AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD TUESDAY DECEMBER 20, 2011 AT 2:00 P.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
CITY COUNCIL CHAMBERS ROOM 112
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)

2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

   Individuals from the audience will be given a total of 5 minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record.

3. Approval of the minutes from the JPA meeting held December 8, 2011 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. Bill No. WH 11-92 Resolution authorizing the Chair of the West Haymarket Joint Public Agency Board of Representatives to enter into a special purchase for construction of the Amtrak platform to construct a 1200' x 15' x 8" concrete passenger platform without building or canopy, subject to the submission of informal quotes by contractors by December 6, 2011. Work shall begin on December 9, 2011 and shall be completed by April 30, 2011. (Dan Marvin/Chris Connolly)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

5. Bill No. WH 11-94 Resolution authorizing the Chair of the West Haymarket Joint Public Agency Board of Representatives to enter into a Contract with the lowest responsible bidder for construction of the Amtrak station and canopy over the platform. (Dan Marvin/Chris Connolly)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

6. Set Next Meeting Date: Friday January 6, 2012 at 3:00 in City Council Chambers Room 112

7. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
December 8, 2011

Meeting Began At: 3:28 P.M.

Meeting Ended At: 3:58 P.M.

Members Present: Tim Clare, Chris Beutler, Eugene Carroll

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

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

Item 2 – Public Comment and Time Limit Notification

Beutler stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

As Chair, Beutler removed Item 8 and Item 10 from today's agenda. A special meeting date will be set at which those two items will be discussed.

Item 3 – Approval of the minutes from the JPA meeting held November 16, 2011

Beutler asked for corrections or changes to the minutes from November 16, 2011. Hearing none, Carroll motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Paula Yancey, PC Sports, distributed a status update packet on the West Haymarket projects, along with the Pinnacle Bank Arena.

A temporary asphalt road has been installed for construction access on the USPS project, which is in front of the Post Office at 'R' Street. The concrete has been covered for cold weather protection.

On 'M' and 'N' Streets the new turn lanes looking north on 10th Street have been installed. The new traffic signal poles are in and waiting to be turned on.

Bids have been received on the Amtrak Station and alternates have been chosen. It is anticipated that the project will be awarded very soon. Construction will start immediately once a contract is awarded.

On the Initial Site Prep Project work is proceeding with expected completion in approximately the next week. One change order has been written to Judds Brothers since the last JPA Meeting. It was

Change Order No. 3 for $81,000 for continued work on the sediment basins. The work was originally anticipated and was moved ahead into this phase. It was within the budget and was approved through the change order process that was previously approved by the JPA.

Paula referenced several aerial pictures (found within the packet attached hereto) depicting the progress on the Arena. The first picture shows progress on the tower cranes on October 15. The second picture showed both of the tower cranes erected on November 15, as well as the trailer compounds being mobilized and the beginning of the drilling operations. Every month, the JPA will be shown aerial photographs on progress.

Overall progress updates include 100 RFI's submitted as of December 8th, 270 submittals, 8 CCA's issued, and a total of $7,984,371 worth of work completed. Responding to a clarification request from Clare, Paula explained that RFI stands for "requests for information" where the contractor asks questions of the architect and the design team for clarifications or more detail on the drawing. A CCA is a "construction change authorization" where the architect makes changes to the drawing for the contractor to implement.

John Hinshaw, with Mortenson Construction, then detailed further construction information for the Board. Also found within the packet distributed by Paula is a summary slide on safety, which John stated is always Mortenson's focus and target. As the slide points out, they have worked 86 days without a safety incident with just over 100 craft workers on site (craft workers are people actually doing work on site—not the supervisors). The numbers of workers is growing every day. They held a safety luncheon this week as a reward for the workers and to refocus the commitment to safety – what is going on with the project and what to watch out for on the job. A second slide shows the tent set up for the safety luncheon.

John went on to review the actual construction progress. Geotechnical was the subcontractor and 640 of the 660 deep foundations have been installed for Phase 1 of the arena construction and these should be completed by Monday. These are auger cast pile foundations, which are 18" drilled grout socket into the ground 100 feet down. The slide shows the crane drilling through the bedrock that installs grout and rebar. They expect to wrap up ahead of schedule. To date 1,400 yards of concrete have been placed on top of those foundations and everyday they are pouring columns, grade beams and pile caps. The pile caps link the piles together to form a cohesive structure on which to put the columns. There is much more to go and several slides depict the ongoing work. On the final slide, the gravel area is smoothed over ready for the shoring to start in the main concourse.

Beutler asked if they can pour concrete all winter long. John responded that for the most part they can and are planning on doing winter pouring. Clare wondered what the soil temperature is currently and whether they are ahead of schedule. John explained that they have a couple of inches of frost at night, which is scrapped off each morning. The pile operation finished ahead of schedule and concrete is proceeding on schedule.

Beutler asked if any further discussions and there were none.

Item 5 – Bill No. WH 11-89 Resolution approving Amendment No. 9 to the Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency, Haymarket Infrastructure Design Project No. 870302 to revise the design and bidding for the M & N Street Roadway Improvement project to include Bid Package 3 for an additional fee of $98,825.00. (Paula Yancey)

Paula Yancey advised that this amendment covers revisions necessary to the previous documents. The additional fee of $98,825 is to cover revised bike lane changes to 'M' and 'N' and 8th Street. Urban Development and Public Works reviewed options to provide bike lanes in a safe and efficient manner. It was determined that a redesign was needed. After a review, it was determined that the revisions will result in significant construction cost savings, so the cost of this amendment will be covered by those cost savings.

Clare asked if the savings was a result of only having to cover 8th and 'M' Streets. Paula confirmed that was correct as the cycle track will continue on 'N' Street downtown.

Beutler asked for public comments and being none, Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 6 – Bill No. WH 11-90 Resolution approving Amendment No. 10 to the Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency, Haymarket Infrastructure Design Project No. 870305 to amend the existing Agreement to include geotechnical engineering, existing fill assessments, assignments for (1) multi-story pad sites in the X-yard area; and (2) Arena Drive and N Street, for an additional fee of $20,522.00. (Paula Yancey).

Paula Yancey informed the Board that they are further along in the project and are in the phase to release the LHIT team to start on geotechnical surveys and testing for the corridor roadway and garage pad sites. The amendment is for $20,522 and within the current budget.

Clare asked if this was done for other sites and Paula responded that they have done this on various other sites, including the arena sites. This was always planned, but now they know the actual scope of what is needed, instead of releasing an actual scope at the beginning of the project. They haven't done the third site, the Watson Brickson site as additional environmental work is needed prior to any engineering geotechnical work.

Beutler asked for comments from the public.

Jane Kinsey asked whether the environmental work needed is included in the current budget or if a grant was to cover this work and if problems are anticipated. Paula explained that the work in this amendment is not related to environmental issues. It is geotechnical to determine the soil, foundation and backfill requirements. Now that Watson Brickson has vacated and moved to their new location, work is needed prior to the demolition of those buildings. The reference to environmental was only to point out why the third site was not included at this time.

Being no further comments, Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 7 – Bill No. WH 11-91 Resolution approving a Site Lease between the West Haymarket Joint Public Agency and District Energy Corporation to provide thermal services to the Arena and other buildings and facilities in the vicinity of the Arena. (Chris Connolly)

Dan Marvin came forward representing Chris Connolly. He advised the Board that this is a replacement for the previously approved agreement with DEC as a result of some relatively minor language changes.

During a final review process of this agreement by the District Energy attorney the following language changes were requested:

- On Site Lease, Page 1, Section 7 (actual second page of the lease) the third line said "…lease service agreement…" has now been changed to "…energy service agreement..."

- On the next page, b. third line where it says "…environmental contamination present on site prior to this site lease…" the word "agreement" has been deleted after "site lease" verbiage.

- On the next page, under g. about the fifth line from the bottom where it says "…any products or materials now or hereafter…" the word "previously" is deleted after the word "materials."

- On the last page on item 4. expanded contact information was included. The original showed the address as 555 South 10th, Lincoln, NE 68508 with Suite 300 included. Now it includes City Law Department, attention Chris Connolly, with his phone and fax numbers.

These were the changes Dan noted in an e-mail received from Chris. These changes were proposed by Charlie Humble for the DEC and reviewed by the City Law Department. There are no dollars associated with these changes.

Beutler asked if there were any further comments or discussion on the approval of the new Site Lease and rescinding of the original. Clare stated that the word "deficient" seemed somewhat harsh for the level of wording changes made.

Beutler asked for public comment and no one came forward.

Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 – Bill No. WH 11-92 Resolution authorizing the Chair of the West Haymarket Joint Public Agency Board of Representatives to enter into a special purchase for construction of the Amtrak platform to construct a 1200' x 15' x 8" concrete passenger platform without building or canopy, subject to the submission of informal quotes by contractors by December 6, 2011. Work shall begin on December 9, 2011 and shall be completed by April 30, 2011. (Dan Marvin/Chris Connolly)

Pulled from the agenda and no action was taken.

Item 9 – Bill No. WH 11-93 Resolution to approve the Contract Agreement between Terracon Consultants Inc. and the West Haymarket Joint Public Agency for construction testing and special inspection services for the Amtrak platform and Amtrak station. (Paula Yancey)

Paula Yancey explained this resolution requests approval to enter into an agreement with Terracon for special inspection services and construction testing. Gene asked if any soil testing had been completed where the platform is going. Paula explained that was completed and this is just for the construction needs.

Beutler asked for public comment.

Jane Kinsey asked for further information about the connection with item 8 that was removed on the agenda today. Paula responded that, once items 8 and 10 are approved for the Amtrak work, Terracon will be paid to be a third-party, independent consultant providing the testing services for those agreements. They will not do construction. Their services will end once those projects are completed and they are a local company.

Clare expressed that this provides some independent peer review in response to a concern raised previously. Paula clarified that Terracon will provide special inspection services during actual construction – they will actually test for strength and structural integrity (backfilling, compaction, welding) and that construction meets plans and specifications. This adds an extra layer of owner protection that the building is constructed correctly.

Beutler asked about cost of the contract and bidders on this work. Paula stated the cost is $17,642 and there was only one bidder for this work.

Hearing no further discussion, Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-94 Resolution authorizing the Chair of the West Haymarket Joint Public Agency Board of Representatives to enter into a Contract with the lowest responsible bidder for construction of the Amtrak station and canopy over the platform. (Dan Marvin/Chris Connolly)

Pulled from the agenda and no action was taken.

Item 11 -- Set Next Meeting Date

The next regular meeting date is scheduled for Friday, January 6, 2012 at 3:30 in City Council Chambers Room 112. There will be a special meeting prior to the end of the year that will be published once that date is set.

Item 12 – Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. Meeting adjourned at 3:58 P.M.

Prepared by: Pam Gadeken, Public Works and Utilities

PINNACLE BANK ARENA

& Associated Infrastructure Projects

Project Status Update
December 8th, 2011

USPS PROJECT

Temporary asphalt road at R Street.

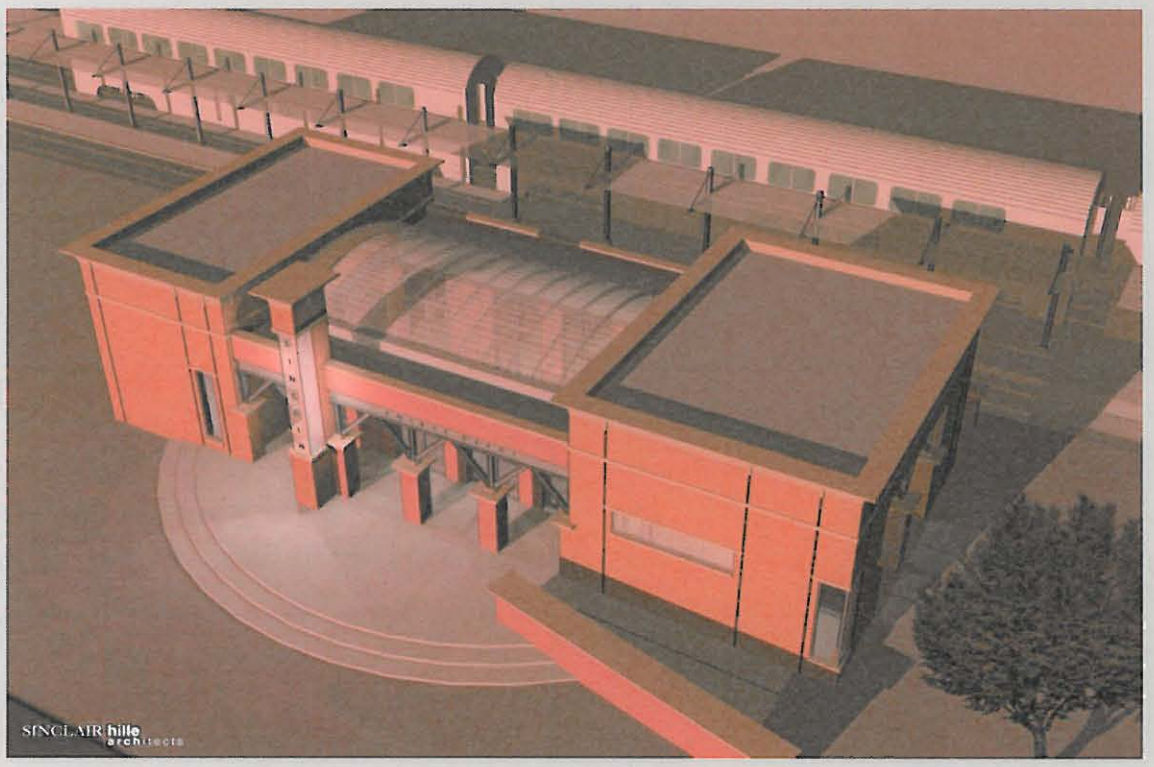
Cold weather concrete protection

M&N STREET

New turn lane - looking North on 10th Street

New Traffic Signal Poles

AMTRAK STATION



- Bids have been received on the Amtrak station. Alternates have been chosen and it is anticipated the project will be awarded soon.

Pinnacle Bank Arena Progress Update

AERIAL
OCTOBER 15TH, 2011

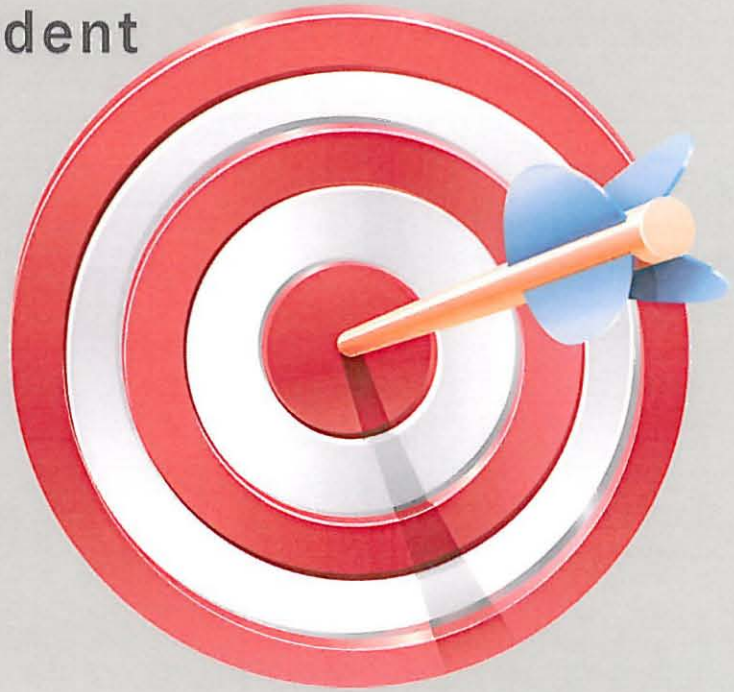
AERIAL
NOVEMBER 15TH, 2011

PROJECT PROGRESS

- As of December 8th, there have been a total of 100 RFI's submitted
- There have been a total of 270 Submittals as of December 8th.
- To date there have been 8 CCA's issued.
- A total of $7,984,371.00 has been completed and stored to date as of November 30th by Mortenson and their subcontractors

SAFETY

- 86 Days without a Safety Incident
- 105 Craft Workers on Site
- Safety Lunch held on 12/6



Mortenson construction | HAMPTON CONSTRUCTION

MORTENSON SAFETY LUNCHEON

Deep Foundations

- 640 of the 660 Augercast foundations installed for phase 1 of the arena construction.
- The piles will be installed ahead of schedule.
- The Piles are 100' long and 18" in diameter.

Mortenson construction | HAMPTON CONSTRUCTION

Concrete Superstructure

- Installing Columns, Grade Beams and Pile Caps
- First Main Concourse Pour is being formed
- 1400 yards of concrete have been placed.

Mortenson construction | HAMPTON CONSTRUCTION

GRADE BEAMS
PILE CAPS

12/01/2011

West Haymarket JPA Meeting

Date Dec 8, 2011

Page_____

Name (Please Print)	Address	Phone/E-Mail
Jane Kinsley	6703	

WH 11-92 Introduce: 12-8-11

RESOLUTION NO. WH- _____

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

That Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to enter into, on behalf of the West Haymarket Joint Public Agency, a special purchase for construction of the Amtrak platform to construct a 1200' x 15' x 8" concrete passenger platform without building or canopy, subject to the submission of informal quotes by contractors by December 6, 2011. Said work shall begin on December 9, 2011 and is to be completed by April 30, 2011.

