

**AGENDA FOR THE WEST HAYMARKET**  
**JOINT PUBLIC AGENCY(JPA)**  
**TO BE HELD FRIDAY, AUGUST 13, 2010 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 Snyder)
2. Approval of the minutes of JPA meeting July 22, 2010 (Chair Snyder)
3. Public Comment and Time Limit Notification Announcement (Chair Snyder)

*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.*

4. Bill No. WH 10-01 Approval of Assignment and Assumption Agreement(s) attached to WH JPA Resolution (Rick Peo)
5. Approval of Payment Register (Steve Hubka)
6. Bill No. WH 10-02 Reimbursement Resolution for West Haymarket JPA (Lauren Wismer/ Lisa DeBuse)
7. Public Officials Liability Insurance (Bill Kostner)
8. Discussion of upcoming 2010-2011 JPA Budget and Public Hearing (Steve Hubka)
9. **Executive Session** for Purposes of Negotiation with proposed Program Manager (Roger Figard)
10. Set next meeting date: Friday August 27, 2010 3:00 P.M. (Council Chambers Rm 112)
11. Motion to Adjourn

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**July 22, 2010**

Meeting Began At: 3:05 P.M.

Meeting Ended At: 3:40 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

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

Chair Snyder opened the meeting and introduced herself, Mayor Chris Beutler and Regent Tim Clare.

The open meetings law is in effect and is posted in the back of the room.

**Item 2 – Approval of the Minutes of the JPA Meeting July 8, 2010**

Snyder asked for any corrections or changes to the minutes from the JPA meeting on July 8, 2010. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. The motion passed 3-0.

**Item 3 – Public Comment and Time Limit Notification**

Snyder stated that the Board will allow public comments related to the specific items listed on today's agenda. Anyone in attendance wishing to speak should come forward to the microphone and will be given a total of five minutes to speak.

**Item 4 – Bond Resolution/Preliminary Official Statement/Facilities Agreement**

Lauren Wismer and Scott Keene came forward to discuss the Bond Resolution for the issuance of the first series of bonds by the JPA. The authorization before the Board is not to exceed \$100 million with an interest rate not to exceed 5.5% for a term not to exceed 35 years. Those are the general parameters for financing that are frequently used by the City of Lincoln and University of Nebraska. It is anticipated that the bonds will be sold in a public sale. The plan is to go to market in the middle of August and close at end of August or early September.

Keene explained to the Board that the market for Build America bonds has been choppy over the last month. He has seen a bit of dislocation in the market place but still feels there is a

significant amount of savings that can be achieved through Build America bond financing. Current interest rates have Build America financing with net costs of 4.5% to 4.6%. The Bond Resolution allows for a rate not to exceed 5.5%, so there is still a fair amount of cushion available. Build America financing provides for the bonds to be issued on a taxable basis with the federal government paying 35% of the semiannual interest payments back to the issuer. Keene and Wismer are currently working with the rating agencies and will know more about the ratings in early August.

Clare asked Keene to explain the pros and cons of Build America bonds and why those are preferable over tax exempt bonds. Keene stated that the interest rate is a big advantage of the Build America bonds. Currently they estimate tax exempt financing would be in the 4.9% to 5.0% range. Build America bonds tend to have a greater advantage the longer the maturity period which is beneficial with a 35 year financing. The down side to this financing is the required filing of an 8038-CP that provides for the repayment of the subsidies back to the issuer. The guidelines state that it must be filed no less than 45 days and no more than 90 days in advance of an interest payment date. There is also some additional scrutiny with this financing as the IRS has indicated that they will be looking at these carefully in relation to pricing and how the proceeds are used. There could be some additional administrative costs if the IRS comes in to look at the financing.

Clare inquired about what would happen if we did not comply with the IRS guidelines. Wismer acknowledged that the federal government could discontinue the subsidy. If that should happen the JPA would have the option, if we are in the period in which the bonds are callable, to roll into tax exempt financing. However, that would be a worst case scenario. The government could do a number of things ranging from nothing to removal of the subsidy.

Snyder asked Keene to explain to the public what happens when the bonds go to market and how they can be purchased. Keene explained that the City of Lincoln usually sells their new money issues through a competitive sales process in which a public auction is held. Bid specifications will be provided to all of the securities firms in the country. Those firms will be communicating with potential buyers the week prior to the sale. Hopefully on the day of the sale we will receive a number of bids and the bonds will be awarded to the lowest responsible bidder. The winning firm will then turn around and immediately begin the process of selling the bonds. Until the winning bidder is known it is hard to say how interested parties can purchase the bonds. Keene does plan to bring the second series of bonds, which may be Recovery Zone Economic Development bonds, to market through a negotiated sale. This will give local firms a chance to market the bonds and make an effort to sell the bonds locally to interested investors.

Clare inquired if Keene felt that the market would react favorably to the sale of these bonds with the market being choppy over the past few months. Keene noted that what he has seen in the market has been limited to the Build America financing due to the additional interest by the IRS and some negative press in regards to how the IRS will be looking at these financings. He is still seeing some wide spreads but much more comfort from the buyers. He will continue to monitor the situation and would look at switching to tax exempt financing if there is a problem.

Snyder opened the floor for public comments on this item. No one came forward.

Beutler made a motion to approve the Bond Resolution Preliminary Official Statement and Facilities Agreement. Clare seconded the motion. Motion approved 3-0.

### **Item 5 – JPA Resolution for Assignment and Assumption Agreement**

Rick Peo informed the Board that this resolution is to accept the assignment and assumption of various contracts that the City has entered into for the West Haymarket project. A couple of the items have been approved for reimbursement at previous meetings. This resolution is broader and includes not only the obligation of payment but the JPA would assume the responsibilities of carrying out the contract obligations. It has been understood that when the Board was created, it would be the owner and operator of the facilities; therefore it would be the party entering into these contracts. If the resolution is adopted, this agreement should be signed by Chair Snyder as well as a separate assignment assumption form that UP has requested we utilize.

Clare asked if the Board would have the opportunity to review the agreements as he had not seen some of them previously. Dan Marvin indicated that he would get the Board members copies of the agreements. Marvin then reviewed the agreements listed in Exhibit A with the Board.

1. Reimbursement of the pledge that 2015 made to the City to get the project going. They pledged up to \$1.6 million to do some of the architectural work and planning documents. The understanding was that if the project were to move forward there would be a reimbursement of those funds back to 2015 and if the project didn't get voter approval there would be no reimbursement. Subsequently 2015 has made a pledge to raise \$20 million to contribute towards this project. Snyder added that this agreement has been public previously as the City Council approved this resolution on January 11, 2010.
2. Reimbursement to Burlington Northern for the design of their track. Burlington indicated that if we wanted to start construction in 2010 we need to help get the track design completed. The estimate for that work was \$100,000 and that money will come off the purchase price. The City also agreed to reimburse BNSF \$25,000 for outside counsel as we were fast tracking the legal agreement.
3. Items 3, 4, 9 and 10 are somewhat related as they are Right of Entry and Access Agreements for properties independent of Burlington Northern. This agreement is to do environmental testing on property owned by JayLynn LLC.
4. Right of Entry Agreement with JayLynn LLC in order to secure an area in which the University could send out anthropologists and archeologists to conserve historical items.
5. Service Agreement for \$14,157 with the University to bring in a team to conduct historical testing at 660 N Street.
6. Relocation Agreement with Qwest Communications to reimburse their costs to relocate their conduit system. The reimbursement request came before the Board and was approved on June 10, 2010.
7. Purchase and Sale Agreement with Union Pacific. This agreement consists of constructing new track in what is known as the Y area and the cost of purchasing land for Union Pacific. The cost of the track relocation is an estimate, but the design has been completed. That work will hopefully begin this fall.

8. Reimbursement Agreement with MCI to relocate their conduit system. The reimbursement request came before the Board and was approved on June 25, 2010.
9. Right of Entry Agreement with Magdalen Franssen in order to do environmental testing.
10. Right of Entry Agreement with Noohznik LP in order to do environmental testing.
11. Engineering Agreement with Speece Lewis to perform survey work on the Charleston Bridge. Items 11 and 12 were discussed at the last Board meeting and are within the JPA boundaries.
12. Engineering Agreement with JEO to perform survey work at M and N Streets.
13. Service Agreement with Benesh to have a team come in and trench to look for artifacts or other historic elements in the area near Salt Creek. This is something that was needed in order to move railroad tracks. They did not find anything but it was an effort to ensure we conserved any historic items that might have been there.
14. Consultant Agreement with Benesh for work as our lead agency for environmental remediation.

Peo noted that all of these contracts are public record and are on file with the City Clerk's Office for inspection by anyone in the public. Agreements approved by ordinance or resolution by the City Council are available on the City website. Those approved by Executive Order are not on the website but anyone can come and ask to see the document. Snyder added that the JPA was officially formed on June 10, 2010. If these agreements had not been entered into earlier this year, the project would not be moving at the speed it is.

Snyder then opened the floor for public comment. Coby Mach came forward and suggested that the JPA put the agenda online with clickable links to documents as the City Council and County Board do. As Regent Clare has not had an opportunity to review the documents, it would be appropriate to delay a vote to the next meeting. Snyder observed that the JPA currently has no stationary and no webpage since it is only five weeks old, however, there is great interest to create a website and get all of the documents online. Due to the speed that the Board is trying to move at, some of the documents were still being proofed and edited over the weekend.

Snyder inquired if delaying the vote would cause any problems. Herz observed that the Board does not meet again for four weeks and although a delay is not optimal, it wouldn't create a crisis. Clare indicated that the only agreement he has an issue with is the purchase agreement with UP. The agreement says the JPA is agreeing to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations and conditions outlined in the purchase agreement. He did not feel comfortable agreeing to that without knowing what all of the conditions are.

Marvin suggested amending the Resolution to exclude item 7 on Exhibit A. He will make sure Clare gets a copy of the UP Purchase Agreement and will bring forward a new Resolution for that agreement at the next Board meeting.

Beutler moved to approve the Resolution for Assignment and Assumption Agreements excluding lines 11 through 18 and item 7 on Exhibit A. Clare seconded the motion. Motion approved 3-0

**Item 6 – Set Next Meeting Date: Friday August 13, 2010 3:00 P.M.**

The next JPA Board meeting is scheduled for August 13, 2010 at 3:00 P.M.

**Item 12 – Motion to Adjourn**

Clare motioned to adjourn. Beutler seconded the motion. Meeting adjourned at 3:40.

**Prepared by: Melissa Ramos-Lammli, Engineering Services**

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

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

3 That the Second Assignment and Assumption Agreement, which is attached hereto  
4 marked as Attachment "A" and incorporated herein by this reference, between the City of  
5 Lincoln, Nebraska and the West Haymarket Joint Public Agency providing for the City as  
6 assignor to assign and for the Agency as assignee to assume all of the City's rights, interests,  
7 duties and obligations under the Agreements listed in Exhibit "A" attached to the Second  
8 Assignment and Assumption Agreement, is hereby accepted and approved and the Chairperson  
9 of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to  
10 execute said Second Assignment and Assumption Agreement on behalf of the West Haymarket  
11 Joint Public Agency.

12 The Chairperson of the West Haymarket Joint Public Agency Board of Representatives is  
13 hereby further authorized to execute without further action of the Board of Representatives any  
14 other assignment and assumption documents which may be needed to obtain any required third  
15 party consent to the Second Assignment to and Assumption of such Agreements by the West  
16 Haymarket Joint Public Agency, including but not limited to the Assignment and Assumption of  
17 Purchase and Sale Agreement between the City of Lincoln and the Union Pacific Railroad  
18 Company attached hereto as Exhibit B.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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Legal Counsel for  
West Haymarket Joint Public Agency

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Jayne Snyder, Chair

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Tim Clare

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Chris Beutler

**SECOND ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Second Assignment and Assumption Agreement (“Assignment”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010, between the **City of Lincoln, Nebraska**, a municipal corporation (“City”) and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska (“Agency”).

**RECITALS**

**I.**

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the “Act”), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

**II.**

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

**III.**

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to

the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

#### IV.

The Agency and the City have entered into a Facilities Agreement providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

#### V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreements listed in Exhibit A (“Agreements”) attached hereto and incorporated herein by this reference which were originally entered into with the City, and Agency assume all obligations of the City under said Agreements.

NOW, THEREFORE, in consideration of the above Recitals, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City’s rights, title and interest in and to and under the Agreements. City shall retain no rights, title or interest in or to or under said agreements, and Agency shall be entitled to exercise such rights without consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreements. Agency shall fully and completely indemnify and

hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreements.

3. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreements if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

**City of Lincoln, Nebraska**  
a municipal corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

**West Haymarket Joint Public Agency**  
**Board of Representatives**

By: \_\_\_\_\_  
Jayne Snyder, Chairperson

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing Assignment and Assumption Agreement was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

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

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing Assignment and Assumption Agreement was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

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

LIST OF AGREEMENTS ASSIGNED TO AGENCY

1. Purchase and Sale Agreement between Union Pacific Railroad Company (UPRR) and the City of Lincoln approved by Executive Order No. 83205, dated June 15, 2010, providing for the purchase of certain UPRR property for the sum of \$1,224,000, and the purchase of any additional portions of Block 81, Original Plat, Lincoln, needed for the future BNSF Corridor for the sum of \$2.25 per square foot and the reimbursement of UPRR's actual cost to rehabilitate certain track and a railroad bridge over Salt Creek. The estimated cost of such work is \$1,030,000. (Includes the Mayor's Notice dated January 26, 2010 to UPRR to advance and complete final design of the work).
2. Amendment No. 6 to the Engineering Services Contract between Olsson Associates Inc. and the City of Lincoln approved by Executive Order No. 83299 dated July 19, 2010 providing for Olsson to provide additional professional engineering and planning services and assistance in the development of a West Haymarket Transportation, Environmental and Utilities Plan for the sum of \$245,000.00.

**ASSIGNMENT AND ASSUMPTION OF  
PURCHASE AND SALE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (“Assignor”), and **WEST HAYMARKET JOINT PUBLIC AGENCY** (“Assignee”), whose address is \_\_\_\_\_, Lincoln, Nebraska 68508, WITNESSETH:

IT IS MUTUALLY AGREED by and between the parties hereto as follows:

**Section 1.** Assignor, for a valuable consideration, does hereby sell, transfer and set over to Assignee all of Assignor’s right, title and interest in and to the following:

Purchase and Sale Agreement dated \_\_\_\_\_, 2010 between Assignor, as Buyer, and Union Pacific Railroad Company, a Delaware corporation, as Seller (the “Purchase Agreement”), covering the purchase of certain real property in Lincoln, Lancaster County, Nebraska.

**Section 2.** Assignee hereby accepts the above assignment and, for the benefit of Assignor and Seller, agrees to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations and conditions outlined in the Purchase Agreement to be performed and observed by Assignor and assumes all liabilities mentioned in the Purchase Agreement to be assumed by Assignor.

**Section 3.** This Assignment shall be considered as taking effect as of \_\_\_\_\_, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed in duplicate as of the date first herein written.

**CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

**WEST HAYMARKET JOINT PUBLIC  
AGENCY**

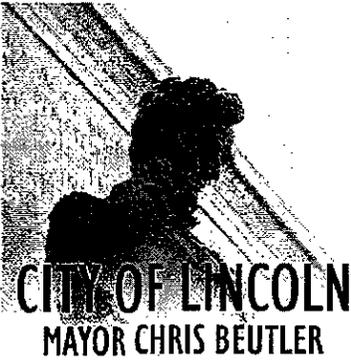
By: \_\_\_\_\_  
Jayne Snyder, Chairperson



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# EXECUTIVE ORDER

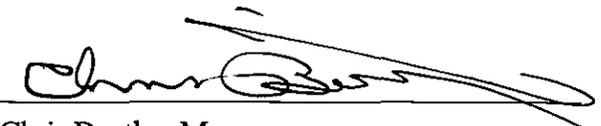
NO. 083299

## BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CHARTER OF THE CITY OF LINCOLN, NEBRASKA:

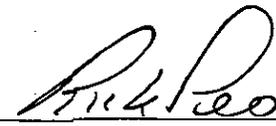
I hereby accept and approve on behalf of the City of Lincoln, the attached Amendment No. 6 to the Contract for professional engineering and planning services and assistance in the development of a West Haymarket Transportation, Environmental and Utilities Plan (Referencing EO #80944) for the additional amount of \$245,000.

The City Clerk is hereby directed to return two fully executed copies to Roger Figard in Public Works, Engineering Services.

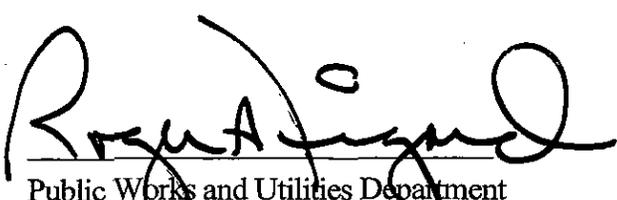
Dated this 19 day of July, 2010

  
Chris Beutler, Mayor

Approved as to Form & Legality:

  
Law Department

Approved:

  
Public Works and Utilities Department

  
Finance Department

**AMENDMENT NO. 6 TO SCOPE OF SERVICES  
FOR  
EXECUTIVE ORDER NO. 80944  
WEST HAYMARKET TRANSPORTATION, ENVIRONMENTAL  
AND UTILITIES PLAN (TEUP)**

On April 10, 2008, Olsson Associates, Inc., entered into an agreement with the City of Lincoln under Executive Order No. 80944 for professional engineering and planning services and assistance in the development of a West Haymarket Transportation, Environmental and Utilities Plan (TEUP). The agreement allows for adjustments in the scope of services and corresponding adjustments in compensation for such changes in the scope of services.

This Amendment No. 6 accomplishes the following:

- Transfers a portion of the work outlined in Amendment No. 5 that is attributed to the affirmative post-bond vote work activities to this Amendment No. 6. A breakdown of the work and associated costs to be transferred is shown in Exhibit A. *Actual Fee of \$75,110 is to be transferred to this Amendment No. 6 from Amendment No. 5.*
- Identifies additional work tasks and efforts that were completed post-affirmative vote that were outside of the scope of work identified in Amendment No. 5. This includes additional work completed to revise sanitary sewer plans to break out the plan set from the railroad project to bid as a City project including revising sewer sizes, adding new construction and securing necessary permits/approvals; additional coordination with the railroads including preparation of exhibits, legal descriptions, surveys and other preliminary design work; coordination with other agencies; and work as requested to support the City in preparing the necessary documents for the definitive agreements with the railroads and other parties. This includes additional work through July 3, 2010 as shown on Exhibit B. *Estimated Fee of \$105,000 for the work shown in Exhibit B.*
- Outlines additional work that is anticipated from July 4, 2010 through October 2, 2010 to support the City in finalizing the necessary agreements with the railroads, assist with agency coordination and assist with bidding of the initial storm water and sanitary sewer improvements. A detailed breakdown of the additional work tasks are shown on the attached Exhibit C. No work as shown on Exhibit C shall begin without authorization of the City's Project Manager or other authorized City representative. *Estimated Fee of \$140,000 for the work shown on Exhibit C.*

This contract amendment increases the total contract amount from \$1,715,050 to \$1,960,050 (an increase of \$245,000). The value of work completed through Amendment No. 5 is thus \$1,639,940 and the amount included in this Amendment No. 6 shall not exceed \$320,110.

In addition to the new work tasks identified above, this Amendment No. 6 shall modify Section II – Administrator of Agreement, of the original agreement dated April 8, 2008. Effective with this Amendment, Mr. Roger Figard will be the City's representative for the purpose of administering the Agreement and shall have the authority on behalf of the City to give approvals under this Agreement.

This contract amendment provides the City the right to transfer or assign this contract to the Joint Public Agency that has been created for the Haymarket Arena Project.

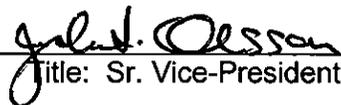
**EXECUTION OF CONTRACT**

Please sign below and return one copy to Olsson Associates, Inc. Upon execution and receipt by both parties, the Document shall form an Agreement between the City of Lincoln and Olsson Associates, Inc. Services will be performed in accordance with the conditions of Executive Order No. 80944.

**CITY OF LINCOLN**

**OLSSON ASSOCIATES, INC.**

By:   
Title: Mayor

By:   
Title: Sr. Vice-President

Date: 7/19, 2010

Date: 7/9, 2010

**EXHIBIT A - AMENDMENT NO. 6**

**BREAKOUT OF AMENDMENT 5 WORK RESPONSIBILITY BETWEEN PRE-AFFIRMATIVE VOTE AND POST AFFIRMATIVE VOTE**

Amendment 5 Task	Estimated Task Cost	Portion of Task Attributed to Pre-Affirmative Vote	Portion of Task Attributed to Post-Affirmative Vote
Task A - Sanitary Sewer Design	\$58,410	\$39,409	\$19,001
Task B - Railroad Exhibits	\$9,720	\$8,000	\$1,720
Task C - Railroad Consultation & Support	\$9,270	\$9,270	\$0
Task D - Coordination for Fiber Relocations	\$7,650	\$6,500	\$1,150
Task E - Storm Water Mitigation Design	\$54,540	\$24,034	\$30,506
Task F - Legal Descriptions/Exhibits for Agreements	\$50,850	\$30,535	\$20,315
Task G - Early Coordination With SHPO	\$14,670	\$12,252	\$2,418
<b>Totals =</b>	<b>\$205,110</b>	<b>\$130,000</b>	<b>\$75,110</b>

**EXHIBIT A – AMENDMENT NO. 6**  
**DESCRIPTION OF TASK ATTRIBUTED TO POST-AFFIRMATIVE VOTE**

**Task A – Sanitary Sewer Design:**

The sanitary sewer design as outlined in Amendment 5 included preparation of final plans for a portion of the new sanitary sewers to be reconstructed to accommodate the railroad track relocation work. This work was identified to be included with the plans and bid documents to be let by the BNSF for the grading work associated with the railroad relocations. The portion of this task completed to support an affirmative vote is as shown on the attached table and includes finalizing the plans and final coordination with the BNSF Railway Company to include this work with the track relocation bidding documents.

**Task B – Railroad Exhibits:**

The railroad exhibits task as outlined in Amendment 5 included additional work to revise the previously developed exhibits per changes in the Memorandum of Understanding between the City of Lincoln and the BNSF Railway Company. The portion of this task completed to support an affirmative vote is as shown on the attached table and includes revisions and additions to exhibits to address comments from the BNSF during review of the MOU.

**Task D – Coordination for Fiber Relocations:**

The coordination with the fiber optic relocations task as outlined in Amendment 5 included work to coordinate with MCI, Qwest and the BNSF to identify a relocation corridor, preliminary cost estimates and agreements to relocate their facilities to accommodate the West Haymarket Project and track relocation work. The portion of this task completed to support an affirmative vote is as shown on the attached table and includes development of the final relocation agreements and cost estimates.

**Task E – Storm Water Mitigation Design:**

The storm water mitigation design as outlined in Amendment 5 included preparation of final plans for a portion of the storm water mitigation and new outlet storm sewer design across the BNSF railroad corridor for the West Haymarket Project. This work was identified to be included with the plans and bid documents to be let by the BNSF for the grading work associated with the railroad relocations. The portion of this task completed to support an affirmative vote is as shown on the attached table and includes finalizing the plans and final coordination with the BNSF Railway Company to include this work with the track relocation bidding documents.

**Task F – Legal Descriptions/Exhibits for Agreements:**

The legal descriptions and exhibit work task as outlined in Amendment 5 included the necessary work to prepare detailed metes and bounds legal descriptions along with the associated legal exhibit for the various property acquisitions and transfers between the railroads and the City. The portion of this task completed to support an affirmative vote is as shown on the attached table and includes preparation/revision of final legal descriptions/exhibits for the various property transfers required for final execution of the railroad agreements.

**Task G – Early Coordination with SHPO:**

The early coordination with the SHPO task as outlined in Amendment 5 included work to assist the City with coordination with the State Historic Preservation Officer regarding the overall project as well as the initial railroad track relocation work. The portion of this task completed to support an affirmative vote is as shown on the attached table and includes coordination and consultation with the City and SHPO regarding the initial track relocation work and approach to addressing historic issues for the overall project.

Personnel	Total Hrs.	Contract/Billing Rate	Labour cost	Expense	Units	Unit Price	Total Price
Principal	0	0.00	0.00	Travel, (mile Cost)	0	0.00	0.00
Project Manager/Team Leader	156	44.60	28,912.00	Travel, (mile (curry vehicle))	0	0.00	0.00
Senior Level	68	47.60	9,988.00	Computer time	0	0.00	0.00
Senior Project Level	122	134.60	16,348.00	Public Meeting Materials/Project	0	0.00	0.00
Project Level	238	116.60	27,370.00	High Sta. Piles	0	0.00	0.00
Associate Level	0	80.00	0.00	Full Sta. Piles	1.60	1.60	2.56
Assistant Level	80	78.60	6,288.00	copier/mechanical	522	1.15	599.70
Senior Technician	232	48.80	11,321.60	Geopak Tests	0.0	200.00	0.00
Associate Technician	0	57.00	0.00				
Administrative Coordinator	0	66.00	0.00				
<b>TOTAL</b>	<b>948</b>		<b>\$104,478.00</b>				<b>\$822.00</b>

MANHOUR AND FEE ESTIMATE

Item No.	Description of Work Items/Tasks	Principal	Project Manager	Senior Level	Senior Project Level	Project Level	Associate Level	Assistant Level	Senior Tech	Associate Tech	Admin	TOTAL MAN HOURS	TOTAL MAN DMS	TOTAL LABOR COST
1	Project Management		24									24	3.00	3,936.00
2	Additional Work and Meetings with USDO		18	24								42	8.50	6,825.00
3	Review SWPPP for Final SWPPP for City Project		16			40						56	17.00	9,520.00
4	Prepare SWPPP for Final SWPPP for City Project		4			20						24	16.50	3,960.00
5	Coordinate with City, BNSF & NYS Title on Rail Station Req		4		24							28	3.80	3,224.00
6	Prepare the Station Design & Landscaping to BNSF		4		40							44	15.50	6,820.00
7	Prepare Additional Land Exhibit as Requested to BNSF		8		50							58	13.50	7,830.00
8	Prepare Additional Exhibit for BNSF, USFWS, and USFWS Agreements		12						40			52	8.50	4,420.00
9	Preparation for Media Presentations		8									16	2.00	3,200.00
10	Additional Land Coordination for Overall Project Progress		2			16						18	2.25	4,050.00
11	Coordination with City on Environmental Work Schedule		8			16						24	1.00	2,400.00
12	Review and Update to Project Timeline		20		20							40	2.50	1,000.00
13	Additional COE and Coordination Work		8			40						48	8.00	3,840.00
14	Coordinate with City on DEC Alternatives		8			40						48	4.00	1,920.00
15	Review San. Sewer Plans to Update Station & Additional Cont.		8			40						48	11.00	5,280.00
16	Coordinate with City on Construction with SWPPP		2			6						8	1.00	8.00
17	Prepare Provisions for Contaminated Soil for Sewer Contract		2		4							6	0.75	4.50
18	Prepare Preliminary Profile for Underpass		4		12							16	5.50	88.00
19	Begin Preliminary Review for Aerial Drive TE		2			16						18	3.25	58.50
20	Begin Preliminary Development of Overpass TS&L		2			8						10	4.25	42.50
21			2			8						10	3.75	37.50
22												0	0.00	0.00
23												0	0.00	0.00
24												0	0.00	0.00
25												0	0.00	0.00
26												0	0.00	0.00
<b>TOTAL MANHOURS AND LABOR FEE</b>													104,478.00	
<b>TOTAL MANHOURS</b>													118.50	
<b>TOTAL LABOR COST AND FEE</b>													\$104,478.00	
<b>TOTAL EXPENSES</b>													\$822.00	
<b>TOTAL LBR, OH, PFT &amp; EXPS</b>													\$105,000.00	

**EXHIBIT B – AMENDMENT NO. 6**  
**DESCRIPTION OF ADDITIONAL WORK TASKS UP THROUGH JULY 3, 2010**

Task 1 – Project Management: This task includes meetings and coordination work with the client and general supervision of the project design team.

Task 2 – Additional Work and Meetings With USPO: This tasks included additional work to identify construction at the USPO property, preparation of preliminary drawings detailing potential alternatives and meetings with USPO representatives.

Task 3 – Revise Sanitary Sewer Plans for City Bid Letting: This task covers the work effort to revise the sanitary sewer plans and specifications to remove them from the BNSF grading project and to set them up for a City of Lincoln bid letting as requested by the City.

Task 4 – Prepare SWPPP for Sanitary Project: This includes work to prepare the SWPPP and necessary erosion/sediment plans for the sanitary sewer work that was originally included with the BNSF grading project (the BNSF grading project is obtaining a SWPPP that would have originally included the sanitary work).

Task 5 – Coordination with BNSF & Nebraska Title: This includes additional work effort working with the BNSF real estate staff and Nebraska Title to provide the necessary documentation for the railroad property transfers.

Task 6 – Prepare ALTA Survey: This includes the work to prepare ALTA surveys as required by the BNSF for the property transfers.

Task 7 – Prepare Additional Legal Exhibits: This includes preparation of additional metes and bounds legal descriptions and exhibits for easements and property transfers outside of the original anticipated railroad property transfers.

Task 8 – Prepare Additional Exhibits for Agreements: This includes preparation of additional exhibits to include with the railroad agreements and other agreements that were not originally identified as part of the original MOU or preliminary draft agreements.

Task 9 – Preparation for Media presentations: This includes time for preparation and performance of media presentations for the project as requested by the City.

Task 10 – Additional Levee Coordination: This includes additional preliminary review work to assess potential impacts from overall project components including review of loop roadway impacts to the existing levee as requested.

Task 11 – Coordination with City on Environmental Work/Schedule: This includes meeting with City environmental staff and coordination to incorporate the environmental timeframe into the overall project schedule.

## **EXHIBIT B – AMENDMENT NO. 6 (Continued)**

Task 12 – Coordination with City on Interim Sun Valley Improvements: This includes preliminary coordination with the City to identify potential Sun Valley work and costs that would need to be included with the WH Project due to the NDOR's decision to defer final design and construction of the Sun Valley Project beyond 2013.

Task 13 – Review and Update Project Timeline: This includes time to update the project timeline as requested by the City.

Task 14 – Additional COE 404 Coordination: This includes time for additional coordination work with the COE regarding the 404 permit to provide supplemental data along with site visits/meetings to provide a final determination permitting for the project. This also includes coordination with the BNSF environmental group regarding the 404 permit application.

Task 15 – Coordination with City on DEC Alternatives: This includes time for coordination and meetings with the City and DEC to discuss alternatives for DEC utility construction based upon the railroad constraints and proposed project schedule.

Task 16 – Revise Sanitary Sewer Plans to Upsize Sewers and Additional Construction: This includes the necessary work to revise the sanitary sewer plans to change the size of the proposed sewers as requested by the City which also required the design for reconstruction of additional length of sanitary sewer and revisions to the specifications.

Task 17 – Coordination with G&P for Concurrence on SWPPP: This includes time for coordination with the Game and Parks as required to secure the necessary NPDES permit for the sanitary sewer work.

Task 18 – Prepare Provisions for Contaminated Soil for Sewer Contract: This includes time to prepare a Special Provision to include with the sanitary sewer documents to identify procedure to follow in the event contaminated soil is encountered during prosecution of the work as requested by the City.

Task 19 – Preliminary Profile of Underpass: This includes time to review preliminary underpass concept to determine potential impacts and to identify a preliminary profile under the BNSF railroad corridor.

Task 20 – Begin Review of Arena Drive to Identify TE at BNSF property: This includes preliminary design work to identify the limits of temporary easements that would be required at the BNSF property to construct Arena Drive. This is information requested by the BNSF as part of the review and approval process for the railroad agreements.

Task 21 – Begin Preliminary Development of Overpass TS & L Plan: This includes initial work to develop a Type Size and Location Plan for the pedestrian overpass structure. This is information requested by the BNSF as part of the review and approval process for the railroad agreements.

EXHIBIT C - AMENDMENT NO. 6  
 WEST HAYMARKET PROPOSED ADDITIONAL WORK FROM JULY 4, 2010 THROUGH OCTOBER 2, 2010  
 OLSSON PROJECT NUMBER 006-0645  
 CITY OF LINCOLN, NEBRASKA  
 JULY 8, 2010

Personnel	Total Hrs.	Contract Billing Rate	Raw Labor cost	Expenses	Units	Unit Price	Total Price
Principal	0	180.00	0.00	Travel, mile (car)	0	0.510	0.00
Project Manager/Team Leader	292	164.90	48,248.00	Travel, mile (company vehicle)	0	0.64	0.00
Senior Level	92	147.20	13,552.00	Computer time	0	15.00	0.00
Senior Project Level	144	134.00	19,296.00	Public Meeting Miscellaneous Product	0	1000.00	0.00
Project Level	310	115.00	35,650.00	Full Size Print	0	0.35	0.00
Associate Level	0	90.00	0.00	Full Size Print	0	1.50	0.00
Assistant Level	40	78.00	3,120.00	copier/miscellaneous	699	1.5	668.00
Senior Technician	306	46.00	20,196.00	General Lease	0.0	2000.00	0.00
Associate Technician	20	57.00	1,140.00				0.00
Administrative Coordinator	0	45.00	0.00				0.00
<b>TOTAL</b>	<b>1194</b>		<b>\$190,334.00</b>				<b>\$668.00</b>

MANHOOR AND FEE ESTIMATE

Item No.	Description of Work Items/hrs	Principal	Project Manager	Senior Level	Senior Project Level	Project Level	Associate Level	Assistant Level	Senior Tech	Associate Tech	Admin	TOTAL HOURS	TOTAL MAN-DAYS	TOTAL LABOR COST								
1	Project Management		60								20	60	10.00	11,400.00								
2	Prepare Exhibits and Provide Information for USPO Consideration			12					8			20	2.90	2,820.00								
3	Additional Consideration with ODE on 404 and 106			20		40						64	8.00	6,780.00								
4	Additional Consideration with SFRD on 106 issues			40								40	5.00	3,800.00								
5	Coordination and Meetings with BNSF on Certificate Agreements		60									60	10.00	13,100.00								
6	Prepare Legal Descriptions as Requested by City			2					16			34	4.25	3,520.00								
7	Prepare AEA's Survey as Requested by City			2					32			34	7.25	6,280.00								
8	Prepare Additional Legal Descriptions/Agreements as Req. by City			2					32			34	3.25	2,860.00								
9	Prepare Additional Legal Descriptions/Agreements as Requested by City			2					32			34	3.25	2,860.00								
10	Prepare AEA's Survey as Requested by City			4					32			36	3.25	2,860.00								
11	Prepare AEA's Survey as Requested by City			16					40			56	18.00	15,960.00								
12	Prepare AEA's Survey as Requested by City			12					40			52	15.00	13,500.00								
13	Prepare AEA's Survey as Requested by City			4					8			12	3.50	1,260.00								
14	Prepare AEA's Survey as Requested by City			4					8			12	3.50	1,260.00								
15	Prepare AEA's Survey as Requested by City			4					8			12	3.50	1,260.00								
16	Work with BNSF/Prepares Exhibit for Direct Fiber Lines		8						8			16	2.00	1,840.00								
17	Review/Prepares Exhibit for Tonto Road from Bluff to Arroyo		2						40			42	2.50	2,440.00								
18	Update Current Exhibits and Prepare New Exhibits as Req.		8						40			48	6.00	3,880.00								
19	Bill Phase Services for Senior Senior Work		12						40			52	3.50	3,890.00								
20	Bill Assistance for RR Grading Contract in regard to Storm Work		12						40			52	3.50	3,890.00								
21	Coordination with Utilities Regarding Relocation Work		8		20							28	4.00	4,070.00								
22	Coordination with Utility on Chambliss Club Parking Lot		8		20							28	3.50	3,890.00								
23	Additional City Requested Assistance		16						80			96	2.00	17,184.00								
24	Update Project Timeline as Requested by City		16						0			16	0.00	0.00								
25			16						0			16	0.00	0.00								
26									0			0	0.00	0.00								
27									0			0	0.00	0.00								
28									0			0	0.00	0.00								
<b>TOTAL MANHOORS AND LABOR FEE</b>												1194		148,225								
<b>TOTAL MANHOORS</b>												0		260								
<b>TOTAL LABOR COST AND FEE</b>												0.00	35.25	11.50	180.00	38.75	0.00	13,520.00	520,196.00	50.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,296.00	\$35,650.00	\$0.00	\$3,120.00	\$20,196.00	\$0.00	\$1,300.00	\$190,334.00
<b>TOTAL LABOR COST AND FEE</b>												0.00	\$46,248.00	\$13,520.00	\$19,29							

**EXHIBIT C – AMENDMENT NO. 6**  
**DESCRIPTION OF POTENTIAL ADDITIONAL WORK TASKS**  
**JULY 4, 2010 THROUGH OCTOBER 2, 2010**

Task 1 – Project Management: This task includes meetings and coordination work with the client and general supervision of the project design team.

Task 2 – Prepare Exhibits and Additional Information for USPO Coordination: This task would include additional support for the City to prepare exhibits and provide additional information for the City's negotiations with the USPO.

Task 3 – Additional Coordination with COE on 404 and 106 Issues: This task would include additional support services for the City as requested to coordinate with the COE in obtaining approval of the project 404 Permit.

Task 4 – Additional Coordination with the SHPO on 106 Issues: This task would include additional coordination and meetings with the City, SHPO and COE to arrive at an agreement on 106 issues to allow approval of the initial 404 permit for the railroad grading project.

Task 5 – Coordination with BNSF on Definitive Agreement: This task would include additional coordination with the BNSF as requested by the City to finalize the Definitive Agreements for the project. This includes preparation and attendance at City/BNSF coordination meetings.

Task 6 – Revise Legal Descriptions: This task includes revising legal descriptions as requested by the City to finalize the necessary project agreements.

Task 7 – Revise ALTA Surveys: This task includes revising the ALTA Surveys as requested by the City to finalize the necessary project agreements.

Task 8 – Prepare Additional Legal Descriptions/Exhibits: This task includes preparation of additional legal descriptions/exhibits as requested by the City and that are necessary for execution of the project agreements.

Task 9 – Additional Design/Exhibit for Arena Drive: This would include time to perform preliminary design work to identify the temporary easements required at the BNSF property to construct the new Arena Drive. This would include preparation of an exhibit to include with the railroad agreement.

Task 10 – Complete TS & L Plan for Pedestrian Overpass and Ramp: This includes work to complete a Type Size and Location Plan for the pedestrian overpass structure and ramp. This is information requested by the BNSF as part of the review and approval process for the railroad agreements.

## **EXHIBIT C – AMENDMENT NO. 6 (Continued)**

Task 11 – Continue Underpass Review and Prepare TS & L Plan: This preparation of a preliminary Type Size and Location Plan for a pedestrian underpass as requested by the City.

Task 12 – Review Arena Construction at SE Corner at BNSF Tracks and Prepare Exhibit: This would include time to perform preliminary design work to review the potential impacts of the initial arena construction work adjacent to the BNSF passenger mains. This would include preparation of an exhibit to include with the railroad agreement.

Task 13 – Additional Design/Exhibit for Temporary Road to Amtrak Station: This would include time to perform preliminary design work to evaluate the potential impacts on the railroad tracks to remain in service, temporary easement requirements and drainage at the temporary road to be constructed to the Amtrak Station. This would include preparation of an exhibit to include with the railroad agreement.

Task 14 – Prepare Exhibit for Grading at Festival/Parking & Temporary Easements at BNSF: This work would include preliminary grading design to determine how the future parking lot/festival grading will tie into the proposed BNSF grading project. This would include identification of the necessary temporary easements and preparation of an exhibit to include with the railroad agreements.

Task 15 – Prepare Exhibit for City/BNSF Access Points to Railroad Corridor: This includes time for meetings and coordination with BNSF/City to identify proposed access points to the BNSF corridor for BNSF and City use. This would include preparation of an exhibit to include with the railroad agreements.

Task 16 – Work with BNSF/Prepare Exhibit for Depot Fiber Lines: Meet and coordinate with BNSF regarding BNSF requested fiber optic lines from the existing Depot to the relocated fiber optic lines along the proposed railroad corridor. This would include preparation of an exhibit to include with the railroad agreements.

Task 17 – Review/Prepare Exhibit for Temp Road from 8<sup>th</sup>/T to Arena: This would include preliminary review and conceptual design for a temporary construction access route to the north side of the arena. This would include preparation of an exhibit as necessary to include with the railroad agreements.

Task 18 – Update Current Exhibits and Prepare New Exhibits as Required: This would include revising current exhibits as requested to address City/Railroad comments and creation of a maximum of 5 additional new exhibits.

Task 19 – Bid Phase Services for Sanitary Sewer: This includes providing assistance to the City during the bidding of the Sanitary Sewer Project.

**EXHIBIT C – AMENDMENT NO. 6 (Continued)**

Task 20 – Bid Assistance for Railroad Grading Contract in Regard to Storm Water Work: This includes providing assistance and responding to contractor questions regarding the storm water work included with the BNSF grading project.

Task 21 – Coordination with LPSNRD/COE on Levee Impacts: This work would include additional coordination with the LPSNRD and the COE as requested by the City regarding the initial project submittal to the COE regarding potential impacts to the Salt Creek Levee System. This would include preparation and attendance at a meeting with the LPSNRD and COE to discuss the overall project and potential future submittal packages that will require COE review and approval.

Task 22 – Coordination with Utilities Regarding Relocation Work: This work includes coordination with MCI, Qwest, Windstream and LES regarding utility work required to accommodate the railroad grading project.

Task 23 – Coordination with UNL on Champions Club Parking Lot: This work includes coordination and meetings with UNL staff to discuss and evaluate alternatives for reconstruction of the parking lot at the Champions Club to ensure no loss of parking.

Task 24 – Additional City Requested Assistance: This includes an allotment of hours to use to provide additional assistance as requested by City staff to support development of the project and execution of the necessary project agreements.

Task 25 – Update Project Timeline: This includes time to update the project timeline as requested by the City.



83205

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CITY OF LINCOLN  
EXECUTIVE ORDER

NO. 83205

**BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City**

**of Lincoln, Nebraska:**

The attached Purchase and Sale Agreement between the City of Lincoln, Nebraska and Union Pacific Railroad Company for purposes of purchasing real property to implement the West Haymarket Project, upon the terms and conditions as set forth in the said Purchase and Sale Agreement attached hereto, is hereby approved and accepted and I have executed the same on behalf of the City.

The City Clerk is directed to return a copy of this Executive Order and one original Purchase and Sale Agreement to Union Pacific Railroad Company, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, NE 68179-1690.

Dated this 15 day of June, 2010.

  
Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

  
\_\_\_\_\_  
Chief Assistant City Attorney

83205



RECEIVED

JUN 8 2010  
MO 5/204  
LAW DEPT.

June 7, 2010  
Folder: 2088-03

**VIA UPS NEXT DAY AIR**

RICK PEO  
CHIEF ASSISTANT CITY ATTORNEY  
CITY OF LINCOLN, NE  
555 SOUTH 10<sup>TH</sup> STREET, SUITE 300  
LINCOLN NE 68508

RE: City of Lincoln, Nebraska, duplicate originals of purchase and sale agreement.

