceeds thereof as provided in the Resolution authorizing such series of Bonds.

The City and the Agency covenant and agree that all payments of the principal or redemption price of and interest on the Bonds shall be made from Revenues, together with the proceeds of the tax levied by the Agency by authority granted to the Agency pursuant to the JPA Agreement and any other available funds of the Agency.

**Section 11. Establishment of Funds.** The City and the Agency hereby create and establish the following separate funds to be held by the City Treasurer as agent for the Agency to be known respectively as the:

(a) the West Haymarket Joint Public Agency Revenue Fund (the **"Revenue Fund"**) in which there is established (1) a General Account and (2) and Private Account.

(b) the West Haymarket Joint Public Agency Debt Service Fund (the **"Debt Service Fund"**) in which there shall be established an account for each series of Bonds.

(c) the West Haymarket Joint Public Agency Operation and Maintenance Fund (the **"Operation and Maintenance Fund"**).

(d) the West Haymarket Joint Public Agency Depreciation and Replacement Fund (the **"Depreciation and Replacement Fund"**).

(e) the West Haymarket Joint Public Agency Surplus Fund (the **"Surplus Fund"**) in which there is established (1) an Arena Account and (2) an Infrastructure Account.

The funds referred to in paragraphs (a) through (e) above shall be maintained and administered by the Agency and the City solely for the purposes and in the manner as provided in this Facilities Agreement so long as any Bonds remain outstanding within the meaning of the Resolution pursuant to which such Bonds were issued.

In addition, to the extent that proceeds of the Bonds authorized by a Resolution will be used to pay the Costs of Construction of any portion of any Project, such Resolution shall establish a Construction Fund and any necessary or desirable accounts and subaccount therein in accordance with the provisions of this Facilities Agreement.

**Section 12. Collection and Application of Revenues.**

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds, and continuing as long as any Bonds remain outstanding under the Resolution pursuant to which they were issued, all of the Revenues shall as and when received be paid and deposited into the Revenue Fund. The City and the Agency shall deposit Revenues into the General Account and the Private Account in accordance with **Exhibit B** attached hereto, as the same may be amended and supplemented from time to time. The Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Agency and the City and shall not be commingled with any other moneys, revenues, funds and accounts of the Agency or the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Facilities Agreement.

(b) The City's occupation tax revenues generated under Ordinance Nos. 19407, 19408, and 19409 (the "Occupation Tax Revenues") have been and shall be expended by the City through the JPA in part to acquire, construct, improve, and equip the Arena as a sports arena facility (as defined in Section 13-2603). Any state assistance provided under the Convention Center Facility Financing Assistance Act (the "Turn Back Tax") in excess of the amounts necessary for a period of thirteen months from the date of receipt to pay principal of and interest on the City's $25,000,000 in principal amount of general obligation bonds issued pursuant to Ordinance No. 19843 adopted on March 4, 2013, by the City Council for the City, and proceeds of any bonds issued to refund such bonds, (the "Turn Back Tax Bonds") shall be used to pay the City back amounts for capital expenditures on the Arena so expended from the City's Occupation Tax Revenues through the JPA. To the extent Turn Back Tax receipts held by the City are insufficient to pay amounts next falling due on the City's Turn Back Tax Bonds, the JPA shall provide funds in an amount necessary for the City to make such debt service payment on the Turn Back Tax Bonds.

**Section 13. Application of Money in Funds.**

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds and continuing so long as any Bonds shall remain outstanding under the Resolution pursuant to which such Bonds were issued, it will on the first day of each month administer and allocate all of the money then held in the General Account in the Revenue Fund as follows:

(1) ***Debt Service Fund***. There shall first be paid and credited monthly to each account established pursuant to a Resolution in the Debt Service Fund, all Revenues collected in the preceding month until the balance in each such account is equal to all principal and interest payments becoming due through the following December 15 on all Bonds then outstanding under such Resolution payable from such account.

(2) ***Operation and Maintenance Fund***. There shall next be paid and credited to the Operation and Maintenance Fund an amount equal to the Operational Increment for the current fiscal year of the Agency. All amounts paid and credited to the Operation and Maintenance Fund shall be expended and used by the City, as agent for the Agency, solely for the purpose of paying the operating expenses of the Arena Project to the extent revenues received by the Arena Manager are insufficient for such purposes.

(3) ***Depreciation and Replacement Fund***. After all payments and credits required at the time to be made under the provisions of paragraphs (1) and (2) of this **Section 13(a)** have been made, there shall next be paid and credited to the Depreciation and Replacement Fund all amounts remaining in the General Account in the Revenue Fund until such Fund aggregates the Depreciation Fund Requirement so long as any of the Bonds remain Outstanding.

Money in the Depreciation and Replacement Fund shall be expended and used by the Agency and the City, if no other funds are available therefor, (A) for the purpose of making emergency replacements and repairs in and to the Arena Project as may be necessary to keep the Arena Project in good repair and working order and to assure the continued effective and efficient operation thereof and (B) to pay the Operational Increment, to the extent that Revenues are insufficient for such purpose. After the Depreciation and Replacement Fund aggregates the Depreciation Fund Requirement, no further payments into said Fund shall be required, but if the Agency or the City is ever required to expend a part of the money in the Depreciation and Replacement Fund for its authorized purposes and such expenditure reduces the amount of such Fund below the Depreciation Fund Requirement, then monthly payments into the Depreciation and Replacement Funds shall resume and continue until said Fund again aggregates the Depreciation Fund Requirement

(4) ***Surplus Fund***. After all payments and credits required at the time to be made under the provisions of paragraphs (1), (2) and (3) of this **Section 13(a)** have been made, all moneys remaining in the General Account in the Revenue Fund shall be paid and credited to either the Arena Account or the Infrastructure Account in the Surplus Fund, as determined by the City and the Agency. Money in the Arena Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects which constitute the Arena Project 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.

The Treasurer shall make a withdrawal from the Arena Account in the Surplus Fund for such purpose 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 Agreement 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.

(B) Paying the cost of the operation, maintenance and repair of the Arena Project to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;

(C) Paying the cost of extending, enlarging or improving the Arena Project;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any; or

(E) Any other lawful purpose in connection with the operation of the Arena Project and benefiting the Arena Project.

Money in the Infrastructure Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) 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.

The Treasurer shall make a withdrawal from the Infrastructure Account in the Surplus Fund for such purpose 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 Agreement 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.

(B) Paying the cost of the operation, maintenance and repair of any of the Projects to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;

(C) Paying the cost of extending, enlarging or improving any of the Projects;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any;

(E) Any other lawful purpose in connection with the operation of any of the Projects and benefiting any of the Projects.

(b) In the event that 30 days prior to the payment date of any principal or interest on 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 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 as provided herein, 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 **Section 15**.

**Section 14. Transfer of Funds to Paying Agent**. The Treasurer of the Agency is hereby authorized and directed to withdraw from the Debt Service Fund sums sufficient to pay the principal of and interest on the Bonds as and when the same become due on any principal or interest payment date, and to forward such sums to the respective paying agents for each series of Bonds in a manner which ensures such paying agent will have available funds in such amounts on or before the business day immediately preceding each such payment date. All money deposited with any paying agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Facilities Agreement and the applicable Resolution.

**Section 15. Annual Budget; Levy of Taxes.** Prior to the commencement of each fiscal year, the Agency will cause to be prepared and filed with its Secretary and the Clerk a budget setting forth the estimated receipts and expenditures for each month in the next succeeding fiscal year. Such annual budget shall be prepared in accordance with the requirements of the laws of Nebraska and shall contain all information that is required by such laws.

The Treasurer shall, not later than the last day of each month, prepare, file with the Secretary and the City Clerk, and forward to each member of the governing body, a financial report which includes the financial statements for the preceding month and the results for the fiscal year through the end of the preceding month. If, at the end of any fiscal quarter, such financial statements show that the budgeted Available Revenues would exceed the projected actual Available Revenues at the end of the fiscal year by more than $500,000, the Agency covenants and agrees that within 60 days of such determination it will deliver a Consultant's Report to the Participants setting forth recommendations for increasing the Available Revenues to the budgeted levels; provided, however, that in the event that such Consultant's Report shall state that federal, state or other applicable governmental laws or regulations (or interpretations thereof) placing restrictions and limitations on the rates, fees and charges to be fixed, charged and collected for the use of or the services furnished by the Arena Project do not permit or by their application make it impracticable for the Agency to produce the required Available Revenues, then the budgeted Available Revenues shall be reduced to the highest practicable level permitted, as set forth in such Consultant's Report, by such laws and regulations then in effect. The Agency agrees that it will, to the extent feasible, follow the recommendations of the Consultant's Report.

The Agency covenants and agrees that for so long as any Bonds are outstanding under the Resolution pursuant to which such Bonds were issued, it will deliver to the Participants a Consultant's Report regarding the operation, maintenance and financial performance of the Arena Project for the fiscal years ending August 31, 2017, and every fifth fiscal year thereafter.

In the event that the budgeted Available Revenues for the fiscal year exceeds the projected actual Available Revenues for such fiscal year by $1,000,000 or more, the Agency covenants and agrees that it shall in it next annual budget prepared pursuant to this **Section 15**, include an amount to be levied upon all of the taxable property within the City and for deposit to the Debt Service Fund of Section 13(a) sufficient in rate and amount to produce the amounts necessary to make up such deficiency in the actual Available Revenues, together with any anticipated additional deficiency in the actual Available Revenues through the end of the next fiscal year.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Agency or the City are levied and collected. The proceeds derived from such taxes shall be used to repay any and all amounts advanced by the City pursuant to the provisions of **Section 13(b)**, shall be kept separate and apart from all other funds of the Agency and shall be used solely for the payment of amounts advanced by the City and for deposit to the Debt Service Fund of Section 13(a).

**Section 16. Annual Financial Audit.** Annually, promptly after the end of the fiscal year, the Agency will cause a financial audit to be made of the Arena Project for the preceding fiscal year by a nationally recognized independent certified public accountant or firm of nationally recognized independent certified public accountants to be employed for that purpose and paid from the Revenues.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Secretary, and a duplicate copy of the audit shall be mailed to the City Clerk. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, the registered owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or registered owner.

As soon as possible after the completion of the annual audit, the governing body of the Agency shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Facilities Agreement or any Resolution, the Agency will promptly cure such deficiency and the City and the Agency will promptly proceed to take such action as may be necessary to adequately provide for such requirements.

**Section 17. Term of Agreement.** This Facilities Agreement shall not terminate so long as Bonds remain outstanding under the terms of any Resolution. Either the City or the Agency may terminate this Agreement at any time after no Bonds are outstanding under the terms of any Resolution.

**Section 18. Governing Law.** This Facilities Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

**Section 19. Severability.** If for any reason any provision hereof shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof.

**Section 20. Assigns.** The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**Section 21. Counterparts.** This Facilities Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Section 23. Section Headings.** The headings or titles of the several sections hereof shall be solely for the convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Agreement.

**Section 23. Amendment.** This Facilities Agreement may be amended in writing upon the approval of both parties.

***[The remainder of this page is intentionally blank.]***

**IN WITNESS WHEREOF**, the City and the Agency have caused this Facilities Agreement to be executed on their behalf by their respective officers thereunto duly authorized.

**WEST HAYMARKET JOINT PUBLIC AGENCY**

By:_____
Chair

**THE CITY OF LINCOLN, NEBRASKA**

By:_____
Mayor

# EXHIBIT A

## MAP OF SITE

**See Attachment 1**

## 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 B**

# COMPLIANCE PLAN AND PROCEDURE
# FOR
# WEST HAYMARKET JOINT PUBLIC AGENCY
# TAX ADVANTAGED BONDS

# COMPLIANCE PLAN AND PROCEDURE
# FOR
# WEST HAYMARKET JOINT PUBLIC AGENCY
# TAX ADVANTAGED BONDS

September 8, 2010

**EXHIBIT B**

# CITY OF LINCOLN, NEBRASKA
# COMPLIANCE PLAN AND PROCEDURE
# FOR
# WEST HAYMARKET JOINT PUBLIC AGENCY
# TAX ADVANTAGED BONDS

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September 8, 2010

**EXHIBIT B**

**CITY OF LINCOLN, NEBRASKA**
**COMPLIANCE PLAN AND PROCEDURE**
**FOR**
**WEST HAYMARKET JOINT PUBLIC AGENCY**
**TAX ADVANTAGED BONDS**

This **COMPLIANCE PLAN AND PROCEDURE FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY TAX ADVANTAGED BONDS** (the "**Compliance Procedure**") has been prepared in connection with the execution and delivery of the Facilities Agreement, dated September 8, 2010 (the "**Facilities Agreement**") between The City of Lincoln Nebraska (the "**City**") and the West Haymarket Joint Public Agency (the "**Agency**"). This Compliance Procedure is applicable to all Tax Advantaged Bonds (as defined below) that are issued by the Agency after the date hereof to finance costs of the Projects (as defined below).

The Agency plans to finance the cost of the Projects by issuing one or more series of bond secured as provided in the Facilities Agreement. In order to reduce interest expense, the Agency wishes to maximize the use of Tax Advantaged Bonds. Tax Advantaged Bonds must satisfy certain restrictions imposed by the Internal Revenue Code of 1986 (the "**Code**") and United States Treasury Regulations ("**Regulations**") related to use of financing proceeds, use of assets financed by the debt and investment of financing proceeds and related funds.

The Facilities Agreement provides that the City is responsible for the construction and operation of the public facilities and infrastructure improvements in the West Haymarket area of the City. The City intends to use and invest proceeds of the Tax Advantaged Bonds and related funds to pay costs of acquisition, construction and improvement, and has agreed to operate the Projects in compliance with the requirements of the Code and Regulations applicable to Tax Advantaged Bonds.

This Compliance Procedure:

(1) Provides guidance regarding procedures to capture and retain data relating to all costs of the Projects;

(2) Describes the documentation procedure to be followed to identify what portions of the West Haymarket Project will be treated as financed by Tax Advantaged Bonds;

(3) Describes procedures to track investments of proceeds of Tax Advantaged Bonds and related funds in order to meet investment restrictions contained in the Code and Regulations;

(4) Establishes a general document retention procedure for each issue of Tax Advantaged Bonds to substantiate compliance with the Code and Regulations; and

(5) Identifies the City officer responsible for monitoring compliance with the provisions of the Code and Regulations related to Tax Advantaged Bonds.



**EXHIBIT B**

## I. Definitions

1.1 *Definitions.* Capitalized words and terms used in this Compliance Procedure, unless otherwise defined below, have the meaning set out in the Facilities Agreement. Other terms have the meaning set forth below:

"**Accounting Department**" means the Finance Department of the City and any other entity assigned by state law or City ordinance or agreement to account for the custody, investment, administration or expenditures of any proceeds of Tax Advantaged Bonds.

"**Agency**" means the West Haymarket Joint Public Agency, a joint public agency created pursuant to a Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010 executed and delivered by the City and The Board of Regents of the University of Nebraska in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended).

"**Ancillary Costs**" means Costs related to the construction, acquisition or equipping of a Development Facility that are not External Costs, such as a percentage of costs of salary for City personnel and City expenses determined to be attributable to activities related to the construction, acquisition or equipping of the Development Facility.

"**Annual Tax Compliance Questionnaire**" means one or more questionnaires in the form attached as **Exhibit E** that may be completed annually for certain Development Facilities following the date they are Placed in Service.

**"Arena"** has the meaning assigned in the recitals of the Facilities Agreement.

"**Available Equity Sources**" means Revenues available to pay for the costs of the Projects. Available Equity Sources do not include any earnings derived from the investment of Tax Advantaged Bonds or Revenues used to pay debt service on Tax Advantaged Bonds or costs of operating or maintaining the Projects.

"**Bond Compliance Officer**" means the Finance Director of the City or, if the position of Finance Director is vacant, the person appointed to perform the duties of the Finance Director on an interim basis by the Mayor. The Bond Compliance Officer is expected to employ members of the City staff and independent contractors to assist in the performance of the obligations assigned in this Compliance Procedure.

"**Bond Compliance Plan**" means the written plan prepared by the Bond Compliance Officer in consultation with Bond Counsel prior to the issue date of each issue of Tax Advantaged Bonds. A form of Compliance Plan is attached as **Exhibit D**.

"**Bond Counsel**" means a firm of nationally recognized bond counsel selected by the City to issue a legal opinion regarding the validity and enforceability of Tax Advantaged Bonds and the tax treatment of interest on Tax Advantaged Bonds.

"**Bond Proceeds**" means proceeds received from the sale of Tax Advantaged Bonds and any money received from the investment of those sale proceeds.



**EXHIBIT B**

"**Bond Restricted Funds**" means Bond Proceeds together with any other funds, accounts, investments, cash or portions of funds, accounts or investments that are subject to arbitrage rebate and/or yield restriction rules under the Code and Regulations.

"**City**" means The City of Lincoln, Nebraska.

**"Code"** means the Internal Revenue Code of 1986, as amended.

"**Compliance Period**" means with respect to each Development Facility the period that begins on the date on which the Development Facility is Placed in Service and which ends on the date all Tax Advantaged Bonds that were allocated to Costs of the Development Facility pursuant to the Final Allocation of Bond Proceeds have been retired.

"**Compliance Procedure**" means this Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds.

"**Cost**" means all expenses or charges of any kind related to the Projects and, in relation to each Development Facility, all External Costs and Ancillary Costs incurred in connection with the acquisition, construction, reconstruction, improvement and equipping of the asset, including but not limited to costs of real property acquisition and site work, engineering, architectural costs and related soft costs of the physical asset.

"**Development Budget**" means the budget for the Projects dated September 8, 2010, attached as **Exhibit A** as amended and supplemented from time to time.

"**Development Facility**" means real or tangible personal property that is separately identified in an Interim Financing Sources Allocation or the Final Financing Sources Allocation as part of the Projects. Each Development Facility includes only physical assets, that are (1) functionally related or integrated in use, (2) located on the same physical site or proximate sites, and (3) expected to be Placed in Service at approximately the same time (within a one-year period).

"**External Costs**" means all Costs of the Projects (including but not limited to interest expense prior to the Placed in Service date for a specific Development Facility) paid to independent contractors that are not Related to the City, the Regents or the Agency that will be capitalized by the City on its financial records or that could be capitalized for federal income tax purposes if the City were required to pay federal income taxes.

"**Final Financing Sources Allocation**" means the written allocation of Bond Proceeds prepared by the Bond Compliance Officer that reflects, as of the date the relevant Development Facility is Placed in Service, the allocation of all funding sources (Tax Advantaged Bonds and Available Equity Sources) to all Costs of the Development Facilities, all Financing Costs and all Start-up Costs for the Projects.

"**Final Private Use Allocation**" means the spreadsheet prepared in conjunction with the Final Financing Sources Allocation that shows the estimated percentage of the Cost of each Development Facility expected to be used in a Private Business Use.

"**Financed Assets**" means any Development Facility or part of a Development Facility financed by Bond Proceeds as reflected in a Final Financing Sources Allocation.

"**Financing Costs**" means all expenses of issuing the Tax Advantaged Bonds.



**EXHIBIT B**

**"Guaranteed Investment Contract"** is any investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

"**Interim Financing Sources Allocation**" means an allocation of all estimated funding sources (Tax Advantaged Bonds and Available Equity Sources) to all Costs of Development Facilities, all Financing Costs and all Start-up Costs prepared by the City in consultation with the Program Manager and Bond Counsel. Each Interim Financing Sources Allocation must, in the opinion of Bond Counsel, result in all Tax Advantaged Bonds meeting the use of proceeds and Financed Assets requirements set out in the Tax Compliance Agreement for the respective financing. The initial Interim Financing Sources Allocation is attached as **Exhibit B**. Each subsequent Interim Financing Sources Allocation will be consecutively designated as **Exhibit B-1, B-2, B-3**, etc., and attached to this Compliance Procedure.