Adopted this _____ day of December, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Tim Clare

_____
Chris Beutler

_____
Eugene Carroll

WH 11-92

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-92 by accepting the attached Substitute Resolution with regard to a contract for a special purchase for construction of the Amtrak platform.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Law Department

Reasons for Request: To identify and accept the lowest responsible quote.

WH 11-92S Introduce: 12-8-11

RESOLUTION NO. WH- _____

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

That Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to enter into, on behalf of the West Haymarket Joint Public Agency, the attached special purchase contract for construction of the Amtrak platform with Stephens and Smith Construction ("Contractor") for construction of a 1200' x 15' x 8" concrete passenger platform without building or canopy, for the sum of $565,499.00 per the Contractor's quote.

Adopted this _____ day of December, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Tim Clare

_____
Chris Beutler

_____
Eugene Carroll

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
QUOTE 3571 ADDENDUM 3
SPECIAL PURCHASE

C O N T R A C T A G R E E M E N T

THIS CONTRACT is made and entered into this 20th day of December, 2011, by and between **Stephens & Smith Construction,** hereinafter called the Contractor, and the **West Haymarket Joint Public Agency**, hereinafter called JPA.

WITNESS, that:

WHEREAS, JPA has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published a special purchase advertisement for and in connection with said Work, to wit:

West Haymarket JPA Amtrak Platform

WHEREAS, the Contractor, in response to such advertisement, has submitted to the JPA, in the manner and at the time specified, a sealed Quote in accordance with the terms of said advertisement.

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Quotes submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the firm providing the best value for the said Work for the sum or sums named in the Contractor's Quote. Copies of the aforesaid documents are attached as Exhibit A.

WHEREAS, a portion of the Project will be carried out on property owned by BNSF Railway Company (BNSF) or to which BNSF has been granted an easement for exclusive use.

WHEREAS, the Work is subject to the terms and conditions of the Temporary Access License for Amtrak Work between BNSF Railway Company (BNSF) and the JPA, a copy of which is attached hereto as Exhibit B, and pursuant to the License is subject to the terms and conditions of the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA, a copy of which is attached hereto as Exhibit C.

WHEREAS, the Work is located upon property leased to the National Railroad Passenger Corporation ("Amtrak") and subleased to the JPA and is subject to the terms and conditions of the Sublease Agreement between Amtrak and the JPA, a copy of which is attached hereto as Exhibit D.

WHEREAS, Contractor possesses certain skills, experience, education and competency to perform the Work on behalf of the JPA and the JPA desires to engage Contractor for such services on the terms and conditions provided herein.

WHEREAS, Contractor is willing and able to perform the Work in accordance with this Agreement. Contractor hereby understands and acknowledges that Contractor will be required to comply with restrictions on the Work imposed on the JPA as Licensee and Subtenant in the License and Sublease Agreement, respectively, subject to the provisions of this Agreement. Contractor hereby further understands and acknowledges that Contractor is deemed to be the JPA's Contractor under the C&M Agreement and in such capacity is required to comply with the Contractor Requirements in the C&M Agreement, subject to the terms of this Agreement.

WHEREAS, the use of the term "City of Lincoln" in the License, the C&M Agreement, and other Contract Documents shall be deemed to refer to the JPA.

NOW, THEREFORE, in consideration of the above Whereas Clauses and the sums to be paid to the Contractor and the agreements herein contained, the Contractor and JPA have agreed and hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete Work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by JPA's official award of this Contract to the Contractor, such award being based on the acceptance by JPA of the Contractor's Quote of $565,499 as set forth in Exhibit A.

JPA agrees to pay to the Contractor for the performance of the work embraced in this Contract, and the Contractor agrees to accept as full compensation therefore, the sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided in the General Provisions and Requirements.

COMPLETION DATE - The Contractor agrees that time is of the essence of this Agreement and that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to commence the Work prior to January 9, 2012 and complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than April 1, 2012.

GUARANTEE - The guarantee periods as stated in Section IX, Paragraph A of the City of Lincoln Standard Specifications for Municipal Construction shall not be applicable to this project.

INDEMNIFICATION - The following Indemnification provisions are in addition to and not in lieu of the Assumption of Liability and Indemnification provisions in the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. INDEMNIFICATION OF JPA.

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR'S CONTRACTOR PARTIES IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WORK AREA;

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF BNSF'S RIGHT-OF-WAY OR OTHER BNSF PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF BNSF'S RIGHT-OF-WAY OR OTHER BNSF PROPERTY IN CONNECTION WITH PERFORMANCE OF THE WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WORK BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF JPA, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY JPA'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF JPA.

B. INDEMNIFICATION OF BNSF. Contractor understands and acknowledges that the Indemnification requirements of the Contractor to indemnify and hold harmless BNSF found in the C&M Agreement and the Contractor's Right of Entry are in addition to, and not in lieu of, the above obligations of Contractor to indemnify and hold harmless the JPA.

INSURANCE - The following Insurance provisions are in addition to and not in lieu of the "Insurance Requirements for all West Haymarket Joint Public Agency Contracts" and "Contractor's Insurance" in the City of Lincoln Standard Specifications for Municipal Corporations (2011 Edition). In the event of a discrepancy in coverage limits, the Contractor will provide the larger amount.

Insurance Coverage. Contractor shall at all times during the term of this Agreement maintain insurance coverage as follows:

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

- Bodily Injury and Property Damage (including loss of use)
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

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

- ISO endorsement form CG 24-17-10-01 or its equivalent providing contractual liability coverage for railroads as additional insureds.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of Amtrak, BNSF and JPA and acceptable to JPA.
- Additional insured endorsement in favor of Amtrak, BNSF, and e JPA and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to JPA employees.
No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this Agreement.

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

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

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

- Waiver of subrogation in favor of Amtrak, BNSF and JPA and acceptable to JPA.
- Additional insured endorsement in favor of Amtrak, BNSF and JPA and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.

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

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $1,000,000 each accident, $1,000,000 by disease policy limit, $1,000,000 by disease each employee.

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

- Waiver of subrogation in favor of Amtrak, BNSF and JPA and acceptable to JPA.

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000.00 per occurrence and $10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

In lieu of providing a Railroad Protective Liability Policy, City may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to City and City Contractors.

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

Other Requirements: All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the

extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against JPA for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor must furnish to JPA acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, non-renewal, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. This cancellation provision must be indicated on the certificate of insurance. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

City of Lincoln
c/o Bill Kostner, Risk Manager
555 South 10th Street
Lincoln, NE 68508

Any insurance policy must be written by a reputable insurance company reasonably acceptable to JPA or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release,

defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by this section will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

BNSF Requirements. Contractor agrees to comply with the Contractor requirements (Exhibit C to the C&M Agreement) and to execute and deliver a Contractor Right of Entry in the form of Exhibit C-1(A) prior to entering BNSF property or easement area to perform the Work. Contractor further agrees that prior to entering BNSF property or easement area to perform the Work, Contractor shall complete the safety training program at the website www.contractororientation.com and the security program (e-RAILSAFE) as more particularly set forth in Section 3.3.4 o the C&M Agreement. Contractor further agrees that each and every employee of the Contractor must possess a card certifying completion of the safety training program and the e-RAILSAFE security program prior to entering upon BNSF property.

BNSF/Amtrak Insurance Requirements. Contractor understands and acknowledges that the Insurance requirements of BNSF found in the C&M Agreement and the Contractor's Right of Entry and the insurance requirements of Amtrak found in the Sublease Agreement are in addition to and not in lieu of the above obligations of Contractor. Contractor agrees to provide all types of insurance required by the JPA, Amtrak or BNSF. Contractor will furnish coverages against any and all perils required by the JPA, Amtrak or BNSF. In the event Contractor discovers a discrepancy in coverage limits, Contractor will provide the larger amount satisfying JPA, Amtrak and BNSF requirements.

CONTRACT DOCUMENTS - The Contract Documents comprise the Contract, and consist of the following, whether or not attached hereto:

1. Bid Documents (Exhibit A)

a. Bid Opportunity Detail
b. Notice of Special Purchase - Quote No. 3751
c. Specifications for Quote No. 3571
d. Instructions to Bidders
e. Addendum Nos. 1, 2 and 3
f. Supplier Response
g. Contractor's Special Purchase Clarifications

2. License (Exhibit B)

3. **Construction and Maintenance Agreement (Exhibit C)**
4. **Sublease Agreement (Exhibit D)**
5. **Other Attached Contract Documents (Exhibit E)**
    a. Commentary to Accompany Construction Bonds.
    b. Construction Performance Bond.
    c. Construction Payment Bond.
    d. Insurance Requirements for all West Haymarket Joint Public Agency Contracts.
    e. Executive Order. No. 83319.
    f. Modified BNSF Insurance Certification Process (10-21-2011).
5. **Other Non-Attached Contract Documents**
    a. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA's Change Order Process adopted by Resolution No. WH00195.
    b. Lincoln Standard Plans 2010.
    c. Project Plans, Specifications, and Profile Detail Sheets
    d. Any executed Addenda or Change Orders.
    e. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase)
        i. Form of Nebraska Resale or Exempt Sales Certificate.
        ii. Form of Purchasing Agent Appointment.

    Note: Any portion of this project used for providing water service, such as pipe for water mains, are not tax exempt and are subject to sales and use tax.
    Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use taxes.

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and JPA hereby agree that all the terms and conditions of this Contract shall, by these presents, be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and JPA do hereby execute this Contract.

CONTRACTOR: **STEPHENS & SMITH CONSTRUCTION**

By: _____
President

JPA: **WEST HAYMARKET JOINT PUBLIC AGENCY**

By: _____

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

EXHIBIT A

Contractor’s Quote

EXHIBIT B

Temporary Access License for Amtrak Work Between BNSF and the JPA

EXHIBIT C

Construction and Maintenance Agreement
Between BNSF and the City of Lincoln

EXHIBIT D

Sublease Agreement

EXHIBIT E

Other Contract Documents

CITY OF LINCOLN NEBRASKA

LANCASTER COUNTY NEBRASKA

Return to Login • Supplier Registration

Bid Opportunity Detail

Bid Information

Organization	Lincoln Purchasing (Lincoln Purchasing)
Buyer Name	Anna Farlow
Buyer Email	afarlow@lincoln.ne.gov
Buyer Phone	
Buyer Fax	
Bid Number	3751 Addendum 3
Bid Title	West Haymarket JPA's Notice of Special Purchase
Bid Type	Quote
Bid Security	Sealed
Issue Date & Time	11/28/2011 2:54:06 PM Central
Close Date & Time	12/6/2011 12:00:00 PM Central - **Time Left:**
Bid Notes	West Haymarket JPA's intent to enter into a Special Purchase with Judds Bros. for the construction of a platform for the New Amtrak Station.
Bid Status	Unsealed
Status Reason	Bid request unsealed by GCFDLW.

Contact Information

Address	Purchasing 440 S. 8th St. Lincoln, NE 68516 USA
Contact Name	Vince Mejer Purchasing Agent
Department	Purchasing
Floor/Room	Suite 200
Contact Phone	1 (402) 441-8314
Contact Fax	1 (402) 441-6513
Contact Email	vmejer@lincoln.ne.gov

Event Activities

No Event Activities

Bid Documents

Document	Format	Description
Invitation Document	Adobe (PDF)	PDF Invitation to Bid
Bid Tabulation by Supplier Spreadsheet	Spreadsheet (XLS)	Bid Tabulation by Supplier Spreadsheet
Bid Tabulation by Line Item Spreadsheet	Spreadsheet (XLS)	Bid Tabulation by Line Item Spreadsheet

Bid Attachments

Header Instructions to Bidders- JPA - A 12-10.pdf (84KB)	Instructions to Bidders
Header West Haymarket Joint Public Agency Insurance Requirements.pdf (19KB)	Insurance Requirements
Header Special Purchase 3751Platform.pdf (7KB)	Specifications
Header Contract - JPA.pdf (61KB)	Sample Contract
Header 3751adn.1.pdf (6KB)	Addendum No. 1
Header 3751ftp1.pdf (127KB)	Additional Information (per Addendum No. 1)
Header 3751 Adn 2.pdf (14KB)	Addendum No. 2
Header 3751 Adn 3.pdf (69KB)	Addendum 3
Header Adn 3 - Notice of Special Purchase.pdf (9KB)	Notice of Special Purcahse - Adn 3

City of Lincoln/Lancaster County

Bid Information

Bid Owner	Anna Farlow
Email	afarlow@lincoln.ne.gov
Phone	
Fax	
Bid Number	3751 Addendum 3
Title	West Haymarket JPA's Notice of Special Purchase
Bid Type	Quote
Issue Date	11/28/2011
Close Date	12/6/2011 12:00:00 PM

Contact Information

Address	Purchasing 440 S. 8th St. Lincoln, NE 68516
Contact	Vince Mejer Purchasing Agent
Department	Purchasing
Building	
Floor/Room	Suite 200
Telephone	1 (402) 441-8314
Fax	1 (402) 441-6513
Email	vmejer@lincoln.ne.gov

Ship to Information

Address	Lincoln, NE 68508
Contact	
Department	
Building	
Floor/Room	
Telephone	(402) 441-8314
Fax	
Email	

Supplier Information

Company Name _____

Contact Name _____

Address _____

Telephone _____

Fax _____

Email _____

Signature _____

Supplier Notes

Date / /

Bid Notes

West Haymarket JPA's intent to enter into a Special Purchase with Judds Bros. for the construction of a platform for the New Amtrak Station.

Bid Activities

Bid Messages

Bid Attachments

The following attachments are associated with this opportunity and will need to be retrieved separately

Line	Filename	Description
Header	Instructions to Bidders- JPA - A 12-10.pdf	Instructions to Bidders
Header	West Haymarket Joint Public Agency Insurance Requirements.pdf	Insurance Requirements
Header	Special Purchase 3751Platform.pdf	Specifications
Header	Contract - JPA.pdf	Sample Contract
Header	3751adn.1.pdf	Addendum No. 1

Header	3751ftp1.pdf	Additional Information (per Addendum No. 1)
Header	3751 Adn 2.pdf	Addendum No. 2
Header	3751 Adn 3.pdf	Addendum 3
Header	Adn 3 - Notice of Special Purchase.pdf	Notice of Special Purcahse - Adn 3

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	_____ (Required)
2	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	_____ (Required)
3	Specifications	I acknowledge reading and understanding the specifications.	_____ (Required)
4	Contact	Name of person submitting this bid:	_____ (Required)
5	Sample Contract	I acknowledge reading and understanding the sample contract.	_____ (Required)
6	Electronic Signature	Please check here for your electronic signature.	_____ (Required)
7	Agreement to Addendum No. 1	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: Attached Addendum No. 1.	_____ (Required)
8	Agreement to Addendum No. 2	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	_____ (Required)
9	Agreement to Addendum No. 3	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	_____ (Required)

Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	To provide all labor and materials as specified to construct the new platform for the New Amtrak Station.	$_____

Manufacturer: Manufacturer #:

Supplier Notes: _____

Advertise 1 time
Thursday, December 1, 2011

City of Lincoln/Lancaster County
Purchasing Division
NOTICE OF SPECIAL PURCHASE

Sealed quotes will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Tuesday, December 6, 2011** for providing the following:

West Haymarket JPA's
Notice of Special Purchase
Quote No. 3751

It is the intent of West Haymarket JPA to enter into a special purchase with anyone who wants to submit for the construction of a platform for the Amtrack Station. Anyone interested in providing a quote on this project may do so electronically.

Bidders must be registered on the City/County's E-Bid site in order to respond to the above Bid. To Register go to: lincoln.ne.gov (type: e-bid - in search box, then click "Supplier Registration")

Upon e-mail notification of registration approval, you may go to the E-Bid site to respond to this bid. Questions concerning this bid process may be directed to City/County Purchasing at (402) 441-8314 or (402) 441-7410 or *vmejer@lincoln.ne.gov*

Specifications
for
Quote Number 3751
Platform for the New Amtrak Building

1. **GENERAL INFORMATION**
   - 1.1 This is notice of special purchase under Neb. Rev. Stat. §23-3109(3).
   - 1.2 Anyone interested in submiting an informal quote may do so through the City's electronic system.
   - 1.3 The intent is to enter into an agreement with the firm providing the best value at the next JPA meeting which is set for Thursday, December 8, 2011.

2. **INTENT**
   - 2.1 The JPA plans to purchase a concrete slab on grade platform approximately 1200' x 15' x 8" along with spread footings and steel reinforcement required needed to support 33 columns.
   - 2.2 Grading and drainage to support storm runoff parameters will be included in this work.
   - 2.3 A retaining wall and all required backfill will be required to support rail line construction.
   - 2.4 Railroad Protective Liability insurance, winter conditions, ADA obligations and Davis Bacon wage rates are required for this installation.
   - 2.5 Scheduling to start this work is December 9th, 2011 and completion by April 30, 2012.
   - 2.6 Additional information can be obtained by reading Specification Number 11-246.