Dear Mr. Peo:

Enclosed are duplicate originals of a purchase and sale agreement executed on behalf of Union Pacific Railroad Company. Please ensure Mayor Chris Beutler executes both copies, and return one copy to me in the enclosed envelope.

Please contact me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Rick L. Harris".

Rick L. Harris  
Manager - Real Estate

Ph.: (402) 544-8588  
Fax: (402) 997-4098  
Email: RHARRIS@UP.COM

**PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (the "Agreement") is entered into this 15<sup>th</sup> day of June, 2010 ("Execution Date"), between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Seller"), and **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, whose address is 555 South 10<sup>th</sup> Street, Suite 300, Lincoln, Nebraska 68508 ("Buyer"), WITNESSETH:

**RECITALS:**

A. Buyer proposes to acquire from Seller real property located in the City of Lincoln, Lancaster County, Nebraska, shown on the print dated February 2, 2010, marked **Exhibit A**, attached hereto and hereby made a part hereof (the "Property"), and to acquire from BNSF Railway ("BNSF") certain other property in the City of Lincoln, Lancaster County, Nebraska, in order to implement Buyer's proposed West Haymarket Project (the "Project").

B. The Project will include relocation of various rail facilities of BNSF and Seller, and rehabilitation by Seller of Seller's existing railroad bridge over Salt Creek ("Salt Creek Bridge") and reconstruction and extension of a segment of Seller's track ("Seller's Work"), as conceptually depicted on the print attached hereto as **Exhibit B** and hereby made a part hereof, all at the sole cost and expense of Buyer.

C. Seller and Buyer have entered into a engineering/design letter agreement ("Engineering/Design Agreement") attached hereto as **Exhibit C** and hereby made a part hereof dated January 26, 2010 covering the engineering and design work associated with Seller's Work and providing for reimbursement by Buyer to Seller of Seller's costs for such engineering and design work.

D. Seller and Buyer wish to enter into an agreement to facilitate Buyer's Project, on the following terms and conditions.

**AGREEMENT:**

NOW, THEREFORE, IT IS AGREED by and between Seller and Buyer as follows:

**Section 1. Purchase and Sale of the Property; Block 81.**

(a) The Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions of this Agreement.

EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, the following:

(i) All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual

right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Buyer, its successors or assigns;

(ii) The railroad trackage and track appurtenances thereto, including, without limitation, signal sheds and signal equipment (collectively, the "Trackage and Equipment") now located upon, along and across the Property, and the right (but not the obligation) to remove the Trackage and Equipment before Closing (as defined in Section 7). Any Trackage and Equipment not removed before Closing shall vest in Buyer in its existing condition, and Seller shall not have any right or obligation to remove same. Any Trackage and Equipment vesting in Buyer shall be deemed to be without warranty or representation, oral or written, express or implied with respect thereto or in connection therewith; and

(iii) One (1) signboard and appurtenances thereto, including, without limitation, wirelines for electrical service to such signboard, now located upon, along, under and across the Property at Third and "O" Streets in Lincoln, and a PERPETUAL EASEMENT for the construction, maintenance, operation, repair, replacement, renewal and reconstruction of such signboard and appurtenances thereto (whether now or hereafter constructed) upon, along, under and across the portion of the Property which is the current locations of the signboard and within a radius five feet (5') outside the perimeter of the land surface directly below the signboard (the "sign shadow") and any poles or footings if outside the sign shadow, together with (A) the right of unobstructed access, ingress and egress to and from said easement area for the purpose of exercising the rights herein reserved, and (B) a sight line easement for the unobstructed view from "O" Street to signboards now or hereafter located on said easement area.

(b) Abutting R-O-W. As part of the purchase and sale of the Property, Seller will convey without additional consideration any reversionary and other remaining real estate claims, ordinance rights, licenses, easements, and interests, if any, in abutting streets and alleys which have been previously platted and dedicated to the Buyer ("Abutting R-O-W") as shown on **Exhibit A**.

(c) Block 81. Seller understands and agrees that there is some question as to the split of ownership of Block 81, Original Plat, Lincoln, Lancaster County, Nebraska ("Block 81") between Seller and BNSF. Therefore, in addition to the purchase and sale of the Property, Seller agrees to transfer to Buyer by separate quitclaim deed in the form attached hereto as **Exhibit J** and hereby made a part hereof all of its right, title and interest in and to any portions of Block 81 not included as part of the Property (the "Block 81 Property") which BNSF claims Seller owns and which BNSF has requested Buyer acquire and convey to BNSF for relocation of its rail facilities. Seller will further convey without additional consideration any Abutting R-O-W abutting the Block 81 Property. Seller and Buyer agree that the conveyance of the Block 81 Property and Abutting R-O-W shall be subject to the same terms and conditions set forth in this Agreement for the purchase and sale of the Property.

(d) The sale made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights, whether or not of record, or open and obvious on the ground.

**Section 2. Purchase Price.**

(a) The purchase price for the Property is ONE MILLION TWO HUNDRED TWENTY-FOUR THOUSAND AND NO/100<sup>TH</sup> DOLLARS (\$1,224,000.00) (the "Property Purchase Price"). The purchase price for the Block 81 Property shall be calculated on the basis of Two and 25/100<sup>th</sup> Dollars (\$2.25) per gross square foot based on the survey to be obtained by Buyer pursuant to Section 3(b) below (the "Block 81 Purchase Price"). The Property Purchase Price and the Block 81 Purchase Price shall hereafter be referred to as the "Purchase Price".

(b) The Purchase Price shall be paid in full by Buyer to Seller at Closing.

**Section 3. Conditions Precedent to Sale.**

This Agreement is subject to the following conditions precedent:

(a) Title Review. On or before June 15, 2010, Buyer, at its sole cost and expense, shall obtain from Nebraska Title Company, 6003 Old Cheney Road, 3<sup>rd</sup> Floor, Lincoln, Nebraska 68506-0169 ("Title Company"), a preliminary title report ("Title Report") on the Property and furnish a copy of the Title Report to Seller together with all copies of the documents referred to in the Title Report that are provided by the Title Company with the Title Report. On or before August 31, 2010 ("Title Contingency Date"), Buyer shall approve or disapprove any defects in the title or any liens, encumbrances, covenants, rights of way, easements or other outstanding rights disclosed by the Title Report or survey, except those matters set forth in Section 5. Disapproval shall be by written notice given by Buyer to Seller setting forth the specific item or items disapproved by Buyer. If no such notice of disapproval is given by Buyer by the Title Contingency Date, it shall be conclusively presumed that Buyer approves of the Title Report and survey. If Buyer disapproves of any item or items contained in or disclosed by the Title Report or survey, Seller shall have fifteen (15) days after receipt of Buyer's notice of disapproval ("Seller's Cure Period") in which, at Seller's election, to eliminate any disapproved items from the policy of title insurance to be issued in favor of Buyer. If any such disapproved item is not eliminated by the end of Seller's Cure Period, then this Agreement shall terminate unless Buyer shall have elected to waive its prior disapproval in writing at least five (5) days prior to the date of Closing. In the event of termination due to any such uncorrected defect in title, this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. In no event will Seller's failure to cure or delete as exceptions to the policy of title insurance any disapproved items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.

(b) Survey. On or before June 15, 2010, Buyer, at its sole cost and expense, shall obtain a perimeter survey of the Property, the Abutting R-O-W, and the Block 81 Property to be quitclaimed to Buyer, prepared and certified by a public surveyor registered in the State of Nebraska, and furnish the survey to Seller and Title Company. The survey, as approved by Buyer as set forth in subparagraph (a) above and as approved by Seller, shall be used by Seller as the basis for preparation of the Quitclaim Deeds referred to in Section 1(c) and Section 5.

(c) Feasibility Studies. Commencing on the Execution Date and continuing to and including September 10, 2010 ("Feasibility Review Period"), Buyer, and its agents and contractors, are granted the privilege of entering upon the Property for the purpose of performing environmental assessments, soil tests, engineering and feasibility studies of the Property as Buyer may deem necessary to determine the suitability of the soil conditions and other physical conditions of the Property. If Buyer wishes to perform any environmental sampling, then Buyer shall (i) before conducting any sampling, provide Seller with Buyer's work plan for sampling and shall modify the work plan as reasonably requested by Seller, (ii) give Seller reasonable advance notice of the dates when sampling will be conducted so that Seller and/or its consultants have the opportunity to be present, (iii) conduct any sampling in accordance with the work plan referred to under (i) above and with generally accepted environmental engineering standards, and (iv) **provide Seller with the draft report on such sampling for Seller's review and comments prior to the report being placed in final form, and give reasonable consideration to such comments.**

If the results of such assessments, tests or studies are unsatisfactory in Buyer's reasonable opinion, Buyer may, at its option, terminate this Agreement by giving Seller written notice of termination before expiration of the Feasibility Review Period. If no such written notice of termination is given by Buyer to Seller before expiration of the Feasibility Review Period, the Property shall be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all environmental assessments, soils, engineering and any other reports prepared for Buyer pertaining to the Property and such reports shall become the sole property of Seller without cost or expense of Seller (and the contents of such reports shall be kept confidential by Buyer and Buyer's consultants, except as otherwise required to be disclosed pursuant to Neb. Rev. Stat. §§ 84-712 – 84-712.09 or by order of a court of competent jurisdiction), the Escrow Fund shall be returned to Buyer, and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. Regardless of whether this Agreement is terminated, Buyer shall promptly furnish Seller with a copy of any and all reports on environmental assessments performed for the benefit of Buyer.

Any entry on the Property by Buyer, its agents or contractors, for the purposes set forth in this Section 3(c) shall be subject to the following terms and conditions:

(i) Buyer shall notify Seller in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Property and shall provide evidence, satisfactory to Seller, of the availability of adequate public liability and other insurance, which insurance shall name Seller as an additional insured;

(ii) To the extent it may lawfully do so, Buyer agrees to indemnify and save harmless Seller and/or Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents, servants and employees, against and from any and all liability, loss, costs and expense of whatsoever nature actually incurred growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage

arises in connection with or incident to the occupation or use of the Property by, or the presence thereon of Buyer, Buyer's agents, contractors, servants or licensees prior to Closing. Buyer's obligation to indemnify Seller or Seller's affiliates, their officers, agents, servants, and employees shall not be applicable to any liability, loss, cost and expense (i) caused solely by the direct and active negligence of Seller or its affiliates, their employees, agents, officers, successors and assigns, or (ii) to the extent caused by the gross negligence or willful or wanton misconduct of Seller or its affiliates, their employees, agents, officers, successors and assigns, as determined in a final judgment by a court of competent jurisdiction;

(iii) Buyer covenants and agrees to pay in full for all materials joined or affixed to the Property and to pay in full all persons who perform labor upon said premises, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer;

(iv) If the sale and purchase of the Property does not close, Buyer shall, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration after giving the Buyer reasonable notice of its failure and opportunity to restore, and Buyer shall reimburse Seller for the cost and expense of the work within thirty (30) days after rendition of bill therefor by Seller; and

(v) Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason, Buyer nevertheless shall be obligated to comply with the provisions of this Section 3(c).

(d) City Council Approval. The terms and conditions of this Agreement are subject to approval by the Mayor and City Council of the City of Lincoln, which approval shall include, without limitation, approval of all necessary resolutions and ordinances for the implementation of Buyer's Project, and obtaining all necessary funding commitments and voter approvals for the Project ("City Council Approval"). Notice of approval or disapproval shall be given by Buyer to Seller before the end of the Feasibility Review Period. If City Council Approval has not been obtained by the end of the Feasibility Review Period, then this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

(e) Seller's Management Approval. The terms and conditions of this transaction are subject to approval in accordance with Seller's Management Policy Statement. Notice of approval or disapproval shall be given by Seller to Buyer on or before Closing, and failure to give such notice shall be deemed notice of disapproval. If the terms of this Agreement are not approved for any reason in accordance with Seller's Management Policy Statement on or before Closing, then this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

(f) BNSF Agreement. On or before September 10, 2010, Buyer and BNSF shall have entered into an agreement (the "BNSF Agreement") for the sale by BNSF to Buyer of other

property in Lincoln for Buyer's Project. If Buyer and BNSF have not entered into the BNSF Agreement on or before September 10, 2010, then this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

(g) UP/BNSF MOU. On or before the Closing, Seller and BNSF shall have entered into a Memorandum of Understanding with respect to joint facilities operations over Seller's Salt Creek Bridge and trackage.

(h) Construction Agreement. On or before Closing, Seller and Buyer shall have entered into a construction agreement ("Construction Agreement") substantially in the form attached hereto as **Exhibit D** and hereby made a part hereof covering the work to be performed by Seller after Closing with respect to rehabilitation of the Salt Creek Bridge and reconstruction and extension of track (previously defined as "Seller's Work" in Recital B). Seller's Work performed under such Construction Agreement shall be at the sole cost and expense of Buyer.

#### Section 4. Escrow.

(a) Escrow. Upon execution of this Agreement by both parties, Buyer shall deposit an executed copy of this Agreement with Title Company, with instructions to hold the same in accordance with the provisions of this Agreement. On or before the date of Closing, Buyer shall deposit into escrow the Purchase Price, the Construction Agreement referred to in Section 3(h), the Assignment and Assumption Agreement referred to in Section 6, and the License Agreement referred to in Section 10, as executed by Buyer, and Seller shall deposit the Construction Agreement referred to in Section 3(h), the Quitclaim Deeds referred to in Section 1(c) and Section 5, the Assignment and Assumption Agreement referred to in Section 6, and the License Agreement referred to in Section 10, as executed by Seller. Title Company shall be instructed that when it is in a position to deliver to Seller the Purchase Price, and to issue a standard owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Property in Buyer, subject only to the items set forth in Section 5, Title Company shall:

- (i) record and deliver the Quitclaim Deeds to Buyer;
- (ii) deliver executed counterparts of the Construction Agreement, the Assignment and Assumption Agreement, and the License Agreement to each of Buyer and Seller;
- (iii) deliver to Seller the Purchase Price; and
- (iv) issue and deliver to Buyer the standard owner's policy of title insurance.

(b) Extended Coverage. Buyer, at its option and at its sole cost and expense, shall have the right to obtain ALTA extended coverage and/or an ALTA survey; provided, however, that the failure to obtain such extended coverage shall not be a condition to nor delay the Closing beyond the date of Closing set forth in Section 6 below, and that Seller will not be required to assume any obligations or liabilities in addition to Seller's obligations and liabilities under this Agreement.

(c) Seller's Costs. At Closing, Seller shall pay the following costs:

(i) Seller's real estate taxes (whether general or special) assessed against the Property and due and payable for all years prior to the year of Closing;

(ii) Seller's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing;

(iii) All taxes centrally assessed applicable to the Property for the year of Closing and all prior years; and

(iv) Costs of releases of liens, mortgages, deeds of trust, or other instruments against the Property, which are attributable to Seller or its predecessors in interest.

(d) Buyer's Costs. At Closing, Buyer shall pay the following costs:

(i) All of the escrow fee;

(ii) The cost of recording the Quitclaim Deeds;

(iii) The premium for the issuance of the standard owner's policy of title insurance; and

(iv) The cost of the required state revenue stamps, if any.

#### **Section 5. Title.**

(a) Upon Closing as set forth in Section 4, Seller's right, title and interest in and to the Property and the Abutting R-O-W shall be transferred by Seller to Buyer by a duly executed Quitclaim Deed in the form marked **Exhibit E**, attached hereto and hereby made a part hereof. Title shall be insurable, free and clear of all liens, encumbrances, exceptions, and reservations other than the following:

(i) The mineral reservation set forth in Section 1 and the covenant set forth in Section 8;

(ii) The Leases referred to in Section 6;

(iii) Non-delinquent real property taxes (whether general or special);

(iv) Standard printed exceptions in the title policy; and

(v) Items disclosed in the Title Report or survey and approved or waived by Buyer as set forth in Section 3(a).

(b) Seller shall deliver to Buyer who shall file of record, good and sufficient releases of all mortgage liens attributable to Seller or its predecessors in interest filed against the Property

securing indebtedness to which Seller is obligated to pay within six (6) months after the date of Closing. For the purpose of this Agreement, the rights and obligations relating to mortgage liens shall apply to any other type of encumbrance under any deed of trust or similar method of encumbrance resulting from agreement of Seller or its predecessors in interest. If the Property is subject to a mortgage lien attributable to Seller or its predecessors in interest, it is understood and agreed that promptly upon Closing, application will be made to the Mortgage Trustee for the release of the Property from the lien of the mortgage. Immediately upon receipt of the Partial Release, the same will be forwarded to Title Company. Seller agrees to indemnify and hold Title Company and Buyer harmless against failure to provide such Partial Release.

#### **Section 6. Assignment of Leases.**

(a) Upon Closing, Seller shall assign to Buyer, and Buyer shall assume, all of Seller's right, title and interest in and to the lease and license agreements (the "Leases") listed on **Exhibit B to Exhibit F** attached hereto and hereby made a part hereof, but only to the extent the Leases affect the Property. Such assignment and assumption shall be by duly executed Assignment and Assumption Agreement in the form attached hereto as **Exhibit F** and hereby made a part hereof. Rentals and other payments under the Leases, if any, shall be prorated between Seller and Buyer as of the date of Closing.

(b) Licenses. Buyer acknowledges that the Property may be subject to licenses and other third party rights ("Licenses") that have not been identified in Seller's records. It is the responsibility of Buyer to determine if any of these unidentified Licenses exist. If any License that affects the Property is identified after the Execution Date, Seller's rights (including, without limitation, any income) and obligations under such License to the extent such License affects the Property will be assigned to and assumed by Buyer at or after Closing.

#### **Section 7. Closing; Possession.**

Escrow for the Property shall close ("Close" or "Closing") on or before September 30, 2010 ("Closing Date"). Subject to the Leases and Licenses, possession of the Property shall pass to Buyer on Closing. Buyer shall have no right to possession or occupancy of or entry upon any portion of the Property [except as set forth in Section 3(c)] and title to the Property shall be and remain vested in Seller until Closing.

#### **Section 8. Post-Closing Covenant.**

The Property and Abutting R-O-W will be quitclaimed by Seller subject to the following covenant, condition and restriction which Buyer by the acceptance of the Quitclaim Deed shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

Restriction on Use. Buyer, its successors and assigns, may use the Property and Abutting R-O-W for industrial, office, and retail-oriented commercial business (for example, shopping center, filling station, restaurant) purposes, only, and for no other purposes whatsoever. Without limitation of the foregoing, the Property and Abutting R-O-W must not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement

centers), or (iii) cultural, educational, recreational or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, gymnasiums, athletic fields, picnic grounds or parks).

The foregoing covenant, condition and restriction shall run with the Property and Abutting R-O-W, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

**Section 9. As Is; Release and Indemnity.**

(a) As Is. Buyer and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and Block 81 Property and matters related thereto as Buyer and its representatives desire. Buyer acknowledges and agrees that the Property and Block 81 Property are to be sold and quitclaimed to and accepted by Buyer in an "as is" condition with all faults. Buyer further acknowledges that the Property and Block 81 Property were used for railroad right-of-way and rail yard purposes. Seller makes no representation or warranties of any kind whatsoever, either express or implied, with respect to the Property and Block 81 Property; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property and Block 81 Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property and Block 81 Property, including the subsurface conditions, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Property and Block 81 Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

(b) Release. TO THE EXTENT IT MAY LAWFULLY DO SO FROM AND AFTER CLOSING, BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND BLOCK 81 PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY OR BLOCK 81 PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY

ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(c) Indemnity. TO THE EXTENT IT MAY LAWFULLY DO SO, FROM AND AFTER CLOSING, BUYER SHALL INDEMNIFY AND SAVE HARMLESS SELLER, SELLER'S AFFILIATES (SELLER'S AFFILIATES MEANS ANY CORPORATION WHICH DIRECTLY OR INDIRECTLY CONTROLS OR IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH SELLER), THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, ACTUALLY INCURRED, ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY AND BLOCK 81 PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY OR BLOCK 81 PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS; EXCEPT, HOWEVER, THE OBLIGATIONS TO INDEMNIFY SHALL NOT BE APPLICABLE TO ANY CLAIM (I) CAUSED SOLELY BY THE DIRECT AND ACTIVE NEGLIGENCE OF SELLER, SELLER'S AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OR (II) TO THE EXTENT ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL AND WANTON MISCONDUCT OF SELLER AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

(d) Additional and Independent Consideration. The release and indemnity by Buyer is additional and independent consideration to Seller for the sale and purchase of the Property and Block 81 Property, without which Seller would not sell the Property and Block 81 Property for the Purchase Price.

#### **Section 10. License and Right of Entry for Security Fencing.**

In an effort to strengthen security, Buyer, as part of the BNSF Agreement, has agreed to construct and maintain security fencing ("Security Fencing") on the perimeter of the future BNSF Corridor to be created by portions of the Property and Block 81 Property, BNSF's existing property, and a portion of Seller's remaining property not included in this Agreement as shown on **Exhibit A-1** attached hereto and hereby made a part hereof. A small portion of the Security Fencing will need to tie into Seller's Salt Creek Bridge referred to in Recital B. and be constructed along the west and east boundaries of Seller's property located in Block 277, Original Plat, Lincoln, Nebraska (the "Block 277 Property"). The Block 277 Property is not

included in the sale of the Property by Seller to Buyer under this Agreement. Seller is willing to accommodate Buyer's construction and maintenance of the Security Fencing on the Block 277 Property and the tie-in to the Salt Creek Bridge, without any additional consideration by Buyer to Seller, by granting to Buyer a license for such construction and maintenance in the form attached hereto as **Exhibit H** and hereby made a part hereof (the "License Agreement"). The License Agreement shall be executed by Seller and Buyer at Closing; provided, however, the work of construction of the Security Fencing on the Block 277 Property and tie-in to the Salt Creek Bridge shall not commence until Seller has given Buyer notice that Seller's Work referred to in Recital B. has been completed.

**Section 11. Notices.**

Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Seller:	UNION PACIFIC RAILROAD COMPANY ATTN: Rick Harris, Manager-Real Estate 1400 Douglas Street, Mail Stop 1690 Omaha, Nebraska 68179 Telephone: (402) 544-8588 Facsimile: (402) 501-0340
With copy to:	UNION PACIFIC RAILROAD COMPANY ATTN: Gerard Sullivan, Senior General Attorney 1400 Douglas Street, Mail Stop 1580 Omaha, Nebraska 68179 Telephone: (402) 544-4468 Facsimile: (402) 501-0132
Buyer:	CITY OF LINCOLN, NEBRASKA ATTN: Chris Beutler, Mayor 555 South 10 <sup>th</sup> Street, Suite 300 Lincoln, Nebraska 68508 Telephone: (402) 441-7281 Facsimile: (402) 441-8812
With copy to:	CITY OF LINCOLN, NEBRASKA ATTN: Rick Peo, Esq. 555 South 10 <sup>th</sup> Street, Suite 300 Lincoln, Nebraska 68508 Telephone: (402) 441-7281 Facsimile: (402) 441-8812

Title Company: NEBRASKA TITLE COMPANY  
ATTN: Lori Oden  
6003 Old Cheney Road, 3<sup>rd</sup> Floor  
Lincoln, Nebraska 68506-0169  
Telephone: (402) 476-8818  
Facsimile: (402) 476-0635

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service. Copies of all notices to Seller or Buyer shall be given to Title Company, and copies of all notices to Title Company shall be given to the other party to this Agreement.

**Section 12. Assignment.**

(a) Buyer shall not transfer or assign this Agreement, or any interest therein, without the consent in writing of Seller, and it is agreed that any such transfer or assignment, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and shall, at the option of Seller, terminate this Agreement.

(b) Notwithstanding the foregoing, Buyer may assign this Agreement, without Seller's prior written consent, to the West Haymarket Joint Public Agency ("JPA"), provided that JPA assumes the provisions of this Agreement, in writing for the benefit of Seller, in the form attached hereto as **Exhibit I** and hereby made a part hereof, and that at least ten (10) days prior to the Closing Date, Buyer shall give Seller written notice of the assignment together with a fully executed original of the assignment and assumption agreement in the form of **Exhibit I**. No assignment by Buyer will relieve Buyer of its obligations under this Agreement.

**Section 13. Acquisition Under Threat of Condemnation.**

The parties acknowledge that Buyer has the power of eminent domain. Buyer represents that it will institute eminent domain proceedings in the event that Seller does not sell the Property and Block 81 Property pursuant to this Agreement. The parties further acknowledge that Seller intends to treat any gain or loss realized from the sale of the Property and Block 81 Property as sold under imminent threat of condemnation pursuant to Section 1033 of the federal Internal Revenue Code of 1986.

**Section 14. Waiver of Breach.**

A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

**Section 15. Time of the Essence.**

Time is of the essence of this Agreement.

**Section 16. Law Governing.**

This Agreement shall be governed in all respects by the laws of the State of Nebraska.

**Section 17. Merger.**

The terms, provisions, covenants and conditions contained in this Agreement shall merge into the deed to be delivered by Seller to Buyer at Closing and shall not survive the Closing, except for the provisions of Section 3(c), 6(b), 8, 9, 10, 18 and 20.

**Section 18. No Brokers.**

The negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the parties without the intervention of any person which would give rise to any valid claim against either of the parties for brokerage commissions or other like payment. Each party shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payment arising out of the transaction contemplated by this Agreement and occasioned by the actions of such indemnifying party.

**Section 19. Successors and Assigns.**

Subject to the provisions of Section 12, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

**Section 20. Special Provision.**

Seller, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Buyer. A certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as **Exhibit G**.

**Section 21. Tax-Deferred Exchange.**

Seller may arrange for the exchange upon the Closing of one or more parcels of property for the Property in order to effect a tax-deferred exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and comparable provisions of state statutes. Buyer agrees to cooperate with Seller in connection with any such exchange. Such cooperation by Buyer shall include, but is not limited to, executing documents as reasonably may be required by Seller.

**Section 22. Not An Offer.**

The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property or Block 81 Property to Buyer or the granting of an option or other rights with respect to the Property and Block 81 Property to Buyer. No agreement with respect to the purchase and sale of the Property and Block 81 Property shall exist, and this

writing shall have no binding force or effect, until executed and delivered by both Seller and Buyer.

**Section 23. Severability.**

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

**Section 24. Entire Agreement.**

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the date first herein written.

**SELLER:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

By: Tommy K. Love

Title: Assistant Vice President - Real Estate

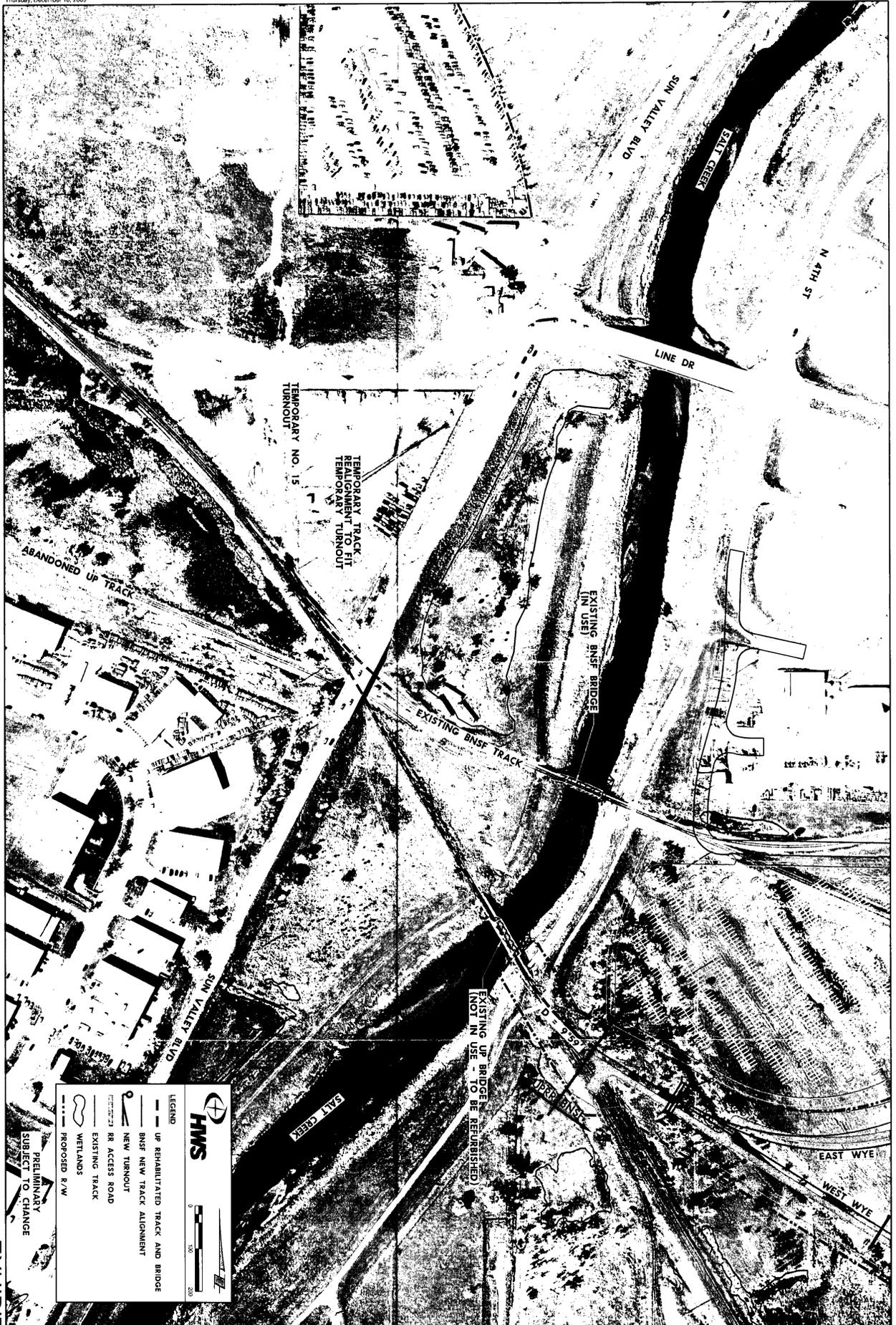
**BUYER:**

**CITY OF LINCOLN, NEBRASKA,  
a municipal corporation**

By: [Signature]

Title: Mayor





PRELIMINARY  
 SUBJECT TO CHANGE

EXHIBIT B

**HWS**

LEGEND

- UP REHABILITATED TRACK AND BRIDGE
- BNSF NEW TRACK ALIGNMENT
- NEW TURNOUT
- RR ACCESS ROAD
- EXISTING TRACK
- WETLANDS
- PROPOSED R/W

SCALE: 1" = 50'

0 50 100 200

**HWS**

LINCOLN OFFICE  
 805 S. 24th, Box 80508  
 Lincoln, NE 68501  
 (402) 478-2200  
 www.hws.com

VISION 2015  
 DOWNTOWN REDEVELOPMENT

UNION PACIFIC TRACK & BRIDGE  
 REHABILITATION PLAN

EXHIBIT C

**ENGINEERING/DESIGN LETTER AGREEMENT  
FROM MAYOR CHRIS BEUTLER DATED JANUARY 26, 2010**



**CITY OF LINCOLN**  
**NEBRASKA**

**MAYOR CHRIS BEUTLER**  
lincoln.ne.gov

Office of the Mayor  
555 South 10th Street  
Suite 208  
Lincoln, Nebraska 68508  
402-441-7511  
fax: 402-441-7120  
mayor@lincoln.ne.gov

January 26, 2010

Tony Love  
AVP - Real Estate  
Union Pacific Railroad  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179

Dear Mr. Love,

The City of Lincoln hereby requests UPRR to advance and complete (final) design of the UPRR Work in order for the UPRR Work to be constructed in the summer/fall of 2010. The UPRR Work is defined in the paragraph designated "Relocation/Rehabilitation of Rail Facilities" in the UPRR Letter of Intent addressed to me dated December 4, 2009. In consideration of UPRR advancing and completing the final design of the UPRR Work, the City agrees to reimburse UPRR for all of its engineering/design costs which are currently estimated to be approximately \$30,000, assuming no changes in the scope of the Work. UPRR agrees not to exceed design costs of \$30,000 without first requesting and receiving further authorization from the City to continue with the final design.

This agreement to reimburse UPRR for said engineering/design costs is not contingent upon UPRR and the City of Lincoln entering into a definitive Purchase and Sale Agreement.

Requests for payment for the engineering/design work shall be sent to: Rick Peo, Chief Assistant City Attorney, for processing.

Sincerely,

Chris Beutler  
Mayor of Lincoln

Approved and Accepted this 8<sup>th</sup> day of February, 2010.

Union Pacific Railroad Company

\_\_\_\_\_  
TONY K. LOVE

By:

Printed Name:

Assistant Vice President - Real Estate

Title:



F:\FILES\MAYOR2010\Mayor\Beutler,Letters,Speeches,Memos\Love,Tony.01-26-2010,UnionPacific,Law,rp.wpd

EXHIBIT A TO EXHIBIT C



December 4, 2009  
Folder: #2088-03

Mayor Chris Beutler  
City of Lincoln  
555 South 10<sup>th</sup> Street, Suite 208  
Lincoln, Nebraska 68508

Re: Term Sheet / Proposed Purchase of UPRR Property for West Haymarket Project

Dear Mayor Beutler:

This Letter sets forth an outline of some of the terms and conditions upon which Union Pacific Railroad Company, a Delaware corporation ("UPRR") would consider entering into a Purchase and Sale Agreement ("PSA") to sell its interest in certain real property located in the City of Lincoln, County of Lancaster, State of Nebraska, to the City of Lincoln, Nebraska, a municipal corporation ("City").

**City Project:** City proposes to acquire real property from UPRR and from BNSF, and have UPRR and BNSF relocate various rail facilities, at the expense and cost of City, in order to implement its proposed West Haymarket Project (the "Project").

**UPRR Property:** Proposed sale area shown on print dated 1/8/2009 on **Exhibit A** attached hereto and made a part hereof ("Property").

UPRR will quitclaim its interest, if any, in abutting streets and alleys.

**Purchase Price:** \$1,280,000.00 ("Purchase Price").

**Due Diligence Period:** City shall have a total of 120 days from execution of the PSA to investigate the Property and make all inspections.

**Site Access:** City and its employees and outside contractors shall have the ability to enter on the Property and conduct all necessary testing, including Phase II environmental testing, as determined by City immediately upon execution of the PSA. Prior to execution of the PSA, subject to the City and/or its contractor executing UPRR's standard form right of entry, City may conduct non-invasive testing, surveys and property investigation.

**Closing and Possession:**

The purchase and sale of the Property shall close ("Closing") through escrow at the offices of the Title Company on or before May 31, 2010 ("Closing Date"). Possession to be delivered at Closing.

**Survey:**

City shall provide UPRR, at City's expense, a current survey of the Property performed by a registered surveyor of the State of Nebraska in accordance with ALTA Survey Standards and in a form acceptable to Title Company. The survey shall be certified to UPRR, the City and the Title Company.

**Title Insurance:**

City will provide, at City's expense, a preliminary title commitment for an ALTA Owner's Title Insurance Policy on the Property issued by Title Company in the amount of the Purchase Price, together with legible copies of all documents referred to in the commitment.

**Environmental:**

UPRR will provide City with copies any environmental reports and investigations on the Property, if any, in UPRR's possession, during the Due Diligence Period.

UPRR wishes to be released and indemnified against all environmental obligations on the Property.

**Relocation/ Rehabilitation of Rail Facilities:**

City's Project will require UPRR, at the sole cost and expense of City, to rehabilitate its existing bridge over Salt Creek to accommodate 40 mph traffic to facilitate certain BNSF operations, and to reconstruct a segment of UPRR track east of the UPRR bridge and extend it, as conceptually depicted on **Exhibit B** attached hereto and made a part hereof ("UPRR Work"). The parties intend for the UPRR Work to be completed in 2010 provided the PSA is timely entered into.

**Engineering Design Agreement:**

City agrees to enter into an Engineering / Design agreement with UPRR to advance the final design of the UPRR Work. City will reimburse UPRR for all its engineering / design costs, which are currently estimated to be approximately \$30,000, assuming no changes in the scope of the Project.

**Conditions Precedent:**

City Council approving all necessary resolutions and ordinances for the implementation of the Project, including obtaining all necessary funding commitments and voter approvals.

BNSF and the City entering into a definitive Agreement for the Project.

UPRR and the City entering into a definitive Agreement for the Project.

UPRR and BNSF entering into a memorandum of understanding regarding joint facilities operations on terms mutually satisfactory.

This letter is not intended as, and does not constitute, a binding agreement by any party, or an agreement by any party to enter into a binding agreement, but is intended to specify some of the proposed terms and conditions of the transaction contemplated herein. Neither party may claim any legal right against the other by reason of this or by taking any action in reliance thereon.

**A contract will not exist unless and until Union Pacific Senior Management approval has been obtained and the parties have executed a formal PSA Agreement, approved by their respective counsel, regarding the subject matter of this Letter and containing all other essential terms of an agreed upon transaction which terms shall be subject to future negotiations. The parties acknowledge that they have not set forth herein nor agreed upon all essential terms.**

Very truly yours,



**Union Pacific Railroad Company**

Approved and Accepted this 4<sup>th</sup> day  
of ~~December~~, 2009. January 2010

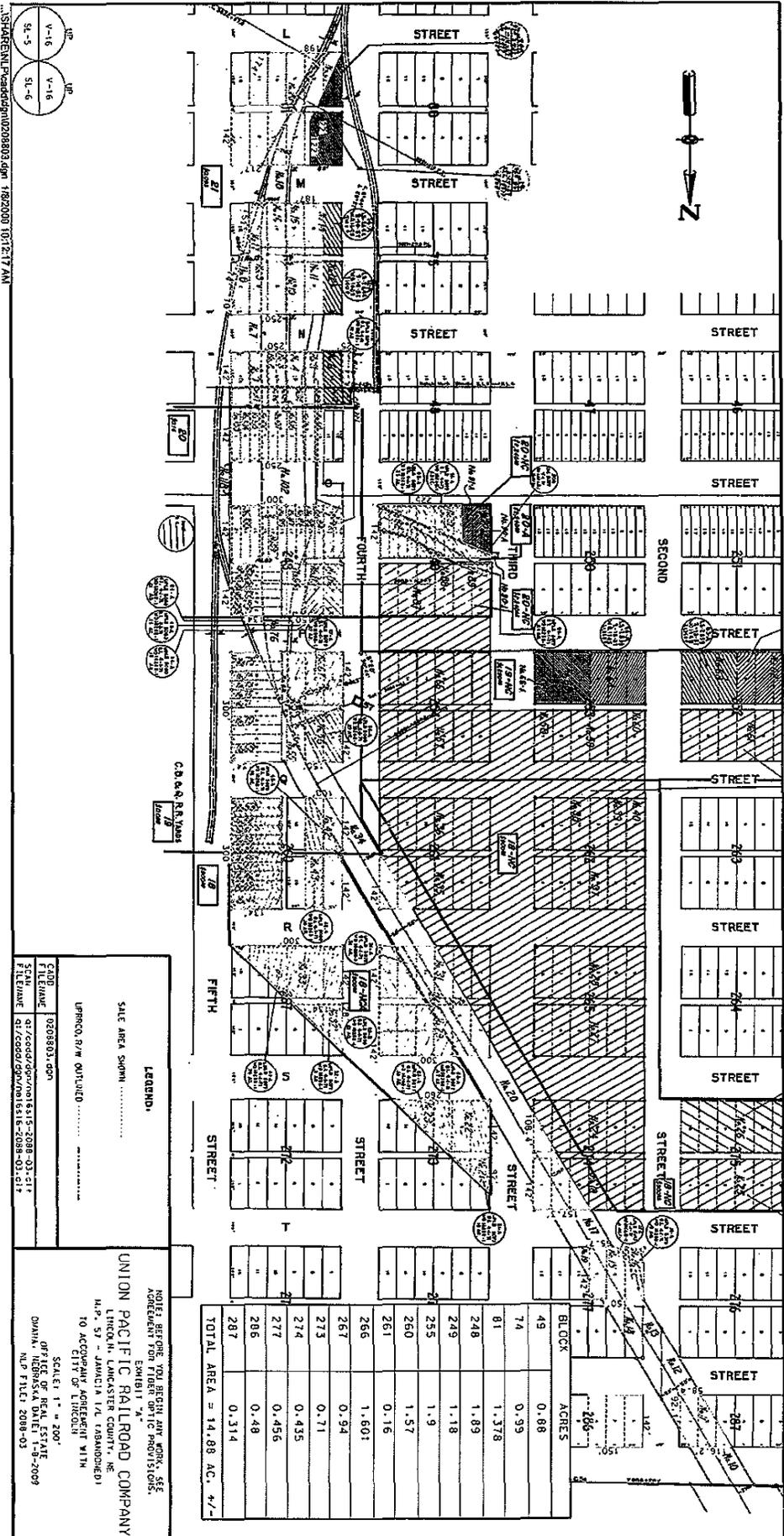
CITY OF LINCOLN

By: 

Printed Name: CHRIS DELUTEN

Title: MAYOR

cc: Rick Peo



BLOCK	ACRES
49	0.88
74	0.99
81	1.378
248	1.89
249	1.18
255	1.9
260	1.57
261	0.16
266	1.601
267	0.94
273	0.71
274	0.435
277	0.456
286	0.48
287	0.314
TOTAL AREA = 14.88 AC. +/-	

**LEGEND.**

SALE AREA SHOWN .....

UPRICO. B/W OBTAINED .....

CODE NO. 0208803.000

FILE NAME C:\CGI\2008\CON\1515-208-03-C1\*

FILE NAME C:\CGI\2008\CON\1515-208-03-C1\*

NOTE: BEFORE YOU BEGIN ANY WORK, SEE ASSESSMENT FOR ACCURACY.