"**Interim Private Use Allocation**" means the spreadsheet showing the estimated percentage of the Cost of each Development Facility that is expected to be used in a Private Business Use. The initial Interim Financing Sources Allocation is attached as **Exhibit C**. Each subsequent Interim Financing Sources Allocation will be consecutively designated as **Exhibit C-1, C-2, C-3**, etc., and attached to this Compliance Procedure.

**"Investment"** means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Bond Proceeds or Bond Restricted Funds..

"**Naming Right Agreement**" means the long-term right to name the Arena facility and accompanying privilege to have the name used in connection with the operation of the Arena.

"**Non-Qualified Users**" means any person or entity that is not a Qualified User and uses a Development Facility in connection with a trade or business.

"**Permitted Private Use**" means any use that otherwise would constitute Private Business Use that is specifically authorized in a Tax Compliance Agreement or which is the subject of a Special Tax Opinion.

"**Placed in Service**" means that date (as determined by the Bond Compliance Officer) when a Development Facility is completed, has commenced operation and is operating at its intended capacity.

"**Pre-Issuance Costs**" means External Costs or Ancillary Costs of a Development Facility paid by the City from other sources of funds prior to the issue date of an issue of Tax Advantaged Bonds for which the City is seeking reimbursement from the proceeds of an issue of Tax-Advantaged Bonds.

"**Private Business Use**" means use of Financed Assets during the Compliance Period in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether the Financed Assets are "used" in a trade or business. The ownership of a Financed Asset by a Non-Qualified User is Private Business Use. Any other special legal right to possession of the Financed Asset or to control the operation of a Financed Asset that is granted to a Non-Qualified User is Private Business Use unless the legal arrangement is a Qualified Use Agreement or an arrangement approved in a Special Tax Opinion. Generally Private Business Use includes use of Financed Assets by a Non-Qualified User pursuant to a Naming Right Agreement, a lease, a management agreement, an operation agreement, or other similar legal arrangement. Private Business Use can result from any legal agreement entered into by the Agency, the City, the Regents or any other Qualified User.

"**Program Manager**" means The Benham Companies, L.L.C or such other firm of engineers or architects assigned by the City to monitor the acquisition, construction and equipping of Development Facilities.

**"Projects"** means land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing of public facilities, including but not limited to a sports/entertainment 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 and any other capital improvements or other projects pertaining to the redevelopment of an area in the City generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and "M" Street on the south, as amended from time to time. A general description of the assets expected to constitute the Projects, the anticipated cost and financing source is included on the Development Budget attached as **Exhibit A** to this Tax Agreement.

**"Qualified Use Agreement"** means any of the following:

(1) A lease or other short-term use by members of the general public who occupy a Development Facility on a short-term basis as members of the general public in the ordinary course of the operation of the Development Facility.

(2) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of a Development Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Non-Qualified User using all or any portion of a Development Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) a Development Facility was not constructed for a principal purpose of providing the property for use by that Non-Qualified User. Any Non-Qualified User using all or any portion of a Development Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Development Facility was not constructed for a principal purpose of providing the property for use by that person.

"**Qualified User**" means the City, the Regents, the Agency or the State of Nebraska, any other political subdivision of the State or Nebraska, or any agency or instrumentality of the foregoing.

"**Rebate Analyst**" means the firm selected by the Bond Compliance Officer to calculate arbitrage rebate.



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

"**Reimbursement Resolution**" means Resolution No. WH00011 adopted by the Agency on August 13, 2010, pursuant to which the Agency evidenced its "official intent" (within the meaning of Regulations § 1.150-2) to issue up to $340,000,000 of debt obligations from time to time to finance the Projects and reimburse expenditures previously made from other sources with proceeds of the financing.

"**Related**" means, with respect to the City, the Regents or the Agency, any relationship involving a related party within the meaning of Regulations Section 1.150-1(b).

**"Revenues"** means any revenues, receipts and incomereceived by the Agency from any source, including, without limitation, property taxes and private donations.

"**Special Tax Opinion**" means a written opinion of Bond Counsel addressed to the City and the Agency that concludes that a particular action or failure to act, contractual agreement or other arrangement will not result in Private Business Use or result in a Tax Advantaged Bond being an arbitrage bond or otherwise result in a Tax Advantaged Bond no longer qualifying as such.

"**Start-up Costs**" means Costs of supplies and other start-up operation expenses for any Development Facility.

"**Substantiation Documents**" means the documents and records listed on **Exhibit D** that will be maintained for each issue of Tax Advantaged Bonds. Substantiation Documents may be stored on a digital electronic medium (e.g., a PDF file) so long as the Bond Compliance Officer determines that the information can be retrieved, reviewed and printed as a paper document if needed.

"**Tax Advantaged Bond(s)**" means any bond, note, lease, certificate or other instrument that is a debt obligation for federal income tax purposes issued by the Agency or issued by another political subdivision, agency or public corporation and loaned or made available to the City for purposes of funding any portion of the Projects. The term Tax Advantaged Bonds includes bonds or notes issued by the City as well as obligations issued by the Agency if the proceeds of that debt are loaned or made available to the City. In either case (1) the interest on the obligation must be excluded from gross income for federal income tax purposes, (2) the holder of the obligation must be entitled to claim a federal income tax credit on account of its ownership of the obligation or (3) the Agency must be entitled to receive payments from the United States measured as a percentage of the interest paid on the obligation.

"**Tax Advantaged Bond File**" means all Substantiation Documents for a single issue of Tax Advantaged Bonds.

"**Tax Compliance Agreement**" means a written agreement between the Agency and the City executed as of the issue date of each issue of Tax Advantaged Bonds which amends this Compliance Procedure to include a new Interim Financing Sources Allocation and includes any specific instructions regarding the investment of Bond Restricted Funds, the use of proceeds of the issue of Tax Advantaged Bonds, or the use of Financed Assets necessary in the opinion of Bond Counsel.

## II. General Matters

2.1 ***Bond Compliance Officer Duties.*** The Bond Compliance Officer is responsible for implementing this Compliance Procedure. The Bond Compliance Officer will work with other officials,



**EXHIBIT B**

departments and administrators that use a Development Facility to carry out the obligations imposed by this Compliance Procedure. The Bond Compliance Officer will consult with Bond Counsel, legal counsel, the Rebate Analyst and other outside experts as necessary to carry out the overall goals of this Compliance Procedure.

2.2 ***Amending Compliance Procedure.*** This Compliance Procedure may be amended from time-to-time by the Bond Compliance Officer. Copies of any amendment to this Compliance Procedure will be provided to the Agency and shall be accompanied by a Special Tax Opinion. No such amendment will become effective until the Agency receives the Special Tax Opinion.

2.3 ***Conflicts between Compliance Procedure and Bond Counsel's Instructions.*** If the requirements of this Compliance Procedure conflict with any Tax Compliance Agreement or with any specific written instructions of Bond Counsel that relate to a Tax Advantaged Bond, the Tax Compliance Agreement or specific written instructions of Bond Counsel shall supersede and govern that issue of Tax Advantaged Bonds. Any exceptions to this Compliance Procedure mandated by Bond Counsel instructions will be noted in the Tax Compliance Agreement for the issue of Tax Advantaged Bonds.

2.4 ***Training and Education.*** The Bond Compliance Officer may arrange for periodic training of officers and staff regarding the requirements imposed by the federal income tax rules and regulations applicable to the City's Tax Advantaged Bonds and this Compliance Procedure.

2.5 ***Costs and Fees.*** The Bond Compliance Officer annually will request an amount of Revenues necessary to pay costs related to the implementation and administration of this Compliance Procedure.

2.6 ***Authority of Bond Compliance Officer.*** The Bond Compliance Officer shall retain control over the administration, investment and expenditure of all proceeds of Tax Advantaged Bonds and the use and operation of all Financed Assets to the extent the Bond Compliance Officer believes is necessary to account for the funds and to ensure compliance with the terms of this Compliance Procedure and any Tax Compliance Agreement.

## III. Compliance Procedure for Tax Advantaged Bond Issues Prior to Date Development Facilities Are Placed in Service

3.1 ***Application of Compliance Procedure.*** This Compliance Procedure applies generally to the accounting for the use and investment of proceeds of Tax Advantaged Bonds and Available Equity Sources to Costs of the Projects and specifically to the ownership and operation of all Development Facilities financed in whole or in part with proceeds of Tax Advantaged Bonds(as reflected in the Final Financing Sources Allocation).

3.2 ***Description of General Plan for Tax Compliance with Restrictions on Private Business Use.***

a. The City and the Agency expect to issue the following categories of Tax Advantaged Bonds:

Tax Exempt Governmental Bonds (TEBS)
Build America Bonds (BABS)
Recovery Zone Economic Development Bonds (RZEDBS)



**EXHIBIT B**

The estimated amount of each category of Tax Advantaged Bonds is contained in the Interim Financing Sources Allocation (the initial form of which is attached as **Exhibit B**). The City anticipates that Available Equity Sources will pay the remaining cost of the Projects.

b. The Interim Financing Sources Allocation attached as **Exhibit B** lists the expected Cost of each Development Facility and the expected Financing Costs and Start-up Costs.

c. The City and the Agency expect that portions of the Projects will be used by Non-Qualified Users in a private use as follows:

Arena
- Naming Rights Agreement
- Long-Term Premium Seating and Suites
- Concession Area

Arena Parking Facilities
- Long-Term Premium Suite Parking

The City expects that the Arena and certain other Development Facilities may be managed and/or operated by Non-Qualified Users pursuant to written agreements. These agreements are not expected to result in Private Business Use in an amount greater than Permitted Private Use, because the City intends to structure the arrangements in a manner so that a Special Tax Opinion can be obtained. The expected percentage of use that would otherwise constitute Private Business Use (absent the allocation discussed in subsection 3.1(d) below) with respect to each Development Facility is shown on **Exhibit C**.

d. As of the date the Facilities Agreement is executed, based on the calculations of expected Private Business Use in **Exhibit C**, and as reflected by the allocation of expected funding sources (Tax Advantaged Bonds and Available Equity Sources) to Costs contained in **Exhibit B**, the City expects to be able to allocate the entire Cost of Development Facilities expected to be used in a Private Business Use and all Start-up Costs to Available Equity Sources. Based on the foregoing, as of the date the Facilities Agreement is executed the City does not expect that any Financed Assets will be used in a Private Business Use.

e. The City expects to update **Exhibit B** and **Exhibit C** in connection with each issue of Tax Advantaged Bonds to account for changes in estimated funding sources, estimated Costs of Development Facilities, and any changes in the amount or nature of Private Business Use. Each Interim Financing Sources Allocation and Interim Private Use Calculation must (1) show that no Financed Assets will be used in a Private Business Use or (2) otherwise be approved by a Special Tax Opinion.

f. Not later than 18 months following the date a Development Facility is Placed in Service (and in no event later than 60 days after the fifth anniversary of the issue date of the Tax Advantaged Bonds that financed said Development Facility), the Bond Compliance Officer will make a Final Financing Sources Allocation in consultation with Bond Counsel and the Program Manager. The Final Financing Sources Allocation will be accompanied by a Special Tax Opinion and will be the final allocation of the proceeds of the relevant issue of Tax Advantaged Bonds for purposes of determining and quantifying Private Business Use of that Development Facility.

3.3 ***Preparation for Issuance of Tax Advantaged Bonds***

a. The Bond Compliance Officer will work with Bond Counsel and other City officials and employees to ensure that the representations of the City contained in each Tax Compliance Agreement are



**EXHIBIT B**

accurate. The Bond Compliance Officer will confer with Bond Counsel and City's counsel regarding the meaning and scope of the covenants contained in the Tax Compliance Agreement. The Bond Compliance Officer will review the Tax Compliance Agreement prior to execution by the City.

b. In consultation and with the advice of Bond Counsel and the Program Manager, the Bond Compliance Officer will update and to the extent necessary revise the Interim Finance Sources Allocation to account for changes to the Development Facilities, their Costs or expected use or changes to the expected amount of Tax Advantaged Bonds or Available Equity Sources allocated to the Costs of the Development Facilities.

c. Prior to each issue of Tax Advantaged Bonds the Bond Compliance Officer will consult with Bond Counsel regarding the applicability of special rules with respect to the investment of proceeds and other funds not otherwise described in Sections 3.4 and 3.5

3.4 ***Accounting for Costs of the Development Facilities; Investment and Arbitrage.***

a. The Accounting Department will follow the directions of the Bond Compliance Officer regarding the administration, investment, accounting and expenditure of Bond Proceeds, Available Equity Sources, and any other Bond Restricted Funds.

b. For each Cost paid, the accounting system shall record: (1) identity of person or business paid, (2) date of payment, (3) amount paid, (4) if determined, the specific Development Facility to which the cost relates, and (5) invoice number or other identifying reference. Each expenditure should further be identified as (1) a hard cost of acquisition or construction, (2) a soft cost (e.g. architects, engineering or consultants) or (3) a "financing cost" (e.g. interest and related remarketing charges, credit facility charges, the cost of bond insurance and other costs of issuing the Tax Advantaged Bonds).

c. Accounting, investment and expenditure records that are to be included as Substantiation Documents with respect to each issue of Tax Advantaged Bonds (which represent the Tax Advantaged Bond File for such issue) are listed on **Exhibit D**.

d. Unless otherwise directed in a Tax Compliance Agreement the Bond Compliance Officer will not segregate proceeds of Tax Advantaged Bonds and other Available Equity Sources either for purposes of investment or expenditure.

e. Unless otherwise directed in a Tax Compliance Agreement, for purposes of accounting for the investment and expenditure of Bond Proceeds and other Bond Restricted Funds in connection with the arbitrage and rebate rules described in each Tax Compliance Agreement, Bond Proceeds will be treated as spent first, and if more than one issue of outstanding Tax Advantaged Bonds has unspent Bond Proceeds at a given time, then all expenditures will be allocated to the earliest issued Tax Advantaged Bonds. All allocations of Tax Advantaged Bond proceeds described in this subsection 3.4(e) apply solely for purposes of arbitrage and rebate compliance. Any allocation of Tax Advantaged Bond Proceeds to Development Facilities shall be done in accordance with Section 3.2.

f. At the time the Final Financing Sources Allocation is completed, the Bond Compliance Officer will determine whether it is possible to complete a final arbitrage rebate computation for the Tax Advantaged Bonds in the event all Bond Proceeds thereof have been spent or whether such a computation is advisable. The Bond Compliance Officer will also schedule any upcoming arbitrage rebate computations required for the Tax Advantaged Bonds as part of the annual ongoing compliance procedures.

3.5 ***Fair Market Value.***

a. No Investment may be acquired for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

b. Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

c. The purchase price of a certificate of deposit (a "**CD**") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

d. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. A bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all "material" terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City, the Agency, or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the City, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are "commercially reasonable." A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the City's reasonably expected deposit and draw-down schedule for the amounts to be invested.



**EXHIBIT B**

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least three "reasonably competitive providers" are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a "material financial interest" in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The City and the Agency retain the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the City or the Agency, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.



**EXHIBIT B**

e. ***Other Investments***. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.,* as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

## IV. Operational Policies and Procedures for All Tax Advantaged Bonds

4.1 ***Annual Tax Advantaged Bond Compliance Review***. Annually the Bond Compliance Officer will complete an Annual Tax Advantaged Bond Review Form (**Exhibit F**) for each outstanding issue of Tax Advantaged Bonds. In the event the Bond Compliance Officer determines that additional information is needed from the individuals actually supervising the use of a Financed Asset, the Bond Compliance Officer will cause an Annual Tax Compliance Questionnaire to be prepared to gather information regarding the use of the Financed Asset. If necessary, the Bond Compliance Officer will consult with Bond Counsel regarding any changes in the use or status of any Financed Asset.

4.2. ***Private Business Use***. Subject to the special requirements, conditions or procedures set out in any Tax Compliance Agreement, the Bond Compliance Officer will not permit any Private Business Use of any Financed Asset without obtaining a Special Tax Opinion. If the Bond Compliance Officer has reason to believe that there exists Private Business Use of any Financed Asset, then the Bond Compliance Officer will consult with and heed the advice of Bond Counsel, which could result in the Agency taking "remedial action" in accordance with Regulations Section 1.141-12 (which may involve the redemption or defeasance of some or all of the Tax Advantaged Bonds) as necessary to maintain the status of the Tax Advantaged Bonds as such.



**EXHIBIT B**

**Exhibit A**
**Development Budget**

September 8, 2010

**EXHIBIT B**

# West Haymarket Joint Public Agency
## Adopted Project Budget

| Item | Description | Construction Cost Estimate | 20% Engr./Design | Total Const. Cost Estimate | Inflation plus Contingency | Total |
|---|---|---|---|---|---|---|
| USE OF FUNDS: | | | | | | |
| Arena | Construction costs | $139,913,000 | $27,982,600 | $167,895,600 | | $167,895,600 |
| | Preoccupancy expense | 1,000,000 | - | 1,000,000 | | 1,000,000 |
| | Total Arena | 140,913,000 | 27,982,600 | 168,895,600 | | 168,895,600 |
| Parking | Surface - Northwest of Tracks | 3,806,400 | 761,280 | 4,567,680 | 1,116,679 | 5,684,359 |
| | Surface -South of Ice Rink | 1,362,200 | 272,440 | 1,634,640 | 399,627 | 2,034,267 |
| | Surface - Train Station | 1,000,000 | - | 1,000,000 | 131,340 | 1,131,340 |
| | Garages - South of Arena | 11,900,000 | 1,190,000 | 13,090,000 | 2,254,582 | 15,344,582 |
| | Garage - Arena | 9,411,000 | 941,100 | 10,352,100 | 965,805 | 11,317,905 |
| | Total Parking | 27,479,600 | 3,164,820 | 30,644,420 | 4,868,033 | 35,512,453 |
| Roads | Sun Valley - Charleston and Bridge | 3,850,600 | 770,120 | 4,620,720 | 1,129,646 | 5,750,366 |
| | Sun Valley - ROW | 614,500 | 122,900 | 737,400 | 180,275 | 917,675 |
| | Arena Drive | 4,945,300 | 989,060 | 5,934,360 | 1,450,797 | 7,385,157 |
| | P, Q & R Streets | 2,298,900 | 459,780 | 2,758,680 | 674,426 | 3,433,106 |
| | M & N Streets | 1,708,400 | 341,680 | 2,050,080 | 501,191 | 2,551,271 |
| | Canopy Street & Ice Drop Off | 1,733,700 | 346,740 | 2,080,440 | 508,613 | 2,589,053 |
| | Total Roads | 15,151,400 | 3,030,280 | 18,181,680 | 4,444,948 | 22,626,628 |
| Pedestrian Ways | Trails and sidewalks | 500,000 | 100,000 | 600,000 | 138,804 | 738,804 |
| | Pedestrian Crossings over BNSF | 6,934,788 | 1,386,958 | 8,321,746 | 1,925,153 | 10,246,898 |
| | Plaza | 1,000,000 | 200,000 | 1,200,000 | 277,608 | 1,477,608 |
| | Total Pedestrian Ways | 8,434,788 | 1,686,958 | 10,121,746 | 2,341,565 | 12,463,310 |
| Utilities | Water | 816,800 | 163,360 | 980,160 | 177,742 | 1,157,902 |
| | Wastewater | 1,892,400 | 378,480 | 2,270,880 | 411,801 | 2,682,681 |
| | LES | 385,000 | 77,000 | 462,000 | 83,779 | 545,779 |
| | Trunk storm sewer to Haymarket area | 1,240,300 | 248,060 | 1,488,360 | 269,899 | 1,758,259 |
| | Communication and Other | 542,400 | 108,480 | 650,880 | 118,031 | 768,911 |
| | Total Utilities | 4,876,900 | 975,380 | 5,852,280 | 1,061,252 | 6,913,532 |
| Environmental | North Area - R to Tracks (arena area) | 815,000 | 163,000 | 978,000 | 226,251 | 1,204,251 |