INSTRUCTIONS TO BIDDERS
WEST HAYMARKET JOINT PUBLIC AGENCY
E-Bid

1. BIDDING PROCEDURE

1.1 Sealed bid, formal and informal, subject to Instructions and General Conditions and any special conditions set forth herein, will be received in the office of the Purchasing Division, 440 So. 8th St., Lincoln, NE 68508, until the bid closing date and time indicated for furnishing the West Haymarket Joint Public Agency, hereinafter referred to as "JPA", the materials, supplies, equipment or services shown in the electronic bid request.

1.2 Bidders shall use the electronic bid system for submitting bids and must complete all required fields.

1.3 Identify the item you will furnish by brand or manufacturer's name and catalog numbers. Also furnish specifications and descriptive literature if not bidding the specific manufacturer or model as listed in the specifications.

1.4 Any person submitting a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.

1.5 Bids received after the time and date established for receiving bids will be rejected.

1.6 The Bidders and public are invited, but not required, to attend the formal opening of bids. At the opening, prices will be displayed electronically and/or read aloud to the public. The pricing is also available for immediate viewing on-line. No decisions related to an award of a contract or purchase order will be made at the opening.

1.7 If bidding on a construction contract, the City's Standard Specifications for Municipal Construction 2006 shall apply.

1.7.1 Bidders may obtain this document from the City's Design Engineering Division of the Public Works & Utilities Department for a small fee.

1.7.2 Said document can be reviewed at Design Engineering or at the office of the Purchasing Division.

1.7.3 Said document is available on the web site.
http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspec/index.htm

2. BID SECURITY

2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bid bond, may be required to be submitted with this bidding document, as indicated on the bid.

2.1.1 Bid security, if required, shall be in the amount specified on the bid. The bid security must be scanned and attached to the "Response Attachments" section of your response or it can be faxed to the Purchasing Division at 402-441-6513. The original bid security should then be sent or delivered to the office of the Purchasing Division, 440 S. 8th St., Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing.

2.1.2 If bid security is not received in the office of the Purchasing Division as stated above, the vendor may be determined to be non-responsive.

2.2 If alternates are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.

2.3 Such bid security will be returned to the unsuccessful Bidders when the award of bid is made.

2.4 Bid security will be returned to the successful Bidder(s) as follows:

2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by JPA.

2.4.2 For all other contracts: upon approval by JPA of the executed contract and bonds.

2.5 JPA shall have the right to retain the bid security of Bidders to whom an award is being considered until either:

2.5.1 A contract has been executed and bonds have been furnished.

2.5.2 The specified time has elapsed so that the bids may be withdrawn.

2.5.3 All bids have been rejected.

2.6 Bid security will be forfeited to JPA as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this bidding document:

2.6.1 If the Bidder fails or refuses to enter into a contract on forms provided JPA, and/or if the Bidder fails to provide sufficient bonds or insurance within the time period as established in this bidding document.

3. BIDDER'S REPRESENTATION

3.1 Each Bidder by electronic signature and submitting a bid, represents that the Bidder has read and understands the bidding documents, and the bid has been made in accordance therewith.

3.2 Each Bidder for services further represents that the Bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bidding documents.

4. CLARIFICATION OF BIDDING DOCUMENTS

4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the bidding documents.

4.2 Bidders desiring clarification or interpretation of the bidding documents for formal bids shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of formal bids.

4.3 Changes made to the bidding documents will be issued electronically. All vendors registered for that bid will be notified of the addendum. Subsequent Bidders will only receive the bid with the addendum included.

4.4 Oral interpretations or changes to the bidding documents made in any manner other than written form will not be binding on JPA; and Bidders shall not rely upon such interpretations or changes.

5. ADDENDA

5.1 Addenda are instruments issued by JPA prior to the date for receipt of bids which modify or interpret the bidding document by addition, deletion, clarification or correction.

5.2 Addenda notification will be made available to all registered vendors immediately via e-mail for inspection on-line.

5.3 No formal addendums will be issued later than forty-eight (48) hours prior to the date and time for receipt of formal bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.

6. INDEPENDENT PRICE DETERMINATION

6.1 By signing and submitting this bid, the Bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder prior to bid opening directly or indirectly to any other Bidder or to any competitor; no attempt has been made, or will be made, by the Bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. ANTI-LOBBYING PROVISION

7.1 During the period between the bid advertisement date and the contract award, Bidders, including their agents and representatives, shall not lobby or promote their bid with the Mayor, any member of the City Council, or JPA Board and staff except in the course of JPA sponsored inquiries, briefings, interviews, or presentations, unless requested by JPA.

8. BRAND NAMES

8.1 Wherever in the specifications or bid that brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.

8.2 It is the Bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of JPA that said item is equal to, or better than, the product specified.

8.3 Bids for alternate items shall be stated in the appropriate space on the e-bid form, or if the proposal form does not contain blanks for alternates, Bidder MUST attach to its bid document on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation.

8.4 The Bidder must indicate any variances by item number from the bidding document no matter how slight.

8.5 If variations are not stated in the bid, it will be assumed that the item being bid fully complies with JPA's bidding documents.

9. DEMONSTRATIONS/SAMPLES

9.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from JPA.

9.2 Such demonstration can be at the JPA delivery location or a surrounding community.

9.3 If items are small and malleable, the Bidder is proposing an alternate product, the Bidder shall supply a sample of the exact item. Samples will be returned at Bidder's expense after receipt by JPA of acceptable goods. The Bidder must indicate how samples are to be returned.

10. DELIVERY (Non-Construction)

10.1 Each Bidder shall state on the bid the date upon which it can make delivery of all equipment or merchandise.

10.2 JPA reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the bid.

10.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. to JPA at the location specified by JPA, with all transportation charges paid.

10.4 At the time of delivery, a designated JPA employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

11. WARRANTIES, GUARANTEES AND MAINTENANCE

11.1 Copies of the following documents, if requested, shall accompany the bid proposal for all items being bid:

11.1.1 Manufacturer's warranties and/or guarantees.

11.1.2 Bidder's maintenance policies and associated costs.

11.2 As a minimum requirement of JPA, the Bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to JPA. Replacement parts of defective components shall be shipped at no cost to JPA. Shipping costs for defective parts required to be returned to the Bidder shall be paid by the Bidder.

12. ACCEPTANCE OF MATERIAL

12.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.

12.2 Material delivered under this proposal shall remain the property of the Bidder until:

12.2.1 A physical inspection and actual usage of the material is made and found to be acceptable to JPA; and

12.2.2 Material is determined to be in full compliance with the bidding documents and accepted bid.

12.3 In the event the delivered material is found to be defective or does not conform to the bidding documents and accepted bid, JPA reserves the right to cancel the order upon written notice to the Bidder and return materials to the Bidder at Bidder's expense.

12.4 Awarded Bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of JPA, as required by the bidding documents or purchase orders.

12.5 Awarded Bidder's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

13. BID EVALUATION AND AWARD

13.1 The electronic signature shall be considered an offer on the part of the Bidder. Such offer shall be deemed accepted upon issuance by JPA of purchase orders, contract award notifications, or other contract documents appropriate to the work.

13.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each Bidder so agrees in submitting the bid.

13.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.

13.4 The bid will be awarded to the lowest responsible, responsive Bidder whose bid will be most advantageous to JPA, and as JPA deems will best serve the requirements and interests of JPA.

13.5 JPA reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of JPA.

13.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by JPA. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.

13.7 JPA reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the bid incomplete, indefinite or ambiguous.

13.8 Any governmental agency may piggyback on any contract entered into from this bid.

14. INDEMNIFICATION

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

14.2 In any and all claims against JPA or any of its members, officers or employees by an employee of the Bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Bidder or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

15. TERMS OF PAYMENT

15.1 Unless stated otherwise, JPA will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

16. LAWS

16.1 The laws of the State of Nebraska shall govern the rights, obligations, and remedies of the parties under this bid and any contract reached as a result of this process.

16.2 Bidder agrees to abide by all applicable local, state and federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

17. EQUIPMENT TAX ASSESSMENT

17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. Indicating; every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract. The certified statement shall state that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

18. AFFIRMATIVE ACTION

18.1 The City of Lincoln provides equal opportunity for all Bidders and encourages minority businesses, women's businesses and locally owned business enterprises to participate in our bidding process.

19. LIVING WAGE

19.1 The Bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

20. INSURANCE

20.1 All Bidders shall take special notice of the insurance provisions required for all JPA contracts (see *Insurance Requirements for All JPA Contracts*).

21. EXECUTION OF AGREEMENT

21.1 Depending on the type of service provided, one of the following methods will be employed. The method applicable to this contract will be checked below:

__X__ a. **PURCHASE ORDER**, unless otherwise noted.

1. A copy of the Bidder's bid response (or referenced bid number) attached and that the same, in all particulars, becomes the contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents.

_____ b. **CONTRACT,** unless otherwise noted.

1. JPA will furnish copies of the Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance (as required), surety bonds properly executed (as required), and Contract signed and dated.
2. The prepared documents shall be returned to the Purchasing Office within 10 days (unless otherwise noted).
3. JPA will sign and date the Contract.
4. Upon approval and signature, the JPA will return one copy to the successful Bidder.

22. TAXES AND TAX EXEMPTION CERTIFICATE

22.1 JPA is generally exempt from any taxes imposed by the state or federal government. A Tax Exemption Certificate will be provided as applicable.

23. AUDIT ADVISORY BOARD

23.1 All parties of any JPA agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make Available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.

24. E-VERIFY

24.1 In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

Addendum #1
West Haymarket JPA's
Notice of Special Purchase
Quote No. 3751

Addenda are instruments issued by the City prior to the date for receipt of offers which will modify or interpret the specification document by addition, deletion, clarification or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

Be advised of the following changes and clarifications to the City's specification and bidding documents:

> **Additional information has been added to the FTP site for this quote. This information is not to be used for construction services**.

All other terms and conditions shall remain unchanged.

Dated this 30th day of November 2011.

Vince M. Mejer
Purchasing Agent

The Plan Set for the project you are preparing to bid on is available at the following ftp website. Left-Click the link to open the FTP site.

ftp://ftp.lincoln.ne.gov/3751/

When prompted:
User name: **ebid**
Password: **ebid123**

1. Use the provided User ID and Password Log On As **Figure 1**
2. Right-Click on appropriate file. Click **'Copy to Folder...'** or **'Save Target As...'**, select folder to save, click **OK**. **Figure 2** & **Figure 3**
3. Exit out of ftp site.
4. Go to folder to view.

Be aware that all systems are not the same. If you need any assistance, please call 402-441-7417.

These are graphic files and may take time to download or open. Please be patient.

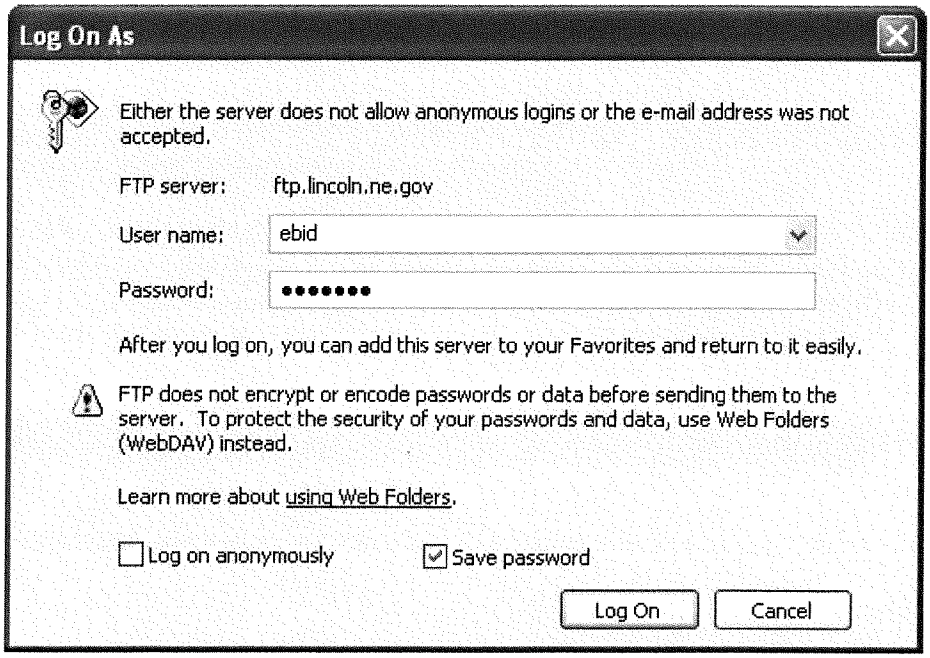


Figure 1 Upon selecting the link above, the "**Log On As**" screen should appear. Use the provided *User Name* and *Password* to login. With the "**Save Password**" feature *Checked*, Internet Explorer should not ask you to login in the future.

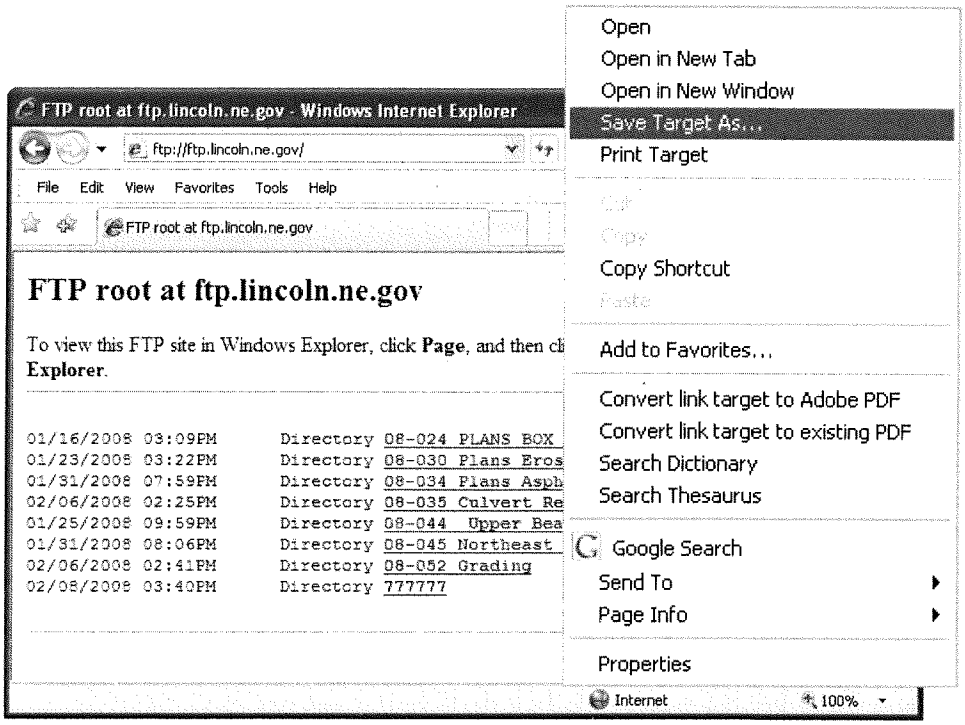


Figure 2 If your PC opens the FTP site using the *Windows Internet Explorer*, Right-Click the appropriate file and select "**Save Target As...**" and save a copy to

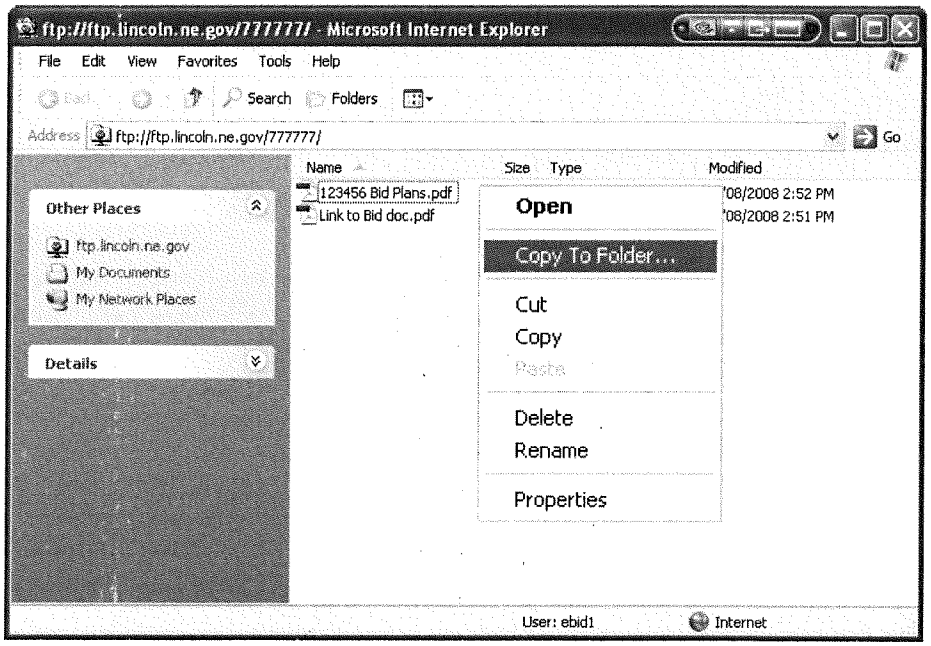


Figure 3 If your PC opens the FTP site using the *Microsoft Internet Explorer*, Right-Click the appropriate file and select **"Copy To Folder..."** and save a copy to your local computer.

