

**AGENDA FOR THE WEST HAYMARKET**  
**JOINT PUBLIC AGENCY (JPA)**  
**TO BE HELD TUESDAY FEBRUARY 28, 2012 AT 3:00 P.M.**

**CITY-COUNTY BUILDING**  
**555 S. 10<sup>TH</sup> 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 February 1, 2012 (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. Approval of Payment Registers (Steve Hubka)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the payment registers)
6. Review of the January 2012 Expenditure Reports (Steve Hubka)
  - Public Comment
7. Bill No. WH 12-12 Resolution to approve the granting of an Easement for Utility Lines and/or Underground Utility Facilities to Lincoln Electric System generally located in Q Street and Arena Drive. (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
8. Bill WH 12-13 Resolution to approve the Consultant Agreement between Thought District and the West Haymarket Joint Public Agency for Website and Facebook Management Services. (Dan Marvin)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
9. Bill WH 12-14 Resolution to approve an amended West Haymarket Joint Public Agency Proposed Budget Summary. (Steve Hubka)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)

10. Bill WH 12-15 Resolution to approve a Lease Agreement between the West Haymarket Joint Public Agency and Lamar Advertising Company for the lease of property at 660 N Street for the purpose of maintaining an existing free standing sign on the property. (Tim Sieh)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
11. Bill WH 12-16 Resolution to approve a Construction Manager at Risk Agreement for Preconstruction Services between the West Haymarket Joint Public Agency and Hausmann Construction and J.E. Dunn Construction, a Joint Venture, for construction of the Precast Parking Deck No. 1 (Bid No. 12-008). (Dan Marvin)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
12. Set Next Meeting Date: Friday, March 16, 2012 at 3:00 in City Council Chambers Room 112
  
13. Motion to Adjourn

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**February 1, 2012**

Meeting Began At: 1:30 P.M.

Meeting Ended At: 2:15 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

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

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

**Item 2 – Public Comment and Time Limit Notification**

Chair Beutler welcomed public comment. He stated that individuals from the audience would 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 January 6, 2012**

Beutler asked for corrections or changes to the minutes from January 6, 2012. Clare had a clarification change on Item 8, page 4, third paragraph. The \$425-\$500 should reflect thousands of dollars. Hearing no other changes, Carroll motioned for approval of the minutes as amended. Clare seconded the motion. Motion carried 3-0.

**Item 4 – West Haymarket Progress Report**

Paula Yancey, PC Sports, distributed a packet (attached hereto) updating the status on the Pinnacle Bank Arena and associated infrastructure projects.

The first image is of the continuing work on 'M' and 'N' Streets. It is expected to be complete by the originally scheduled timeframe of March 1. By the end of next week, the south half of 'N' Street from 10<sup>th</sup> to 9<sup>th</sup> Street should be open to allow that left-handed turn. The second image shows the S.W. corner of 10<sup>th</sup> and 'N' Streets, and you can see the lane that should be open next week. On the Amtrak Building, both Ronco and Stephens and Smith are on site and work is progressing. The image shows the backfilling operations for the Amtrak platform, as well as the storm drain tap. Responding to a question from Clare, Yancey explained that a storm drain tap is the process of tapping into the existing storm drain systems for that building. On Alter Sliver, TCW is proceeding on the environmental remediation work. The image shows the shoring installed along the rail line. The excavation has begun.

For other project progress, the Lincoln Haymarket Infrastructure Team is continuing design Core Area Roadway project and plans are expected to be complete and ready for bidding in early summer. Purchasing received the Parking Deck 1 construction manager at risk proposals on Monday. Those proposals are currently under review by the team. LHIT also continues working on the design for the pedestrian bridge and the festival space areas.

For the Pinnacle Bank Arena project update, the first image is the aerial dated December 16, 2011, and shown at the last JPA Board meeting. You can see that the columns were on the north side of the site and some pile cap work was beginning towards the south. On the new January 15, 2012, image you can see how the work has progressed and all the columns are out of the ground down to the south of the site and starting to come around towards the east.

As of January 31, there have been 243 RFI's (requests for information from the contractor to the architectural engineering team) and 388 submittals that either are in the review process or returned to the contractor for approval. Seventeen CCA's (construction change authorizations) have been issued to the design team to clarify added design concepts on the drawings.

John Hinshaw, Mortenson Construction, detailed further construction information for the Board. Last month they held a safety luncheon to reward workers for 120 working days without a safety incident. They have roughly 100 workers on site on daily basis and have worked around 80,000 hours. There is a picture of the workers in the tent in the packet. Clare asked about the percentage of workers that were local. Hinshaw responded that there is a high percentage of workers from Lincoln, in the 70-80% range. They will have a report coming out on that issue.

Hinshaw went on the concrete superstructure. The picture shows the elevated shoring at the north end of the site, which will eventually become the main concourse. Mortenson continues to install columns, grade beams, spread footings and pile caps. As shown, 3,100 yards of concrete has been placed. Tomorrow the first elevated piece of the main concourse will be placed at the north end of the job site. From there the concrete decks will continue on a weekly basis.

The precast stadia is awarded to our local partner, Concrete Industries. On the right of the image, there is a screen shot of the stadia showing the event seating. The shop drawings are complete and samples are approved. They will start casting the precast within two weeks. They will be delivered in May and erected on site.

Beutler expressed his appreciation and how impressed he was with the progress.

Carroll asked if Yancey would please use the aerial to point out the work that will be discussed later on the agenda items related to the site preparation. Referring to the January 15 aerial, Yancey pointed out that the images on the east and west side shows the track that remains. Once those tracks are removed, the rest of the grade will need to be brought back up to pad ready.

Clare inquired as to timing, to which Hinshaw confirmed that the project is on schedule.

Chair Beutler invited public comment. Being none, the Board moved ahead to the next item.

## **Item 5 - Approval of Payment Registers**

Steve Hubka, JPA Treasurer, informed the Board that roughly \$10,400,000 was expended in December. This included two payments to Mortenson that landed in the same month and the internal billing from Engineering Services for \$27,113.

Beutler asked for public comments. Hearing none, Carroll made a motion to approve the December payment registers. Clare seconded the motion. Motion carried 3-0.

## **Item 6 - Review of the December 2011 Expenditure Reports**

Steve Hubka stated that this is the December 2011 expenditure report. Since there is now a guaranteed maximum price there will be a revision soon of the various breakdowns on the project.

Beutler asked for further comments or discussion. There was none.

## **Item 7 - Bill No. WH 12-08 Resolution to accept the financial audit and management letter from BKD CPA's & Advisors LLP for the period ending August 31, 2011**

Hubka introduced Roger Watton and Chris Lindner from BKD to do the audit presentation.

Watton addressed the Board regarding the audit process, financial statements and communication letter. He explained this was somewhat historic because the statements are through August 31, 2011. BKD issued an unqualified opinion on the financial statements. The audit was performed under generally accepted accounting standards and layered on that is the government auditing standards which are more compliance driven. Therefore, when BKD looks at contracts, they also look at statutes to be sure they comply with regulations -- in addition to the financial appropriateness. This was a single year presentation and next year there will probably be a two-year presentation, which is always a little easier to look at and compare financial data.

The format is unique, because auditors are issuing an opinion on a stand-alone governmental fund. In addition, even though it has many aspects of a business it is in fact a governmental fund because it is strictly relying on tax revenues. Therefore, what is shown is a three-column approach taking it from a project fund column (literally a modified accrual system), the adjustments are shown, and showing statement of net assets. This is on page 6 and 7 of the document. It would be very similar to a commercial entity on full accrual reporting all debt, all assets, where the project fund is modified accrual, does not present any long-term debts, or does not present the capital assets of the arena itself. Footnotes are a significant piece of the financial in terms of explanation. Note 4 goes in to the long-term liabilities, all the terms and conditions, and the fact that they are Build America Bonds and the interest rate subsidies, etc. From the income statement standpoint, on page 7, there is the modified accrual and, in this case, unlike what a commercial entity would do, the interest that you pay on the bonds is not capitalized in to the capital assets section. This is a period expense. Under the General Revenues, the Occupation Taxes have been beyond projections with \$7.6 million either collected or reported as receivable in this period. The intergovernmental revenues includes Build American Bond interest rate subsidy -- principles say this is set out as revenue. Also, NDEQ Grant is also shown in that \$3.2 million. The end of year showed \$4.8 million.

The staff of the Finance Department were very cooperative.

Clare questioned if Occupation Taxes were monies we collect and if Mr. Watton was aware that we were bring someone back, Don Herz, to help with some of the formulas for that collection. Clare asked if BKD also looked at performance audit issues.

Watton confirmed we collected the Occupation Tax monies and did work with a little element of performance audit due to the governmental standards, but this is still primarily a financial driven audit.

Hubka responded that Herz is not being brought back to primarily work with the Occupation Tax, but to work with the cash flow model and other aspects of the overall financials.

Beutler asked about the overall audit suggestions made concerning Occupation Tax collections and how capital assets components are being handled and if BKD is satisfied with the City's response for recommendations. He wanted to know if they believed we were on the right track and if there were any other categories about which substantial recommendations were made.

Watton expressed that those were the two larger areas. From his knowledge of the verbal discussions – he has not seen anything in written form – they are very much on track in addressing those areas. Policies are in the process of being reduced to writing.

Lindner stepped forward to review the communication letter. According to auditing standards, a firm is required to make certain indications to those charged with governing. There are several ways to do this and BKD chooses to do this via a written letter. They include a response even if there is nothing to report, such as on page 2 “Disagreements with Management.” Also, on page 2 it is noted that there were no audit adjustments to the original statements provided by management. That is a complement to Steve and Mark and the rest of the Finance staff for their hard work put in to compiling those statements. As part of this statement, BKD is required to do an evaluation of internal controls for financial reporting. This is usually thought of as segregation of duties, but also looks at whether there are controls in place to catch things such as audit adjustments and any misstatements to the financial statements. There were no problems with the segregation of duties within the Finance Department for JPA.

BKD is not allowed to report in written form that there were none, but it is okay to communicate that verbally to the Board. This is another complement to the Finance staff. On page 3 are other matters addressing best practices for the future. The “Occupation Taxes Collection Policy” recognizes that this is new but needs to be followed closely due to the significance of that tax to the JPA. Dealing with the “Capital Asset Components,” although the project will not go into service for several years and from a financial reporting prospective the depreciation expense will not occur for several years, BKD's experience with large construction projects is to look at the different components and make sure it gets broken out as it goes along instead of waiting until the end. This is not just for depreciation, but also for tracking various items with the overall project.

Additionally, BKD included information to make the Board aware of some upcoming financial accounting standards that will affect the JPA in the next several years. Although, these needed communicated, BKD does not feel they will have a significant impact on the financial statements, the presentation or format of those. Also, attached to the letter, is the management representation letter required under auditing standards. There is nothing of concern there as well.

Clare wanted to confirm that BKD is essentially giving us a clean audit and everything is in order. Lindner did confirm that was the case.

Beutler asked if BKD works with both private and public entities. And, if they were familiar with what the public or State Auditor looks for and if they check the same items.

Lindner responded that they do, but Watton and he primarily do public entities. BKD stands by their clean opinion. Watton explained that the State Auditor is often looking at compliance to State statute. Although they apply government auditing standards, it is probably not at the level that the State Auditor would be looking. BKD focuses on the material items, the financial statements, doing sampling of various elements. The State Auditor will “plow” in deeper to the same information than what is required by the AICPA. The State may look at financial and performance issues.

Attestation audits are a separate service that can be provided. Nothing BKD did or what the State Auditor usually looks at are part of the Attestation Standards. Those are more where you agree to do a certain set of things from a sampling or numbers standpoint. But the attestation parameters certainly encompass many of the same things in a financial audit. It is somewhat difficult to draw that line. BKD checks against the major statues and requirements.

Hubka thanked the Financial Department staff that worked on this – especially Mark Leikam and Dwight Fuhrer in Accounting and Pat Wiegel in the City Treasurer’s Office. As the management response reflects, there have been a number of actions taken over the last a few months related to Occupation Tax. There was a round of certified letters that went out in October and those collected well over a \$100,000. An assessment process was recently done which is provided for in the City Code and we are in the process of getting companies to respond. If they do not respond we would implement some follow-up action. Although we definitely have some problem companies we are averaging 582 contacts with returns in percentage of collection of dollars in the high 90 percent. Within the first 12 months of the Occupation Tax we took in \$11,847,000 – well in excess of the projections. The staff is very diligent is making that percentage as close to 100 percent as possible.

Beutler asked that Hubka add the Board’s congratulations to his staff also.

Beutler invited public comment. Hearing none, Carroll made a motion to accept the Resolution WH 12-08. Clare seconded the motion. Motion carried 3-0.