**EXHIBIT B**

| Item | Description | Construction Cost Estimate | 20% Engr./Design | Total Const. Cost Estimate | Inflation plus Contingency | Total |
|---|---|---|---|---|---|---|
| | South Area - R to O | 1,750,000 | 350,000 | 2,100,000 | 485,814 | 2,585,814 |
| | South Area - O on South | 2,000,000 | 400,000 | 2,400,000 | 555,216 | 2,955,216 |
| | West Area - Roundhouse | 300,000 | 60,000 | 360,000 | 83,282 | 443,282 |
| | Wetlands, Seeding and Removals | 138,000 | 27,600 | 165,600 | 38,310 | 203,910 |
| | Total Environmental | 5,003,000 | 1,000,600 | 6,003,600 | 1,388,873 | 7,392,473 |
| Dirt Moving | Pad site development - fill | 1,931,100 | 386,220 | 2,317,320 | 420,223 | 2,737,543 |
| | Stormwater/Floodplain mitigation | 5,588,200 | 1,117,640 | 6,705,840 | 1,216,037 | 7,921,877 |
| | Total Dirt Movement | 7,519,300 | 1,503,860 | 9,023,160 | 1,636,260 | 10,659,420 |
| TIF Improvements | Public Use of TIF Proceeds | 5,515,693 | - | 5,515,693 | | 5,515,693 |
| Site Purchase | BNSF Land Acquisition | 1,000,000 | | 1,000,000 | | 1,000,000 |
| | BNSF Construction, Rehab, & Relloc. | 44,000,000 | - | 44,000,000 | | 44,000,000 |
| | Canopy Rehabilitation | 177,000 | 35,400 | 212,400 | 49,137 | 261,537 |
| | Amtrak Building | 1,200,000 | 240,000 | 1,440,000 | | 1,440,000 |
| | UP Land Acquisition | 1,000,000 | | 1,000,000 | 131,340 | 1,131,340 |
| | UP Wetland Enhancement | 1,000,000 | 200,000 | 1,200,000 | 277,608 | 1,477,608 |
| | UP Track Modifications W of Bridge | 1,030,000 | 206,000 | 1,236,000 | 285,936 | 1,521,936 |
| | Subtotal Railroad Site Purchase | 49,407,000 | 681,400 | 50,088,400 | 744,021 | 50,832,421 |
| | Other Land Acquisition | 7,585,000 | 200,000 | 7,785,000 | 1,172,482 | 8,957,482 |
| | Total Site Purchase | 56,992,000 | 881,400 | 57,873,400 | 1,916,503 | 59,789,903 |
| Other Costs | Dynamic Message Signage | 2,250,000 | 450,000 | 2,700,000 | 624,618 | 3,324,618 |
| | Public Art | 1,500,000 | | 1,500,000 | | 1,500,000 |
| | Total Other | 3,750,000 | 450,000 | 4,200,000 | 624,618 | 4,824,618 |
| | SUBTOTAL | 275,635,681 | 40,675,898 | 316,311,579 | 18,282,052 | 334,593,630 |
| Miscellaneous Costs | PLUS: Additional Contingencies | - | | - | | - |
| | PLUS: Cost of Bond Issuance, 1.50% | 5,160,000 | | 5,160,000 | | 5,160,000 |
| | | 5,160,000 | - | 5,160,000 | | 5,160,000 |
| | TOTAL ARENA COSTS | $280,795,681 | $40,675,898 | $321,471,579 | $18,282,052 | $339,753,630 |

SOURCE OF FUNDS:

| | |
|---|---|
| Bonded Debt | $316,953,630 |
| Private Donations | 22,000,000 |
| Federal Grants | 800,000 |
| | $339,753,630 |

**EXHIBIT B**

**Exhibit B**
**Interim Financing Sources Allocation**

September 8, 2010

**EXHIBIT B**

Exhibit B

| Development Facility | Ref # | Est Sq Feet | Total cost | Tax Advantaged Bonds: Tax Exempt | BAB | BAB issue 2 | RZEDB | RZFB | Total | Available Equity Sources: Taxes | Private Donations | Taxable Bonds | Total | Grand Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Arena** | | | | | | | | | - | | | | - | | |
| Land Acquisition | | 202,500 | 2,778,722 | 401 363 | 1 605 453 | 2,298 666 | 513,745 | | 4,819,228 | 258,962 | 694,239 | | 953,202 | 5,772,430 | |
| Construction | | | 139,913 000 | 10,302,414 | 41 209,657 | 43,319,797 | 13,187 090 | | 108 018,959 | 13,039,168 | 15,560,796 | - | 28,599,964 | 136,618,923 | |
| Architecture/Engineering | | | 20 986,950 | 1,545,718 | 6,182,874 | 6 500,574 | 1,978,520 | | 16,207,685 | 1,955,875 | 2,334,817 | - | 4,290,692 | 20,498,377 | |
| Site Work | | | 503,358 | 72,706 | 290 824 | 416 397 | 93 064 | | 872,990 | 46,910 | 125,760 | - | 172,670 | 1,045,660 | |
| Environmental | | | 348,866 | 50,391 | 201,563 | 288,596 | 64,500 | | 605,050 | 32,513 | 87,161 | - | 119,674 | 724,724 | |
| Inflation/Contingency | | | 7 995,650 | 588,348 | 2 353,392 | 2,472,633 | 753,085 | | 6,167,459 | 745,353 | 888,460 | - | 1,633,614 | 7,801,072 | |
| Financing Costs | | | 2,705,262 | 203,232 | 812,930 | 867,073 | 260,138 | | 2,143,373 | 252,118 | 308,766 | - | 560,884 | 2,704,257 | |
| Subtotal Arena | | | 175,231,828 | 13,164,173 | 52,656,693 | 56,163,735 | 16,850,142 | - | 138,834,743 | 16,330,700 | 20,000,000 | - | 36,330,699 75 | 175,165,443 | 66,384 68 |
| **Garage South of Arena** | | | | | | | | | | | | | | | |
| Land Acquisition | | 60,000 | 823,325 | 60,583 | 242,333 | 199 398 | 77,546 | | 579 860 | 246,831 | | | 246,831 | 826,691 | |
| Construction | | | 11 900,000 | 875 644 | 3 502,575 | 2,882,014 | 1,120,824 | | 8,381,057 | 3 567 596 | | | 3,567,596 | 11 948,653 | |
| Architecture/Engineering | | | 1 190,000 | 87,564 | 350 258 | 288,201 | 112,082 | | 838 106 | 356,760 | | | 356,760 | 1,194,865 | |
| Site Work | | | 149 143 | 10,974 | 43,898 | 36,120 | 14,047 | | 105,040 | 44,713 | | | 44,713 | 149,753 | |
| Environmental | | | 103,368 | 7,606 | 30 425 | 25,034 | 9,736 | | 72,801 | 30,989 | | | 30,989 | 103,790 | |
| Inflation/Contingency | | | 2,254 582 | 165,900 | 663 600 | 546,028 | 212,352 | | 1,587 881 | 675,919 | | | 675,919 | 2,263,800 | |
| Financing Costs | | | 257,478 | 18,946 | 75,785 | 62,358 | 24,251 | | 181,340 | 77,192 | | | 77,192 | 258,531 | |
| Subtotal Garages South of Arena | | | 16,677,896 | 1,227,218 | 4,908,873 | 4,039,154 | 1,570,839 | - | 11,746,084 | 5,000,000 | - | | 5,000,000 00 | 16,746,084 | (68,187 79) |
| **Garage Arena** | | | | | | | | | | | | | - | - | |
| Land Acquisition | | 22,500 | 308 747 | 22 719 | 90,875 | 36 293 | 29,080 | | 178,967 | 129,670 | | | 129,670 | 308,636 | |
| Construction | | | 9,411 000 | 692 494 | 2,769 978 | 1,106,270 | 886,393 | | 5,455,135 | 3 952,495 | | | 3,952,495 | 9,407,630 | |
| Architecture/Engineering | | | 941 100 | 69 249 | 276,998 | 110 627 | 88,639 | | 545,514 | 395,249 | | | 395,249 | 940,763 | |
| Site Work | | | 55,929 | 4,115 | 16 462 | 6,574 | 5,268 | | 32,419 | 23 489 | | | 23,489 | 55,909 | |
| Environmental | | | 38 763 | 2 852 | 11,409 | 4 557 | 3,651 | | 22,469 | 16,280 | | | 16,280 | 38,749 | |
| Inflation/Contingency | | | 965 805 | 71,067 | 284,269 | 113 531 | 90,966 | | 559,834 | 405 625 | | | 405,625 | 965,459 | |
| Financing Costs | | | 183 795 | 13,524 | 54 097 | 21,605 | 17,311 | | 106,538 | 77,192 | | | 77,192 | 183,729 | |
| Subtotal - Garages Arena | | | 11,905,139 | 876,022 | 3,504,088 | 1,399,458 | 1,121,308 | | 6,900,876 | 5,000,000 | - | | 5,000,000.00 | 11,900,876 | 4,262.93 |
| **Lincoln Traction Development Blocks** | | | | | | | | | | | | | | | |
| Land Acquisition | | 195 000 | 2 675 306 | | - | | - | | | 2,675,806 | | | 2,675 806 | 2,675,806 | |
| Construction | | | 96,822 | | | | | | | 96,822 | | | 96,822 | 96,822 | |
| Architecture/Engineering | | | 19 364 | | | | | | - | 19,364 | | | 19,364 | 19,364 | |
| Site Work | | | 484,715 | | | - | | | | 484,715 | | | 484,715 | 484,715 | |
| Environmental | | | 335 945 | | | | | | - | 335,945 | | | 335,945 | 335,945 | |
| Inflation/Contingency | | | - | | | | | | - | | | | - | - | |
| Financing Costs | | | 56 648 | | | | | | - | 56 648 | | | 56,648 | 56,648 | |
| Subtotal - Utilities Communication and Other | | | 3,669,300 | | - | | | - | - | 3,669,300 | | | 3,669,300 | 3,669,300 | - |
| **Surface Parking Northwest of Tracks** | | | | | | | | | - | | | | | | |
| Land Acquisition | | 740,520 | 10 161 476 | 747 717 | 2,990 868 | 5,466 002 | 957,078 | | 10,161,665 | | | | | 10,161,665 | |
| Construction | | | 3,806 400 | 280 088 | 1,120,353 | 2 047,516 | 358,513 | | 3 806,471 | | | | | 3 806,471 | |
| Architecture/Engineering | | | 761,280 | 56,018 | 224,071 | 409,503 | 71,703 | | 761,294 | | | | - | 761,294 | |
| Site Work | | | 1 840 725 | 135 347 | 541 788 | 990 152 | 173 372 | | 1 840,759 | | | | | 1 840,759 | |
| Environmental | | | 1 275 765 | 93,875 | 375,501 | 686,252 | 120,160 | | 1,275,789 | | | | | 1,275,789 | |
| Inflation/Contingency | | | 1 116 679 | 82 169 | 328 677 | 600,677 | 105 177 | | 1 116,700 | | | | | 1 116 700 | |
| Financing Costs | | | 297,336 | 21 879 | 87,516 | 159,941 | 28 005 | | 297 342 | | | | | 297,342 | |
| Subtotal - Surface Parking Northwest of Tracks | | | 19,259,662 | 1 417,194 | 5,668,774 | 10,360,044 | 1,814,008 | - | 19,260,020 | | - | | | 19 260,020 | (358 19) |
| | | | | | | | | | | | | | | 19,260,020 | - |
| **Surface Parking South of Ice Rink** | | | | | | | | | | | | | | | |
| Land Acquisition | | 157 500 | 2 161 228 | 159,031 | 636 123 | 1,162 555 | 203,559 | | 2,161,268 | | | | - | 2,161,268 | |
| Construction | | | 1 362 200 | 100 235 | 400 942 | 732,747 | 128 301 | | 1,362,225 | | | | - | 1,362,225 | |
| Architecture/Engineering | | | 272 440 | 20 047 | 80 183 | 146,549 | 25 660 | | 272 445 | | | | - | 272,445 | |
| Site Work | | | 391 501 | 28 808 | 115,232 | 210,594 | 36,874 | | 391,508 | | | | - | 391,508 | |
| Environmental | | | 271,340 | 19 966 | 79,865 | 145 958 | 25 557 | | 271,345 | | | | - | 271,345 | |
| Inflation/Contingency | | | 399,627 | 29,406 | 117,624 | 214,965 | 37,640 | | 399,634 | | | | - | 399,634 | |
| Financing Costs | | | 76 181 | 5 606 | 22 423 | 40 979 | 7,175 | | 76,182 | | | | - | 76,182 | |
| Subtotal Surface Parking South of Ice Rink | | | 4,934,517 | 363,099 | 1,452 396 | 2,654,346 | 464,767 | | 4,934,608 | - | | - | | 4,934,608 | (97,77) |
| | | | | | | | | | | | | | | 4 934,608 | |
| **Surface Parking - Train Station** | | | | | | | | | | | | | | | |
| Land Acquisition | | 11 000 | 150,943 | 11 107 | 44,428 | 81,194 | 14,217 | | 150,946 | | | | | 150,946 | |
| Construction | | | 1,000,000 | 73 584 | 294,334 | 537 914 | 94,187 | | 1 000,019 | | | | - | 1,000,019 | |
| Architecture/Engineering | | | - | | | | - | | | | | | - | - | |
| Site Work | | | 27 343 | 2 012 | 8 048 | 14,708 | 2 575 | | 27,343 | | | | - | 27,343 | |
| Environmental | | | 18 951 | 1 394 | 5 578 | 10 194 | 1,785 | | 18,951 | | | | - | 18,951 | |
| Inflation/Contingency | | | 131,340 | 9 664 | 38 658 | 70,650 | 12,371 | | 131,342 | | | | - | 131,342 | |
| Financing Costs | | | 20 833 | 1,533 | 6,132 | 11,206 | 1,962 | | 20,833 | | | | - | 20,833 | |
| Subtotal - Surface Parking Train Station | | | 1,349,409 | 99,294 | 397,177 | 725,866 | 127,097 | | 1,349,434 | | - | - | - | 1,349 434 | 25.10 |
| | | | | | | | | | | | | | | 1,349,434 | - |
| **Garages South of Arena** | | | | | | | | | | | | | - | - | |
| **Pedestrian Ways Trails and Sidewalks** | | | | | | | | | | | | | - | | |
| Land Acquisition | | | | | - | - | - | | - | | | | | - | |
| Construction | | | 500,000 | 36,792 | 147,167 | 268,957 | 47 093 | | 500,009 | | | | - | 500,009 | |
| Architecture/Engineering | | | 100 000 | 7,358 | 29 433 | 53,791 | 9,419 | | 100 002 | | | | - | 100,002 | |
| Site Work | | | | - | - | - | | | - | | | | - | - | |
| Environmental | | | - | - | | - | - | | - | | | | - | - | |
| Inflation/Contingency | | | 138 804 | 10 214 | 40,855 | 74 665 | 13,074 | | 138,807 | | | | - | 138,807 | |
| Financing Costs | | | 11,585 | 852 | 3,410 | 6,232 | 1,091 | | 11,585 | | | | - | 11,585 | |
| Subtotal Pedestrian Ways Trails and Sidewalks | | | 750,389 | 55,216 | 220,865 | 403,645 | 70,677 | | 750,403 | - | - | - | - | 750,403 | 13 96 |
| | | | | | | | | | | | | | | 750,403 | - |
| **Pedestrian Ways - Pedestrian Crossings of BNSF** | | | | | | | | | - | | | | - | - | |
| Land Acquisition | - | | | | - | - | | | | | | | - | | |
| Construction | | | 6 934,788 | 510 286 | 2,041,144 | 3,730,321 | 653,166 | | 6,934,917 | | | | - | 6,934,917 | |
| Architecture/Engineering | | | 1 386 958 | 102,057 | 408,229 | 746 084 | 130,633 | | 1 386,984 | | | | - | 1,386,984 | |
| Site Work | | | | - | - | | - | | - | | | | - | - | |
| Environmental | | | | - | - | - | - | | - | | | | - | - | |
| Inflation/Contingency | | | 1 925,153 | 141,660 | 566,638 | 1,035,567 | 181,324 | | 1 925,189 | | | | - | 1,925,189 | |
| Financing Costs | | | | - | - | - | - | | - | | | | - | - | |
| Subtotal Pedestrian Ways - Pedestrian Crossings of B | | | 10,246,899 | 754,003 | 3,016,011 | 5,511,952 | 965,124 | - | 10,247,090 | - | - | - | - | 10,247,090 | (190 57) |
| | | | | | | | | | | | | | - | - | - |
| **Pedestrian Ways - Plaza** | | | | | | | | | - | | | | | | |
| Land Acquisition | - | | - | | - | | - | | - | | | | - | | |
| Construction | | | 1,000,000 | 73 584 | 294,334 | 537,914 | 94 187 | | 1 000,019 | | | | - | | |
| Architecture/Engineering | | | 200,000 | 14,717 | 58,867 | 107,583 | 18,837 | | 200,004 | | | | - | | |
| Site Work | | | - | | | | | | | | | | - | | |
| Environmental | | | | - | | - | - | | - | | | | - | | |
| Inflation/Contingency | | | 277 608 | 20,427 | 81,709 | 149,329 | 26,147 | | 277,613 | | | | - | | |
| Financing Costs | | | 23 169 | 1 705 | 6,820 | 12 463 | 2,182 | | 23,170 | | | | - | | |
| Subtotal - Pedestrian Ways Plaza | | | 1,500,777 | 110,432 | 441,730 | 807,289 | 141,354 | - | 1,500,805 | - | - | - | - | 1,500,805 | (27 91) |
| **Utilities Water** | | | | | | | | | | | | | - | | |
| Land Acquisition | | | | - | - | - | | | | | | | - | | |
| Construction | | | 816,800 | 60 103 | 240,412 | 439,368 | 76,932 | | 816 815 | | | | - | | |
| Architecture/Engineering | | | 163 360 | 12 021 | 48 052 | 87,874 | 15,386 | | 163,363 | | | | - | | |
| Site Work | | | | - | - | - | - | | | | | | - | | |
| Environmental | | | | | - | | - | | - | | | | - | | |
| Inflation/Contingency | | | 177 742 | 13 079 | 52,316 | 95 610 | 16,741 | | 177,745 | | | | - | | |
| Financing Costs | | | 18,156 | 1 336 | 5,334 | 9 767 | 1,710 | | 18,157 | | | | - | | |
| Subtotal Utilities Water | | | 1,176,058 | 86,539 | 346,154 | 632,618 | 110,769 | - | 1,176,080 | | | - | - | 1,176,080 | (21.87) |
| **Utilities - Wastewater** | | | | | | | | | - | | | | - | | |
| Land Acquisition | | | - | | - | - | | | | | | | - | | |
| Construction | | | 1,892,400 | 139,249 | 556,998 | 1,017 949 | 178,239 | | 1,892,435 | | | | - | | |
| Architecture/Engineering | | | 378 480 | 27,850 | 111,400 | 203 590 | 35,648 | | 378,487 | | | | - | | |
| Site Work | | | - | | | | - | | - | | | | - | | |
| Environmental | | | - | | - | | | | - | | | | - | | |
| Inflation/Contingency | | | 411,801 | 30,302 | 121 207 | 221,514 | 38,786 | | 411,809 | | | | - | | |
| Financing Costs | | | 42,065 | 3,095 | 12,381 | 22,628 | 3,962 | | 42,066 | | | | - | | |
| Subtotal - Utilities Wastewater | | | 2,724,746 | 200,496 | 801,986 | 1,465,680 | 256,635 | - | 2,724,797 | - | - | - | - | 2,724,797 | (50.67) |
| **Utilities LES** | | | | | | | | | | | | | - | | |
| Land Acquisition | - | | | | - | - | - | | | | | | - | | |
| Construction | | | 385,000 | 28,330 | 113,319 | 207 097 | 36,262 | | 385,007 | | | | - | | |
| Architecture/Engineering | | | 77,000 | 5,666 | 22,664 | 41,419 | 7,252 | | 77,001 | | | | - | | |
| Site Work | | | | - | | - | - | | - | | | | | | |