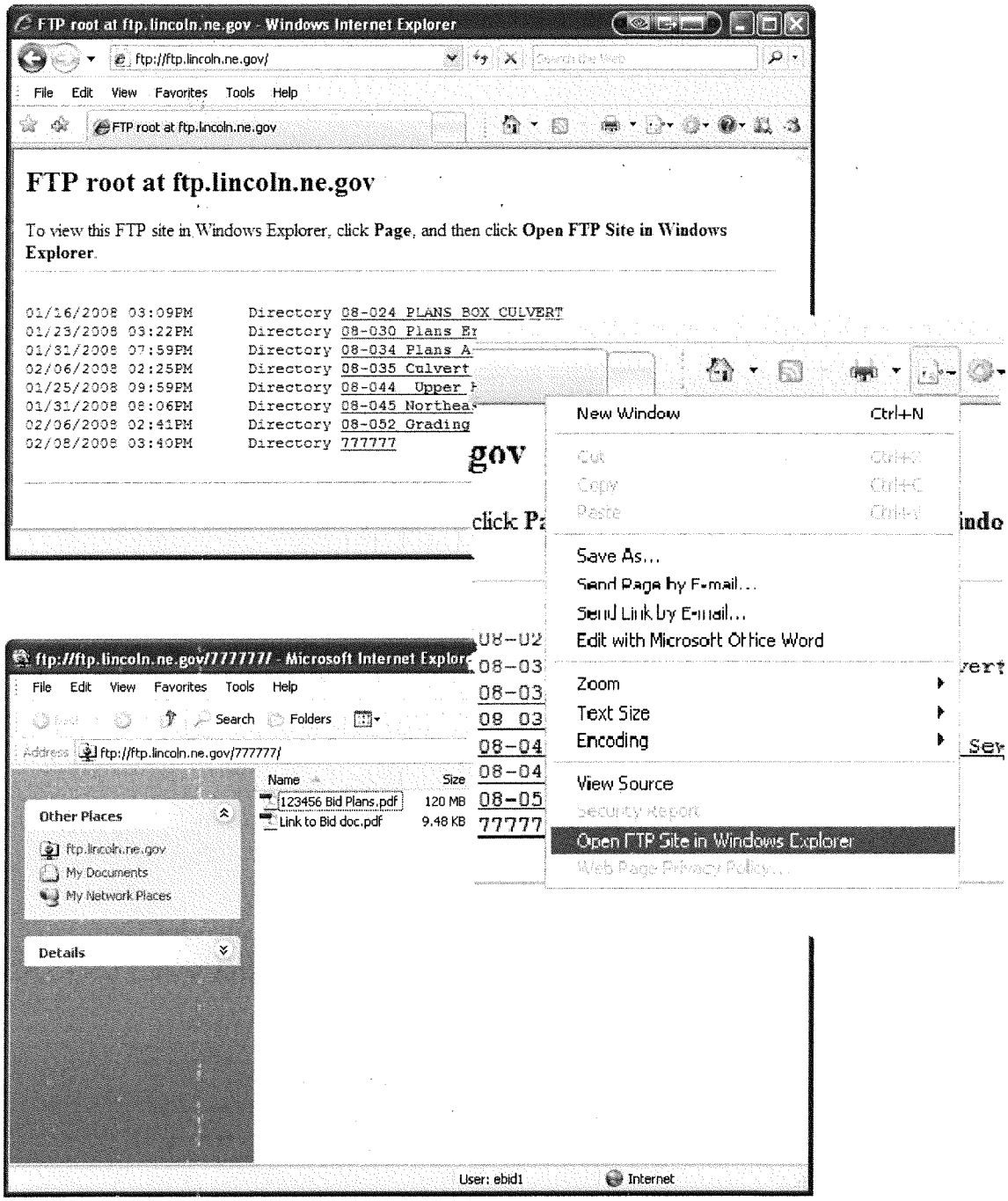


Figure 4 If the FTP site opens with *Windows Internet Explorer* and you wish to use *Microsoft Internet Explorer,* go to **Page > Open FTP Site in Windows Explorer**.

ADDENDUM NO. 2
QUOTE NO. 3751
WEST HAYMARKET JPA'S NOTICE OF SPECIAL PURCHASE

Addenda are instruments issued by the City prior to the date for receipt of offers which will modify or interpret the specification document by addition, deletion, clarification, or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

The follow questions have been asked concerning this purchase:

Q1 What is the classification for the Davis Bacon Wages?

A1. Davis Bacon Wage Rates are attached to bid number 11-246

Q2 Please clarify the extent of grading and storm drainage that is to be performed under this contract.

A2. See Addendum No. 1

Q3 Is there a specification for the precast detectable warning pavers?

A3. West Haymarket Joint Public Agency 870906 WH-14 Amtrak Platform and Grading SHA Project No. 11022 TACTILE WARNING SURFACING 321726 - 1

SECTION 321726 – TACTILE WARNING SURFACING

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

A. Section includes precast detectable warning pavers for use at edge of railway platform.

B. Related Requirements:

1. Division 03 for cast-in-place concrete work associated with slab on grade conditions to receive detectable warning pavers.

1.3 DELIVERY, STORAGE, AND HANDLING

A. Store pavers on elevated platforms in a dry location. If units are not stored in an enclosed location, cover tops and sides of stacks with waterproof sheeting, securely tied.

B. Store aggregates where grading and other required characteristics can be maintained and contamination avoided.

C. Store liquids in tightly closed containers protected from freezing.

D. Store asphalt cement and other bituminous materials in tightly closed containers.

1.4 FIELD CONDITIONS

A. Cold-Weather Protection: Do not use frozen materials or materials mixed or coated with ice or frost. Do not build on frozen subgrade or setting beds. Remove and replace unit paver work damaged by frost or freezing.

B. Weather Limitations for Mortar and Grout:

1. Cold-Weather Requirements: Comply with cold-weather construction requirements contained in ACI 530.1/ASCE 6/TMS 602.

2. Hot-Weather Requirements: Comply with hot-weather construction requirements contained in ACI 530.1/ASCE 6/TMS 602. Provide artificial shade and windbreaks and use cooled materials as required. Do not apply mortar to substrates with temperatures of 100 deg F (38 deg C)and higher.

a. When ambient temperature exceeds 100 deg F (38 deg C), or when wind velocity exceeds 8 mph (13 km/h) and ambient temperature exceeds 90 deg F (32 deg C), set pavers within 1 minute of spreading setting-bed mortar.

PART 2 - PRODUCTS West Haymarket Joint Public Agency 870906 WH-14 Amtrak Platform and Grading SHA Project No. 11022 TACTILE WARNING SURFACING 321726 - 2

2.1 CONCRETE PAVERS

A. Concrete Pavers: Solid paving units complying with ASTM C-140 and resistant to freezing and thawing when tested according to ASTM C-67, made from normal-weight aggregates.

1. Manufacturers: Subject to compliance with requirements, provide the following product or product approved for substitution during bidding:

a. Tile Tech Pavers, Los Angeles, CA – (213) 489.2555, www.TileTechPavers.com.

2. Thickness: 2 inches.

3. Size: 11.875 inches by 11.875 inches

4. Color: Yellow

5. Finish: Rough ground and shot blast surface.

6. Texture: 0.20 inch truncated dome added to thickness

7. Dome Size and Spacing: Truncated domes to have a base diameter of 0.9 inches minimum to 1.4 inches maximum. A top diameter of 50%, or 0.45 inch to 0.9 inch. Height shall be 0.2 inches and a center-to center spacing of 1.5 inches to 2.4 inches measured along one side of a square arrangement.

8. Dome Alignment: Align on a square grid in predominate direction of travel.

9. Note: Concrete pavers are NOT factory sealed.

2.2 MATERIALS

A. Portland Cement: ASTM C-150.

B. Aggregates: All aggregates to meet ASTM C-33 specifications, cleaned and properly graded to size. Aggregate shall be blended to meet individual project requirements.

C. Coloring: Pigments used shall be inorganic, resistant to alkalinity and used per manufacturer's recommendations.

D. Cleaner: Liquid neutral chemical cleaner with pH factor between 7 and 8, of formulation recommended by sealer manufacturer for type of precast paver used.

E. Sealer: Colorless, slip and stain resistant penetrating or acrylic sealer with pH factor between 7 and 8 that does not affect color or physical properties of precast paver surface.

F. Material Compatibility:

1. Provide materials for use within each paint system that are compatible with one another and substrates indicated, under conditions of service and application as demonstrated by manufacturer, based on testing and field experience.

2. For each coat in a paint system, provide products recommended in writing by manufacturers of topcoat for use in paint system and on substrate indicated.

G. Colors: As selected by Architect from manufacturer's full range.

2.3 MIXES

A. Aggregate: Natural, sound, crushed marble chips without excessive flats or flakes.

B. Matrix Pigments: Pure mineral or synthetic pigments, resistant to alkalies and non-fading. Mix pigments with matrix to provide required colors.

C. Face Layer: Minimum depth of 3/8" (nominal) and shall include 70% coverage of the Paver face with marble aggregate.**West Haymarket Joint Public Agency 870906 WH-14 Amtrak Platform and Grading SHA Project No. 11022 TACTILE WARNING SURFACING 321726 - 3**

2.4 FABRICATION

A. Mechanically vibrated in the molds.

B. Hydraulically pressed by 600 tons of pressure.

C. Moisture cured with 100% humidity for 24 hours.

D. Factory finish: In-line grinding and shot blasting.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Inspect areas to receive underbed for:

1. Defects in existing concrete work that affect proper execution of Paver installation.
2. Variances beyond allowable tolerances.
3. Maximum variation in sub floor not to exceed 1/8" in 10'-0" from required plane.

3.2 INSTALLATION

A. Thin Set Application:

1. Slab to have steel trowel and fine broom finish. Do not use curing compounds. Maximum variation in the slab = 1/4" in 10'-0".
2. Apply latex cement mortar, conform with ANSI A118 4 utilizing a 3/8" x 1/4" square notch trowel.
3. Apply thin set for a minimum of 1/8" setting bed. Allow for thin set manufacturers' recommended setting time before grouting.
4. Coat underside of each unit with latex cement mortar, firmly set, tamp into bedding to ensure minimum 95% surface contact with mortar bed.
5. All units to be installed level, square, parallel, except where otherwise indicated in a true plane with adjacent units and other floor finishes.
6. Maintain a maximum joint of 1/32" or less.
7. Joints to be swept with sand or grout.

Q4 In the specifications for Quote Number 3751, the slab is indicated to be 8" thick. Detail 2 on S-506 indicates the slab to be 6" thick. Please clarify.

A4. The latest is it is to be 6"

Q5 Exterior Elevation F4 on A201 indicates 2" extruded polystyrene insulation under the platform slab. Exterior Elevation A4 on A201 does not indicate any insulation under the platform slab. Please clarify if insulation is required under the platform slab.

A5. There shall be no insulation under the slab

Q6 Are there any chain link fences (temporary or permanent) required to be provided under this contract? If so, please clarify the extent.

A6. Please see addendum No. 1

7. **To the Civil part of the Platform plans we want to edit the Trench Drain detail to add the perforated pipe to be wrapped in MIRAFI 160N (Or approved Equal) Non-Woven Geotextile material.**

All other terms and conditions shall remain unchanged.

Dated this 30th day of November, 2011.

Vince M. Mejer
Purchasing Agent

ADDENDUM NO. 3
QUOTE NO. 3751
WEST HAYMARKET JPA'S NOTICE OF SPECIAL PURCHASE

Addenda are instruments issued by the City prior to the date for receipt of offers which will modify or interpret the specification document by addition, deletion, clarification, or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

Please follow the below instructions:

Notice of Special Purchase was changed. Judds Bros. was deleted and replaced with **request quotations for the work from anyone who wants to submit**

All other terms and conditions shall remain unchanged.

Dated this 1st day of December, 2011.

Vince M. Mejer
Purchasing Agent

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

Bid Information

Bid Creator	Anna Farlow
Email	afarlow@lincoln.ne.gov
Phone	
Fax	
Bid Number	3751 Addendum 3
Title	West Haymarket JPA's Notice of Special Purchase
Bid Type	Quote
Issue Date	11/28/2011
Close Date	12/6/2011 12:00:00 PM CST
Need by Date	

Contact Information

Address	Purchasing 440 S. 8th St. Lincoln, NE 68516
Contact	Vince Mejer Purchasing Agent
Department	Purchasing
Building	
Floor/Room	Suite 200
Telephone	1 (402) 441-8314
Fax	1 (402) 441-6513
Email	vmejer@lincoln.ne.gov

Ship to Information

Address	Lincoln, NE 68508
Contact	
Department	
Building	
Floor/Room	
Telephone	
Fax	
Email	

Supplier Information

Company	Stephens & Smith Construction Co., Inc.
Address	1542 South 1st St. Lincoln, NE 68502
Contact	
Department	
Building	
Floor/Room	
Telephone	1 (402) 4758087
Fax	1 (402) 4750119
Email	
Submitted	12/6/2011 11:50:12 AM CST
Total	$565,499.00

Signature _____

Supplier Notes

Bid Notes

West Haymarket JPA's intent to enter into a Special Purchase with Judds Bros. for the construction of a platform for the New Amtrak Station.

Bid Activities

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
2	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
3	Specifications	I acknowledge reading and understanding the specifications.	Yes
4	Contact	Name of person submitting this bid:	Gary Ebert
5	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
6	Electronic Signature	Please check here for your electronic signature.	Yes
7	Agreement to Addendum No. 1	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: Attached Addendum No. 1.	Yes
8	Agreement to Addendum No. 2	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	Yes
9	Agreement to Addendum No. 3	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	Yes

Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	To provide all labor and materials as specified to construct the new platform for the New Amtrak Station.	$565,499.00

Item Notes:

Supplier Notes:

Response Total: $565,499.00

Rick R. Peo

From: Vince Mejer
Sent: Thursday, December 08, 2011 12:26 PM
To: Rick R. Peo; Rodney M. Confer; Trish A. Owen; Daniel K. Marvin; Paula Yancey; Chris J. Connolly; 'Randy Swanson'
Subject: FW: Quote 3751 - Clarifications
Attachments: West Haymarket's JPA Special Purchase Clarifications.pdf

fyi

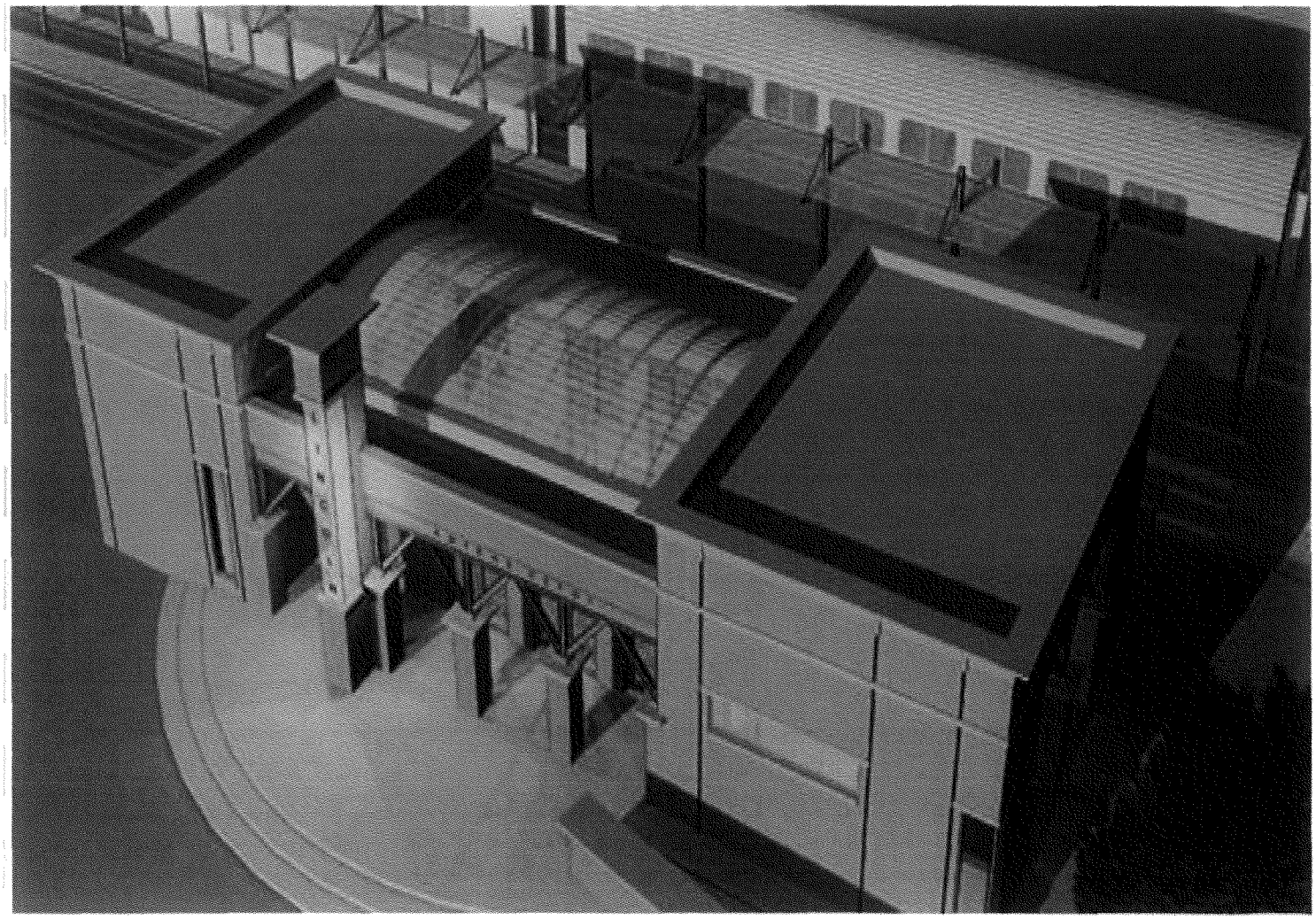
From: Brett Richert [mailto:BRichert@stephensandsmith.com]
Sent: Thursday, December 08, 2011 11:54 AM
To: Vince Mejer
Cc: Gary Ebert; Dave Thibault
Subject: Quote 3751 - Clarifications

Vince,
Please find attached our responses to the clarifications requested for Quote 3751 – West Haymarket's JPA Notice of Special Purchase. Please contact me if you have any questions, or need additional information.
Thank You,

Brett Richert
Stephens & Smith Const.
Office (402)-475-8087
Cell (402)-525-8784
www.stephensandsmith.com

Quote 3751
West Haymarket's JPA Notice of Special Purchase. Clarifications

Submited by Stephens & Smith Construction



Clarifications- please provide:

-List of proposed subcontractors for each work scope

- ***Aero Fence Co.- 9741 N. 153rd Street, Waverly NE 68462*** *– Temporary Fencing and Relocation of Fencing*
- ***Kroger Landscapes & Irrigation – Lincoln, NE*** *– Seeding*
- ***Gana Trucking & Excavating – 2200 W Panama Road, Martell, NE*** *– Excavation, Haul-off, and Grading*
- *All other scopes will be performed by Stephens & Smith Construction.*

-Detailed schedule (by trade or specification section)

See attached schedule

-Confirmation of railroad liability insurance (provide carrier name and date of coverage start)
See attached letter at end of clarifications.

