

AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD THURSDAY, December 11, 2014 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 November 18, 2014 (Chair Beutler)
 - (Staff recommendation is for the JPA Board to approve the minutes as presented)
4. WH 14-37 Resolution approving the Consultant Agreement between the West Haymarket Joint Public Agency and PC Sports Inc for project management services described in the Phase Three Continued Oversight of West Haymarket Redevelopment Projects for a term of January 1, 2015 through December 31, 2015. (Paula Portz)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
5. 2015 Meeting Schedule
6. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
November 18, 2014

Meeting Began At: 3:00 P.M.

Meeting Ended At: 3:40 P.M.

Members Present: Chris Beutler, Tim Clare, Doug Emery

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

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

Item 2 – Reports and Communications Received

This item is to let the public know that a letter was received from BKD dated October 13, 2014 summarizing BKD’s planned scope and timing for the August 31, 2014 audit of the financial statements of the West Haymarket Joint Public Agency. No action was required.

Item 3 -- Public Comment and Time Limit Notification

Public comment is welcome. Beutler stated that individuals from the audience who wish to would get 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 4 -- Approval of the minutes from the JPA meeting held September 23, 2014

Beutler asked for corrections or changes to the minutes of the September 23, 2014 JPA meeting. Emery moved approval of the minutes as presented. Clare seconded the motion. Motion carried 3-0.

Item 5 -- Approval of September and October 2014 Payment Registers

Steve Hubka, City Finance Director, presented the 2014 payment registers for September and October. Each item is sorted as to whether the item is out of the Operating Budget, the Phase I Budget, or the Phase II Budget.

The September total is \$3,937,718.27. Larger payments included a payment of \$203,800 to SMG for prepayment of the opening loan, \$1.4 million to Legends to settle the lawsuit, and \$155,000 to Culligan for the water softening system previously approved by the Board. There were also some ongoing payments to Hausmann for the Parking Decks.

October includes a lengthy list of small refunds for parking passes due to a snafu when Husker parking went on sale. The parking passes were unintentionally at a large discount for a short period. After it was caught, the parkers were contacted and refunds were processed to them for the wrong payment

amounts. They could then repurchase at the correct amounts. There is a payment of \$255,000 for 25% of the sponsorship money that was paid over to the operation. There were minimal Phase I and Phase II payments. The October total was \$1,442,472.97. Hubka reported that signatures are being obtained from an audit perspective and everything is within budget.

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

Item 6 -- Review of September and October 2014 Expenditure Reports

Hubka presented the September and October Expenditure Reports. The recently adopted operating budget and capital budgets are reflected in this report. This is nothing out of the ordinary to report and everything is within budget.

There was no public comment and no action was required.

Item 7 – WH 14-30 Resolution to approve the Letter Agreement to engage BKD to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards for the year ended August 31, 2014.

Chris Lindner, BKD, introduced this resolution presenting the engagement letter to the Board. It is a standard engagement letter in accordance with auditing standards and, being a JPA, the government auditing standards. It defines the relative engagement objectives, scope, party responsibilities and fees - - which are in accordance with the 2011 audit proposal. Clare expressed his appreciate for work done thus far stating that it has been a good partnership.

Jane Kinsey, Watchdogs of Lincoln Government, read a portion of a letter written by their legal consultant, Rick Boucher, to the Lincoln Journal Star, expressing his view that more than a standard audit is warranted by the JPA Arena. It states the need for an external audit independent of the City or JPA's accountants. It could be a forensic or performance audit or a combination of the two to detect inefficiencies, fraud, waste or abuse. An annual financial audit is not designed to discover these issues for an arena operation. A forensic audit detecting serious waste, abuse or inefficiencies may cost 15 times as much as a standard audit so it is reserved until after preliminary problems are detected. Other methods to discover issues include risk assessment of the organizations financial procedures to generate scenarios and identify controlled gaps, triple the number of transactions sampled, and randomly sample transactions on a quarterly basis to ensure compliance with an organization's financial procedures. Kinsey stated that the Watchdogs concur with Boucher's assessment and ask for a separate audit, particularly in light of the fact that a large amount of money was borrowed from the City and financial projections have not held up.