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| Development Facility | | | | | | | Land area (sq ft) | total cost | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Arena - Land Acquisition | 204,468 | 817,872 | 859,312 | 261,719 | ######## | | 202,500 | 2,778,721 69 | | |
| Arena - Construction | 10,295,290 | 41,181,159 | 43,267,735 | 13,177,971 | ######## | | | 139,913,000.00 | | |
| Arena - Architecture/Engineering | 1,544,293 | 6,177,174 | 6,490,157 | 1,976,696 | ######## | | | 20,986,950 00 | | |
| Arena - Site Work | 37,039 | 148,155 | 155,662 | 47,410 | 359,741 | | | 503,358 10 | | |
| Arena - Environmental | 25,671 | 102,683 | 107,886 | 32,859 | 249,328 | | | 348,866.22 | | |
| Arena - Inflation/Contingency | 588,348 | 2,353,392 | 2,472,633 | 753,085 | ######## | | | 7,995 650.00 | | |
| Arena - Financing Costs | 199,064 | 796,257 | 836,601 | 254,802 | ######## | | | 2,705,281 86 | | |
| Subtotal Arena | | | | | ####### | ####### | | 175 231,827.86 | 172,104 239 96 | 172 526,546 01 |
| Garage South of Arena - Land Acquisition | | | | | | | 60,000 | 823,324 94 | | |
| Construction | | | | | | | | 11,900,000 00 | | |
| Architecture/Engineering | | | | | | | | 1,190,000 00 | | |
| Site Work | | | | | | | | 149,143.14 | | |
| Environmental | | | | | | | | 103,367 77 | | |
| Inflation/Contingency | | | | | | | | 2,254,582 00 | | |
| Financing Costs | | | | | | | | 257,478 40 | | |
| Subtotal Garages South of Arena | | | | | ####### | ####### | | - | (926,692 71) | 16,420,417 85 |
| Garage Arena | 401,363 31 | 1,605,453 23 | 2,298 666 07 | 513,745 03 | | | | | | |
| Land Acquisition | 10,302,414 35 | 41,209,657 39 | 43 319,797 03 | 13 187,090 36 | | | 22,500 | 308,746 85 | | |
| Construction | 1,545,718 38 | 6,182,873 50 | 6,500,573 64 | 1,978,519 52 | | | | 9,411,000 00 | | |
| Architecture/Engineering | 72,705 90 | 290,823.61 | 416,397 29 | 93,063.56 | | | | 941,100 00 | | |
| Site Work | 50,390.83 | 201,563.33 | 288,595 63 | 64,500.27 | | | | 55,928 68 | | |
| Environmental | 588,348.01 | 2,353,392 02 | 2,472,633 05 | 753,085.45 | | | | 38 762 91 | | |
| Inflation/Contingency | 203 232.48 | 812,929 92 | 867,072 70 | 260,137 58 | | | | 965,805 00 | | |
| Financing Costs | - | | | | | | | 183,795.12 | | |
| Subtotal - Garages Arena | | | | | ####### | 4,262 93 | | 11,721,343 45 | 11,373,833 68 | 11,721 343 45 |
| Lincoln Traction Development Blocks | 196,895 21 | 787,580 83 | 1 439 353 93 | 252,025 87 | | | | | | |
| Land Acquisition | 7,124 48 | 28,497 90 | 52,083 73 | 9,119 33 | | | 195,000 | 2,675,806 07 | | |
| Construction | 1,424.90 | 5,699 58 | 10,416 35 | 1 823 87 | | | | 96,821 63 | | |
| Architecture/Engineering | 35,667 05 | 142,668 19 | 260,735 17 | 45,653 82 | | | | 19,364 33 | | |
| Site Work | 24,720 03 | 98,880 12 | 180,709 70 | 31,641 64 | | | | 484,715 21 | | |
| Environmental | - | - | | - | | | | 335 945 25 | | |
| Inflation/Contingency | 4,168 34 | 16,673 37 | 30,471 63 | 5,335 48 | | | | | | |
| Financing Costs | | | | | | | | 56,647 76 | | |
| Subtotal - Utilities Communication and Other | | | | | ####### | - | | | | |
| Surface Parking Northwest of Tracks - Land Acquisition | | | | | | | 740,520 | 10,161,476 47 | | |
| Construction | | | | | | | | 3,806,400 00 | | |
| Architecture/Engineering | | | | | | | | 761,280 00 | | |
| Site Work | | | | | | | | 1 840,724 64 | | |
| Environmental | | | | | | | | 1,275,765 00 | | |
| Inflation/Contingency | | | | | | | | 1,116 679 00 | | |
| Financing Costs | | | | | | | | 297 336 47 | | |
| Subtotal - Surface Parking Northwest of Tracks | | | | | ####### | (358 19) | | 19,259,661 58 | 7,822 420 11 | 18 961,225 11 |
| Surface Parking South of Ice Rink - Land Acquisition | | | | | | | 157,500 | 2,161,227 98 | | |
| Construction | | | | | | | | 1,362,200 00 | | |
| Architecture/Engineering | | | | | | | | 272,440 00 | | |
| Site Work | | | | | | | | 391,500 74 | | |
| Environmental | | | | | | | | 271,340 39 | | |
| Inflation/Contingency | | | | | | | | 399,627 00 | | |
| Financing Costs | | | | | | | | 76 180 56 | | |
| Subtotal Surface Parking South of Ice Rink | | | | | ####### | (91 77) | | 4 858,336 12 | 2 425 767 74 | 4 858 336 12 |
| Surface Parking - Train Station - Land Acquisition | | | | | | | 11 000 | 150,942 91 | | |
| Construction | | | | | | | | 1,000,000 00 | | |
| Site Work | | | | | | | | 27,342.91 | | |
| Environmental | | | | | | | | 18 950 76 | | |
| Inflation/Contingency | | | | | | | | 131,340 00 | | |
| Financing Costs | | | | | | | | 20 832 59 | | |
| Subtotal - Surface Parking Train Station | | | | | ####### | (25 10) | | 1,328,576 57 | 1,158,682 91 | 1,328,576 57 |
| Pedestrian Ways Trails and Sidewalks - Construction | | | | | | | | 500,000.00 | | |
| Architecture/Engineering | | | | | | | | 100,000.00 | | |
| Inflation/Contingency | | | | | | | | 138,804 00 | | |
| Financing Costs | | | | | | | | 11,584 73 | | |
| Subtotal Pedestrian Ways Trails and Sidewalks | | | | | ####### | (13 96) | | 738,804 00 | 738,804 00 | 738,804 00 |
| Pedestrian Crossings of BNSF - Land Acquisition | | | | | | | | - | | |
| Construction | | | | | | | | 6 934 788 00 | | |
| Architecture/Engineering | | | | | | | | 1,386 958 00 | | |
| Site Work | | | | | | | | - | | |
| Environmental | | | | | | | | - | | |
| Inflation/Contingency | | | | | | | | 1,925,153 00 | | |
| Subtotal Pedestrian Ways - Pedestrian Crossings of B | | | | | ####### | (190 57) | | 10,146,899 00 | 10 246,899 00 | 10,146 899 00 |
| Pedestrian Ways - Plaza - Construction | | | | | | | | 1,000,000 00 | | |
| Architecture/Engineering | | | | | | | | 200,000 00 | | |
| Environmental | | | | | | | | - | | |
| Inflation/Contingency | | | | | | | | 277 608 00 | | |
| Financing Costs | | | | | | | | 23,169 46 | | |
| Subtotal - Pedestrian Ways Plaza | | | | | ####### | (27 91) | | 1,477,608 00 | 1,477,608 00 | 1,477,608 00 |
| Utilities Water - Construction | | | | | | | | 816,800 00 | | |
| Architecture/Engineering | | | | | | | | 163,360 00 | | |
| Site Work | | | | | | | | - | | |
| Inflation/Contingency | | | | | | | | 177,742 00 | | |
| Financing Costs | | | | | | | | 18,156 34 | | |
| Subtotal Utilities Water | | | | | ####### | (21 87) | | 1,157 902 00 | 1,157,902 00 | 1 157,902 00 |
| Utilities - Wastewater - Construction | | | | | | | | 1,892,400 00 | | |
| Architecture/Engineering | | | | | | | | 378,480 00 | | |
| Site Work | | | | | | | | - | | |
| Environmental | | | | | | | | - | | |
| Inflation/Contingency | | | | | | | | 411,801 00 | | |
| Financing Costs | | | | | | | | 42,065.46 | | |
| Subtotal - Utilities Wastewater | | | | | ####### | (50 67) | | 2,682,681 00 | 2,682,681 00 | 2,682,681 00 |
| Utilities LES - Land Acquisition | | | | | | | | - | | |
| Construction | | | | | | | | 385,000 00 | | |
| Architecture/Engineering | | | | | | | | 77,000 00 | | |
| Site Work | | | | | | | | - | | |

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EXHIBIT B

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Environmental | | | | - | - | - | | | | | | - | | |
| Inflation/Contingency | | 83,779 | 6,165 | 24,659 | 45 066 | 7,891 | | 83,781 | | | | - | | |
| Financing Costs | | 8 558 | 630 | 2 519 | 4 603 | 806 | | 8 558 | | | | - | | |
| Subtotal Utilities LES | | 554,337 | 40,790 | 163,160 | 298,186 | 52,211 | - | 554,347 | | | - | - | 554,347 | (10 35) |
| **Greenspace (and stormwater mitigation)** | | | | | | | | | | | | | | |
| Land Acquisition | 1 732,380 | 23,771 861 | 1 749,217 | 6 996 868 | 12,787,220 | 2 238,998 | | 23 772 303 | | | | | | |
| Construction | | 860 163 | 63 294 | 253 175 | 462 694 | 81 016 | | 860,179 | | | | - | | |
| Architecture/Engineering | | 172 033 | 12 659 | 50 635 | 92,539 | 16 203 | | 172 036 | | | | | | |
| Site Work | | 4 306,210 | 316,866 | 1,267 464 | 2,316,371 | 405,589 | | 4,306,290 | | | | | | |
| Environmental | | 2 984,538 | 219 613 | 878 451 | 1 605,425 | 281,104 | | 2,984,593 | | | | - | | |
| Inflation/Contingency | | - | | - | - | | | | | | | - | | |
| Financing Costs | | 503 259 | 37,032 | 148,126 | 270,710 | 47,400 | | 503,268 | | | | - | | |
| Subtotal Utilities Trunk Storm Sewer to Haymarket | | 32,598,063 | 2,398,680 | 9,594,720 | 17,534,959 | 3,070,310 | | 32,598,670 | - | - | | | 32,598,670 | (606 25) |
| **Breslow Ice Center (NU Foundation / Parks and Rec)** | | | | | | | | | | | | | | |
| Land Acquisition | 135 000 | 1 852 481 | 136 312 | 545 248 | 996 476 | 174 479 | | 1 852,516 | | | | | | |
| Construction | | 67 030 | 4 932 | 19 729 | 36,057 | 6,313 | | 67,032 | | | | | | |
| Architecture/Engineering | | 13,406 | 986 | 3,946 | 7,211 | 1 263 | | 13 406 | | | | | | |
| Site Work | | 335,572 | 24,693 | 98,770 | 180 509 | 31,606 | | 335 578 | | | | | | |
| Environmental | | 232,577 | 17,114 | 68,455 | 125 107 | 21,906 | | 232 582 | | | | | | |
| Inflation/Contingency | | | | - | | | | - | | | | | | |
| Financing Costs | | 39 218 | 2,886 | 11,543 | 21 096 | 3,694 | | 39,218 | | | | | | |
| Subtotal Utilities Communication and Other | | 2,540,285 | 186,923 | 747,692 | 1,366,455 | 239,262 | - | 2 540,332 | | | | | 2,540,332 | (47 14) |
| **Alter Scrap location** | | | | | | | | | | | | | | |
| Land Acquisition | 435 600 | 5,977 339 | 439,834 | 1,759 334 | 3,215,295 | 562,987 | | 5 977,450 | | | | | | |
| Construction | | 216 285 | 15 915 | 63,660 | 116 343 | 20,371 | | 216,289 | | | | | | |
| Architecture/Engineering | | 43 257 | 3,183 | 12 732 | 23,269 | 4,074 | | 43,258 | | | | | | |
| Site Work | | 1,082,779 | 79,675 | 318 699 | 582 442 | 101 984 | | 1 082 799 | | | | | | |
| Environmental | | 750 450 | 55 221 | 220 883 | 403 678 | 70 683 | | 750,464 | | | | | | |
| Inflation/Contingency | | | | | | | | - | | | | | | |
| Financing Costs | | 126 542 | 9,311 | 37,246 | 68,069 | 11,919 | | 126,545 | | | | | 126 545 | (1 35) |
| Subtotal - Utilities Communication and Other | | 8,196,652 | 603,138 | 2,412,554 | 4,409,095 | 772,017 | - | 8,196,805 | | | | | | |
| **Utilities Communication and Other** | | | | | | | | | | | | | | |
| Land Acquisition | | | | - | | | | - | | | | | | |
| Construction | | 542,400 | 39 912 | 159 647 | 291 765 | 51,087 | | 542,410 | | | | | | |
| Architecture/Engineering | | 108,480 | 7 982 | 31 929 | 58,353 | 10,217 | | 108,482 | | | | | | |
| Site Work | | | - | - | - | | | - | | | | - | | |
| Environmental | | | | | - | | | | | | | | | |
| Inflation/Contingency | | 118,031 | 8,685 | 34,741 | 63,491 | 11 117 | | 118,033 | | | | | | |
| Financing Costs | | 12 057 | 887 | 3,549 | 6 486 | 1 136 | | 12,057 | | | | - | | |
| Subtotal - Utilities - Communication and Other | | 780 968 | 57,466 | 229,865 | 420,094 | 73 557 | - | 780,982 | | | | - | 780,982 | (14 52) |
| Public use of Tax Increment Finance (TIF) | | 5 515,693 | 405 864 | 1,623 456 | 2 966 969 | 519,506 | | 5,515,796 | | | | | | |
| Financing Costs | | 163,109 | 12,002 | 48,009 | 87 739 | 15 363 | | 163 112 | | | | | | |
| Total Public use of TIF | | 5,678,802 | 417,866 | 1,671,465 | 3,054,708 | 534,869 | | 5,678,908 | | | | | 5 678 908 | (105 61) |
| **Roads - Sun Valley - Charleston and Bridge** | | | | | | | | | | | | - | | |
| Land Acquisition | | | | | | | | | | | | - | | |
| Construction | | 3,850,600 | 283 341 | 1,133,363 | 2,071,292 | 362,676 | | 3,850,672 | | | | - | | |
| Architecture/Engineering | | 770 120 | 56 668 | 226 673 | 414,258 | 72,535 | | 770,134 | | | | - | | |
| Site Work | | | | | | - | | | | | | - | | |
| Environmental | | | | | | - | | - | | | | - | | |
| Inflation/Contingency | | 1,129 646 | 83 123 | 332,493 | 607 653 | 106,398 | | 1,129,667 | | | | - | | |
| Financing Costs | | 90 168 | 6,635 | 26,539 | 48 503 | 8,493 | | 90,170 | | | | - | | |
| Subtotal - Roads Sun Valley Charleston and Bridge | | 5,840,534 | 429,767 | 1,719,068 | 3,141,706 | 550,102 | - | 5,840,643 | - | | | | 5,840 643 | (108 61) |
| **Roads Sun Valley ROW** | | | | | | | | | | | | - | | |
| Land Acquisition | - | 614 500 | 45,217 | 180 868 | 330 548 | 57,878 | | 614 511 | | | | - | | |
| Construction | | | | - | | | | | | | | | | |
| Architecture/Engineering | | 122,900 | 9 043 | 36,174 | 66,110 | 11,576 | | 122,902 | | | | | | |
| Site Work | | | - | - | - | - | | | | | | - | | |
| Environmental | | | - | - | | - | | | | | | | | |
| Inflation/Contingency | | 180 275 | 13 265 | 53,061 | 96,972 | 16,980 | | 180,278 | | | | - | | |
| Financing Costs | | 14 389 | 1,059 | 4 235 | 7,740 | 1 355 | | 14,390 | | | | - | | |
| Subtotal Roads - Sun Valley ROW | | 932,064 | 68,585 | 274 339 | 501,371 | 87,788 | | 932,082 | - | - | - | - | 932,082 | (17 33) |
| **Roads Arena Drive** | | | | | | | | - | | | | - | | |
| Land Acquisition | 360 000 | 4,939 950 | 363,499 | 1,453,995 | 2,657,269 | 465,279 | | 4,940,042 | | | | - | | |
| Construction | | 4 945 300 | 363,893 | 1,455 570 | 2 660 147 | 465 782 | | 4,945,392 | | | | - | | |
| Architecture/Engineering | | 989,060 | 72,779 | 291,114 | 532,029 | 93,156 | | 989,078 | | | | | | |
| Site Work | | 894,859 | 65 847 | 263 387 | 481 357 | 84 284 | | 894 875 | | | | | | |
| Environmental | | 620,207 | 45,637 | 182 548 | 333,618 | 58,415 | | 620,218 | | | | - | | |
| Inflation/Contingency | | 1 450,797 | 106 755 | 427 019 | 780,404 | 136,646 | | 1 450,824 | | | | - | | |
| Financing Costs | | 217 019 | 15 969 | 63,876 | 116 738 | 20,440 | | 217 023 | | | | - | | |
| Subtotal - Roads Arena Drive | | 14,057,191 | 1,034,377 | 4,137,510 | 7,561,562 | 1,324,003 | | 14,057,453 | - | | - | - | 14,057,453 | (261 43) |
| **Roads - P, Q & R Streets** | | | | | | | | | | | | - | | |
| Land Acquisition | 135 000 | 1 352 481 | 136 312 | 545,248 | 996,476 | 174,479 | | 1 852 516 | | | | | | |
| Construction | | 2 298 900 | 169 161 | 676,645 | 1,236,611 | 216 526 | | 2,298,943 | | | | - | | |
| Architecture/Engineering | | 459,780 | 33 832 | 135,329 | 247 322 | 43 305 | | 459,789 | | | | - | | |
| Site Work | | 335,572 | 24 693 | 98 770 | 180,509 | 31,606 | | 335 578 | | | | - | | |
| Environmental | | 232,577 | 17 114 | 68 455 | 125,107 | 21,906 | | 232,582 | | | | - | | |
| Inflation/Contingency | | 674 426 | 49 627 | 198,507 | 362 783 | 63 522 | | 674 439 | | | | | | |
| Financing Costs | | 91 789 | 6,754 | 27,017 | 49 375 | 8,645 | | 91,791 | | | | - | | |
| Subtotal - Roads P, Q & R Streets | | 5,945,525 | 437,493 | 1,749,971 | 3,198,182 | 559,991 | | 5,945,636 | | - | - | - | 5 945,636 | (110 57) |
| **Roads - M & N Streets** | | | | | | | | | | | | - | | |
| Land Acquisition | 45 000 | 617,494 | 45 437 | 181 749 | 332,159 | 58,160 | | 617 505 | | | | - | | |
| Construction | | 1,708,400 | 125 710 | 502 840 | 918,973 | 160,909 | | 1,708 432 | | | | - | | |
| Architecture/Engineering | | 341,680 | 25,142 | 100 568 | 183,795 | 32,182 | | 341 686 | | | | - | | |
| Site Work | | 111 857 | 8 231 | 32 923 | 60 170 | 10 535 | | 111 859 | | | | - | | |
| Environmental | | 77,526 | 5 705 | 22,818 | 41,702 | 7 302 | | 77,527 | | | | - | | |
| Inflation/Contingency | | 501 191 | 36 879 | 147,518 | 269 598 | 47 206 | | 501,200 | | | | | | |
| Financing Costs | | 52,657 | 3 875 | 15,499 | 28,325 | 4,960 | | 52,658 | | | | - | | |
| Subtotal - Roads - M & N Streets | | 3,410,805 | 250,979 | 1,003,916 | 1,834,720 | 321,253 | | 3,410,868 | - | | - | - | 3,410,868 | (63.43) |
| **Roads Canopy Street & Ice Drop Off** | | | | | | | | - | | | | - | | |
| Land Acquisition | 124 000 | 1 701 538 | 125 205 | 500,821 | 915 281 | 160 263 | | 1 701,570 | | | | - | | |
| Construction | | 1 733 700 | 127,572 | 510 287 | 932 582 | 163 292 | | 1,733 732 | | | | - | | |
| Architecture/Engineering | | 346 740 | 25,514 | 102 057 | 186 516 | 32 658 | | 346,746 | | | | | | |
| Site Work | | 308 229 | 22,681 | 90,722 | 165 801 | 29 031 | | 308,235 | | | | | | |
| Environmental | | 213 627 | 15 719 | 62 878 | 114,913 | 20 121 | | 213 631 | | | | - | | |
| Inflation/Contingency | | 508 613 | 37,426 | 149,702 | 273,590 | 47,905 | | 508,622 | | | | | | |
| Financing Costs | | 75 461 | 5,553 | 22 211 | 40 592 | 7,107 | | 75 462 | | | | | | |
| Subtotal - Roads Canopy Street & Ice Drop Off | | 4,887,908 | 359 669 | 1,438,678 | 2 629,275 | 460 377 | - | 4,887,999 | | - | | | 4,887,990 | (90 90) |
| **Other Costs Dynamic Message Signage** | | | | | | | | | | | | - | | |
| Land Acquisition | | | | | | | | | | | | | | |
| Construction | | 3,750 000 | 275 938 | 1,103 753 | 2 017,178 | 353 201 | | 3 750,070 | | | | - | | |
| Architecture/Engineering | | 450 000 | 33 113 | 132 450 | 242 061 | 42 384 | | 450,008 | | | | | | |
| Site Work | | | | | | | | - | | | | | | |
| Environmental | | - | | | | - | | - | | | | | | |
| Inflation/Contingency | | 624 618 | 45,962 | 183 846 | 335,991 | 58 831 | | 624,630 | | | | | | |
| Financing Costs | | 75 652 | 5 567 | 22 267 | 40 694 | 7 125 | | 75,653 | | | | - | | |
| Subtotal Other Costs Dynamic Message Signage | | 4 900,270 | 360,579 | 1,442,316 | 2 635,924 | 461,541 | | 4,900,361 | - | | | | 4,900,361 | (91 13) |
| | | | | | | | | | | 20 000 000 | | | | |
| **Total** | | 339 750,026 | 25,000,000 | 100,000,000 | 132,750,026 | 32,000,000 | | 289,750,026 | 30,000,000 | 20,000,000 | | | | |
| | | | | | | | | | | | | | | 228 146667 |