-Staffing plan with estimated hours for each person (prime or lead contractor), confirmation of full time site manager

- ***Stephens & Smith Construction will have a full time site manager on site.***
  - ***David Thibault – Project Manager – 402-416-3505***
  - ***Crew Size will vary between 4 & 10 employees based on work being performed.***
  - ***Approx. 6000 labor hours including sub-contractors.***
  - ***All subs will be monitored & supervised by a Stephens & Smith manager.***

-Qualifications and background of Project Manager and full time site PM or Superintendent

- ***David Thibault – Project Manager***
  - ***23 years of employment***
    - ***Project managed 10+ projects over past 2 years***
    - ***ACI certified field technician***
- ***Ryan Garlock – Site Superintendent***
  - ***13 years of employment***
    - ***Supervised multiple crews on multiple projects***
    - ***OSHA 10 hour certification***
    - ***First Aid/CPR certified***

-Past project references with contact information

- ***Lancaster County Jail – Sampson Construction 402-434-5450***
- ***Mopac Trail Bridge – City of Lincoln 402-441-8314***
- ***Wayne State College Commons Improvement – Wayne State College 402-369-1894***
- ***UNL East Stadium Steam Tunnel – Sampson Construction 402-434-5450***

Stephens & Smith Construction Co., Inc.

An Owner on Every Project

-Similar project experience information

Name of project	Address	Owner	General Contractor/ Construction Manager	Contract Amount	Scope of Work
Billy Wolff Trail & Pedestrian Bridge	Antelope Valley	City of Lincoln	Stephens & Smith Gary Ebert 402-475-8087	$ 200,000.00	Excavation & Flatwork
UNL East Stadium Expansion - Steam Tunnel	Memorial Stadium	University of Nebraska - Lincoln	Sampson Construction Chuck Richter 402-434-5450	$ 230,000.00	Excavation, Backfill, & Concrete Tunnel
Deshler Trail	Deshler, NE	City of Deshler	Stephens & Smith Gary Ebert 402-475-8087	$ 140,000.00	Concrete flatwork
Lancaster County Detention Center	Lincoln, NE	Lancaster County	Sampson Construction Chuck Richter 402-434-5450	$ 1,400,000.00	Concrete Foundations
Digital Multipurpose Range Complex	Ft. Riley, KS	US Army Corp of Engineers	M. A. Mortenson Co. Roger Grout 785-717-2169	$ 1,637,367.00	Concrete Foundations and Flatwork
Superior Swimming Pool	Superior, NE	City of Superior, NE	Stephens & Smith Gary Ebert 402-475-8087	$ 269,000.00	General Construction
Brodstone Memorial Hospital	Superior, NE	Brodstone Memorial Hospital	BD Construction Dennis Neemeyer 308-234-1836	$ 375,052.00	Concrete Foundations and Flatwork
Wayne State College Commons Improvement	Wayne, NE	Wayne State College	Stephens & Smith Gary Ebert 402-475-8087	$ 600,000.00	Utilities, Sitework, & Concrete Flatwork
Custer Hill Beddown	Fort Riley, KS	US Army Corps of Engineers	M. A. Mortenson Grant Ackerman 785-717-2365	$ 3,194,000.00	Concrete foundations and flatwork
Health and Human Performance Athletic Center	Seward, NE	Concordia Univ.	Kiewit Construction Mike Koch 402-261-0351	$ 1,111,030.00	Concrete flatwork
Marshall Airfield VMF & COF	Fort Riley, KS	US Army Corps of Engineers	M. A. Mortenson Darren Conlee 785-717-2169	$ 1,273,232.00	Concrete foundations

www.stephensandsmith.com
1542 South 1st St. Lincoln, NE 68502 Phone (402) 475-8087 Fax (402) 475-0119
5711 South 60th St. Omaha, NE 68117 Phone (402) 731-0363 Fax (402) 731-6388

Stephens & Smith Construction Co., Inc.

An Owner on Every Project

-History of company/financial stability

CONTRACTORS QUALIFICATION STATEMENT

Stephens and Smith Construction Co. Inc.
1542 South First Street
Lincoln NE 68502
(402) 475-8087

Line of Business: Cast in Place Concrete Construction

NAICS # (North American Industry Classification System)
237310 - Highway, street and bridge construction
238110 - Poured concrete foundations
238390 - Other building finishing construction
238910 - Site preparation
239990 - All other specialty trades

State Contractor License #	22003	NE Sales Tax Option	2
Federal ID #	47-0558429	C Corporation	Incorporated 7/1/74
State Tax #	7371586	Date company started	08/16/1971

Officers of the Corporation	**Office Held**	**With Company Since**
Robert Stephens	President	08/16/1971
Steve Willis	CEO	02/04/1985
Lance Jordan	Vice President	05/23/1978
Brett Richert	Vice President	10/10/1979
Robert Irwin	Vice President	12/03/1982
Gary Ebert	Vice President	06/27/1983
Larry Niles	Vice President	09/03/1996
Steve Amos	Director	04/07/1986
Denise Kobza	Director	06/22/1992
Denny Ackerson	Director	10/25/1999
Ryan Good	Director	04/28/2003
Jason Bryce	Director	08/11/1993

Minority Business Enterprise	no
Woman's Business Enterprise	no
DBE	no
SBE	no

Bank Information

Pinnacle Bank	Line of Credit	3,000,000.00
Mark Dempke	Current available	1,150,000.00
PO Box 540001		
Omaha, NE 68154		
402-697-5958		

Stephens & Smith Construction Co., Inc.

An Owner on Every Project

Dun & Bradstreet info

DUNS # (Data Universal Numbering System)	06-867-3037
rating	3A2

Bonding & Surety Info

Surety Co.	Granite RE	AM Best Rating: A
Broker / Agent	Gene Lilly Surety Bonds	
Contact	Bob Cirone	
Address	P.O. Box 30553 Lincoln, NE 68510 402-475-7700	

Subcontractor aggregate limit	$ 3,000,000.00
Subcontractor single project limit	$ 2,000,000.00
With surety company since	2009

CPA/Accounting Info

CPA/Accountant	James Moock/CPA
Address	3201 Pioneers Plaza #210 Lincoln, NE 68502 402-489-3565

Financial (Fiscal year starts July 1)	**Current 2011**	**2010**	**2009**	**2008**
Annual Sales	$7,489,405.00	$21,817,754.00	$20,531,957.00	$27,194,477.(

Insurance

Unico	General Liability	$1,000,000 each occ	$2,000,000 gen agg.
4435 O Street	Automobile Liability	$1,000,000	
Suite 200	Excess/Umbrella Liability	$1,000,000	
Lincoln NE 68510	Workers Comp	$500,000	
(402) 434-7200			

Safety & Health	**2011**	**2010**	**2009**	**2008**
Mod Rate	0.78	0.86	0.83	0.86
OSHA recordable incident rates		7.92	2.31	3.89
TRIR (Total Recordable Incident Rate)		7.92	2.31	3.89
LTIR (Lost Time Incident Rate)		2.83	0.57	0.87
EMR (Experience Modification Rate)		0.86	0.83	0.86
DART Rate		5.66	1.73	3.03
OSHA citations		0	0	0

www.stephensandsmith.com
1542 South 1st St. Lincoln, NE 68502 Phone (402) 475-8087 Fax (402) 475-0119
5711 South 60th St. Omaha, NE 68117 Phone (402) 731-0363 Fax (402) 731-6388

Stephens & Smith Construction Co., Inc.

An Owner on Every Project

Summary of Work Related Injuries and Illnesses from OSHA 300 Log

	2011	2010	2009	2008
Total hours worked		353,588	347,061	461,936
Lost Time Accidents		5	1	2
Lost Time Accident Rate		2.83	0.57	0.87
OSHA Recordable Accidents		9	2	4
OSHA Recordable Accident Rate		7.92	2.31	4.33
Days of Lost Time		125	32	65
Lost Days Rate		2.83	0.57	0.087
Number of Fatalities		0	0	0

Summary of Work Related Injuries and Illnesses from OSHA 300A

Number of Cases	**2011**	**2010**	**2009**	**2008**
Total number of deaths		0	0	0
Total number of cases with days away from work		5	1	2
Total number of cases with job transfer or restriction		5	2	5
Total number of recordable cases		14	4	9

Number of Days	**2011**	**2010**	**2009**	**2008**
Total number of days of job transfer or restriction		166	79	323
Total number of days away from work		125	32	65

Injury and Ilness Types	**2011**	**2010**	**2009**	**2008**
Injuries				
Skin Disorders				
Respiratory Conditions				
Poisonings				0
All Other Illnesses				

Employment Information	**2011**	**2010**	**2009**	**2008**
Annual average number of employees		160		
Total hours worked by all employees		353,588	347,061	461,936

Trade References

Ready-Mixed Concrete Company Kirk Havranek 6200 Cornhusker Hwy. Lincoln, NE 68507 402-434-1861	Concrete Industries Dave Borchers 6300 Cornhusker Hwy. Lincoln, NE 68507 402-434-1800	Omaha Ready Mixed Concrete Co. Mark Dietz 4315 Cuming Street Omaha, NE 68131 402-556-3600

www.stephensandsmith.com
1542 South 1st St. Lincoln, NE 68502 Phone (402) 475-8087 Fax (402) 475-0119
5711 South 60th St. Omaha, NE 68117 Phone (402) 731-0363 Fax (402) 731-6388

-Ability to complete this project on time and on budget (describe current workload and availability of key staff)

- ***We currently have a backlog of approximately 3.8 million dollars, of which several projects are not slated to start until spring 2012. We currently have 120 field employees of which we see this project requiring between 4 & 10 employees depending on work being performed to meet the April 30, 2012 deadline, or sooner if weather allows.***

-Confirm breakout cost of any construction contingency in quote

- ***There are no contingencies in our quote. Price is based on information from the drawings and any unknown or unforeseen conditions will be an extra cost to the contract. At this point we do not anticipate any additional costs.***

-List of ALL drawings, specifications and related dates of each, that were used as basis for quote

- **West Haymarket's JPA's Notice of Special Purchase – Bid Number 3751**
  - **Additional Information (per Addendum No. 1)**
    - **Sheets C001 - C033 dated November 02, 2011**
  - ***Addendum Numbers 1-3 have been seen***
- **West Haymarket JPA No. 870906, WH-14 Amtrak Station – Building & Canopy**
  - **Civil Sheets – C001 – C009 dated November 02, 2011**
  - **Architectural Sheets – G100, A001, A101, A102, A200, A201, A202, A300, A400, A401, A500, A700 dated November 02, 2011**
  - **Structural Sheets – S001, S101, S102, S103, S104, S501, S502, S503, S504, S505, S506, S507 dated October 28, 2011**
  - **Plumbing Sheets – P101, P501 dated November 02, 2011**
  - **Mechanical Sheets – M101, M501 dated November 02, 2011**
  - **Electrical Sheets – E101, E102, E103, E104, E501, E502, E601 dated November 02, 2011**
  - **Addendum Numbers 1-3 have been seen**
  - **Project Manual and Specification for the Construction of the West Haymarket JPA Amtrak Station Building and Canopy dated November 02, 2011.**

-Detailed cost breakdown of quote based on trade or scope of work.

- ***Excavation, Backfill, & Grading - $134,914.00***
- ***Footing & Wall - $168,586.00***
- ***Erosion Control/Seeding - $10,515.00***
- ***Fencing - $43,677.00***
- ***Site Utilities - $46,578.00***
- ***Slab - $140,747.00***
- ***Mobilization - $11,434.00***
- ***Bond - $9,048.00***

-Breakout cost for any winter condition construction

- **Due to scheduled time frame all winter conditions have been included in the lump sum price of this contract. These include hot water, concrete admixtures, insulated blankets, labor to cover and uncover.**
- **Weather conditions will dictate schedule of dirt work to be performed, which will be adjusted internally.**

UNICO

To whom it may concern:

Upon awarding of this contract to Stephens and Smith Construction Inc. by the JPA, Stephens and Smith, through UNICO Group, Inc. will procure the Railroad Protective Liability insurance coverage required in this contract.

Thank you.

Thomas W. Champoux, CPCU, AIC, CWCA, Licensed Consultant
UNICO Group, Inc.
tchampoux@unicogroup.com
(402) 434-7252 - (Phone)
(402) 434-7272 - (Fax)

Mailing address:

4435 O Street
Suite 200
Lincoln, NE 68510-1800

(402) 434-7200
(800) 755-0048
www.unicogroup.com

Lincoln

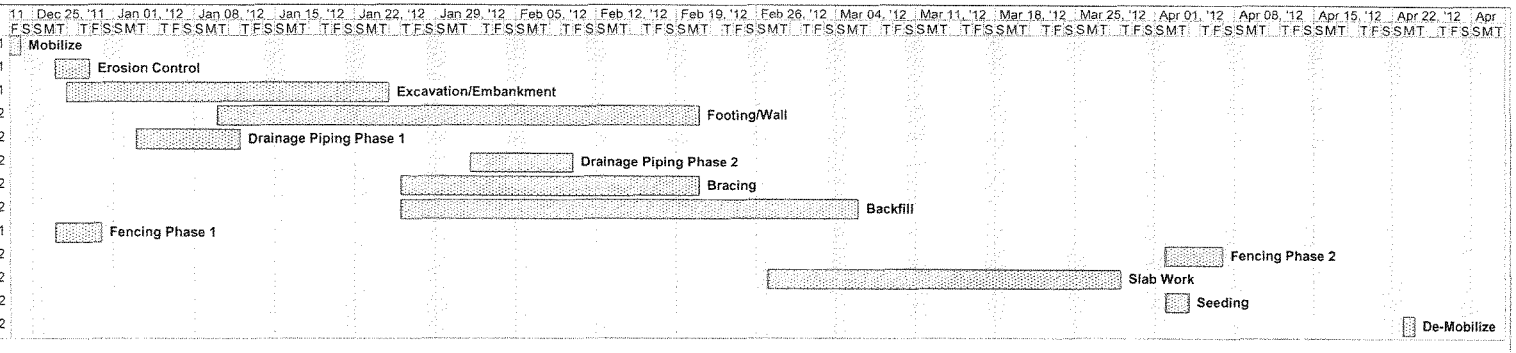
Columbus

Kearney

Papillion/Omaha

Kansas City

ID	Task Name	Duration	Start
1	Mobilization	1 day?	Fri 12/23/11
2	Erosion Control	3 days	Tue 12/27/11
3	Excavation/Embankment	20 days	Wed 12/28/11
4	Footing/Wall	30 days	Tue 01/10/12
5	Drainage Piping Phase 1	7 days	Tue 01/03/12
6	Drainage Piping Phase 2	7 days	Wed 02/01/12
7	Bracing	18 days	Thu 01/26/12
8	Backfill	28 days	Thu 01/26/12
9	Fencing Phase 1	4 days	Tue 12/27/11
10	Fencing Phase 2	5 days	Mon 04/02/12
11	Slab Work	23 days	Mon 02/27/12
12	Seeding	2 days	Mon 04/02/12
13	De-mobilze	1 day?	Mon 04/23/12



Project: Amtrak Platform
Date: Thu 12/08/11

Task		Progress		Summary		External Tasks		Deadline	
Split		Milestone		Project Summary		External Milestone			

TEMPORARY ACCESS AND CONSTRUCTION LICENSE FOR AMTRAK WORK

THIS TEMPORARY ACCESS AND CONSTRUCTION LICENSE FOR AMTRAK WORK ("**License**") is made to be effective as of the 12th day of May, 2011 ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**Licensee**").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. **GENERAL.**

1.1 Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to use (i) the area of Licensor's property labeled "Temporary Access Road" on **Exhibit M-2**, attached hereto and incorporated herein by reference, and shown as light blue thereon, and (ii) the area of Licensor's property labeled "Temporary Easement" on **Exhibit M-2** and shown as red thereon (excluding the red circle labeled "Temporary At-Grade Crossing"), situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (collectively, the "**Premises**") for the purposes specified in **Section 1.3** below (the "**Permitted Uses**").