**Item 8 - Bill No. WH 12-09 Resolution approving Final Guarantee Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company to establish \$149,999,536.00 as the amount the Contract sum shall not exceed**

Paula Yancey was happy to report that there was more good news. She was pleased to be joined by several staff from M.A. Mortenson and have Stan Meredith from DLR in the audience. This resolution is to approve the final guaranteed maximum price (GMP) to the Mortenson/Hampton Construction Contract. The GMP for the arena and garage totals \$149,999,536 and that is within the \$150 million dollar amount originally budgeted for these scopes of work and the project remains on schedule. This GMP has been reviewed and scrubbed by all members of the team to get it to this point today.

Clare asked for confirmation that the GMP is roughly \$150 million and there is contingencies built into that, so it is reasonable to believe that the GMP is actually closer to \$145 million.

Yancey confirmed it would be about \$4.9 million worth of Mortenson contractor controlled contingencies built in the figure.

Clare was excited about the number and wanted someone to elaborate on the value based procurement procedures and how that affects the GMP dollar and the local participation.

Derek Cunz, Vice President at Mortenson, explained that the ‘best value’ procurement process that JPA approved when we started the project allowed them to give a point system for local subcontractor involvement and go out early in the market place prior to the design being complete. To get subcontractors involved for the major scopes of work helped with design and the budget early on. This enabled us to lock in pricing early in the process to guard against price escalation to help the budget. It is a big part of why we are on budget today.

On the local participation issue, we are seeing virtually a 100% of local subcontractor participation on the teams that have formed for the project or entirely local subcontractors that we would not have had without that best value procurement process. Points were given in the bidding process for local. The large companies would not have had the incentive to find local partners to make it a local project. Some of the smaller local firms would not have had the capacity to take on this large of a job without teaming with other firms.

This process allows them to be standing in front of the Board on budget and on schedule. One problematic issue with the more traditional process where you design the building completely and then put it out for bid is if the bids come in over budget you then have to re-design and you have to recover financially from those costs. You have to redesign to either fit the budget or go outside the budget. This process allowed us to be proactive throughout and maximize the best value.

Carroll wondered in order to get to the \$150 million if we were getting the originally projected package at or below the budgeted dollars or if anything had to be cut to get to the number.

Cunz confirmed it was the original project and the building has room for future growth.

Bob Caldwell, President/CEO for Hampton Enterprises, thanked the JPA for using the best value procurement process. There really has been laser light focus on the local participation. It has been a resounding success.

Beutler invited public comment. Hearing none Carroll made a motion to accept the Resolution WH 12-09. Clare seconded the motion. Motion carried 3-0.

**Item 9 - Bill No. WH 12-10 Resolution approving Amendment No. 1 to the Final Guaranteed Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company to add Owner requested items and Construction Alternates and to establish \$156,270,167 as the revised amount the Contract sum shall not exceed**

Paula Yancey explained that this is an amendment to the GMP just approved. It includes some owner added scope and upgrade items determined to be necessary after the GMP was reached. The items are within other line item budgets but will be shifted from those other budget line items and included within the Mortenson scope of services. Some were desired owner enhancements that would give additional benefit to the building. This amendment is to make those shifts and to adjust the contract amount to \$156,270,167 and all items are funded within the existing budget.

Clare wanted explanation on the increase and relationship to the GMP just established.

Yancey explained that this is the revised contract value; however, the GMP for the Mortenson arena and garage scopes of work as originally anticipated is \$150 million. At this time the contract total is being adjusted to include these items and they will be continued to be monitored and priced out. These are add-ons to the contract but are not part of the base GMP. These include items we knew would have to be done, such as the site prep items to which Carroll referred earlier, in order to get the pad raised after track removal. The pedestrian ramp is an example of this where it is already accounted for in another budget category but was shifted over to another line item in the overall program budget.

Chair Beutler opened the floor for public comment. Being none, Carroll made a motion to approve Resolution WH 12-10. Clare seconded the motion. Motion carried 3-0.

**Item 10 - Bill No. WH 12-11 Resolution authorizing AON Risk Solutions on behalf of the West Haymarket Joint Public Agency (JPA) to procure the attached endorsements to add the Jaylynn LLC and Alter Trading Company properties acquired by the JPA to the existing ACE American Insurance Company pollution policy**

Dan Marvin presented the resolution stating that in 2010 the Board approved a contract with AON Insurance to provide environmental remediation insurance for properties north of 'O'

Street. That remediation is complete and that policy provided an additional \$20 million worth of protection with a \$50,000 deductible. Now that property south of 'O' Street has been acquired, including the Watson Brickson Property and Alter Scrap, the total of about 8.5 acres of property, we can extend that policy south of 'O' Street for an additional cost of \$69,127. That seems to be a prudent thing to do to have an additional layer of coverage in the case that we find unknowns for which we did not plan.

Beutler asked where that put us on the overall environmental budget.

Marvin explained that this does come from that existing budget. This was a planned expense within that budget.

Hearing no public comments, Carroll made a motion to approve Resolution WH 12-11. Clare seconded the motion. The motion carried 3-0.

### **Item 11 -- Set Next Meeting Date**

The next regular meeting date is scheduled for Tuesday, February 14, 2012 at 3:00 in City Council Chambers Room 112.

### **Item 12 – Motion to Adjourn**

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 2:15 P.M.

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



# **PINNACLE BANK ARENA**

**& Associated Infrastructure  
Projects**

**Project Status Update  
February 1<sup>st</sup>, 2012**

# M&N STREET

(NE CORNER AT 9<sup>TH</sup> & N ST)



# M&N STREET

SW CORNER AT 10<sup>TH</sup> & N ST



# AMTRAK



Backfilling platform storm drain (looking South)

Building storm drain tap into  
72" RCP



# ALTER SLIVER EXCAVATION



## **OTHER PROJECT PROGRESS**

- **Design continues on Core Area Roadway**
- **Deck 1 Construction Management Risk Proposals received January 30<sup>th</sup>, 2012**
- **Pedestrian Bridge design work continues**

# **Pinnacle Bank Arena Progress Update**

# AERIAL DECEMBER 16<sup>TH</sup>, 2011



12-16-11

# AERIAL

January 15<sup>th</sup> , 2012



# PROJECT PROGRESS

- As of January 31<sup>st</sup>, there have been a total of 243 RFI's submitted
- There have been a total of 388 Submittals as of January 31<sup>st</sup>.
- To date there have been 17 CCA's issued.

# SAFETY



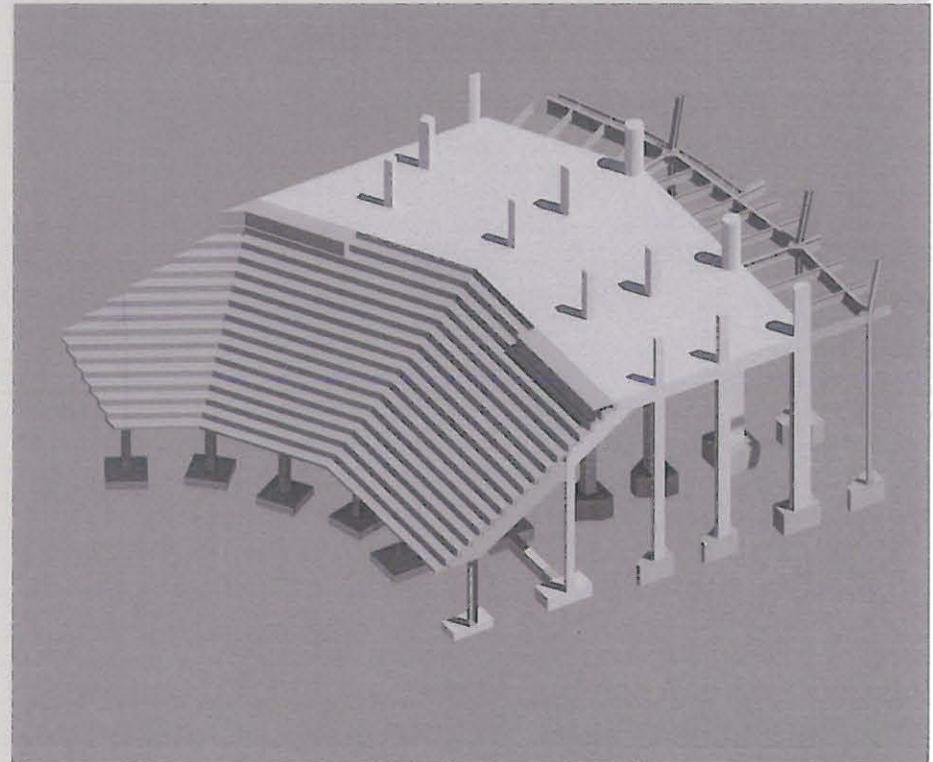
# Concrete Superstructure

- Installing Columns, Grade Beams, Spread footings, and Pile Caps
- 3,100 yards of concrete have been placed.
- First Elevated Deck Pour Tomorrow



# PRECAST STADIA

- Awarded to Concrete Industries
- Shop Drawings Complete
- Samples Approved
- Casting Begins within 2 Weeks
- Setting Precast starts in May



# VIEW OF SHORING ALONG WEST SIDE OF ARENA



# CRAFT WORKERS COMPLETING FIRST DECK POUR



West Haymarket JPA  
Payment Register  
1/1/2012 through 1/31/2012

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
82368	State of Nebraska	Nov'2011 monitoring for 10620	870602	WH Voluntary Clean-up Program	PV	1333824	1,203.80	01/04/12	462014
103499	Register of Deeds	Doc#2011048489 Deed	870304	WH 10th & Salt Creek Road Impr	PV	1333826	15.50	01/04/12	462015
103499	Register of Deeds	Doc Adjustment	870304	WH 10th & Salt Creek Road Impr	PV	1333828	1.00	01/04/12	462015
594773	Alfred Benesch & Company	Services 10/17-11/13/11	870602	WH Voluntary Clean-up Program	OV	1333888	19,355.50	01/04/12	462016
594773	Alfred Benesch & Company	Services 10/17-11/13/11	870604	WH Other/Miscellaneous	OV	1333888	18,902.91	01/04/12	462016
594773	Alfred Benesch & Company	Services 10/17-11/13/11	870603	WH Environmental Contngy Pln	OV	1333888	21,251.50	01/04/12	462016
98079	Black Hills Energy	660 N St, 12/2-12/19/11	870903	WH Jaylynn Site Purchase	PV	1333825	197.28	01/05/12	50056
596579	SMG	Cust#000839	870100	WH Arena	PV	1333823	290.09	01/05/12	50116
596579	SMG	Oct'11 consulting services	870100	WH Arena	OV	1333869	5,000.00	01/05/12	50116
98642	Information Services	11/11 Data Processing	06095	W Haymarket O & M	PV	1335297	88.42	01/11/12	462427
100722	US Bank	BNSF Escrow Admin 12/11-11/12	06095	W Haymarket O & M	PV	1335299	1,500.00	01/11/12	462428
102154	Public Building Commission	Finance- Mark L 01/12	06095	W Haymarket O & M	PV	1335302	22.24	01/11/12	462429
102154	Public Building Commission	Finance- Mark L 01/12	06095	W Haymarket O & M	PV	1335302	204.62	01/11/12	462429
594773	Alfred Benesch & Company	Remediation, 10/17-11/13/11	870601	WH NDEQ T-200	OV	1335095	4,060.00	01/11/12	462430
596579	SMG	Nov'2011 consulting	870100	WH Arena	OV	1335093	5,000.00	01/12/12	50309
596579	SMG	Cust#000839, Godoy Nov.airfare	870100	WH Arena	PV	1335103	673.12	01/12/12	50309
596579	SMG	Cust#000839, Godoy, Benevento	870100	WH Arena	PV	1335104	154.00	01/12/12	50309
88022	T J Osborn Construction	#870302, work 9/15-1/4/12	870302	WH "M"&"N" St, 7th to 10th St	OV	1336278	50,350.00	01/19/12	50364
185050	TCW Construction Inc	#870302, 11/29-12/15/11 work	870302	WH "M"&"N" St, 7th to 10th St	OV	1336690	24,547.80	01/19/12	50391
185050	TCW Construction Inc	#870302, 12/16-12/31/11 work	870302	WH "M"&"N" St, 7th to 10th St	OV	1336691	23,342.88	01/19/12	50391
596579	SMG	Dec'2011 consulting	870100	WH Arena	OV	1336671	5,000.00	01/19/12	50439
596608	M A Mortenson Company	Work 12/1-12/31/11	870100	WH Arena	OV	1336657	3,775,600.93	01/19/12	50440
596608	M A Mortenson Company	December, 2011 scheduling	870000	WH General Coordination	OV	1336667	16,666.00	01/19/12	50440
596877	Olsson Associates	Services 10/9-11/5/11	870000	WH General Coordination	OV	1336614	28,791.19	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870204	WH Parking Garage #2	OV	1336614	12,727.50	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870951	WH ITS & Dynamic Message Signs	OV	1336614	5,068.85	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870202	WH Parking Garage #1	OV	1336614	42,724.15	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870305	WH Core Area Roadway & Utility	OV	1336614	68,699.00	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870201	WH HymktPkLot, FestSp&PedGrdStr	OV	1336614	43,571.40	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870303	WH USPS Parking Lot Reconstctn	OV	1336614	374.00	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870703	WH Initial Haymarket Site Prep	OV	1336614	24,362.11	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870302	WH "M"&"N" St, 7th to 10th St	OV	1336614	27,294.68	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870307	WH Streetscape	OV	1336614	11,617.47	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870906	WH Amtrak Station	OV	1336614	23,267.56	01/19/12	50441
596877	Olsson Associates	Services 10/9-11/5/11	870301	WH Charleston Bridge/Roadway	OV	1336614	1,074.50	01/19/12	50441
598263	PC Sports LLC	Dec'2011 Arena Management	870100	WH Arena	OV	1336275	30,450.00	01/19/12	50443
598263	PC Sports LLC	Dec'2011 Project Management	870000	WH General Coordination	OV	1336275	71,470.00	01/19/12	50443
77921	County/City Property Management	CITY CONTROLLER-JPA	06095	W Haymarket O & M	PV	1337150	15.44	01/25/12	463255
97885	Copy Services	Customer 595381	06095	W Haymarket O & M	PV	1337151	1.33	01/25/12	463256
108417	Citizen Information Center	WHJPA Video 12/8/11, 12/20/11	06095	W Haymarket O & M	PV	1337152	112.50	01/25/12	463257
127319	Urban Development	Billing for 8/18-11/23/11	870908	WH Other Private Prop Acqstns	PV	1336515	46.14	01/25/12	463258
127319	Urban Development	Billing for 8/18-11/23/11	870302	WH "M"&"N" St, 7th to 10th St	PV	1336515	507.55	01/25/12	463258
127319	Urban Development	Billing for 8/18-11/23/11	870303	WH USPS Parking Lot Reconstctn	PV	1336515	101.66	01/25/12	463258
127319	Urban Development	Billing for 8/18-11/23/11	870304	WH 10th & Salt Creek Road Impr	PV	1336515	265.26	01/25/12	463258
127319	Urban Development	Billing for 8/18-11/23/11	870902	WH Alter Site Purchase	PV	1336515	1,833.78	01/25/12	463258
127319	Urban Development	Billing for 8/18-11/23/11	870903	WH Jaylynn Site Purchase	PV	1336515	69.20	01/25/12	463258
324566	Union Bank & Trust Company	WHJPA Series 2010B 2010C admin	195021	JPA 2010B/C Debt Service	PV	1337153	424.00	01/25/12	463259
38391	Lincoln Journal Star	Cust#60016059	870202	WH Parking Garage #1	PV	1336517	20.35	01/26/12	50482
38391	Lincoln Journal Star	Cust#60016059	870602	WH Voluntary Clean-up Program	PV	1336527	48.21	01/26/12	50482
308161	Midwest Right of Way Services Inc	Services 11/1-12/31/11	870903	WH Jaylynn Site Purchase	PV	1336516	692.00	01/26/12	50548
324304	BNSF Railway Company	Cont#NC20024270	870905	WH BNSF Const, Rehab, Reloc	PV	1336511	24,965.00	01/26/12	50551
324304	BNSF Railway Company	Cont#NC20024122	870703	WH Initial Haymarket Site Prep	PV	1336514	24,168.00	01/26/12	50551
588846	District Energy Corp	November 2011 Design Work	06095	W Haymarket O & M	PV	1337154	128,328.34	01/26/12	50571