Notes

1. Land area allocation Total land area equals 100 acres Allocation is estimated on a per square foot basis
2. 1 acre equals 43,560 sq feet
3. Total cost of all parcels estimated at $60 003 250
4. "Site work" is allocated on a per square foot basis by using the estimated 10,827 792 in pad site development and stormwater floodplain mitigation estimated by TEUP
5. Enviromental costs use the 7 504,500 TEUP estimate allocated ona per square foot basis As more data becomes available it may be possible to

| | | | | | |
|---|---|---|---|---|---|
| | | | 83,779 00 | | |
| | | | 8 558 02 | | |
| ####### | (10 31) | | 545,779 00 | 545,779 00 | 545,779 00 |
| | | 1,732 380 | 23,771 861 13 | | |
| | | | 860,163 38 | | |
| | | | 172 032 68 | | |
| | | | 4,306 209 90 | | |
| | | | 2,984 537 58 | | |
| | | | 503,258 74 | | |
| ####### | (606 25) | | 32,094,804 67 | 5,338,405 95 | 32,094 804 67 |
| | | 135 000 | 1,852 481 13 | | |
| | | | 67,030 36 | | |
| | | | 13,406 07 | | |
| | | | 335 572 07 | | |
| | | | 232,577 46 | | |
| | | | 39,217 68 | | |
| ####### | (47 14) | | | | |
| | | 435,600 | 5,977,339 10 | | |
| | | | 216 284 63 | | |
| | | | 43,256 93 | | |
| | | | 1,082,779 20 | | |
| | | | 750,450 00 | | |
| | | | 126 542 39 | | |
| ####### | (152 44) | | | | |
| | | | - | | |
| | | | 542,400 00 | | |
| | | | 108 480 00 | | |
| | | | 118,031 00 | | |
| | | | 12 056 82 | | |
| ####### | (14 52) | | 768,911 00 | 768,911 00 | 768,911 00 |
| | | | 5,515 693 00 | 5,515 693 00 | |
| ####### | (105 61) | | | | |
| | | | 3,850,600 00 | | |
| | | | 770,120 00 | | |
| | | | 1,129 646 00 | | |
| | | | 90,167 93 | | |
| ####### | (108 61) | | 5 750 366 00 | 5 750 366 00 | 5 750 366 00 |
| | | | 614,500 00 | | |
| | | | 122,900 00 | | |
| | | | 180 275 00 | | |
| | | | 14,389.49 | | |
| ####### | (17 33) | | 917,675 00 | 303 175 00 | 917,675 00 |
| | | 360,000 | 4,939,949 67 | | |
| | | | 4,945 300 00 | | |
| | | | 989,060 00 | | |
| | | | 894,858 84 | | |
| | | | 620,206.61 | | |
| | | | 1 450 797 00 | | |
| | | | 217,019 16 | | |
| ####### | (261 43) | | 13,840,172 11 | 8,280,015 84 | 13,840 172 12 |
| | | 135 000 | 1,852,481 13 | | |
| | | | 2,298,900 00 | | |
| | | | 459 780 00 | | |
| | | | 335,572 07 | | |
| | | | 232,577 48 | | |
| | | | 674,426 00 | | |
| | | | 91,788 82 | | |
| ####### | (110 57) | | 5,853,736 67 | 3,768,678 07 | 5 853,736 67 |
| | | 45 000 | 617,493 71 | | |
| | | | 1,708,400 00 | | |
| | | | 341,680 00 | | |
| | | | 111 857 36 | | |
| | | | 77,525 83 | | |
| | | | 501 191 00 | | |
| | | | 52 657 04 | | |
| ####### | (63 43) | | 3 358 147 89 | 1,663 128 36 | 3 358 147 89 |
| | | 124 000 | 1,701,538 22 | | |
| | | | 1 733,700 00 | | |
| | | | 346 740 00 | | |
| | | | 308 229 16 | | |
| | | | 213 626 72 | | |
| | | | 508,613 00 | | |
| | | | 75 461 00 | | |
| ####### | (90 90) | | 4,812,447 10 | 2,897,282 16 | 4 812 447 10 |
| | | | 3 750 000 00 | | |
| | | | 450 000 00 | | |
| | | | 624,618 00 | | |
| | | | 75 651 85 | | |
| ####### | (91 13) | | 4,824,618 00 | 4 824,618 00 | 4 824,618 00 |
| ######## | (0,04) | 4,356,000 | 641,057,213 71 | 320,528,606 85 | 314,888,096 56 |
| | | 43 560 | | | 5,515,693 00 |
| ######## | | 100 | | | 5,160 000 00 |
| 0.04 | | - | | | 339,749 343.00 |
| | | | | | 14 185 553 44 |
| | | | | 5160000 | |
| ######## | | 59,773,391 total acres | | (5,160,000 00) | |
| | | 13,722 cost per acre — land | | | |

Allocation of land - Alter [illegible]

| | | | | |
|---|---|---|---|---|
| Stormwater | ######## | 0 693512 | 860163 4 | 172032 7 |
| [illegible] | 195 000 | 0 078063 | 96821 63 | 19364 33 |
| Ice Center | 135 000 | 0 054044 | 67030 36 | 13406 07 |
| Alter | 435 600 | 0 174381 | 216284 6 | 43256 93 |
| | ####### | | 1240300 | ######## |
| | | | 0 | 0 |

18 186 967 00
4,443,759 00
296 645 679 03

EXHIBIT B

better allocate the actual cost of environmental remediation on a parcel by parcel basis

| | |
|---|---|
| Bab 2 to complete Arena | 54,189,667 |
| Bab 2 to complete Arena Garage | 1,399,658 |
| Bab 2 to complete Garage | 4,039,154 |
| Bab 2 to compelete all else | 73,121,447 |
| Total City of Lincoln GO bond | 25,000,000 |
| Total IPB Issued BAB Debt | 100,000,000 |
| Total Recover Zone bond | 32,000,000 |
| Total tax revenue | 30,000 000 |
| Total Areal Contributions | 20,000,000 |
| Total | 339,750 026 |
| | 135,935,163 |

Proiect value less arena and two garages

| | |
|---|---|
| 7,504 500 | Total environmental |
| 4,504,500 | North of O Street |
| 3,000,000 | South of O Street |
| 1 723 | environmental cleanup per sq foot |
| 229,839 | |

| | =VALUE! |
|---|---|
| Land Acquisition | 49 573,517 85 |
| Construction | 139 200,051 35 |
| Architecture/Engineering | 29,277,260 68 |
| Site Work | 3 868 796 85 |
| Environmental | 6,245 764 36 |
| | 1 357,715 64 |

**EXHIBIT B**

# Exhibit C

| Development Facilities Used in Non-Qualified Use | Physical Space: Square Footage | Physical Space: Cost per Square Foot | Physical Space: Allocation Cost | Time: Total Time Available | Time: Time in Non-Qualified Use | Time: % Private Use | Revenues: Non-Qualified Use Revenues | Non-Qualified Use % | Total Development Facility Cost | Total Non-Qualified Use Facility Cost |
|---|---|---|---|---|---|---|---|---|---|---|
| Arena | | | | | | | | | | |
| Concession Area | 10,000 | 389 | 3,894,282 | | | | N/A | | | |
| Private Luxury Boxes | 24,100 | 389 | 9,385,219 | | | | N/A | | | |
| Naming Rights | N/A | N/A | N/A | N/A | N/A | N/A | | | | |
| Long-Term Seating Contracts | N/A | N/A | N/A | N/A | N/A | N/A | | | | |
| Long-Term Advertising | N/A | N/A | N/A | N/A | N/A | N/A | | | | |
| Arena Total | | | | | | | | | | |
| Parking Garage -- Arena | | | | | | | | | | |
| Suite Parking | 200 | 22,049 | 4,409,757 | | | | N/A | | | |
| Parking Garage -- Arena Total | | | | | | | | | | |
| Parking Garages-- South of Arena | | | | | | | | | | |
| Hotel Parking | 200 | 18,686 | 3,737,236 | | | | N/A | | | |
| Parking Garages -- South of Arena Total | | | | | | | | | | |

EXHIBIT B

**Exhibit D**
**Substantiation Documents**

| Item Number | Description | Required for All Tax Advantaged Bonds | Required for Tax Advantaged Bonds Issued After ____ _, 20__ |
|---|---|---|---|
| | | | |
| 1 | Reimbursement Resolution | X – Only if Pre-Issuance Costs are reimbursed | |
| 2 | Transcript of proceedings | X | |
| 3 | Records of expenditure of Tax Advantaged Bond Proceeds | X – Expenditure records should at least show date of payment, person paid, amount paid and general purpose. Copies of journal entries, invoices and/or requisitions may satisfy this requirement | |
| 4 | All rebate calculations and all investment records provided to Rebate Analyst to prepare calculations | X – For any Tax Advantaged Bond issue exempt from rebate, only records of investment are required | |
| 5 | Forms 8038-T together with proof of filing and payment of rebate | X | |
| 6 | Investment agreement bid documents including:<br>I. Bid solicitation<br>II. Bids<br>III. Certificate of broker<br>IV. Written summary of reasons for deviations from the terms of the solicitation that are incorporated into the investment agreement<br>V. Copies of the investment agreement and any amendments | X | |
| 7 | Any item listed in Tax Compliance Agreement (Specify) | X | |
| 8 | Final Financing Sources Allocation | | X – Also complete for Tax Advantaged Bonds issued prior to above date if Development Facility not Placed in Service |
| 9 | Financed Assets List | X | |

| Item Number | Description | Required for All Tax Advantaged Bonds | Required for Tax Advantaged Bonds Issued After _____ _, 20__ |
|---|---|---|---|
| 10 | Completed Annual Tax Advantaged Bond Review Form and Annual Tax Compliance Questionnaire | X | |
| 11 | Opinions of bond counsel or legal counsel regarding tax compliance, together with copy of agreement on which advice was sought, if applicable | X | |
| 12 | Amendments, modifications or substitute agreements to any agreement contained in the Transcript of Proceedings | X | |
| 13 | Any correspondence with the IRS relating to the Tax Advantaged Bonds | X | |

**Exhibit E**
**Annual Tax Compliance Questionnaire**

**Part I** *(Complete Prior to Giving to Reporting Party)*

| | |
|---|---|
| **Development Facility description ("Asset"):** | |
| **Aggregate cost of Asset:** | |
| **Name of Tax Advantaged Bonds ("Bonds") financing Asset:** | |
| **Percentage of Asset financed by Bonds (Financed Asset):** | |
| **Issue date of Bonds:** | |
| **Placed in service date of Asset:** | |
| **End of measurement period:** | |
| **Name of person completing checklist:** | |
| **Title:** | |
| **Email address:** | |
| **Telephone number:** | |
| **Period covered by request (Annual Period):** | |

**You have been identified as the person who is primarily responsible for the management and day-to-day operation of the Asset identified above. We have determined that all or a portion of the Asset was financed with Tax Advantaged Bonds. Because the Asset was financed with Tax Advantaged Bonds there are a number of rules restricting how the Asset can be used. Generally, these rules limit the use of the Asset by entities other than a State or local government. We need your cooperation to accurately report on the bond issue(s) described above. Please return your completed questionnaire as soon as possible, but in all events no later than , 20 .**

**If you have any questions please contact at .**

**Part II** *(Completed by Reporting Party)*

| Item | Question | Response |
|---|---|---|
| **1 Ownership** | Was the Asset owned by the Agency during the entire Annual Period? | ☐ Yes<br>☐ No |
| | If No: Was the Asset (or any portion of the Asset) sold or otherwise disposed of solely because it was determined that the property was inadequate, obsolete or worn out? | ☐ Yes<br>☐ No |
| | If No: What is the legal name of the new owner? | |
| | Date new owner acquired the Asset: | |
| | Is the new owner a state or local government or controlled by a state or local government (a "Qualified User")? | ☐ Yes<br>☐ No<br>☐ Unsure |
| | Did the new owner agree in writing to comply with the Tax Advantaged Bond Compliance Procedure and the Compliance Plan? | ☐ Yes<br>☐ No<br>☐ Unsure |

| | | |
|---|---|---|
| **2 Leases** | During the Annual Period was any part of the Asset leased at any time pursuant to an agreement for *more than 50 days* by another nonaffiliated corporation, association, firm, or other entity? (*Do Not Include Qualified Use Agreements – See Item 3.*) | ☐ Yes<br>☐ No |
| | If Yes: What is the legal name of the Tenant? | |
| | Is the Tenant a Qualified User? | ☐ Yes<br>☐ No<br>☐ Unsure |
| | Attach a copy of the lease if not previously provided in a prior report. | |
| | List approximate percentage of Asset leased by Tenant (e.g., 30% of the square feet in the building). | |

| | | |
|---|---|---|
| **3 Qualified Use Agreements** | Is any part of the Asset leased or reserved for use by individuals or businesses pursuant to a "rate scale" use agreement (e.g., quarterly parking permits in a garage)? | ☐ Yes<br>☐ No |
| | If Yes: Attach the form(s) of the agreement(s) and the current applicable published rates that apply. | |

| | | |
|---|---|---|
| **4 Management or Service Agreements** | During the Annual Period has the management of all or any part of the operations of the Asset been assumed by or transferred to another entity? | ☐ Yes<br>☐ No |
| | If Yes: Attach a copy of the agreement(s). | |

| | | |
|---|---|---|
| **5 Other** | Was any other agreement entered into with an individual or entity (other than a Qualified User) that grants special legal rights to the Asset? | ☐ Yes<br>☐ No |
| | If Yes: Attach a copy of the agreement(s). | |

**Signature, Name and Title of Person Completing Questionnaire:**

_____

**Printed Name:**
**Title:**
**Date Completed:**

**Exhibit F**
**Annual Tax Advantaged Bond Review Form**

1. Bond Issue Name

2. Intent Resolution Date (include Resolution of Intent in Substantiation Documents)

3. Bond Issue Date

4. All Financed Assets used in manner provided in Compliance Plan? ☐ Yes ☐ No
(If no, describe steps taken determine change in use does not create tax issue. Attach opinion of Bond Counsel, if applicable.)

5. Date of last scheduled rebate calculation/payment or date opinion received from Bond Counsel or Rebate Analyst that no further calculations are required.

6. Verify no events have occurred requiring Bond Counsel review/opinion or reference any opinion received, if "Yes".

A) Transfer of ownership of any Financed Asset to any person prior to the end of the Financed Asset's useful life. ☐ Yes ☐ No
B) Leases of any Financed Asset to another State or local government (a "Qualified User") with a term in excess of one year. ☐ Yes ☐ No
C) Leases or use agreements with any person or entity other than a Qualified User (including the United States or its agencies) for a term greater than 50 days (including options to renew). ☐ Yes ☐ No

WH 13-69 Introduce: 7-12-13

RESOLUTION NO. WH - _____

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

That the attached Amendment No. 010.1 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency dated September 1, 2010 is hereby approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract Amendment on behalf of the West Haymarket Joint Public Agency.

Adopted this ___ day of July, 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

_____
Doug Emery

# AIA® Document G802™ – 2007

## *Amendment to the Professional Services Agreement*

Amendment Number: 010.1
IPTV Architectural Coordination

**TO:** Ms. Paula Yancey
*(Owner or Owner's Representative)*

In accordance with the Agreement dated: September 01, 2010

**BETWEEN** the Owner:
*(Name and address)*
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

and the Architect:
*(Name and address)*
DLR Group, inc. (a Nebraska corporation)
1111 Lincoln Mall
Suite 201
Lincoln, NE 68508

for the Project:
*(Name and address)*
Pinnacle Bank Arena
Lincoln, Nebraska

Authorization is requested
☒ to proceed with Additional Services.
☐ to incur additional Reimbursable Expenses.

As follows:
IPTV increase in Architectural coordination hours.

The following adjustments shall be made to compensation and time.
*(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)*

Compensation:
Lump sum of $16,000

Time:
No impact to design or construction.

| **SUBMITTED BY:** | **AGREED TO:** |
|---|---|
| Stan Meradith, AIA | |
| *(Signature)* | *(Signature)* |
| Stan Meradith, AIA<br>Principal | Mayor Chris Beutler<br>Chair |
| *(Printed name and title)* | *(Printed name and title)* |
| July 3, 2013 | |
| *(Date)* | *(Date)* |

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**User Notes:** (1515737176)

WH 13-70 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the Guaranteed Maximum Price Amendment to the Agreement between the West Haymarket Joint Public Agency and Hausmann/Dunn, a joint venture, to establish $13,294,244 and $5,871,412 as the amount the Contract Sum shall not exceed for Precast Parking Deck Nos. 2 and 3, respectively, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Guaranteed Maximum Price Amendment on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and the Guaranteed Maximum Price Amendment to Hausmann Construction, c/o Chad Wiles, 8545 Executive Woods Drive, Suite 1, Lincoln, NE 68512 and to J.E. Dunn Construction, c/o Brett Chapman, 8420 West Dodge Road, Suite 303, Omaha, NE 68114.