1.2 In the event the Permitted Uses will affect any improvements or facilities of Licensor or Licensor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "**Other Improvements**"), if any, or interfere with the use of the Other Improvements, Licensee will be responsible at Licensee's sole risk to locate and make any adjustments necessary to such Other Improvements. Licensee must contact the owner(s) of the Other Improvements notifying them of any work that may damage and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses.

1.3 Licensee shall use the Premises exclusively as a site for construction, and ingress and egress to and from the construction site for the Amtrak Work (as defined in that certain Master Development Agreement between Licensor and Licensee dated October 19, 2010 [the "**Master Agreement**"]). Licensee shall not use the Premises for any other purpose whatsoever. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("**CERCLA**") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

1.4 Licensor and Licensee mutually agree that no construction activities for the Permitted Uses, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on Licensor's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to Licensor's Network Operations Center (telephone number: 800 832-5452). Licensor and Licensee mutually understand and agree that trains cannot be subjected to delay during this time period.

1.5 In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.

1.6 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

1.7 Upon completion of the Platform and Canopy, Licensee shall deliver to Licensor a bill of sale (the "**Bill of Sale**") in form and substance reasonably acceptable to Licensor, conveying to Licensor all of Licensee's right, title, and interest in and to the Platform and Canopy. Licensee acknowledges and agrees that Licensee has already received good and valuable consideration for the Platform and Canopy pursuant to the provisions of a separate agreement between Licensor and Licensee.

2. TERM. This License shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until completion of the Permitted Uses, but in no event later than the date that is the earliest to occur of: (i) the end of the Development Period (as defined in the Master Agreement), or (ii) December 31, 2014.

3. COMPENSATION.

3.1 Licensee shall pay Licensor, prior to the Effective Date, the sum of No Dollars ($0) as compensation for the use of the Premises.

3.2 Subject to the provisions of the C&M Agreement (as defined below) concerning Licensee's reimbursement of costs and expenses, including without limitation flagging costs, incurred by Licensor in connection with Licensee's use of the Premises, Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all other costs and expenses incurred by Licensor in connection with Licensee's use of the Premises. All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

4.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the use of the Premises.

4.2 Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all of Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Website "http://contractororientation.com". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

4.3 Licensee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Licensor and Licensee dated October 19, 2010 (the "**C&M Agreement**"). In the event of conflicts between the terms of this License and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

5. **DEFINITION OF COST AND EXPENSE.** For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

6. **RIGHT OF LICENSOR TO USE.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

6.1 to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

6.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

6.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the Permitted Uses.

7. **LICENSEE'S OPERATIONS.**

7.1 Licensee shall notify Licensor's Project Engineer, Gerald Maczuga, at 201 N. 7th Street, Lincoln, NE 68508, telephone (402) 458-7537, at least ten (10) business days prior to initially entering the Premises and prior to entering the Premises for any subsequent maintenance thereon (if applicable). After completion of use of the Premises for the Permitted Uses, Licensee shall notify Licensor in writing that such use has been completed.

7.2 In performing the Permitted Uses, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other. In the event Licensee must cross from one side of Licensor's tracks to the other at a location or locations other than a public roadway, and such location or locations are approved by Licensor in advance, then Licensee shall enter into Licensor's Agreement for Private Crossing for each such private crossing location, each such Agreement for Private Crossing to be in the form attached to the Master Agreement as Exhibit UU.

7.3 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to stop using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

7.4 Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, locate and construct the Platform and Canopy in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of Licensor's railroad. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this **Section 7.4**, Licensor may, at its option, itself perform such work as it deems necessary for

the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

7.5 During the construction of the Platform and Canopy, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Platform and Canopy shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Platform and Canopy, Licensee shall, at Licensee's own cost and expense, restore the Premises to their former state as of the Effective Date.

7.6 Prior to Licensee conducting any excavating or boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested entry on the Premises, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines on the Premises. Prior to conducting any such boring work, Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

7.7 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

7.8 Any open hole, boring or well constructed upon Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

7.8.1 filled in to surrounding ground level with compacted bentonite grout; or

7.8.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on the Premises for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

7.9 Upon completion of Licensee's work on the Premises or upon termination of this License, whichever shall occur first, Licensee shall, at its sole cost and expense:

7.9.1 remove all of its equipment from the Premises;

7.9.2 report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;

7.9.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

7.9.4 leave the Premises in the condition which existed as of the Effective Date.

7.10 Licensee's on-site supervisors shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

8. LIABILITY. During the term of this License, Licensee shall comply with all provisions contained in Sections 3.6 and 3.7 of the C&M Agreement, and all such provisions contained in Sections 3.6 and 3.7 of the C&M Agreement are hereby incorporated herein by reference.

9. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF LICENSOR.

10. INSURANCE. During the term of this License, Licensee shall comply with all provisions contained in Section 3.8 of the C&M Agreement, and all such provisions contained in Section 3.8 of the C&M Agreement are hereby incorporated herein by reference; provided, however, if any portion of the operation is to be subcontracted by Licensee, Licensee must require that Licensee's contractors provide and maintain the insurance coverages set forth in the C&M Agreement, naming Licensor as an additional insured; provided further, however, that policy limits for Commercial General Liability Insurance may be reduced to $2,000,000 per occurrence and an aggregate limit of $4,000,000, but in no event less than the amount otherwise carried by Licensee's contractors. In addition, Licensee must require that Licensee's contractors release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor in the C&M Agreement.

11. ENVIRONMENTAL.

11.1 Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

11.2 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

11.3 In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Platform and Canopy which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

11.4 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

12. ALTERATIONS. Licensee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

13. NO WARRANTIES. LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. QUIET ENJOYMENT. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

15. DEFAULT. If default shall be made in any of the covenants or agreements of Licensee contained in this License, Licensor may pursue any and all remedies set forth in Section 24 of the Master Agreement. The remedy set forth in this **Section 15** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

16. LIENS. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 16** or any other Section of this License.

17. TERMINATION. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

18. ASSIGNMENT. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this

License or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

19. NOTICES. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: West Haymarket Joint Public Agency
c/o City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

20. SURVIVAL. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

21. RECORDATION. It is understood and agreed that this License shall not be filed of record with the Lancaster County, Nebraska Register of Deeds Office or otherwise recorded in the official records of Lancaster County, Nebraska.

22. APPLICABLE LAW. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

23. VENUE. To the fullest extent permitted by law any dispute arising under or in connection with this License or related to any subject matter which is the subject of this License shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by Licensor and Licensee to be mandatory and not permissive. Licensor and Licensee each hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

24. SEVERABILITY. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of

this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

25. INTEGRATION. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

26. MISCELLANEOUS.

26.1 In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

26.2 The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

26.3 All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26.4 Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

[Signature page follows]

IN WITNESS WHEREOF, this License has been duly executed by the parties as of the date below each party's signature; to be effective, however, as of the Effective Date above.

LICENSOR:

BNSF Railway Company

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska

By: _____
Jayne Snyder
Chairperson

Date: 5-10-2011

IN WITNESS WHEREOF, this License has been duly executed by the parties as of the date below each party's signature; to be effective, however, as of the Effective Date above.

LICENSOR:

BNSF Railway Company

By: David P. Schneider

Name: David P. Schneider

Title: General Director – Land Revenue Management

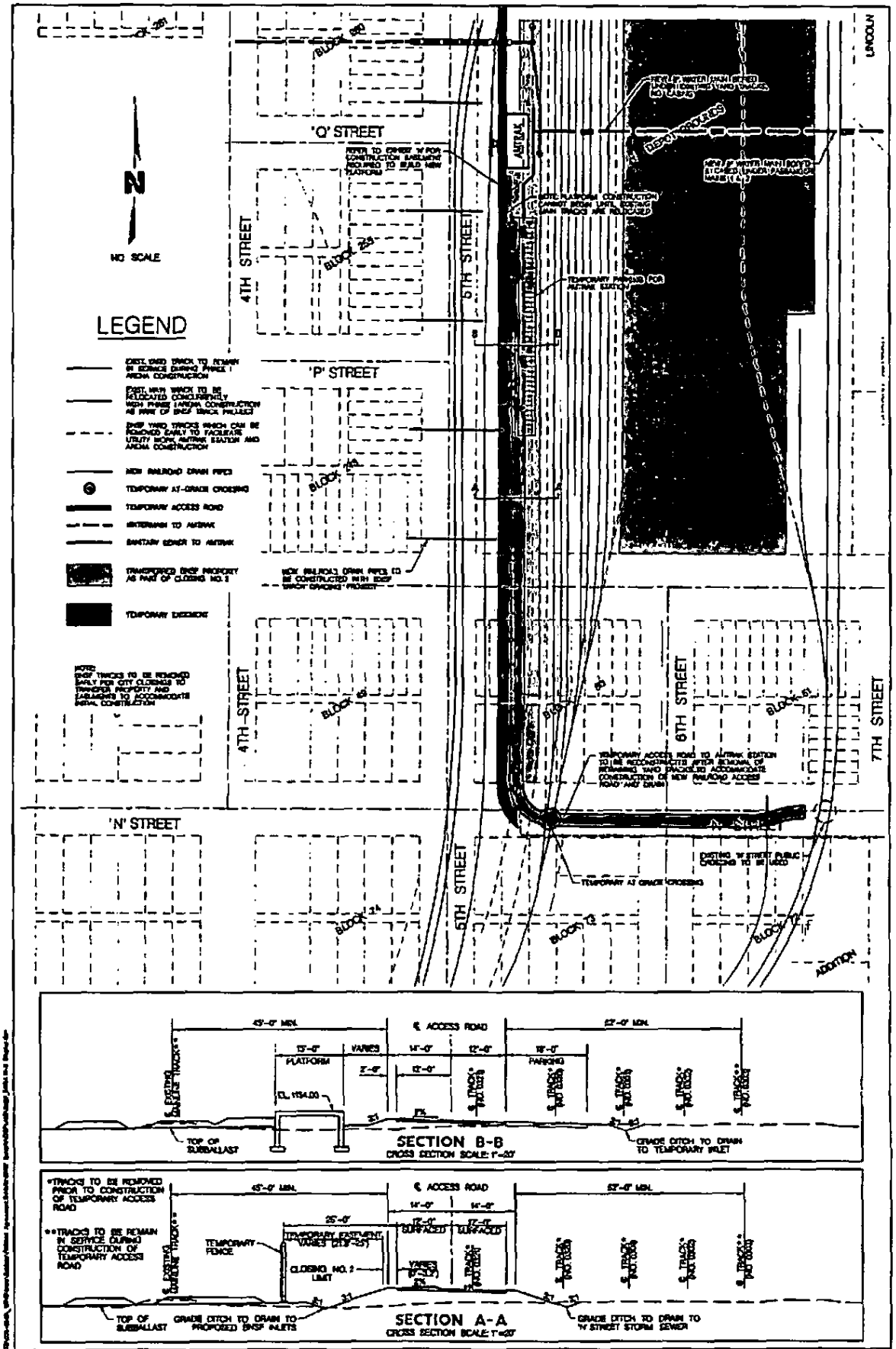
Date: _____

LICENSEE:

West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska

By: _____
Jayne Snyder
Chairperson

Date: _____



PROJECT NO: 008-0845	AMTRAK TEMPORARY ACCESS ROAD	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO			M-2
DATE: 9/29/2010			

A- 86070

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be effective the 18th day of October, 2010 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**City**"). City and BNSF, respectively, are sometimes referred to in this C&M Agreement each as a "**Party**" and collectively, as the "**Parties**".

RECITALS

A. BNSF owns and operates a line of railroad in and through the City of Lincoln, State of Nebraska

B In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, City plans to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**") in the area shown on the map attached hereto as **Exhibit A** and incorporated herein by reference ("**Project Area**") The West Haymarket Project will include, among other things, an approximately 16,000-seat arena (the "**Arena**"), an ice center facility (the "**Ice Center**"), a district energy facility, and upgrades to parking, utilities, and surface transportation access to the area.

C. City and BNSF have entered into that certain Master Development Agreement of even date herewith (the "**Master Agreement**"). In connection with certain economic development objectives of City as set forth in the Master Agreement, City desires that BNSF grant certain permanent or temporary license and/or easement rights to City and certain third parties (each a "**Right of Entry**" and, in multiples, "**Rights of Entry**") for certain activities on BNSF's Property (defined below) (each a "**Right of Entry Work**" and collectively, "**Rights of Entry Work**"). For the purposes of this C&M Agreement, the term "BNSF's Property" shall mean the applicable Existing BNSF Property, Retained BNSF Property, and/or Replacement BNSF Property which is under BNSF ownership at the time work is done under the Right of Entry. All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I – CITY C&M WORK. The provisions of this C&M Agreement, in addition to and not in limitation of the provisions contained in the applicable Rights of Entry, shall apply with respect to the Rights of Entry Work and any other construction, maintenance, Operation (as defined in the Master Agreement), or other work being performed on or adjacent to BNSF property by or for City (collectively, the "**City C&M Work**"). In the event of conflicts between the terms of this C&M Agreement and any applicable Right of Entry agreement, the most restrictive provisions shall apply to City.

ARTICLE II – BNSF OBLIGATIONS. In consideration of the covenants of City set forth herein and the faithful performance thereof, BNSF agrees to do the following:

2.1 Grant to City the following temporary Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.1.1 The Temporary Access License for Initial Construction as defined and described in Section 3.2.1 of the Master Agreement and attached thereto as Exhibit EE;

2.1.2 The Temporary Grading License for Storm Water Mitigation as defined and described in Section 3.2.2(a) of the Master Agreement and attached thereto as Exhibit FF-1;

2.1.3 The Temporary Access License for Soil Staging as defined and described in Section 3.2.3 of the Master Agreement and attached thereto as Exhibit GG;

2.1.4 The Temporary Access License for Construction Staging - Pedestrian Bridge as defined and described in Section 3.2.4(a) of the Master Agreement and attached thereto as Exhibit HH-1;

2.1.5 The Temporary Access License for Amtrak Work as defined and described in Section 3.2.5 of the Master Agreement and attached thereto as Exhibit II;

2.1.6 The Temporary Grading License for Arena Drive and Parking Lot Construction as defined and described in Section 3.2.9 of the Master Agreement and attached thereto as Exhibit KK;

2.1.7 The Temporary Access License for Survey / Geotech / Environmental Activities as defined and described in Section 3.2.11(a) of the Master Agreement and attached thereto as Exhibit BB;

2.1.8 The Crossing Agreements as defined and described in Section 3.2.12 of the Master Agreement and attached thereto as Exhibit UU.

2.1.9 The Temporary Construction and Access License for Sanitary Sewer Work as defined and described in Section 3.2.11(b) of the Master Agreement and attached thereto as Exhibit BB-1.

2.2 Grant to City the following permanent Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.2.1 The Storm Water Mitigation Easement as defined and described in Section 3.2.2(b) of the Master Agreement and attached thereto as Exhibit FF;

2.2.2 The Pedestrian Bridge Easement as defined and described in Section 3.2.4(b) of the Master Agreement and attached thereto as Exhibit HH; and

2.2.3 The City Utility Easements as defined and described in Section 3.2.7 of the Master Agreement and attached thereto as Exhibit TT and Exhibit TT-1.

2.2.4 The 2nd & J Utility Easement as defined and described in Section 3.2.10 of the Master Agreement and attached thereto as Exhibit TT.

2.3 Grant to City the Security Fencing License in accordance with and as defined and described in Section 3.2.8 of the Master Agreement and attached thereto as Exhibit JJ.

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

3.1.1 If any City C&M Work is not included in the City Work Final Design (as defined in the Master Agreement), City must furnish to BNSF four sets of plans and specifications for such City C&M Work (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, for approval prior to commencement of any construction. For each set of such plans and specifications submitted by City to BNSF, BNSF shall approve or reject such plans and specifications within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans and specifications shall be approved or rejected in the manner hereinbefore provided. BNSF will give City final written approval of the plans and specifications substantially in the form of **Exhibit B**, attached hereto and incorporated herein by reference. Upon BNSF's final written approval of the plans and specifications (the "**Approved Plans**"), the Approved Plans will

become part of this C&M Agreement and incorporated herein. Any approval of the Approved Plans by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the Approved Plans meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the Approved Plans or construction is structurally sound and appropriate or that the Approved Plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

3.1.2 City must provide for and maintain minimum vertical and horizontal clearances, as required in the Contractor Requirements in **Exhibit C**, attached hereto and incorporated herein by reference, and as approved by BNSF as part of the City Work Final Design or any other Approved Plans.