EXHIBIT "A"

**UNION PACIFIC RAILROAD COMPANY**

LINCOLN, LANCASTER COUNTY, NE

M.P. 57 - JAMACIA T.V. (UNMODIFIED)

TO ACCOMPANY AGREEMENT WITH CITY OF LINCOLN

SCALE: 1" = 200'

OFFICE OF REAL ESTATE

DAVINA, NEBRASKA DATE: 1-9-2009

N.P. FILE# 2008-03

**EXHIBIT A**

HP V-16 V-16

SL-5 SL-6

HP V-16 V-16

SL-5 SL-6

1/8/2009 10:12:17 AM

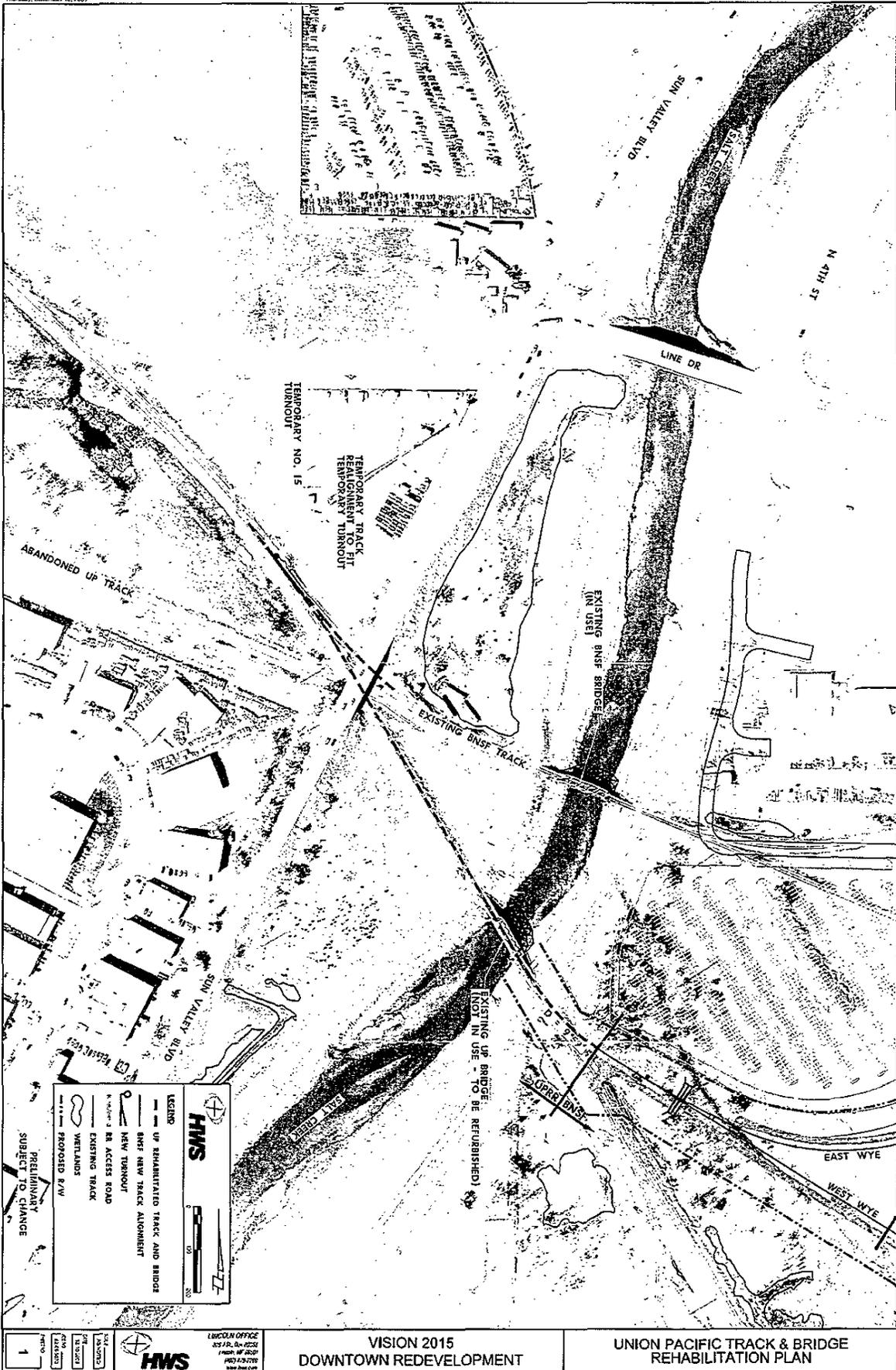


EXHIBIT B

**HMS**

LEGEND

- UP REHABILITATED TRACK AND BRIDGE
- BNSF NEW TRACK ALIGNMENT
- NEW TURNOUT
- BNSF 2 IN ACCESS ROAD
- EXISTING TRACK
- WETLANDS
- PROPOSED R/W

SCALE: 1" = 50'

0 50 100

PRELIMINARY  
SUBJECT TO CHANGE

LINCOLN OFFICE  
 200 J.L. Ray Blvd  
 Suite 400  
 Lincoln, NE 68502  
 PH: 402.476.7770  
 www.hms.com

VISION 2015  
 DOWNTOWN REDEVELOPMENT

UNION PACIFIC TRACK & BRIDGE  
 REHABILITATION PLAN

**HMS**

1

**EXHIBIT D****AGREEMENT COVERING REHABILITATION  
OF  
TRACK AND BRIDGE IN LINCOLN, NEBRASKA**

This Agreement ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 ("**Execution Date**") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**Railroad**") and **CITY OF LINCOLN, NEBRASKA**, a municipal corporation of the State of Nebraska ("**City**").

**RECITALS**

A. Railroad and City have entered into a Purchase and Sale Agreement dated \_\_\_\_\_, 2010 (the "**Sale Agreement**") covering the City's purchase of certain property located in the City of Lincoln, Lancaster County, Nebraska, to accommodate the City's proposed West Haymarket Project (the "**Project**").

B. The Project provides for Railroad, at City's expense, to rehabilitate certain track and a railroad bridge over the Salt Creek as described and shown on the print prepared by HWS dated December 10, 2009, marked **Exhibit A**, attached hereto and hereby made a part hereof (the "**Railroad Work**").

C. Railroad and City are entering into this Agreement to set forth the terms and conditions under which the Railroad Work will be performed.

**AGREEMENT**

NOW, THEREFORE, it is mutually agreed by and between Railroad and City as follows:

**Section 1. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD.**

City agrees that no Project costs are to be borne by Railroad and that all Railroad Work is to be performed by Railroad at City's sole cost and expense. In addition, Railroad is not required to contribute any funding for the Project.

**Section 2. RAILROAD WORK; RAILROAD'S ESTIMATE; BILLING TO CITY.**

A. Upon receiving a notice to proceed from the City and after closing under the Sale Agreement, Railroad shall perform the Railroad Work consisting of (i) installing a new turnout in the location shown in blue on **Exhibit A**, (ii) rehabilitating the portion of Railroad's track shown by dashed red lines on **Exhibit A** including the grading, drainage, ballasting and track work associated therewith, and (iii) refurbishing the railroad bridge over Salt Creek as described and shown on **Exhibit A** and as described in Railroad's Material and Force Account Estimate dated September 21, 2009, marked **Exhibit B**, attached hereto and hereby made a part hereof

(the "**Estimate**"). As set forth in the Estimate, Railroad's estimated cost to perform the Railroad Work is One Million Twenty Nine Thousand Six Hundred Twenty One Dollars (\$1,029,621.00).

B. Railroad shall recalculate and update the Estimate prior to closing under the Sale Agreement.

C. City agrees that the Estimate is only an estimate provided by Railroad of anticipated costs to be incurred by Railroad under the Project and that Railroad will bill the City based on actual costs incurred by Railroad.

D. Railroad shall send progressive billing to City during the course of performing the Railroad Work and shall send final billing to City within one hundred eighty (180) days after Railroad has completed the Railroad Work.

E. Railroad shall perform the Railroad Work in compliance with plans affecting the Railroad Work that have been prepared by Railroad and approved by City as such plans are dated \_\_\_\_\_, 2010, and marked **Exhibit C**, attached hereto and hereby made a part hereof (the "**Plans**"). No changes in the Plans shall be made unless Railroad has consented to such changes in writing.

F. When performing the Railroad Work, Railroad shall use commercially reasonable efforts to perform the work to meet Project construction timelines. However, City agrees that Railroad shall have no liability to City, City's contractor or any other person or entity if Railroad does not complete the Railroad Work within the Project construction timelines.

**Section 3. CITY'S REIMBURSEMENT OF COSTS INCURRED BY RAILROAD.**

A. City agrees to reimburse Railroad within thirty (30) days of its receipt of progressive or final billing for one hundred percent (100%) of all actual costs incurred by Railroad for the Railroad Work including, without limitation, construction inspection, flagging, procurement of materials, manpower, equipment rental, deliveries to the job site and all direct and indirect overhead labor costs including Railroad's standard additives.

B. The books, papers, records and accounts of Railroad as they relate to the Railroad Work performed by Railroad shall be open to inspection and audit by City at Railroad's Headquarters' Building in Omaha, Nebraska, during normal business hours for a period of three (3) years following the date of Railroad's final billing to City.

**Section 4. TRACKAGE RIGHTS AGREEMENT WITH BNSF.**

Railroad shall amend the existing trackage rights agreement with the BNSF Railway Company ("**BNSF**") to cover BNSF's use of the rehabilitated track and bridge covered by this Agreement.

**Section 5. EFFECTIVE DATE.**

This Agreement is effective as of the Execution Date first herein written.

IN WITNESS WHEREOF, Railroad and City have executed this Agreement in duplicate as of the Execution Date first herein written.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

**CITY OF LINCOLN, NEBRASKA,  
a municipal corporation**

By:  \_\_\_\_\_  
Title: Mayor

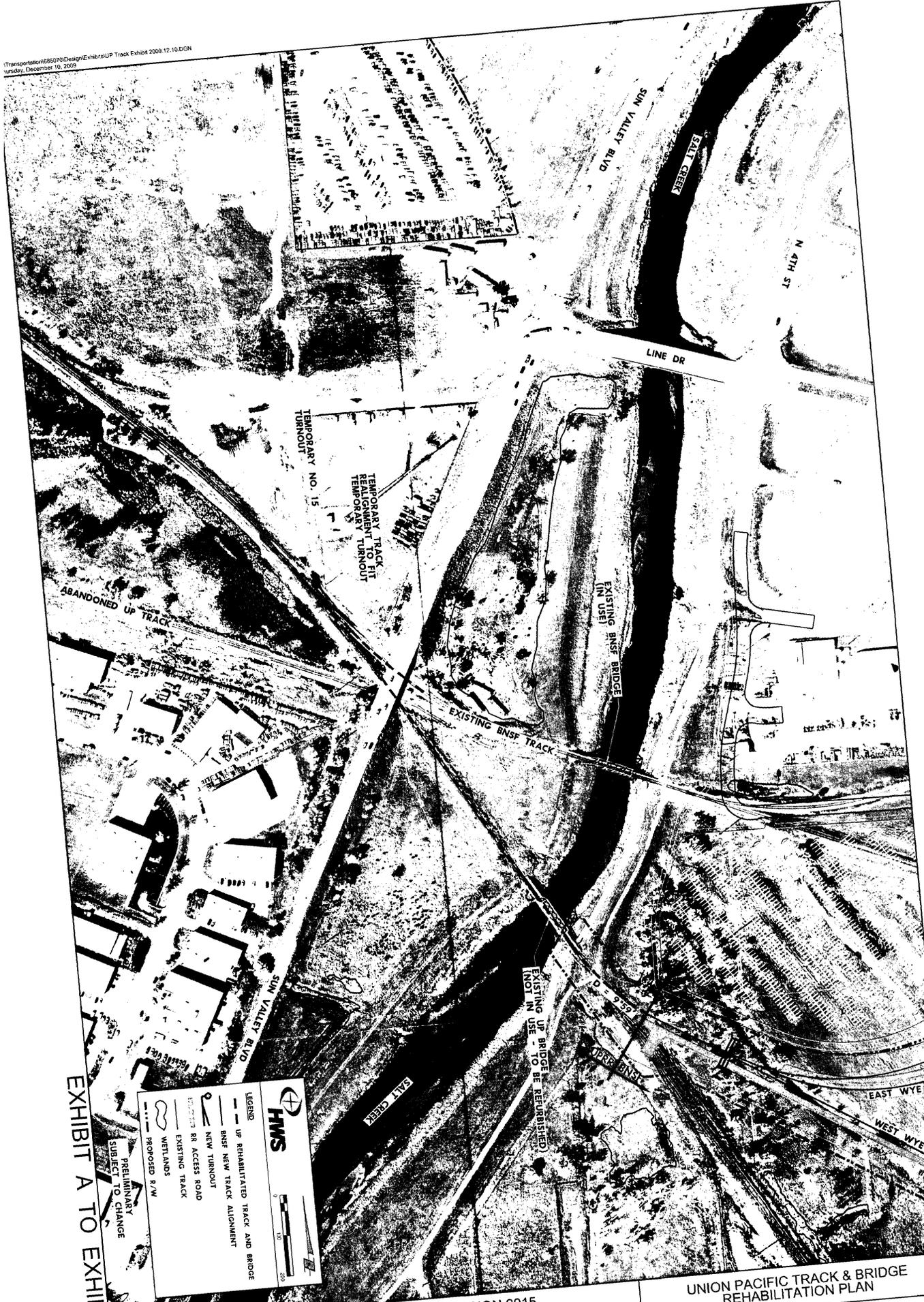


EXHIBIT A TO EXHIBIT D

**HWS**

**LEGEND**

- UP REHABILITATED TRACK AND BRIDGE
- BNSF NEW TRACK ALIGNMENT
- NEW TURNOUT
- RR ACCESS ROAD
- EXISTING TRACK
- WETLANDS
- PROPOSED R/W
- PRELIMINARY SUBJECT TO CHANGE

Scale: 0 50 100 Feet

**HWS**

LINCOLN OFFICE  
 825 S. St. Box 85366  
 Lincoln, NE 68501  
 (402) 479-2200  
 www.hws.com

VISION 2015  
 DOWNTOWN REDEVELOPMENT

UNION PACIFIC TRACK & BRIDGE  
 REHABILITATION PLAN

# EXHIBIT B TO EXHIBIT D Material And Force Account Estimate

## City of Lincoln, Ne

Estimate Number: 42524 Version: 3

Standard Rates: Labor Additive = 236% WT Labor Additive = 187.95%

Estimate Good for 6 Months Until 11/17/10

Location: JAMAICA (ABANDONED), CONN, 135.89-141.4

Description of Work: Track work near Salt Creek for West Haymarket Redevelopment Project - Lincoln Ne.

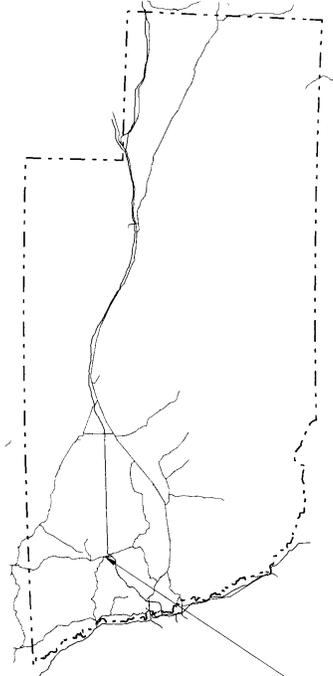
COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	
<b>ENGINEERING</b>									
		ENGINEERING	1	LS	100,000.00	100,000	0	100,000	
		CONTRACT SURVEYING/STAKING	1	LS	5,000.00	0	5,000	5,000	
		FLAGGING	15	MD	750.00	11,250	0	11,250	
<b>Sub-Total =</b>						<b>111,250</b>	<b>5,000</b>	<b>116,250</b>	
<b>TRACK CONSTRUCTION - COMPANY</b>									
	TRACK	136# CWRHH0 CWR 24-9', 16'N TP	1250	TF	262.56	198,877	129,318	328,195	
	TRACK	SHIFT TRACK: M.L. 50% TIES	484	TF	62.26	18,587	11,546	30,133	
	TRACK	SHIFT TRACK: M.L. 30% TIES	965	TF	44.04	27,078	15,423	42,502	
#11 Track Element	TRACK	136# CWRHH0 CWR 24-9', 16'N TP	125	TF	267.60	20,471	12,978	33,450	
LH	PPTO	PPTO 136# #11 HT XLSR	1	EA	75,196.14	72,784	2,412	75,196	
	PPTO	RELOCATE TO: #11	1	EA	12,392.23	9,599	2,793	12,392	
<b>Sub-Total =</b>						<b>347,396</b>	<b>174,471</b>	<b>521,868</b>	
<b>TRACK REMOVAL - COMPANY</b>									
	TRACK	REMOVE TRACK	275	TF	10.46	2,876	0	2,876	
<b>Sub-Total =</b>						<b>2,876</b>	<b>0</b>	<b>2,876</b>	
<b>SITE WORK - CONTRACT</b>									
		MOBILIZATION	1	LS	60,000.00	0	60,000	60,000	
		CLEARING AND GRUBBING	1.57	AC	2,500.00	0	3,925	3,925	
For new grade only		GRADING: EXCAVATION	3843	CY	25.00	0	96,075	96,075	
		SUBEXCAVATION	385	CY	12.00	0	4,620	4,620	
		CLEAN FILL FOR SUB-EX FUR/PLC	385	CY	16.00	0	6,160	6,160	
For new grade only		AGGREGATE - SUBBALLAST - FURNISH, PLACE	1468	CY	55.00	0	80,740	80,740	
		FENCE: SILT	500	LF	3.00	0	1,500	1,500	
		SEEDING - DRILLED	1	AC	3,000.00	0	3,000	3,000	
		STRAW WATTLES	100	LF	16.00	0	1,600	1,600	
<b>Sub-Total =</b>						<b>0</b>	<b>257,620</b>	<b>257,620</b>	
<b>BRIDGE - CONTRACT</b>									
Bridge Repairs		BRIDGE - CONSTRUCT	1	LS	80,250.00	0	80,250	80,250	
<b>Sub-Total =</b>						<b>0</b>	<b>80,250</b>	<b>80,250</b>	
<b>EQUIPMENT RENTAL</b>									
		EQUIPMENT RENTAL	1	LS	50,000.00	0	50,000	50,000	
<b>Sub-Total =</b>						<b>0</b>	<b>50,000</b>	<b>50,000</b>	
<b>HOMELINE FREIGHT</b>									
		HOMELINE FREIGHT	4252	Per Ton	7.38	0	31,362	31,362	
<b>Sub-Total =</b>						<b>0</b>	<b>31,362</b>	<b>31,362</b>	
<b>PROJECT LEVEL COST</b>									
	CONTINGENCIES	CONTINGENCY	10	%	10,602.25	46,152	59,870	106,023	
<b>Sub-Total =</b>						<b>46,152</b>	<b>59,870</b>	<b>106,023</b>	
<b>Total Wgt. in Tons = 4,252</b>						<b>Totals =</b>	<b>507,674</b>	<b>658,573</b>	<b>1,166,248</b>

**Grand Total =** **\$1,166,248**

This estimate is based on preliminary site information. Final design has not been completed. The figures are estimates only and actual costs will be based on final design quantities



**ENGINEERING  
DESIGN/CONSTRUCTION**



*State of Nebraska*

*Project Location Map*



PROJECT LOCATION

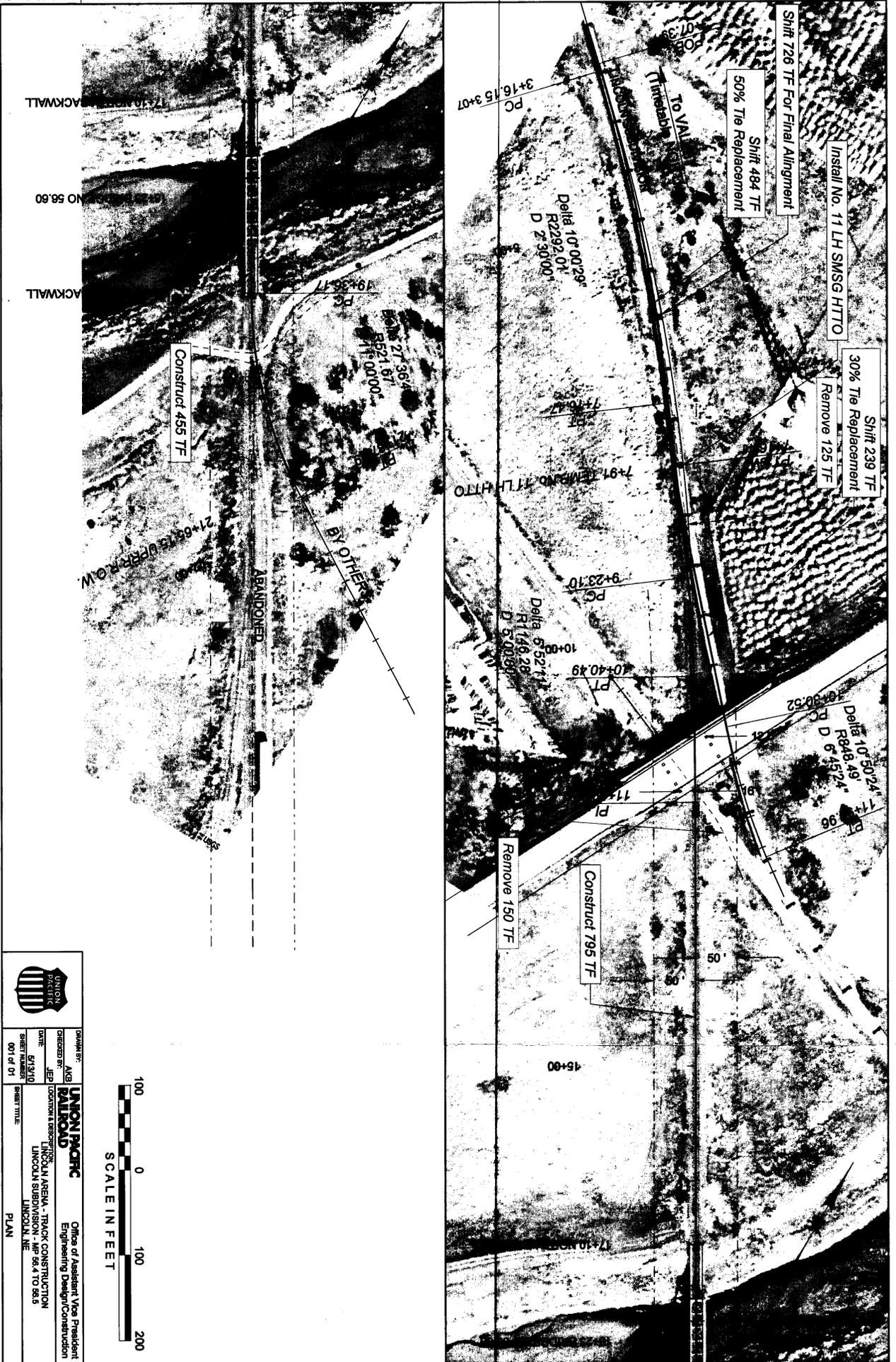
**LINCOLN, NE  
LINCOLN SUBDIVISION  
MILE POST 56.4 - 56.6  
LINCOLN ARENA REALIGNMENT**

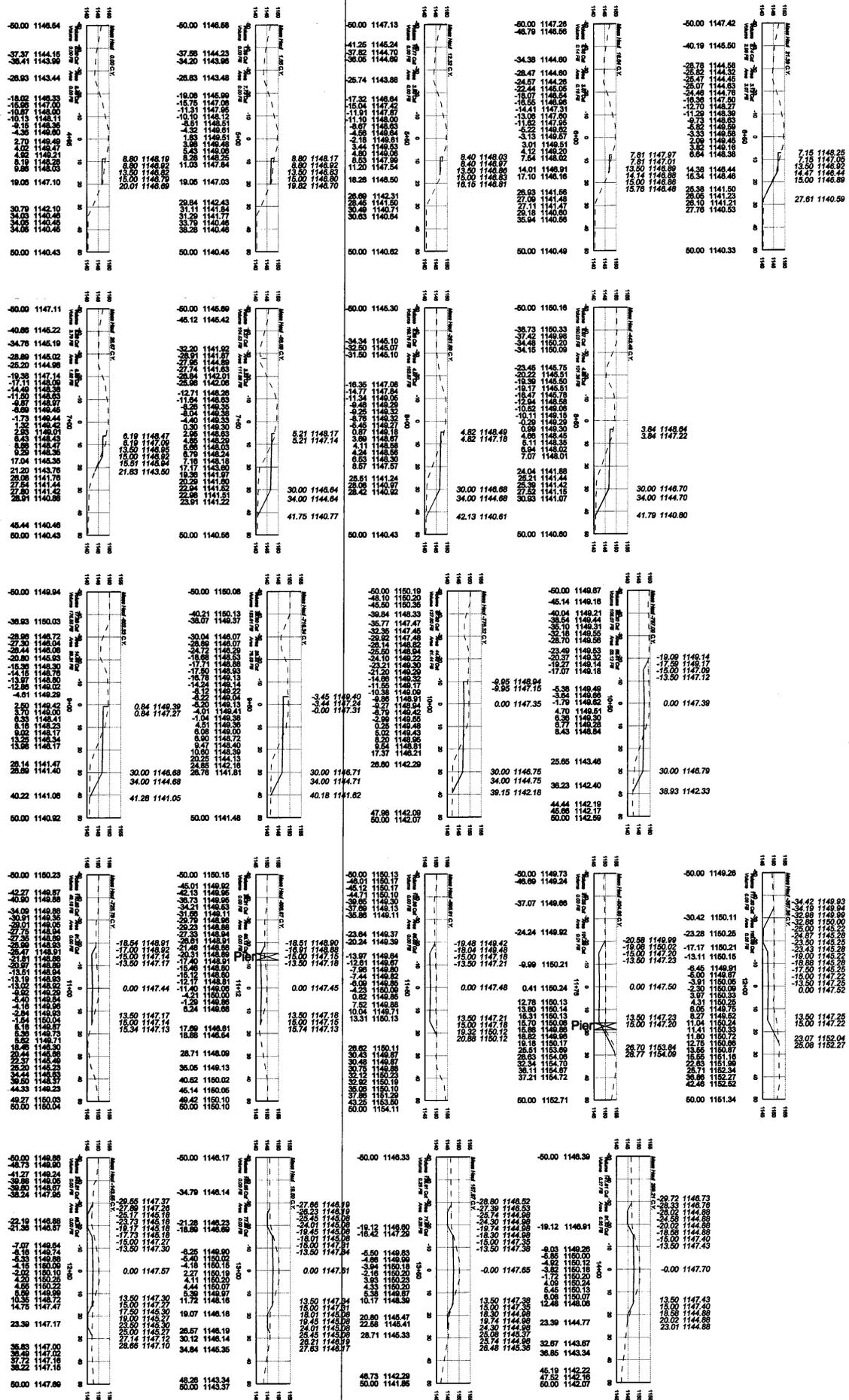
**PRELIMINARY**

**NOT FOR CONSTRUCTION**

**LAST REVISED  
MAY 12, 2010**

WORK ORDER: 04367  
PROJECT NUMBER:  
BUDGET REFERENCE:

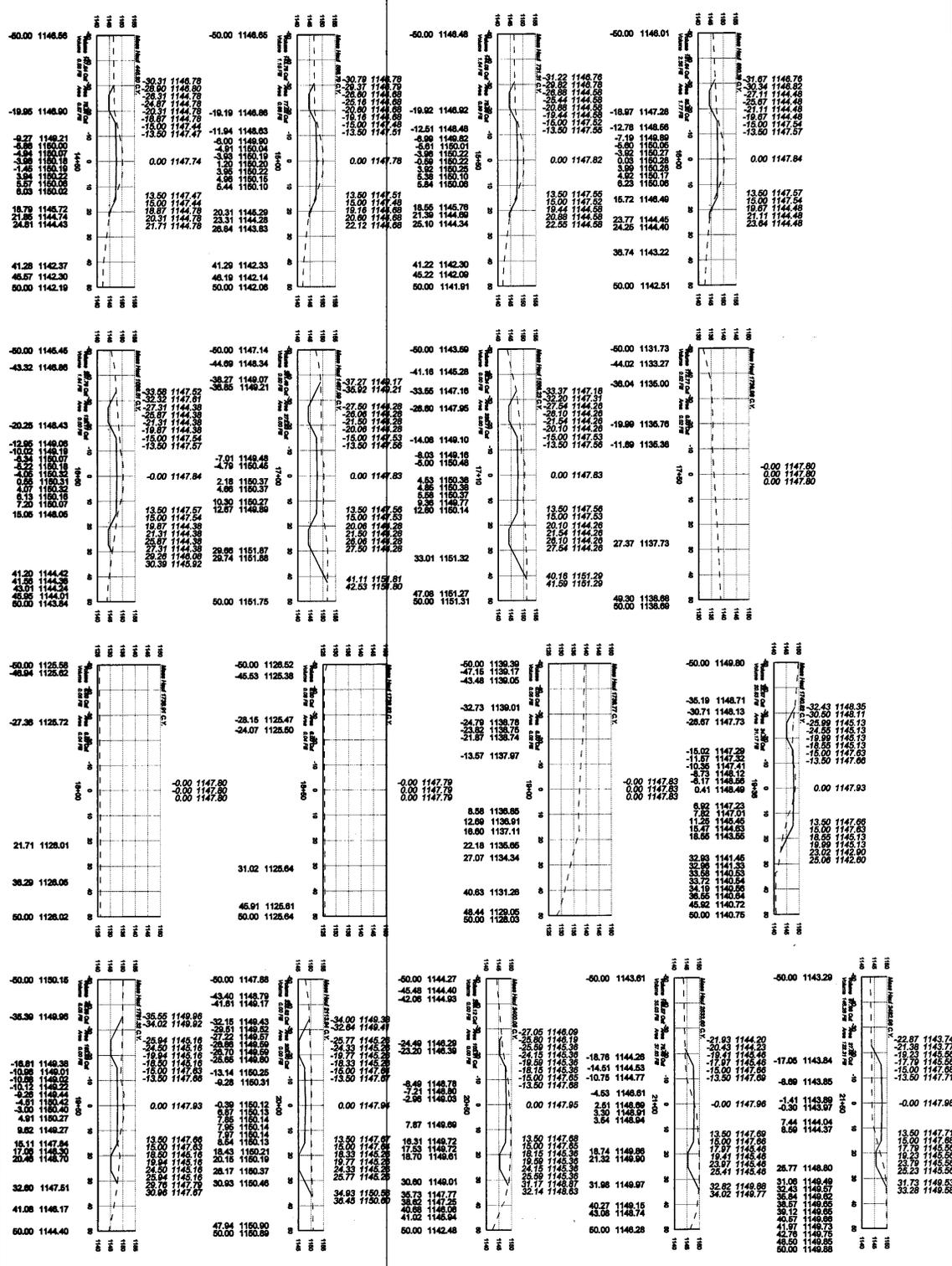




**UNION PACIFIC**  
 RAILROAD  
 LINCOLN ARENA TRACK CONSTRUCTION  
 ENGINEERING DESIGN/CONSTRUCTION  
 LINCOLN, NE 68210-8833

DATE: 6/13/10  
 SHEET NUMBER: 001 OF 03  
 SHEET TITLE: CROSS SECTIONS STA 485 TO STA 490

DESIGNED BY: JEB  
 CHECKED BY: JEB  
 DRAWN BY: JEB  
 OFFICE OF ASSISTANT VICE PRESIDENT



**UNION PACIFIC**

Office of Assistant Vice President  
 Engineering Design/Construction

**UNION PACIFIC**  
 RAILROAD  
 LINCOLN ARENA TRACK CONSTRUCTION  
 LINCOLN STATION, JEP 96-170-843  
 LINCOLN, NE  
 SHEET TITLE: CROSS SECTIONS STA 1490 TO STA 2300

DATE: 6/13/10  
 DESIGNED BY: JEP  
 CHECKED BY: JEP  
 REVISION: 002 of 03

Report Results

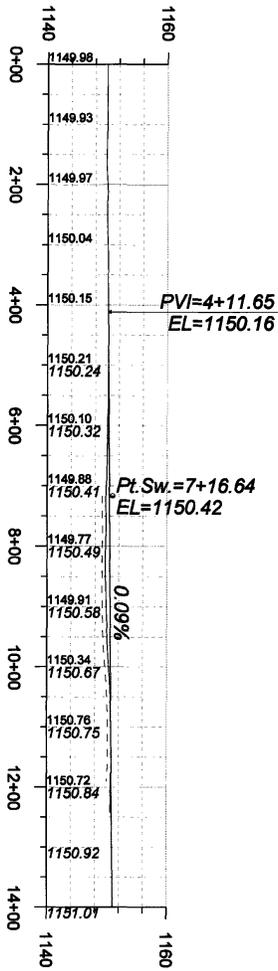
\* \* \* EARTHWORK \* \* \*

BASLINE STATION NUMBER	STATION AREA (sq. ft.)	CUT VOLUME (cu yd)	STATION AREA (sq. ft.)	FILL VOLUME (cu yd)	MASS ORDINATE (cu yd)
4+94.84	8.48	0	0.00	0	0
5+00.00	7.73	0	0.00	0	2
5+50.00	3.90	11	0.00	0	12
6+00.00	3.07	6	0.16	0	19
6+50.00	3.13	6	3.07	3	21
7+00.00	6.68	9	1.02	4	27
7+50.00	3.33	9	11.88	105	-69
8+00.00	4.07	7	103.87	200	-261
8+50.00	4.65	8	101.36	190	-443
9+00.00	14.44	18	89.21	171	-602
9+50.00	28.32	40	64.28	128	-779
10+00.00	54.01	95	53.12	106	-789
11+00.00	60.13	110	0.00	49	-726
11+11.96	60.13	27	0.00	0	-699
11+50.00	86.03	103	0.00	0	-596
11+76.21	101.59	91	0.01	0	-505
12+00.00	165.08	118	0.00	0	-387
12+50.00	98.24	244	0.00	0	-144
13+00.00	77.86	163	0.00	0	20
13+50.00	71.84	139	0.26	0	158
14+00.00	81.10	142	0.33	0	299
14+50.00	78.24	148	0.37	1	446
15+00.00	71.02	144	0.68	1	389
15+50.00	88.36	154	0.77	2	831
16+00.00	133.17	157	0.00	2	1087
16+50.00	272.83	206	0.00	0	1668
17+00.00	235.77	98	0.00	0	1739
17+10.43	0.00	173	0.02	0	1739
17+50.00	0.00	98	0.04	0	1739
18+00.00	0.00	0	0.04	0	1739
18+50.00	0.00	0	0.02	0	1739
19+00.00	0.00	0	31.17	21	1781
19+36.06	34.26	23	0.00	8	2114
19+50.00	153.83	49	0.00	0	2400
20+00.00	205.40	333	0.00	0	2400
20+50.00	103.61	286	0.00	0	2334
21+00.00	78.42	189	32.93	13	2334
21+50.00	21.00	25	162.32	270	2393

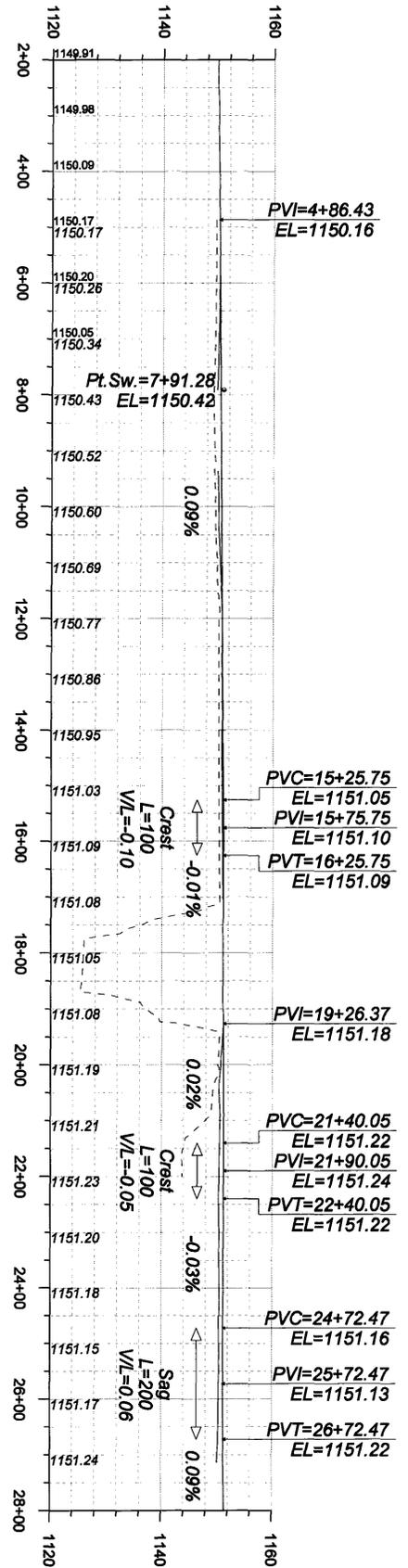
=====  
 Grand Tot.:  
 TOTAL CUT: 3843 c.y.  
 TOTAL FILL: 3943 c.y.  
 TOTAL SUB-BALANCE: 1468 c.y.  
 =====

	DESIGNED BY: <b>AKG</b>	<b>UNION PACIFIC RAILROAD</b> Office of Assistant Vice President Engineering Design/Construction LINCOLN ARENA - TRACK CONSTRUCTION LINCOLN SUBDIVISION - MP 58.4 TO 58.5 LINCOLN, NE
	CHECKED BY: <b>JEP</b>	
DATE: 5/13/10	SHEET NUMBER: 001 of	
SHEET TITLE: <b>GRADING QUANTITIES</b>		

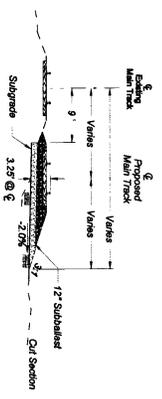
# Temporary Connection



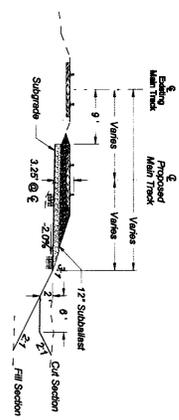
# Proposed Main Track



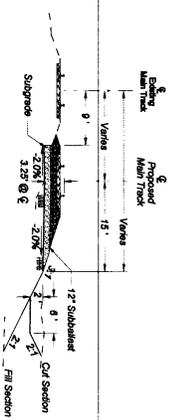
	DRAWN BY: ASB CHECKED BY: JEP DATE: 6/13/10 SHEET NO: 001 of 01 SHEET TITLE: PROFILES
	<b>UNION PACIFIC RAILROAD</b> OFFICE OF ASSISTANT VICE PRESIDENT ENGINEERING DESIGN/CONSTRUCTION LINCOLN ARENA TRACK CONSTRUCTION LINCOLN ARENA, NE 65710 8815 LINCOLN, NE



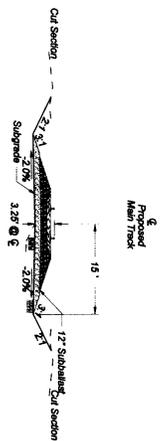
TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 4+95 TO STA. 7+50



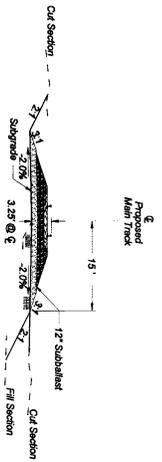
TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 7+50 TO STA. 9+11



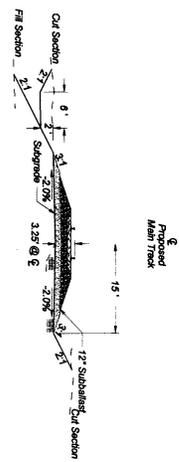
TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 9+11 TO STA. 10+50



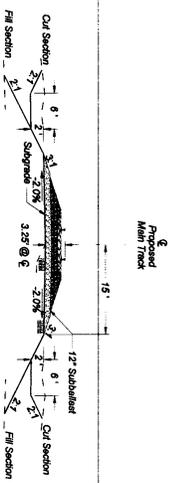
TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 10+50 TO STA. 11+50  
 STA. 11+50 TO STA. 12+00



TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 11+50 TO STA. 11+50



TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 12+00 TO STA. 12+50



TYPICAL SECTION FOR PROPOSED MAIN TRACK  
 STA. 12+50 TO STA. 17+10  
 STA. 17+10 TO STA. 22+00

	DESIGNER: <b>ANG</b> CHECKED BY: <b>JEP</b> DATE: <b>8/12/10</b> SHEET NUMBER: <b>001 OF 01</b>	<b>UNION PACIFIC RAILROAD</b> OFFICE OF ASSISTANT VICE PRESIDENT ENGINEERING DESIGN/CONSTRUCTION LINCOLN SUBDIVISION - MP 94.1 TO 94.5 LINCOLN, NE
	SHEET TITLE: <b>TYPICAL SECTIONS</b>	

EXHIBIT E

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SPACE ABOVE FOR RECORDER'S USE ONLY

QUITCLAIM DEED

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **CITY OF LINCOLN, NEBRASKA**, a municipal corporation ("Grantee"), whose address is 555 South 10<sup>th</sup> Street, Suite 208, Lincoln, Nebraska 68508, and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") and the abutting streets and alleys ("Abutting R-O-W") situated in the City of Lincoln, Lancaster County, State of Nebraska, together with all other acquired title of the Grantor therein as more particularly described in **Exhibit A** hereto attached and hereby made a part hereof.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, the following:

(a) All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors or assigns; and

(b) One (1) signboard and appurtenances thereto, including, without limitation, wirelines for electrical service to such signboard, now located upon, along, under and across the Property at Third and "O" Streets in Lincoln, and a PERPETUAL EASEMENT for the construction, maintenance, operation, repair, replacement, renewal and reconstruction of such signboard and appurtenances thereto (whether now or hereafter constructed) upon, along, under and across the portion of the Property which is the current locations of the signboard and within a radius five feet (5') outside the

perimeter of the land surface directly below the signboard (the "sign shadow") and any poles or footings if outside the sign shadow, together with (i) the right of unobstructed access, ingress and egress to and from said easement area for the purpose of exercising the rights herein reserved, and (ii) a sight line easement for the unobstructed view from "O" Street to signboards now or hereafter located on said easement area.

The Property and Abutting R-O-W are quitclaimed by Grantor subject to the following covenant, condition and restriction which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

Restriction on Use. Grantee, its successors and assigns, may use the Property and Abutting R-O-W for industrial, office, and retail-oriented commercial business (for example, shopping center, filling station, restaurant) purposes, only, and for no other purposes whatsoever. Without limitation of the foregoing, the Property and Abutting R-O-W must not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) cultural, educational, recreational or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, gymnasiums, athletic fields, picnic grounds or parks).

The foregoing covenant, condition and restriction shall run with the Property and Abutting R-O-W and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 2010.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

Attest:

\_\_\_\_\_  
Assistant Secretary

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

(Seal)

Grantee hereby accepts this Deed and agrees for itself, its successors and assigns, to be bound by the covenants set forth herein.

Dated this 15<sup>th</sup> day of June, 2010.

**CITY OF LINCOLN, NEBRASKA,  
a municipal corporation**

By: [Signature]  
Title: Mayor

ATTEST:

[Signature]  
City Clerk

(Seal)



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who are the \_\_\_\_\_ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

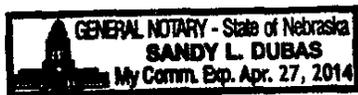
\_\_\_\_\_  
Notary Public

(Seal)

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

On June 15, 2010, before me, Sandy L. Dubas, Notary Public in and for said County and State, personally appeared Chris Beutler and Joan E. Ross who are the Mayor and the City Clerk, respectively, of the City of Lincoln, Nebraska, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



*Sandy L. Dubas*  
Notary Public

(Seal)

**EXHIBIT A TO EXHIBIT E**

**LEGAL DESCRIPTION OF PROPERTY AND ABUTTING R-O-W  
TO BE ATTACHED**

**EXHIBIT F**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to CITY OF LINCOLN, NEBRASKA, a municipal corporation ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the leases and licenses (collectively, "Licenses") to the extent the Licenses affect the real property ("Property") and abutting streets and alleys ("Abutting R-O-W") described on **Exhibit A**, which Licenses are listed on **Exhibit B**.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property and Abutting R-O-W accruing on and after the date hereof, and (b) indemnify and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property and Abutting R-O-W on and after the date hereof, or (2) claims under the Licenses as they relate to the Property and Abutting R-O-W by the licensees named in the Licenses accruing on and after the date hereof.

This assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

All exhibits attached to this Agreement are incorporated herein for all purposes.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2010.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

**CITY OF LINCOLN, NEBRASKA,  
a municipal corporation**

By:  \_\_\_\_\_  
Title: Mayor

**EXHIBIT A TO EXHIBIT F**

**LEGAL DESCRIPTION OF PROPERTY AND ABUTTING R-O-W  
TO BE ATTACHED**

**EXHIBIT B TO EXHIBIT F**  
**U.P.R.R. REAL ESTATE DEPARTMENT**  
**PROPOSED SALE OF LAND TO**

**CITY OF LINCOLN, NE**

**FOLDER NO. 2088-03**

PROJECT	AUDIT	FOLDER	FILENET	PARTY NAME	PURPOSE	CITY	COUNTY	ST	MP START	DISPOSITION	CONTAINED
103582	126284		77263315	ALLTEL COMMUNICATIONS	Crossing - Wireline	LINCOLN	LANCASTER	NE	57.21	Assigned	Totally
655936	228423	212432	114709852	LINCOLN WASTEWATER SYSTEM	Crossing Pipeline	LINCOLN	LANCASTER	NE	56.92	Assigned	Totally
11328	A92645	8159	80145533	ALLTEL COMMUNICATIONS	Encroachment - Wireline	LINCOLN	LANCASTER	NE	57.13	Assigned	Totally
525203	209900	174755	102094054	LEVEL 3 COMMUNICATION LLC	Crossing - Wireline	LINCOLN	LANCASTER	NE	56.58	Assigned	Totally
2296	A102232	5932	18546771	ALLTEL COMMUNICATIONS	Encroachment - Wireline	LINCOLN	LANCASTER	NE	57.12	Assigned	Totally
119165	42762	1811	78487747	LANCASTER COUNTY SANITARY DISTRICT	Crossing Pipeline	LINCOLN	LANCASTER	NE	57.05	Assigned	Partially
666900	84647		157585567	CONSUMERS PUBLIC POWER DISTRICT	Crossing - Wireline	LINCOLN	LANCASTER	NE	57.2	Assigned	Totally
54031	UPX2018	42238	539532	LINCOLN ELECTRIC SYSTEM	Crossing - Wireline	LINCOLN	LANCASTER	NE	57.21	Assigned	Totally

**EXHIBIT G****CERTIFICATION OF NON-FOREIGN STATUS**

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF LINCOLN, NEBRASKA, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three-year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT H****LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (the "Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Licensor"), and **CITY OF LINCOLN, NEBRASKA**, a municipal corporation ("Licensee"), WITNESSETH:

**RECITALS:**

A. Licensee has acquired from Licensor real property located in the City of Lincoln, Lancaster County, Nebraska, and has or will acquire from BNSF Railway ("BNSF") certain other property in the City of Lincoln, Lancaster County, Nebraska, in order to implement Licensee's proposed West Haymarket Project (the "Project").

B. The Project will include relocation of various rail facilities of BNSF and Licensor and rehabilitation by Licensor of Licensor's existing railroad bridge over Salt Creek (the "Salt Creek Bridge") and reconstruction and extension of a segment of Licensor's track ("Licensor's Work"), as more particularly defined in that certain Purchase and Sale Agreement between Licensor and Licensee dated \_\_\_\_\_, 2010 (the "Purchase Agreement"), all at the sole cost and expense of Licensee.

C. The Project will further include construction, maintenance and repair of security fencing ("Security Fencing") on the perimeter of the future BNSF Corridor to be created under the Project, including the construction, maintenance and repair of Security Fencing upon and along the west and east boundaries of Licensor's property located in Block 277, Original Plat, Lincoln, Nebraska (the "Block 277 Property", which is not included in the sale of property to Licensee under the Purchase Agreement) and tie-in of such Security Fencing to Licensor's Salt Creek Bridge, shown by \_\_\_\_\_ line on the print attached hereto as **Exhibit A** and hereby made a part hereof.

D. Licensor is willing to grant a license to Licensee for construction, maintenance and repair of the Security Fencing on the Block 277 Property and tie-in of the Security Fencing to the Salt Creek Bridge, and Licensee is willing to accept such license, on the following terms and conditions.

**AGREEMENT:**

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**SECTION 1. LICENSOR GRANTS RIGHT.**

In consideration of the covenants and agreements herein contained to be by Licensee kept, observed and performed, Licensor hereby grants to Licensee, subject to the terms and conditions stated in this Agreement, the right to construct and thereafter, during the term hereof, to continue to maintain the Security Fencing on Licensor's Block 277 Property in the location shown on Exhibit A.

The foregoing license is subject to the right and power of Licensor, its successors and assigns, to construct at any and all times and to maintain roads, highways, railroad tracks, pipelines and telephone, fiber optic and electric power pole and wire lines, over, under and across the Block 277 Property, it being understood that the right so reserved to Licensor, its successors and assigns, is retained along with the right of Licensor, its successors and assigns, to the use of the Block 277 Property for any purpose not inconsistent with the use by Licensee for the purposes herein defined.

The foregoing grant is subject to all outstanding superior rights, including, but not limited to, those for pipe, telephone, electric and fiber optic lines, lessees of Licensor's right of way, and others, and the right of Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**SECTION 2. SPECIFICATIONS.**

Licensee, at its sole cost and expense, shall install and thereafter maintain the Security Fencing to prevent access to or encroachment on the railroad right-of-way of Licensor and BNSF Railway adjacent to the Block 277 Property. The Security Fencing must be of a design and type satisfactory to Licensor, and in compliance with applicable building codes, and shall be constructed and maintained by Licensee in such manner as not to be or constitute a hazard to the railroad right-of-way of Licensor and other railroads using Licensor's right-of-way. Licensee shall submit the plans for the Security Fencing to:

Union Pacific Railroad Company  
Attn: Rick L. Harris, Manager-Real Estate  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179

with copy of transmittal to:

Vice President-Engineering Management  
Union Pacific Railroad Company  
1400 Douglas Street, Mail Stop 0910  
Omaha, Nebraska 68179

for review and approval. Licensor shall complete such review and make appropriate response to Licensee within thirty (30) days after receipt of such plans by Licensor. Licensor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee

or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the Security Fencing as constructed will be structurally sound.

### **SECTION 3. COST.**

The entire cost of the construction, maintenance, and repair, and any and all modification, revision, relocation or reconstruction of the Security Fencing, including any expense incurred by Licensor for supervision or inspection or otherwise in connection therewith, shall be borne solely by Licensee.

### **SECTION 4. NOTICE OF COMMENCEMENT OF WORK.**

Licensee shall not commence any work in connection with the Security Fencing on the Block 277 Property until Licensee has been notified by Licensor that Licensor's Work defined in Recital B above has been completed ("Licensor's Notice of Completion of Work"). Licensee shall then notify Licensor at least five (5) days in advance of the commencement of any work in connection with the construction, maintenance or repair of the Security Fencing on the Block 277 Property.

### **SECTION 5. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT; INSURANCE.**

(a) If Licensee will be hiring a contractor or contractors to perform any work involving the Security Fencing on the Block 277 Property, Licensee shall require its contractor(s) and their subcontractors to (i) execute Licensor's Contractor's Right of Entry Agreement (which provides for flagging), and obtain the insurance coverage described therein; and (ii) provide the insurance policies, certificates, binders and/or endorsements to Licensor before allowing any of its contractor(s) and their respective subcontractors to commence any work on the Block 277 Property or on any other Licensor property.

(b) All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Union Pacific Railroad Company  
 Real Estate Department  
 1400 Douglas Street – STOP 1690  
 Omaha, NE 68179-1690  
 ATTN: Rick L. Harris  
 UP File Folder No. 2088-03

(c) If Licensee's own employees will be performing any of the Security Fencing work, Licensee shall provide the Licensor defense and indemnification at least equal to the defense and indemnification to which the Licensor would be entitled as an additional insured had Licensee purchased *General Liability Insurance and Automobile Liability Insurance* each in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence or claim and an aggregate limit of at least SIX MILLION DOLLARS (\$6,000,000) for Bodily Injury and Property Damage. Nothing herein shall be deemed to insure Licensor

against (i) its sole, direct, and active negligence, or (ii) its gross negligence or willful or wanton misconduct. Licensee may self insure, as customary under its risk management programs, provided its self-insurance retention is in keeping with its net worth and cash flows and is consistent with that of other licensees of its size and operation.

#### **SECTION 6. MECHANICS' LIENS.**

Licensee shall not permit any mechanics' or materialmen's liens of any kind or nature to be enforced against the Block 277 Property for any work done or materials furnished thereon at Licensee's request.

#### **SECTION 7. RELOCATION OR REMOVAL OF SECURITY FENCING.**

The license herein granted is subject to the needs and requirements of Licensor in the operation, improvement and use of its property, and Licensee shall, at the sole expense of Licensee, move all or any portion of the Security Fencing to such new location or (unless the Security Fencing extends entirely across the property of Licensor) remove the Security Fencing from said property, as Licensor may designate, whenever, in the furtherance of such needs and requirements, Licensor shall find such action necessary or desirable.

All the terms, conditions and stipulations herein expressed with reference to the Security Fencing on the Block 277 Property shall, so far as the Security Fencing remains on the Block 277 Property, apply to the Security Fencing as modified, changed or relocated within the contemplation of this Section.

#### **SECTION 8. INTERFERENCE.**

In the construction and maintenance of the Security Fencing Licensee shall take all suitable precaution to prevent any interference with the operation of Licensor's railroad right-of-way; and if, at any time, the construction or maintenance of the Security Fencing causes interference with the operation of said railroad right-of-way, as now existing or which may hereafter be constructed by Licensor, Licensee shall, at the sole expense of Licensee, immediately take such action as may be necessary to eliminate such interference.

#### **SECTION 9. LIABILITY.**

TO THE EXTENT IT MAY LAWFULLY DO SO, LICENSEE AGREES TO INDEMNIFY AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATES (LICENSOR'S AFFILIATES MEANS ANY CORPORATION WHICH DIRECTLY OR INDIRECTLY CONTROLS OR IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH LICENSOR), THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS) (COLLECTIVELY, THE "INDEMNITEES"), AGAINST AND FROM ANY AND ALL LIABILITY, LOSS, COSTS AND EXPENSE OF WHATSOEVER NATURE ACTUALLY INCURRED GROWING OUT OF PERSONAL INJURY TO OR DEATH OF PERSONS WHOMSOEVER, OR LOSS OR DESTRUCTION OF OR DAMAGE TO PROPERTY WHATSOEVER, WHERE SUCH PERSONAL INJURY, DEATH, LOSS,

DESTRUCTION OR DAMAGE ARISES IN CONNECTION WITH OR INCIDENT TO THE OCCUPATION OR USE OF THE BLOCK 277 PROPERTY BY, OR THE PRESENCE THEREON BY LICENSEE, LICENSEE'S AGENTS, CONTRACTORS, SERVANTS OR LICENSEES. LICENSEE'S OBLIGATION TO INDEMNIFY LICENSOR OR LICENSOR'S AFFILIATES, THEIR OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, SHALL NOT BE APPLICABLE TO ANY LIABILITY, LOSS, COST AND EXPENSE (I) CAUSED SOLELY BY THE DIRECT AND ACTIVE NEGLIGENCE OF LICENSOR OR ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OR (II) TO THE EXTENT CAUSE BY THE GROSS NEGLIGENCE OR WILLFUL OR WANTON MISCONDUCT OF LICENSOR OR ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

#### **SECTION 10. TERMINATION FOR NONUSE OR DEFAULT.**

If Licensee does not use the right herein granted for one (1) year after receipt of Licensor's Notice of Completion of Work, or if Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default, Licensor may, at its option, forthwith terminate this Agreement. Notice of default and notice of termination may be served upon Licensee by mailing to the last known address of Licensee.

#### **SECTION 11. REMOVAL OF SECURITY FENCING UPON TERMINATION OF AGREEMENT.**

Within fifteen (15) days after the termination of this Agreement howsoever, Licensee shall, at the sole expense of Licensee, remove the Security Fencing from the Block 277 Property and restore the Block 277 Property to as good condition as it was in before the Security Fencing was originally constructed, all under the supervision and to the satisfaction of Licensor; and if Licensee fails to do so, Licensor may perform the work of removal and restoration at the expense of Licensee. Licensor shall not be liable to Licensee for any damage sustained by Licensee as a result of the removal of the Security Fencing by Licensor as in this section provided, nor shall such action prejudice or impair any right of action for damages or otherwise that Licensor may, at the time of such removal, have against Licensee.

#### **SECTION 12. WAIVER OF BREACH.**

The waiver by Licensor of the breach of any condition, covenant or agreement herein contained, to be kept and performed by Licensee, shall not impair the right of Licensor to avail itself of any subsequent breach thereof.

#### **SECTION 13. LICENSEE NOT TO ASSIGN.**

Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Licensor. Notwithstanding the foregoing, Licensee may assign this Agreement, without Licensor's prior written consent, to the West Haymarket Joint

Public Agency ("JPA"), provided that JPA assumes the provisions of this Agreement, in writing for the benefit of Licensor, in the form attached hereto as **Exhibit I** and hereby made a part hereof, and that at least ten (10) days prior to such assignment, Licensee shall give Licensor written notice of the assignment together with a fully executed original of the assignment and assumption agreement in the form of **Exhibit I**. No assignment by Licensee will relieve Licensee of its obligations under this Agreement.

**SECTION 14. EFFECTIVE DATE - TERM.**

This Agreement shall take effect as of the date hereof and shall continue in full force and effect until terminated as herein provided.

**SECTION 15. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 13, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

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

**CITY OF LINCOLN, NEBRASKA,  
a municipal corporation**

By  \_\_\_\_\_  
Title: Mayor \_\_\_\_\_

**EXHIBIT A TO**  
**LICENSE AGREEMENT**

**PRINT SHOWING LOCATION OF SECURITY FENCING  
ON BLOCK 277 PROPERTY**

EXHIBIT IASSIGNMENT AND ASSUMPTION OF  
(PURCHASE AND SALE AGREEMENT)(LICENSE AGREEMENT)

THIS ASSIGNMENT AND ASSUMPTION, Made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between **CITY OF LINCOLN, NEBRASKA**, a municipal corporation ("Assignor"), and **WEST HAYMARKET JOINT PUBLIC AGENCY** ("Assignee"), whose address is \_\_\_\_\_, Lincoln, Nebraska 68508, WITNESSETH:

IT IS MUTUALLY AGREED by and between the parties hereto as follows:

**Section 1.** Assignor, for a valuable consideration, does hereby sell, transfer and set over to Assignee all of Assignor's right, title and interest in and to the following:

Purchase and Sale Agreement dated \_\_\_\_\_, 2010 between Assignor, as Buyer, and Union Pacific Railroad Company, a Delaware corporation, as Seller (the "Purchase Agreement"), covering the purchase of certain real property in Lincoln, Lancaster County, Nebraska.

or

License Agreement dated \_\_\_\_\_, 2010 between Assignor, as Licensee, and Union Pacific Railroad Company, a Delaware corporation, as Licensor (the "License Agreement"), covering the construction and installation of Security Fencing (as defined therein) on certain real property in Lincoln, Lancaster County, Nebraska.

**Section 2.** Assignee hereby accepts the above assignment and, for the benefit of Assignor and (Seller)(Licensor), agrees to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations and conditions outlined in the (Purchase Agreement)(License Agreement) to be performed and observed by Assignor and assumes all liabilities mentioned in the (Purchase Agreement)(License Agreement) to be assumed by Assignor.

**Section 3.** This Assignment shall be considered as taking effect as of \_\_\_\_\_, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed in duplicate as of the date first herein written.

**CITY OF LINCOLN, NEBRASKA**

By: 

Title: \_\_\_\_\_

**WEST HAYMARKET JOINT PUBLIC AGENCY**

By: 

Title: \_\_\_\_\_

**EXHIBIT J**

SPACE ABOVE FOR RECORDER'S USE ONLY

**QUITCLAIM DEED**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **CITY OF LINCOLN, NEBRASKA**, a municipal corporation ("Grantee"), whose address is 555 South 10<sup>th</sup> Street, Suite 208, Lincoln, Nebraska 68508, and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Block 81 Property") and the abutting streets and alleys ("Abutting R-O-W") situated in the City of Lincoln, Lancaster County, State of Nebraska, together with all other acquired title of the Grantor therein as more particularly described in **Exhibit A** hereto attached and hereby made a part hereof.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 2010.

**Attest:**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

\_\_\_\_\_  
Assistant Secretary

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

(Seal)

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who are the \_\_\_\_\_ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

Notary Public

(Seal)

**EXHIBIT A TO EXHIBIT J**

**LEGAL DESCRIPTION OF BLOCK 81 PROPERTY AND ABUTTING R-O-W  
TO BE ATTACHED**

West Haymarket JPA Check Register

Address Number	Alpha Name	Remark	Do Ty	Document Number	Amount	Warrant Date	Warrant Number
112061	BNSF Railway Company	Legal-draft Mstr Agmnt Lnd Acq	PV	1208129	25,000.00	08/04/10	425173
Grand Total Level total					25,000.00		

Approved \_\_\_\_\_

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION DECLARING OFFICIAL INTENT UNDER  
THE INTERNAL REVENUE CODE OF 1986, AS AMENDED**

**BE IT RESOLVED BY THE BOARD OF REPRESENTATIVES OF THE WEST  
HAYMARKET JOINT PUBLIC AGENCY, AS FOLLOWS:**

**RESOLVED**, that the West Haymarket Joint Public Agency (the “**Agency**”), intends to issue up to \$340,000,000 in aggregate principal amount of bonds, notes, or a lease purchase agreement. (collectively, “**Bonds**”), in multiple series and from time to time, to fund the constructing, equipping, furnishing and financing of various public facilities in the West Haymarket redevelopment area of the City, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively, the “**West Haymarket Facilities**”), and acquiring land and relocating existing businesses, undertaking environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, the “**Projects**,” and, individually, a “**Project**”).

**FURTHER RESOLVED**, that the Projects will benefit the Agency, the City, and The Board of Regents of the University of Nebraska (the “**Regents**”) and the Agency, The City of Lincoln, Nebraska (the “**City**”), and the Regents, have made or expect to make after the date of this Resolution expenditures in furtherance of the Projects prior to issuance of all the Bonds, and the Agency intends to reimburse itself, the City and the Regents, for such expenditures with the proceeds of the Bonds to the extent permitted by federal income tax law, including but not limited to Section 1.150-2 of the Regulations issued by the U.S. Treasury Department (the “**Regulations**”).

**FURTHER RESOLVED**, that nothing in this resolution is intended to obligate the Agency to issue the Bonds or to reimburse any particular expenditure.

**FURTHER RESOLVED**, that this resolution, and not the bond resolution adopted by the Agency on July 22, 2010, is to be considered to be the Agency’s “official intent” within the meaning of the Regulations.

*[The remainder of this page intentionally left blank.]*

**INTRODUCED BY:**

\_\_\_\_\_

**ADOPTED \_\_\_\_\_, 2010**

**APPROVED AS TO FORM AND LEGALITY:**

**WEST HAYMARKET JOINT PUBLIC  
AGENCY**

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

\_\_\_\_\_  
Jayne Snyder, Chair

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

\_\_\_\_\_  
Bond Counsel

\_\_\_\_\_  
Chris Beutler

**National Union Fire Insurance Company of Pittsburgh, Pa.**  
300 South Riverside Plaza  
Suite 2100  
Chicago, IL 60606-6613  
(312) 930-5300



August 05, 2010

TROY VARNEY  
AON FINANCIAL SERVICES GROUP, INC  
200 E RANDOLPH ST 11TH FL  
CHICAGO, IL 60601-6436

**RE: Insured: WEST HAYMARKET JOINT PUBLIC AGENCY**  
**Insured Address: 555 S 10TH ST**  
**LINCOLN, NEBRASKA 68508-**  
**Type of Policy: Not For Profit Risk Protector**

**Name of Insurance Carrier: NATIONAL UNION FIRE INSURANCE COMPANY**  
**OF PITTSBURGH, PA.**  
**Address of Insurance Carrier: 175 WATER STREET, NEW YORK, NY, 10038**

**Tab#: 1333857, Submission #: 931945651**  
**New Line**  
**Policy Period of 12 Months**

Dear Troy:

As per your request for a Not For Profit Risk Protector quote, and based upon the information submitted, we are pleased to quote the following:

<b>LIMITS OF LIABILITY; RETENTION AND CONTINUITY DATE</b>	
<b>POLICY AGGREGATE:</b> For all coverages combined other than the Crime and the KRE Coverage Sections:	\$5,000,000
<b>CRISIS MANAGEMENT FUND FOR D&amp;O:</b>	\$50,000
<b>VOLUNTARY COMPLIANCE LOSS SUBLIMIT OF LIABILITY FOR FLI:</b>	Coverage Section Not Purchased
<b>HIPPA PENALTIES SUBLIMIT OF LIABILITY FOR FLI:</b>	Coverage Section Not Purchased

<b>Coverage Section</b>	<b>Separate Limit of Liability</b>	<b>Shared Limit of Liability</b>	<b>Retention/Deductible*</b>	<b>Continuity Date</b>
D&O and Not-For-Profit Organization (D&O”)	\$5,000,000	Inapplicable	If Crisis Management Events : \$0  All Other Claims: \$50,000	<b>POLICY INCEPTION</b>
Employment Practices (“EPL”)	Coverage Section Not Purchased	Coverage Section Not Purchased	All Other Claims: Coverage Section Not Purchased	Coverage Section Not Purchased
Fiduciary (“FLI”)	Coverage Section Not Purchased	Coverage Section Not Purchased	All Other Claims: Coverage Section Not Purchased	Coverage Section Not Purchased
Employed Lawyers (“CCP”)	Coverage Section Not Purchased	Coverage Section Not Purchased	All Other Claims: Coverage Section Not Purchased	Coverage Section Not Purchased

\*With respect to the D&O, EPL, FLI and CCP Coverage Sections only, no Retention amount is applicable to Non-Indemnifiable Loss.

\*No Retention is applicable to Voluntary Compliance Loss and HIPAA Penalties.

<b>Crime Coverage Section</b>	<b>Per Occurrence Limit Of Liability</b>	<b>Deductible Amount</b>
Insuring Agreement 1.A.: “Employee Theft” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.B.: “Forgery or Alteration” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.C.: “Inside the Premises – Theft of Money or Securities” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.D.: “Inside the Premises – Robbery or Safe Burglary of Other Property” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.E.: “Outside the Premises” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.F.: “Computer Fraud” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Insuring Agreement 1.G.: “Money Orders and Counterfeit Paper Currency” Loss	Coverage Section Not Purchased	Coverage Section Not Purchased

Coverage Endorsement "Clients Property" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Coverage Endorsement "Funds Transfer Fraud" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
Coverage Endorsement "Guest Property" Loss	Coverage Section Not Purchased	Coverage Section Not Purchased
If "Not Covered" is inserted above opposite any specific Insuring Agreement, such Insuring Agreement in the Crime Coverage Section and any other reference thereto in this policy is hereby deleted.		
<b>KRE Coverage Section</b>		
<b>Loss Component</b>	<b>Each Loss Component Limit</b>	<b>Annual Aggregate Limit</b>
<b>A. Ransom Monies:</b>	Coverage Section Not Purchased	Coverage Section Not Purchased
<b>B. In-Transit/Delivery:</b>	Coverage Section Not Purchased	Coverage Section Not Purchased
<b>C. Expenses:</b>	Coverage Section Not Purchased	Coverage Section Not Purchased
<b>D. Consultant Expenses:</b>	Coverage Section Not Purchased	Coverage Section Not Purchased
<b>E. Judgments, Settlements and Defense Costs:</b>	Coverage Section Not Purchased	Coverage Section Not Purchased
<b>F. Death or Dismemberment:</b>	Coverage Section Not Purchased	Coverage Section Not Purchased
<b>Each Insured Event Limit:</b>		Coverage Section Not Purchased
<b>Coverage Section Aggregate:</b>		Coverage Section Not Purchased
<b>Deductible (Each Loss):</b>		Coverage Section Not Purchased
<b>Insured Person(s):</b> All directors, officers and employees of the Named Organization		
If "Not Covered" is inserted above opposite any specific Insuring Agreement, such Insuring Agreement in the KRE Coverage Section and any other reference thereto in this policy is hereby deleted.		
Total Premium Charged For All Coverages Combined:		\$30,744
D&O and NFP Organization Liability ("D&O")		\$30,744
Employment Practices Liability ("EPL")		\$0
Fiduciary ("FLI")		\$0
Employed Lawyers Professional Liability ("CCP")		\$0
Crime Coverage ("CRIME")		\$0
Kidnap and Ransom/Extortion ("KRE")		\$0

Premium for Certified Acts of Terrorism Coverage under Terrorism Risk Insurance Act 2002: \$304 included in policy premium stated above. Any coverage provided for losses caused by an act of terrorism as defined by TRIA (TRIA Losses) may be partially reimbursed by the United States under a formula established by TRIA as follows: 85% of TRIA Losses in excess of the insurer deductible mandated by TRIA, the deductible to be based on a percentage of the insurer's direct earned premiums for the year preceding the act of terrorism.

The TRIA disclosure is attached hereto.

Not For Profit Risk Protector 94204 (03/07) will provide the basic contract. If you have not been previously provided with a copy of this policy form, a specimen is enclosed or will be provided at your request. Please read it carefully.

The following will be added to the basic policy:

**ADMITTED GUTS**

**D&O COVERAGE SECTION (ADMITTED)**

**APPENDIX A NOT FOR PROFIT PANEL COUNSEL ADDENDUM**

**APPENDIX B CRISIS MANAGEMENT COVERAGE FOR D&O COVERAGE SECTION**

The following endorsements will be added to the basic policy:

#	Form #	Ed Dt	Title
1	52156	05/94	NE CANCELLATION/NONRENEWAL
2	89644	07/05	COVERAGE TERRITORY ENDORSEMENT (OFAC)
3	97650	03/08	EXCLUSIONS (F) AND (G) AMENDED ENDORSEMENT (GENERAL TERMS AND CONDITIONS AMEDEMMENT)
4	96338	10/07	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (ALL COVERAGE SECTIONS)
5	94657	05/07	CAPTIVE INSURANCE COMPANY EXCLUSION (D&O COVERAGE SECTION)
6	94654	05/07	COMMISSIONS EXCLUSION (ALL COVERAGE SECTIONS)
7	100045	09/08	ORGANIZATION PATENT EXCLUSION (D&O COVERAGE SECTION)
8	99758	08/08	NOTICE OF CLAIM (REPORTING BY E-MAIL)
9	101036	04/09	CANCELLATION AMENDATORY (RETURN PRO RATA)
10	99500	06/08	NOT-FOR-PROFIT RISK PROTECTOR AMENDATORY ENDORSEMENT (NO BI/PD EXCLUSION AMENDMENT) (D&O, EPL & FLI COVERAGE SECTIONS)
11	94698	06/07	RELIANCE UPON OTHER CARRIER'S APPLICATION (AFFIRMATIVE REPRESENTATION)(ALL COVERAGE SECTIONS) - Darwin Application
12	97427	02/08	SEVERABILITY OF THE APPLICATION ENDORSEMENT (FULL INDIVIDUAL SEVERABILITY; TOP 3 ORGANIZATION POSITIONS IMPUTED TO ORGANIZATION; NON-RESCINDABLE) (D&O & EPL COVERAGE SECTIONS)
13			SOVERIGN IMMUNITY EXCLUSION (ALL COVERAGE SECTIONS)
14	78859	10/01	FORMS INDEX ENDORSEMENT

**IMPORTANT : READ CAREFULLY**

This quote is strictly conditioned upon no material change in the risk occurring between the date of this letter and the inception date of the proposed policy. In the event of such change in risk, the Insurer may in its sole discretion, whether or not this quote has been already accepted by the Insured, modify and/or withdraw this quote.

This quote will remain open until 08/20/2010.

Commission for this policy is 18.50%.

Before this account can be bound, your brokers license number and expiration date for the state of Nebraska will be required.

Thank you for the opportunity to quote this account. Please note that this quotation contains only a general description of coverages provided. For a detailed description of the terms of the policy, you must refer to the policy itself and any endorsements quoted. If you have any questions about this quote, please do not hesitate to call. We would also be pleased to meet with you and your client to answer any questions they may have.

Sincerely,

A handwritten signature in cursive script that reads "David Simon".

DAVID SIMON  
Senior Underwriter  
Executive Liability  
312-930-5300

## **Executive Liability Value Proposition**

### ***Why Choose Chartis for your Executive Liability Coverage Needs?***

#### **UNDERWRITING EXPERTISE & MARKET DEDICATION**

- Named the #1 provider of Directors & Officers insurance and Employment Practices Liability insurance<sup>1</sup>
- More than four decades of experience and commitment to the market, offering stable, high-limit capacity with a diverse appetite for risk
- Broad and innovative product offering, including unrivaled international capabilities via our Passport platform
- Ongoing pursuit of outstanding client service through continuous dialogue and client feedback response
- Over 350 dedicated underwriting professionals with an average of 10 years of industry experience
- A dedicated legal staff skilled in developing manuscript solutions tailored to client coverage needs
- Regional offices provide local underwriting presence and authority, delivering expertise and solutions across all lines of business
- Specialized underwriting and claims units focused on key segments, including Errors and Omissions, Financial Institutions, Fidelity and Private and Non-Profit
- Large geographic footprint that benefits companies doing business in multiple international jurisdictions
- Nearly 20,000 unique policyholders<sup>2</sup>

#### **SUPERIOR CLAIMS MANAGEMENT**

- We have a claims staff of 300 who manage 30,000 new claims per more than \$1.9 billion
- Resolved claims exceeding \$9 million in value have increased over 850 percent since 1996<sup>3</sup>
- The top 25 claims paid by Executive Liability in 2009 totaled over \$300 million

#### **CHARTIS FINANCIAL SNAP-SHOT**

- Chartis U.S. Policyholder Surplus is \$28 billion<sup>4</sup> (increased 58% from 12/31/05 to 12/31/09)
- In 2009, Chartis companies wrote in excess of \$40 billion gross written premiums worldwide year, averaging 2,250 new claims per month
- Our claims management team has an average of 15 years of industry experience for management
- Total payments made by Executive Liability on behalf of its insureds in 2009 totaled
- Chartis has ample resources to pay policyholder claims, paying \$71 million in claims worldwide every business day in 2009
- Objective sources confirm our company's strong financial standing. From rating agencies to broker assessments, metrics in the insurance industry indicate that Chartis remains one of the most financially secure insurance organizations
- Our financial strength combined with our experience, global reach and broad range of product and service offerings, solve the insurance needs of 40 million clients worldwide

#### **STAYING POWER**

Our consistent market leadership and commitment has lasted for more than four decades, while other carriers shift their focus and support from year-to-year. Our global underwriting capacity, philosophy and expertise—coupled with our local presence—enables Executive Liability to assess the most complex risks and respond rapidly when unforeseen events occur.

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<sup>1</sup>The Risk and Insurance Management Society 2009 Benchmark Survey <http://www.rims.org/resources/BenchmarkSurvey/Pages/default.aspx>

<sup>2</sup> Does not include Programs or Small Business accounts.

3 NERA Economic Consulting.  
4 Year ended December 31, 2009.

## INNOVATIVE SOLUTIONS

### Management Liability

**Executive Edge<sup>SM</sup>:** Primary public company D&O coverage with market leading features, including advancement of covered loss for directors and officers when the company fails or refuses to indemnify for any reason, worldwide investigation and inquiry coverage and a simplified “entity vs. insured” exclusion in place of the “insured vs. insured” exclusion.

**Executive Shield:** Follow form excess Side-A Directors & Officers Liability Insurance with Difference In Conditions coverage that is distinct from other Side-A DIC policies. The policy provides individual directors and officers with the coverage they need to protect themselves and their assets when facing a claim.

**PrivateEdge Plus:** A flexible modular package that offers market-leading management and professional liability coverage for private companies of any size. Choose one or combine multiple coverage options to customize a comprehensive program that meets specific business needs.

**Not-for-Profit-Risk-Protector<sup>®</sup>:** A flexible modular package policy designed to help non-profit organization clients manage their management liability and other liability risks. Choose one or combine multiple coverage options to customize a comprehensive program that meets specific business needs. The policy is available to all non-profit organizations regardless of revenue, asset size or employee count.

**Public Entity Plan and Trustee Protector:** A policy that protects individuals who manage governmental entity employee benefit plans from fiduciary liability exposures.

**Financial Institutions Risk Protector<sup>®</sup>:** A modular package of management and professional liability coverages for private and public financial institutions. Coverages can be bundled into one policy to provide flexible protection tailored for a financial institution’s full spectrum of management and professional liability risks.

**Excess Edge<sup>SM</sup>:** Follow form excess management and professional liability coverage that reduces the administrative burden facing brokers and their clients when placing excess insurance for directors and officers liability, employment practices liability, fiduciary liability, errors and omissions liability, and other executive liability exposures.

### Professional Liability

**Specialty Risk Protector<sup>®</sup>:** A modular package of professional liability and data network security coverages for all types of businesses. Businesses can bundle multiple lines of coverage into one policy.

**Corporate Counsel Premier<sup>®</sup>:** Provides general counsel and other in-house attorneys employed by public and private companies with coverage for claims alleging professional malpractice.

**Lawyers Professional Liability Program:** This admitted program provides broad coverage for attorneys and includes crisis management coverage to help mitigate damage to a law firm’s reputation.

**Personal Identity Coverage:** Enables organizations to extend expert assistance and financial relief to employees, customers or members who are victims of identity theft. This innovative program combines extensive recovery support as well as reimbursement of costs related to a theft incident.

### Value Added Services

**Passport:** State-of-the-market approach for multinationals to secure locally-admitted insurance that is in sync with local requirements and customs, and written in local language worldwide.

**EPL Pak<sup>®</sup> Premier:** The Employment Practices Liability Loss Prevention Pack offered through Jackson Lewis, LLP, helps insureds proactively mitigate employment practices exposures. The program includes both training programs that help instill

proper employment practices within an organization and resources to keep employers informed of changing statutes, regulations and court decisions shaping the employment landscape.

**CrisisFund®:** Built-in crisis management enhancement provides policyholders with professional support, including a 24-hour hotline with access to claims specialists, and immediate funds in the event of a serious crisis. Up to \$250,000 of additional policy limits available to cover immediate expenses and an additional \$50,000 limit to retain the services of a public relations or crisis management firm.

**Fidelity Research and Investigative Settle Clause (FRISC):** A unique provision in Fidelity policies that allows the insured to select an investigative specialist or forensic accountant to determine the facts of the case and quantify the loss. This sets the stage for an efficient, cooperative loss investigation and settlement process that can save the insured time and money. Even if the loss is ultimately determined to not be covered under the policy, the insurer still pays half of the investigation expenses.

**eDiscovery Solutions:** A litigation-management tool devised to create a strategy to handle the collection of electronically stored information throughout litigation.

**Panel Counsel:** Comprised of some of the nation's premier litigators who specialize in defending securities, employment practices, fiduciary liability and technology litigation. Participating law firms have a proven record of achieving litigation success while maximizing litigation efficiency. Consistent superior performance is required to maintain a position on the panel.

For more information about Executive Liability, please contact us at [executiveliability@chartisinsurance.com](mailto:executiveliability@chartisinsurance.com) or visit

**[www.chartisinsurance.com](http://www.chartisinsurance.com).**

Chartis is a world leading property-casualty and general insurance organization serving more than 40 million clients in over 160 countries and jurisdictions. With a 90-year history, one of the industry's most extensive ranges of products and services, deep claims expertise and excellent financial strength, Chartis enables its commercial and personal insurance clients alike to manage virtually any risk with confidence.

Chartis is the marketing name for the worldwide property-casualty and general insurance operations of Chartis Inc. For additional information, please visit our website at [www.chartisinsurance.com](http://www.chartisinsurance.com).

All products are written by insurance company subsidiaries or affiliates of Chartis Inc. Coverage may not be available in all jurisdictions and is subject to actual policy language. Non-insurance products and services may be provided by independent third parties. Certain coverage may be provided by a surplus lines insurer. Surplus lines insurers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.

**POLICYHOLDER DISCLOSURE**  
**NOTICE OF TERRORISM INSURANCE COVERAGE**  
(APPLICABLE TO CERTIFIED AND NON-CERTIFIED ACTS)

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism, *as defined in Section 102(1) of the Act*: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury—in concurrence with the Secretary of State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS’ LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

**Acceptance or Rejection of Terrorism Insurance Coverage**

	I hereby elect to purchase terrorism coverage for a prospective premium of <u>\$304</u> .
	I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

\_\_\_\_\_  
Policyholder/Applicant’s Signature

\_\_\_\_\_  
Policyholder/Applicant’s Printed Name

\_\_\_\_\_  
Date

Insured Name: WEST HAYMARKET JOINT PUBLIC AGENCY Policy Form: Not For Profit Risk Protector Tab: 1333857, Submission: 931945651 Policy Period of 12 Months
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**Professional  
Governmental  
Underwriters, Inc.**  
**The Authority.**

## Public Officials Management & Employment Practices Liability

9020 Stony Point Parkway, Suite 455  
P.O. Box 35471  
Richmond, VA 23235      www.pgui.com  
Toll Free: 800-586-6502      Fax: 804-272-7852

**Date:** 08/04/2010

**To:** Troy D. Varney  
Aon, A Division of Aon Risk Services Central, Inc.  
**Email:** troy.varney@aon.com

**From:** Dana D. Fawver  
**Phone:** 804-272-7405  
**Email:** dfawver@pgui.com

**Proposed Insured:** West Haymarket Joint Public Authority  
c/o City Risk Management 555 S. 10th Street, Room 302  
Lincoln, NE 68508

**Application #:** APP9433101

Thank you very much for your submission. Based upon the information received and subject to the limitations outlined below, we are pleased to offer the following:

### INDICATION

This Indication is not an offer to bind coverage. If we are provided with acceptable underwriting information and determine that a quote can be offered, it may differ from the indication.

**Coverage:** See coverage form DRWN POL 1000 (10/2006) for terms, conditions and limitations

**Form:** Claims Made

**Retro Date:** Inception

**Insurer Information:** Darwin Select Insurance Company  
Member of Allied World Assurance Group  
Best Rating: A XV  
Surplus Lines Insurer

**Filings / Taxes:** Broker Handles Filings

**Commission:** 10.00%

**Quotation / Indication valid until:** 9/9/2010

If we are offering coverage on a surplus lines basis, the agent is responsible for handling of filings unless we note otherwise on this quotation. If we have provided terms using bid specifications or an application other than ours, the quote is subject to change pending review of a completed and signed PGU application.

# Public Officials Management & Employment Practices Liability

**Proposed Insured:** West Haymarket Joint Public Authority

Terms	Limits	Retentions each claim including LAE	Premium
Public Officials Management & Employment Practices Liability	\$1,000,000	\$10,000	\$13,647.00
Employment Practices Liability	N/A	N/A	N/A
Policy Aggregate	\$1,000,000		
Supplementary Payments	\$50,000	\$10,000	Included
Supplementary Payments Aggregate	\$100,000		
<b>Features/Enhancements</b>			
Punitive Damages		See Retentions Above	Included
Personal Injury		See Retentions Above	Included
Third Party Wrongful Acts		N/A	N/A
Back Pay / Front Pay		N/A	N/A
Non-Monetary Relief		Included in Supplementary Payments	Included
Loss of Earnings		See Retentions Above	Included
<b>Optional Increased Limits</b>			<b>Additional Premium</b>
	2,000,000 CSL		\$4,094.00
	3,000,000 CSL		\$2,047.00
	4,000,000 CSL		\$1,024.00
	5,000,000 CSL		\$512.00
<b>Premium, Fees and Taxes</b>			
	<b>Total Premium:</b>		\$21,324.00
	<b>Engineering Fee :</b>		\$245.00
	<b>Total Cost:</b>		\$21,569.00

# Public Officials Management & Employment Practices Liability

Proposed Insured: West Haymarket Joint Public Authority

**SUBJECTIVITIES - WE MUST BE PROVIDED WITH THESE ITEMS BEFORE COVERAGE CAN BE BOUND:**

Confirmation on the estimated completion date of the arena.

We will add manuscript immunity endorsement

Receipt of confirmation that General Liability coverage will be maintained for the duration of the policy.

As your agency is responsible for the surplus lines filings, we require the name of licensee, agency name, address, and surplus lines license number prior to binding, as well as, a copy of the license.

**Reminders:**

A written request is required to bind coverage.

Backdating of coverage is not allowed.

See attached Coverage Features attachment for additional information.

Limits, deductibles, terms and conditions quoted do not necessarily match those requested.

Minimum Earned Premium is the GREATER of \$1,500 or 25% of annual premium.

This proposal contains a brief outline of coverages to be included in any policy that may be issued in the future.

This is only a summary and the Terms and Conditions of any policy will take precedence over any proposal.

We will not cancel flat after inception date.

Engineering Fee is non-refundable.

**Applicable Forms:** (Other forms may apply. Consult Underwriter for details.)

DRWN POL 1005	Public Officials Professional Insurance Policy Declarations
SAA-100	Schedule of Policy Forms and Endt's.
DRWN POL 1000	Public Officials Professional and Employment Practices Liability Insurance Policy
PGU 1075	Amend Insured vs. Insured Exclusion, Employment Practices Carveback for Officials
PGU 1089	Spouses and Domestic Partners
PGU 1096	Amend Law Enforcement Exclusion
PGU 1052	Minimum Earned Premium
PGU 1072	Defense Coverage for Tax-Exempt Bond Claims
s1006 DSI	Service of Suit
PGU 1010	Delete Insurance Agreement B, EPL Coverage

**Comments:**



**Professional  
Governmental  
Underwriters, Inc.**  
**The Authority.**

9020 Stony Point Parkway  
Suite 455  
Richmond, VA 23235  
800-586-6502  
www.pgui.com

## ***Public Officials Management & Employment Practices Liability***

<b>Coverage Features</b>	<b>We welcome a comparison!</b>	
	<b>PGU - The Authority</b>	<b>The Others</b>
Defense in Addition to Limit	X	
Broad form EPL coverage	X	
Covers Defense for Non-Monetary claims	X	
Modified Consent to Settle Clause with only 50% co-insurance requirement from Insured	X	
Business Invitee (Third Party) Liability covering Emotional Distress, Sexual Harrassment, Discrimination and other allegations	X	
Broad definition of Loss including Back and Front Pay and Punitive Damages with a most favorable venue	X	
Broad definition of Wrongful Act including Personal Injury	X	
Broad definition of Claim including Non-Monetary Relief, any arbitration proceedings and EEOC hearings, subject to exclusions	X	
Severability of the Application for all Individual Insureds for all exclusions (not just personal profit and fraud exclusions)	X	
75-day free mini-tail	X	
Bi-Lateral ERP options of 1, 2 and 3 years	X	
Policy Non-Cancelable by carrier, except for non-payment of premium	X	
True Worldwide Coverage	X	
24/7 Toll-free and on-line access to Employer HELPLINE for employment law and HR support	X	

**This document is intended to summarize key coverage features generally available. Please review the entire quotation / indication and policy form and endorsements for specific details.**

**SUBJECT TO ITS TERMS, THIS POLICY PROVIDES COVERAGE FOR CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. GENERALLY, DEFENSE EXPENSES ARE PAID IN ADDITION TO THE LIMITS OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer**, including the statements made in the **Application**, the **Insurer** and the **Insureds**, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

## **I. INSURING AGREEMENTS**

### **A. Public Officials Professional Liability**

The **Insurer** will pay on behalf of any **Insured**, subject to the Limit of Liability set forth in ITEM 3(a) of the Declarations, **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** first made against any **Insured** during the **Policy Period** or any applicable Extended Reporting Period for a **Public Officials Wrongful Act** which occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

### **B. Employment Practices Liability and Third Party Liability**

The **Insurer** will pay on behalf of any **Insured**, subject to the Limit of Liability set forth in ITEM 3(b) of the Declarations, **Loss** which the **Insured** is legally obligated to pay as a result of any **Claim** first made against any **Insured** during the **Policy Period** or any applicable Extended Reporting Period for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act** which occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

In addition to the applicable Limits of Liability set forth in ITEM 3 of the Declarations, the **Insurer** will have the right and duty to defend any **Claim** first made against any **Insured** for a **Wrongful Act** which is covered under INSURING AGREEMENTS A. or B. of this Policy, even if the allegations of such **Claim** are groundless, false or fraudulent.