West Haymarket JPA  
 Payment Register  
 1/1/2012 through 1/31/2012

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
591846	Marvin Investment Management Co	Prgram Admin 11/16/11-12/15/11	06095	W Haymarket O & M	PV	1337155	7,063.00	01/26/12	50576
593485	Thought District Inc	10-JPA-0007 On-Going Mgmt	06095	W Haymarket O & M	PV	1337157	2,000.00	01/26/12	50580
596877	Olsson Associates	Work of 11/6-12/3/11	870307	WH Streetscape	OV	1338332	15,395.00	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870906	WH Amtrak Station	OV	1338332	29,086.12	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870201	WH HymktPkLot, FestSp&PedGrdStr	OV	1338332	46,635.35	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870305	WH Core Area Roadway & Utility	OV	1338332	55,936.50	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870202	WH Parking Garage #1	OV	1338332	37,292.60	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870951	WH ITS & Dynamic Message Signs	OV	1338332	14,366.50	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870204	WH Parking Garage #2	OV	1338332	13,100.13	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870000	WH General Coordination	OV	1338332	27,889.22	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870308	WH Sun Valley Blvd & West "O"	OV	1338332	3,545.00	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870302	WH "M"&"N" St, 7th to 10th St	OV	1338332	750.00	01/26/12	50586
596877	Olsson Associates	Work of 11/6-12/3/11	870703	WH Initial Haymarket Site Prep	OV	1338332	60,042.96	01/26/12	50586
599727	Amtrak	RR Protective ins	870906	WH Amtrak Station	PV	1340742	20,995.00	01/31/12	22899
Grand total							4,880,616.14		

West Haymarket JPA  
Public Works Engineering Costs  
1/1/2012 through 1/31/2012

Description	Fund	Project	Description	Do Ty	Document Number	Object	Sub	Amount	G/L	Date
Design Engineering	00951	870000	WH General Coordination	EU	332268	6153	130	696.84		01/12/12
Laboratory & Testing	00951	870302	WH "M"&"N" St,7th to 10th St	EU	332268	6153	350	176.60		01/12/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	332268	6153	130	450.88		01/12/12
Observer/Inspections	00951	870302	WH "M"&"N" St,7th to 10th St	EU	332268	6153	325	1,519.61		01/12/12
Construction Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	332268	6153	320	781.54		01/12/12
Design Engineering	00951	870303	WH USPS Parking Lot Reconstctn	EU	332268	6153	130	115.35		01/12/12
Design Engineering	00951	870304	WH 10th & Salt Creek Road Impr	EU	332268	6153	130	104.16		01/12/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	332268	6153	130	450.25		01/12/12
Design Engineering	00951	870703	WH Initial Haymarket Site Prep	EU	332268	6153	130	230.71		01/12/12
Design Engineering	00951	870000	WH General Coordination	EU	333124	6153	130	192.98		01/26/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	333124	6153	130	1,420.74		01/26/12
Observer/Inspections	00951	870302	WH "M"&"N" St,7th to 10th St	EU	333124	6153	325	2,215.65		01/26/12
Construction Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	333124	6153	320	1,269.99		01/26/12
Design Engineering	00951	870303	WH USPS Parking Lot Reconstctn	EU	333124	6153	130	115.35		01/26/12
Design Engineering	00951	870304	WH 10th & Salt Creek Road Impr	EU	333124	6153	130	173.05		01/26/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	333124	6153	130	974.95		01/26/12
Design Engineering	00951	870703	WH Initial Haymarket Site Prep	EU	333124	6153	130	230.71		01/26/12
								-----		
Grand total								11,119.36		

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
-----							
00951	West Haymarket Capital Proj						
70090	West Haymarket Park						
	870000 WH General Coordination		3,896,960	3,043,860	6,940,820-		6,940,820-
-----							
70090	West Haymarket Park		3,896,960	3,043,860	6,940,820-		6,940,820-
70091	Arena						
	870100 WH Arena	161,899,950	20,535,104	57,135,234	84,229,612		84,229,612
	870101 WH Arena Contingency	6,995,650			6,995,650		6,995,650
	870203 WH Arena Parking Garage	10,352,100	495,250	230,544	9,626,306		9,626,306
-----							
70091	Arena	179,247,700	21,030,354	57,365,778	100,851,568		100,851,568
70092	Parking						
	870201 WH HymktPkLot,FestSp&PedGrdStr	14,089,426	286,143	1,296,207	12,507,076		12,507,076
	870202 WH Parking Garage #1	13,090,000	249,904	761,512	12,078,584		12,078,584
	870204 WH Parking Garage #2		187,606	41,252	228,858-		228,858-
-----							
70092	Parking	27,179,426	723,653	2,098,971	24,356,802		24,356,802
70093	Roads						
	870301 WH Charleston Bridge/Roadway	4,835,720	252,015	390,766	4,192,939		4,192,939
	870302 WH "M"&"N" St.7th to 10th St	2,280,000	1,562,269	182,058	535,673		535,673
	870303 WH USPS Parking Lot Reconstctn	885,000	592,046	74,468	218,486		218,486
	870304 WH 10th & Salt Creek Road Impr	3,412,000	3,348,318	23,644	40,038		40,038
	870305 WH Core Area Roadway & Utility	14,668,960	341,956	591,432	13,735,572		13,735,572
	870306 WH Traffic Analysis		57,270	28,148	85,418-		85,418-
	870307 WH Streetscape		127,740	277,966	405,706-		405,706-
	870308 WH Sun Valley Blvd & West "O"	737,400	22,853	16,518	698,029		698,029
-----							
70093	Roads	26,819,080	6,304,467	1,585,000	18,929,613		18,929,613
70094	Pedestrian Ways						
	870401 WH Plaza	1,200,000			1,200,000		1,200,000

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
-----							
00951	West Haymarket Capital Proj						
70094	Pedestrian Ways						
	870402 WH Canopy Phase II						
-----							
70094	Pedestrian Ways	1,200,000			1,200,000		1,200,000
-----							
70095	Utilities						
	870501 WH Sanitary Sewer Relocation	1,440,000	1,492,905		52,905-		52,905-
	870502 WH Fiber Optic Comm & Other	650,880	506,035	31,547	113,298		113,298
-----							
70095	Utilities	2,090,880	1,998,940	31,547	60,393		60,393
-----							
70096	Environmental						
	870601 WH NDEQ T-200	1,706,504	1,535,479	6,430	164,595	80,945	245,540
	870602 WH Voluntary Clean-up Program	2,100,000	605,637	48,662	1,445,701		1,445,701
	870603 WH Environmental Contngy Pln	2,400,000	241,732	49,378	2,108,890		2,108,890
	870604 WH Other/Miscellaneous	525,600	296,773	49,267	179,560		179,560
	870605 WH Canopy Phase I-Lead Abatent						
-----							
70096	Environmental	6,732,104	2,679,621	153,737	3,898,746	80,945	3,979,691
-----							
70097	Dirt Moving						
	870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF	2,400,000			2,400,000		2,400,000
	870703 WH Initial Haymarket Site Prep	2,088,360	5,694,624	964,426	4,570,690-		4,570,690-
	870704 WH Other Stormwater Mitigation	3,105,840			3,105,840		3,105,840
-----							
70097	Dirt Moving	7,594,200	5,694,624	964,426	935,150		935,150
-----							
70098	TIF Improvements						
	870800 WH TIF Improvements	5,515,693			5,515,693		5,515,693
-----							
70098	TIF Improvements	5,515,693			5,515,693		5,515,693
-----							
70099	Site Purchase						

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
870901	WH BNSF Land Acquisition	1,000,000	1,051,078		51,078-		51,078-
870902	WH Alter Site Purchase	4,080,000	3,577,101		502,899		502,899
870903	WH Jaylynn Site Purchase	3,080,000	1,600,602		1,479,398		1,479,398
870904	WH UP Site Purchase	1,000,000	1,326,248		326,248-		326,248-
870905	WH BNSF Const. Rehab. Reloc	44,000,000	50,224,360		6,224,360-		6,224,360-
870906	WH Amtrak Station	1,440,000	277,473	27,952	1,134,575		1,134,575
870907	WH UP Track Mod West of Bridge	1,236,000	1,166,994		69,006		69,006
870908	WH Other Private Prop Acqstns	625,000	603,342		21,658		21,658
70099	Site Purchase	56,461,000	59,827,198	27,952	3,394,150-		3,394,150-
70100	Other Costs						
870951	WH ITS & Dynamic Message Signs	2,700,000	71,234	104,292	2,524,474		2,524,474
870952	WH Community Space & Civic Art	1,500,000			1,500,000		1,500,000
70100	Other Costs	4,200,000	71,234	104,292	4,024,474		4,024,474
70105	Bond Related Costs						
870975	WH Miscellaneous	5,160,000			5,160,000		5,160,000
870976	WH Line of Credit		53,227		53,227-		53,227-
870977	WH Series 1 JPA Debt		1,535,168		1,535,168-		1,535,168-
870978	WH Series 2 JPA Debt		1,221,802		1,221,802-		1,221,802-
870979	WH Series 3 JPA Debt		577,661		577,661-		577,661-
870980	WH Series 4 JPA Debt		1,243,825		1,243,825-		1,243,825-
70105	Bond Related Costs	5,160,000	4,631,683		528,317		528,317
00951	West Haymarket Capital Proj	322,200,083	106,858,734	65,375,563	149,965,786	80,945	150,046,731

City of Lincoln, NE  
 West Haymarket JPA  
 Operating Expenditure Report  
 As of January 31, 2012