3.1.3 Prior to the start of any segment of City C&M Work on or affecting BNSF's property, City must provide to BNSF, and BNSF must approve, exact minimum vertical and horizontal clearances for such segment of City C&M Work being constructed pursuant to the City Work Final Design. Upon BNSF's approval of each segment of City C&M Work, BNSF and City agree to execute an amendment to this C&M Agreement incorporating the approved clearances into this C&M Agreement as **Exhibit D** ("**Final Clearances**"). City shall not deviate from the Final Clearances for the applicable segment of City C&M Work without the prior written approval of BNSF.

3.1.4 City or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Project Engineer (defined below) for approval. The shoring, falsework or cribbing used by City Contractors (defined below) shall comply with all applicable requirements *promulgated by state and federal agencies, departments, commissions and other legislative bodies.*

3.1.5 (a) For purposes of notices required under this C&M to be made to BNSF's Project Engineer, Division Engineer, Manager Signal, and Director Engineering Services, the following contact information is in effect at the Effective Date:

(i) BNSF's "**Project Engineer**" is:

Gerald Maczuga
Gerald.Maczuga@BNSF.com
402-458-7537 (office)
206-265-2427 (cell)
402-458-4376 (fax)

(ii) BNSF's "**Division Engineer**" is:

Andrew Shearer
Andrew.Shearer@BNSF.com
402-458-7724 (office)

(iii) BNSF's "**Manager Signal**" is:

Mike Koetter
Michael.Koetter@BNSF.com
402-458-7504 (office)
402-458-7590 (fax)

(iv) BNSF's "***Director Engineering Services***" is:

Tom Schmidt
Thomas.Schmidt@BNSF.com
913-551-4330 (office)

(b) The contact information in **Section 3.1.5(a)** may be changed from time to time in accordance with the notice provisions of **Section 4.6** below.

3.2 Additional City Requirements.

3.2.1 City must supervise and inspect the operations of all City Contractors to assure compliance with the City Work Final Design and all other Approved Plans, the terms of this C&M Agreement and all communicated and applicable safety requirements of BNSF.

3.2.2 City must make any required applications and obtain all required permits and approvals for the City C&M Work.

3.2.3 City must acquire all rights of way necessary for the City C&M Work.

3.2.4 City must furnish all labor, materials, tools and equipment for the performance of the City C&M Work.

3.2.5 City must advise BNSF's Project Engineer in writing of: (i) the completion date of each Right of Entry Work within thirty (30) days after each such completion date and (ii) the date on which City and/or City Contractor will meet with BNSF for the purpose of making final inspection of each Right of Entry Work.

3.2.6 City must notify and obtain prior authorization from BNSF's Project Engineer before entering BNSF's right-of-way for inspection, construction, maintenance, or any other purposes. Prior to performing any inspection, construction or maintenance with its own personnel, City shall: comply with all of BNSF's communicated and applicable safety rules and regulations; require any City employee performing maintenance to complete the safety training program at the Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of **Exhibit C** or **Section 3.3.6** below, flaggers are required to be present; and procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

3.2.7 City agrees to reimburse BNSF for work of an emergency nature caused by City or City Contractors in connection with the City C&M Work which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such emergency work may be performed by BNSF without prior approval of City and City agrees to fully reimburse BNSF for all such work.

3.2.8 The City C&M Work must be performed by City or City Contractors in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

3.2.9 City must include the following provisions in any contract with City Contractors:

3.2.9.1 City Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "**Lines**") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. City Contractor will be responsible for contacting BNSF's Project Engineer, BNSF's Manager Signal, and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. City Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. City Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

3.2.9.2 City Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the City C&M Work. City Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

3.2.9.3 Failure to mark or identify these Lines will be sufficient cause for BNSF's Project Engineer to stop all or any part of the City C&M Work at no cost to City or BNSF until these items are completed.

3.2.9.4 All City C&M Work performed within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF.

3.2.9.5 Changes or modifications during the City C&M Work that affect safety or BNSF operations must be subject to BNSF's approval.

3.2.9.6 No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(A)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.7 Notwithstanding the provisions of **Section 3.2.9.6** above, solely for the temporary Rights of Entry described in **Sections 2.1.1**, **2.1.3**, **2.1.4**, and **2.1.5** above, no work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work under the referenced temporary Rights of Entry have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(B)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.8 To facilitate scheduling for the City C&M Work, City Contractors shall give BNSF's Project Engineer eight (8) weeks' advance notice of the proposed times and dates for work windows, except in case of emergency, in which event City Contractors must notify BNSF's Project Engineer by telephone at (402) 458-7537 as soon as practicable and shall promptly thereafter follow up with written notice to BNSF's Project Engineer at City Contractor's earliest opportunity. Notwithstanding the foregoing, in no event shall City or any City Contractors enter onto BNSF's property prior to receiving written approval for such entry from BNSF's Project Engineer. BNSF and the City Contractors will establish mutually agreeable work windows for the City C&M Work. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the City C&M Work.

3.3 Construction and Contractor Requirements.

3.3.1 Contractor Requirements. For the City C&M Work, City must comply, and cause all of its contractors (each a "**City Contractor**", and collectively the "**City Contractors**") to comply, with the obligations set forth in **Exhibit C** attached hereto and incorporated herein by reference, and cause all City Contractor(s) for such work to execute and deliver a Contractor Right of Entry ("**CROE**") in the form of **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable. In addition, all City C&M Work must comply with all of the following requirements:

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each

portion of the City C&M Work must be promptly commenced by the Party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the City C&M Work which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from BNSF's Project Engineer.

3.3.3 Site Cleanup and Restoration. City shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, *contaminated soils, asphalt debris, litter and other waste materials resulting from the City C&M Work to the* reasonable satisfaction of BNSF's Division Engineer.

3.3.4 Safety/Security.

3.3.4.1 During the City C&M Work, City, at City's sole cost, shall perform all activities and work in such a manner as to preclude personal injury or property damage to BNSF or any other party, and shall ensure that there is no interference with the railroad operations or other activities of BNSF, or anyone present on BNSF's property with the authority or permission of BNSF. City shall not disturb any improvements of BNSF or BNSF's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements, except as permitted by **Section 3.3.5** below.

3.3.4.2 Prior to entering BNSF's property to perform the City C&M Work, City shall *cause all City Contractor(s) to comply with all of BNSF's communicated and applicable safety and security* rules and regulations and complete the safety training program at the Website "www.contractororientation.com" or then-current program designated by BNSF (the "**Safety Orientation**") and eRAILSAFE or then-current security program designated by BNSF (the "**Security Orientation**") within one year prior to entering upon BNSF's property. Additionally, City must ensure that each and every employee of all City Contractors possess a card certifying completion of the Safety Orientation and the Security Orientation prior to entering upon BNSF's property. City must renew the Safety Orientation and Security Orientation annually.

3.3.4.3 City must supervise and inspect the activities of all City Contractors entering onto BNSF's property to perform the City C&M Work, and assure compliance with the applicable Approved Plans, the terms of this C&M Agreement, and all communicated and applicable safety requirements of BNSF. BNSF will have the right to stop work if any of the following events take place: (i) If BNSF determines that proper supervision and inspection are not being performed by City at any time during the City C&M Work, (ii) any City Contractor performs any work in a manner contrary to the applicable Approved Plans; (iii) any City Contractor, in BNSF's opinion, prosecutes its work in a manner which is hazardous to BNSF property, facilities, personnel, or the safe and expeditious movement of railroad traffic; or (iv) the insurance described herein or in **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable, is canceled or expires. The work stoppage will continue until all necessary actions are taken by City to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have under this C&M Agreement or an applicable Right of Entry. In the event that BNSF desires to stop work, BNSF agrees to immediately notify City. Notwithstanding the foregoing, BNSF has no duty or obligation to observe or inspect, or to halt work by any City Contractor on BNSF's property, it being solely City's responsibility to ensure that work performed by any City Contractor is conducted in compliance with *the terms of this C&M Agreement, all Legal Requirements and the applicable Approved Plans.*

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "**Other Improvements**"). City must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. City must also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or

Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this **Section 3.3.5**, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

3.3.6 Flagging. Subject to modification in writing by BNSF's Division Engineer, no City Contractor shall conduct any activities on, or be present on, any portion of BNSF's property that is within twenty-five (25) feet of any active railroad track or where any such activities have the potential to foul any active railroad track, except in the presence of a flagger. In addition to and not in limitation of the foregoing, City shall, and shall cause its City Contractors to, comply with all BNSF requirements concerning flagging, including without limitation the provisions of Section 1.05 of **Exhibit C**. BNSF shall arrange for the presence of flaggers as soon as practicable after receipt of notice from City in accordance with Section 1.05.01 of **Exhibit C**; provided, however, BNSF shall not be held responsible for City delays when flaggers are not available.

3.3.7 Flagging Costs. Flagging costs of the Included BNSF Work (as defined in the Master Agreement) are the responsibility of BNSF to the extent described in Section 2.2(i) of the Master Agreement. All other flagging costs, including without limitation flagging costs for City C&M Work, BNSF Additional Cost Work and any other work that is or becomes a part of the West Haymarket Project, shall be at City's cost and expense; provided, however, to the extent BNSF is performing work requiring flagging that is the responsibility of BNSF (under the first sentence of this **Section 3.3.7**) at the same time and in the same location as the City C&M Work, BNSF Additional Cost Work and/or any other work that is or becomes a part of the West Haymarket Project, such flagging costs and expenses shall be deemed to be part of the Included BNSF Work. Notwithstanding the foregoing, however, if the City C&M Work, BNSF Additional Cost Work or any other work that is or becomes part of the West Haymarket Project is of such magnitude that additional flaggers or additional flagging time is required, then City shall be responsible for all flagging costs and expenses for such incremental flaggers and additional flagging time as BNSF Additional City Cost Work. As further described in Section 1.05.03c of **Exhibit C**, the governmental flagging rate in effect at the time of performance by the flaggers will be used to calculate flagging costs. As more particularly described in Section 2.7.2 of the Master Agreement and also in the Escrow Agreement (as defined in the Master Agreement), City shall deposit additional amounts, including amounts for estimated flagging costs, into escrow for BNSF Additional City Cost Work.

3.3.8 No Unauthorized Tests or Digging. No City Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on BNSF's property, except after City has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.

3.3.9 Drainage. Any and all cuts and fills, excavations or embankments as part of the City C&M Work shall be deemed to be a part of the City C&M Work and shall be made by City in such manner, form and to the extent as will provide adequate drainage of and from BNSF's property and any adjoining BNSF right of way. Wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from either or both BNSF's property and BNSF's adjoining right of way, City shall construct such culverts or drains to preserve such natural and pre-existing drainage, and such culverts or drains shall also be deemed to be a part of the City C&M Work. City shall wherever necessary with respect to the City C&M Work, construct extensions of existing drains, culverts or ditches through or along BNSF's property (which extensions will also be deemed to be a part of the City C&M Work), such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

3.3.10 Liens. City shall promptly pay and discharge any and all liens arising out of any construction done, suffered or permitted to be done by City. BNSF is hereby authorized to post any notices

or take any other action upon or with respect to BNSF's property that is or may be permitted by Legal Requirements to prevent the attachment of any such liens to any portion of BNSF's property; provided, however, that failure of BNSF to take any such action shall not relieve City of any obligation or liability under this Section or any other section of this C&M Agreement. City shall include in its contracts with all City Contractors, and require all contractors performing any work on BNSF's property or providing materials to include in their contracts with their subcontractors, a notice and acknowledgement by the party providing work or materials that BNSF is not liable for any amounts due such contractor or contractors and waiving any right to place a lien on BNSF's property.

3.4 Environmental Compliance and Notification.

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to strictly comply with all federal, state and local environmental laws and regulations in its use of BNSF's property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to the BNSF property. City and its contractors, if any, shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on BNSF's property. City and its contractors, if any, shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in BNSF's property and as encountered in the City C&M Work and then only in compliance with Environmental Laws and the SMP (defined below), and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the City C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any BNSF property.

3.4.2 Notice of Release. City shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from BNSF's property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of BNSF's property. City shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in this C&M Agreement only in compliance with Environmental Laws and the SMP. City shall also give BNSF notice of all measures undertaken on City's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

3.4.3 Remediation of Release. In the event City has notice of a release or violation of Environmental Laws which occurred or may occur as a result of City's activities contemplated in this C&M Agreement, City shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting BNSF's property or improvements. If during the City C&M Work, soils or other materials considered to be environmentally contaminated are exposed, City will remove and safely dispose of said contaminated soils only in compliance with Environmental Laws and the SMP. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

3.4.4 Evidence of Compliance. City agrees to periodically to furnish BNSF upon written request with reasonable proof that it is in compliance with this **Article III, Section 3.4**.

3.4.5 Soil Management Plan. In addition to the other obligations of City and City Contractors as set forth herein, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the Soil Management Plan attached hereto as **Exhibit E** ("**SMP**") sets forth additional obligations of City and BNSF with respect to the proper management of impacted environmental media during the Development Period (as defined in the Master Agreement).

3.5 Timing.

3.5.1 City will use commercially reasonable efforts to perform all City C&M Work in accordance with the Timeline.

3.5.2 BNSF and City mutually agree that no construction activities for the City C&M Work, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on BNSF's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). BNSF and City mutually understand and agree that trains cannot be subjected to delay during this time period.

3.6 Indemnifications.

3.6.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF *AND BNSF'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL* REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):**

(i) **ANY RIGHTS OR INTERESTS GRANTED TO CITY OR ANY CITY PARTY (DEFINED BELOW) PURSUANT TO THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THIS C&M AGREEMENT;**

(ii) **THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CITY CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY *WORK PERFORMED BY CITY OR ANY CITY PARTY IN, ON, OR ABOUT BNSF'S PROPERTY OR* RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING (AS DEFINED IN THE MASTER AGREEMENT), OR STORM WATER MITIGATION (AS DEFINED IN THE MASTER AGREEMENT) BY CITY;**

(iii) **ANY ENVIRONMENTAL MATTERS ARISING FROM THE WEST HAYMARKET PROJECT AND/OR AFFECTING THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO;**

(iv) **ANY AND ALL CLAIMS BROUGHT BY ANY PARTY RELATED TO OR ARISING FROM THE ACQUISITION AND/OR DEVELOPMENT OF ANY AND ALL PROPERTY AS PART OF THE WEST HAYMARKET PROJECT, INCLUDING WITHOUT LIMITATION PROPERTY DESCRIBED IN THIS C&M AGREEMENT, THE MASTER AGREEMENT, THE EXCHANGE AGREEMENT, AND/OR THE RIGHTS OF ENTRY AGREEMENTS;**

(v) **THE CONDITION OF THE REPLACEMENT BNSF PROPERTY, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS RELATED TO OR ARISING FROM THE EXISTENCE OF ANY THIRD PARTY RESERVED RIGHTS AND/OR ANY THIRD PARTY'S EXERCISE OF ITS RESERVED RIGHTS;**

(vi) **ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CITY OR ANY CITY PARTY, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS**

OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(vii) **CITY'S OR ANY CITY PARTY'S BREACH OF THE TERMS AND CONDITIONS OF THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THE MASTER AGREEMENT;**

(viii) **ANY ACT OR OMISSION OF CITY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS, OR A CITY PARTY, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

THE LIABILITY ASSUMED BY CITY AND THE CITY CONTRACTORS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY BNSF'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

3.6.2 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.**

3.6.3 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES, AND SHALL CAUSE CITY'S CONTRACTORS TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CITY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

3.6.4 City agrees that its obligations under the provisions of this **Section 3.6** expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement and the Rights of Entry agreements.

3.7 Waiver of Municipal and Sovereign Immunity. To the fullest extent permitted by law, City waives its municipal immunity and its sovereign immunity with respect to BNSF for matters arising out of the West Haymarket Project, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and this C&M Agreement, including, without limitation, (i) for environmental and other conditions of the Replacement BNSF Property that City is conveying to BNSF pursuant to the Master Agreement and the Exchange Agreement; (ii) for environmental and other conditions of the real property that BNSF is quitclaiming to City pursuant to the Master Agreement and the Exchange Agreement and of property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest, including remediation costs beyond Nebraska Department of Environmental Quality Title 200 funds ("**Title 200 Funding**"); (iii) for claims arising out of work performed by City or its contractors pursuant to the provisions of this C&M Agreement, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and the Exchange Agreement; and (iv) for claims arising out of continuing rights of City to enter onto property of BNSF, including work performed by City and City Contractors on such property of BNSF. Any lawful waiver of City's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of City's sovereign immunity pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement, and the Rights of Entry agreements.

3.8 Insurance Obligations.

3.8.1 During the Development Period, City shall, at its sole cost and expense, procure and maintain the following insurance:

3.8.1.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability in an amount of at least $25,000,000 per occurrence and an aggregate limit of $50,000,000, but in no event less than the amount otherwise carried by City. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

3.8.1.4 Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000.00 per occurrence and $10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- *Endorsed to remove any exclusion for punitive damages.*
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

In lieu of providing a Railroad Protective Liability Policy, City may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to City and City Contractors.