### **C. Supplemental Payments**

- (1) The **Insurer** will reimburse the **Insured**, in addition to the Limits of Liability set forth in ITEM 3(a), 3(b) and 3(c) of the Declarations, and subject to the Limits of Liability set forth in ITEMS 3(d) and 3(e) of the Declarations, **Defense Expenses** incurred in connection with a **Claim** exclusively seeking, and at all times remaining a **Claim** exclusively seeking, **Non-Monetary Relief**, which is first made against any **Insured** during the **Policy Period** or any applicable Extended Reporting Period, and arising out of **Wrongful Acts** which occurred on or after the **Retroactive Date** and before the end of the **Policy Period**.

Subject to CONDITION B(3), it shall be the duty of the **Insured**, and not the **Insurer**, to defend any **Claim** under INSURING AGREEMENT C(1).

- (2) The **Insurer** will pay on behalf of any **Insured**, in addition to the aggregate Limit of Liability set forth in ITEM 3(c) of the Declarations, all reasonable expenses incurred by the **Insured** at the **Insurer's** request to assist the **Insurer** in the investigation or defense of any **Claim**, including actual loss of earnings of any **Insured**, because of time off from work; provided that the most the **Insurer** shall pay shall be up to \$250 per day, per **Insured**. Such "expenses", as used herein, shall not include salaries of employees of the **Named Insured**.

## II. DEFINITIONS

- A. "**Application**" means the application submitted to the **Insurer**, any and all materials and information submitted to the **Insurer** in connection with such application, and all publicly available material that is created by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Inception Date of the Policy, all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of, this Policy, as if physically attached.
- B. "**Business Invitee**" means a natural person, solely in their capacity as one who is invited to enter into and remain on any premises owned or operated by the **Named Insured** for a purpose directly or indirectly connected with the business or commercial dealings therein. A "**Business Invitee**" shall not, under any circumstances, include a trespasser or any other person who enters any premises of the **Named Insured** without its knowledge or permission or any **Employee**.
- C. "**Claim**" means:
  - (1) any written demand for monetary damages or **Non-Monetary Relief**;
  - (2) any written request to toll or waive any statute of limitations;
  - (3) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
  - (4) any criminal proceeding which is commenced by the return of an indictment or similar document;
  - (5) any administrative or regulatory proceeding or investigation, including a proceeding brought by or before the Equal Employment Opportunity Commission or similar state or local agency, commenced by the filing of a notice of charges, formal order of investigation or similar document; or
  - (6) any arbitration proceeding, or any other alternative dispute resolution proceeding, to which the **Insured** must submit or does submit with the **Insurer's** consent.

A **Claim** will be deemed to have been first made when an **Insured** receives notice of the **Claim**.

- D. **“Contaminant-Toxin”** means any of the following:
- (1) smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
  - (2) mold(s), mildew(s), fungi and/or spore(s); or any materials, goods or products containing, harboring or nurturing any such mold(s), mildew(s), fungi and/or spore(s);
  - (3) lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or
  - (4) nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.
- E. **“Defense Expenses”** means reasonable legal fees and expenses incurred by or on behalf of the **Insured** in the defense or appeal of a **Claim**; provided, however, that **Defense Expenses** will not include the **Insured’s** overhead expenses or any salaries, wages, fees, or benefits of its **Employees**. **Defense Expenses** shall include the cost of any bond or appeal bond required in any civil suit, but only for bond amounts within the applicable Limit of Liability shown in ITEM 3 of the Declarations; provided that the **Insurer** shall not be obligated to apply for or furnish any such bond.
- F. **“Employee”** means the following natural persons, but only for **Wrongful Acts** committed while acting within the scope of employment for the **Named Insured**:
- (1) full-time, part-time, seasonal and temporary employees; and
  - (2) all persons who perform services on a volunteer basis for the **Named Insured**, and under the direction and control of the **Named Insured**.
- Employee** shall not include persons providing services to the **Named Insured** under a mutual aid agreement or any similar agreement.
- G. **“Employment Practices Wrongful Act”** means any of the following, when alleged by any past or present **Employee** of the **Named Insured** or any applicant for employment with the **Named Insured**, in connection with that person’s actual or proposed employment relationship with the **Named Insured**:
- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
  - (2) harassment (including sexual harassment whether “quid pro quo”, hostile work environment or otherwise);
  - (3) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws;

- (4) breach of any manual of employment policies or procedures issued to the **Insureds** by the **Named Insured**;
- (5) retaliatory action in response to that **Employee's**:
  - (a) disclosure or threat of disclosure of any act by an **Insured** alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
  - (b) actual or attempted exercise of any right that **Employee** has under law;
  - (c) filing of any **Claim** under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law;
- (6) misrepresentation, libel, slander, humiliation, defamation, invasion of privacy, infliction of emotional distress or mental anguish; or
- (7) wrongful failure to employ or promote, wrongful deprivation of career opportunity, including tenure, wrongful demotion or evaluation or wrongful discipline.

H. **"Insured"** means:

- (1) the **Named Insured**;
- (2) all past, present or future duly elected, appointed or employed officials, directors, or members of commissions, boards or other units operated by the **Named Insured** and under its jurisdiction, within the apportionment of the **Named Insured's** operating budget in the **Application**;

provided that **"Insured"** shall not include the following boards, commissions or units, or any officials, directors, members or employees thereof: schools, airports, transit authorities, hospitals, nursing homes, housing authorities, port authorities or any type of utility companies, unless otherwise provided in an Endorsement attached hereto;

- (3) **Employees**; and
- (4) all persons providing services to the **Named Insured** under a mutual aid or any similar agreement; however, such persons are not **Insureds** with respect to **Claims for Employment Practices Wrongful Acts or Third Party Wrongful Acts**.

In the event of the death, incapacity or bankruptcy of an **Insured** individual, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured** individual for a **Wrongful Act** will be deemed a **Claim** against such **Insured** individual.

I. **"Insurer"** means the Company identified in the Declarations.

J. **"Loss"** means damages, pre-judgment interest, post-judgment interest, front pay and back pay, judgments, settlements, punitive or exemplary damages where insurable under

applicable law, or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** will not include:

- (1) **Defense Expenses;**
- (2) **Non-Monetary Relief;**
- (3) any amount representing the value of diminished or lost retirement, health care or other benefits;
- (4) fines, taxes, penalties; or
- (5) the multiplied portion of multiplied damages; provided that **Loss** will include any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act ("Specified Multiplied Damages") that an **Insured** is obligated to pay as a result of a **Claim**, but only if such Specified Multiplied Damages are insurable under applicable law.

For the purpose of determining the insurability of punitive damages, exemplary damages or Specified Multiplied Damages under this Policy, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction:

- (1) is the location of the court which awarded or imposed such punitive or exemplary damages;
- (2) is where the **Named Insured** is incorporated or otherwise organized or has a place of business; or
- (3) is where the **Insurer** is incorporated or has its principal place of business.

K. "**Named Insured**" means the public entity set forth in ITEM 1 of the Declarations.

L. "**Non-Monetary Relief**" means relief or redress in any form other than compensatory or monetary damages, including: the costs of complying with any injunctive, declaratory or equitable relief, remedy or order; the costs of compliance with the Americans with Disabilities Act or any similar provisions of federal, state or local statutory or common law; and any award of claimant's or plaintiff's attorneys fees or costs, whether or not provided for by statute, but only with respect to **Claims** seeking such non-monetary relief.

M. "**Personal Injury**" means the following, when alleged against an **Insured** by an entity or a person who is not a past or present **Insured**, or applicant for employment with the **Insured**: libel, slander, or other defamation, invasion of privacy, false arrest, erroneous service of process, wrongful detention or imprisonment, malicious prosecution, wrongful entry or eviction, infringement of copyright or trademark, or other unauthorized use of title, or plagiarism or misappropriation of ideas.

N. "**Policy Period**" means the period from the Inception Date of this Policy set forth, in ITEM 2(a) of the Declarations, to the Expiration Date of this Policy set forth in ITEM 2(b) of the Declarations, or to any earlier cancellation date of this Policy.

- O. **"Public Officials Wrongful Act"** means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty, including any **Personal Injury**, by any **Insured**;
  - (2) any actual or alleged violation of civil rights protected under 42 USC 1981 et seq., or any similar federal, state or local law, by any **Insured**;
  - (3) any matter claimed against an **Insured** solely by reason of his or her status as an **Insured** during the **Policy Period**;
- and committed in the performance of his or her duties for the **Named Insured**.
- P. **"Related Claims"** means all **Claims** for **Wrongful Acts** based upon, arising out of, resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances situations, transactions or events, whether related logically, causally or in any other way.
- Q. **"Retroactive Date"** means the applicable date set forth in ITEM 7 of the Declarations.
- R. **"Sexual Abuse and Molestation"** means any actual or alleged conduct, physical act, gesture or spoken or written word of a sexual nature directed by an **Insured**, or by any person for whom an **Insured** is legally responsible, toward any person under the care, custody or control of any **Insured**, including without limitation any actual, alleged or threatened sexual intimacy (even if allegedly consensual), molestation, assault or battery, exploitation or any other sexual act.
- S. **"Terrorism"** means activities against persons, organizations or property of any nature:
- (1) that involve the following or preparation for the following:
    - (a) use or threat of force or violence; or
    - (b) commission or threat of a dangerous act; or
    - (c) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
  - (2) when one or both of the following applies:
    - (a) the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
    - (b) it appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
- T. **"Third Party Wrongful Act"** means any of the following, when alleged against an **Insured** by a **Business Invitee** of the **Named Insured**:
- (1) harassment (including sexual harassment);

- (2) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws; or
- (3) humiliation, invasion of privacy, or infliction of emotional distress or mental anguish.

U. **"Wrongful Act"** means any **Public Officials Wrongful Act, Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

### III. EXCLUSIONS

A. The **Insurer** shall not pay **Loss**, but shall only pay **Defense Expenses**, from any **Claim** brought about or contributed to in fact by:

- (1) any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by any **Insured**;
- (2) any willful violation by any **Insured** of any law, statute, ordinance, rule or regulation; or
- (3) any **Insured** gaining any profit, remuneration or advantage to which such **Insured** is not legally entitled.

The applicability of EXCLUSIONS A(1), A(2) and A(3) to any specific **Insured** may be determined by an admission of such **Insured**, a finding, or a final adjudication in the proceeding constituting the **Claim** or in a proceeding separate from or collateral to the **Claim**. If any specific **Insured** in fact engaged in the conduct specified in EXCLUSIONS A(1), A(2) or A(3), such **Insured** shall reimburse the **Insurer** for any **Defense Expenses** advanced to or on behalf of such **Insured**.

B. The **Insurer** shall not pay any **Loss** or **Defense Expenses** from any **Claim**:

- (1) under INSURING AGREEMENTS I.A. or I.B., if otherwise covered under INSURING AGREEMENT I.C(1);
- (2) by, on behalf of or in the name or right of:
  - (a) the **Named Insured**; or
  - (b) any duly elected, appointed or employed director or official of the **Named Insured**, or any member of a commission, board or other unit operated by the **Named Insured** and under its jurisdiction, and within the apportionment of the **Named Insured's** operating budget in the **Application**, unless in the form of a cross-claim or third-party complaint arising from a **Claim** made against such director, official or member, that is otherwise covered under this Policy;
- (3) for actual or alleged violation of the Fair Labor Standards Act, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation,

unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing, including, but not limited to, any actual or alleged improper payroll practices, wage and hour policies, and payment of overtime or vacation pay; provided, however, that this EXCLUSION B(3) shall not apply to the extent that any **Claim** alleges an **Employment Practices Wrongful Act**;

- (4) for any actual or alleged express or assumed liability of any **Insured** under an indemnification agreement; provided, that this EXCLUSION B(4) shall not apply to any tort liability that would have attached to the **Insured** in the absence of such agreement and is otherwise insured under this Policy;

C. The **Insurer** shall not pay any **Loss** or **Defense Expenses** from any **Claim** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (1) any actual or alleged damage to, destruction of or loss of use of, any tangible property;
- (2) any actual or alleged bodily injury, corporal punishment, sickness, disease or death;
- (3) emotional distress or mental anguish, provided, however, this EXCLUSION C(3) shall not apply to any emotional distress or mental anguish alleged in any **Claim** for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**;
- (4) any **Sexual Abuse or Molestation**, including without limitation any actual or alleged liability for committing **Sexual Abuse or Molestation** or permitting or failing to prevent, stop, detect or reveal **Sexual Abuse or Molestation**, whether such liability is alleged as a violation of civil rights protected under 42 USC 1981 et seq. or any similar federal, state or local law, or as a tort or other breach of duty;
- (5) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Contaminant-Toxin**, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Contaminant-Toxin**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- (6) any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto or any similar provisions of state statutory law or common law;
- (7) any actual or alleged liability of the **Named Insured** under any express contract or agreement, unless such liability would have attached to the **Named Insured** in the absence of such express contract or agreement. For the purposes of this EXCLUSION C(7), an "express contract or agreement" is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making, but does

not include any manual of employment policies or procedures issued to the **Insureds** by the **Named Insured**;

- (8) any actual or alleged failure to obtain, implement, effect, comply with, provide notice under or maintain any form, policy, plan or program of insurance, stop loss or provider excess coverage, reinsurance, self-insurance, suretyship or bond;
- (9) any fact, circumstance, situation, transaction, event or **Wrongful Act** or series of facts, circumstances, situations, transactions, events or **Wrongful Acts**:
  - (a) underlying or alleged in any mediation, arbitration, grievance proceeding, litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date set forth in ITEM 2(a) of the Declarations:
    - (i) to which any **Insured** is or was a party; or
    - (ii) with respect to which any **Insured**, as of the Inception Date set forth in ITEM 2(a) of the Declarations, knew or should reasonably have known that an **Insured** would be made a party thereto;
  - (b) which was the subject of any notice given prior to the Inception Date set forth in ITEM 2(a) of the Declarations under any other policy of insurance or plan or program of self-insurance; or
  - (c) which was the subject of any **Claim** made prior to the Inception Date set forth in ITEM 2(a) of the Declarations;

if, however, this Policy is a renewal of one or more policies previously issued by the **Insurer** to the **Named Insured**, and the coverage provided by the **Insurer** to the **Named Insured** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION C(9) to the Inception Date will be deemed to refer instead to the Inception Date of the first policy under which the **Insurer** began to provide the **Named Insured** with the continuous and uninterrupted coverage of which this Policy is a renewal;

- (10) any lockout, strike, picket line, hiring of replacement workers, riot or civil commotion, or other similar actions in connection with labor disputes or labor negotiations;
- (11) any activities of any law enforcement agency or law enforcement personnel, including the operation of any jail cell, holding cell, detention or lock up facility;
- (12) eminent domain, adverse possession, dedication by adverse use, inverse condemnation or condemnation proceedings;
- (13) debt financing, including but not limited to bonds, notes, debentures and guarantees of debt;

- (14) the formulation of tax rates, the collection of taxes and/or the disbursement of tax refunds;
- (15) any procurement, service, construction, architectural or engineering contract;
- (16) construction, architectural, engineering, legal or other professional services rendered by an **Insured** for an individual or entity other than the **Named Insured**;
- (17) war, whether or not declared, or any act or condition incidental to war, including civil war, insurrection, rebellion or revolution; or **Terrorism**.

#### IV. CONDITIONS

##### A. Limits of Liability, Retentions:

Regardless of the number of **Claims** brought under this Policy, the number of persons or entities included within the definition of **Insured**, or the number of claimants, the **Insurer's** liability is limited as follows:

(1) Public Officials Professional Liability

Subject to the Policy Aggregate Limit of Liability, the amount set forth in ITEM 3(a) of the Declarations shall be the maximum Limit of Liability of the **Insurer** for all **Loss** in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from each **Claim** under INSURING AGREEMENT I.A for which this Policy provides coverage.

(2) Employment Practices Liability and Third Party Liability

Subject to the Policy Aggregate Limit of Liability, the amount set forth in ITEM 3(b) of the Declarations shall be the maximum Limit of Liability of the **Insurer** for all **Loss** in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from each **Claim** under INSURING AGREEMENT I.B for which this Policy provides coverage.

(3) Policy Aggregate

The amount set forth in ITEM 3(c) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss** resulting from all **Claims** under INSURING AGREEMENT I.A and INSURING AGREEMENT I.B for which this Policy provides coverage.

(4) Supplemental Payments

Subject to the INSURING AGREEMENT 1.C(1). Aggregate Limit of Liability, the amount set forth in ITEM 3(d) of the Declarations shall be the maximum Limit of Liability of the **Insurer** for all **Defense Expenses** resulting from each **Claim** under INSURING AGREEMENT 1.C(1).

(5) Supplemental Payments Aggregate

The amount set forth in ITEM 3(e) of the Declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Defense Expenses** resulting from all **Claims** under INSURING AGREEMENT 1.C(1).

(6) Except as provided in CONDITION A(7) below, **Defense Expenses** payable under INSURING AGREEMENTS I.A or I.B are paid in addition to the applicable Limits of Liability set forth in ITEMS 3(a), (b) or (c) of the Declarations, and payment of **Defense Expenses** by the **Insurer** will not reduce such applicable Limit of Liability.

(7) The **Insurer** shall not be obligated under the Policy to pay more than the applicable Limit of Liability set forth in ITEM 3(c) of the Declarations, for all **Defense Expenses** resulting from **Claims** for which the resulting **Loss** is wholly excluded from coverage under EXCLUSION A of this Policy.

(8) In the event that any **Claim** for which coverage is provided under INSURING AGREEMENT 1.C(1) subsequently becomes a **Claim** for both monetary and **Non-Monetary Relief** for which coverage is provided under INSURING AGREEMENT I.A or I.B, such **Claim** shall become subject to the increased Retention and Limit of Liability applicable under INSURING AGREEMENT I.A or I.B. **Defense Expenses** already reimbursed in connection with such **Claim** by the **Insurer** shall be applied against the applicable Retention, and deemed to reduce the applicable Limit of Liability, under either INSURING AGREEMENT I.A. or I.B.

(9) The obligation of the **Insurer** to pay **Loss** or **Defense Expenses**, or to defend any **Claim**, under INSURING AGREEMENTS I.A, I.B or I.C(1), will only be in excess of the applicable Retention set forth in ITEM 4 of the Declarations. The **Insurer** will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any Retention amount on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to advance such amount, in which event the **Insureds** agree to repay the **Insurer** any amounts so advanced.

(10) **Related Claims** will be deemed a single **Claim**, and only one "Each Claim" Limit of Liability, and only one Retention, will apply.

**B. Defense and Settlement of Claims:**

(1) No **Insured** may incur any **Defense Expenses** or admit liability for, or settle, or offer to settle, any **Claim** without the **Insurer's** written consent.

(2) The **Insurer** will have the right to make investigations and, solely with respect to INSURING AGREEMENTS I.A and I.B, conduct negotiations and enter into the settlement of any **Claim** as the **Insurer** deems appropriate, with the consent of the **Insured**. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, then, subject to the applicable Limit of Liability set forth in ITEM 3 of the Declarations, the **Insurer's** liability for such **Claim** will not exceed:

- (a) the amount for which such **Claim** could have been settled by the **Insurer** plus **Defense Expenses** up to the date the **Insured** refused to settle such **Claim**; plus
  - (b) fifty percent (50%) of any **Loss** and/or **Defense Expenses** in excess of the amount in clause (a) above, incurred in connection with such **Claim**. The remaining **Loss** and/or **Defense Expenses** will be carried by the **Insured** at its own risk and will be uninsured.
- (3) It shall be the duty of the **Insured**, and not the **Insurer**, to defend any **Claims** under INSURING AGREEMENT I.C(1). The **Insured** shall have the right to select defense counsel for the investigation and defense of any such **Claim**, subject to the consent and approval of the **Insurer**, which shall not be unreasonably withheld.
  - (4) The **Insurer** will have no obligation to pay **Loss** or **Defense Expenses**, or to defend or continue to defend any **Claim**, under INSURING AGREEMENTS I.A or I.B, after the applicable Limit of Liability, as set forth in ITEM 3 of the Declarations, has been exhausted by the payment of **Loss**. If the **Insurer's** maximum aggregate Limit of Liability, as set forth ITEM 3(c) of the Declarations, is exhausted by the payment of **Loss**, the entire premium will be deemed fully earned.
  - (5) The **Insurer** will have no obligation to reimburse **Defense Expenses** in connection with any **Claim** under INSURING AGREEMENT I.C(1) after the **Insurer's** aggregate Limit of Liability, as set forth in ITEM 3(e) of the Declarations, has been exhausted by the reimbursement of **Defense Expenses**.

**C. Other Insurance:**

- (1) All **Loss** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance. Other insurance includes, but is not limited to, coverage or benefits provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption.
- (2) Notwithstanding CONDITION C(1) above, with respect to any **Claim** under this Policy for which coverage is available under any insurance policy which applies to claims for bodily injury and/or property damage, the **Insurer** will have no duty to defend such **Claim**, or to pay **Defense Expenses** incurred by or on behalf of any **Insured** in connection with such **Claim** or to contribute to any defense provided to any **Insured** under such other insurance policy, or to reimburse any other insurer, in whole or in part, for **Defense Expenses** incurred in connection with such **Claim**.

**D. Cooperation; Subrogation:**

In the event of a **Claim**, the **Insured** will provide the **Insurer** with all information, assistance and cooperation that the **Insurer** reasonably requests, and will do nothing that may prejudice the **Insurer's** position or potential or actual rights of recovery. At the **Insurer's** request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the **Insurer** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in their name. The obligations of the **Insured** under this CONDITION D will survive the expiration or cancellation of the Policy.

**E. Extended Reporting Period:**

- (1) If either the **Insurer** or the **Named Insured** cancels, refuses or declines to renew this Policy for any reason other than nonpayment of premium, and, within thirty (30) days of the end of the **Policy Period**, the **Named Insured** elects to purchase the Extended Reporting Period Policy pursuant to one of the available options as set forth below, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss or Defense Expenses** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION I, whichever is earlier. The Extended Reporting Period does not increase or reinstate any Limit of Liability and may only be purchased if all premiums and retentions due under the Policy have been paid. Once purchased, the Extended Reporting Period may not be canceled and the premium shall be deemed fully earned.
- (2) Extended Reporting Period Options:
  - (a) a one (1) year extended reporting period for an additional premium of seventy percent (70%) of the Premium set forth in ITEM 6 of the Declarations;
  - (b) a two (2) year extended reporting period for an additional premium of one hundred percent (100%) of the Premium set forth in ITEM 6 of the Declarations; or
  - (c) a three (3) year extended reporting period for an additional premium of one hundred and fifty percent (150%) of the Premium set forth in ITEM 6 of the Declarations.

**F. Notice; Timing, and Interrelationship of Claims:**

- (1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made and in no event later than seventy-five (75) days after the expiration date of the **Policy Period**.

- (2) If, during the **Policy Period**, the **Insured** first becomes aware of any **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of this Policy:
  - (a) gives the **Insurer** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and
  - (c) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then the **Insurer** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.

- (3) All notices under CONDITIONS F(1) and F(2) must be sent in writing to the address set forth in ITEM 5 of the Declarations.
- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION F(2), whichever is earlier.

**G. Cancellation; No Obligation to Renew:**

- (1) The **Insurer** may not cancel this Policy except for failure to pay a premium when due. The **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice of cancellation at least twenty (20) days before the effective date of cancellation. Such notice shall state the reason for cancellation. A copy of such notice shall be sent to the agent of record.
- (2) The **Named Insured** may cancel this Policy by mailing to the **Insurer** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, return premium will be computed as 0.90 times the pro rata unearned premium shown in ITEM 6 of the Declarations and rounded to the nearest whole dollar. Premium adjustment may be made either at the time that cancellation by the **Named Insured** is effective or as soon as practicable thereafter.
- (3) The **Insurer** will not be required to renew this Policy upon its expiration. If the **Insurer** elects not to renew this Policy, the **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations. Such notice shall state the specific reason(s) for non-renewal.

**H. Representations:**

The **Insured** represents that the particulars and statements contained in the **Application** are true, accurate and complete, and agrees that this Policy is issued in reliance upon the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.

**I. Separation of Insureds; Protection of Innocent Insureds:**

- (1) In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void:
  - (a) with respect to any natural person **Insured** who knew of such untruth, misrepresentation or omission; and
  - (b) with respect to the **Named Insured**, if, and only if, an elected or appointed official, or the highest ranking member of any board, commission or unit, of the **Named Insured**, or any other person in a functionally equivalent position within the **Named Insured**, knew of such untruth, misrepresentation or omission.
- (2) No act, error or omission of any **Insured** will be imputed to any other **Insured** to determine the application of any Exclusion set forth in Section III of this Policy. If it is determined that an Exclusion applies to an **Insured** in connection with a **Claim**, no coverage shall be available under this Policy for such **Insured**, however, coverage shall continue in effect under this Policy for any other **Insured**, subject to all other terms, conditions, and Exclusions herein.

**J. No Action against Insurer:**

- (1) No action may be taken against the **Insurer** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the **Insurer**.
- (2) No person or entity will have any right under this Policy to join the **Insurer** as a party to any **Claim** to determine the liability of any **Insured**; nor may the **Insurer** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.

**K. Insolvency of Insured:**

The **Insurer** will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured**.

**L. Non-Pyramiding of Limits:**

If a **Claim** is made for which coverage is afforded, under this Policy and any other policy or policies underwritten by Darwin Professional Underwriters, Inc. or any entity to which

Darwin Professional Underwriters, Inc. has delegated its underwriting authority, to the **Named Insured** or to any public entity or political subdivision:

- (1) which shares an operational budget with the **Named Insured**; or
- (2) which receives its funding or budget from the same tax base as the **Named Insured**; or
- (3) operates or has jurisdiction over the **Named Insured** or which is operated by or under the jurisdiction of the **Named Insured**;

then the maximum amount payable in the aggregate under this Policy, and all such other policies, shall not exceed the single highest Limit of Liability available under all such policies.

**M. Territory:**

This Policy applies to **Wrongful Acts** committed by any **Insured**, or to any **Claim** brought against any **Insured**, anywhere in the world.

**N. Authorization and Notices:**

The **Insureds** agree that the **Named Insured** will act on their behalf with respect to receiving any notices and return premiums from the **Insurer**.

**O. Changes:**

Notice to or knowledge possessed by any agent or other person acting on behalf of the **Insurer** will not effect a waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

**P. Assignment:**

No assignment of interest under this Policy will bind the **Insurer** without its consent.

**Q. Entire Agreement:**

The **Insured** agrees that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** or any of its agents relating to this insurance.

**R. Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof, the **Insurer** has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page by a duly authorized representative of the **Insurer**.

**In witness whereof, the Insurer has caused this Policy to be executed on the Declarations Page.**



**Professional  
Governmental  
Underwriters, Inc.**  
**The Authority.**

darwin

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## **The Workplace HELPLINE**

Risk management is a core element of Allied World / Darwin's approach to specialty insurance. An effective risk management/loss control program is essential to help mitigate losses during the coverage term and beyond. The *Workplace HELPLINE Services* are available at no cost when policyholders purchase or renew qualifying insurance coverage with Professional Governmental Underwriters (PGU) and Allied World / Darwin.

### **Services**

- **Toll-free Employer HELPLINE**  
Policyholders receive personalized attention to specific human resources and employment law questions like hiring and termination, drug and alcohol testing, FMLA, ADA, exempt/non-exempt, harassment, and discrimination.
- **Online Resource Web Site**  
The site, [www.darwinhelpline.com](http://www.darwinhelpline.com), includes access to current human resources information, sample policies, and additional valuable content to support policyholder risk management efforts.
- **Monthly HR Express Updates and HR Alerts**  
These resources keep policyholders informed of continuously changing state and federal workplace regulations.
- **Unlimited Access**  
Policyholders have seamless access to experienced employment attorneys and may contact these experts via phone or e-mail for guidance as often as they like throughout the policy period.

**Professional Governmental Underwriters, Inc.**  
9020 Stony Point Parkway, Suite 455  
Richmond, VA 23235  
V 800-586-6502  
F 804-272-7852  
[www.pgui.com](http://www.pgui.com)

#### **About Allied World**

Allied World Assurance Company Holdings, Ltd, through its subsidiaries, is a global provider of innovative property, casualty and specialty insurance solutions, offering superior client service through offices in Bermuda, Europe, Hong Kong, Singapore and the United States. Coverage is underwritten by Darwin National Assurance Company and Darwin Select Insurance Company, subsidiaries of Allied World.

ENDORSEMENT NO. <EN>

ADDITIONAL EXCLUSION, SOVERIGN IMMUNITY

This Endorsement, effective at 12:01 a.m. on <TRXEFFDATE>, forms part of

Policy No. <POLICYNO>  
Issued to <ACCTNAME>  
Issued by <CARRNAME>

In consideration of the premium charged, it is hereby agreed that:

The **Insurer** shall not be liable under this Policy to make any payment of **Loss** in connection with any **Claim** made against any **Insured** that is barred by the defense of sovereign immunity as provided for in §§13-901 – 13-926 et seq. of the Nebraska State Statutes, also know as the "Political Subdivisions Tort Claims Act" provided however, that:

- (1) this exclusion shall not apply to the payment of **Defense Expenses** in an otherwise covered **Claim** under this Policy; and
- (2) nothing in this Policy or any Endorsement thereto shall constitute a waiver of the defense of sovereign immunity.

All other terms, conditions and limitations of this Policy shall remain unchanged.

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Authorized Representative

**ENDORSEMENT NO.**

**DEFENSE COVERAGE FOR TAX-EXEMPT BOND CLAIMS**

This Endorsement, effective at 12:01 a.m. on \_\_\_\_\_, forms part of

Policy No.  
Issued to  
Issued by

In consideration of the premium charged, it is understood and agreed that Section III. EXCLUSION, subsection C.(13) is amended to read as follows:

"(13) debt financing, including but not limited to bonds, notes, debentures and guarantees of debt; or any purchase, sale or offering of securities or violation of any laws pertaining thereto;

Provided that this Exclusion shall not apply to **Defense Expenses** only, from **Claims** arising from the failure of any tax exempt bond issued by the **Named Insured** to qualify for tax exempt status under applicable state or federal laws. The most the **Insurer** shall pay for **Defense Expenses** in connection with any such **Claim** shall be \$250,000, which amount shall be part of, and not in addition to, the aggregate Limit of Liability set forth in Item 3(c) of the Declarations."

All other terms, conditions and limitations of this Policy shall remain unchanged.

\_\_\_\_\_  
Authorized Representative

**ENDORSEMENT NO.**

**MINIMUM EARNED PREMIUM**

This Endorsement, effective at 12:01 a.m. on \_\_\_\_\_, forms part of

Policy No.  
Issued to  
Issued by

In consideration of the premium charged, Section IV. CONDITIONS, Subsection G, governing Cancellation; No Obligation to Renew, Paragraph (2), is deleted in its entirety and replaced as follows:

- (2) The **Named Insured** may cancel this Policy by mailing the **Insurer** written notice stating when, no later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, earned premium amount to be retained by the **Insurer** will be the greater of:
- (a) the amount computed in accordance with the customary short rate table and procedure; or
  - (b) \_\_\_\_\_ % of the total policy premium shown in ITEM 6 of the Declarations; or
  - (c) \$ \_\_\_\_\_.
- Premium adjustment may be made either at the time that cancellation by the **Named Insured** is effective or as soon as practicable thereafter.

All other terms, conditions and limitations of this Policy shall remain unchanged.

\_\_\_\_\_  
Authorized Representative

ENDORSEMENT NO. 3

AMEND INSURED VS. INSURED EXCLUSION,  
EMPLOYMENT PRACTICES CARVEBACK FOR OFFICIALS

This Endorsement, effective at 12:01 a.m. on \_\_\_\_\_, forms part of

Policy No.  
Issued to  
Issued by

In consideration of the premium charged, it is understood and agreed that Section III. EXCLUSIONS, subsection B.(2), is amended to read as follows:

- “(2) by, on behalf of or in the name or right of:
- (a) the **Named Insured**; or
  - (b) any duly elected, appointed or employed director or official of the **Named Insured**, or any member of a commission, board or other unit operated by the **Named Insured** and under its jurisdiction, and within the apportionment of the **Named Insured's** operating budget in the **Application**; unless, (i) in the form of a cross-claim or third-party complaint arising from a **Claim** made against such director, official or member, that is otherwise covered under this Policy, or (ii) for an **Employment Practices Wrongful Act.**”

All other terms, conditions and limitations of this Policy shall remain unchanged.

\_\_\_\_\_  
Authorized Representative

**ENDORSEMENT NO.**

**AMEND LAW ENFORCEMENT EXCLUSION**

This Endorsement, effective at 12:01 a.m. on \_\_\_\_\_, forms part of

Policy No.  
Issued to  
Issued by

In consideration of the premium charged, it is understood and agreed that Section III. EXCLUSIONS, paragraph (C)(11), is amended to read as follows:

“(11) the activities of any **Insured** as a law enforcement officer, police officer, police department or other law enforcement unit or agency; the operation of any jail cell, holding cell, detention or lock-up facility of any kind; or the activities of any **Insured** charged with the power to arrest, detain or interrogate another person, or to seize or confiscate the property of any individual or entity;

Provided however, that this exclusion shall not preclude any **Claim** for the vicarious liability of any **Insured** for any such individual, entity or operation described above;

Provided further, that this exclusion shall not apply to the administrative functions or activities of any **Insured** in the enforcement of the municipal code, laws or regulations of the **Named Insured**, including but not limited to, the issuance of citations, fines, warnings, notices of violation, the issuance or denial of licenses or permits, or the inspection of property or buildings, by persons authorized to conduct such functions or activities on behalf of the **Named Insured**.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

\_\_\_\_\_  
Authorized Representative

ENDORSEMENT NO. 2

SPOUSES AND DOMESTIC PARTNERS

This Endorsement, effective at 12:01 a.m. on \_\_\_\_\_, forms part of

Policy No.  
Issued to  
Issued by

In consideration of the premium charged, it is understood and agreed that Section II. DEFINITIONS, Subsection H., the definition of "**Insured**" is amended to include the following ultimate paragraph:

"**Insured** shall also include a lawful spouse or domestic partner of any individual identified in the paragraph above, but only with respect to liability arising out of **Wrongful Acts** committed by such individual, and provided that such spouse or domestic partner is represented by the same counsel as such individual with respect to any **Claim**."

All other terms, conditions and limitations of this Policy shall remain unchanged.

\_\_\_\_\_  
Authorized Representative

## SCHEDULE OF POLICY FORMS AND ENDORSEMENTS

Form(s) and Endorsement(s) made a part of this policy at time of issue.

SAA-100 (8-98)

*[Faint handwritten notes or scribbles]*

**ENDORSEMENT NO.**

**SERVICE OF SUIT**

This Endorsement, effective at 12:01AM on 10/02/2005, forms part of

Policy No.

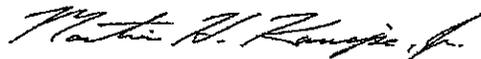
Issued to

Issued by

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the Statute, or his successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured(s) or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the below named as the person whom the said officer is authorized to mail process or a true copy thereof.

It is further agreed that service of process in such suit may be made upon Stephen J. Sills, President of the Company, or his nominee, at 9 Farm Springs Road, Farmington, CT 06032 and that in any suit instituted against any one of them upon this policy, the Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal.

NOTHING HEREIN SHALL VARY, ALTER, WAIVE, OR EXTEND ANY OF THE TERMS, PROVISIONS, REPRESENTATIONS, CONDITIONS OR AGREEMENTS OF THE POLICY OTHER THAN AS STATED ABOVE.



Authorized Representative



Troy Varney  
 Aon Corporation  
 200 E Randolph, Ste 900  
 Chicago, Illinois 60601-6414

Quote No.: UDA1164259

July 26th, 2010

RE: West Haymarket Joint Public Agency

Not for Profit Management Liability

Dear Troy,

In accordance with your request for a proposal, and based upon the information submitted, I am pleased to offer the following indication subject to receipt, review and acceptance of:

1. A properly completed, signed and dated Hiscox Not-for-Profit Management Liability New Business Application. Please include a copy of the bond prospectus and a time frame for issuance of the bonds.

Option # 1

Total Limit of Liability: \$ 1,000,000  
 Total Premium: \$ 16,274.00

Line of Insurance (LOI)	Coverage Part Limit of Liability	Separate Limit or Shared Limit	Retention	Continuity Date	Premium
Directors & Officers Liability (DO)	\$ 1,000,000	Separate	\$ 50,000	Inception	\$ 16,274.00
Employment Practices Liability (EPLI)	N/A				
Fiduciary Liability (FLI)	N/A				
Employed Lawyers Liability (ELAW)	N/A				

If "N/A" appears in the Coverage Part Limit of Liability column for any of the above Coverage Parts, such Coverage Part was not purchased and no coverage is provided under this Policy with respect to this Coverage Part.

Reputation Loss Limit of Liability: \$ 50,000  
 Voluntary Compliance Loss Limit of Liability: N/A



**Option # 2**

Total Limit of Liability: \$ 3,000,000  
 Total Premium: \$ 28,830.00

Line of Insurance (LOI)	Coverage Part Limit of Liability	Separate Limit or Shared Limit	Retention	Continuity Date	Premium
Directors & Officers Liability (DO)	\$ 3,000,000	Separate	\$ 50,000	Inception	\$ 28,830.00
Employment Practices Liability (EPLI)	N/A				
Fiduciary Liability(FLI)	N/A				
Employed Lawyers Liability (ELAW)	N/A				

If "N/A" appears in the Coverage Part Limit of Liability column for any of the above Coverage Parts, such Coverage Part was not purchased and no coverage is provided under this Policy with respect to this Coverage Part.

Reputation Loss Limit of Liability: \$ 50,000  
 Voluntary Compliance Loss Limit of Liability: N/A

**Option # 3**

Total Limit of Liability: \$ 5,000,000  
 Total Premium: \$ 30,689.00

Line of Insurance (LOI)	Coverage Part Limit of Liability	Separate Limit or Shared Limit	Retention	Continuity Date	Premium
Directors & Officers Liability (DO)	\$ 5,000,000	Separate	\$ 50,000	Inception	\$ 30,689.00
Employment Practices Liability (EPLI)	N/A				
Fiduciary Liability(FLI)	N/A				
Employed Lawyers Liability (ELAW)	N/A				

If "N/A" appears in the Coverage Part Limit of Liability column for any of the above Coverage Parts, such Coverage Part was not purchased and no coverage is provided under this Policy with respect to this Coverage Part.

Reputation Loss Limit of Liability: \$ 50,000  
 Voluntary Compliance Loss Limit of Liability: N/A



The above indication is subject to our standard policy form and is inclusive of the following:

1. One (1) year policy period;
2. Hiscox Insurance Company Inc, which is Admitted and rated A by A.M. Best. Financial Size Category is Class VII;
3. Attached endorsements apply: (1) E3334.1, (2) E3372.1, (3) E9996.1, (4) E996.1, (5) E995.1

This indication will expire in 30 days, and the commission payable is 15.00 %.

Thank you for the opportunity to offer a proposal. Please give me a call if you have any questions.

Sincerely,

Brian Clifford  
Senior Underwriter



**HISCOX Inc.** is now providing a **Toll-Free Risk Management Assistance Hotline** for its policyholders.

In an on-going effort to better serve the needs of our policyholders, Hiscox, through its United States organization, **Hiscox Inc.**, is now making available a **Toll-Free Risk Management Assistance Hotline**. This hotline is staffed by highly qualified attorneys from the law firm of Warden Grier PC a **nationally recognized firm** which has distinguished itself for many years in the area of insurance related issues.

**Who is it For:**

- All policyholders of Hiscox Professional Liability insurance (except for Terrorism coverage) written out of our US offices.

**Information Provided On Issues Relating To:**

- Contract provisions dealing with liability and damage issues.
- Matters that could potentially result in a claim situation.
- Other general risk management related matters.

**How it Works:**

- Policyholders can either call the Toll-Free Hotline or can send questions via email.
- Callers required to provide insured name/policy number for verification purposes.
- Inquiries will be responded to by an appropriately experienced Warden Grier PC attorney. If the attorney is unavailable at the time of contact, then a telephone or email response will be sent within one business day.
- Hours of service are 8:00 AM to 6:00 PM Eastern Standard Time, Monday - Friday, excluding national holidays.

**Other Terms and Conditions:**

- The information and counseling provided shall be on a basis that does **not** establish any **attorney-client relationship** between Warden Grier PC and the caller.
- The information and counseling provided **must be confirmed** with the caller's own legal counsel.
- Conversations/emails will be confidential and the content will **not be communicated** to the insurer in any part.
- The caller will be advised by the Warden Grier PC attorney at the beginning of each call of the **nature and limitation** of the relationship, including the fact that Warden Grier represents the insurers.
- **This Hotline is NOT a loss reporting Hotline.** Please refer to your policy for instructions on how to report a claim.



## ECONOMIC AND TRADE SANCTIONS POLICYHOLDER NOTICE

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Hiscox is committed to complying with the U.S. Department of Treasury Office of Foreign Assets Control (OFAC) requirements. OFAC administers and enforces economic sanctions policy based on Presidential declarations of national emergency. OFAC has identified and listed numerous foreign agents, front organizations, terrorists, and narcotics traffickers as Specially Designated Nationals (SDN's) and Blocked Persons. OFAC has also identified Sanctioned Countries. A list of Specially Designated Nationals, Blocked Persons and Sanctioned Countries may be found on the United States Treasury's web site <http://www.treas.gov/offices/enforcement/ofac/>.

Economic sanctions prohibit all United States citizens (including corporations and other entities) and permanent resident aliens from engaging in transactions with Specially Designated Nationals, Blocked Persons and Sanctioned Countries. Hiscox may not accept premium from or issue a policy to insure property of or make a claim payment to a Specially Designated National or Blocked Person. Hiscox may not engage in business transactions with a Sanctioned Country.

A Specially Designated National or Blocked Person is any person who is determined as such by the Secretary of Treasury.

A Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States.