Adopted this _____ day of _____, 2013.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

**West Haymarket Parking Garage Deck 2 and 3**
**Lincoln, NE**
**July 1, 2013**

| | |
|---|---|
| New Garage | Deck 3 |
| Total SF Area: | 296,696 |

## 65% - Initial GMP Summary - Deck 3 and Partial Deck 2

| Description | | Deck 3 Budget / Bid *Total* | Deck 2 Budget / Bid *Total* | Budget / Bid *Total* | Budget / Bid *Cost/SF* |
|---|---|---|---|---|---|
| Preconstruction | | $ 15,587 | $ 15,586 | $ 31,173 | $ 0.11 |
| General Conditions | | $ 299,306 | $ 274,123 | $ 573,429 | $ 1.93 |
| Building Permit | | $ 75,000 | $ - | $ 75,000 | $ 0.25 |
| Submittal Exchange | | $ 5,696 | $ 5,696 | $ 11,392 | $ 0.04 |
| Performance & Payment Bonds | | $ 73,532 | $ 41,583 | $ 115,115 | $ 0.39 |
| General Liability | | $ 96,525 | $ 51,975 | $ 148,500 | $ 0.50 |
| Excavation & Grading | | $ 334,000 | $ - | $ 334,000 | $ 1.13 |
| Site Utilities | | $ - | $ - | $ - | $ - |
| Auger Cast Piles | | $ 986,600 | $ - | $ 986,600 | $ 3.33 |
| Concrete Foundations | | $ 667,700 | $ - | $ 667,700 | $ 2.25 |
| Sheet Piling | | $ 75,900 | $ - | $ 75,900 | $ 0.26 |
| Concrete SOG & Topping Slabs | | $ 1,217,530 | $ - | $ 1,217,530 | $ 4.10 |
| Masonry | | $ 79,086 | $ - | $ 79,086 | $ 0.27 |
| Precast Material | | $ 5,011,200 | $ 3,942,700 | $ 8,953,900 | $ 30.18 |
| Precast Erection | | $ 939,188 | $ 714,312 | $ 1,653,500 | $ 5.57 |
| Structural & Misc Steel | | $ 508,076 | $ - | $ 508,076 | $ 1.71 |
| Rough Carpentry & Casework | | $ 34,375 | $ - | $ 34,375 | $ 0.12 |
| Roofing & Sheet Metal | | $ 31,999 | $ - | $ 31,999 | $ 0.11 |
| Caulking & Sealants | | $ 175,160 | $ - | $ 175,160 | $ 0.59 |
| Doors, Frames & Hardware | | $ 42,056 | $ - | $ 42,056 | $ 0.14 |
| Overhead Door | | $ 3,475 | $ - | $ 3,475 | $ 0.01 |
| Glass & Glazing | | $ 322,000 | $ - | $ 322,000 | $ 1.09 |
| Drywall & Ceiling | | $ 47,060 | $ - | $ 47,060 | $ 0.16 |
| Flooring & Tile | | $ 35,573 | $ - | $ 35,573 | $ 0.12 |
| Painting | | $ 43,754 | $ - | $ 43,754 | $ 0.15 |
| Specialties | | $ 12,562 | $ - | $ 12,562 | $ 0.04 |
| Elevators | | $ 537,274 | $ 537,274 | $ 1,074,548 | $ 3.62 |
| Fire Protection | | $ 53,600 | $ - | $ 53,600 | $ 0.18 |
| Plumbing & HVAC | | $ 312,500 | $ - | $ 312,500 | $ 1.05 |
| Electrical | | $ 605,000 | $ - | $ 605,000 | $ 2.04 |
| Contaminated Soils Allowance | | $ 10,000 | $ - | $ 10,000 | $ 0.03 |
| Winter Protection Allowance | | $ 100,000 | $ - | $ 100,000 | $ 0.34 |
| Shared Site Access Road Maintenance Allowance | | $ - | $ - | $ - | $ - |
| Additional Auger Piles Allowance | | $ 15,000 | $ - | $ 15,000 | $ 0.05 |
| Precast Material for Completion of Design Allowance | | $ - | $ - | $ - | |
| Delete One Elevator per Garage (Target Reduction) | | $ (120,000) | $ - | $ (120,000) | $ (0.40) |
| | **Subtotal** | $12,646,314 | $ 5,583,249 | $18,229,563 | $ 61.44 |
| Construction Contingency | 3.0% | $ 379,390 | $ 167,497 | $ 546,887 | $ 1.84 |
| | **Subtotal** | $13,025,704 | $ 5,750,746 | $18,776,450 | $ 63.29 |
| Fee | 2.1% | $ 273,540 | $ 120,766 | $ 394,306 | $ 1.33 |
| | **GMP Total** | **$13,299,244** | **$ 5,871,512** | **$19,170,756** | **$ 64.61** |

**Alternates**
N/A

**West Haymarket Parking Decks No.2 and 3**
**Project Documents and Clarifications**

**Contract Documents:**

1. This proposal is based on the following Contract Documents:

2. AIA A133 – 2009 Contract between Owner and Construction Manager as modified.

3. General Conditions – AIA Documents A201-2007 of the Contract for Construction as modified.

4. Specifications including specification sections prepared by Davis Design, Inc. and their Consultants.
   - Bid Package No. 1 – N/A
   - Bid Package No. 2 – Dated May 15, 2013
   - Bid Package No. 3 – Dated June 10, 2013

5. Drawings as follows:

| **Bid Package No. 1** | | |
|---|---|---|
| **Number:** | **Title:** | **Revision Date:** |
| | **Deck No. 3 – Preliminary Drawings** | |
| A-201 | Elevations | 04/26/13 |
| C-104 | Existing Grades / Proposed Easement Grades | 04/26/13 |
| S-501 | Details | 04/26/13 |
| | | |
| | **Bid Package No. 2** | |
| | **Deck No. 2 – Preliminary Drawings** | |
| A-101 | First Floor, Typical Floor Plan Levels 2 Thru 5 | 12/15/11 |
| A-102 | Sixth Level Floor Plan, Cross Over Plan | 12/15/11 |
| A-103 | Enlarged Plans | 12/01/11 |
| A-201 | Exterior Elevations | 12/15/11 |
| A-301 | Building Sections | 12/15/11 |
| | | |
| | **Deck No. 3 – 35% Drawings** | |
| **General** | | |
| G-101 | Cover Page | 05/15/13 |
| **Civil** | | |
| C-101 | Vicinity Plan | 04/26/13 |
| C-104 | Existing Grades/Proposed Easement Grades | 04/26/13 |

**West Haymarket Parking Decks No.2 and 3**
**Project Documents and Clarifications**

| | | |
|---|---|---|
| **Structural** | | |
| S-102 | Footing/Foundation Plan | 04/26/13 |
| S-201 | Level 1 Framing Plan | 04/26/13 |
| S-202 | Level 2 Framing Plan | 04/26/13 |
| S-203 | Level 3 Framing Plan | 04/26/13 |
| S-204 | Level 4 Framing Plan | 04/26/13 |
| S-205 | Level 5 Framing Plan | 04/26/13 |
| S-206 | Level 6 Framing Plan | 04/26/13 |
| S-207 | Penthouse Framing Plan | 04/26/13 |
| **Architectural** | | |
| A-101 | Level 1 and 2 Floor Plans | 05/15/13 |
| A-102 | Level 3 and 4 Floor Plans | 04/26/13 |
| A-103 | Level 5, 6 and Penthouse Floor Plan | 05/15/13 |
| A-104 | Enlarged Elevator/Stair Plans | 05/15/13 |
| A-106 | Level 1 and Levels 2 Thru 5 Drainage Plans | 04/26/13 |
| A-107 | Level 2 Traffic Topping and Level 6 Drainage Plan | 05/15/13 |
| A-201 | Elevations | 05/15/13 |
| A-202 | Elevations Showing Precast Panels | 05/15/13 |
| A-203 | Precast Concrete Panel Legend | 05/15/13 |
| A-204 | Precast Concrete Panel Legend | 05/15/13 |
| A-205 | Precast Concrete Panel Legend | 05/15/13 |
| A-206 | Precast Concrete Panel Legend | 05/15/13 |
| A-207 | Precast Concrete Panel Legend | 05/15/13 |
| A-208 | Precast Concrete Panel Legend | 05/15/13 |
| A-209 | Stair Tower Precast Concrete Panel Legend | 05/15/13 |
| A-210 | Stair Tower Precast Concrete Panel Legend | 05/15/13 |
| A-301 | Building Sections | 05/15/13 |
| A-302 | Building Sections | 05/15/13 |
| A-303 | Building Sections | 05/15/13 |
| A-304 | Building Sections | 05/15/13 |
| A-305 | Building Sections | 05/15/13 |
| A-401 | Wall Sections | 04/26/13 |
| **Parking** | | |
| AG-101 | Grade & Second Level Striping Layouts | May 14, 2013 |
| AG-102 | Third & Fourth Level Striping Layouts | May 14, 2013 |
| AG-103 | Fifth & Sixth Level Striping Layout | May 14, 2013 |

| | | |
|---|---|---|
| AG-401 | Enlarged Entry/Exit Plans | May 14, 2013 |
| | | |
| | **Bid Package No. 3** | |
| | **Deck No. 2 – Preliminary Drawings** | |
| A-101 | First Floor, Typical Floor Plan Levels 2 Thru 5 | 12/15/11 |
| A-102 | Sixth Level Floor Plan, Cross Over Plan | 12/15/11 |
| A-103 | Enlarged Plans | 12/01/11 |
| A-201 | Exterior Elevations | 12/15/11 |
| A-301 | Building Sections | 12/15/11 |
| | | |
| | **Deck No. 3 – 65% Drawings** | |
| **General** | | |
| G-101 | Cover Page | 06/07/13 |
| **Utilities** | | |
| U-101 | Utilities Site Plan | 06/07/13 |
| **Civil** | | |
| C-101 | Vicinity Plan | 06/07/13 |
| C-102 | Site Plan Showing Street/ROW Grades | 06/07/13 |
| C-103 | Existing Grades / Proposed Easement Grades | 06/07/13 |
| C-104 | Miscellaneous Site Details | 06/07/13 |
| C-105 | Miscellaneous Site Details | 06/07/13 |
| **Structural** | | |
| S-001 | General Notes | 06/07/13 |
| S-101 | Auger Cast Pile Layout Plan | 06/07/13 |
| S-102 | Footing/Foundation Plan | 06/07/13 |
| S-201 | Level 1 Framing Plan | 06/07/13 |
| S-202 | Level 2 Framing Plan | 06/07/13 |
| S-203 | Level 3 Framing Plan | 06/07/13 |
| S-204 | Level 4 Framing Plan | 06/07/13 |
| S-205 | Level 5 Framing Plan | 06/07/13 |
| S-206 | Level 6 Framing Plan | 06/07/13 |
| S-207 | Penthouse Framing Plan | 06/07/13 |
| S-301 | Details | 06/07/13 |
| S-302 | Details | 06/07/13 |
| S-303 | Details | 06/07/13 |
| S-304 | Auger Cast Pile Schedule | 06/07/13 |

**West Haymarket Parking Decks No.2 and 3**
**Project Documents and Clarifications**

| **Architectural** | | |
|---|---|---|
| A-101 | Level 1 and 2 Floor Plans | 06/07/13 |
| A-102 | Level 3 and 4 Floor Plans | 06/07/13 |
| A-103 | Level 5, 6 and Penthouse Floor Plans | 06/07/13 |
| A-104 | Enlarged Elevator/Stair Plans | 06/07/13 |
| A-105 | Enlarged Floor Plans | 06/07/13 |
| A-106 | Level 1 and Levels 2 Thru 5 Drainage Plan | 06/07/13 |
| A-107 | Level 2 Traffic Topping and Level 6 Drainage Plan | 06/07/13 |
| A-108 | Level 1 and 2 Reflected Ceiling Plans | 06/07/13 |
| A-109 | Level 3 and 4 Reflected Ceiling Plans | 06/07/13 |
| A-110 | Level 5 and 6 and Penthouse Reflected Ceiling Plans | 06/07/13 |
| A-111 | Enlarged Reflected Ceiling Plans | 06/07/13 |
| A-112 | Enlarged Reflected Ceiling Plans / Roof Plans | 06/07/13 |
| A-201 | Elevations | 06/07/13 |
| A-202 | Elevations Showing Precast Panels | 06/07/13 |
| A-203 | Precast Concrete Panel Legend | 06/07/13 |
| A-204 | Precast Concrete Panel Legend | 06/07/13 |
| A-205 | Precast Concrete Panel Legend | 06/07/13 |
| A-206 | Precast Concrete Panel Legend | 06/07/13 |
| A-207 | Precast Concrete Panel Legend | 06/07/13 |
| A-208 | Precast Concrete Panel Legend | 06/07/13 |
| A-209 | Stair Tower Precast Concrete Panel Legend | 06/07/13 |
| A-210 | Stair Tower Precast Concrete Panel Legend | 06/07/13 |
| A-211 | Interior Elevations | 06/07/13 |
| A-212 | Interior Elevations | 06/07/13 |
| A-213 | Stair Tower Interior Elevations | 06/07/13 |
| A-214 | Stair Tower Interior Elevations | 06/07/13 |
| A-215 | Stair Tower Interior Elevations | 06/07/13 |
| A-301 | Building Sections | 06/07/13 |
| A-302 | Building Sections | 06/07/13 |
| A-303 | Building Sections | 06/07/13 |
| A-304 | Building Sections | 06/07/13 |
| A-305 | Building Sections | 06/07/13 |
| A-306 | Building Sections, Office Details | 06/07/13 |
| A-401 | Wall Sections | 06/07/13 |
| A-402 | Wall Sections | 06/07/13 |

| | | |
|---|---|---|
| A-403 | Wall Sections | 06/07/13 |
| A-404 | Canopy Details | 06/07/13 |
| A-405 | Stair Lobby / Elevator Sections | 06/07/13 |
| A-406 | Wall Sections | 06/07/13 |
| A-407 | Wall Sections | 06/07/13 |
| A-408 | Wall Sections | 06/07/13 |
| A-409 | Miscellaneous Sections | 06/07/13 |
| A-501 | Enlarged Details | 06/07/13 |
| A-502 | Miscellaneous Details | 06/07/13 |
| A-503 | Miscellaneous Details | 06/07/13 |
| A-504 | Miscellaneous Details | 06/07/13 |
| A-505 | Miscellaneous Details, Typical Precast Joints | 06/07/13 |
| A-506 | Miscellaneous Details | 06/07/13 |
| **Parking** | | |
| AG-101 | Grade & Second Level Striping Layouts | 06/07/13 |
| AG-102 | Third & Fourth Level Striping Layouts | 06/07/13 |
| AG-103 | Fifth & Sixth Level Striping Layouts | 06/07/13 |
| AG-401 | Enlarged Entry / Exit Plans | 06/07/13 |
| AG-601 | Signage Schedule and Details | 06/07/13 |
| AG-602 | Signage Details | 06/07/13 |
| AG-701 | Sign Mounting Details | 06/07/13 |
| **Mechanical** | | |
| M-101 | First Floor Mechanical Plans | 06/07/13 |
| M-102 | 2nd thru 5th and 6th Level Mechanical Plans | 06/07/13 |
| M-301 | Sections | 06/07/13 |
| M-401 | Enlarged Plumbing Plans | 06/07/13 |
| M-402 | Enlarged Mechanical Plans | 06/07/13 |
| M-501 | Mechanical Schedules and Details | 06/07/13 |
| M-601 | Fire Protection Piping Isometric | 06/07/13 |
| M-602 | Storm Drainage Isometric | 06/07/13 |
| M-603 | Waste, Vent and Domestic Water Isometric | 06/07/13 |
| **Electrical** | | |
| E-101 | Level 1 & 2 Electrical Plans | 06/07/13 |
| E-102 | Level 3 & 4 Electrical Plans | 06/07/13 |
| E-103 | Level 5 & Roof Electrical Plans | 06/07/13 |
| E-401 | Enlarged Electrical Plans | 06/07/13 |

| | | |
|---|---|---|
| E-501 | Electrical Details | 06/07/13 |
| E-502 | Electrical Details | 06/07/13 |
| E-601 | Electrical Riser, Symbol Legend & Schedules | 06/07/13 |

6. Bidding Requirements:
   - Bid Package No. 1 – Dated April 26, 2013 – Early Procurement Package Sheet Piling
   - Bid Package No. 2 – Dated May 20, 2013 – Early Procurement Package and Precast Materials
   - Bid Package No. 3 – Dated June 10, 2013 – Footings, Foundations, and Piles

7. Addenda:
   Bid Package No. 1 – Addendum No. 1 – dated April 30, 2013 - Bidding Requirements
   Bid Package No. 2 – Addendum No. 1 – dated, May 24, 2013 - Precast Materials
   Bid Package No. 2 – Addendum No. 2 – dated June 3, 2013 – Precast Materials

**Inclusions and General Clarifications:**

1. This proposal provides for a complete project scope for Deck No. 3, based on the 65% plans and specifications issued for Deck No. 3. To ensure the validity of the estimate, we have made some assumptions to ensure a complete and functional project scope. Throughout the design process, we intend to work closely with the Project Team to maintain the design concept, program scope, and budget.
2. This proposal includes some scopes of work for Deck No. 2 which have been bid with Bid Package Nos. 1-3 to date.
3. Proposal is based upon acceptance of the Guaranteed Maximum Price by July 16, 2013. We will need approval to release the Auger Pile Subcontractor to start the test pile installation by July 12, 2013.
4. Proposal is based upon site access on July 2, 2013. The Substantial Completion date will be July 15, 2014 for Deck No. 3. Deck No. 2 is scheduled to be substantially complete on September 1, 2014.
5. This proposal is based on an access road to the site being provided by others during construction operations.
6. Cost associated with delays resulting from adjacent project operations and infrastructure work which is not a part of, or under the control of this project team, is not included in this proposal.
7. Site will be prepared by others.
8. Performance and payment bonds.
9. Builder's risk insurance.
10. Building permit.
11. Subcontractor bonding.

12. Davis-Bacon prevailing wage rates.
13. Use taxes.
14. We have included for Deck No. 3 a $10,000 allowance for removal of contaminated soils. Removal will be to the designated site set aside in the Contract Documents. All other soil from structural excavation is assumed to not be contaminated.
15. We have included for Deck No. 3 a $100,000 allowance for winter protection.
16. We have not included an allowance for shared site access road maintenance for Deck No. 3. Roads to the site and adjacent to the site are by others. Access roads, staging area, and parking area for the building pad and DEC staging area are included under Excavation and Grading.
17. We have included for Deck No. 3 a $15,000 allowance for additional auger piles.
18. We have included a target cost reduction item of ($120,000) to delete one (1) elevator from Deck No. 3. The Elevator bidders bid four (4) elevators per garage. The target reduction is for reducing from four (4) to three (3) elevators for Deck No. 3. We will confirm pricing with the Elevator bidders for reducing one (1) elevator per garage.
19. Precast materials and erection are included for both Deck No. 3 and Deck No. 2.
20. Escalation for Deck No. 3 until bid day, December 1, 2013.
21. LED lighting as shown on the 65% construction documents for Deck No. 3.
22. Temporary utility consumption costs during construction.
23. Site concrete and curb and gutter for drives entering the garage up to the edge of the street only. The sidewalks, landscaping, curb and gutter, and concrete surrounding the garage are excluded.
24. We reserve the right to utilize the new elevators for material and personnel hoisting and mechanical and electrical systems for temporary heating and cooling as required. Ductwork cleanliness will be per SMACNA guidelines.
25. This proposal includes a construction contingency to be utilized by the Contractor as needed during the construction process and as defined in the Agreement between the Owner and Construction Manager.
26. Warranties will begin upon the date of Substantial Completion.

**Exclusions:**

1. Fireproofing including spray-on or intumescent painting.
2. Parking equipment including entry gates, booths, ticket dispensers, detection loops, coiling doors at entries.
3. Graphics and Signage
4. Security systems including code blue stations, cameras, monitors, and cabling. Raceway for security system and cameras is included.
5. Owner soft costs.
6. Architect, engineer or consultant's fees.
7. Sales tax.
8. Development fees, City impact fees, or special assessments. Utility tap fees will be included with the Site Utilities.
9. Financing costs.