00950 West Haymarket Reven  
 06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies	250			250		250
5261 Postage	1,000			1,000	758	242
-----	-----	-----	-----	-----	-----	-----
11 Materials & Supplies	1,250			1,250	758	492
12 Other Services & Charges						
5621 Misc Contractual Services	428,698			428,698	100,526	328,172
5624 Auditing Service	15,000			15,000	15,000	
5631 Data Processing Service	10,855			10,855	442	10,413
5633 Software	1,000			1,000		1,000
5637 Engineering & Design	1,828,566			1,828,566	546,523	1,282,043
5643 Management Services	95,043			95,043	38,301	56,742
5762 Photocopying	500			500	9	491
5763 Printing	500			500	56	444
5794 Public Officials	30,000			30,000		30,000
5928 Rent of Co/City Bldg Space	2,456			2,456	1,023	1,433
5931 Parking Rent Bldg Comm	267			267	111	156
5952 Advertising/Media Serv	2,850			2,850	889	1,961
-----	-----	-----	-----	-----	-----	-----
12 Other Services & Charges	2,415,735			2,415,735	702,880	1,712,855
-----	-----	-----	-----	-----	-----	-----
06095 W Haymarket O & M	2,416,985			2,416,985	703,638	1,713,347

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket JPA  
Operating Expenditure Report  
As of January 31, 2012

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02/09/12  
10:20:29

00950 West Haymarket Reven  
195011 JPA 2010A Debt Servi

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
195011 JPA 2010A Debt Servic						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg					524	524-
6235 Bd Trustee Pmt-Interest	4,651,510			4,651,510	2,325,755	2,325,755
-----	-----	-----	-----	-----	-----	-----
15 Debt Service	4,651,510			4,651,510	2,326,279	2,325,231
-----	-----	-----	-----	-----	-----	-----
195011 JPA 2010A Debt Servic	4,651,510			4,651,510	2,326,279	2,325,231

83410  
 MARK  
 JPAADMIN

City of Lincoln, NE  
 West Haymarket JPA  
 Operating Expenditure Report  
 As of January 31, 2012

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

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg					424	424-
6235 Bd Trustee Pmt-Interest	5,874,323			5,874,323	2,937,161	2,937,162
-----	-----	-----	-----	-----	-----	-----
15 Debt Service	5,874,323			5,874,323	2,937,585	2,936,738
-----	-----	-----	-----	-----	-----	-----
195021 JPA 2010B/C Debt Serv	5,874,323			5,874,323	2,937,585	2,936,738

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket JPA  
Operating Expenditure Report  
As of January 31, 2012

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02/09/12  
10:20:29

00950 West Haymarket Reven  
195031 JPA 2011 Debt Servic

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
195031 JPA 2011 Debt Service						
15 Debt Service						
6235 Bd Trustee Pmt-Interest	3,711,614			3,711,614	1,415,770	2,295,844
-----	-----	-----	-----	-----	-----	-----
15 Debt Service	3,711,614			3,711,614	1,415,770	2,295,844
-----	-----	-----	-----	-----	-----	-----
195031 JPA 2011 Debt Service	3,711,614			3,711,614	1,415,770	2,295,844
-----	-----	-----	-----	-----	-----	-----
00950 West Haymarket Revenue	16,654,432			16,654,432	7,383,272	9,271,160

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3 That the Easement for Utility Lines and/or Underground Utility Facilities to Lincoln  
4 Electric System in an area generally located in Q Street and Arena Drive is hereby authorized  
5 and approved and the Chair is hereby authorized to execute the Easement on behalf of the West  
6 Haymarket Joint Public Agency.

7 The City Clerk is directed to send the original easement to Lincoln Electric System, c/o  
8 Larry Swanson, Land Management, P.O. Box 80869, Lincoln, NE 68501, for recording.

9 Adopted this \_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

**EASEMENT FOR UTILITY LINES AND/OR UNDERGROUND UTILITY FACILITIES**

KNOW ALL MEN BY THESE PRESENTS:

That West Haymarket Joint Public Agency, a political Subdivision of the State of Nebraska, of Lancaster County, Nebraska, in consideration of \$ 1.00, receipt of which is hereby acknowledged, and the further payment of a sum to make total payment of \$ 1.00 for necessary equipment when set on the following described property, do hereby grant and convey unto the LINCOLN ELECTRIC SYSTEM (hereinafter referred to as Grantee, whether one or more) Time Warner Entertainment – Advance/Newhouse Partnership

its (their) lessees, successors and assigns, the permanent right, privilege and easement of a right-of-way to construct, reconstruct, operate and remove all necessary underground electric facilities, communications lines and other necessary equipment in connection therewith, on and across the following property situated in Lancaster County, Nebraska, more particularly described as follows: Exhibit "A" Attached hereto

The utility line and underground utility facilities herein contemplated shall be located on the property approximately as follows:

A strip of ground Fifteen (15) feet in width the South line of which is described as follows:  
Commencing at the Southwest Quarter (SW¼) corner of the Southeast Quarter (SE¼) of Section 23, Township 10 North, Range 6 East of the 6<sup>th</sup> P.M., Lincoln, Lancaster County, Nebraska  
Thence; N 0° 11' 51" E coincident with quarter (¼) section line a distance of Seven hundred fifty four and eight four hundredths (754.84) feet;  
Thence; N 89° 41' 38" W a distance of Two hundred ninety four and fifty three hundredths (294.53) feet to the point of beginning;  
Thence; N 89° 41' 38" W a distance of Three hundred fifty and forty nine hundredths (350.49) feet and ending there.

The Grantee shall also have the non-exclusive privilege and easement of ingress and egress across that portion of the property to its (their) officers and employees for any purpose necessary in connection with the construction, reconstruction operation, maintenance, inspection and removal of said line and underground utility facilities.

The Grantee shall also have the right at any time to trim or remove such trees and underbrush as may in any way endanger or interfere with the safe operation of the lines, underground electric facilities and equipment used in connection therewith.

The Grantee shall also at all times exercise reasonable effort to avoid injury or damage to the landscaping, and improvements of the Grantor, and the Grantee shall repair any such damage and loss arising or occurring to such property solely by reason of the construction, operation, maintenance and removal of any utility lines, however, in the event that all or part of the underground utility facilities which may be installed on said easement right-of-way becomes defective or unserviceable in the sole judgment of the Grantee, the Grantee shall have the right, to maintain, repair or replace such underground facilities; provided, if improvements to the property make the installation of such replacements impractical at the location of the original easement granted hereby, the Grantor or their successors in title shall grant and convey to the Grantee, for the same consideration as given herein, an easement for such further installation at a location on said property which is mutually satisfactory to the parties. If the parties fail to agree upon any such new location for the underground electric facilities, the Grantee shall have no obligation to replace or provide underground electric facilities across or to any such property and Grantee shall not be liable nor bear any responsibility to Grantor, its successors and assigns for failure to provide electric service to the property. In determining the locations for further installation the Grantee shall at all times exercise reasonable effort to avoid injury or damage to the landscaping and improvements of the Grantor or their successors. Grantee shall perform any work in connection with this Easement in a good and workmanlike manner with reasonable effort to minimize interference with the use of Grantor's herein described property except as may be reasonably necessary for Grantee to carry out the terms and conditions of this Easement. Grantor, on behalf of itself and its tenants reserves the right to use the surface of the easement area for landscaping, curbing, paving, signs, and otherwise provided such uses do not interfere with the rights of Grantee and comply with applicable provisions of the National Electrical Safety Code and the Lincoln Municipal Code.

The Grantee agrees that should the utility lines and underground utility facilities constructed hereunder be abandoned for a period of five years, the right-of-way or easement hereby secured shall then cease and terminate, and this easement shall be of no further force and effect.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

\_\_\_\_\_  
Chair, West Haymarket JPA Board of Representation

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF LANCASTER )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ Chair, West Haymarket JPA Board of Representation personally to me known to be identical person(s) who signed the foregoing instrument as Grantor and who acknowledged the execution thereof to be a voluntary act and deed for the purpose therein expressed.

WITNESS my hand and notarial seal the date above written.

My Commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public



EXHIBIT A

LEGAL DESCRIPTION

CITY OF LINCOLN CLOSING NO. 2

A TRACT OF LAND COMPOSED OF ALL OF LOTS 3 THRU 14, PART OF LOTS 2 & 15 AND PART OF THE EAST/WEST ALLEY ADJACENT IN BLOCK 270, ORIGINAL TOWN, PART OF LOTS 1 THRU 3, AND PART OF LOTS 8 THRU 12, PART OF THE EAST/WEST ALLEY ADJACENT IN BLOCK 281, ORIGINAL TOWN, PART OF THE DEPOT LOT, ORIGINAL TOWN, A PART OF "O" STREET RIGHT-OF-WAY, A PART OF "S" STREET RIGHT-OF-WAY, A PART OF "T" STREET RIGHT-OF-WAY, A PART OF 6TH STREET RIGHT-OF-WAY, AND A PART OF 7TH STREET RIGHT-OF-WAY, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, ALSO A PART OF "O" STREET RIGHT-OF-WAY LOCATED IN THE NORTHWEST QUARTER OF SECTION 26, ALL IN TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> PM LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHWEST CORNER OF BLOCK 50, ORIGINAL TOWN; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 43 MINUTES 39 SECONDS EAST, ALONG THE NORTH LINE OF SAID BLOCK 50, A DISTANCE OF 245.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY A DISTANCE OF 203.61 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1175.09 FEET, A CENTRAL ANGLE OF 9 DEGREES 55 MINUTES 39 SECONDS, WITH A CHORD BEARING OF NORTH 5 DEGREES 18 MINUTES 38 SECONDS EAST, AND A CHORD DISTANCE OF 203.35 FEET TO A POINT; THENCE NORTH 00 DEGREES 20 MINUTES 48. SECONDS EAST, A DISTANCE OF 1177.82 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 216.43 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1438.18 FEET, A CENTRAL ANGLE OF 8 DEGREES 37 MINUTES 21 SECONDS, WITH A CHORD BEARING OF NORTH 04 DEGREES 39 MINUTES 29 SECONDS EAST, AND A CHORD DISTANCE OF 216.23 FEET TO A POINT; THENCE NORTH 08 DEGREES 58 MINUTES 08 SECONDS EAST, A DISTANCE OF 146.73 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 163.52 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 710.67 FEET, A CENTRAL ANGLE OF 13 DEGREES 10 MINUTES 59 SECONDS, WITH A CHORD BEARING OF NORTH 15 DEGREES 33 MINUTES 38 SECONDS EAST, AND A CHORD DISTANCE OF 163.16 FEET TO A POINT; THENCE NORTH 22 DEGREES 09 MINUTES 07 SECONDS EAST, A DISTANCE OF 108.75 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 80.64 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 751.06 FEET, A CENTRAL ANGLE OF 6 DEGREES 09 MINUTES 07 SECONDS, WITH A CHORD BEARING OF NORTH 25 DEGREES 13 MINUTES 40 SECONDS EAST, AND A CHORD DISTANCE OF 80.60 FEET TO A POINT; THENCE NORTH 28 DEGREES 18 MINUTES 14 SECONDS EAST, A DISTANCE OF 66.94 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 250.03 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 603.80 FEET, A CENTRAL ANGLE OF 23 DEGREES 43

MINUTES 32 SECONDS, WITH A CHORD BEARING OF NORTH 40 DEGREES 09 MINUTES 59 SECONDS EAST, AND A CHORD DISTANCE OF 248.24 FEET TO A POINT; THENCE NORTH 52 DEGREES 01 MINUTES 44 SECONDS EAST, A DISTANCE OF 56.51 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 76.69 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1043.25 FEET, A CENTRAL ANGLE OF 4 DEGREES 12 MINUTES 42 SECONDS, WITH A CHORD BEARING OF NORTH 49 DEGREES 55 MINUTES 23 SECONDS EAST, AND A CHORD DISTANCE OF 76.67 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY A DISTANCE OF 459.77 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1060.15 FEET, A CENTRAL ANGLE OF 24 DEGREES 50 MINUTES 53 SECONDS, WITH A CHORD BEARING OF SOUTH 12 DEGREES 45 MINUTES 47 SECONDS WEST, AND A CHORD DISTANCE OF 456.17 FEET TO A POINT; THENCE SOUTH 00 DEGREES 20 MINUTES 21 SECONDS WEST, A DISTANCE OF 1401.16 FEET TO A POINT; THENCE NORTH 89 DEGREES 54 MINUTES 08 SECONDS WEST, A DISTANCE OF 49.41 FEET TO A POINT; THENCE SOUTH 00 DEGREES 05 MINUTES 52 SECONDS WEST, A DISTANCE OF 559.87 FEET TO A POINT ON THE NORTH LINE OF BLOCK 51, ORIGINAL TOWN; THENCE NORTH 89 DEGREES 43 MINUTES 39 SECONDS WEST, ALONG THE NORTH LINE OF BLOCKS 51 AND 50, A DISTANCE OF 321.15 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 705159.39 SQUARE FEET (16.19 ACRES) MORE OR LESS.