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy may be rendered void from its inception with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- (1) Any insured under this Policy, or any person or entity claiming the benefits of such insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to US economic trade sanctions;
- (2) Any claim or suit that is brought in a Sanctioned Country or by a Sanctioned Country government, where any action in connection with such claim or suit is prohibited by US economic or trade sanctions;
- (3) Any claim or suit that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to US economic or trade sanctions;
- (4) Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country government, where any activities related to such property are prohibited by US economic or trade sanctions; or
- (5) Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to US economic or trade sanctions.

Please read your Policy carefully and discuss with your broker/agent or insurance professional. You may also visit the US Treasury's website at <http://www.treas.gov/offices/enforcement/ofac/>.



## Management Liability Insurance Policy

### General Terms and Conditions

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this Policy, the **Insurer** agrees as follows:

#### I. Terms and Conditions

Except for the terms and conditions appearing in these **General Terms and Conditions**, the terms and conditions of each **Coverage Part** shall only apply to that particular **Coverage Part** and in no way shall be construed to apply to any other **Coverage Part**. If any provision in these **General Terms and Conditions** is inconsistent or in conflict with the terms and conditions of any **Coverage Part**, then any defined term referenced in these **General Terms and Conditions** but defined in a **Coverage Part** shall, for purposes of coverage under that **Coverage Part**, have the meaning set forth in that **Coverage Part**.

#### II. Definitions

##### A. **Affiliate** means any:

- (i) entity, other than a **Subsidiary**, which the **Named Organization** or any **Subsidiary** controls or otherwise has the ability to direct the financial or managerial decisions of such entity, whether through the operation of law, oral or written contract or agreement, membership, charter, articles of incorporation or by-law provisions; or
- (ii) not-for-profit entity, other than a **Subsidiary**, which is granted by oral or written contract the right to control the financial or managerial decisions of the **Named Organization** or any **Subsidiary**;

provided, however, that such coverage as may be provided under this Policy for any entity described in subparagraphs (i) and (ii) of this Definition shall be limited solely to **Wrongful Acts** occurring in the course of the exercise of such control of financial or managerial decisions.

- B. **Application** means the signed application for the Policy, including any attachments and other materials or information submitted in conjunction with the signed application. The **Application** shall be deemed attached to and part of this Policy. If this Policy is a renewal or replacement of a previous policy or policies issued by the **Insurer**, all signed applications and other materials that were attached to and part of those previous policies shall also be considered part of the **Application** for this Policy. With respect to the **FLI Coverage Part** (if purchased), **Application** shall also mean any public documents filed by the **Named Organization** or any **Subsidiary** with any federal, state, local or foreign regulatory agency.
- C. **Continuity Date** means the date set forth in Item 4. of the Declarations as applicable for each **Coverage Part** purchased.
- D. **Coverage Part** means each **Coverage Part** that is purchased by the **Insured** as set forth in Item 4. of the Declarations.
- E. **Coverage Part Limit of Liability** means the **Coverage Part Limit of Liability** set forth in Item 4. of the Declarations.
- F. **Discovery Period** means **Discovery Period** as that term is defined in Clause VIII. of these **General Terms and Conditions** and as set forth by endorsement to this Policy.



## Management Liability Insurance Policy

### General Terms and Conditions

- G. **Domestic Partner** means a person legally recognized as a domestic or civil union partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by an **Organization**
- H. **Full Annual Premium** means:
- (i) with regard to a canceled or non-renewed policy, the total annual premium charged for this Policy; or
  - (ii) with regard to a canceled or non-renewed **Coverage Part**, the total annual premium charged for such **Coverage Part**.
- I. **Insurer** means the insurance company set forth in the Declarations.
- J. **Limit of Liability** means any and all of the following (including any sublimit made part thereof) as applicable to this Policy and **Coverage Part** thereof: (i) the **Policy Aggregate Limit of Liability**; (ii) each **Coverage Part Limit of Liability**; (iii) the **Shared Limit(s) of Liability**; and (iv) each **Separate Limit of Liability**.
- K. **Management Control** means: (i) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of the board of directors or trustees of an entity; or (ii) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Organization**, to elect, appoint or designate a majority of the board of directors or trustees of an entity.
- L. **Named Organization** means the entity set forth in Item 1. of the Declarations.
- M. **Organization** means: (1) the **Named Organization**; (2) any **Subsidiary** thereof; and (3) any **Affiliate** thereof listed by endorsement to this Policy, but solely with respect to the **Coverage Part** indicated on such endorsement. In the event a bankruptcy proceeding shall be instituted by or against an **Organization**, the term **Organization** shall also mean the resulting debtor-in-possession (or equivalent status outside the United States of America), if any, but only for acts on behalf of an **Organization**.
- Organization** does not include and coverage shall not extend under any **Coverage Part** for any **Subsidiary** or **Affiliate**, or an **Individual Insured** of such **Subsidiary** or **Affiliate**, for any **Wrongful Act** committed, attempted, or allegedly committed or attempted, during any time when such entity was not a **Subsidiary** or **Affiliate**.
- N. **Policy Aggregate Limit of Liability** means the **Policy Aggregate Limit of Liability** set forth in Item 3. of the Declarations.
- O. **Policy Period** means the period of time from the inception date set forth in Item 2. of the Declarations to the earlier of the expiration date set forth in Item 2. of the Declarations or the effective date of cancellation of this Policy.
- P. **Related Wrongful Act(s)** means **Wrongful Act(s)** which are the same, repeated or continuous, or **Wrongful Act(s)** which arise from a common causal connection or cause the same or related damages, or a common nexus or nucleus of facts. **Claims** can allege **Related Wrongful Act(s)** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- Q. **Separate Limit of Liability** means the applicable **Separate Limit of Liability** (to the extent elected for a **Coverage Part**) set forth in Item 4. of the Declarations.



## Management Liability Insurance Policy

### General Terms and Conditions

- R. **Shared Limit of Liability** means the **Shared Limit of Liability** (to the extent elected for a **Coverage Part**) set forth in Item 4. of the Declarations.
- S. **Subsidiary** means:
- (i) any entity of which the **Named Organization** has **Management Control** ("**Controlled Entity**"), on or before the inception date of the **Policy Period**, either directly or indirectly through one or more **Controlled Entities**;
  - (ii) any not-for-profit entity of which the **Named Organization** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**, and whose assets total less than forty percent (40%) of the total consolidated assets of the **Named Organization** as of the inception date of the **Policy Period**; and
  - (iii) any for-profit entity, whose securities are not publicly traded, of which the **Named Organization** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Controlled Entities**, and whose assets total less than twenty five percent (25%) of the total consolidated assets of the **Named Organization** as of the inception date of the **Policy Period**.

With regard to subparagraphs (ii) and (iii) of this Definition, the **Named Organization** shall provide the **Insurer** with full particulars of the **Subsidiary** before the end of the **Policy Period**.

Any entity which becomes a **Subsidiary** during the **Policy Period**, but which exceeds the asset limitations stated in subparagraphs (ii) or (iii) of this Definition, shall be provided coverage under this Policy, but only upon the condition that within ninety (90) days after the date of its becoming a **Subsidiary**, the **Named Organization** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the terms and conditions of this Policy required by the **Insurer** relating to such new **Subsidiary**. Further, the coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named Organization** paying, when due, any additional premium required by the **Insurer** relating to such new **Subsidiary**.

- T. **Wrongful Act** shall have the same meaning set forth in each applicable **Coverage Part**.

### III. Spouses, Estates, and Legal Representatives

Subject otherwise to the terms, conditions and limitations of these **General Terms and Conditions** and any applicable **Coverage Part**, coverage shall extend to **Loss** arising from any **Claim** for the **Wrongful Acts** of an **Individual Insured** made against:

- A. the estates, heirs or legal representatives of deceased **Individual Insureds**, and the legal representatives of **Individual Insureds** in the event of such **Individual Insured's** incompetency, insolvency or bankruptcy, provided such persons were **Individual Insureds** at the time the **Wrongful Acts** upon which such **Claims** are based were committed; or
- B. the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) or **Domestic Partner** of an **Individual Insured** for all **Claims** arising solely out of his or her



## Management Liability Insurance Policy

### General Terms and Conditions

status as the spouse or **Domestic Partner** of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse or **Domestic Partner**, or property transferred from the **Individual Insured** to the spouse or **Domestic Partner**; provided, however, this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** of the spouse or **Domestic Partner**, subject to the Policy's terms, conditions and Exclusions.

#### IV. Limits of Liability

Regardless of the number of **Claims** made during the **Policy Period** or **Discovery Period** (if applicable), or any **Claim** deemed to be made during the **Policy Period** or **Discovery Period** pursuant to Clause VI.B. or VI.C., the maximum the **Insurer** shall be liable to pay for all covered **Loss** (including **Defense Costs**) under this Policy shall be as follows:

- A. The **Policy Aggregate Limit of Liability** shall be the maximum amount for all **Loss** under the Policy for any and all **Coverage Parts**.
- B. The **Coverage Part Limit of Liability** shall be the maximum amount for all **Loss** under the respective **Coverage Part** for which such amount is designated.

Subject to subparagraphs C. or D. below, a **Coverage Part Limit of Liability** may either be a **Shared Limit of Liability** or a **Separate Limit of Liability**, depending upon how designated in Item 4. of the Declarations.

- C. With respect to each **Coverage Part Limit of Liability** designated in Item 4. of the Declarations as part of a **Shared Limit of Liability**:

The **Shared Limit of Liability** shall be the maximum amount for all **Loss** under any and all **Coverage Parts** set forth in Item 4. of the Declarations as part thereof, regardless of any amounts remaining under a participating **Coverage Part Limit of Liability**. The **Shared Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

- D. With respect to each **Coverage Part Limit of Liability** designated in Item 4. of the Declarations as a **Separate Limit of Liability**:

The **Separate Limit of Liability** shall be the maximum amount for all **Loss** under the respective **Coverage Part** for which such amount is designated. The **Separate Limit of Liability** shall be part of, and not in addition to, the **Policy Aggregate Limit of Liability**.

#### V. Retention

The Retentions set forth in the Declarations are separate Retentions pertaining only to the applicable **Coverage Part** for which they are set forth in the Declarations. The application of a Retention under one **Coverage Part** shall not reduce the Retention under any other **Coverage Part**.

In the event a **Claim** triggers a Retention in multiple **Coverage Parts**, then the following shall apply:

- A. with regard to **Loss** which is payable under any **Coverage Part** which is subject to a **Separate Limit of Liability**, the Retention applicable to such **Loss** pursuant to the Retention Clause of such **Coverage Part** (or pursuant to any applicable



## Management Liability Insurance Policy

### General Terms and Conditions

endorsement) shall apply separately to such **Loss**, and the applicable Retention for such **Coverage Part** shall not be reduced by payments of **Loss** made towards the Retention required under any other **Coverage Part**; and

- B. with regard to **Loss** which is payable under any **Coverage Part** which is subject to a **Shared Limit of Liability**, the highest applicable Retention of any **Coverage Part** triggered under such **Shared Limit of Liability** shall be deemed the Retention applicable to **Loss** arising from such **Claim**.

#### VI. Reporting and Notice

Notice hereunder shall be given in writing at the address set forth in Item 7. of the Declarations. Notice shall reference the policy number set forth in the Declarations, as well as the **Coverage Part(s)** under which the **Claim** is being noticed. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

With respect to all **Coverage Parts**, the following shall apply:

- A. The **Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this Policy, give written notice to the **Insurer** of any **Claim** made against an **Insured** as soon as practicable.
- B. If written notice of a **Claim** has been given to the **Insurer** pursuant to Clause VI.A. above, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** for which such notice has been given, or alleging any **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged in the **Claim** of which such notice has been given, shall be considered made at the time such notice was originally given pursuant to Clause VI.A. above.
- C. If during the **Policy Period** or the **Discovery Period** (if applicable) the **Insured(s)** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Insured(s)** and shall give written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** which is subsequently made against the **Insureds** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Wrongful Act** which is the same as or is a **Related Wrongful Act** to that alleged or contained in such circumstances, shall be considered made at the time such notice of such circumstances was originally reported.
- D. Any matter which could involve the payment of **Reputation Loss** under the **D&O Coverage Part** shall be reported to the **Insurer** in the same manner as a **Claim** under Clause VI.A. above.
- E. Any matter which could involve the payment of **Voluntary Compliance Loss** under the **FLI Coverage Part** shall be reported to the **Insurer** in the same manner as a **Claim** under Clause VI.A. above.

The **Insured(s)** shall, as a condition precedent to exercising any right to coverage under this Policy, give to the **Insurer** such information, assistance and cooperation as the **Insurer** may reasonably require, and shall include in any notice under Clause VI.A, B., C., D. or E. above a description of the **Claim** or circumstances, the nature of any alleged



## Management Liability Insurance Policy

### General Terms and Conditions

**Wrongful Acts**, the nature of the alleged or potential damage, the names of all actual or potential claimants, the names of all actual or potential defendants, and the manner in which such **Insured** first became aware of the **Claim** or circumstances.

#### VII. Cancellation

This Policy or any individual **Coverage Part** may be canceled by the **Named Organization** at any time by either surrendering or mailing written notice to the **Insurer** or its authorized agent stating: (i) which **Coverage Part(s)** is/are to be canceled or that the entire Policy is to be canceled; and (ii) when thereafter such cancellation shall be effective. In no event shall such cancellation be effective prior to the **Insurer's** receipt of such notice or such surrender.

This Policy may be canceled by or on the behalf of the **Insurer** only in the event of non-payment of premium by the **Insured**. In the event of non-payment of premium by the **Insured**, the **Insurer** may cancel this Policy by written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender.

If the Policy or any **Coverage Part** shall be canceled by the **Named Organization**, the **Insurer** shall retain the short rate proportion of the applicable premium herein.

If the Policy is canceled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the applicable premium herein.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice as set forth above is also set forth in any law controlling the construction thereof, the period set forth above shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in the controlling law.

#### VIII. Discovery Period

##### A. Cancellation or Non-Renewal

If the Policy or any **Coverage Part** is either cancelled or not renewed for any reason other than non-payment of premium, the **Named Organization** shall have the right to purchase a **Discovery Period** for a length of time indicated by endorsement to this Policy, subject to the following:

- (i) The premium for the purchased **Discovery Period** shall be the **Full Annual Premium** multiplied by the applicable percentage amount set forth by endorsement to this Policy. If no such percentage is set forth, or the percentage is set forth as "to be determined," then the premium for such **Discovery Period** shall be an amount as the **Insurer** may reasonably decide.
- (ii) Unless notice of election and the premium contemplated above are received by the **Insurer** within thirty (30) days of the cancellation or non-renewal date, the **Insured's** rights contained in the Clause shall lapse.
- (iii) The **Insured** shall have the right to give the **Insurer** written notice of **Claims** first made against any **Insured** during the **Discovery Period**, but only for



## Management Liability Insurance Policy

### General Terms and Conditions

**Wrongful Acts** occurring prior to the end of the **Policy Period**.

- (iv) Notwithstanding the foregoing, the **Discovery Period** shall not apply to a **Reputation Risk Event** occurring during the **Discovery Period**.

#### B. Change in Control

If there is a **Change in Control** as defined in Clause IX. of these **General Terms and Conditions**, the **Named Organization** shall have the right within thirty (30) days before the end of the **Policy Period** to request an offer from the **Insurer** of a **Discovery Period** for a length of time that does not exceed those lengths offered by endorsement to this Policy per subparagraph A. above and subject to such terms, conditions and premium as the **Insurer** may reasonably decide.

In the event of a **Change in Control**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this subparagraph B.

#### C. General

If any premium is owed for the Policy, any premium received from the **Insured** shall first be applied to the premium owing for the Policy with the remainder applied to the premium for the **Discovery Period**. The **Discovery Period** shall not take effect unless the outstanding premium for the Policy is paid in full and the premium for the **Discovery Period** is paid when due.

### IX. Change in Control

If during the **Policy Period**:

- A. the **Named Organization** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
- B. any person or entity or group of persons or entities acting in concert shall acquire **Management Control** of the **Named Organization**; or
- C. the **Named Organization** shall change from not-for-profit to for-profit status;

(any of the above events herein referred to as a "**Change In Control**"),

then coverage under this Policy and any purchased **Coverage Part** shall continue until termination of such Policy or **Coverage Part**, but only with respect to **Claims** alleging **Wrongful Acts** committed, attempted or allegedly committed or attempted by the **Insureds** before such **Change In Control**.

This Policy and any purchased **Coverage Part** may not be canceled after the effective time of the **Change In Control**. The **Named Organization** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in Clause VIII. of these **General Terms and Conditions**.

The **Named Organization** shall give the **Insurer** written notice of the **Change In Control** as soon as practicable, but not later than thirty (30) days after the effective date of the **Change In Control** together with such other information as the **Insurer** may require.

### X. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery thereof, and the **Insureds**



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shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured**. In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Individual Insured** under this Policy unless such **Individual Insured** has been convicted of a criminal act, or been determined by a final adjudication to have committed a dishonest or fraudulent act or to have obtained any profit or advantage to which such **Individual Insured** was not legally entitled.

Additionally, in the event that the **Insurer** shall for any reason pay **Indemnifiable Loss** on behalf of an **Individual Insured**, the **Insurer's** subrogation rights shall include, but not be limited to, the assertion of indemnification or contribution rights with respect to any such payments it makes or advances. Additionally, upon the **Insurer** making any payment of **Loss** within the Retention, the **Insurer** shall have a direct contractual right under this policy to recover from the **Organization**, or in the event of the bankruptcy of the **Organization**, from the debtor-in-possession (or equivalent status outside the United States) such **Loss** which was paid within the Retention. Such direct contractual right of recovery against the **Organization** shall be in addition to and independent of the **Insurer's** subrogation right pursuant to this Clause X. and any other rights the **Insurer** may have under applicable law.

#### XI. Other Insurance

With respect to all **Coverage Parts**, other than the **EPLI Coverage Part**, such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable **Limit of Liability** for this Policy or any **Coverage Part**. This Policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.

Such insurance as is provided by the **EPLI Coverage Part** shall be primary unless expressly written to be excess over other applicable insurance.

With respect to all **Coverage Parts**, in the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**, or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased **Employee** or independent contractor **Employee** as described in the Definition of **Employee** in the applicable **Coverage Part**, coverage as is afforded by this Policy shall be specifically excess of any: (i) indemnification provided by such **Outside Entity** or leasing company; and (ii) any other insurance provided to such **Outside Entity**, leasing company or independent contractor.

#### XII. Representations and Severability

In granting coverage under this Policy, it is agreed that the **Insurer** has relied upon the statements and representations contained in the **Application** for this Policy as being accurate and complete. All such statements and representations are the basis of this Policy and are to be considered as incorporated into this Policy.

The **Insureds** agree that in the event that the particulars and statements contained in the **Application** are not accurate and complete and materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under the Policy, then this Policy shall be void *ab initio* as to any **Insured** who knew as of the inception date of the **Policy Period** of the facts that were not accurately and completely disclosed in the **Application** (whether or not such **Insured** knew that such facts were not accurately and



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completely disclosed in the **Application**). Solely for purposes of determining whether this Policy shall be void *ab initio* as to an **Insured**, such aforesaid knowledge possessed by any **Insured** shall not be imputed to any other **Insured**.

- XIII. Notice and Authority** It is agreed that the **Named Organization** shall act on behalf of its **Subsidiaries** and all **Insureds** with respect to the giving of notice of any **Claim**, the giving and receiving of notice of cancellation and non-renewal, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy, the exercising or declining of the right to tender the defense of a **Claim** to the **Insurer** and the exercising or declining to exercise any right to a **Discovery Period**.
- XIV. Assignment** No change in, modification of or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy which is signed by an authorized representative of the **Insurer**.
- XV. Action Against Insurer** No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by final judgment against the **Insured** or by written agreement of the **Insured**, the claimant and the **Insurer**.
- Any person or entity or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join the **Insurer** as a party to any action against the **Insured** or an **Organization** to determine the **Insured's** liability, nor shall the **Insurer** be impleaded by the **Insured** or an **Organization** or their legal representatives.
- XVI. Bankruptcy** Bankruptcy or insolvency of any **Insured** or the **Insured's** estate shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this Policy.
- XVII. Coverage Territory** Where legally permissible, this Policy shall apply to any **Claim** made against any **Insured** anywhere in the world.
- XVIII. Governmental Restrictions** This Policy does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the **Insurer** from providing insurance.
- XIX. Headings** The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.



## Management Liability Insurance Policy

### Directors & Officers Liability Coverage Part ("D&O Coverage Part")

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this Policy, the **Insurer** agrees as follows:

#### I. Insuring Agreements

This **D&O Coverage Part** affords the following coverage:

##### Coverage A: Individual Insurance Coverage

This **D&O Coverage Part** shall pay the **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of such **Individual Insured**, except when and to the extent that an **Organization** has indemnified the **Individual Insured** for such **Loss**.

##### Coverage B: Organization Reimbursement Coverage

This **D&O Coverage Part** shall pay the **Loss** of an **Organization** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of such **Individual Insured**, but only when and to the extent that such **Organization** has indemnified such **Individual Insured** for such **Loss**.

##### Coverage C: Organization Coverage

This **D&O Coverage Part** shall pay the **Loss** of an **Organization** arising from a **Claim** first made against an **Organization** during the **Policy Period** or the **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of an **Organization**.

##### Coverage D: Reputation Coverage

This **D&O Coverage Part** shall pay the **Reputation Loss** of an **Organization** solely with respect to a **Reputation Risk Event** that first commences and is reported to the **Insurer** during the **Policy Period** up to the amount of the **Reputation Loss Limit of Liability**. Payment of any **Reputation Loss** under this **D&O Coverage Part** shall not waive any of the **Insurer's** rights under this Policy or at law. Coverage D shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Reputation Risk Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**.

A **Reputation Risk Event** first commences when an **Organization** or any of its **Executives** first become aware of such **Reputation Risk Event** during the **Policy Period** and shall conclude at the earliest of the time when a risk management, public relations or law firm advises an **Organization** that such **Reputation Risk Event** no longer exists or when the **Reputation Loss Limit of Liability** has been exhausted.



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### Defense Provision

The **Insurer** does not assume any duty to defend; provided, however, the **Named Organization** may at its sole option tender to the **Insurer** the defense of a **Claim** for which coverage is provided by Clause VII. of this **D&O Coverage Part**. Regardless of whether the defense is so tendered, the **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**.

## II. Definitions

### A. **Claim** means:

- (i) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
- (ii) a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (1) service of a complaint or similar pleading;
  - (2) return of an indictment, information or similar document (in the case of a criminal proceeding); or
  - (3) receipt or filing of a notice of charges; or
- (iii) a formal civil, criminal, administrative or regulatory investigation of an **Individual Insured** for a **Wrongful Act** once such **Individual Insured** is identified in writing by such investigating authority as a person against whom a proceeding described in subparagraph (ii) of this Definition may be commenced.

B. **Cleanup Costs** means expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

C. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.

D. **Employee** means any past, present or future employee of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of an **Organization** in his or her capacity as such. An individual who is leased to an **Organization** shall also be an **Employee**, but only if such **Organization** provides indemnification to such leased individual in the same manner as is provided to such **Organization's** own employees.

**Employee** shall also mean any other individual who is contracted to perform work for an **Organization**, or who is an independent contractor for an **Organization**, but only if such **Organization** provides or is required to provide indemnification to such



## Management Liability Insurance Policy

### Directors & Officers Liability Coverage Part ("D&O Coverage Part")

individual in the same manner as provided to such **Organization's** own employees, pursuant to a written contract; provided, however, an **Organization** may request that no coverage be provided under this **D&O Coverage Part** for an independent contractor named in a specific **Claim**. Such request must be made in writing and within ninety (90) days of the **Claim** being reported to the **Insurer**. If no such request is made, this **D&O Coverage Part** shall apply as if such **Organization** determined that such independent contractor shall receive coverage.

- E. **Excess Benefit** means an "excess benefit" as defined in Section 4958 of the Internal Revenue Code, 26 U.S.C. §4958.
- F. **Executive** means:
- (i) any past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head or committee member (of a duly constituted committee);
  - (ii) any past, present or future person in a duly elected or appointed position in an entity which is organized and operated in a **Foreign Jurisdiction** that is equivalent to an executive position listed in subparagraph (i) of this Definition; or
  - (iii) any past, present or future General Counsel and Risk Manager (or equivalent position).
- G. **Financial Insolvency** means: (i) the appointment by any government official, agency, commission, court or other governmental authority of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an insolvent **Organization**; (ii) the filing of a petition under the bankruptcy laws of the United States of America; or (iii) as to both (i) or (ii) of this Definition, any equivalent events outside the United States of America.
- H. **Foreign Jurisdiction** means any jurisdiction other than the United States of America or any of its territories or possessions.
- I. **Foreign Policy** means any standard executive management liability insurance policy (including all mandatory endorsements, if any) of the **Insurer** or an affiliate of the **Insurer**, which has been approved for sale within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this **D&O Coverage Part**. If more than one such policy exists, then **Foreign Policy** means the standard basic policy form typically offered for sale in that **Foreign Jurisdiction** for comparable risks by the **Insurer** or any other affiliate company of the **Insurer**. The term **Foreign Policy** shall not include any partnership management, pension trust or professional liability coverage.
- J. **Indemnifiable Loss** means **Loss** for which an **Organization** has indemnified or is permitted or required to indemnify an **Individual Insured** pursuant to law, contract or the charter, by-laws, operating agreement or similar documents of such **Organization**.
- K. **Individual Insured** means any:
- (i) **Executive** of an **Organization**;
  - (ii) **Employee** of an **Organization**; or



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(iii) **Outside Entity Executive.**

L. **Insured** means:

- (i) an **Organization**; or
- (ii) an **Individual Insured**.

M. **Loss** means the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:

- (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
- (ii) **Defense Costs**, including those incurred in connection with a **Claim** seeking an assessment of taxes, initial taxes, additional taxes, tax deficiencies, excise taxes or penalties pursuant to the following Sections of the Internal Revenue Code of 1986 (as amended): §4911; §4940 (a); §4941; §4942; §4943; §4944; §4945; §6652(c)(1)(A) and (B); §6655 (a)(1); and §6656 (a) and (b);
- (iii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (iii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
- (iv) **Excess Benefit** penalty assessed in the amount of ten percent (10%) by the Internal Revenue Service ("**IRS**") against any **Insured(s)** for an **Executive's** involvement in the award of an **Excess Benefit** and the **Defense Costs** attributable thereto. **Loss** shall specifically exclude: (1) any twenty-five percent (25%) penalty assessed by the **IRS** against an **Insured** deemed to have received an **Excess Benefit**; (2) **Defense Costs** incurred to defend any **Insured** if it has been in fact determined that such individual received an **Excess Benefit**; and (3) any two hundred percent (200%) penalty assessed by the **IRS** for failure to correct the award of an **Excess Benefit**; and
- (v) **Reputation Loss**.

**Loss** shall not include: (i) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (ii) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; (iii) civil or criminal fines or penalties; (iv) taxes or tax penalties (whether imposed by federal, state, local or other governmental authority); or (v) the costs and expenses of complying with any injunctive relief or other form of non-monetary relief. **Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (i) through (v) of this subparagraph provided such **Defense Costs** result from a covered **Claim**.

**Loss** shall also not include any compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**.

N. **Material Publication** means the publication, broadcast or circulation of unfavorable information regarding an **Organization** which can reasonably be expected to lessen public confidence in the competence of the **Organization** or its products and/or services, received or circulated in the geographic area of an **Organization**.



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- O. **Non-Indemnifiable Loss** means **Loss** for which an **Organization** has neither indemnified nor is permitted or required to indemnify an **Individual Insured** pursuant to law or contract or the charter, by-laws, operating agreement or similar document of an **Organization**.
- P. **Outside Entity** means:
- (i) any not-for-profit entity, other than a **Subsidiary** or **Affiliate**; or
  - (ii) any other entity listed as an **Outside Entity** by endorsement to this Policy.
- Q. **Outside Entity Executive** means: (i) any **Executive** of an **Organization** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of an **Organization**; or (ii) any other person listed as an **Outside Entity Executive** in an endorsement to this **D&O Coverage Part**. It is understood and agreed that, in the event of a disagreement between an **Organization** and an individual as to whether such individual was acting at the specific request or direction of such **Organization**, this **D&O Coverage Part** shall abide by the determination of the **Named Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** is first reported to the **Insurer** pursuant to the terms of the Policy. In the event no determination is made within such period, this **D&O Coverage Part** shall apply as if the **Named Organization** determined that such **Individual Insured** was not acting at such **Organization's** specific request or direction.
- R. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- S. **Reputation Loss** means the following amounts incurred during the pendency of or within ninety (90) days prior to and in anticipation of a **Reputation Risk Event**, regardless of whether a **Claim** is ever made against an **Insured** arising from a **Reputation Risk Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**:
- (i) the reasonable and necessary fees and expenses incurred by a risk management, public relations or law firm in the performance of **Reputation Risk Management Services** for an **Organization** arising from a **Reputation Risk Event**; and
  - (ii) the reasonable and necessary fees and expenses incurred in the printing, advertising or mailing of **Reputation Risk Event** materials in the performance of **Reputation Risk Management Services** for an **Organization** arising from a **Reputation Risk Event**.
- T. **Reputation Loss Limit of Liability** means the dollar amount set forth in Item 6(a) of the Declarations.
- U. **Reputation Risk Event** means the public announcement of one of the following events which, in the good faith opinion of an **Organization**, did cause or is reasonably likely to cause a **Material Publication**:



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- (i) Management Risk Event: the death, incapacity or criminal indictment of any **Individual Insured** for whom an **Organization** maintains key person life insurance;
  - (ii) Bankruptcy/Debt Default/Downsizing: that: (1) an **Organization** intends to file for bankruptcy protection or that a third party is seeking to file for involuntary bankruptcy on behalf of such **Organization**; (2) an **Organization** has defaulted or intends to default on any debt obligation; or (3) the closing or forced sale of a department/unit/division of an **Organization**;
  - (iii) Regulatory Risk Event: the commencement or threat of litigation or other proceedings by any governmental or regulatory agency against an **Organization**;
  - (iv) Bodily Injury/Abuse Risk Event: an accusation that an **Individual Insured** (or an individual an **Insured** is legally responsible for) has intentionally caused bodily injury to or death of any person in the performance of his or her duties with an **Organization**;
  - (v) Workplace Violence: an **Employee** of an **Organization** was the victim of a violent crime while on the premises of such **Organization**;
  - (vi) Child Abduction: a child was abducted or kidnapped while under the care or supervision of an **Organization**; or
  - (vii) Contribution Revocation: the withdrawal or demand for return of any non-governmental grant, contribution or bequest in excess of one hundred thousand dollars (\$100,000).
- V. **Reputation Risk Management Services** means those services performed by a risk management, public relations or law firm retained by the **Insured**, with the prior written consent of the **Insurer**, to advise the **Insured** on minimizing potential harm to an **Organization** arising from a **Reputation Risk Event**, including maintaining and restoring public confidence in such **Organization**.
- W. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable **Limit of Liability** and that is acceptable to the claimant.
- X. **Third Party Violation** means any actual or alleged harassment (including sexual harassment) or unlawful discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability), or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or an applicant for employment with an **Organization** or an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- Y. **Wrongful Act** means:
- (i) with respect to **Individual Insureds**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Individual Insureds** in his/her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his/her status as an **Individual Insured** of an **Organization**;
  - (ii) with respect to an **Organization** under Coverage C, any breach of duty,



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neglect, error, misstatement, misleading statement, omission or act by or on behalf of such **Organization**;

- (iii) with respect to **Outside Entity Executives**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as an **Outside Entity Executive** of an **Outside Entity**;
- (iv) with respect to all **Insureds**, subject to subparagraphs (i), (ii) and (iii) of this Definition, **Wrongful Act** shall specifically include: (1) violation of the Sherman Antitrust Act or similar federal, state or local statutes or rules; (2) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy; (3) wrongful entry or eviction or other invasion of the right of occupancy; (4) false arrest or wrongful detention; (5) plagiarism; and (6) infringement of copyright or trademark or unauthorized use of title.

### III. Worldwide Coverage

For **Claims** made and maintained in a **Foreign Jurisdiction** for **Wrongful Acts** committed in such **Foreign Jurisdiction**, the **Insurer** shall apply to such **Claims** the provisions of the **Foreign Policy** in the **Foreign Jurisdiction** that are more favorable to such **Insured** in the **Foreign Jurisdiction**; provided, however, this paragraph shall apply only to provisions more favorable by virtue of insuring clauses, extensions, definitions, exclusions or other defense counsel, discovery or extended reporting period, notice and authority, dispute resolution process or order of payments provisions, if any, of the **Foreign Policy** when compared to the same or similar clauses of this **D&O Coverage Part**. This paragraph shall not apply to excess provisions or Policy provisions that address cancellation and non-renewal, duty to defend, defense within or without limits, taxes, claims made provisions or any other provision of this Policy intended to govern coverage worldwide.

All premiums, limits, Retentions, **Loss** and other amounts under this **D&O Coverage Part** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** due under this **D&O Coverage Part** (subject to the terms, conditions and limitations of this **D&O Coverage Part**) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Organization**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

### IV. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. arising out of, based upon or attributable to:
  - (i) the gaining of any profit or advantage to which any final adjudication establishes the **Insured** was not legally entitled; or
  - (ii) the committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if any final adjudication establishes



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that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed;

- B. alleging, arising out of, based upon or attributable to the facts alleged, or the same or **Related Wrongful Act(s)** alleged or contained in any claim or demand which has been reported, or in any circumstances of which notice has been given, under any prior insurer's policy or policy of which this **D&O Coverage Part** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the **Continuity Date** for this **D&O Coverage Part**, or the alleging of any **Wrongful Act** which is the same or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
- D. with respect to an **Outside Entity Executive**, for any **Wrongful Act** occurring prior to the **Continuity Date** if any **Insured**, as of such **Continuity Date**, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **D&O Coverage Part**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity, other than as an **Executive** or **Employee** of an **Organization**, or as an **Outside Entity Executive** of an **Outside Entity**;
- F. which is brought by or on behalf of an **Organization** against any **Individual Insured**; provided, however, this Exclusion shall not apply to any derivative **Claim** made on behalf of such **Organization** by a member, an attorney general or any other such representative party if such action is brought and maintained independently of and without the solicitation of or assistance of, or active participation of or intervention of any **Individual Insured** or such **Organization**;
- G. for any **Wrongful Act** arising out of an **Individual Insured** serving in a capacity as an **Outside Entity Executive** if such **Claim** is brought by the **Outside Entity** or any **Executive** thereof;
- H. for bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property; provided, however, this Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;
- I. for: (i) any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; provided, however, this Exclusion shall not apply to **Non-Indemnifiable Loss**, other than **Non-Indemnifiable Loss** constituting **Cleanup Costs**;
- J. for violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto or any similar federal, state, local or foreign statutory law



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or common law;

- K. alleging, arising out of, based upon or attributable to:
  - (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered;
  - (ii) improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
  - (iii) failure to provide or enforce legally required meal or rest break periods;
- L. alleging, arising out of, based upon or attributable to the employment of any individual, a **Third-Party Violation** or any wrongful employment practice, including, but not limited to, wrongful termination, dismissal or discharge, breach of implied contract, harassment, sexual harassment or hostile work environment, discrimination, retaliation, employment-related misrepresentations, libel, slander, humiliation, defamation or invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful discipline, demotion, negligent employee evaluation, failure to grant tenure or practice privileges, negligent hiring, training or supervision, or other employment-related claim;
- M. alleging, arising out of, based upon or attributable to any purchase or sale of securities by an **Organization** or **Outside Entity** or **Claims** brought by securities holders of such **Organization** or **Outside Entity** in their capacity as such; provided, however, this Exclusion shall not apply to the issuance by an **Organization** of bond debt or **Claims** brought by bond debt holders;
- N. alleging, arising out of, based upon or attributable to:
  - (i) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
  - (ii) payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners or employees, or affiliates (as defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal shareholders or employees) or any customers of an **Organization** or any members of their family or any entity with which they are affiliated; or
  - (iii) political contributions, whether domestic or foreign; or
- O. with respect to Coverage C only:
  - (i) alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, this Exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement; or
  - (ii) alleging, arising out of, based upon or attributable to any actual or alleged patent infringement or misappropriation of trade secrets.



## Management Liability Insurance Policy

### Directors & Officers Liability Coverage Part ("D&O Coverage Part")

For the purpose of determining the applicability of the foregoing Exclusions, other than Exclusions B., C., D., F. and O.: (1) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (2) only facts pertaining to and knowledge possessed by any past, present or future executive director, chief executive officer or chief financial officer (or equivalent positions) of an **Organization** shall be imputed to such **Organization**.

However, Exclusions A. through O. do not apply to **Reputation Loss** or **Reputation Risk Events**.

The **Insurer** shall not be liable to make any payment for such **Reputation Loss**:

- P. arising out of, based upon or attributable to the facts alleged, or the same or related **Reputation Risk Event** alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this **D&O Coverage Part** is a renewal or replacement or which it may succeed in time;
- Q. arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the **Continuity Date** for this **D&O Coverage Part**, or involving any **Reputation Risk Event** which is the same or a related **Reputation Risk Event** to that alleged in such pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
- R. arising out of, based upon or attributable to any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
- S. arising out of, based upon or attributable to the hazardous properties of nuclear materials.

#### V. Limits of Liability

The following provision shall apply in addition to the provisions of Clause IV. LIMITS OF LIABILITY of the **General Terms and Conditions**:

##### Reputation Insurance

The maximum limit of the **Insurer's** liability for all **Reputation Loss** arising from all **Reputation Risk Events** occurring during the **Policy Period**, in the aggregate, shall be the amount set forth in the Declarations as the **Reputation Loss Limit of Liability**. This **Reputation Loss Limit of Liability** shall be the maximum limit of the **Insurer** under this **D&O Coverage Part** for **Reputation Loss**, regardless of the number of **Reputation Risk Events** occurring during the **Policy Period**; provided, however, the **Reputation Loss Limit of Liability** shall be part of, and not in addition to, the **Coverage Part Limit of Liability** applicable to this **D&O Coverage Part** as set forth in the Declarations.

#### VI. Retention

The following provision shall apply in addition to the provisions of Clause V. RETENTION of the **General Terms and Conditions**:

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the Declarations for this **D&O**



## Management Liability Insurance Policy

Directors & Officers Liability Coverage Part ("D&O Coverage Part")

**Coverage Part**, such Retention to be borne by the **Insureds** and shall remain uninsured, with regard to: (i) all **Indemnifiable Loss**; and (ii) **Loss** of an **Organization**. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act(s)**.

In the event an **Organization** is unable to pay an applicable Retention due to **Financial Insolvency**, then the **Insurer** shall commence advancing **Loss** within the Retention; provided, however, that the **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Organization** pursuant to Clause X. SUBROGATION of the **General Terms and Conditions**.

No Retention is applicable to **Reputation Loss** or **Non-Indemnifiable Loss** under Coverage A.

### VII. Defense Costs, Defense Counsel, Settlements, Judgments (Including the Advancement of Defense Costs)

#### Defense

The **Insurer** does not assume any duty to defend. The **Insureds** shall defend and contest any **Claim** made against them.

Notwithstanding the foregoing, the **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld.

#### Insured's Option to Tender Defense

The **Insureds** shall have the right to tender the defense of the **Claim** to the **Insurer**, which right shall be exercised in writing by the **Named Organization** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Clause VI. of the **General Terms and Conditions**. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is first made against an **Insured**. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Organization**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of this Clause VII.

In the event the **Insurer** accepts the tender of defense of such **Claim**, the **Insurer** shall be responsible for the retention of defense counsel for such **Claim**.

#### General Provisions

When the **Insurer** has not assumed the defense of a **Claim** pursuant to this Clause VII., the **Insurer** nevertheless shall advance, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the terms and conditions of this **D&O Coverage Part** to payment of such **Loss**.



## Management Liability Insurance Policy

### Directors & Officers Liability Coverage Part ("D&O Coverage Part")

The **Insurer** shall have the right to fully and effectively associate with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insured's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.

Additionally, the **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, incur any **Defense Costs** or **Reputation Loss** or retain risk management, public relations or law firm without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs** and **Reputation Loss** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **D&O Coverage Part**. The **Insurer** shall not unreasonably withhold any consent required under this **D&O Coverage Part**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **D&O Coverage Part**. In addition, the **Insured** shall not take any action, without the **Insurer's** written consent, which prejudices the **Insurer's** rights under this **D&O Coverage Part**.

When the **Insurer** has assumed the defense of a **Claim** and the **Insureds** do not consent to the first **Settlement Opportunity** within thirty (30) days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then, subject to any applicable **Limit of Liability**, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) eighty percent (80%) of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining twenty percent (20%) of such covered **Loss** excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4. of the Declarations or to those **Claims** for which the **Insurer** has not assumed the defense.

With the express prior written consent of the **Insurer**, an **Insured** may select a defense counsel different from that selected by other **Insured** defendants if such selection is required due to an actual conflict of interest.

This Clause VII. shall not be applicable to **Reputation Loss**

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## Management Liability Insurance Policy

### Directors & Officers Liability Coverage Part ("D&O Coverage Part")

#### VIII. Allocation

In the event that the **Insured** tenders the defense of a **Claim** in accordance with Clause VII. above, the following allocation provision shall apply:

If both **Loss** covered under this **D&O Coverage Part** and loss not covered under this **D&O Coverage Part** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **D&O Coverage Part** with respect to such **Claim** shall apply as follows:

- A. **Defense Costs:** One hundred percent (100%) of **Defense Costs** incurred by the **Insured** on account of such **Claim** will be considered covered **Loss** subject to Clause VII. of this **D&O Coverage Part**; and
- B. **Loss** other than **Defense Costs:** All remaining amounts incurred by the **Insured** on account of such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of **Loss**:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- B. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one (1) arbitrator selected by the **Insureds**, one (1) arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two (2) arbitrators.

#### IX. Order of Payments

In the event of **Loss** arising from any **Claim** for which payment is due under the provisions of this **D&O Coverage Part** but which **Loss**, in the aggregate, exceeds the remaining available **Limit of Liability** applicable to this **D&O Coverage Part**, then the **Insurer** shall:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **D&O Coverage Part**, then with respect to whatever remaining **Limit of Liability** is available after payment of such **Loss**;
- B. then pay such **Loss** for which coverage is provided under Coverage B of this **D&O Coverage Part**, and
- C. then pay such **Loss** for which coverage is provided under Coverage C or D of this **D&O Coverage Part**.

In the event of **Loss** arising from a **Claim** for which payment is due under the provisions of this **D&O Coverage Part** (including those circumstances described in the first paragraph of this Clause IX.), the **Insurer** shall at the written request of the **Named Organization**:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **D&O Coverage Part**, then
- B. either pay or hold payment for such **Loss** for which coverage is provided under



**Management Liability Insurance Policy**  
Directors & Officers Liability Coverage Part ("D&O Coverage Part")

Coverage B, C or D of this **D&O Coverage Part**.

In the event that the **Insurer** withholds payment under Coverage B, C or D of this **D&O Coverage Part** pursuant to the above request, then the **Insurer** shall at any time in the future, at the request of the **Named Organization**, release such **Loss** payment to an **Organization**, or make such **Loss** payment directly to the **Individual Insured** in the event of covered **Loss** for any **Claim** covered under this **D&O Coverage Part** pursuant to Coverage A of this **D&O Coverage Part**.