Clare responded that that was why we engage BKD to do the audit. Responding to Kinsey, he confirmed they are being paid for their work. Kinsey felt a paid auditor might not have an objective opinion. Emery added he did not believe that Boucher thought the work would be free, as someone has to pay. Kinsey replied that you have to ask before you know that answer. In light of the Antelope Valley discrepancies that were turned over to the federal government by way of the State Auditor's Department, Kinsey believes that it would be important to have even more careful scrutiny of the JPA. Beutler thanked Kinsey for her suggestions.

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

Item 8 – WH 14-31 Resolution approving a Parking Rights Agreement with Olsson Associates, Inc. for the lease of parking spaces in the Blue 3 Parking Garage.

Wayne Mixdorf, City Parking Manager, explained that this agreement specifies the number of reserved spaces and pricing for those spaces. It also sets the pricing for the unreserved spaces and creates a formula for special event pricing for unreserved monthly parking. Those were the most important points in moving forward with Olsson as the primary tenant at Blue 3 Garage.

Clare asked about total garage rental revenue from Olsson. Mixdorf confirmed that Olsson would be paying a sizeable portion of that rental income. It is a 950-space garage, with Olsson eventually having 300 spaces. So, 35-40% of the gross revenue is anticipated to come from this contract.

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

Item 9 – WH 14-32 Resolution authorizing City of Lincoln Parking Services to operate, manage and set parking rates for the West Haymarket Joint Public Agency.

Chris Connolly, City Attorney's Office, introduced the resolution stating that the prior resolution did not specifically grant Parking Services the right to set rates, although they did have rights for all types of management activities relative to parking on behalf of the JPA. The only change is in paragraph two, which formally gives Parking Services the authority to set parking rates that are similar and comparable to other public City garages. Connolly responded to Emery that those decisions would not need to come before the Board if this is approved. In response to Clare's question, Connolly confirmed that this does not include the garages attached to the arena.

Kinsey asked how these rates compare with those that usually prevail. Connolly responded that the rates would be comparable and similar to those rates charged at other City of Lincoln garages. Kinsey requested a copy of the agreement.

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

Item 10 – WH 14-33 Resolution to approve Amendment No. 11 to the Agreement for Environmental Remediation Consulting Services with Alfred Benesch & Company.

Paula Portz, P.C. Sports, introduced this item. As in the past for Benesch agreements on environmental work, amendments are issued as scope of work is defined and delineated. Amendment No. 11 includes tasks related to Benesch. One task includes services related to the monitoring wells on the Canopy Lofts. Those wells were installed to monitor petroleum and free product recovery. The last quarterly report showed traces of petroleum in three of the six wells. The monitoring will continue until reports are clean and NDEQ agrees there is no longer a need for monitoring. It was anticipated that this well monitoring would be needed for an extended period. They are doing exactly as they were setup to do. A second item is to continue investigations of the contamination on the Alter South Sites as they move forward to determine future remediation needs. They are now ready to submit a final report on the Alter North Sites to the NDEQ and EPA. Therefore, after the final cleanup and after going through the processes with NDEQ and EPA, the final report is ready to issue and that task is included in the agreement. The contract date is extended to the end of 2015. The total amount of the amendment is \$153,192. The money is included in the budget so this moves it to their contract amount. Portz affirmed

for Clare that this money is included in the Environmental component of the budget. There is a budget for environmental cleanup. Those dollars have not yet been exceeded. Until the final clean up on the Alter South Sites is completed, there will not be a final figure on that budget.

Kinsey asked about the budget amounts. Portz explained that, including the Brownfield's Grant, there was a total of \$7.2 million available. So far, there has been \$5.5 million expended. When this money is expended, it will increase that amount. The original contract amount was for \$2.3 million, but that has not all been paid yet. This amendment takes the contact amount to \$2.4 million.

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

Item 11 – WH 14-35 Resolution to approve a Parking Rights Agreement between the West Haymarket Joint Public Agency and the City of Lincoln regarding the use of the West Depot Parking Lot and Construction Parking Lot for City public parking.