AND ALSO:

A TRACT OF LAND COMPOSED OF ALL OF LOT 9 AND A PART OF LOTS 8, 10, 14 AND 15, AND A PART OF THE EAST/WEST ALLEY ADJACENT IN BLOCK 50, ORIGINAL TOWN, A PART OF "N" STREET RIGHT-OF-WAY, AND A PART OF "O" STREET RIGHT-OF-WAY LOCATED IN THE NORTHWEST QUARTER OF SECTION 26, AND PART OF THE DEPOT LOT, ORIGINAL TOWN, AND PART OF "O" STREET RIGHT-OF-WAY, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, ALL IN TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> PM LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

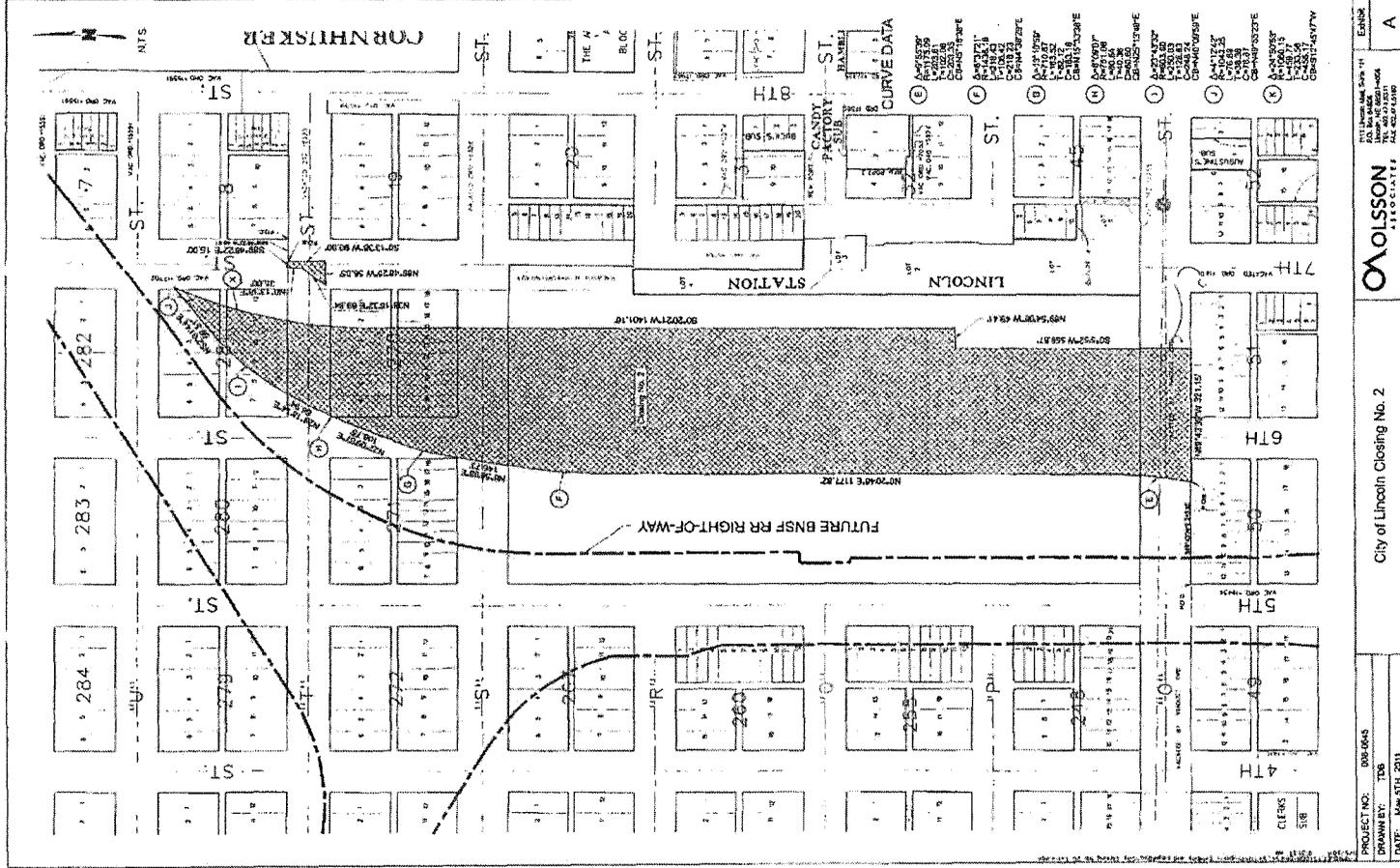
COMMENCING FROM THE INTERSECTION OF THE CENTERLINE OF "N" STREET AND THE CENTERLINE OF 5<sup>TH</sup> STREET; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 44 MINUTES 29 SECONDS EAST, ALONG THE CENTERLINE OF SAID "N" STREET, A DISTANCE OF 127.69 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 04 DEGREES 07 MINUTES 53 SECONDS WEST, A DISTANCE OF 176.78 FEET TO A POINT; THENCE NORTH 00 DEGREES 04 MINUTES 24 SECONDS EAST, A DISTANCE OF 983.82 FEET TO A POINT; THENCE NORTH 89 DEGREES 55 MINUTES 36 SECONDS WEST, A DISTANCE OF 10.50 FEET TO A POINT; THENCE NORTH 00 DEGREES 04 MINUTES 24 SECONDS EAST, A DISTANCE OF 120.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 55 MINUTES 36 SECONDS EAST, A DISTANCE OF 25.50 FEET TO A POINT; THENCE NORTH 00 DEGREES 04 MINUTES 24 SECONDS EAST, A DISTANCE OF 235.53 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 74.42 FEET ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1004.59 FEET, A CENTRAL ANGLE OF 4 DEGREES 14 MINUTES 40 SECONDS, WITH A CHORD BEARING OF NORTH 14 DEGREES 34 MINUTES 39 SECONDS EAST, AND A CHORD DISTANCE OF 74.40 FEET TO A POINT; THENCE NORTH 16 DEGREES 41 MINUTES 59 SECONDS EAST A DISTANCE OF 89.60 FEET TO A POINT OF

CURVATURE; THENCE SOUTHWESTERLY A DISTANCE OF 71.58 FEET ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1075.06 FEET, A CENTRAL ANGLE OF 3 DEGREES 48 MINUTES 53 SECONDS, WITH A CHORD BEARING OF SOUTH 02 DEGREES 07 MINUTES 16 SECONDS WEST, AND A CHORD DISTANCE OF 71.57 FEET TO A POINT; THENCE SOUTH 00 DEGREES 13 MINUTES 22 SECONDS WEST A DISTANCE OF 1476.42 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY A DISTANCE OF 81.17 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 704.92 FEET, A CENTRAL ANGLE OF 6 DEGREES 35 MINUTES 52 SECONDS, WITH A CHORD BEARING OF SOUTH 03 DEGREES 31 MINUTES 19 SECONDS WEST, AND A CHORD DISTANCE OF 81.13 FEET TO A POINT; THENCE SOUTH 06 DEGREES 49 MINUTES 15 SECONDS WEST, A DISTANCE OF 45.03 FEET TO A POINT ON THE CENTERLINE OF SAID "N" STREET; THENCE NORTH 89 DEGREES 44 MINUTES 29 SECONDS WEST, ALONG THE CENTERLINE OF SAID "N" STREET, A DISTANCE OF 29.73 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 82058.38 SQUARE FEET (1.88 ACRES) MORE OR LESS.

AND ALSO:

A TRACT OF LAND COMPOSED OF A PART OF VACATED "T" STREET RIGHT-OF-WAY (ORD # 8328), LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> PM LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF BLOCK 8, ORIGINAL TOWN OF LINCOLN, SAID POINT ALSO BEING THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF "T" STREET AND THE EAST RIGHT-OF-WAY LINE OF 7<sup>TH</sup> STREET; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 46 MINUTES 22 SECONDS WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID "T" STREET, A DISTANCE OF 46.01 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 13 MINUTES 38 SECONDS WEST, A DISTANCE OF 90.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 46 MINUTES 25 SECONDS WEST, A DISTANCE OF 58.05 FEET TO A POINT; THENCE NORTH 38 DEGREES 16 MINUTES 32 SECONDS EAST, A DISTANCE OF 69.84 FEET TO A POINT; THENCE NORTH 00 DEGREES 13 MINUTES 38 SECONDS EAST, A DISTANCE OF 35.00 FEET TO A POINT ON THE NORTH LINE OF VACATED "T" STREET; THENCE NORTH 89 DEGREES 46 MINUTES 22 SECONDS EAST, ALONG THE NORTH LINE OF VACATED "T" STREET RIGHT-OF-WAY, A DISTANCE OF 15.00 TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 2533.77 SQUARE FEET (0.06 ACRES) MORE OR LESS.