**The Financial Insolvency of any Organization or any Individual Insured shall not relieve the Insurer of any of its obligations to prioritize payment of covered Loss under this D&O Coverage Part pursuant to this Clause IX.**

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Endorsement 1

APPLICANT NAME: West Haymarket Joint Public Agency

E3334.1 Nuclear Energy Exclusion

Page 1 of 1

This endorsement modifies only the referenced terms and conditions of the Coverage Part(s) selected below. All non-selected Coverage Part(s) and non-referenced terms and conditions of the selected Coverage Part(s) remain unchanged.

- Declarations
- General Terms and Conditions
- D&O Coverage Part
- EPLI Coverage Part
- FLI Coverage Part
- ELAW Coverage Part

In consideration of the premium charged, it is understood and agreed that the Coverage Part(s) selected above are modified as follows:

1. The **EXCLUSIONS** Clause is amended to include the following exclusion at the end thereof:

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- NE-A. alleging, arising out of, based upon or attributable to any hazardous properties of any nuclear material, including source material, special nuclear material or byproduct material;
- NE-B. which is insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters, or Nuclear Insurance Association of Canada, or would be insured under any such policy but for its termination or exhaustion of its limit of liability; or
- NE-C. with respect to which:
  - (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
  - (ii) the **Insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

All other terms and conditions remain unchanged.

Endorsement 2

APPLICANT NAME: West Haymarket Joint Public Agency

E3372.1 Nebraska Amendatory Endorsement

Page 1 of 2

This endorsement modifies only the referenced terms and conditions of the Coverage Part(s) selected below. All non-selected Coverage Part(s) and non-referenced terms and conditions of the selected Coverage Part(s) remain unchanged.

- Declarations
- General Terms and Conditions
- D&O Coverage Part
- EPLI Coverage Part
- FLI Coverage Part
- ELAW Coverage Part

In consideration of the premium charged, it is understood and agreed that the Coverage Part(s) selected above are modified as follows:

1. The **CANCELLATION** Clause is deleted in its entirety and replaced by the following:

**CANCELLATION**

Notice of Cancellation

The **Named Organization** may cancel this Policy or any individual **Coverage Part** by giving the **Insurer** advance written notice stating when thereafter such cancellation shall be effective. If the **Named Organization** cancel this Policy or any individual **Coverage Part**, the **Insurer** shall retain the customary short rate proportion of the premium.

The **Insurer** may also cancel this Policy by mailing to the **Named Organization** by registered, certified or other first class mail, at the address shown in the Declarations, written notice stating when not less than sixty (60) days thereafter (or ten (10) days thereafter when cancellation is due to non-payment of premium), the cancellation shall be effective. The mailing of such notice shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If the **Insurer** cancels this Policy, any return premium shall be calculated pro rata. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of the cancellation, but such payment shall be made as soon as practicable.

After this Policy has been in effect for more than sixty (60) days, the **Insurer** may cancel only for one or more of the following reasons:

- (a) Non-payment of premium;
- (b) This Policy was obtained through material misrepresentation;
- (c) The **Organization** has submitted a fraudulent **Claim**;
- (d) The **Organization** has violated any of the terms and conditions of this Policy;
- (e) The risk originally accepted has substantially increased;
- (f) Certification to the Director of Insurance of loss of the **Insurer's** reinsurance for all or part of the underlying risk insured; or

**Endorsement 2**

APPLICANT NAME: West Haymarket Joint Public Agency

**E3372.1 Nebraska Amendatory Endorsement**

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- (g) A determination by the Director that the continuation of the Policy would place the **Insurer** in violation of the insurance laws of Nebraska.

**Nonrenewal**

If the **Insurer** elects not to renew this Policy, the **Insurer** will mail or deliver to the **Named Organization** written notice of nonrenewal not less than sixty (60) days before the end of the **Policy Period**.

The **Insurer** will mail or deliver the notice of nonrenewal to the **Named Organization** at the last mailing address known to the **Insurer**. If the notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice.

2. The **General Terms and Conditions** is amended by adding the following Clause at the end thereof:

**Policy Conflicts**

To the extent any term or condition contained in the Policy or any Endorsement attached thereto conflicts with any term or condition contained in this or any other State Amendatory Endorsement attached to the Policy, such terms and conditions most favorable to the Insured shall apply.

All other terms and conditions remain unchanged.

NFP E3372 NE (04/09)



**Endorsement 3**

APPLICANT NAME: West Haymarket Joint Public Agency

**E9996.1 Policyholder Disclosure TRIA (Quote)**

Page 1 of 1

**Policyholder Disclosure Notice of Terrorism Insurance Coverage**

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, **as defined in Section 102(1) of the Act, as amended:** The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States-to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Any coverage you purchase for "acts of terrorism" shall expire at 12:00 midnight December 31, 2014, the date on which the TRIA Program is scheduled to terminate or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THIS FORMULA, THE UNITED STATES PAYS 85% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A USD100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS USD100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED USD100 BILLION, YOUR COVERAGE MAY BE REDUCED.

THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

\_\_\_ I hereby elect to purchase Terrorism coverage in consideration of one percent (1%) of the premium (for TRIA-applicable lines of business only) being allocated as "TRIA Premium".

\_\_\_ I hereby elect to have the exclusion for Terrorism coverage. I understand that I will have no coverage for losses arising from acts of terrorism.

Policyholder/Applicant's Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Insurance Company: \_\_\_\_\_ Policy No.: \_\_\_\_\_

**Endorsement 4**

APPLICANT NAME: West Haymarket Joint Public Agency

**E996.1 Public Officials Liability Coverage Endorsement**

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This endorsement modifies only the referenced terms and conditions of the Coverage Part(s) selected below. All non-selected Coverage Part(s) and non-referenced terms and conditions of the selected Coverage Part(s) remain unchanged.

- Declarations**
- X **General Terms and Conditions**
  - X **D&O Coverage Part**
  - EPLI Coverage Part**
  - FLI Coverage Part**
  - ELAW Coverage Part**

In consideration of the premium charged, it is understood and agreed that the **Coverage Part(s)** selected above are modified as follows:

1. In the **DEFINITIONS** Clause of the **General Terms and Conditions** is amended as follows:
  - A. The definition of "**Named Organization**" is deleted in its entirety and replaced with the following:
    - L. "**Named Organization**" means the municipality, governmental body, department or unit set forth in Item 1. of the Declarations.
  - B. The definition of "**Organization**" is deleted in its entirety and replaced with the following:
    - M. "**Organization**" means the **Named Organization**.

**Organization** does not include and coverage shall not extend under any **Coverage Part** for any **Subsidiary, Affiliate** or other entity, or any **Individual Insured** of such **Subsidiary, Affiliate** or other entity unless specifically listed by endorsement to this Policy and solely with respect to the **Coverage Part** indicated on such endorsement.

2. In the **CHANGE IN CONTROL** Clause of the **General Terms and Conditions**, paragraph C. which reads "the **Named Organization** shall change from not-for-profit to for-profit status" is deleted in its entirety.
3. In the **OTHER INSURANCE** Clause of the **General Terms and Conditions** the first two paragraphs are deleted in their entirety and replaced with the following:

With respect to all **Coverage Parts** such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable **Limit of Liability** for this Policy or any **Coverage Part**. This Policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this Policy may be obligated to pay **Loss**.

**Endorsement 4**

APPLICANT NAME: West Haymarket Joint Public Agency

**E996.1 Public Officials Liability Coverage Endorsement**

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The below paragraphs 4. and 5. apply to the **D&O Coverage Part** and/or the **EPLI Coverage Part** to the extent such **Coverage Part** is purchased and selected above.

4. In the **INSURING AGREEMENTS** Clause, the **Defense Provision** paragraph is deleted in its entirety and replaced with the following:

In accordance with the **DEFENSE COSTS, DEFENSE COUNSEL, SETTLEMENTS & JUDGMENTS** Clause of this **Coverage Part**, the **Insurer** shall have the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent. The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention and in addition to the applicable **Limit of Liability** on behalf of the **Insured** prior to final disposition of the **Claim**.

5. The **DEFENSE COSTS, DEFENSE COUNSEL, SETTLEMENTS & JUDGMENTS** Clause is deleted in its entirety and replaced with the following:

**VII. DEFENSE COSTS, DEFENSE COUNSEL, SETTLEMENTS & JUDGMENTS**

**Defense**

The **Insurer** shall have both the right and duty to defend any **Claim** against an **Insured** alleging a **Wrongful Act**, even if such **Claim** is groundless, false or fraudulent.

The **Insured** shall have the right to effectively associate with the **Insurer** in the defense of any **Claim**, including, but not limited to, negotiating a settlement, subject to the provisions of this Clause.

**General Provisions**

The **Insurer** shall advance **Defense Costs** in addition to the applicable **Limit of Liability** on behalf of the **Insured** prior to the final disposition of a **Claim**, subject to the other provisions of this **Coverage Part**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled to payment of such **Loss** under the terms and conditions of this **Coverage Part**. The **Insurer** shall not be obligated to advance or pay any **Defense Costs** or to undertake or continue defense of any **Claim** after the applicable **Limit of Liability** has been exhausted by payment of **Loss** or after deposit of the applicable limit of the **Insurer's** liability in a court of competent jurisdiction, and in such case the **Insurer** shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, incur any **Defense Costs** or retain any defense counsel without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments, **Defense Costs** which have been consented to in writing by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Part**.

If the **Insured** does not consent to the first **Settlement Opportunity** within thirty (30) days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than thirty (30) days after the settlement offer was made), then, subject to any applicable **Limit of Liability**, the

**Endorsement 4**

APPLICANT NAME: West Haymarket Joint Public Agency

**E996.1 Public Officials Liability Coverage Endorsement**

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**Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed: (1) the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus (2) fifty percent (50%) of covered **Loss** in excess of such **Settlement Opportunity Amount**, it being a condition of this insurance that the remaining fifty percent (50%) of such covered **Loss** excess of such **Settlement Opportunity Amount** shall be carried by the **Insureds** at their own risk and be uninsured. Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity Amount** exceeds the applicable Retention set forth in Item 4. of the Declarations.

The **Insureds** shall give the **Insurer** full cooperation and such information as the **Insurer** may reasonably require.

With respect to the **D&O Coverage Part**, this Clause VII. shall not be applicable to **Reputation Loss**.

The below paragraphs 6. through 9. apply to the **D&O Coverage Part** to the extent such **Coverage Part** is purchased and selected above.

6. The **INSURING AGREEMENTS** Clause is deleted in its entirety and replaced with the following:

**I. INSURING AGREEMENTS**

**INSURED COVERAGE**

This **D&O Coverage Part** shall pay on behalf of an **Insured** the **Loss** arising from a **Claim** first made against such **Insured** during the **Policy Period** or **Discovery Period** (if applicable) for any actual or alleged **Wrongful Act** of such **Insured**.

**REPUTATION COVERAGE**

This **D&O Coverage Part** shall pay the **Reputation Loss** of an **Organization** solely with respect to a **Reputation Risk Event** that first commences and is reported to the **Insurer** during the **Policy Period** up to the amount of the **Reputation Loss Limit of Liability**. Payment of any **Reputation Loss** under this **D&O Coverage Part** shall not waive any of the **Insurer's** rights under this Policy or at law. This coverage shall apply regardless of whether a **Claim** is ever made against an **Insured** arising from such **Reputation Risk Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the making of the **Claim**.

A **Reputation Risk Event** first commences when an **Organization** or any of its **Executives** first become aware of such **Reputation Risk Event** during the **Policy Period** and shall conclude at the earliest of the time when a risk management, public relations or law firm advises an **Organization** that such **Reputation Risk Event** no longer exists or when the **Reputation Loss Limit of Liability** has been exhausted.

7. The **DEFINITIONS** Clause is amended as follows:

A. The definition of "**Claim**" is deleted in its entirety and replaced with the following:

"**Claim**" means:

- (i) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);

**Endorsement 4**

APPLICANT NAME: West Haymarket Joint Public Agency

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- (ii) a civil, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading or receipt of filing; or
- (iii) a formal civil, administrative or regulatory investigation of an **Individual Insured** for a **Wrongful Act** once such **Individual Insured** is identified in writing by such investigating authority as a person against whom a proceeding described in subparagraph (ii) of this Definition may be commenced.

B. The definition of "**Employee**" is deleted in its entirety and replaced with the following:

**Employee** means any past, present or future employee of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of an **Organization** in his or her capacity as such. An individual who is leased to an **Organization** shall also be an **Employee**, but only if such **Organization** provides indemnification to such leased individual in the same manner as is provided to such **Organization's** own employees.

**Employee** also means any employee of a commission, board or similar body operated by and under the jurisdiction of the **Organization**.

**Employee** shall not mean and coverage is not provided for any individual who is contracted to perform work for an **Organization**, or who is an independent contractor for an **Organization** unless such individual is listed as an **Employee** by endorsement to this **D&O Coverage Part**.

C. The definition of "**Executive**" is deleted in its entirety and replaced with the following:

"**Executive**" means any:

- (i) past, present or future lawfully elected or appointed officials; and
- (ii) member of a commission, board or similar body operated by and under the jurisdiction of the **Organization**.

D. The definition of "**Insured**" is amended to include the following at the end thereof:

"**Insured**" also means commissions, boards or similar bodies and the members and employees thereof, operated by and under the jurisdiction of the **Organization**.

E. The definition of "**Loss**" is deleted in its entirety and replaced with the following:

"**Loss**" means the amount that any **Insured** becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:

- (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements;
- (ii) **Defense Costs;**

damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages where insurable by law.

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(i) The enforceability of this subparagraph (iii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages; and

(ii) **Reputation Loss.**

**Loss** shall not include: (i) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; (ii) matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; (iii) civil or criminal fines or penalties; or (iv) the costs and expenses of complying with any injunctive relief or other form of non-monetary relief. **Defense Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs (i) through (v) of this subparagraph provided such **Defense Costs** result from a covered **Claim**.

**Loss** shall also not include any compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**.

F. The definition of "**Wrongful Act**" is deleted in its entirety and replaced with the following:

"**Wrongful Act**" means:

- (i) with respect to **Individual Insureds**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Individual Insureds** in his/her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his/her status as an **Individual Insured** of an **Organization**;
- (ii) with respect to an **Organization**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by or on behalf of such **Organization**; or
- (iii) with respect to **Outside Entity Executives**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by such **Outside Entity Executive** in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status an **Outside Entity Executive** of an **Outside Entity**.

8. The **EXCLUSIONS** Clause is amended as follows:

A. Paragraphs H., I. and O. are deleted in their entirety and replaced with the following:

H. alleging, arising out of, based upon or attributable to any bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property; provided, however, this Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;

I. alleging, arising out of, based upon or attributable to any: (i) actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

O. alleging, arising out of, based upon or attributable to any actual or alleged:

- (i) breach of contractual liability, including any implied, expressed, actual or constructive contractual liability; or

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(ii) patent infringement or misappropriation of trade secrets.

B. Paragraphs M. and N. are deleted in their entirety.

C. The Exclusion Clause is amended to include the following paragraph at the end thereof:

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

POL-A. alleging, arising out of, based upon or attributable to any:

- (i) libel, slander, defamation or publication or utterance in violation of an individual's right of privacy;
- (ii) wrongful entry or eviction or other invasion of the right of occupancy;
- (iii) false arrest or wrongful detention;
- (iv) plagiarism; or
- (v) infringement of copyright or trademark or unauthorized use of title;

POL-B. seeking relief or redress in any form other than monetary damages or **Defense Costs** for a **Claim** seeking injunctive or other non-monetary relief; provided, however, the **Insurer** shall defend such a **Claim** in accordance with this **D&O Coverage Part** subject to a sublimit of liability of \$50,000, which shall be part of, and not in addition to, any applicable **Limit of Liability**;

POL-C. alleging, arising out of, based upon or attributable to inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use, including the valuation of any property for purposes of the foregoing;

POL-D. alleging, arising out of, based upon or attributable to the improper administration or collection of taxes, or loss that reflects any tax obligations;

POL-E. alleging, arising out of, based upon or attributable to any debt financing, including, but not limited to, the planned or actual issuance of any bonds, notes, debentures or guarantees of debt;

POL-F. alleging, arising out of, based upon or attributable to any strikes, picketing, riots, civil commotions or similar events; or

POL-G. alleging, arising out of, based upon or attributable to the establishment, operation or maintenance of any schools, hospitals, clinics, nursing homes or other health care operations, jails or detention facilities, law enforcement agencies or fire fighting authorities unless specifically listed by endorsement to this Policy.

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APPLICANT NAME: West Haymarket Joint Public Agency

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9. The **LIMITS OF LIABILITY** Clause is amended to include the following paragraph at the end thereof:

**DEFENSE OUTSIDE THE LIMIT OF LIABILITY**

The maximum limit of the **Insurer's** liability for all **Defense Costs** incurred during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be equal to the **Coverage Part Limit of Liability** applicable to this **D&O Coverage Part** as set forth in Item 4. of the Declarations and without reduction of such **Coverage Part Limit of Liability**.

10. Notwithstanding any reference in the **D&O Coverage Part** to the contrary, nothing in this endorsement or in the Policy shall be interpreted to provide coverage for **Non-Indemnifiable Loss** unless such amount qualifies under this **D&O Coverage Part's** definition of **Loss** and is not otherwise excluded by the terms and conditions of this Policy.

The below paragraphs 11. through 13. apply to the **EPLI Coverage Part** to the extent such **Coverage Part** is purchased and selected above.

11. The **DEFINITIONS** Clause is amended as follows:

- A. The definition of "**Claim**" is deleted in its entirety and replaced with the following:

**"Claim"** means:

- (i) a written demand for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
- (ii) a civil, administrative or regulatory proceeding for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading or receipt of filing, including, but not limited to, an Equal Employment Opportunity Commission ("**EEOC**") or Office of Federal Contract Compliance Program ("**OFCCP**") (or similar federal, state or local agency) proceeding or investigation; or
- (iii) an arbitration proceeding pursuant to an employment contract, policy or practice of an **Organization** commenced by receipt of a demand for arbitration or similar document.

However, in no event shall the term "**Claim**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

- B. The definition of "**Employee**" is deleted in its entirety and replaced with the following:

**Employee** means any past, present or future employee of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of an **Organization** in his or her capacity as such. An individual who is leased to an **Organization** shall also be an **Employee**, but only if such **Organization** provides indemnification to such leased individual in the same manner as is provided to such **Organization's** own employees.

**Employee** also means any employee of a commission, board or similar body operated by and under the jurisdiction of the **Organization**.

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APPLICANT NAME: West Haymarket Joint Public Agency

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**Employee** shall not mean and coverage is not provided for any individual who is contracted to perform work for an **Organization**, or who is an independent contractor for an **Organization** unless such individual is listed as an **Employee** by endorsement to this **D&O Coverage Part**.

C. The definition of "**Executive**" is deleted in its entirety and replaced with the following:

"**Executive**" means any:

- (i) past, present or future lawfully elected or appointed officials; and
- (ii) member of a commission, board or similar body operated by and under the jurisdiction of the **Organization**.

D. The definition of "**Insured**" is amended to include the following at the end thereof:

"**Insured**" also means commissions, boards or similar bodies and the members and employees thereof, operated by and under the jurisdiction of the **Organization**.

12. Paragraph F. in the **EXCLUSIONS** Clause is deleted in its entirety and replaced with the following:

F. alleging, arising out of, based upon or attributable to any bodily injury, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property; provided, however, this Exclusion shall not apply to a **Claim** for emotional distress or mental anguish arising from a **Wrongful Act**;

13. The **EPLI Coverage Part** is amended to include the following provision at the end thereof which shall apply in addition to the provisions of Clause IV. LIMITS OF LIABILITY of the **General Terms and Conditions**:

**DEFENSE OUTSIDE THE LIMIT OF LIABILITY**

The maximum limit of the **Insurer's** liability for all **Defense Costs** incurred during the **Policy Period** or the **Discovery Period** (if applicable), in the aggregate, shall be equal to the **Coverage Part Limit of Liability** applicable to this **EPLI Coverage Part** as set forth in Item 4. of the Declarations and without reduction of such **Coverage Part Limit of Liability**.

All other terms and conditions remain unchanged.

**Hiscox Insurance Company Inc**



**Endorsement 5**

APPLICANT NAME: West Haymarket Joint Public Agency

**E995.1 Amendment to Public Officials Coverage**

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Deletion of Bond Exclusion in Endorsement 996-wording subject to legal approval



# **West Haymarket JPA Public Official Liability**

## **2010 Proposal of Coverage**

*Aon Risk Services Central, Inc. | Nebraska & Iowa*  
*11213 Davenport Street, Suite 201*  
*Omaha, Nebraska 68154*  
*402.697.1400 telephone*  
*402.697.0017 fax*  
*800.729.1011 toll free*  
**Date Prepared: August 6, 2010**

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**This insurance document is furnished to you as a matter of information for your convenience. It only summarizes the listed proposed policy(ies) and is not intended to reflect all the terms and conditions or exclusions of such proposed policy(ies). Moreover, the information contained in this document reflects proposed coverage as of the effective dates(s) of the proposed policy(ies) and does not include subsequent changes. This document is not an insurance policy and does not amend, alter or extend the coverage afforded by the listed proposed policy(ies). The insurance afforded by the listed proposed policy(ies) is subject to all the terms, exclusions and conditions of such policy(ies).**

## Aon Service Team

Each client is vitally important to Aon Risk Services Central, Inc. | Nebraska/Iowa. To ensure you receive the proper service, an Account Management Team has been assembled for **West Haymarket JPA**.

<b>Account Management</b>	<b>E-mail</b>	<b>Phone Number</b>
Scott Scheidel, CPCU, AAI Asst. Vice President	Scott.Scheidel@aon.com	402.697.5228
Nancy Meinders, AAI, CISR Sr. Account Specialist	Nancy.Meinders@aon.com	402.697.5286
<b>Client Service Department</b>		
Robert Patton Account Specialist	Robert.Patton@aon.com	402.697.5211
<b>Certificates of Insurance</b>		
Certificate Requests	OmahaCertRequest@ars.aon.com	402.697.5215 402.697.1594 (Fax)
<b>Brokerage</b>		
Jim Binderup, CPCU Vice President	Jim.Binderup@aon.com	402.697.5214
<b>Surety Bonds</b>		
Claudia Rathbun Senior Consultant	Claudia.Rathbun@aon.com	402.436.2127 800.804.1903
<b>Technical Services - Claims</b>		
David L. Williams Assistant Vice President	David.Williams@aon.com	402.697.5226
<b>Technical Services - Risk Control</b>		
Bill Zersen Vice President	William.Zersen@aon.com	402.697.5776
<b>Personal Insurance Services</b>		
Kathleen Palmesano Account Executive	Kathleen.Palmesano@aon.com	402.697.5252
<b>Employee Benefits</b>		
Kim Lobato Senior Vice President	Kim.Lobato@aon.com	402.697.5223
<b>Executive Benefits</b>		
Dan Krekeler Vice President	Dan.Krekeler@aon.com	314.719.3870

**Aon Risk Services Central, Inc. | Nebraska/Iowa**  
11213 Davenport Street, Suite 201  
Omaha, Nebraska 68154

**Mailing Address:**  
P. O. Box 3307  
Omaha, NE 68103-0307

Office Hours:	8:00AM - 5:00PM (CST) Monday - Friday
Telephone:	402.697.1400 or 800.729.1011
Fax:	402.697.0017
After Hours Emergency Number:	402.978.8104

CA License No. 0D04043



**AON FINANCIAL SERVICES GROUP  
PREMIUM QUOTATION FOR:  
West Haymarket Joint Public Authority**

**INSURER:** Hiscox  
**ISSUING PAPER:** Hiscox Insurance Company Inc.  
**BEST'S RATING:** A  
**COVERAGE:** Not-for-Profit Management Liability  
**POLICY FORM:** NFP P001 CW (03/09)  
**POLICY TERM:** 12 Months

Option	Coverage	Limit of Liability (inclusive of defense costs)	Retention	Continuity Date	Premium
1	Directors & Officers Liability	\$1,000,000	\$50,000	Inception	\$16,274
2	Directors & Officers Liability	\$3,000,000	\$50,000	Inception	\$28,830
3	Directors & Officers Liability	\$5,000,000	\$50,000	Inception	\$30,689
<b>COMMISSION</b>		<b>15%</b>			

**ENDORSEMENTS TO THE POLICY:**

1. Nuclear Energy Exclusion
2. Nebraska Amendatory Endorsement
3. Policyholder Disclosure TIA (Quote)
4. Public Officials Liability Coverage Endorsement
5. Amendment to Public Officials Coverage (Delete Bond Exclusion)
6. Nebraska Immunity Exclusion

**SUBJECT TO:**

1. A properly completed, signed and dated Hiscox Not-for-Profit Management Liability New Business Application. (not necessary with the use of a reliance upon other carriers application endorsement. The Darwin application submitted was signed 6/25 so if coverage is bound after 8/25 it would need to be resigned.)
2. Please include a copy of the bond prospectus and a time frame for the issuance of the bonds.

**IMPORTANT NOTICE:**

**This insurance coverage is conditioned or subject to ("subjectivities") providing additional information and/or documentation. These subjectivities condition coverage on the prompt satisfaction of these subjectivities. Failure to satisfy subjectivities in a prompt and complete manner may result in the retroactive cancellation of coverage by the carrier.**



**AON FINANCIAL SERVICES GROUP  
PREMIUM QUOTATION FOR:  
West Haymarket Joint Public Authority**

**INSURER:** Chartis  
**ISSUING PAPER:** National Union Fire Insurance Company of Pittsburgh, PA  
**BEST'S RATING:** A  
**COVERAGE:** Non-Profit Directors & Officers Liability  
**POLICY FORM:** Not for Profit Risk Protector  
**POLICY TERM:** 12 Months

Option	Coverage	Limit of Liability (inclusive of defense costs)	Retention	Continuity Date	Premium
1	Management Liability	\$5,000,000	\$50,000	Inception	\$30,744
	<b>COMMISSION</b>	<b>18.5%</b>			

**ENDORSEMENTS TO THE POLICY:**

1. NO CANCELLATION/NONRENEWAL
2. COVERAGE TERRITORY ENDORSEMENT (OFAC)
3. EXCLUSIONS (F) AND (G) AMENDED ENDORSEMENT (GENERAL TERMS AND CONDITIONS AMENDMENT)
4. NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (ALL COVERAGE SECTIONS)
5. CAPTIVE INSURANCE COMPANY EXCLUSION (D&O COVERAGE SECTION)
6. COMMISSIONS EXCLUSION (ALL COVERAGE SECTIONS)
7. ORGANIZATION PATENT EXCLUSION (D&O COVERAGE SECTION)
8. NOTICE OF CLAIM (REPORTING BY E-MAIL)
9. CANCELLATION AMENDATORY (RETURN PRO RATA)
10. NOT-FOR-PROFIT RISK PROTECTOR AMENDATORY ENDORSEMENT (NO BI/PD EXCLUSION AMENDMENT) (D&O, EPL & FLI COVERAGE SECTIONS)
11. RELIANCE UPON OTHER CARRIER'S APPLICATION (AFFIRMATIVE REPRESENTATION) (ALL COVERAGE SECTIONS) - Darwin Application
12. SEVERABILITY OF THE APPLICATION ENDORSEMENT (FULL INDIVIDUAL SEVERABILITY; TOP 3 ORGANIZATION POSITIONS IMPUTED TO ORGANIZATION; NON-RESCINDABLE) (D&O & EPL COVERAGE SECTIONS)
13. SOVERIGN IMMUNITY EXCLUSION (ALL COVERAGE SECTIONS)
14. FORMS INDEX ENDORSEMENT

**SUBJECT TO:**

1. Nothing is required

**IMPORTANT NOTICE:**

This insurance coverage is conditioned or subject to ("subjectivities") providing additional information and/or documentation. These subjectivities condition coverage on the prompt satisfaction of these subjectivities. Failure to satisfy subjectivities in a prompt and complete manner may result in the retroactive cancellation of coverage by the carrier.



**AON FINANCIAL SERVICES GROUP**  
**PREMIUM QUOTATION FOR:**  
**West Haymarket Joint Public Authority**

**INSURER:** Allied World Assurance Group (Professional Governmental Underwriters)

**ISSUING PAPER:** Darwin Select Insurance Company

**BEST'S RATING:** A

**COVERAGE:** Public Officials Management Liability

**POLICY FORM:** DRWN POL 1000 (10/2006)

**POLICY TERM:** 12 Months

Option	Coverage	Limit of Liability (inclusive of defense costs)	Retention	Retroactive Date	Premium
1	Management Liability	\$1,000,000	\$10,000	Inception	\$13,647*
2	Management Liability	\$2,000,000	\$10,000	Inception	\$17,740*
3	Management Liability	\$3,000,000	\$10,000	Inception	\$19,788*
4	Management Liability	\$4,000,000	\$10,000	Inception	\$20,812*
5	Management Liability	\$5,000,000	\$10,000	Inception	\$21,324*

**COMMISSION 10%**

\*Does not include surplus lines taxes and fees or \$245 engineering fee

**ENDORSEMENTS TO THE POLICY:**

1. Public Officials Professional Insurance Policy Declarations
2. Schedule of Policy Forms and Endorsements
3. Public Officials Professional Liability Policy Form
4. Amend Insured vs. Insured Exclusion
5. Spouses and Domestic Partners
6. Amend Law Enforcement Exclusion
7. Minimum Earned Premium
8. Defense Coverage for Tax Exempt Bond Claims
9. Service of Suit
10. Delete Insurance Agreement B, EPL Coverage

**SUBJECT TO:**

1. Confirmation on the estimated completion date of the arena
2. We will add a manuscript immunity endorsement
3. Receipt of confirmation that General Liability coverage will be maintained for the duration of the policy
4. Provide surplus lines filing information (Aon to provide)

**IMPORTANT NOTICE:**

**This insurance coverage is conditioned or subject to ("subjectivities") providing additional information and/or documentation. These subjectivities condition coverage on the prompt satisfaction of these subjectivities. Failure to satisfy subjectivities in a prompt and complete manner may result in the retroactive cancellation of coverage by the carrier.**

## Premium Summary Revenue Disclosure

COVERAGE	CARRIER	TOTAL PREMIUM	PREMIUM WITHOUT COMMISSION	TOTAL COMMISSION
Public Officials' Liability	Chartis - \$5M	\$30,744.00	\$25,056.36	\$5,687.64
Public Officials' Liability	Hiscox - \$1M	\$16,274.00	\$13,832.90	\$2,441.10
Public Officials' Liability	Hiscox - \$3M	\$28,830.00	\$24,505.50	\$4,324.50
Public Officials' Liability	Hiscox - \$5M	\$30,689.00	\$26,085.65	\$4,603.35
Public Officials' Liability	Darwin - \$1M	\$13,647.00*	\$12,282.30*	\$1,364.70
Public Officials' Liability	Darwin - \$2M	\$17,740.00*	\$15,966.00*	\$1,774.00
Public Officials' Liability	Darwin - \$3M	\$19,788.00*	\$17,809.20*	\$1,978.80
Public Officials' Liability	Darwin - \$4M	\$20,812.00*	\$18,730.80*	\$2,081.20
Public Officials' Liability	Darwin - \$5M	\$21,324.00*	\$19,191.60*	\$2,132.40
<b>TOTAL</b>				

\* Indicates premiums that are subject to applicable Surplus Lines taxes.

**Standard cancellation is 30 days except 10 days for non-payment.  
Refer to policies for exact terms.**

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## Acknowledgement and Approval of Insured

We hereby acknowledge receipt and review of the information presented in the Proposal ("Proposal") dated 08/06/2010 for West Haymarket JPA Public Officials' Liability and provided in the attached Quote Disclosure Report dated 08/06/2010. We hereby instruct Aon Risk Services to bind the insurance program(s) selected by us and understand that our instruction to bind constitutes an acceptance of the terms and conditions and payments described in this Renewal Proposal. We further agree that Aon is entitled to collect the commissions as set forth in the Quote Disclosure Report from the gross premiums paid by us to Aon, and that Aon will remit net premium to our insurers or intermediaries on our behalf. We also acknowledge that Aon has provided information about its contractual agreements and ownership interest(s), if any, in the insurers listed in this Renewal Proposal through Aon's website at [http://www.aon.com/market\\_relationships](http://www.aon.com/market_relationships).

Date: \_\_\_\_\_

\_\_\_\_\_  
**On behalf of West Haymarket Joint  
Public Agency**

Program	Line of Business	Carrier	Carrier Response	Carrier Declination Reason	Premium <sup>1</sup>	Quoted ARS Commission	Nationally Agreed Commission Rate <sup>2</sup>	Intermediary, If applicable	Intermediary Commission	ARS Fee <sup>3</sup>	Total ARS Income <sup>4,5</sup>	Total Cost to Client (Premium + Fee) <sup>5</sup>
2010 NPDO	ACE	Declined	Class of Business									
2010 NPDO	Travelers	Declined	No Response									
2010 NPDO	Charis - \$5M	Quoted			\$30,744.00	18.50%					\$ 5,687.64	\$30,744.00
2010 NPDO	Hiscox - \$1M	Quoted			\$16,274.00	15.00%					\$ 2,441.10	\$16,274.00
2010 NPDO	Hiscox - \$3M	Quoted			\$28,830.00	15.00%					\$ 4,324.50	\$28,830.00
2010 NPDO	Hiscox - \$5M	Quoted			\$30,689.00	15.00%					\$ 4,603.35	\$30,689.00
2010 NPDO	Darwin - \$1M	Quoted			\$13,647.00	10.00%		PGU			\$ 1,364.70	\$13,647.00
2010 NPDO	Darwin - \$2M	Quoted			\$17,740.00	10.00%		PGU			\$ 1,774.00	\$17,740.00
2010 NPDO	Darwin - \$3M	Quoted			\$19,788.00	10.00%		PGU			\$ 1,978.80	\$19,788.00
2010 NPDO	Darwin - \$4M	Quoted			\$20,812.00	10.00%		PGU			\$ 2,081.20	\$20,812.00
2010 NPDO	Darwin - \$5M	Quoted			\$21,324.00	10.00%		PGU			\$ 2,132.40	\$21,324.00

<sup>1</sup> Where compensation to ARS is in the form of commission, and not withstanding any commission amounts shown in the Quoted ARS Commission column, ARS has nationally-agreed commission rates with some carriers (as indicated) for certain lines of business and/or for outsourced administrative services performed on the carrier's behalf. Where there is a Nationally Agreed Commission Rate, ARS expects this commission rate to be applied to the gross premium amount quoted herein. Collecting this commission will not change in any way the Premium quoted above.

<sup>2</sup> When a carrier does not pay ARS an amount sufficient to cover the brokerage and administrative services performed by ARS on the carrier's behalf for the benefit of our clients, ARS may charge such fees to the client as ARS deems necessary and where permitted by applicable law.

<sup>3</sup> Total ARS Income equals the sum of the commission ARS will receive from the Carrier, including quoted or nationally agreed commissions (as applicable), and the ARS fee, if any. Commission is calculated by multiplying the Premium amount by the applicable commission rates.

<sup>4</sup> The Total Cost to Client is Premium (inclusive of all ARS commissions) plus ARS Fee (if applicable). Total Cost to Client does not include applicable state fees, surcharges, or taxes assessed on the policy.

<sup>5</sup> ARS performs various administrative functions related to the procurement of coverage, including, but not limited to, electronic policy filing and storage, expiration tracking, client data management, and administration. Where legally permitted to do so, ARS charges for its own account and collects from its clients, a \$250 policy administrative charge per policy placed. This administrative charge is in addition to and not in lieu of any other service fees agreed to and paid to us by our clients and/or any commissions paid to us by insurers, and this administrative charge appears as a separately billed charge on the invoices we issue.

## **Fiduciary Funds**

Premiums paid by Client to ARS for remittance to insurers and Client refunds paid to ARS by insurance companies for remittance to Client are deposited into fiduciary accounts in accordance with applicable insurance laws until they are due to be paid to the insurance company or Client. Subject to such laws and the applicable insurance company's consent, where required, ARS will retain the interest or investment income earned while such funds are on deposit in such accounts.

## **Insurer Insolvency**

Whether or not a placement is with an admitted insurer, Aon does not guarantee the solvency of any insurer with which we place business. In addition to publicly available information that Aon may convey to our clients, Aon encourages our clients to review all the publicly available information since only the client can make the ultimate decision to accept or reject a particular insurer.

## **Commission**

Unless mandated otherwise by applicable state law and regulation or by contractual agreement between Aon and insurers, any commission that Aon is entitled to receive for any placement shall be deemed fully earned as of the effective date of the insurance programs described in our insurance proposals. Any midterm program or coverage changes that result in a premium-bearing endorsement will be negotiated at the same commission rate, as applicable

## **Insurer Ownership/Contractual Relationships**

Aon has provided information about its contractual agreements with and ownership interests, if any, in the insurers and intermediaries listed in insurance proposals through Aon's website at [http://www.aon.com/market\\_relationships](http://www.aon.com/market_relationships).

## Surplus Lines

Based on our marketing efforts, insurance for this proposal is not available in the admitted market for the terms and conditions specified. Therefore, this insurance proposal is with an insurer not licensed to transact insurance in the states of exposure and is issued and delivered as surplus lines coverage pursuant to the various state insurance laws. Persons insured by surplus lines carriers do not have the protection of the state insurance guaranty funds to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer. The states do not audit the finances or review the solvency of the surplus lines insurer providing this coverage. Applicable surplus lines taxes and fees apply.

In some instances, insurance placements made by ARS on your behalf may require the payment of state surplus lines or other premium taxes and/or fees in addition to the premium itself. ARS will make every effort to identify any such tax and/or fee in advance, but in all instances the payment of these taxes and/or fees will remain the ultimate responsibility of

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## Aon's Policy on Use of Intermediaries

It is Aon's policy that our retail brokers approach markets directly (without an intermediary) wherever possible. However, Aon will consider and recommend the use of a managing general agent/managing general underwriter ("MGA/MGU"), wholesale broker, or reinsurance broker (collectively, "Intermediary"\*) where we believe it is in the client's best interest for one or more of the following reasons:

- Certain insurers will only underwrite through a designated wholesaler or other organization or agency, such as a Managing General Agent or Managing General Underwriter.
- If a client's particular risks and coverage needs require the unique or specialized expertise developed by certain intermediaries.
- There may be jurisdictional licensing requirements that preclude a US retail broker from accessing certain markets on behalf of its clients (e.g., Bermuda, United Kingdom).
- Certain insurers have multiple access points, some of which require access through an intermediary. This can occur in one of two ways:
  - Some insurers have different underwriting groups around the world. This kind of insurer may specify its risk appetite and capabilities by geographic location. In this instance, we would endeavor to match the client with the most suitable insurer access point.
  - Other insurers have similar appetites and capabilities in all geographic locations. In these scenarios, we will discuss with you our recommended access point, which will be based on our professional judgment and experience where we believe the best underwriting result will be obtained. In these instances, the preferred avenue is usually to access the market directly unless there are extenuating circumstances.

Whenever we recommend utilizing the services of and before approaching an intermediary to assist in accessing, negotiating, placing, or procuring insurance or reinsurance for your insurance programs, we will advise you of the available options, and whether or not the intermediary is affiliated with Aon. Aon will not be responsible for the non-Aon affiliated intermediary's actual or alleged acts, errors, or omissions or those of its officers, directors or employees arising out of this assistance. Any and all compensation earned by a non-Aon affiliated intermediary is in addition to compensation paid to Aon and to any compensation earned by an Aon affiliated intermediary.

\*MGA/MGUs typically are appointed as agents or administrators of the insurance companies they represent and they usually are compensated by such companies in the form of commissions from premiums. Wholesale brokers and reinsurance brokers also are typically compensated by insurance companies in the form of commissions. Wholesale brokers may also receive fees from underwriters for services they provide to them. In some instances and subject to applicable law, wholesale brokers may assess a broker fee in addition to the compensation paid by insurance companies, and such broker fees typically are paid by the client.

## Market Security Policy

Our goal is to procure insurance for our clients with underwriters possessing the financial strength to perform in today's economic environment. In meeting this goal, Aon Group, Inc. and its subsidiaries (Aon) regularly review publicly available information concerning an underwriter's financial condition. This information includes but is not limited to:

- Approval by various regulatory authorities;
- Analyses by the major insurance rating agencies, such as: A.M. Best, Standard and Poor's, Moody's and Fitch (f.k.a. Duff and Phelps);
- Key performance test results which consist of financial ratios established by the National Association of Insurance Commissioners (NAIC) for United States underwriters and Standard and Poor's for international underwriters; and,
- Input from our global affiliates and correspondents.

The vast majority of Aon placements are made with underwriters that are rated "excellent" by the professional rating agencies.

Aon does not guarantee the solvency of any market with which we place business. Aon encourages our clients to review the publicly available information obtained by us since only the client can make the ultimate decision to accept or reject a particular market. The decision to accept or reject an underwriter shall be made solely by you, the client.

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## Terrorism Risk Insurance Program Reauthorization Act (TRIPRA)

The Terrorism Risk Insurance Act (“TRIA”) had been scheduled to expire on December 31, 2007. Prior to the termination of the program, Congress enacted an extension of TRIA until December 31, 2014. This extension was accomplished by the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA). There are several important changes to TRIA included with the extension of which you should be aware:

### **A. Change in Definition of “Act of Terrorism”**

Prior to the enactment of the extension legislation, TRIA applied only to acts of terrorism committed by an individual or individuals “acting on behalf of any foreign person or foreign interest”. This restriction has been removed such that the Secretary of Treasury may also certify acts of terrorism commonly described as “domestic terrorism”. Because your policy may contain a limitation or exclusion relating to “certified acts of terrorism” and/or “other acts of terrorism” or “non-certified acts of terrorism” this change in the law may impact coverage under your policy. You should review your insurance policy and note the revised certification criteria under TRIPRA.

### **B. Clarification of Operation of \$100 Billion Cap on All Insurer and Federal Obligations**

If aggregate insured losses attributable to terrorist acts certified under TRIPRA exceed \$100 billion in a Program Year (January 1 through December 31) and an insurer has met its deductible under the program, that insurer shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of Treasury.

### **C. Change in the Recoupment of the Federal Share of Insured Losses**

Should there be a terrorist act certified under TRIPRA, Treasury must recoup 133% of the amount of its payments under the program (limited to \$27.5 billion minus the amount insurers retain in that calendar year as a result of the insurer deductible and co-share) through policyholder surcharges:

1. For an act of terrorism occurring prior to 2011, the collection must be completed by September 30, 2012;
2. For an act of terrorism occurring during 2011, the collection must be 35% completed by September 30, 2012 with the balance collected by September 30, 2017; and
3. For a later event, the collection must be completed by September 30, 2017.

### **D. Revised Definition of Act of Terrorism under TRIPRA**

TRIPRA defines “act of terrorism” as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States:

1. To be an act of terrorism;
2. To be a violent act or an act that is dangerous to human life, property or infrastructures.
3. To have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of Title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

No act may be certified as an act of terrorism if the act is committed as part of the course of a war declared by Congress (except for workers’ compensation) or if losses resulting from the act, in the aggregate for insurance subject to TRIPRA, do not exceed \$5,000,000.