Adam Hoebelheinrich, P.C. Sports, introduced this resolution as an extension of an agreement with Parking Services for two years for some surface lots mainly south of "O" and north of "N" between Pinnacle Arena Drive and Canopy Street. It also included a little space south of the Oscar Building. It was to make up some of the parking on Lumberworks. Parking Services pays the JPA \$3,500 per month, as well as takes care of all maintenance of all the parking lot areas. This resolution is to extend the agreement and change some of the language to cancel or adjust the agreement with proper notice if needed for development purposes.

Kinsey asked about the amount of parking available as she continues to hear reports on parking difficulties. Beutler responded that there is much more than three years ago. Mixdorf added that all three of the structures are now open providing 2,600 parking spaces. The West Depot Lot has been expanded from 152 to 199 spaces. The gravel construction lot is not striped, but for special events, they park another 150 vehicles. The City's latest garage, Lumberworks Garage, has 500 spaces for both monthly and special events. Mixdorf believes there is enough parking now to meet both monthly and special event needs. They sell out for special events to approximately the 90% level. Men's Basketball, being one of the biggest events, sells out to about the 95% level. Responding to Clare's inquiry, Mixdorf added that the Haymarket garage added an additional 409 spaces and the festival lot added an additional 1,400 spaces. Clare summarized there were approximately 5,100 spots, not including street parking. Beutler asked about lots to the east. Mixdorf explained that they only count to the west of 9th Street. They keep the other garages in standard hourly parking with the first hour free. If people are willing to walk a short distance, they can use those spaces as well. Clare asked if the parking spaces are actually occupied and what tracking is done. Mixdorf explained that as data is collected, they would be able to generate some reports. For football, the spaces throughout the Haymarket area are completely sold out. These will be the first basketball games with Blue 3 and Green 2 garages open. The presale has been substantial, running to about the 40-45% level. The data is not yet available for the day of game sales. Responding to Kinsey, Mixdorf stated concerts sales run 8,000 to 14,000 (Pearl Jam was the largest). Emery again mentioned the additional 1,400 spaces in the festival space, as well as surface parking behind the Arena. Mixdorf agreed stating the festival space, the VIP garage and surface lots are managed by a different entity so he would not have any numbers on the usage. There are over 5,000 spaces available for parking. Agreeing with Clare's summarization, Mixdorf said studies show we have adequate parking available for this size of an arena. What cannot be controlled is an individual's perception of how far they may have to walk. Kinsey suggested they watch letters to the editor to read some of the comments.

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

Item 12 – WH 14-36 Resolution approving Change Order No. 3 to the Contract Agreement between the JPA and Hawkins Construction Company for construction of the West Haymarket Parking Lot, Festival Space, and Pedestrian Bridge.

Caleb Swanson, P.C. Sports, explained this change order is similar to other past deductive change orders on other construction projects. On a unit price contract, there are often efficiencies that can be found on individual items. The total deduct on this change order is \$145,734.71 which represents a savings on this contract and to the JPA.

Kinsey asked if \$145,000 is being added. Swanson again explained that this is a deduct to the contract reducing the amount from approximately \$7,218,000 to \$7,072,000 due to efficiencies found during the project. This may include various items on the owner's, contractor's or engineer's side for reasons such as a better way of doing things or things found not to be needed. When all the small items throughout the course of the project are accumulated together at the end, there is a savings to the total cost of the project. Swanson confirmed for Kinsey that the Hawkins work is now done.

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

Item 13 -- Set Next Meeting Date

The next meeting is scheduled for Thursday, December 11, 2014 at 3:00 p.m. in the County-City Building City Council Chambers Room 112.

Item 14 -- Motion to Adjourn

Being no further business, Emery moved adjournment of the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:40 p.m.

Prepared by: Pam Gadeken, Public Works & Utilities

RESOLUTION NO. WH- _____

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

3 That the attached PC Sports Consultant Agreement between PC Sports, Inc. and the West
4 Haymarket Joint Public Agency for project management services described in the Phase Three
5 Continued Oversight of West Haymarket Redevelopment Projects for a term of January 1, 2015
6 through December 31, 2015 is hereby approved and the Chairperson of the West Haymarket
7 Joint Public Agency Board of Representatives is hereby authorized to execute said Consultant
8 Agreement on behalf of the JPA.