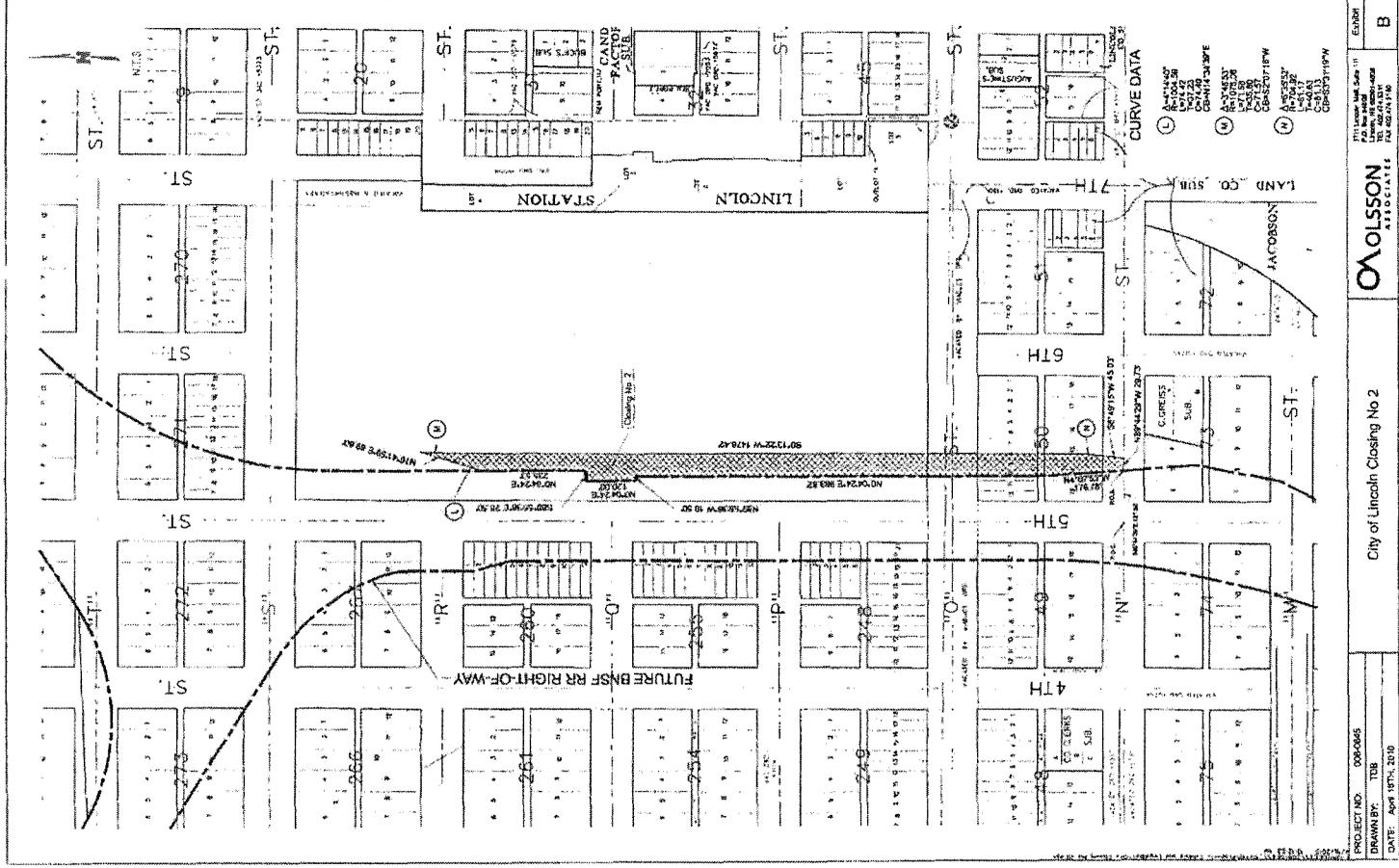


PROJECT NO.: 08-06-05  
 DRAWN BY: JCB  
 DATE: May 9TH, 2011

City of Lincoln Closing No. 2

**CRAYSON**  
 ENGINEERS & ARCHITECTS  
 1100 O ST. LINCOLN, NE 68502

ENR 10  
 A



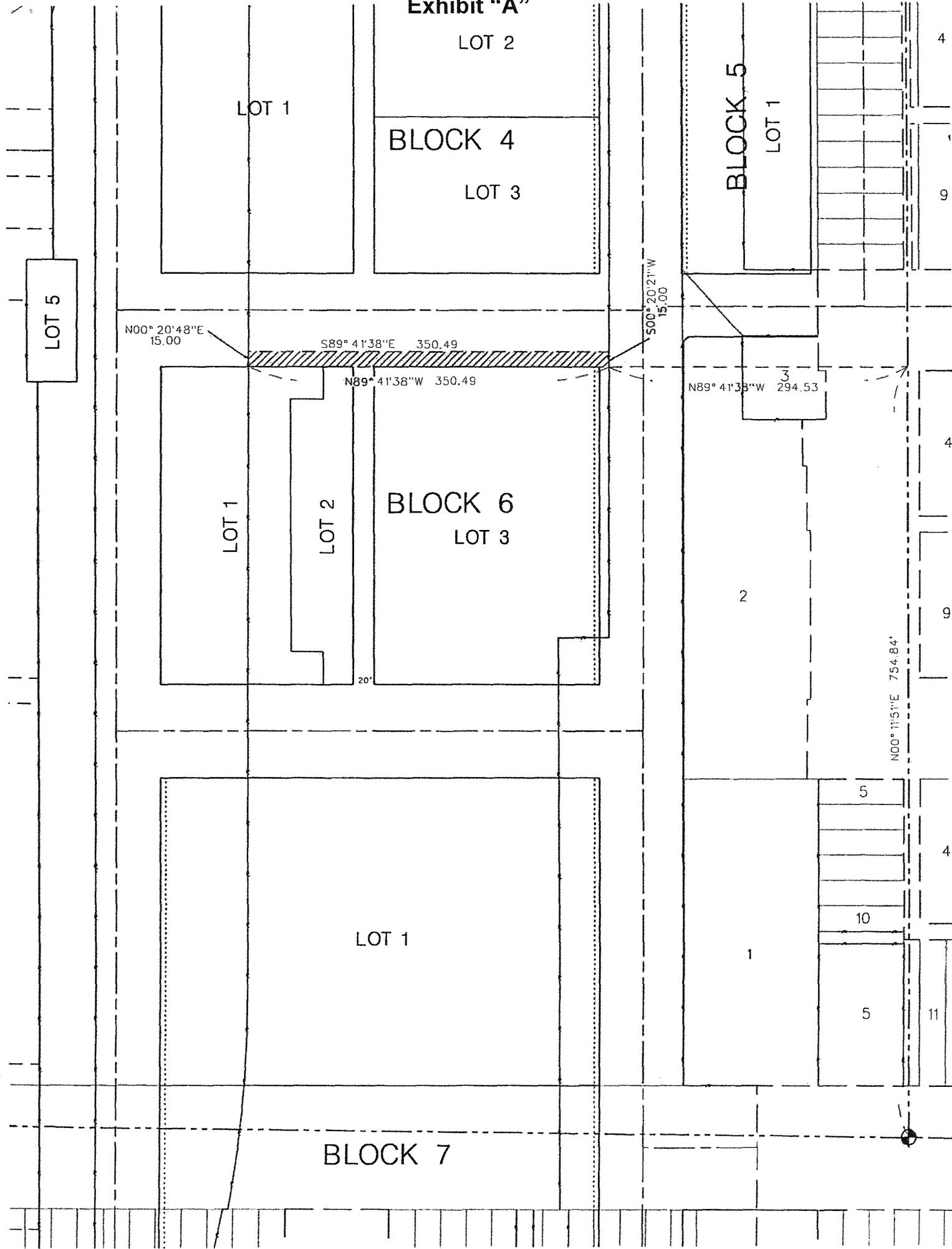
PROJECT NO. 080-045  
 DRAWN BY: TDB  
 DATE: April 1978, 2010

City of Lincoln Closing No 2

**OLSSON**  
 ASSOCIATES

EDWIN B

Exhibit "A"



LOT 2

LOT 1

BLOCK 4

LOT 3

BLOCK 5

LOT 1

4

9

N00° 20' 48" E  
15.00

S89° 41' 38" E 350.49

S00° 20' 21" W  
15.00

N89° 41' 38" W 350.49

N89° 41' 38" W 294.53

LOT 1

LOT 2

BLOCK 6

LOT 3

2

4

9

N00° 11' 51" E 754.84'

LOT 1

5

4

10

1

5

11

BLOCK 7

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3           That the Consultant Agreement between Thought District and the West Haymarket Joint  
4 Public Agency to provide Website and Facebook Management Services for the West Haymarket  
5 Joint Public Agency, attached hereto and incorporated herein by this reference, is hereby  
6 approved and the Chairperson of the West Haymarket Joint Public Agency Board of  
7 Representatives is hereby authorized to execute said Agreement on behalf of the West  
8 Haymarket Joint Public Agency.

9           Adopted this \_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

## CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this 20 day of February, 2012 (Execution Date), by and between the West Haymarket Joint Public Agency, hereinafter referred to as "JPA" and "Thought District", hereinafter referred to as "Consultant."

### RECITALS

#### A.

The JPA proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in facebook page and website management for the JPA and Haymarket Arena. ("Consultant Services").

#### B.

Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the JPA, and the JPA desires to engage Consultant for such Consultant Services on the terms herein provided.

#### C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

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

### I.

#### ADMINISTRATOR OF AGREEMENT

Dan Marvin, JPA Project Manager and JPA Board Secretary, shall be the JPA's representative for the purposes of administering this Agreement and shall have authority on behalf of the JPA to give approvals under this Agreement. Eric Dinger, shall be the Consultant's representative and will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

### II.

#### SCOPE OF SERVICES

Consultant has performed Phase One services related to the development and design of the website and facebook page. This Agreement involves Phase Two wherein Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner, services on behalf of the JPA for Phase Two: ongoing management of the Haymarket NOW website and facebook page. There are three main services to be provided under Phase Two:

1. Copyright and content collection - Consultant shall keep the website updated with new content and provide high quality marketing coy to encourage visitors to interact and direct users to specific areas of the site;

2. Website/Social Media Integration and Mangement - Consultant will monitor and manage the website and facebook page for the Haymarket Now! Project. Consultant will integrate the facebook page onto the website, share and upload content and funnel and direct all queries and pertinent comments to the JPA;

3. Website and Facebook Page Promotion -

### **III. TERM OF AGREEMENT**

The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue for one year from the date of execution of this Agreement. This Agreement may be renewed for three additional one year terms at the request of the JPA and upon mutual consent of both parties.

### **IV. COMPENSATION**

The JPA agrees to pay Consultant for the Phase Two services set forth in Attachment "A" a sum not to exceed \$2,000 per month. The Consultant will furnish to the JPA a monthly services report and request for payment itemizing hours worked on services provided, with any supporting documentation, on the 5th day of each month for the previous month's services. Monthly payments, based upon the services performed as requested and provided in Attachment "A", shall be payable within fifteen days receipt of the report and supporting documentation for the previous month's services, acceptable to the JPA, for the work completed for that month.

### **V. NON-RAIDING CLAUSE**

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

### **VI. 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 A or B above, Consultant shall be paid for all approved services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

Consultant hereby expressly waives any and all claims for damages or compensation 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 Section II, or interested in the decisional process relating to the application of such findings as may result from the tasks performed as defined in Section II for a period of one (1) year after such termination, without prior approval of the JPA.

## **VII. ADDITIONAL SERVICES**

The JPA may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

## **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.

## **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.

**X.  
ASSIGNABILITY**

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified 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.

**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.

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

Consultant agrees to and hereby transfers all rights it has, including those of a property or copyright nature, in any marketing copy and content, reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced by the Consultant 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 JPA deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.

**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.

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

A. Consultant represents that all materials, processes, or other protected rights to be used in the Consultant 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.

**XV.  
INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless JPA, its elected officials, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable. This section will not require Consultant to indemnify or hold harmless the JPA for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the JPA. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

**XVI.  
INSURANCE**

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

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Consultant and JPA from any and all claims under any Worker's Compensation Act or Employer's Liability Law. Consultant shall exonerate, indemnify and hold harmless JPA from and against, and shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Consultant or any such employees of

Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

Coverage	Listing	Min. Amount	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

2. General Liability Insurance. General Liability Insurance, naming and protecting Consultant and the JPA, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Consultant and Consultant's employees, students, or those directly or indirectly employed by Consultant. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- i. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- ii. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- iii. Personal Injury Damage - \$1,000,000 each Occurrence; and
- iv. Contractual Liability - \$1,000,000 each Occurrence; and
- v. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
- vi. Medical Expenses (any one person) - \$10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General

Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an “occurrence” basis only. All insurance coverages 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 not less than A:VIII unless specific approval has been granted by the JPA.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the JPA at the time the evidence of insurance is provided.

D. Certificate of Insurance. All Certificates of Insurance shall be filed with the JPA on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA as an additional insured for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as if the Consultant possessed General Liability Insurance. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the JPA thirty days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

## **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 JPA  
Dan Marvin, JPA Project Manager  
2523 Woods Blvd  
Lincoln NE 68502

Thought District  
Eric Dinger, President  
300 S. 13th Street  
Lincoln, NE 68508

## **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.

**XIX.  
NEBRASKA LAW**

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

**XX.  
INTEGRATION**

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

**XXI.  
AMENDMENT**

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

**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.

**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.

**XIV.  
AUDIT AND REVIEW**

The Consultant shall make available to the JPA copies of all financial and performance related records and materials germane to this Agreement as allowed by law.

**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](http://www.uscis.gov/everify).

**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 JPA do hereby execute this Agreement as of the Execution Date set forth above.

**THOUGHT DISTRICT**

By:   
Eric Dinger, President

**WEST HAYMARKET JOINT  
PUBLIC AGENCY**

By: \_\_\_\_\_  
Chris Beutler, Chair

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3           That the Operating Budget for September 1, 2011 to August 31, 2012, adopted by  
4 Resolution No. WH 00193 on September 1, 2011, is hereby amended to incorporate the attached  
5 Program Budget Summary changes.

6           Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

**West Haymarket JPA  
Program Budget Summary**

Description		Previous Job Cost Report Budget	Proposed Changes	Revised Project Budget
<b>TOTAL PROGRAM SUMMARY</b>				
<b>Infrastructure</b>				
70090	General Coordination	\$0.00	\$6,674,522.13	\$6,674,522.13
70092	Parking	\$27,179,426.00	\$1,198,897.29	\$28,378,323.29
70093	Roads	\$26,819,080.00	-\$5,499,066.01	\$21,320,013.99
70094	Pedestrian Ways	\$1,200,000.00	-\$200,000.00	\$1,000,000.00
70095	Utilities	\$2,090,880.00	\$52,905.32	\$2,143,785.32
70096	Environmental	\$6,003,600.00	\$0.00	\$6,003,600.00
70097	Dirt Moving	\$7,594,200.00	\$1,441,809.95	\$9,036,009.95
70098	TIF Improvements	\$5,515,693.00	-\$5,515,693.00	\$0.00
70100	Other Costs (ITS / Civic Art)	\$4,200,000.00	-\$873,173.16	\$3,326,826.84
	<b>Total Infrastructure</b>	<b>\$80,602,879.00</b>	<b>-\$2,719,797.48</b>	<b>\$77,883,081.52</b>
<b>Arena</b>				
70091	Arena / Garage Construction	\$179,247,700.00	\$4,702,566.00	\$183,950,266.00
	<b>Total Arena / Arena Garage</b>	<b>\$179,247,700.00</b>	<b>\$4,702,566.00</b>	<b>\$183,950,266.00</b>
<b>Site Purchase / Bond Related Costs</b>				
70099	Site Purchase	\$56,461,000.00	\$5,990,005.01	\$62,451,005.01
70105	Bond Related Costs	\$5,160,000.00	\$0.00	\$5,160,000.00
	<b>Total Site Purchase Bond Related Costs</b>	<b>\$61,621,000.00</b>	<b>\$5,990,005.01</b>	<b>\$67,611,005.01</b>
	<b>Total Project Costs</b>	<b>\$321,471,579.00</b>	<b>\$7,972,773.53</b>	<b>\$329,444,352.53</b>
<b>Contingency</b>				
	1% Inflation (delta over overage)	\$6,788,547.00	-\$6,788,547.00	\$0.00
	Contingency	\$11,489,217.00	-\$1,184,226.53	\$10,304,990.47
	City Funded Betterments	\$0.00	\$403,579.00	\$403,579.00
	<b>Total Contingencies</b>	<b>\$18,277,764.00</b>	<b>-\$7,569,194.53</b>	<b>\$10,708,569.47</b>
	<b>Total Project Budget with Contingencies</b>	<b>\$339,749,343.00</b>	<b>\$403,579.00</b>	<b>\$340,152,922.00</b>
<b>Other Funding Sources</b>				
	Convention and Visitors Bureau	\$0.00	\$3,500,000.00	\$3,500,000.00
	Brownfield Reimbursement	\$0.00	\$810,000.00	\$810,000.00
		<b>\$0.00</b>	<b>\$4,310,000.00</b>	<b>\$4,310,000.00</b>
	<b>Total Project Budget plus Other Funding Sources</b>	<b>\$339,749,343.00</b>	<b>\$4,713,579.00</b>	<b>\$344,462,922.00</b>

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3           That the Lease Agreement between the West Haymarket Joint Public Agency and Lamar  
4 Advertising Company for the lease of property at 660 N Street for the purpose of maintaining an  
5 existing free standing sign on the property, attached hereto and incorporated herein by this  
6 reference, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency  
7 Board of Representatives is hereby authorized to execute said Lease Agreement on behalf of the  
8 West Haymarket Joint Public Agency.