10. Moving expenses.
11. Owner's project contingency or contingency for time extensions.
12. Utility company charges for distribution system extensions or relocations.
13. Off-site improvements.
14. Abatement of unforeseen asbestos, lead, or hazardous materials.
15. Monitoring or testing of hazardous materials.
16. Moisture remediation system and moisture barrier for floor coverings.
17. Third Party special inspections and testing.
18. Soil borings and investigation expense.
19. Removal and replacement of unsuitable materials, hidden structures, or obstructions from site.
20. Soil stabilization or rock excavation.
21. Guard services or security services.
22. Artwork, furnishings, or displays.
23. Televisions, computers, business equipment, and accessories.
24. Third Party commissioning of mechanical and electrical systems.
25. Purchasing of CAD drawings from A/E.
26. MEP coordination drawings.
27. Vibration monitoring.
28. Any items listed as "N.I.C.", "Future", "By Owner", or "By Others".

WH 13-71 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the West Haymarket Joint Public Agency Thermal Energy Rate Class 1 formula rate charges attached hereto as Exhibit A for all Rate Class 1 customers receiving energy services from the West Haymarket Joint Public Agency is hereby adopted and approved..

Adopted this _____ day of _____, 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

_____
Doug Emery

**EXHIBIT "A"**

WEST HAYMARKET JOINT PUBLIC AGENCY
RATE CLASS 1

*Adopted July 12, 2013*

APPLICABLE: The Customer will be placed on this rate upon the Effective Date of the Customer Service Agreement.

CUSTOMER ENERGY SERVICE: Customer Energy Service shall be as defined in Article 1 of the Customer Service Agreement.

BILL: Demand Charges (Facilities Financing and Other) + Commodity Charge for Hot Water + Commodity Charge for Chilled Water + All applicable taxes (if any); based on the rate in effect.

BILLING PERIOD: Under normal conditions, BILLING PERIODS typically range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There will be twelve billing periods per year.

RATE: (Elements)

| | |
|---|---|
| Demand Charge – Facilities Financing | $_____ per Billing Period |
| Demand Charge – Other | $_____ per Billing Period |
| Commodity Charge for Chilled Water | $_____ per MMBTU for cooling thermal energy per Billing Period |
| Commodity Charge for Hot Water | $_____ per MMBTU for heating thermal energy per billing period |

Customer's Monthly Demand Charge – Facilities Financing for each billing shall be:

(Customer Area Ratio) x (Private Sector Share) x (Total Annual Cost of Debt Service) ÷ 12 = monthly payment.

Example (assumes the Premises is 80,000 SF, the Private Sector Area is 385,000 SF, the Public Sector Area is 460,000 SF, and TACDS is $1,127,687):

*(Customer Area Ratio x Private Sector Share x TACDS) ÷ 12 = Monthly Payment*
(.20779 x .31 x $1,127,687.00) ÷ 12 = $6,053.32/month

Calculation of Customer's Monthly Demand Charge – Other:

The Customer's Monthly Demand Charge-Other for each billing shall be the result of the monthly JPA Demand Charge – Other from DEC for the same billing period divided by the Total Area available to receive Energy Services times the total sq. ft. of the Premises.

Customer's Monthly Commodity Charge:

The Customer's Monthly Commodity Charge shall be the Customer's actual share of the JPA Monthly Commodity Charge based upon the meter reading at the Point of Delivery for the Premises.

Upon request of Customer, JPA will, if practical, provide recorded energy consumption readings for the purpose of allocating Demand and Commodity Charges.

MINIMUM BILL: (Demand Charge – Facilities Financing) + (Demand Charge – Other) + applicable taxes. The minimum bill shall be subject to the limitations in Article 4.

WH 13-72 Introduce: 7-12-13

**RESOLUTION NO. WH- _____**

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

That the attached Rate Class 1 Customer Energy Service Agreement between the West Haymarket Joint Public Agency and Project Oscar LLC for the delivery of thermal energy to the Premises legally described as Lot 2, West Haymarket 1st Addition, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

The Chairperson is further authorized to execute the Memorandum of Customer Energy Services Agreement attached hereto on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and the Agreement to Rick Peo, City Law Department, for transmittal of the Agreement to Project Oscar LLC.

The City Clerk is further directed to return the original Memorandum of Customer Energy Service Agreement for the Agreement to Rick Peo, City Law Department, to be filed of record with the Register of Deeds and indexed against the District Energy Corporation's Premises and the Premises.

Adopted this _____ day of _____, 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

_____
Doug Emery

# CUSTOMER ENERGY SERVICE AGREEMENT

Between

West Haymarket Joint Public Agency

And

Project Oscar, LLC

Energy Services to the Southwest Corner
of Canopy Drive and "P" Streets,
Lincoln, Nebraska

July 12, 2013

**CUSTOMER ENERGY SERVICE AGREEMENT**

This Customer Energy Service Agreement ("Agreement") is entered into as of this _____ day of July, 2013, by and between West Haymarket Joint Public Agency, and its successors and assigns ("JPA") and Project Oscar, LLC, a Nebraska limited liability company, and its successors and assigns ("Customer").

WITNESSETH:

WHEREAS, the Customer desires Energy Services (herein defined) be delivered to its approximately 70,100 square feet of office space and approximately 9,900 square feet of retail improvements, located approximately on the southwest corner of Canopy Drive and "P" Streets Lincoln, NE and legally described as Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska ("Premises"); and

WHEREAS, District Energy Corporation, a nonprofit Nebraska corporation organized by The City of Lincoln, Nebraska and The County of Lancaster, Nebraska pursuant to (a) the Nebraska Interlocal Cooperation Act and (b) the Nebraska Nonprofit Corporation Act, and its successors and assigns ("DEC") will provide Energy Services for sale to such buildings and projects as may be authorized from time to time; and

WHEREAS, the JPA and the 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 on Lot 2, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska ("Plant Site") and distribution system equipment within public right-of-ways or easements and provide Energy Services (as defined in the Energy Services Agreement) to the Arena and certain other private buildings and facilities in the West Haymarket Redevelopment Area, including the Premises; and

WHEREAS, the DEC will charge the JPA the following monthly charges (defined in Art. I) pursuant to the Energy Services Agreement:

Demand Charge - Facilities Financing
Demand Charge - Other
Commodity Charge; and

WHEREAS, 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 Points of Delivery to other buildings and facilities receiving heating and cooling from the Energy Services provided by the DEC to the JPA; and

WHEREAS, the Energy Services provided to the JPA will be developed as needed with the initial allocation of charges for providing Energy Services to the JPA based upon service capacity of 845,000 sq. ft. (460,000 sq. ft. public and 385,000 sq. ft. private, including the

Premises). Energy Services, (the Demand Charge - Facilities Financing, Demand Charge - Other, and the Commodity Charge) will be allocated to end users on a square foot basis, except that for the Demand Charge - Facilities Financing, the end user percentage of total cost will be split 69% public and 31% private as negotiated between the parties and reflected in the formula in Rate Class 1 below; and

WHEREAS, the JPA has developed Rate Class 1 (set forth in Exhibit A) as a pass-through rate that enables JPA to recover its actual capital costs as well as its actual operating costs, without including any JPA or DEC profits; and

WHEREAS, the JPA does not intend to subsidize other rate classes, customers, or JPA facilities that do not benefit the Premises, with the charges paid by the Customer; and

WHEREAS, the JPA and DEC have entered into an Addendum to the Energy Service Agreement ("Addendum") dated January 24, 2013 wherein DEC agrees to provide Energy Services to the Points of Delivery identified in Exhibit C attached to the Addendum, including the Premises, to read the Meter at each Point of Delivery and record such readings on a consistent monthly basis, calculate the amount to be billed to each Point of Delivery and mail monthly statements for JPA Customer Energy Services in the amounts calculated pursuant to Section 4.01 of this Agreement for each Point of Delivery to the address provided by the JPA; and

WHEREAS, in order for JPA to furnish such Customer Energy Services to the Customer, it is necessary, desirable and advisable that the Customer and JPA enter into this Agreement for such service.

NOW THEREFORE, the parties hereby agree as follows:

## ARTICLE 1
## DEFINITIONS

Unless the context otherwise requires, the terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

1.01 <u>DEC</u>

means District Energy Corporation acting through its duly appointed board members and agents acting within the scope of their duties and responsibilities, and its successors and assigns.

1.02 Energy Services

means the delivery of thermal energy by DEC to the JPA, through the generation, transmission, and distribution system and facilities operated by DEC (thermal energy system), for the purpose of heating and cooling public and private buildings and facilities in the West Haymarket Redevelopment Area.

1.03 Customer Energy Services

means the delivery of thermal energy by JPA to the Customer through the thermal energy system for the purpose of heating and cooling the Premises.

1.04 Service Piping

means the piping connecting the DEC distribution facilities to Customer's service pipe flange.

1.05 Point of Delivery

means the point where the JPA supplies thermal energy to the Premises and which, unless otherwise agreed between the JPA and Customer, shall be the point where DEC Piping is joined to the Customer's Service Piping and DEC thermal metering is installed.

1.06 Meter

means the device or devices including all auxiliary equipment necessary to measure and register a thermal quantity (energy or demand) that is supplied by JPA to the Point of Delivery.

1.07 Facilities

means the property and thermal energy system equipment used by DEC to provide Energy Services to the JPA and the Customer.

1.08 Parallel Production

means all forms of thermal energy which could be operated by JPA or the Customer in parallel with the Facilities or Customer Energy Services. Such equipment may include, but is not limited to, heat-pumps, chillers or boilers, or geothermal loop field systems or facilities.

1.09 JPA Demand Charge - Facilities Financing

means the monthly charge the DEC will charge the JPA for DEC's Total Annual Cost of Debt Service on the Total Indebtedness.

1.10 JPA Demand Charge - Other

means the monthly charge DEC will charge the JPA to provide Energy Services to the JPA. Demand Charge - Other includes the monthly electrical demand charge that LES charges the DEC to provide power at peak demand points, and also includes a charge for operation and maintenance which is comprised of (1) the cost of operating and maintaining the Facilities (O&M), (2) administrative and general cost of managing the Facilities (A&G), and (3) the cost of debt service coverage to generate funds for future capital needs.

1.11 JPA Commodity Charge

means the monthly charge DEC will charge the JPA for energy used to produce and deliver thermal energy to the JPA.

1.12 JPA Total Charge

means the sum total of the JPA Demand Charge - Facilities Financing, the JPA Demand Charge - Other, and the JPA Commodity Charge.

1.13 Total Indebtedness

means the total cost of construction of the Facilities as incurred by DEC and payable by JPA.

1.14 Total Annual Cost of Debt Service

means principle, interest, fees, and costs of financing Total Indebtedness incurred by DEC and payable by JPA on an annual basis.

1.15 Private Sector Area

means the total square footage of buildings and structures owned by entities other than JPA that is receiving heating and cooling from JPA.

1.16 Public Sector Area

means the total square footage of buildings and structures owned by JPA that is receiving heating and cooling from JPA.

1.17 Private Sector Share

means the JPA determined portion of the Total Area allocated to the Private Sector Area for purposes of calculating JPA Demand Charge-Facilities Financing .

1.18 Customer Area Ratio

means the square footage of the Premises divided by the Private Sector Area.

1.19 Total Area

means the sum of the Private Sector Area and the Public Sector Area.

## ARTICLE 2
## AGREEMENT TERM

2.01 This Agreement shall remain in effect and binding upon the Customer and JPA and their assigns for thirty-five (35) years from the Effective Date (defined below); provided that, the Customer shall have the exclusive option to extend this Agreement for three (3) additional five (5) year terms. The Customer shall provide written notice of exercising an option not less than one year prior to expiration of the Agreement or an option term.

2.02 This Agreement shall become effective on the date of substantial completion of the Premises ("Effective Date") unless, prior to the Effective Date, another Effective Date is agreed to by both the JPA and the Customer.

2.03 In the event the building improvements located on the Premises are destroyed and not rebuilt, then the Customer may terminate this Agreement by providing sixty (60) days written notice of termination of this Agreement, where upon this Agreement shall terminate.

## ARTICLE 3
## SERVICE

3.01 JPA will provide Customer Energy Services to Customer and Customer will accept and use Customer Energy Services for all of Customer's heating and cooling purposes at the Premises throughout the Term specified in Article 2, subject to Section 3.02 and Section 11.02.

3.02 The parties acknowledge that the Customer and/or its tenant(s) or lender, may require or elect to have Parallel Production system(s) for redundant, back-up or supplementary heating and/or cooling system(s) and/or alternative energy source(s) to heat and/or cool the Premises and/or a tenant's space and shall be operated pursuant to Section 11.02.

3.03 JPA reserves the right to interrupt the supply of Customer Energy Services to enable DEC to make any necessary repairs or connections to its Facilities. JPA will attempt to give Customer 24 hours advance notice of such interruption.

3.04 JPA will use commercially reasonable efforts at all times to provide Customer with a regular and uninterrupted supply of Customer Energy Services throughout the year on a twenty-four-hour-a-day basis except as interruptions may be required by DEC to make any necessary repairs or connections to its Facilities, but JPA does not warrant or guarantee uninterrupted service, and JPA shall not be liable for any special, indirect or

consequential damages relating to or arising from an interruption in service. In the event of any interruption of service, both parties shall be prompt and diligent in attempting to remove and overcome the cause of the interruption, and nothing contained herein shall be construed as permitting JPA to refuse to deliver, or Customer to refuse to accept, Customer Energy Services after the cause of interruption has been removed.

3.05 The Customer agrees and acknowledges that DEC currently owns all of the Facilities and is responsible for the operation, repairs, and maintenance of such Facilities on behalf of JPA. The parties further agree and acknowledge that the DEC is the agent of the JPA with regard to delivery of the Customer Energy Services. The Customer shall contact the JPA or a designated agent regarding all issues of billing and customer service. For purposes of this Agreement, the Customer consents to allowing JPA, DEC, or any of their employees, agents or contractors on or in the Premises, to the extent necessary, and at all times that are reasonable in order to repair or maintain the Facilities.

## ARTICLE 4
## TOTAL CHARGE RATES AND CHARGES

4.01 Upon the Effective Date, the Customer shall pay on a monthly basis the formula rate charges calculated by JPA for all customers in Rate Class 1 based upon the Rate Class 1 formula rate charge attached hereto and marked as Exhibit A. Under no circumstances shall JPA derive a profit from the Customer. JPA reserves the right to include administrative costs and overhead expenses necessary for performing this Agreement as part of the JPA Demand Charge - Other. The formula rate charges for Rate Class 1 shall be included in the books and records of the JPA.

a. The Customer agrees that the Appendix to Exhibit A is an illustration of the formula rate charges for Rate Class 1 and is provided for informational purposes only. The Customer further agrees that the amount of each of the JPA Charges in said Appendix is not a representation or warranty by the JPA as to the actual amount of the JPA Charges to be billed to Customer and Customer understands and acknowledges that the cost for the JPA Charges in said Appendix are only estimated budget forecasts which are not guaranteed and which are subject to change.

b. Any new or expanded Private Sector Area greater than 385,000 square feet will result in a recalculation under the formula for Rate Class 1.

c. Rates and charges paid by the Customer to JPA shall not be used to subsidize any other rate class, customer, or JPA facility that does not benefit the Premises.

4.02 The JPA shall have the right to amend, modify, or change the rate schedule for Rate Class 1, subject to this Section, following forty-five (45) days' notice to the Customer and an opportunity for the Customer to contest the amendment, modification, or change at a hearing of the JPA Board of Representatives. A request for a hearing must be made

within thirty (30) days of the notice of amendment, modification, or change of the rate schedule. Any amendment, modifications or changes by JPA to the rate schedule will not discriminate against the Customer and will be based on necessary adjustments to any or all elements of the JPA Total Charge and will be based upon the actual pass-through costs without including any JPA or DEC profits.

4.03 Energy Services provided by JPA to any building or other structure belonging to a third party that begins after execution of this Agreement by both parties shall not result in an increase in any costs to the Customer and the Customer's monthly charges under this Agreement shall be recalculated pursuant to the formula established for Rate Class 1.

4.04 JPA shall not charge the Customer nor shall the Customer pay for any Demand Charge-Facilities Financing as defined in Rate Class 1 (Exhibit A) for any month in which the Customer did not use or consume any Customer Energy Services from JPA.

## ARTICLE 5
## DELIVERY POINT

5.01 JPA rates are based upon the supply of Energy Services to the entire Premises through a single delivery and metering point. If JPA agrees to supply Energy Service to more than one Point of Delivery at the Premises, each Point of Delivery will be considered a separate service, provided however, meter readings shall be combined for billing purposes. Equipment which can transfer load between separately metered Energy Services may be allowed with the consent of the JPA.

5.02 The Parties acknowledge that the Energy Delivery Points described in Exhibit Cof the Addendum as "Woodbury Building #1, Canopy Rd. & "P" St., Lincoln, NE 68508" is the same as the Premises. The location of the connection point on the Premises between DEC's system and the Customer's system shall be agreed upon by the JPA and Customer and must be approved by DEC.

## ARTICLE 6
## PAYMENT AND BILLING

6.01 Charges for Customer Energy Services shall be calculated monthly in accordance with Article 4 above.

6.02 JPA shall be paid monthly for Customer Energy Services made available to the Customer. Payment is due and payable at the accounting office of JPA at 555 S. 10th Street, Suite 103, Lincoln, NE 68508 upon the Customer's receipt of the monthly billing statement and is delinquent if not paid to JPA within thirty (30) days from the date rendered. Billing statements for the Premises Point of Delivery shall be sent to Project Oscar, LLC, 11422 Miracle Hills Drive, Suite 400, Omaha, NE 68154, unless the Customer provides a different party or address. Any overdue balance is subject to a late charge of one percent per month.

6.03 Termination of Customer Energy Services may occur for nonpayment of an undisputed bill over sixty (60) days in arrears. JPA will provide written notice of delinquency status and termination thirty (30) days prior to termination of Customer Energy Services.

6.04 JPA may disconnect the Customer Energy Service to the Premises for the following causes:

a. Without notice in the event of a condition determined by JPA or DEC to be hazardous or unsafe to the general public or any part of the thermal energy system.

b. Without notice in the event of JPA determining that Customer equipment is being used in such a manner as to adversely affect the Facilities or Energy Services to the JPA.

c. Without notice in the event of any unapproved Parallel Production installations by the Customer.

d. Without notice in the event of a violation of the provisions of Article 12 of this Agreement.

e. Upon 30 days' written notice in the event of any other violation or noncompliance with this Agreement.

f. Upon 30 days' notice for failure of the Customer to provide and maintain to DEC unobstructed access to the Facilities by JPA.

6.05 JPA may terminate the Customer Energy Service to the Premises for the causes in Section 6.04 after providing the Customer written notice and such failure continues for more than thirty (30) days after written notice thereof from JPA unless such failure cannot reasonably be cured within such thirty (30) day period and Tenant shall within such period commence and diligently pursue the curing of such failure.

6.06 In the event this Agreement is terminated under any provision of Article 6 herein, the JPA reserves the right to seek damages from Customer to compensate JPA for all actual losses, costs, expenses and damages, but not indirect, special, incidental or consequential damages, suffered by JPA as a result of Customer's breach of this Agreement.

6.07 Upon termination of this Agreement under this Article 6, JPA and DEC shall have the right to enter the Premises and remove all of DEC's equipment including, without limitation, all meters installed therein.

6.08 If the Premises is reconnected after disconnection, JPA may include a reconnection charge covering the cost of restoring Customer Energy Services including labor, material and equipment billed to the JPA by the DEC.

6.09 If the Customer questions the accuracy of the calculations of any monthly statement for Customer Energy Services, it shall be deemed to be a disputed bill. The Customer must present the disputed points in writing within thirty (30) days to avoid termination for nonpayment pursuant to Section 6.02. JPA will provide in writing a response to the disputed points within twenty (20) days of the receipt of Customer's dispute. The Customer has the right to contest the remaining disputed points at a hearing of the JPA Board of Representatives. A request for a hearing must be made within ten (10) days of receipt of JPA's written response.