9 The City Clerk is directed to return a fully executed original of the Agreement to Paula
10 Portz, PC Sports, 17300 Henderson Pass, Suite 110, San Antonio, TX 78232.

11 Adopted this _____ day of December, 2014.

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

Tim Clare

Doug Emery

**PC SPORTS
CONSULTANT AGREEMENT**

This PC Sports Consultant Agreement (“Agreement”) is entered into this ____ day of December, 2014, by and between the **West Haymarket Joint Public Agency**, hereinafter referred to as “JPA” and **PC Sports, Inc.**, a Texas corporation, hereinafter referred to as “Consultant.”

RECITALS

A.

The JPA desires to engage the Consultant in accordance with the terms and conditions set forth herein to provide West Haymarket project management services (“Services”) for the ongoing and future development of the JPA’s West Haymarket Projects construction of multiple facilities including the Arena near downtown Lincoln more fully set forth in Consultant’s Proposed Scope and Personnel Duties, Phase Three, Continued Oversight of West Haymarket Redevelopment Projects attached hereto as Exhibit A (“Scope of Services”).

B.

Consultant hereby represents that Consultant is willing and able to perform the Services in accordance with the Scope of Services.

C.

If any portion of the Services will in part be carried out on BNSF Railway Company (“BNSF”) property pursuant to various temporary licenses (“Licenses”) granted or to be granted by BNSF to the JPA as set forth in the Master Development Agreement (“Master Agreement”) between the JPA and BNSF, such work is subject to the terms and conditions of the Master Agreement, the Licenses and the Construction and Maintenance Agreement (“C&M Agreement”) between BNSF and the JPA. Said documents are on file in the office of the City Clerk for the City of Lincoln, Nebraska.

D.

Consultant hereby acknowledges that Consultant is deemed to be the JPA's agent under the Licenses and, as such, is required to comply with the restrictions imposed on the JPA as licensee in the Licenses.

E.

The use of the term "City of Lincoln" in the Master Agreement, the Licenses, the C&M Agreement are deemed to refer to the JPA as the Assignee of the City of Lincoln.

F.

The Master Agreement, the C&M Agreement and the form of the various Licenses to be granted to the JPA are on file in the office of the City Clerk for the City of Lincoln, Nebraska.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree as follows:

**SECTION I.
ADMINISTRATOR OF AGREEMENT**

Paula Portz shall be the Consultant's representative and will supervise the Services and be in charge of performance of the Services on behalf of the Consultant as set forth in this Agreement.

**SECTION II.
SCOPE OF SERVICES**

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the Services as set forth in Exhibit A. In the event there is a conflict between the terms of Exhibit A and this Agreement, the terms of this Agreement shall control.

**SECTION III.
TERM OF AGREEMENT**

JPA and Consultant hereby agree that the term of this Agreement shall commence on January 1, 2015 and said term shall continue through December 31, 2015 or until otherwise terminated or modified as provided in this Agreement.

**SECTION IV.
COMPENSATION**

The Services shall be provided on a fixed annual fee of \$204,000.00 to be billed at a fixed fee of \$17,000.00 per month. Consultant acknowledges and agrees that the fee includes and Consultant is responsible, at Consultant's own cost and expense, to pay for all expenses incurred by Consultant to perform the Services.

Unless otherwise agreed, the monthly payment for Services is due and payable thirty (30) days from the date of receipt of the Consultant's invoice. Any amounts unpaid forty-five (45) days after receipt of the invoice date shall bear interest at the rate of nine percent (9%) per annum.

Failure of the JPA to accept the recommendations or work of the Consultant on the basis of differences of professional opinion shall not be the basis for rejection of the work performed by the Consultant or for nonpayment of the Consultant.

**SECTION V.
SERVICES TO BE CONFIDENTIAL**

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval of the JPA or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

**SECTION VI.
NON-RAIDING CLAUSE**

Consultant shall not engage the services of any person or persons presently in the employ of the JPA or the City of Lincoln for work covered by this Agreement without the written consent of the JPA.