9           Adopted this \_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

## LEASE AGREEMENT

This Agreement of lease is made by and between the West Haymarket Joint Public Agency, as Lessor, and Lamar Advertising Company, as Lessee for the leasing of property commonly known as 660 N Street for the purpose of maintaining a freestanding sign with up to two faces on the property.

**WHEREAS** the West Haymarket Joint Public Agency acquired property commonly known as 660 N Street; and

**WHEREAS** Lamar Advertising Company holds a lease interest in said property as a result of lease entered with the previous owner of said property; and

**WHEREAS** the West Haymarket Joint Public Agency does not immediately require the property for its own uses; and

**WHEREAS** Lamar Advertising Company desires to continue advertising on the existing sign at said location.

**NOW THEREFORE** the West Haymarket Joint Public Agency (hereinafter “Lessor”) and Lamar Advertising Company (hereinafter “Lessee”) agree as follows:

1. The Lessor does hereby lease and demise to the Lessee the entire plot or premises described as Lots 6-15 and the west 25 feet of Lot 16, Block 51, Original Lincoln, Lancaster County, Nebraska except for the 8.5 feet lying on either side of the centerline of the BNSF Railway Company’s spur track located on Lots 7, 8, and 15, Block 51, Original Lincoln, Lancaster County, Nebraska.(hereinafter the “Leased Premises”).
2. That the term of said lease shall be on a year to year basis beginning the 3rd day of March, 2012 and ending the 2<sup>nd</sup> day of March the following year. This lease shall automatically renew on a continuing annual basis for an additional one year period unless the Lessor provides notice in writing of its intent to terminate said lease at least thirty (30) days prior to the expiration date of the lease.
3. That Lessee shall pay to the Lessor annual rent in the amount of one-sixth (1/6) Lessee’s annual sign face rent of a fourteen feet by forty-eight feet Rotary Bulletin as more specifically set forth in the rate card for the existing freestanding sign on the Leased Premises, said rent to be paid in advance of the lease period. The rent for the first year of this lease shall be Four Thousand Two Hundred Seventy and No/100 Dollars (\$4,270.00) . For all subsequent years, Lessee shall provide Lessor with a true and accurate copy of its rate card annually by no later than February 1 of the year in which the new term will begin for the purpose of establishing the lease rent for the additional one year term of this Lease.

4. That Lessee shall have the right to construct and maintain the existing advertising sign structure and equipment on the demised premises and post, paint, illuminate, and maintain advertising on such structures in accordance with Chapters 22.05 and 27.69 of the Lincoln Municipal Code. All structures, equipment, and materials placed upon said premises by the Lessee shall always remain the personal property of, and may be removed by, Lessee at any time prior to or within a reasonable time, not to exceed ninety (90) days, after the expiration of the term hereof or any extension thereof.
5. That Lessor and Lessee agree that Lessee shall have free and reasonable access to and use of any part of any ground or structure on said premises as may be necessary for Lessee to construct, maintain, post, paint, illuminate, repair, or remove its advertisements and structures.
6. That if at any time (a) the sign or sign structure of the Lessee on the leased premises shall be or become entirely or partially obscured or destroyed; or (b) the said premises shall be or become unsafe for the maintenance of the Lessee's sign structures thereon, or unable to support such structure; or (c) the value of said location for advertising purposes shall be or become diminished; or (d) there be a temporary or permanent diversion of traffic from the street or streets adjacent to, or leading to or past, the said premises, or a change in the direction of traffic on such street or streets; or (e) the Lessee be unable to obtain from the authorities having any jurisdiction any necessary permit for the maintenance of such sign or sign structure; or (f) the Lessee be prevented by any present or future law or ordinance, or by the authorities having jurisdiction, from maintaining on said premises such sign or signs (of special or standard size, design, and construction), as the Lessee may so desire to construct or maintain - - then in such event, at the option of the Lessee, this lease shall terminate on thirty (30) days written notice to the Lessor by certified mail addressed to Lessor as provided in this Agreement, and the Lessor agrees thereupon to return to the Lessee any rent paid in advance for the unexpired term; provided, however, that if the conditions described in (a), (b), (c), and (d) hereof, or any part of them, shall at any time temporarily exist, then the Lessee shall at its option, in lieu of such termination of this lease, be entitled to an abatement of the rent payable hereunder, for and during the period of the existence of such conditions, or any of them, and to the return of any rent paid in advance for such period of abatement.
7. That Lessor agrees not to allow any other signs to be erected on adjoining premises owned or controlled by Lessor, without first obtaining Lessee's written approval.
8. That it is expressly understood that neither the Lessor nor the Lessee is bound by any stipulation, representations, or agreements not specifically made part of this

Agreement.

9. That Lessee hereby reserves the right, and said right is granted to Lessee, to sell, assign, and set over all of Lessee's right, title, and interest in this lease to any financially responsible assignee upon the express and written assumption by the assignee of all of the obligations of the Lessee herein named and upon such assumption, Lessee shall be fully discharged from any and all obligations under this Agreement.
10. That this lease shall inure to the benefit of and be binding upon the personal representatives, successors, and assigns of the parties hereto.
11. A notice under this Agreement by a party to the other party shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to Lessee, Lamar Outdoor Advertising at:

Scott Morton - Vice President and General Manager  
The Lamar Companies  
3870 Sky Park Road, Bldg. 700  
Grand Island, Nebraska 68801  
Fax: 308-382-2477

and to the Lessor, the West Haymarket Joint Public Agency at:

Lincoln City Attorney's Office  
555 South 10<sup>th</sup> Street, Suite 300  
Lincoln, Nebraska 68508  
Fax: 402-441-8812

12. That the Lessor may, at its convenience, require, at its convenience, removal of said sign structure at any time by giving a thirty day written notice to Lessee, and that upon giving notice of termination of this Agreement, Lessor shall return any pre-paid rent on a pro-rata basis to the Lessee.
13. The Lessee shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting the Lessee and the Lessor, its

officials, contractors, employees, and those directly or indirectly employed by Lessor as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Lessee and Lessee's employees, or those directly or indirectly employed by Lessee. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- a. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- b. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- c. Personal Injury Damage - \$1,000,000 each Occurrence; and
- d. Contractual Liability - \$1,000,000 each Occurrence; and
- e. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
- f. Medical Expenses (any one person) - \$10,000
- g. Fire Damage (any one fire) - \$100,000

Lessee shall provide and attach to this Agreement a Certificate of Insurance for its General Liability Insurance naming the Lessor as an additional insured on the General Liability Insurance as required by this Agreement. For all subsequent one year terms, Lessee shall provide Lessor with a similar Certificate of Insurance naming the Lessor as an additional insured by no later than the first day of February prior to the commencement of the new term. In addition, Lessee shall provide proof of Workers' Compensation, where appropriate, to Lessor.

Lessee shall provide to Lessor with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

- 14. That Lessee and Lessor agree that this Agreement supercedes and replaces the Lease Agreement governing said property and from which Lessee originally obtained an interest in the Leased Premises dated September 3, 1998 and recorded in the Office of the Register of Deeds for Lancaster County, Nebraska on November 3, 2004 as Instrument No. 2004-071992.

DATED and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EXECUTED BY:

\_\_\_\_\_  
Scott Morton  
Vice President and General Manager

The Lamar Companies  
3870 Sky Park Road, Bldg 700  
Grand Island, Nebraska 68801

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Chris Beutler - Chairperson  
West Haymarket Joint Public  
Agency

\_\_\_\_\_  
Date of Execution



**RESOLUTION NO. WH- \_\_\_\_\_**

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

3           That the Construction Manager at Risk Agreement for Preconstruction Services between  
4 the West Haymarket Joint Public Agency and Hausmann Construction Inc. and J.E. Dunn  
5 Construction Company, a Joint Venture, for construction of the Precast Parking Deck No. 1 (Bid  
6 No. 12-008), is hereby approved and the Chairperson of the West Haymarket Joint Public  
7 Agency Board of Representatives is hereby authorized to execute said Construction Manager at  
8 Risk Agreement on behalf of the West Haymarket Joint Public Agency.

9           Adopted this \_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the    day of    in the year 2012  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status and address)

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

and the Construction Manager:  
(Name, legal status and address)

Hausmann Construction and J.E. Dunn Construction  
a Joint Venture

for the following Project:  
(Name and address or location)

West Haymarket Arena and attached structures, the Parking Garage, and the Arena Plaza  
as defined by the JPA

The Design Professionals (hereinafter "Architect"):  
(Name, legal status and address)

Davis Design

The Owner's Designated Representative:  
(Name, address and other information)

PC Sports

The Construction Manager's Designated Representative:  
(Name, address and other information)

### ADDITIONS AND DELETIONS:

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

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

The Architect's Designated Representative:  
*(Name, address and other information)*

| Michael A. Wachal, P.E.

The Owner and Construction Manager agree as follows.

Init.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
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- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Construction Manager understands and acknowledges that this Agreement is limited to Preconstruction Phase Services for the Project. The Construction Phase Services for the Project will require further negotiation with Owner and approval of the Board of Representatives for the West Haymarket Joint Public Agency. The Contract Documents for the Preconstruction Phase Services consist of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. It is anticipated that prior to completion of the Preconstruction Phase Services and submittal of the Construction Manager's Guaranteed Maximum Price proposal, this Agreement shall be amended to include the Construction Phase Services. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. AIA Document A201™–2007 shall also apply to the extent that it defines capitalized terms used in this Agreement. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

### ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2.. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

Init.

## **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, input from competent subcontractors, or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

**§ 2.1.5.3** All estimates shall be broken down by individual trades and cost components with quantity take offs and unit prices associated with the various identifiable elements of each trade. Estimates shall also include descriptions of limitations, scope, conditions, assumptions, quality standards, and other considerations used. Construction Manager shall provide such other information reasonably requested by the Owner to evaluate and understand the estimates provided.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop Subcontractor interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be procured well in advance of construction. The Construction Manager shall expedite and coordinate the procurement, ordering and delivery of materials that must be ordered well in

Init.

advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. The Construction Manager's recommendations concerning the Project will be made based upon the Construction Manager's experience as a construction manager or general contractor, not as an architect or engineer, and the ultimate responsibility for the performance or aesthetic characteristics inherent in the design shall remain with the Architect. Nothing in this Agreement, or elsewhere in the Contract Documents, shall be construed to create any responsibility of or liability upon the Construction Manager for the accuracy, adequacy, sufficiency, or safety of the design of the Project.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, the Davis-Bacon Act, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At such time as the Contract Documents are deemed to be sixty percent (60%) complete as mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The negotiated Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including the Cost of the Work, including the Cost of the Work contingency described in Section 2.2.4, a fixed fee amount for the Cost of the General Conditions, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager's Guaranteed Maximum Price proposal shall include a written statement of its basis, including but not limited to the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract upon which the Guaranteed Maximum Price is based;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 The proposed Guaranteed Maximum Price, including a detailed statement of the estimated Cost of the Work organized by trade categories or systems and allowances, the Cost of Work Contingency, the Cost of the General Conditions, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A time limit by which the Owner must accept the Guaranteed Maximum Price proposal (which shall not be less than 30 days).

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a Cost of Work contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but that are not the basis for a Change Order. The amount of Cost

of the Work contingency to be included in the Guaranteed Maximum Price shall be a percentage of the aggregate value of the Cost of the Work to be negotiated between Owner and Construction Manager prior to the Construction Manager's submittal of the Guaranteed Maximum Price proposal.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing on or before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. In the event that the Guaranteed Maximum Price proposal is not acceptable to the Owner, in the Owner's sole and exclusive judgment, Owner may terminate this Agreement.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all non-exempt sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### **§ 2.3 Construction Phase**

The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this section.

*(Paragraphs deleted)*

### **§ 2.4 Professional Services**

Section 3.12.10 of A201-2007 shall apply to the Preconstruction Phase.