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## Credit Policy

Aon is contractually bound to pay premiums to insurance companies in a timely manner. Your prompt remittance of premiums due will enable us to meet our obligations. Listed below are some guidelines that will allow us to meet this obligation.

- *Annual and deposit premiums are due within 20 days of the effective date of coverage.*
- *Endorsement premiums are due within 20 days of the invoice date.*
- *Installment premiums are due within 20 days of the installment date.*
- *Audit premiums are due within 20 days of the invoice date.*

Hopefully, you understand that delinquent accounts are subject to cancellation for non-payment of premium.

We would be glad to assist you in financing your annual premiums if you desire.

***Thank you for the opportunity to be of service.***

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## Aon Advantage

### About Aon

Aon is a global leader in risk management, insurance and reinsurance brokerage, human resources and management consulting and outsourcing. With approximately 36,000 employees in 500 offices, we integrate customized services, leverage expertise across industries and apply business knowledge to your strategic goals.

As full-service risk management advisers, we help you anticipate how change intersects with opportunity. Our global network of resources is available to provide innovative solutions to your business risks, issues and challenges, and helps you capture opportunity, increase efficiency and build value. Our core value is client focus. By recognizing that each client has unique business needs, we have developed expertise for a complete range of business processes, products and industries. Account Executives and Account Specialists form a comprehensive perspective of your organization, matching our products and services to your business strategy.

**Darwin Select Insurance Company****Ownership**

N/A

Group Name	Country	Location	Incorporated	FEIN	NAIC Code
Allied World Assurance Group	UNITED STATES	Farmington, CT	1992	51-0331163	24319

**Best's****S & P**

Rating/FSC	Eff.Date	Rating	Eff.Date
A g XV	Jul 2009	NR	Jul 2008
A r IX	Oct 2008	CCC pi	Mar 2005
A- ru VIII	Jun 2008		

**Balance Sheet (US\$, Thousands)**

	Sep 2009 (Quarterly)	Dec 2008	Dec 2007	Dec 2006	Dec 2005
<b>Assets</b>					
Bonds	57,490	53,455	23,323	18,343	9,138
Stocks	0	0	0	0	0
Real Estate & Mortgage Loans	0	0	0	0	0
Investments in Affiliates	N/A	0	0	0	0
Cash & (Other) Invested Assets	18,895	1,898	29,915	6,334	13,468
Subtotal, Cash & Invested	76,385	55,353	53,237	24,676	22,606
Agents' Balances	16,550	24,538	17,392	16,699	4,381
Other Assets	22,617	14,193	1,970	4,567	345
<b>Total Assets</b>	<b>115,552</b>	<b>94,084</b>	<b>72,599</b>	<b>45,942</b>	<b>27,332</b>

**Liabilities**

Total Loss & LAE	17,280	6,175	3,832	1,196	4
IBNR Reserves	N/A	7,591	5,218	1,869	7
Unearned Premium Reserves	7,678	6,507	5,754	4,171	308
Subtotal, Technical Reserves	24,958	20,273	14,804	7,236	319
Other Liabilities	38,996	24,709	12,187	15,958	4,542
<b>Total Liabilities</b>	<b>63,954</b>	<b>44,982</b>	<b>26,991</b>	<b>23,194</b>	<b>4,861</b>

**Policyholders' Surplus**

Capital Stock	4,200	4,200	4,200	4,200	4,200
Paid-In and Contributed Surplus	35,755	35,755	35,755	13,755	13,755
Other Surplus	11,643	9,147	5,653	4,793	4,516
<b>Total Policyholders' Surplus</b>	<b>51,598</b>	<b>49,103</b>	<b>45,608</b>	<b>22,748</b>	<b>22,471</b>

**Income Statement**

Gross Premium Written	150,644	187,865	165,664	133,984	5,057
Net Premium Written	12,104	13,642	11,191	8,274	325
Net Premium Earned	10,933	12,888	9,608	4,411	17
Net Losses & LAE Incurred	5,644	6,153	6,319	3,066	11
Other Underwriting Expenses Incurred	3,228	3,624	3,111	1,997	312
Underwriting Result	2,061	3,111	179	(652)	(306)
Net Investment Income	1,620	2,179	1,323	952	791
Net Realized Capital Gains	177	(33)	0	(2)	(265)
Other Income	0	0	0	0	0
<b>Pretax Profit</b>	<b>3,858</b>	<b>5,257</b>	<b>1,502</b>	<b>298</b>	<b>220</b>

**Capital & Surplus Account**

Net Income	2,537	3,288	834	44	119
Net Unrealized Capital Gains	0	0	0	0	0
Dividends to Stockholders	0	0	0	0	0
<b>Change in PHS</b>	<b>2,495</b>	<b>3,495</b>	<b>22,860</b>	<b>277</b>	<b>22,471</b>

**Key Financials (US\$, Thousands)**

	1,000	1,000	1,000	1,000	1,000
Gross Premium Written	150,644	187,865	165,664	133,984	5,057
Net Premium Written	12,104	13,642	11,191	8,274	325
Policyholders' Surplus	51,598	49,103	45,608	22,748	22,471
Technical Reserves	24,958	20,273	14,804	7,236	319
Total Assets	115,552	94,084	72,599	45,942	27,332
Underwriting Result	2,061	3,111	179	(652)	(306)
<b>Pretax Profit</b>	<b>3,858</b>	<b>5,257</b>	<b>1,502</b>	<b>298</b>	<b>220</b>

**Darwin Select Insurance Company**

NAIC (IRIS) Ratio Results	2008 NAIC			
	Dec 2008	Dec 2007	Dec 2006	Usual Range
1. Gross Premium Written/Policyholders' Surplus	382.6%	363.2%	589.0%	< 900.0 %
2. Net Premium Written/Policyholders' Surplus	27.8%	24.5%	36.4%	<300.0%
3. Change in Net Writings	21.9%	35.3% *	1,000.0% *	-33%/33%
4. Surplus Aid to Policyholders' Surplus	13.4%	13.8%	20.7% *	< 15.0%
5. Two-Year Overall Operating Ratio	67.0%	77.0%	57.0%	<100.0%
6. Investment Yield	4.1%	3.4%	4.1%	3.0%/6.5%
7. Gross Change in Policyholders' Surplus	7.7%	100.5% *	1.2%	-10.0%/50.0%
8. Net Change in Adjusted Policyholders' Surplus	7.7%	3.8%	1.2%	-10.0%/25.0%
9. Liabilities/Liquid Assets	80.6%	50.3%	93.0%	<105.0%
10. Gross Agents' Balances/Surplus	50.0% *	38.1%	73.4% *	<40.0%
11. One-Year Reserve Development/Surplus	-3.8%	0.0%	0.0%	<20.0%
12. Two-Year Reserve Development/Surplus	-4.3%	0.0%	0.0%	<20.0%
13. Est.Current Reserve Deficiency/Surplus	-11.8%	0.0%	0.0%	<25.0%
Total Outside Usual Range (*) / Total	1 / 13	2 / 13	3 / 13	

**Additional Performance Tests**

	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Loss Ratio	51.6%	47.7%	65.8%	69.5%	64.4%
Expense Ratio	26.7%	26.6%	27.8%	24.1%	96.0%
Combined Ratio	78.3%	74.3%	93.6%	93.6%	160.4%
Investment Income	14.8%	16.9%	13.8%	21.6%	4,722.0%
Operating Ratio	63.5%	57.4%	79.8%	72.1%	-4,561.6%
Return on Equity	6.7%	6.9%	2.4%	0.2%	N/A
Technical Reserves / Net Premium	154.7%	148.6%	132.3%	87.5%	98.2%
Technical Reserves/PHS	48.4%	41.3%	32.5%	31.8%	1.4%
Reinsurance Recoverable/PHS	N/A	531.1%	430.5%	424.7%	12.2%
Change in Policyholders' Surplus	5.1%	7.7%	100.5%	1.2%	N/A
Change in Technical Reserves	23.1%	36.9%	104.6%	2,169.3%	N/A
Cash & Invested Assets/Total Assets	66.1%	58.8%	73.3%	53.7%	82.7%
Net Premium Written/Gross Premium Written	8.0%	7.3%	6.8%	6.2%	6.4%

**Net Premium Written**

	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Liability Lines	100.0%	100.0%	100.0%	100.0%
Property Lines	0.0%	0.0%	0.0%	0.0%
Combined Lines	0.0%	0.0%	0.0%	0.0%
All Other Lines	0.0%	0.0%	0.0%	0.0%
Non-proportional Reinsurance Lines	0.0%	0.0%	0.0%	0.0%
Totals	100.0%	100.0%	100.0%	100.0%

**Accounting Notes**

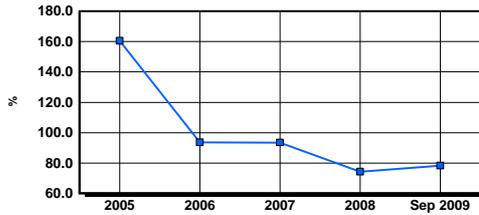
Annual USPC and USLH reports deduct affiliated investments from bonds and stocks. Annual USPC reports deduct IBNR from loss reserves. Certain calculations are annualized for comparative purposes on quarterly reports. Beginning with 2005 year-end data, Gross Change in PHS, NAIC (IRIS) Ratio 7, no longer adjusts for deferred acquisition expenses.

**General Notes**

The company is domiciled in the state of AR and is a licensed, approved or accredited reinsurer in 49 additional states and territories including AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI and WY.

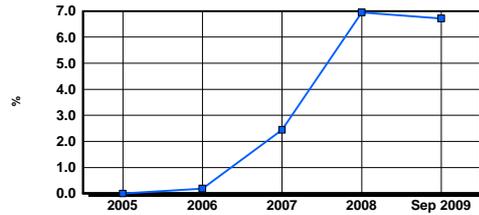
**Darwin Select Insurance Company**

**1. Combined Ratio**



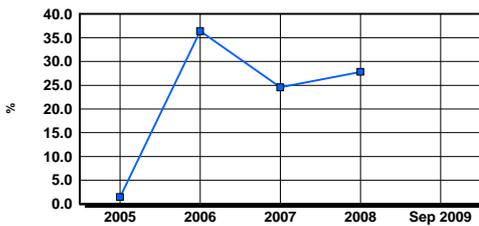
The sum of the loss ratio and expense ratio. This test measures the company's overall underwriting profitability.

**2. Return on Equity**



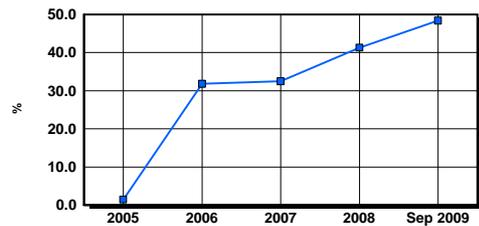
The sum of net income and unrealized capital gains to average policyholders' surplus. This test measures the company's overall profitability from underwriting and investment activity.

**3. NPW / PHS**



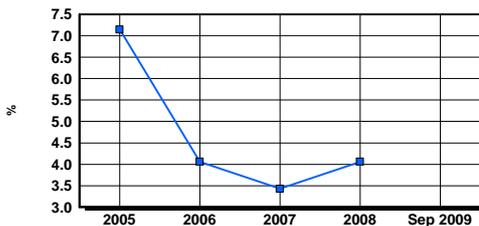
Net Premium Written to Policyholders' Surplus. This test measures the company's exposure to pricing errors in its current book of business.

**4. Technical Reserves/PHS**



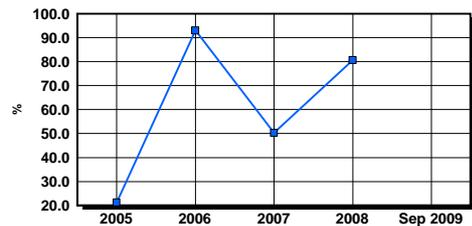
The sum of loss, LAE and premium reserves to surplus. This test measures the susceptibility of the company's surplus to any understatement of reserves.

**5. Investment Yield**



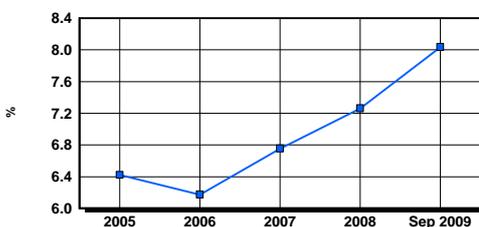
This test measures the average return on the company's invested assets and provides an indication of the general quality of the investment portfolio.

**6. Liabilities/Liquid Assets**



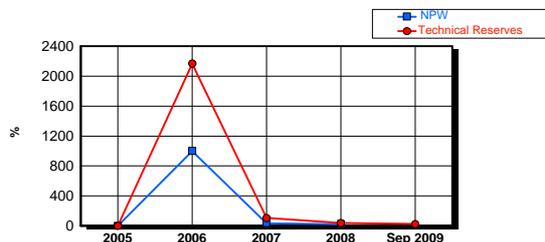
This test measures the company's ability to meet its obligations as they become due.

**7. NPW/GPW**



This is the retention ratio which indicates the extent of dependence on reinsurance/retrocessions.

**8. Change in NPW & Technical Reserves**



These tests measure the growth in net premium written and technical reserves and, when shown together, facilitate the comparison of the rates of change.

**National Union Fire Insurance Company of Pittsburgh, Pa.****Ownership**

N/A

Group Name	Country	Location	Incorporated	FEIN	NAIC Code
American International Group	UNITED STATES	New York, NY	1901	25-0687550	19445
<b>Best's</b>	<b>S &amp; P</b>				
<b>Rating/FSC</b>	<b>Eff.Date</b>	<b>Rating</b>	<b>Eff.Date</b>		
A p XV	Dec 2009	A+	Mar 2009		
A p XV	Nov 2008	A+ neg	Nov 2008		
A pu XV	Sep 2008	A+ dev	Sep 2008		
<b>Balance Sheet (US\$, Thousands)</b>	<b>Sep 2009</b>	<b>Dec 2008</b>	<b>Dec 2007</b>	<b>Dec 2006</b>	<b>Dec 2005</b>
<b>Assets</b>	(Quarterly)				
Bonds	12,439,748	12,882,016	14,123,165	13,457,046	10,806,319
Stocks	8,642,906	264,564	681,425	717,705	685,223
Real Estate & Mortgage Loans	17,422	0	0	0	0
Investments in Affiliates	N/A	10,662,632	10,367,454	8,966,203	7,870,902
Cash & (Other) Invested Assets	2,909,152	3,691,380	2,538,023	1,693,343	1,644,965
Subtotal, Cash & Invested	24,009,228	27,500,592	27,710,067	24,834,297	21,007,409
Agents' Balances	2,865,251	2,930,211	2,884,714	2,926,053	2,195,252
Other Assets	5,729,361	3,276,041	3,980,570	3,907,144	5,559,064
Total Assets	32,603,840	33,706,844	34,575,351	31,667,494	28,761,725
<b>Liabilities</b>					
Total Loss & LAE	12,822,693	6,311,750	6,392,632	5,934,132	5,505,469
IBNR Reserves	N/A	7,042,698	7,459,620	6,967,847	6,280,831
Unearned Premium Reserves	3,675,965	3,827,773	4,513,703	4,403,870	4,291,224
Subtotal, Technical Reserves	16,498,659	17,182,221	18,365,954	17,305,848	16,077,523
Other Liabilities	3,651,106	4,699,200	4,052,402	3,941,434	4,564,038
Total Liabilities	20,149,765	21,881,421	22,418,357	21,247,283	20,641,561
<b>Policyholders' Surplus</b>					
Capital Stock	4,479	4,479	4,479	4,479	4,479
Paid-In and Contributed Surplus	4,883,096	3,875,603	2,925,224	2,694,092	2,694,092
Other Surplus	7,566,500	7,945,341	9,227,291	7,721,641	5,421,594
Total Policyholders' Surplus	12,454,075	11,825,423	12,156,994	10,420,212	8,120,164
<b>Income Statement</b>					
Gross Premium Written	15,897,186	24,558,350	28,951,856	29,090,993	28,235,929
Net Premium Written	4,480,738	6,579,154	7,776,582	7,813,847	7,086,979
Net Premium Earned	4,633,116	7,265,084	7,666,749	7,701,201	7,035,963
Net Losses & LAE Incurred	3,754,925	5,674,001	5,332,576	5,472,890	6,345,959
Other Underwriting Expenses Incurred	1,096,635	1,657,034	1,685,858	1,747,380	1,401,165
Underwriting Result	(218,444)	(65,951)	648,315	480,930	(711,161)
Net Investment Income	804,939	1,340,829	1,182,291	757,517	747,551
Net Realized Capital Gains	449,809	133,771	(40,847)	40,370	44,691
Other Income	(1,710)	872	5,766	15,610	(57,082)
Pretax Profit	1,034,595	1,409,522	1,795,525	1,294,428	23,999
<b>Capital &amp; Surplus Account</b>					
Net Income	1,061,694	1,369,745	1,284,907	1,120,855	131,915
Net Unrealized Capital Gains	(578,011)	(766,210)	1,342,643	1,381,471	697,684
Dividends to Stockholders	(377,000)	(1,737,225)	(1,120,000)	0	(97,750)
Change in PHS	628,652	(331,571)	1,736,783	2,300,047	743,343
<b>Key Financials (US\$, Thousands)</b>	1.000	1.000	1.000	1.000	1.000
Gross Premium Written	15,897,186	24,558,350	28,951,856	29,090,993	28,235,929
Net Premium Written	4,480,738	6,579,154	7,776,582	7,813,847	7,086,979
Policyholders' Surplus	12,454,075	11,825,423	12,156,994	10,420,212	8,120,164
Technical Reserves	16,498,659	17,182,221	18,365,954	17,305,848	16,077,523
Total Assets	32,603,840	33,706,844	34,575,351	31,667,494	28,761,725
Underwriting Result	(218,444)	(65,951)	648,315	480,930	(711,161)
Pretax Profit	1,034,595	1,409,522	1,795,525	1,294,428	23,999

**National Union Fire Insurance Company of Pittsburgh, Pa.**

NAIC (IRIS) Ratio Results	2008 NAIC			
	Dec 2008	Dec 2007	Dec 2006	Usual Range
1. Gross Premium Written/Policyholders' Surplus	207.7%	238.2%	279.2%	< 900.0 %
2. Net Premium Written/Policyholders' Surplus	55.6%	64.0%	75.0%	<300.0%
3. Change in Net Writings	-15.4%	-0.5%	10.3%	-33%/33%
4. Surplus Aid to Policyholders' Surplus	0.6%	0.5%	0.5%	< 15.0%
5. Two-Year Overall Operating Ratio	80.1%	79.6%	91.4%	<100.0%
6. Investment Yield	4.9%	4.6%	3.3%	3.0%/6.5%
7. Gross Change in Policyholders' Surplus	-2.7%	16.7%	28.3%	-10.0%/50.0%
8. Net Change in Adjusted Policyholders' Surplus	-10.5% *	14.5%	28.3%*	-10.0%/25.0%
9. Liabilities/Liquid Assets	150.2% *	143.7% *	145.6% *	<105.0%
10. Gross Agents' Balances/Surplus	7.2%	5.2%	8.0%	<40.0%
11. One-Year Reserve Development/Surplus	-0.2%	-0.5%	1.1%	<20.0%
12. Two-Year Reserve Development/Surplus	0.4%	4.2%	27.3% *	<20.0%
13. Est.Current Reserve Deficiency/Surplus	-5.9%	-7.0%	4.8%	<25.0%
Total Outside Usual Range (*) / Total	2 / 13	1 / 13	3 / 13	

**Additional Performance Tests**

	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Loss Ratio	81.0%	78.1%	69.6%	71.1%	90.2%
Expense Ratio	24.5%	25.2%	21.7%	22.4%	19.8%
Combined Ratio	105.5%	103.3%	91.2%	93.4%	110.0%
Investment Income	17.4%	18.5%	15.4%	9.8%	10.6%
Operating Ratio	88.1%	84.8%	75.8%	83.6%	99.3%
Return on Equity	5.3%	5.0%	23.3%	27.0%	10.7%
Technical Reserves / Net Premium	276.2%	261.2%	236.2%	221.5%	226.9%
Technical Reserves/PHS	132.5%	145.3%	151.1%	166.1%	198.0%
Reinsurance Recoverable/PHS	N/A	389.4%	410.8%	471.8%	613.6%
Change in Policyholders' Surplus	5.3%	-2.7%	16.7%	28.3%	10.1%
Change in Technical Reserves	-4.0%	-6.4%	6.1%	7.6%	15.2%
Cash & Invested Assets/Total Assets	73.6%	81.6%	80.1%	78.4%	73.0%
Net Premium Written/Gross Premium Written	28.2%	26.8%	26.9%	26.9%	25.1%

**Net Premium Written**

	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Liability Lines	71.5%	75.5%	75.2%	76.9%
Property Lines	9.1%	8.0%	9.1%	8.0%
Combined Lines	6.5%	7.8%	7.9%	8.0%
All Other Lines	12.8%	8.8%	7.8%	7.1%
Non-proportional Reinsurance Lines	0.0%	0.0%	0.0%	0.0%
Totals	100.0%	100.0%	100.0%	100.0%

**Accounting Notes**

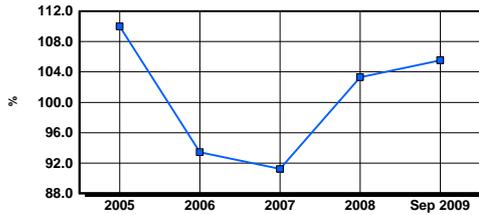
Annual USPC and USLH reports deduct affiliated investments from bonds and stocks. Annual USPC reports deduct IBNR from loss reserves. Certain calculations are annualized for comparative purposes on quarterly reports. Beginning with 2005 year-end data, Gross Change in PHS, NAIC (IRIS) Ratio 7, no longer adjusts for deferred acquisition expenses.

**General Notes**

The company is domiciled in the state of PA and is licensed in 52 additional states and territories including AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, GU and PR.

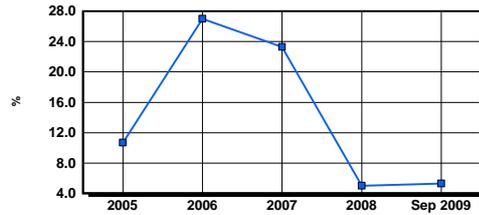
**National Union Fire Insurance Company of Pittsburgh, Pa.**

**1. Combined Ratio**



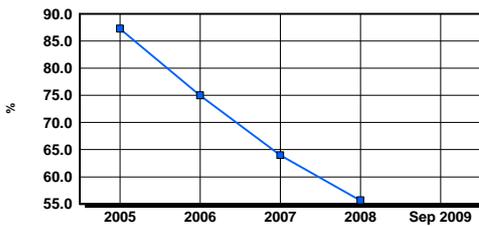
The sum of the loss ratio and expense ratio. This test measures the company's overall underwriting profitability.

**2. Return on Equity**



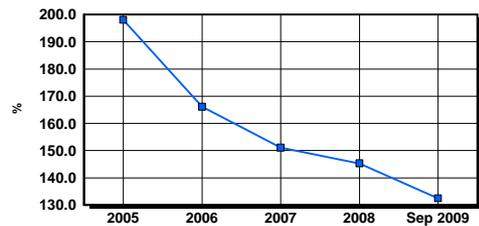
The sum of net income and unrealized capital gains to average policyholders' surplus. This test measures the company's overall profitability from underwriting and investment activity.

**3. NPW / PHS**



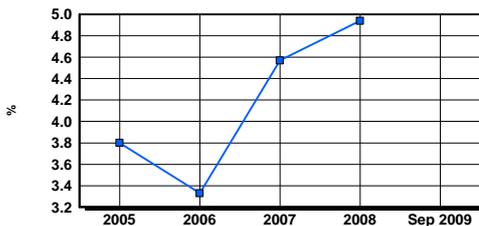
Net Premium Written to Policyholders' Surplus. This test measures the company's exposure to pricing errors in its current book of business.

**4. Technical Reserves/PHS**



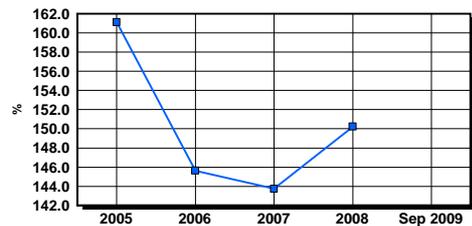
The sum of loss, LAE and premium reserves to surplus. This test measures the susceptibility of the company's surplus to any understatement of reserves.

**5. Investment Yield**



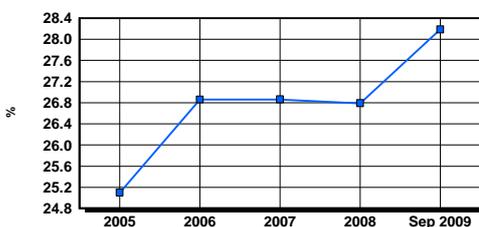
This test measures the average return on the company's invested assets and provides an indication of the general quality of the investment portfolio.

**6. Liabilities/Liquid Assets**



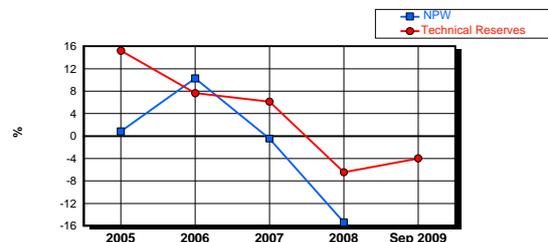
This test measures the company's ability to meet its obligations as they become due.

**7. NPW/GPW**



This is the retention ratio which indicates the extent of dependence on reinsurance/retrocessions.

**8. Change in NPW & Technical Reserves**



These tests measure the growth in net premium written and technical reserves and, when shown together, facilitate the comparison of the rates of change.

**Hiscox Insurance Company Inc.****Ownership**

N/A

Group Name	Country	Location	Incorporated	FEIN	NAIC Code
Hiscox U.S.A. Group	UNITED STATES	Geneva, IL	1952	98-6000550	10200

Best's		S & P	
Rating/FSC	Eff.Date	Rating	Eff.Date
A g XI	May 2010	NR	Dec 1998
A VII	Oct 2009		
A VI	Sep 2008		

Balance Sheet (US\$, Thousands)	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
<b>Assets</b>	(Quarterly)				
Bonds	26,590	23,613	24,918	20,598	23,774
Stocks	20,349	2,941	2,630	19,884	18,791
Real Estate & Mortgage Loans	210	210	210	210	210
Investments in Affiliates	N/A	20,052	0	0	0
Cash & (Other) Invested Assets	7,001	18,992	29,298	23,746	16,557
Subtotal, Cash & Invested	54,150	65,807	57,056	64,438	59,332
Agents' Balances	1,613	1,862	2,208	3,289	2,472
Other Assets	667	439	739	756	3,560
Total Assets	56,430	68,108	60,003	68,483	65,364

Liabilities	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Total Loss & LAE	1,474	1,597	1,634	1,820	4,010
IBNR Reserves	N/A	337	338	658	858
Unearned Premium Reserves	3,156	3,493	4,949	4,976	5,386
Subtotal, Technical Reserves	4,630	5,428	6,921	7,454	10,254
Other Liabilities	1,577	11,316	2,414	7,191	6,342
Total Liabilities	6,206	16,744	9,336	14,645	16,596

Policyholders' Surplus	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Capital Stock	2,500	2,500	2,500	2,500	2,500
Paid-In and Contributed Surplus	9,461	8,711	8,711	1,211	1,211
Other Surplus	38,263	40,153	39,456	50,127	45,057
Total Policyholders' Surplus	50,224	51,364	50,667	53,838	48,768

Income Statement	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Gross Premium Written	7,433	15,047	16,148	16,896	25,298
Net Premium Written	5,076	8,624	11,236	11,193	21,246
Net Premium Earned	5,413	10,080	11,262	11,604	22,568
Net Losses & LAE Incurred	2,865	4,710	4,177	3,402	14,585
Other Underwriting Expenses Incurred	2,952	4,375	5,543	5,320	5,783
Underwriting Result	(404)	995	1,542	2,881	2,200
Net Investment Income	897	1,740	2,556	2,545	1,732
Net Realized Capital Gains	(1,507)	(25)	5,695	318	(1,189)
Other Income	5	6	6	6	6
Pretax Profit	(1,008)	2,717	9,799	5,750	2,750

Capital & Surplus Account	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Net Income	(1,019)	2,005	8,522	4,155	1,774
Net Unrealized Capital Gains	811	(1,255)	(5,553)	765	2,457
Dividends to Stockholders	0	0	(14,000)	0	0
Change in PHS	(1,141)	698	(3,171)	5,070	3,463

Key Financials (US\$, Thousands)	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Gross Premium Written	7,433	15,047	16,148	16,896	25,298
Net Premium Written	5,076	8,624	11,236	11,193	21,246
Policyholders' Surplus	50,224	51,364	50,667	53,838	48,768
Technical Reserves	4,630	5,428	6,921	7,454	10,254
Total Assets	56,430	68,108	60,003	68,483	65,364
Underwriting Result	(404)	995	1,542	2,881	2,200
Pretax Profit	(1,008)	2,717	9,799	5,750	2,750

**Hiscox Insurance Company Inc.**

NAIC (IRIS) Ratio Results	Dec 2008	Dec 2007	Dec 2006	2008 NAIC
				Usual Range
1. Gross Premium Written/Policyholders' Surplus	29.3%	31.9%	31.4%	< 900.0 %
2. Net Premium Written/Policyholders' Surplus	16.8%	22.2%	20.8%	<300.0%
3. Change in Net Writings	-23.2%	0.4%	-47.3% *	-33%/33%
4. Surplus Aid to Policyholders' Surplus	2.0%	0.9%	1.2%	< 15.0%
5. Two-Year Overall Operating Ratio	71.4%	59.2%	74.3%	<100.0%
6. Investment Yield	2.9% *	4.3%	4.2%	3.0%/6.5%
7. Gross Change in Policyholders' Surplus	1.4%	-5.9%	10.4%	-10.0%/50.0%
8. Net Change in Adjusted Policyholders' Surplus	1.4%	-19.8%*	10.4%	-10.0%/25.0%
9. Liabilities/Liquid Assets	35.0%	16.0%	23.0%	<105.0%
10. Gross Agents' Balances/Surplus	2.2%	3.0%	5.0%	<40.0%
11. One-Year Reserve Development/Surplus	0.1%	-0.9%	-3.5%	<20.0%
12. Two-Year Reserve Development/Surplus	-1.1%	-4.1%	-0.7%	<20.0%
13. Est.Current Reserve Deficiency/Surplus	-0.4%	-0.6%	0.9%	<25.0%
Total Outside Usual Range (*) / Total	1 / 13	1 / 13	1 / 13	

**Additional Performance Tests**

	Sep 2009	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Loss Ratio	52.9%	46.7%	37.1%	29.3%	64.6%
Expense Ratio	58.2%	50.7%	49.3%	47.5%	27.2%
Combined Ratio	111.1%	97.5%	86.4%	76.8%	91.8%
Investment Income	16.6%	17.3%	22.7%	21.9%	7.7%
Operating Ratio	94.5%	80.2%	63.7%	54.9%	84.2%
Return on Equity	-0.5%	1.5%	5.7%	9.6%	9.0%
Technical Reserves / Net Premium	68.4%	62.9%	61.6%	66.6%	48.3%
Technical Reserves/PHS	9.2%	10.6%	13.7%	13.8%	21.0%
Reinsurance Recoverable/PHS	N/A	6.3%	4.0%	4.9%	4.4%
Change in Policyholders' Surplus	-2.2%	1.4%	-5.9%	10.4%	7.6%
Change in Technical Reserves	-14.7%	-21.6%	-7.1%	-27.3%	-41.0%
Cash & Invested Assets/Total Assets	96.0%	96.6%	95.1%	94.1%	90.8%
Net Premium Written/Gross Premium Written	68.3%	57.3%	69.6%	66.2%	84.0%

**Net Premium Written**

	Dec 2008	Dec 2007	Dec 2006	Dec 2005
Liability Lines	0.0%	0.0%	0.0%	-5.1%
Property Lines	105.4%	85.8%	87.7%	98.7%
Combined Lines	-5.4%	14.2%	13.0%	5.7%
All Other Lines	0.0%	0.0%	0.0%	0.0%
Non-proportional Reinsurance Lines	0.0%	0.0%	-0.7%	0.7%
Totals	100.0%	100.0%	100.0%	100.0%

**Accounting Notes**

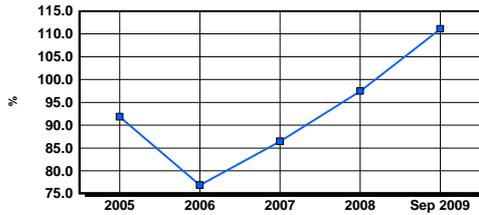
Annual USPC and USLH reports deduct affiliated investments from bonds and stocks. Annual USPC reports deduct IBNR from loss reserves. Certain calculations are annualized for comparative purposes on quarterly reports. Beginning with 2005 year-end data, Gross Change in PHS, NAIC (IRIS) Ratio 7, no longer adjusts for deferred acquisition expenses.

**General Notes**

The company is domiciled in the state of IL and is licensed in 49 additional states and territories including AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI and WY.

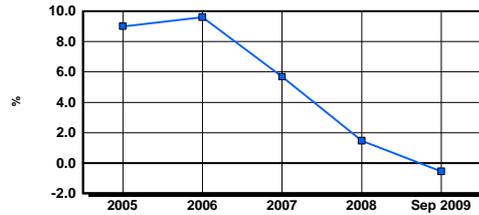
**Hiscox Insurance Company Inc.**

**1. Combined Ratio**



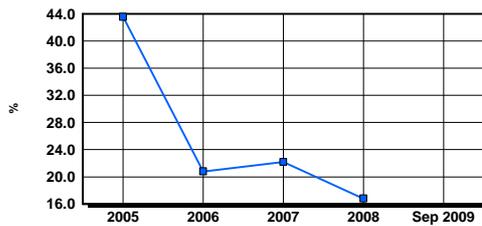
The sum of the loss ratio and expense ratio. This test measures the company's overall underwriting profitability.

**2. Return on Equity**



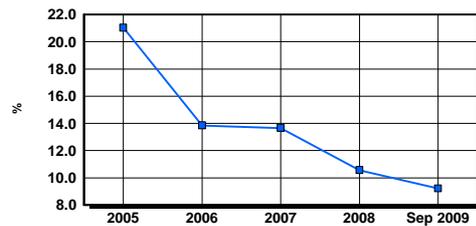
The sum of net income and unrealized capital gains to average policyholders' surplus. This test measures the company's overall profitability from underwriting and investment activity.

**3. NPW / PHS**



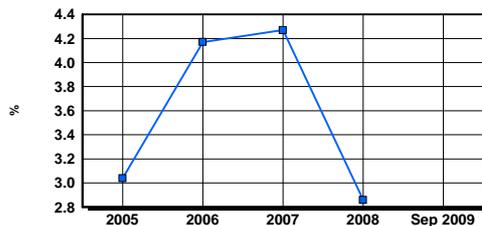
Net Premium Written to Policyholders' Surplus. This test measures the company's exposure to pricing errors in its current book of business.

**4. Technical Reserves/PHS**



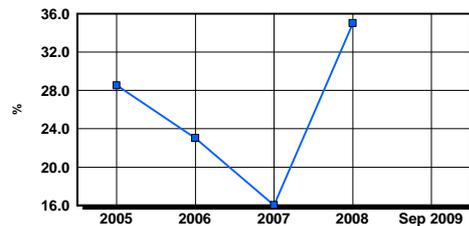
The sum of loss, LAE and premium reserves to surplus. This test measures the susceptibility of the company's surplus to any understatement of reserves.

**5. Investment Yield**



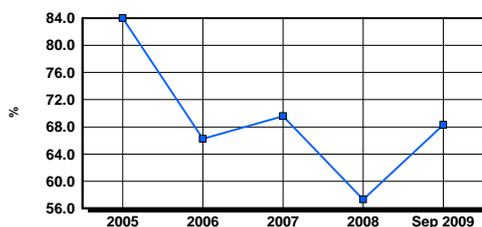
This test measures the average return on the company's invested assets and provides an indication of the general quality of the investment portfolio.

**6. Liabilities/Liquid Assets**



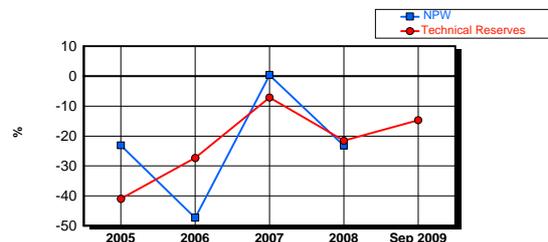
This test measures the company's ability to meet its obligations as they become due.

**7. NPW/GPW**



This is the retention ratio which indicates the extent of dependence on reinsurance/retrocessions.

**8. Change in NPW & Technical Reserves**



These tests measure the growth in net premium written and technical reserves and, when shown together, facilitate the comparison of the rates of change.

**Quote Comparison  
Directors & Officers Liability Insurance**

*Terms are reflected as negotiated to date. The description of policy terms is only a summary. Please note that actual policy language will dictate the scope of coverage in the event of a claim. We encourage our clients, with the assistance of legal counsel, to read the full policy form in order to have a better understanding of its terms and conditions. We further encourage our clients to raise with us any coverage issues that are of particular importance and which may not be specifically addressed in our written materials.*

<b>POLICY OVERVIEW</b>	<b>HISCOX</b>	<b>CHARTIS</b>
AM Best Rating	A	A
Policy Form Number	NFP P001 CW (03/09)	94204 (3/07)
Admitted Status	Admitted	Admitted
Policy Limit / Premium • D&O	\$1,000,000 / \$16,274 \$3,000,000 / \$28,830 \$5,000,000 / \$30,689	\$5,000,000 / \$30,744
Retentions	\$50,000	\$50,000
Commission	15%	18.5%
Pending & Prior Litigation Date:	Inception	Inception
Discovery Period	To Be Determined	1 Year @ 125% of the Annual Premium
<b>Coverage</b>		
Coverage	Pay on behalf of the insured	Pay on behalf of the insured
Reputation Coverage / Crisis Fund	\$50,000 sublimit	\$50,000 sublimit
<b>GENERAL TERMS &amp; CONDITIONS</b>		
<b>Choice of Counsel</b>	<b>Duty to Defend</b>	<b>Panel Counsel. Can tender defense to the insurer.</b>
Defense	<b>Separate limit of liability equal to the</b>	<b>Within the limits of liability</b>

	HISCOX	CHARTIS
	<b>policy aggregate</b>	
Settlement Clause	50 / 50	50 / 50
Allocation Provision	Defense Costs will be covered 100% and all remaining Loss will be allocated between covered and uncovered Loss based on the legal liability and financial exposures of the Insureds to covered and non-covered matters.	Insurer shall be obligated to assume the defense of the Claim, even if such Claim is groundless, false or fraudulent. Silent on remaining loss.
Change in Control • Merger or Consolidation • Sale of 50% or more of voting power • Change from Non-Profit to For-Profit	Yes Yes No	Yes Yes Yes
Acquisitions • Reporting Threshold (Non-Profit) • Reporting Threshold (For-Profit) • Reporting Deadline	40% of the assets 25% of the assets 90 days	30% of the assets 20% of the assets 90 Days
Coverage Extensions • Spouses & Domestic Partners • Estates & Heirs	Yes Yes	Yes Yes
Cancellation Clause	Carrier may cancel only for nonpayment of premium	Carrier may cancel only for nonpayment of premium
Notice of Claim	As soon practicable	As soon as practicable
Severability of the Application	Full severability for Insureds.	Full severability for Insured Persons and the knowledge of the top 3 organization positions shall impute to the entity
	<b>KEY DEFINITIONS</b>	
<b>Definition of Insured</b>	<b>Organization – West Haymarket Joint Public Agency, any subsidiary or any affiliate listed by endorsement</b>  <b>Insured also means commissions, boards or similar bodies and the members thereof, operated by or under</b>	<b>Organization – West Haymarket Joint Public Agency any subsidiary or any affiliate</b>  <b>Debtor in Possession</b>

	HISCOX	CHARTIS
	<p><b>the jurisdiction of the Organization</b></p> <p><b>Individual Insured – executives or employees of the Organization</b></p>	<p><b>Individual Insured – director, officer, trustee, trustee emeritus, executive director, department head, committee member, staff or faculty member or Employee</b></p>
<p><b>Definition of Claim</b></p> <ul style="list-style-type: none"> <li>• Written Demands for Monetary, Non-Monetary Relief</li> <li>• Civil Proceedings</li> <li>• <b>Criminal Proceedings</b></li> <li>• Arbitration Proceedings</li> <li>• Regulatory Proceedings</li> </ul>	<p>Yes</p> <p>Yes</p> <p><b>No</b></p> <p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p><b>Yes</b></p> <p>No</p> <p>Yes</p>
<p><b>Definition of Wrongful Act</b></p> <ul style="list-style-type: none"> <li>• Capacity as Insured Person</li> <li>• Status as Insured Person</li> <li>• Alleged against the Insured Entity</li> <li>• Insured in capacity of director or officer of an Outside Entity</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><b>Definition of Loss</b></p> <ul style="list-style-type: none"> <li>• Defense Costs</li> <li>• Damages</li> <li>• Settlements</li> <li>• Judgments</li> <li>• Punitive, Exemplary &amp; Multiplied Damages</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes (where insurable by law)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes (where insurable by law)</p>
<b>KEY EXCLUSIONS</b>		
<ul style="list-style-type: none"> <li>• Bodily Injury / Property Damage</li> <li>• Pollution</li> <li>• Contractual Liability</li> <li>• Patent Infringement / Trade Secrets</li> <li>• Wrongful Entry or Eviction</li> <li>• False arrest or wrongful detention</li> <li>• Non-Monetary Relief</li> <li>• Inverse condemnation / adverse</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes (will cover defense costs up to \$50,000)</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p>

	HISCOX	CHARTIS
possession		
• Improper administration or collection of taxes	Yes	No
• Strikes, picketing or similar events	Yes	No
<b>BOND EXCLUSION</b>	<b>Not Applicable</b>	<b>Carveback to exclusion (f) to include coverage Build America Bonds is being drafted.</b>

**West Haymarket Joint Public Agency  
Proposed Operating Budget  
September 1, 2010 to August 31, 2011**

**Proposed Expenditure Budget**

Personnel Costs - Transfer to the City of Lincoln	
Assistant City Controller	\$95,229
Assistant City Attorney	107,238
Assistant Purchasing Agent	72,167
Temporary Professional/Tech. Worker	55,978
Services:	
Project Manager	82,043
Project Manager expenses	10,000
Outside Legal/Consulting	20,000
Public Officials Liability Insurance	30,000
Data systems development	20,000
Postage, copying	6,000
Audio/Visual - Channel 5 expense	1,000
Mileage	1,000
Advertising	500
Rent	1,900
Telephone	1,000
Furniture and Fixtures	11,000
Computers	<u>4,500</u>
 Total Expenditure Budget	 <u><u>\$519,555</u></u>
 <b>Proposed Source of Funds</b>	
Occupation taxes	<u><u>\$519,555</u></u>