**SECTION VII.
TERMINATION OF AGREEMENT**

A. This Agreement may be terminated by the Consultant if the JPA fails to adequately perform any material obligation required by this Agreement (“Default”). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from the Consultant specifying the nature of the Default.

B. The JPA may terminate this Agreement, in whole or part, for any reason for the JPA’s own convenience upon at least ten days written notice to the Consultant.

If the Agreement is terminated by either the JPA or Consultant as provided in VII. A or B above, Consultant shall be paid the monthly fee for all Services performed up until the date of termination. The monthly fee will be prorated for the month of termination if termination occurs prior to the end of the billable month.

Consultant hereby expressly waives any and all claims for damages or compensation, including out-of-pocket reimbursable expenses, expenses for demobilization and all other costs incurred by Consultant by reason of such termination arising under this Agreement except as set forth in this paragraph in the event of termination.

Further, Consultant agrees that, upon termination as provided in this paragraph, it shall not be employed by any developer or other party who is or may be interested in the work effort as defined in Article II, or interested in the decisional process relating to the application of

such findings as may result from the tasks performed as defined in Article II for a period of one (1) year after such termination, without prior approval of the JPA.

**SECTION VIII.
FAIR EMPLOYMENT**

In connection with the performance of work under this Agreement, Consultant 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.

**SECTION IX.
FAIR LABOR STANDARDS**

The Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.

**SECTION X.
ASSIGNABILITY**

The Consultant shall not assign or subcontract any interest in this Agreement, delegate any duties or work required under this Agreement, 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 Consultant from JPA under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

**SECTION XI.
INTEREST OF CONSULTANT**

Consultant covenants that Consultant 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 Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by Consultant under this Agreement.

**SECTION XII.
OWNERSHIP, PUBLICATION, REPRODUCTION
AND USE OF MATERIAL**

Consultant agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without the express written consent of JPA.

JPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the City deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.

**SECTION XIII.
COPYRIGHTS, ROYALTIES & PATENTS**

Without exception, Consultant represents the consideration for this Agreement includes Consultant'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 this

Agreement. Further, Consultant shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Consultant shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights that Consultant has used in the course of performing this Agreement.

**SECTION XIV.
COPYRIGHT; CONSULTANT'S WARRANTY**

A. Consultant represents that all materials, processes, or other protected rights to be used in the Services have been duly licensed or authorized by the appropriate parties for such use.

B. Consultant agrees to furnish the JPA upon demand written documentation of such license or authorization. If unable to do so, Consultant agrees that the JPA may withhold a reasonable amount from Consultant's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

**SECTION XV.
INDEMNIFICATION**

A. General Indemnification of JPA.

To the fullest extent permitted by law, Consultant shall release, indemnify, defend and hold harmless JPA and JPA's members, successors, assigns, legal representatives, officers, employees and agents for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs and attorneys' fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity directly or indirectly (collectively, "Liabilities") arising out of, resulting from or causally related to (in whole or in part):

- (i) Any rights or interests granted to Consultant pursuant to this Agreement;

(ii) The use, occupancy or presence of Consultant and Consultant Parties (defined below) and/or any work performed by Consultant and Consultant Parties in, on, or about BNSF's property or right-of-way and/or the work area;

(iii) Except as provided in subsection B below, any environmental matters arising from Consultant and/or Consultant Parties' use and occupancy of BNSF's right-of-way or other BNSF property, including without limitation use and occupancy of BNSF's right-of-way or other BNSF property in connection with performance of the work;

(iv) Any damage to or destruction of any telecommunication lines in connection with the work by Consultant and/or Consultant parties, including but not limited to (a) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees as a result of such damage or destruction, and/or (b) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies) as a result of such damage or destruction;

(v) Consultant's breach of the terms and conditions of this Agreement; or

(vi) Any act or omission of Consultant or its officers, agents, invitees, employees or subcontractors (such officers, agents, invitees, employees and subcontractors being referred to herein individually as a "Consultant Party" and collectively, "Consultant Parties"), or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.