### **§ 2.5 Hazardous Materials**

Section 10.3 of A201-2007 shall apply to the Preconstruction Phase.

## **ARTICLE 3 OWNER'S RESPONSIBILITIES**

### **§ 3.1 Information and Services Required of the Owner**

**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, sustainability and site requirements.

**§ 3.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material

change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

**§ 3.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 3.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 3.1.4.1** The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

**§ 3.1.4.3** Not used for Preconstruction Services.

*(Paragraph deleted)*

**§ 3.2 Owner's Designated Representative**

Paula Yancey of PC Sports, or her designee, has been designated as the Owner's representative and is authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

**§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Init.

A Fixed Lump Sum of Twenty-Six Thousand Three Hundred Fifty Dollars (\$26,350). Such lump sum amount includes all of the Construction Manager's costs of travel, local and long-distance telephone charges, computer and electronic copying and transmission expenses, delivery charges, Construction Manager's personnel expenses and overhead, and photocopying and reproductions (except for the cost of plan reproduction associated with bidding and determination of the Guaranteed Maximum Price).

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six ( 6 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

*(Paragraph deleted)*

#### § 4.2 Payments

§ 4.2.1 Payment of the \$26,340 for Preconstruction Phase services shall be made in six monthly payments of \$4,391.66.

#### § 4.2.2

*(Paragraphs deleted)*

Each monthly payment is due and payable within 20 days of the submission of the Construction Manager's application for payment, which may be made on or after the first day of each month beginning April 1, 2012.

### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this Article.

*(Paragraphs deleted)*

### ARTICLE 6 [NOT USED]

*(Paragraphs deleted)*

*(Table deleted)*

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this Article.

*(Paragraphs deleted)*

### ARTICLE 8 INSURANCE

For the Preconstruction Phase services, the Construction Manager shall purchase and maintain insurance as set forth in the Insurance Requirements for All West Haymarket Joint Public Agency Contracts (approved by JPA Counsel Feb. 2012) attached hereto as Exhibit A.

*(Table deleted)*

### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Litigation in a court of competent jurisdiction

*(Paragraphs deleted)*

Init.

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

*(Paragraphs deleted)*

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to the Preconstruction Phase.

### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to the Preconstruction Phase.

**§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5 Other provisions:**

**§ 11.5.1** The parties agree (subject to Owner’s right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this section.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

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

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

**CONSTRUCTION MANAGER:**

**HAUSMANN CONSTRUCTION AND J.E. DUNN  
CONSTRUCTION, A Joint Venture**

**HAUSMANN CONSTRUCTION**

By: \_\_\_\_\_

**J.E. DUNN CONSTRUCTION**

By: \_\_\_\_\_

**OWNER:**

**WEST HAYMARKET JOINT PUBLIC AGENCY**

By: \_\_\_\_\_

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

*(Table deleted)(Paragraphs deleted)*

# **Additions and Deletions Report for** **AIA<sup>®</sup> Document A133<sup>™</sup> – 2009**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:42:05 on 02/22/2012.

## **PAGE 1**

**AGREEMENT** made as of the day of in the year 2012

...

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

...

Hausmann Construction and J.E. Dunn Construction  
a Joint Venture

...

West Haymarket Arena and attached structures, the Parking Garage, and the Arena Plaza as defined by the JPA

...

The Architect-Design Professionals (hereinafter "Architect"):

...

Davis Design

...

PC Sports

## **PAGE 2**

Michael A. Wachal, P.E.

## **PAGE 3**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution Construction Manager understands and acknowledges that this Agreement is limited to Preconstruction Phase Services for the Project. The Construction Phase Services for the Project will require further negotiation with Owner and approval of the Board of Representatives for the West Haymarket Joint Public Agency. The Contract Documents for the Preconstruction

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**User Notes:**

(944189803)

Phase Services consist of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance It is anticipated that prior to completion of the Preconstruction Phase Services and submittal of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. this Agreement shall be amended to include the Construction Phase Services. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; ~~to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.~~ Owner. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

...

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. ~~For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. AIA Document A201™-2007 shall also apply to the extent that it defines capitalized terms used in this Agreement.~~ The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. ~~The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. 2.2.~~ The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

#### PAGE 4

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, ~~volume~~ volume, input from competent subcontractors, or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

...

**§ 2.1.5.3** All estimates shall be broken down by individual trades and cost components with quantity take offs and unit prices associated with the various identifiable elements of each trade. Estimates shall also include descriptions of limitations, scope, conditions, assumptions, quality standards, and other considerations used. Construction Manager shall provide such other information reasonably requested by the Owner to evaluate and understand the estimates provided.

The Construction Manager shall develop ~~bidders'~~ Subcontractor interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ~~ordered~~ procured well in advance of construction. The Construction Manager shall expedite and coordinate the procurement, ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

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The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. The Construction Manager's recommendations concerning the Project will be made based upon the Construction Manager's experience as a construction manager or general contractor, not as an architect or engineer, and the ultimate responsibility for the performance or aesthetic characteristics inherent in the design shall remain with the Architect. Nothing in this Agreement, or elsewhere in the Contract Documents, shall be construed to create any responsibility of or liability upon the Construction Manager for the accuracy, adequacy, sufficiency, or safety of the design of the Project.

...

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, the Davis-Bacon Act, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

...

§ 2.2.1 ~~At a time to be such time as the Contract Documents are deemed to be sixty percent (60%) complete as mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The negotiated Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including the Cost of the Work, including contingencies described in Section 2.2.4, the Cost of the Work contingency described in Section 2.2.4, a fixed fee amount for the Cost of the General Conditions, and the Construction Manager's Fee.~~

...

§ 2.2.3 ~~The Construction Manager shall include with the Manager's Guaranteed Maximum Price proposal shall include a written statement of its basis, which shall include including but not limited to the following:~~

.1 ~~A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;~~ Contract upon which the Guaranteed Maximum Price is based;

...

.3 ~~A statement of the~~ The proposed Guaranteed Maximum Price, including a detailed statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, systems and allowances, the Cost of Work Contingency, the Cost of the General Conditions, and the Construction Manager's Fee;

...

- .5 A date-time limit by which the Owner must accept the Guaranteed Maximum Price-Price proposal (which shall not be less than 30 days).

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include ~~its a Cost of Work~~ contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but ~~not included in a Change Order that are not the basis for a Change Order.~~ The amount of Cost of the Work contingency to be included in the Guaranteed Maximum Price shall be a percentage of the aggregate value of the Cost of the Work to be negotiated between Owner and Construction Manager prior to the Construction Manager's submittal of the Guaranteed Maximum Price proposal.

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§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing on or before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. In the event that the Guaranteed Maximum Price proposal is not acceptable to the Owner, in the Owner's sole and exclusive judgment, Owner may terminate this Agreement.

...

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all non-exempt sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

...

The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this section.

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

~~§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.~~

~~§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.~~

~~§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.~~

~~§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.~~

~~§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.~~

~~§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.~~

~~Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.~~Phase.

...

~~Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.~~Phase.

...

~~§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.~~

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~~§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~Not used for Preconstruction Services.

~~§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.~~

~~The Owner shall identify a representative Paula Yancey of PC Sports, or her designee, has been designated as the Owner's representative and is authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~

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

PAGE 8

A Fixed Lump Sum of Twenty-Six Thousand Three Hundred Fifty Dollars (\$26,350). Such lump sum amount includes all of the Construction Manager's costs of travel, local and long-distance telephone charges, computer and electronic copying and transmission expenses, delivery charges, Construction Manager's personnel expenses and overhead, and photocopying and reproductions (except for the cost of plan reproduction associated with bidding and determination of the Guaranteed Maximum Price).

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

~~§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

~~§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payment of the \$26,340 for Preconstruction Phase services shall be made in six monthly payments of \$4,391.66.~~

~~§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~

~~—%— Each monthly payment is due and payable within 20 days of the submission of the Construction Manager's application for payment, which may be made on or after the first day of each month beginning April 1, 2012.~~

...

The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this Article.

~~§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.~~

~~§ 5.1.1 The Construction Manager's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)~~

~~§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:~~

~~§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed \_\_\_\_\_ percent (\_\_\_\_%) of the standard rate paid at the place of the Project.~~

~~§ 5.1.5 Unit prices, if any:  
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)~~

**ARTICLE 6 [NOT USED]**

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ 5.2 Guaranteed Maximum Price**

~~§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.  
(Insert specific provisions if the Construction Manager is to participate in any savings.)~~

~~§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.~~

**§ 5.3 Changes in the Work**

~~§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

~~§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.~~

~~§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

~~§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.~~

~~§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment~~

provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 6 – COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

~~§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.~~

~~§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.~~

### **§ 6.2 Labor Costs**

~~§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.~~

~~§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~

~~§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.~~

~~§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~

### **§ 6.3 Subcontract Costs**

~~Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.~~

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

~~§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.~~

~~§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.~~

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

~~§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no~~

longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

### **§ 6.7 Other Costs and Emergencies**

~~§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.~~

~~§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.~~

~~§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.~~

~~§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.~~

### **§ 6.8 Costs Not To Be Reimbursed**

~~§ 6.8.1 The Cost of the Work shall not include the items listed below:~~

- ~~.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;~~
- ~~.2 Expenses of the Construction Manager's principal office and offices other than the site office;~~
- ~~.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;~~
- ~~.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;~~
- ~~.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
- ~~.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;~~
- ~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and~~
- ~~.8 Costs for services incurred during the Preconstruction Phase.~~

### **§ 6.9 Discounts, Rebates and Refunds**

~~§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.~~

~~§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

### **§ 6.10 Related Party Transactions**

~~§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.~~

~~§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the~~

cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this Article.

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

~~§ 7.1.7~~ Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- ~~.1~~ Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- ~~.2~~ Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~.3~~ Add the Construction Manager's Fee, less retainage of ~~—~~ percent (~~—~~%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- ~~.4~~ Subtract retainage of ~~—~~ percent (~~—~~%) from that portion of the Work that the Construction Manager self performs;
- ~~.5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~.6~~ Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- ~~.7~~ Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

~~§ 7.1.8~~ The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

~~§ 7.1.9~~ Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

~~§ 7.1.10~~ In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## ~~§ 7.2 Final Payment~~

~~§ 7.2.1~~ Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- ~~.1~~ the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- ~~.2~~ the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- ~~.3~~ a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

~~§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~

~~§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.~~

**ARTICLE 8 INSURANCE AND BONDS**

~~For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)~~

**ARTICLE 8 INSURANCE**

For the Preconstruction Phase services, the Construction Manager shall purchase and maintain insurance as set forth in the Insurance Requirements for All West Haymarket Joint Public Agency Contracts (approved by JPA Counsel Feb. 2012) attached hereto as Exhibit A.

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
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...

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

**§ 9.3 Initial Decision Maker**

~~The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~

~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

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**~~§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price~~**

~~Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.~~

~~§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.~~

~~§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~

**~~§ 10.3 Suspension~~**

~~The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.~~

...

Section 1.5 of A201-2007 shall apply to ~~both the Preconstruction and Construction Phases.~~Phase.

...

Section 13.1 of A201-2007 shall apply to ~~both the Preconstruction and Construction Phases.~~Phase.

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§ 11.5.1 The parties agree (subject to Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement upon the terms and conditions of this section.

...

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

**CONSTRUCTION MANAGER:** HAUSMANN CONSTRUCTION AND J.E. DUNN CONSTRUCTION, A Joint Venture

HAUSMANN CONSTRUCTION

By: \_\_\_\_\_

J.E. DUNN CONSTRUCTION

By: \_\_\_\_\_

**OWNER:** WEST HAYMARKET JOINT PUBLIC AGENCY

By: \_\_\_\_\_

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

**§ 12.2** The following documents comprise the Agreement:

~~.1~~ AIA Document A133 – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

~~.2~~ AIA Document A201 – 2007, General Conditions of the Contract for Construction

~~.3~~ AIA Document E201™ – 2007, Digital Data Protocol Exhibit, if completed, or the following:

~~.4~~ AIA Document E202™ – 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

~~.5~~ Other documents:  
(List other documents, if any, forming part of the Agreement.)

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

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
**CONSTRUCTION MANAGER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

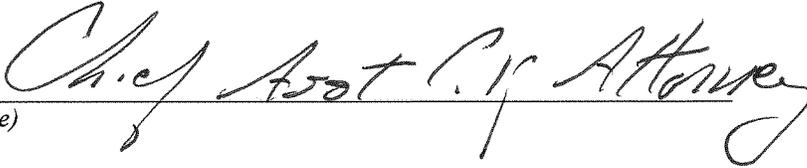
## Certification of Document's Authenticity

AIA® Document D401™ – 2003

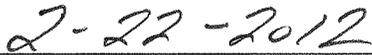
I, Rick Peo, Chief Asst. City Attorney, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:42:05 on 02/22/2012 under Order No. 0592695983\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)



(Title)



(Dated)