6.10 DEC's standard rules and regulations for providing Energy Services to the JPA as in effect during the Term of this Agreement and as may be amended shall be applicable to the provision of Customer Energy Services under this Agreement and are incorporated herein by this reference. JPA, will provide the Customer a copy of the DEC's standard rules and regulations, including any amendments thereto. If there is a dispute regarding the DEC's standard rules and regulations, the Customer must present the disputed points in writing within thirty (30) days. JPA will provide in writing a response to the disputed points within twenty (20) days of the receipt of Customer's dispute. The Customer has the right to contest the remaining disputed points at a hearing of the JPA Board of Representatives. A request for a hearing must be made within ten (10) days of receipt of JPA's written response.

6.11 The Customer shall be responsible for payment of all applicable taxes due as a result of the service provided under this Agreement. The JPA shall include such taxes in the billing statement.

## ARTICLE 7
## SERVICE INSTALLATION

7.01 Prior to connection of the Premises to the Facilities, the Customer's piping and other equipment and controls must conform to DEC requirements or such other requirements of applicable governmental authorities or local utilities. It is the Customer's responsibility to obtain from applicable governmental authorities or local utilities, all information needed for the Customer's design of the Customer's heating and cooling equipment including but not limited to all required mechanical and control equipment, and the maximum pressure, flow and temperature available at the Point of Delivery.

7.02 The location of the Service Piping and Meters shall be determined by JPA in coordination with the Customer. Any piping installed without first determining the Point of Delivery shall be brought into conformance by the Customer upon notification by JPA. It is the Customer's responsibility to provide and maintain unobstructed access to the Meters for JPA. JPA, at its expense, (i) will cause the DEC to extend the Facilities under a Access Easement area abutting the Premises' Point of Delivery on the west, including causing DEC to make the service tap connection, to the 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 Customer.

7.03 JPA has obtained and will continue to have the necessary fee title or easements for the Facilities to provide Customer Energy Services to the Premises during the Term of this Agreement.

7.04 JPA will authorize the connection of Service Piping as soon as practical after final inspection by the appropriate authority(s) and DEC.

7.05 The Customer shall notify JPA and DEC of any expected changes in Customer Energy Services which requires delivery of thermal energy for heating or cooling purposes at a level which exceeds 120% of the Customer's prior maximum level of thermal energy delivered for heating or cooling purposes. Such notice shall be given at least twelve (12) months prior to the expected change.

7.06 The Customer shall provide any devices necessary to protect the Customer's equipment from loss or damage due to disturbances in Customer Energy Services. It is expressly understood that the JPA has no liability for any such loss or damage and Customer shall bear the risk of all such loss or damage.

7.07 The Customer shall provide unrestricted access to a location on the JPA side of the Point of Delivery for the installation, maintenance and operation of DEC operated cutoff valves and thermal energy metering equipment.

## ARTICLE 8
## METERING

8.01 The JPA shall cause DEC to furnish all Meters required to measure the Customer Energy Services supplied, and to keep such Meters accurate within the limits specified in 8.02.

8.02 Either party at its own cost and expense may, at any reasonable time, request that any Meter used for billing purposes installed pursuant to the Agreement be tested by DEC. If a Meter is found to violate tolerances set by equipment manufacturer's specifications or to be otherwise defective, the JPA shall cause the Meter to be repaired or replaced by DEC and at no cost to the Customer. Customer shall be afforded an opportunity to have its representative present during all testing which has been requested by the Customer.

8.03 If any test of the Meters discloses inaccuracy in excess of the equipment manufacturer's specifications, the Customer's billing statement shall be adjusted for:

a. If the period can be determined, the actual period during which inaccurate measurements were made;

b. If the period cannot be determined, the adjustments shall be made for the previous month or from the date of the latest test (if within the previous month) and for the

elapsed period in the month during with the test was made. Overpayment shall be refunded to the Customer.

8.04 Should any Meter at any time fail to register or should the registration thereof be so erratic as to be meaningless, the amounts of Customer Energy Services provided shall be determined from the best data available.

## ARTICLE 9
## CONSTRUCTION AND GRADE CHANGES

9.01 The Customer shall be liable to JPA for (i) all costs incurred in the relocation and repair of Facilities necessitated by construction work or grade changes on the Premises or (ii) the Customer Area Ratio as defined in herein required by other changes to the Energy Services or circumstances beyond the control of JPA and/or DEC.

## ARTICLE 10
## SYSTEM DISTURBANCES

10.01 Customer will install corrective equipment, to be approved by DEC and meeting the specifications of local utilities, if DEC has reasonably determined the operation of the Customer's equipment would result in a violation of DEC's standard rules and regulations for providing Energy Services to the JPA.

10.02 The Customer will protect DEC's distribution systems from accidental or intermittent contamination from the Premises. No mixing of DEC and Customer potable water shall occur. DEC will not supply either hot or cold water for consumption by Customer.

10.03 The Customer shall be responsible for the isolation of Customer's potable water system from possible contamination contained from DEC's distribution system equipment.

## ARTICLE 11
## CUSTOMER PARALLEL OPERATION

11.01 The Customer shall only be allowed to interconnect thermal production equipment with the Facilities upon meeting written DEC's Parallel Production requirements which shall be part of DEC's standard rules and regulations for providing Energy Services to the JPA.

11.02 A Parallel Production system(s) may be installed and operated by the Customer or tenant of the Customer in circumstances when: (a) the JPA cannot or is not supplying sufficient amounts of Customer Energy Services for any reason other than those set forth in Sections 6.03 and 6.04; (b) the Customer has heating and cooling needs in excess of the capacity of the Customer Energy Services; (c) when the Customer or a tenant of the Customer is experimenting or operating a different heating and cooling technology than the steam and chilled water supplied by the Customer Energy Services supplied by the JPA; or (d) certain uses or situations on or in the Premises that require a substantially

different cooling or heating requirement(s) than can be provided by JPA through the Customer Energy Services.

In the event that JPA cannot or is not supplying heating and cooling for any reason other than set forth in Sections 6.03 and 6.04, or is not due to (b) or (c) above, then the Customer may immediately begin operating a Parallel Production system(s). When Customer Energy Services are restored by JPA under (a) above, then the Customer shall cease operation of the Parallel Production system(s) unless (b), (c) or (d) above applies.

In the event the Customer anticipates that the Premises will need additional heating or cooling that may exceed the capacity of the Customer Energy Services under (b) above, then the Customer shall consult with JPA and DEC before operating any Parallel Production system(s). If the JPA and DEC can reasonably supply the needed heating and cooling, within the time reasonably needed by the Customer, then the Customer shall accept such Customer Energy Services from JPA as long as the Rate Class 1 formula is not increased. If the JPA and DEC cannot supply all necessary heating and cooling for the Premises, then the Customer shall accept and pay for the maximum amount of heating and cooling that can be supplied by the JPA and DEC and the Customer shall be permitted to supplement the heating and cooling with its Parallel Production System(s).

In the event the Customer or a tenant of the Customer seeks to experiment or operate a new heating and cooling technology on the Premises under (c) above, then the Customer or Customer and tenant shall consult with JPA and DEC before beginning any experiment or operation of the new technology that affects the heating and cooling system of the Premises. For purposes of experimentation or operation, the Customer may request a reduction in the amount of heating and cooling needed for the Premises during such experiment or operation. The Customer shall also be responsible for insuring that any such new heating and cooling technology complies with all applicable state and local statutes, codes, and rules for development or operation of heating and cooling equipment and facilities. If (c) above applies, then JPA may resume supply of Customer Energy Services on a date and time that the JPA and Customer or the tenant of the Customer may agree upon. The Customer agrees to indemnify and hold the JPA and DEC harmless from any direct damages to the operation, maintenance, repair to the Customer Energy Service, resulting from the negligent design, construction, installation, operation, maintenance, repair, or removal of any heating and cooling system owned or operated by the Customer or a tenant of the Customer.

## ARTICLE 12
## ASSIGNMENT AND SUCCESSORS

12.01 The Premises and Plant Site shall hereafter be held, transferred, sold, leased, conveyed and occupied, subject to this Agreement and shall inure to the benefit of, shall run with the land, an shall be binding upon the Premises and Plant Site (hereinafter referred to individually as a "Parcel" and collectively as the "Parcels") and each of which shall apply to and bind the heirs, assignees and successors in interest of each and every owner of a Parcel or Parcels. The provisions of this Agreement shall be binding upon parties and their successors and assigns; provided, however, that the obligations of parties pursuant to this Agreement shall be binding upon such party and its successors and assigns only during their respective periods of ownership.

12.02 Subject to Section 12.01, this Agreement shall not otherwise be assigned in whole or in part by either party without the prior written approval of the other party. This Agreement shall be binding upon the successors and permitted assigns of each party.

## ARTICLE 13
## INDEMNIFICATION

13.01 The Customer shall, to the extent and as permitted by law, indemnify and hold JPA and DEC and their directors, employees, contractors, and agents harmless from any damage, liability or cost to the extent caused by the negligent or intentional acts, errors, or omissions of the Customer or caused by the breach of any of the representations, warranties or covenants of the Customer herein arising out of or in connection with the delivery of Customer Energy Services under this Agreement. Under no circumstances shall the Customer and its manager, members, directors, officers, employees, contractors, or agents, be liable to the JPA and DEC for any indirect, special, incidental or consequential damages, including but not limited to, loss of revenue, loss of full or partial use of facility, cost of capital or other similar damages.

13.02 The JPA shall, to the extent and as permitted by law, indemnify and hold the Customer and its manager, members, directors, employees, contractors, and agents harmless from any damage, liability or cost to the extent caused by the negligent or intentional acts, errors, or omissions of JPA or caused by the breach of any of the representations, warranties or covenants of the JPA herein arising out of or in connection with the delivery of Customer Energy Services under this Agreement. Under no circumstances shall JPA and its directors, officers, employees, contractors, or agents, be liable to the Customer for any indirect, special, incidental or consequential damages, including but not limited to, loss of revenue, loss of full or partial use of facility, cost of capital or other similar damages.. Nothing herein shall be construed to constitute a waiver of sovereign immunity to the extent applicable.

## ARTICLE 14
## NOTICES

14.01 Except as otherwise provided herein, any notices or communications permitted or required herein shall be deemed given where sent in writing by first class mail with sufficient postage affixed thereto to the following addresses of the parties. Notice shall be deemed to be given 3 days following the date such notice is delivered to the United States Postal System or upon the date of actual delivery to the Party if another delivery system is used.

a. If to the JPA: 555 S. 10th Street
Suite 300
Lincoln, Nebraska 68508

b. If to Customer: : 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

## ARTICLE 15
## ENTIRETY

15.01 This Agreement is intended by the parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. Notwithstanding any indication to the contrary in this Agreement, Customer acknowledges that DEC is not a party to this Agreement and that Customer's sole rights and remedies with respect to the matters contained and described in this Agreement are against the JPA and not DEC. All prior written or oral understanding, offers or other communications of every kind pertaining to the sale of Customer Energy Services to the Customer by JPA are hereby superseded and replaced.

## ARTICLE 16
## FORCE MAJEURE

16.01 If JPA shall be wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through strikes, lightning, rain, wind, riots, fire, flood, invasion, insurrection, civil commotion, accident, equipment failures, the order of any court, judge or civil authority, war, any act of God, the public enemy, or any other similar cause reasonably beyond its exclusive control and not attributable to its neglect, then in any such event, JPA shall be excused from whatever performance is prevented by such event to the extent so prevented, and JPA shall not be liable for any damage or loss resulting there from.

## ARTICLE 17
## ADDITIONAL PROVISIONS

17.01 Pursuant to Section 3.01 of the Energy Service Agreement, JPA warrants and represents the following:

a. the DEC and JPA have determined that there will be, during the term of this Agreement, availability of Energy Services and Facilities to provide Customer Energy Services to the Premises.

b. DEC has advised JPA of the available capacity, pressure and temperature for Energy Services and JPA will cause DEC to provide the available capacity, pressure and temperature for Customer Energy Services to the Customer or Customer's design team.

17.02 It is intended by the parties that this 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 Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

17.03 A Memorandum of this Agreement shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Premises and Plant Site, at the Redeveloper's expense.

17.04 This Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

**IN WITNESS WHEREOF**, this Agreement has been executed as of the date first above written.

**WEST HAYMARKET JOINT PUBLIC AGENCY,** a political subdivision and body corporate politic of the State of Nebraska

ATTEST:

_____
Secretary

By: _____
Chair

**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 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

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

RATE CLASS 1 RATE SCHEDULE

APPLICABLE: The Customer will be placed on this rate upon the Effective Date of the Customer Service Agreement.

CUSTOMER ENERGY SERVICE: Customer Energy Service shall be as defined in Article 1 of the Customer Service Agreement.

BILL: Demand Charges (Facilities Financing and Other) + Commodity Charge for Hot Water + Commodity Charge for Chilled Water + All applicable taxes (if any); based on the rate in effect.

BILLING PERIOD: Under normal conditions, BILLING PERIODS typically range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There will be twelve billing periods per year.

RATE: (Elements)

| | |
|---|---|
| Demand Charge – Facilities Financing | $_____ per Billing Period |
| Demand Charge – Other | $_____ per Billing Period |
| Commodity Charge for Chilled Water | $_____ per MMBTU for cooling thermal energy per Billing Period |
| Commodity Charge for Hot Water | $_____ per MMBTU for heating thermal energy per billing period |

Customer's Monthly Demand Charge – Facilities Financing for each billing shall be:

(Customer Area Ratio) x (Private Sector Share) x (Total Annual Cost of Debt Service) ÷ 12 = monthly payment.

Example (assumes the Premises is 80,000 SF, the Private Sector Area is 385,000 SF, the Public Sector Area is 460,000 SF, and TACDS is $1,127,687):

*(Customer Area Ratio x Private Sector Share x TACDS) ÷ 12 = Monthly Payment*

(.20779 x .31 x $1,127,687.00) ÷ 12 = $6,053.32/month

Calculation of Customer's Monthly Demand Charge – Other:

> The Customer's Monthly Demand Charge-Other for each billing shall be the result of the monthly JPA Demand Charge – Other from DEC for the same billing period divided by the Total Area available to receive Energy Services times the total sq. ft. of the Premises.

Customer's Monthly Commodity Charge:

> The Customer's Monthly Commodity Charge shall be the Customer's actual share of the JPA Monthly Commodity Charge based upon the meter reading at the Point of Delivery for the Premises.

Upon request of Customer, JPA will, if practical, provide recorded energy consumption readings for the purpose of allocating Demand and Commodity Charges.

<u>MINIMUM BILL</u>: (Demand Charge – Facilities Financing) + (Demand Charge – Other) + applicable taxes. The minimum bill shall be subject to the limitations in Article 4.

SAMPLE BILLING STATEMENT

APPLICABLE: The Customer will be placed on this rate upon the Effective Date of the Customer Energy Service Agreement.

CUSTOMER ENERGY SERVICE: Customer Energy Service shall be as defined in Article 1 of the Customer Service Agreement.

BILL: Demand Charges (Facilities Financing and Other) + Commodity Charge for Hot Water + Commodity Charge for Chilled Water + applicable taxes; based on the rate in effect.

BILLING PERIOD: Under normal conditions, BILLING PERIODS will range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There are twelve billing periods per year.

RATE: (Elements)

| | |
|---|---|
| Demand Charge – Facilities Financing: | $_____ per Billing Period |
| Demand Charge – Other: | $_____ per Billing Period |
| Commodity Charge for Chilled Water: | $_____ per MMBTU for cooling thermal energy per Billing Period |
| Commodity Charge for Hot Water: | $_____ per MMBTU for heating thermal energy per billing period |
| Applicable Taxes | $_____ |
| TOTAL: | $_____ |

APPENDIX TO EXHIBIT A

## A. DEMAND CHARGE – FACILITIES FINANCING

| Assumptions: | Square feet |
|---|---|
| Premises | 80,000 |
| Private Sector Area | 385,000 |
| Public Sector Area | 460,000 |
| Total Area | 845,000 |
| Customer Area Ratio | 80,000 ÷ 385,000 = .20779 |

| | |
|---|---|
| Amount of Total Indebtedness | $ 19,500,000.00 |
| Annual Interest Rate | 4.0% |
| Term – Years | 30 |
| Total Annual Cost of Debt Service | $ 1,127,700.00 |
| Private Sector Share | 31% |

## B. JPA DEMAND CHARGE – OTHER

| | |
|---|---|
| Electrical Demand Charge (based upon LES Experience) | $ 444,000.00/year |
| O&M Demand Charge | $ 312,000.00/year |
| TOTAL | $ 756,000.00/year |

## C. JPA COMMODITY CHARGE (estimated)

| | |
|---|---|
| Estimate Chilled Water Commodity Charge | $ 66,670.00/year |
| Estimate Hot Water Commodity Charge | $ 94,943.00/year |
| TOTAL | $ 161,613.00/year |

The above JPA Demand Charge – Facilities Financing is a budget forecast based upon the estimated cost of the Facilities to be financed by the issuance of bonded indebtedness in the amount of $19.5 million with an assumed annual interest rate of 4% and 30 year term.

The above JPA Demand Charge – Other and JPA Commodity Charge are estimated charges based upon budget forecasts for the 2014 operating year (first full year of DEC operation of the Facilities) using historical costs at other DEC facilities.

NEW OR EXPANDED SQUARE FOOTAGE: Any new or expanded private sector square footage greater than 385,000 square feet will result in a recalculation under the formula for Rate Class 1 as described in Section 4.01 b. of the Agreement.

Return the Original to:

City Attorney's Office
Attention: Chris Connolly
555 South 10th Street
Lincoln, NE 68508

**MEMORANDUM OF CUSTOMER ENERGY SERVICE AGREEEMENT**

This Memorandum of Customer Energy Service Agreement ("**Memorandum**") is entered into as of this 12th day of July, 2013 ("**Effective Date**"), by and between West Haymarket Joint Public Agency, and its successors and assigns ("**JPA**") and Project Oscar, LLC, a Nebraska limited liability company, and its successors and assigns ("**Customer**").

**1. Customer Energy Service Agreement and Premises**. The JPA, and Customer have entered into that certain Customer Energy Service Agreement dated as of this even date ("**Customer Agreement**"), describing the delivery of Customer Energy Services as defined in the Customer Agreement be delivered to its approximately 70,100 square feet of office space and approximately 9,900 square feet of retail improvements, located approximately on the southwest corner of Canopy Drive and "P" Streets Lincoln, NE and legally described as **Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska** ("**Premises**").

2. **Plant Site**. 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 on **Lot 2, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska** ("**Plant Site**") and distribution system equipment within public right-of-ways or easements and provide Energy Services (as defined in the Energy Services Agreement) to the public arena and certain other private buildings and facilities in the West Haymarket Redevelopment Area, including the Premises.

3. **Term**. The Customer Agreement shall remain in effect and binding upon the Customer and JPA and their assigns for thirty-five (35) years from the substantial completion of the building improvement located upon the Premises or other date mutually agreed upon by the parties ("**Completion Date**"); provided that, the Customer shall have the exclusive option to extend the Customer Agreement for three (3) additional five (5) year terms. The Customer shall provide written notice of exercising an option not less than one year prior to expiration of the Customer Agreement or an option term.

4. **Inquiries**. Except as otherwise provided herein, any inquiries, notices or communications may be sent as follows:

a. If to the JPA: 555 S. 10th Street
Suite 300
Lincoln, Nebraska 68508

b. If to Customer: 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

5. **Remaining Terms**. The rest and remaining terms of the Customer Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Customer Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

[SIGNATURE PAGES TO FOLLOW]

**IN WITNESS WHEREOF**, this Memorandum has been executed as of the date first above written.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate politic of the State of Nebraska

ATTEST:

_____
Secretary

By: _____
Chair

**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 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.

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Notary Public

STATE OF NEBRASKA )
) ss.
COUNTY OF _____ )

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(Seal)

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(Seal)

_____
Notary Public