The liability assumed by Consultant will not be affected by the fact, if it is a fact, that any damage, destruction, injury or death was occasioned by or contributed to by the negligence of JPA, its agents, servants, employees or otherwise, but excluding claims wholly caused by JPA's sole negligence and excluding claims to the extent that such claims are caused by the willful misconduct or gross negligence of JPA.

B. HAZARDOUS SUBSTANCE INDEMNIFICATION OF CONSULTANT. The Consultant's work under this Agreement does not include a duty to identify, examine for, remediate or otherwise deal with materials containing any Hazardous Substance encountered at

the Site except that the Consultant shall immediately notify the JPA and its Contractor of any known release, spill, unlawful disposal or handling of a Hazardous Substance. The JPA shall thereafter promptly determine the necessity for the JPA or its Contractor to retain a qualified expert to evaluate such Hazardous Substance or take corrective action, if any. Notwithstanding the above, the Consultant shall be responsible for any Hazardous Substance brought to the site by the Consultant and any of its Subcontractors, or any sub-subcontractors or suppliers unless such Hazardous Substance was required by the Contract Documents.

To the fullest extent permitted by law, the JPA shall indemnify and hold harmless the Consultant and its Subcontractors, sub-subcontractors, and agents, officers, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to judgments, fines, penalties, civil sanctions, the cost of remediation, and attorneys' fees, arising out of or resulting from any release, spill, disposal or other handling of any Hazardous Substance in the performance of the Work if in fact the material is a Hazardous Substance, except to the extent that such damages, loss or expense is due to the negligence or willful misconduct of a party seeking indemnity.

For the purposes of this subsection B, "hazardous substances" shall mean all substances, materials, and waste that are or become regulated or classified in the handling, storage, remediation, or disposal as hazardous or toxic under any Environmental Law, including but not limited to any hazardous, ignitable, corrosive, caustic, reactive, toxic, or polluting waste or substance; a "hazardous waste" (as defined in the regulations adopted under the Resource Conservation and Recovery Act of 1976); oil or petroleum products; asbestos; polychlorinated biphenyls; formaldehyde compounds, explosives, and radioactive materials. "Environmental Laws" shall mean any federal, state, or local statute, ordinance, rule, regulation, order, decree or guideline (or that of any quasi-governmental entity having jurisdiction over the Project or the Project site) pertaining to health, industrial hygiene or the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation, and Liability Act.

C. INDEMNIFICATION OF BNSF. Consultant understands and acknowledges that the Indemnification requirements of BNSF found in the Master Agreement, C&M Agreement and Licenses are in addition to, and not in lieu of, the above obligations of Consultant to indemnify and hold harmless the JPA.

D. CONSEQUENTIAL DAMAGES. Consultant shall not be liable for any indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income of revenue, reputation, or any other consequential damages occurred from any cause of action whatsoever arising under, in connection with or out of this Agreement.

SECTION XVI. INSURANCE

Insurance Coverage. At all times during the term of this Agreement, Consultant shall maintain insurance coverage as follows:

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

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

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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to 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.

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

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

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

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

D. Professional Liability Insurance. Professional Liability Insurance, naming and protecting Consultant against claims for damages resulting from the Consultant's errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than Two Million Dollars (\$2,000,000.00) per claims and aggregate.

E. Memorandum of Insurance. Memoranda of Insurance shall be filed with the JPA showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA, BNSF, the City of Lincoln, and University of Nebraska as additional insureds for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. Such memorandum shall specifically state that insurance policies have been endorsed to require the Consultant to provide the JPA thirty (30) days notice of reduction in amount, increase in deductibles, or non-renewal of insurance coverage and ten (10) days notice for cancellation for non-payment of premium.

**SECTION XVII.
NOTICE**

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

West Haymarket
Joint Public Agency
Attention: Chris Beutler, Chair
555 South 10th St., Ste 301
Lincoln NE 68508
(402) 441-7511

PC Sports
Attention: Paula Portz
17300 Henderson Pass, Suite 110
San Antonio, TX 78232
FAX: (210) 545-5450

**SECTION XVIII.
INDEPENDENT CONTRACTOR**

The JPA is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor and it is expressly understood and agreed that Consultant 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 or and injury leave.

**SECTION XIX.
NEBRASKA LAW**

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

**SECTION XX.
INTEGRATION**

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

**SECTION XXI.
AMENDMENT**

This Agreement may be amended or modified only in writing signed by both the JPA and Consultant.

**SECTION XXII.
SEVERABILITY**

If any provision of this Agreement 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 Agreement 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.

**SECTION XXIII.
WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce any provision of this Agreement 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 Agreement.

**SECTION XXIV.
AUDIT AND REVIEW**

The Consultant shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

**SECTION XXV.
FEDERAL IMMIGRATION VERIFICATION**

A. If the Consultant is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant 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 Consultant 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 Consultant 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 Consultant is an individual or sole proprietor, the Consultant agrees to complete the United States Citizenship Attestation Form attached hereto as Exhibit B.

C. Public Benefits Eligibility Status Check. If the Consultant 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 Consultant 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 hereto as Exhibit C. The Consultant 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 Consultant 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.

**SECTION XXVI.
REPRESENTATIONS**

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, Consultant and the City do hereby execute this Agreement as of the Execution Date set forth above.

**WEST HAYMARKET
JOINT PUBLIC AGENCY**

By: _____
Chris Beutler, Chair

PC SPORTS, INC.

By: _____
Paula Portz, President

PC Sports

Proposed Scope and Personnel Duties

Phase Three

Continued Oversight of West Haymarket Redevelopment Projects

PC Sports, including the team consisting of Paula (Yancey) Portz, Adam Hoebelheinrich, Caleb Swanson, any necessary administrative support and interns will assist the JPA in the continued development of the Phase 3 ongoing redevelopment including ongoing activities and new activities.

Paula Portz will continue to work closely with the Finance Department and JPA Board with budget projections and financing issues related to Phase 3 activities. She will attend meetings as necessary to work on bond allocations, budget updates, tracking and approval of invoices and regularly update the JPA board on the status of the projects. She and staff will also continue to interact and assist with any Pinnacle Bank Arena issues as they arise.

Adam Hoebelheinrich and Caleb Swanson will continue to coordinate with other Developers on the West Haymarket sites to include all remaining undeveloped properties such as Block 2, the remainder of Block 3 as well as potential development of Jaylynn, Alter North and Alter South sites. They will attend, as necessary, meetings related to Redevelopment Agreements and will oversee coordination activities between all of the Developers on site. They will continue to manage budgets related to JPA financial obligations and provide any required assistance with TIF invoicing on behalf of the JPA.

Dependent on the subject, PC Sports personnel will attend necessary meetings with the JPA, City Staff (including but not limited to Park & Go, Public Works, Finance, Mayor's Office, Urban Development). We will review any bid packages, proposals and provide recommendations for approval to the JPA on the selected subcontractors for any future work. In addition, PC Sports personnel will provide the day-to-day oversight of any construction activities on site. The selected personnel will ensure contractors are communicating and coordinating construction activities. Contractor staging and laydown areas will be managed. Coordination will occur with Public Works and other utility providers as well as with the environmental team to coordinate remediation activities and inspections. PC Sports will continue to handle the day to day land owner management of the property and work to ensure that subcontracted upkeep and maintenance is taking place.

Project Managers will also ensure any punch list issues are closed and contracts completed. Complete project documentation will be kept and maintained for the JPA. It is anticipated that the project manager and administrative personnel will be onsite 40 hours per week.

The total fee proposed for this work is \$204,000 as outlined in the attached letter and will be billed in equal monthly installments of \$17,000.00. This fee includes all expenses and office space required.

**UNITED STATES CITIZENSHIP ATTESTATION FORM
FOR INDIVIDUAL CONSULTANT
(to be used pursuant to Section XXVI.B)**

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

OR

I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of the USCIS (United States Citizenship and Immigration Services) documentation upon request required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States. I understand and agree that lawful presence in the United States is required and the consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

**UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT
(to be used pursuant to Section XXVI.C)**

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

OR

I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of my USCIS (United States Citizenship and Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____