3.8.1.5 Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

City agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. City further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under City's care, custody or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

City is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automotive Liability and up to $500,000 per occurrence and $500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions

of this C&M Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the City C&M Work, City must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Upon notification to BNSF of cancellation, non-renewal, substitution or material alteration of any such policy(ies), BNSF shall have the option to (i) if feasible, pay, on behalf of the City, any and all such premiums, penalties, fees or expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market and procure such policy(ies) of insurance on behalf of City as required by this C&M Agreement at the then-current market rate. Upon any of the above occurrences, BNSF shall invoice the City for reimbursement of all such premiums, penalties, fees or expenses advanced on City's behalf plus an additional fifteen (15%) of such advanced amounts as remuneration for BNSF's overhead. Such amounts advanced by BNSF shall be paid by City within thirty (30) days after delivery of a statement for such expense. Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

City represents that this C&M Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by City to procure the insurance coverage required by this C&M Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. City represents that it understands and its insurance agent(s)/broker(s) have been informed that the City's insurance coverage being procured by City herein is to protect, defend, indemnify and hold harmless BNSF from any and all Liabilities, as such term is defined herein, that may arise in connection with this C&M Agreement and City, to the fullest extent allowed by law, waives its sovereign and municipal immunity and any caps or limitations on legal liability that may result therefrom.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by City, City must require that City Contractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured; provided, however, that policy limits for Commercial General Liability Insurance may be reduced to $5,000,000 per occurrence and an aggregate limit of $10,000,000, but in no event less than the amount otherwise carried by the City Contractor. In addition, City must require that City Contractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Section 3.8** will entitle, but not require, Railroad to immediately suspend, until such default is cured, any and/or all work under this C&M Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work, and (iii) any other work on or affecting any BNSF property, subject to termination as provided in the Master Agreement. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by City will not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this C&M Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this **Section 3.8**, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

3.8.2 During the Post-Development Period (as defined in the Master Agreement), City shall, and shall require City Contractors to, at City's sole cost and expense, procure and maintain the insurance coverages listed in the applicable Rights of Entry, continuing thereafter so long as the C&M Agreement and/or any Right of Entry agreement is in effect.

3.9 Adherence to Timeline. City must require City Contractors to reasonably adhere to the Timeline. The Parties mutually agree that BNSF's failure to complete the BNSF Work in accordance with *the Timeline due to inclement weather or unforeseen railroad emergencies will not constitute a breach of* this C&M Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the Timeline, BNSF reserves the right to reallocate the labor forces assigned to complete the BNSF Work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The Parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this C&M Agreement by BNSF.

ARTICLE IV – MISCELLANEOUS

4.1 Any books, papers, receipts, and accounts of the Parties relating to the City C&M Work and the BNSF Additional City Cost Work will at all reasonable times and upon reasonable prior written notice be open to inspection and audit by the agents and authorized representatives of the Parties for a period of one (1) year after the date of the final disbursement from the Escrow Account.

4.2 The terms and conditions of indemnification and liability provisions of **Sections 3.6** and **3.7** shall survive expiration or termination of this C&M Agreement, the Master Agreement and the Exchange Agreement, and all Closings under the Exchange Agreement.

4.3 The covenants and provisions of this C&M Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding the preceding sentence, neither Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this C&M Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) City's entire interest under the Master Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to JPA.

4.4 This C&M Agreement shall be in effect for so long as the Master Agreement and/or any Right of Entry is in effect; provided, however, that if the Master Agreement and all Rights of Entry have expired or been terminated, BNSF has the right to terminate this C&M Agreement upon written notice to City.

4.5 Neither termination nor expiration of this C&M Agreement will release either Party from any liability or obligation under this C&M Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

4.6 Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party no less than thirty (30) days' advance written notice of such change in address.

If to BNSF: BNSF Railway Company
P.O. Box 961034
Fort Worth, TX 76161-0034.
Attn: Robert J. Boileau, P.E., Assistant Vice President, Engineering Services

If to City: City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

4.7 Time is of the essence of this C&M Agreement.

4.8 In any action (declaratory or otherwise) brought by either Party in connection with or arising out of the terms of this C&M Agreement, the prevailing Party in such action will be entitled to recover from the non-prevailing Party all actual costs, actual damages, and actual expenses, including, without limitation, reasonable attorneys' fees and charges to the fullest extent permitted by law.

4.9 Each Party and its counsel have reviewed and revised this C&M Agreement. The Parties agree that the rule of construction that any ambiguities are to be resolved against the drafting Party must not be employed to interpret this C&M Agreement or its amendments or exhibits.

4.10 If any clause or provision of this C&M Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this C&M Agreement, then and in that event, it is the intention of the Parties that the remainder of this C&M Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this C&M Agreement that is illegal, invalid or unenforceable, there be added, as a part of this C&M Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

4.11 This C&M Agreement, the Master Agreement, the Exchange Agreement, and, to the extent executed, the Right of Entry licenses and/or easements described herein, contain the entire agreement between BNSF and City with respect to the West Haymarket Project. Oral statements or prior written matters not specifically incorporated into this C&M Agreement are superseded hereby. No variation, modification, or change to this C&M Agreement, the Exchange Agreement or the Rights of Entry agreements shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party's right to require strict compliance with any term of this C&M Agreement. The captions next to the section numbers of this C&M Agreement are for reference only and do not modify or affect this C&M Agreement.

4.12 No director, officer, elected or appointed official, or employee of either of the Parties shall be personally liable in the event of any default.

4.13 This C&M Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.

4.14 As of this same Effective Date, City and BNSF have also entered into the Master Agreement, the Exchange Agreement and to the extent executed, certain Right of Entry licenses and/or easements. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Right of Entry licenses and/or easements. City and BNSF agree that, except as otherwise stated in **Article 1** of this C&M Agreement: (i) in the event the terms of the Master Agreement and the terms of the C&M Agreement, the Exchange Agreement and the various licenses and/or easements are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement and the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the Exchange Agreement shall prevail, and (iii) in the event the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the C&M Agreement shall prevail.

4.15 All aspects of this C&M Agreement shall be governed by the laws of the State of Nebraska.

4.16 To the fullest extent permitted by law any dispute arising under or in connection with this C&M Agreement or related to any subject matter which is the subject of this C&M Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive. Each Party hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

4.17 By signing below, the Parties affirm they have the legal authority to enter into this C&M Agreement.

4.18 Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Party shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this C&M Agreement.

[*Signature page follows*]

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David L. Freeman, Vice President – Engineering

Date: _____

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

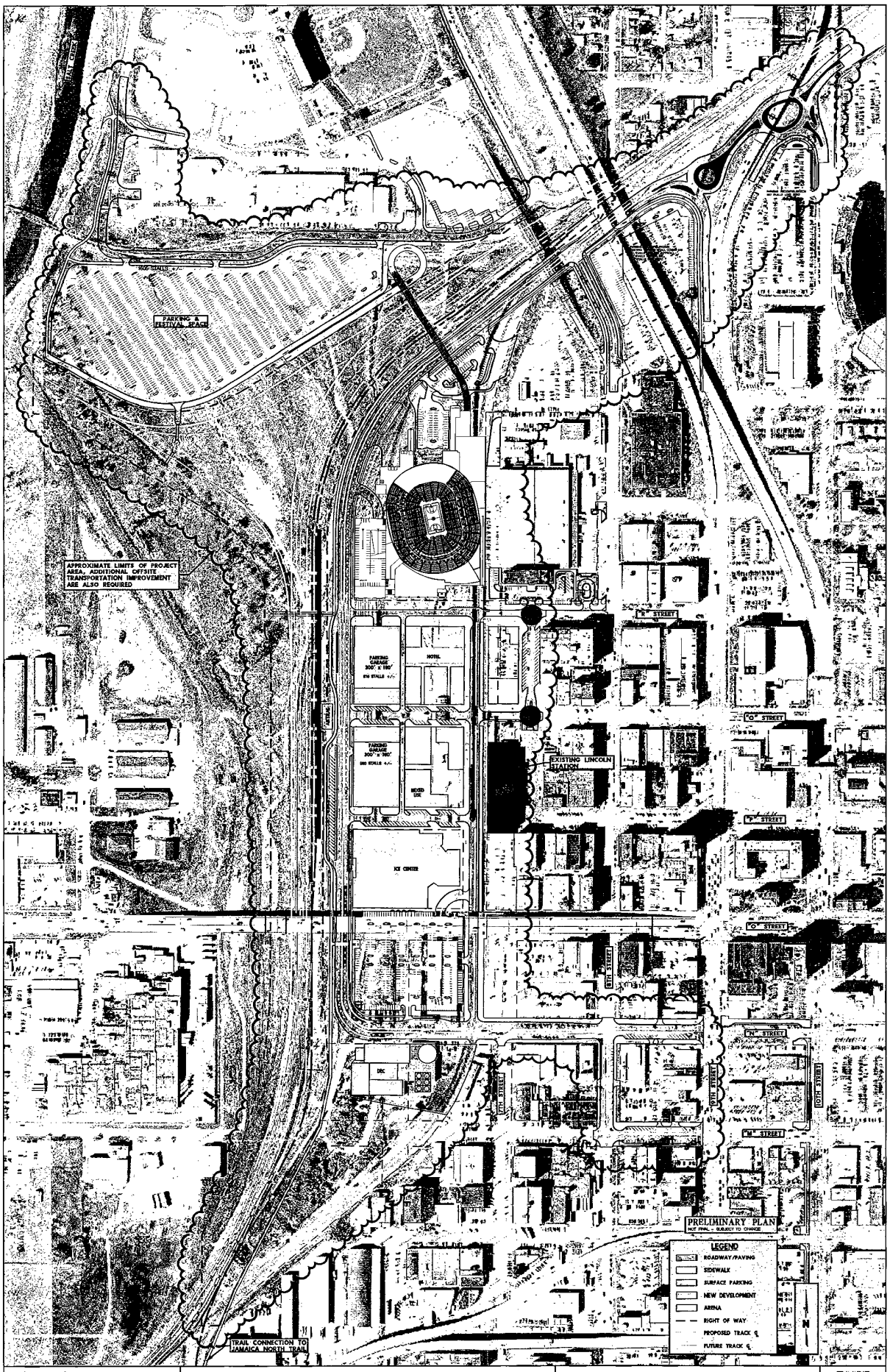
By: _____
David L. Freeman, Vice President – Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]



PROJECT NO: 008-0645 DRAWN BY: JGO DATE: 8/23/2010	WEST HAYMARKET REDEVELOPMENT AREA	OLSSON ASSOCIATES 1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	EXHIBIT A

DATE: 8/23/2010
DGN: f:\projects\008-0645_mw\base\sch\bls\railroad_agreement\exhibits\BNSF Exhibits\DISPLAYS\BNSF_Exhibit A Display.dgn

EXHIBIT B

Form of BNSF Plan Approval

Gerald Maczuga
Project Engineer

BNSF Railway Company
201 N 7th St
Lincoln, NE 68508
402-458-7537 (office)
402-458-4376 (fax)
Gerald.Maczuga@BNSF.com

Date: _____

Ernest R. Peo, III
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: Chief Assistant City Attorney

Re: Review of Plans and Specifications dated September 2, 2010, drafted by Olsson Associates (hereinafter called the "**Plans and Specifications**")

Dear Mr. Peo:

This letter serves as BNSF Railway Company's ("**BNSF**") response to its review of the Plans and Specifications covering the construction of the West Haymarket Utility Relocation - Project Number 870501. BNSF has reviewed these plans and no exceptions are taken. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design of the project. These comments are given to the City of Lincoln, Nebraska ("**City**") pursuant to Section 3.1.1 of that certain Construction and Maintenance Agreement between BNSF and City, dated _____, 2010. If the Plans and Specifications are revised by City subsequent to the date set forth above, this letter shall no longer serve as BNSF's written comments and City must resubmit said Plans and Specifications to BNSF for review.

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

  Roger Figard, City Engineer
  Department of Public Works and Utilities
  City of Lincoln, Nebraska
  555 South 10th Street
  Lincoln, NE 68508

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway's Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to Railway's Property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on Railway's Property. Contractor shall not handle, transport, release or suffer the release of "hazardous

waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in Railway Property and as encountered in the C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway Property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give Railway notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting Railway Property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish Railway upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.

- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.

- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.

- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the *Contractor such that the C&M Work may be handled and performed in an efficient manner.* The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.**

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's

operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

  - 15' Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained:

  - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
  - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge

- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.

- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor, upon completion of the C&M Work, must promptly remove from the Railway Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway's Project Engineer to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.contractororientation.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

  Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.

- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01 C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Railway Property, except after Contractor has obtained written approval from Railway Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.**

- **1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the**

personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.**

- **1.06.04 When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.**

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF**

THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

- **1.07.05** Contractor will be responsible at no cost to Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway Property (collectively, "**Other Improvements**"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway improvements and Other Improvements in the field in order to verify their locations. Contractor must also use all reasonable methods when working on or near Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting Railway Property, in a manner that does not adversely impact utility service to Railway.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1 (800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1 (817) 352-7595 and to the Railway's Project Engineer no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St
2. Date: _____ Time: _____ County:
3. Temperature:
4. Weather
   (if non-Railway location)

5. Social Security #

6. Name (last, first, mi)

7. Address: Street: _____ City: St._____ Zip:

8. Date of Birth: _____ and/or Age _____ Gender:
   (if available)

9. (a) Injury: _____ (b) Body Part:
   (i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
    __ First Aid Only
    __ Required Medical Treatment
    __ Other Medical Treatment

13. Dr. Name _____ 30. Date: _____

14. Dr. Address:
    Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name:

16. Hospital Address:
    Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis:

FAX TO RAILWAY AT (817) 352-7595
AND COPY TO RAILWAY ROADMASTER FAX

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

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

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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

_____	
(Contractor)	**BNSF Railway Company**
By:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*
Contact Person: _____	Accepted and effective this _____day of 20__.
Address: _____	
_____	
City:_____ State:___ Zip:____	
Fax: _____	
Phone: _____	
E-mail:_____	

EXHIBIT C-1(B)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

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

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

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

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

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

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- Additional insured endorsement in favor or and acceptable to Railroad.
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- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
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D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- *Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)*
- Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

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The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

_____	
(Contractor)	**BNSF Railway Company**
By:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*
Contact Person: _____	Accepted and effective this _____day of 20__.
Address: _____	
_____	
City:_____ State:___ Zip:____	
Fax: _____	
Phone: _____	
E-mail:_____	

EXHIBIT D

Final Clearances

Pursuant to the provisions of **Section 3.1.3** of the C&M Agreement, approved Final Clearances for each segment of City C&M Work being constructed pursuant to the City Work Final Design are attached hereto as **Exhibit D**.

EXHIBIT E

Soil Management Plan

In addition to and not in limitation of the requirements and obligations of City and City Contractors contained in the C&M Agreement, the following requirements shall apply to City and City Contractors with respect to management of impacted environmental media. In the event of conflicts between the terms of this **Exhibit E** and the rest of the C&M Agreement, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the most restrictive provisions shall apply to City and City Contractors.

Proper Management of Impacted Media

1. Access

Access to the West Haymarket Redevelopment Site (WHRS) is restricted to railroad and City of Lincoln personnel and contractors conducting work in their official capacity as employees or contractors of their respective organizations. Access to Railroad operating property for purposes of providing construction – related services is subject to specific safety and rules training certifications and requirements found at: **www.contractororientation.com**. Access to other non-railroad private property for purposes of performing construction – related services within the WHRS must be arranged through the EPMT.

2. Management Practices

Due to the potential risks and penalties involved in management of impacted media and protection of rare and unique saline wetlands as well as the wide applicability of these issues to planned construction activity, prescriptive management practices for these areas are as follows:

2.1 Impacted Soil and Debris Management

Attachment 3 - NDEQ Environmental Guidance Document 05-061 "Investigation Derived Waste and Remediation Considerations" (GD 05-061) is provided as reference. Relevant and critical points extracted from GD 05-061 as well as NDEQ's Title 132 (Integrated Solid Waste Management Regulations) for purposes of implementation and compliance is as follows:

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.

2. Title 132, Chapter 1, Section 041 defines fill as: "*solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material*".

3. The "*use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment*".

4. From pg. 2 of NDEQ GD 05-161: "*Activity not related to investigation or remediation is not considered "active management" under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation.*"

5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

contaminants of concern (if any) and allowable re-use (including use as fill), alternatives to be employed for excess soil or debris to be generated associated with his/her respective work task. The project manager will work with the construction representative and advise where excess soils or debris shall be stored. Provisions for temporary storage of potentially impacted soil/debris must be explicitly agreed upon.

2.2 Grading/Excavation

Construction grading and excavation activities associated with applicable WHRS project activities require coordination and compliance as follows:

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.

2. The PM/CR must arrange for all utility clearance.

3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).

4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation***.

5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.

7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.

8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

2.3 Utility Work

Contractors performing utility work including all intrusive work (trenching, boring, digging, etc.) where surface features (soil, concrete, asphalt, vegetated surfaces) will be disturbed require conformance to the following procedures:

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.

2. The PM/CR must arrange for all related utility clearance.

3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).

4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.

7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.

8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.

9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:

Frank Uhlarik – Alfred Benesch & Company:	**402-333-5792** **Cell: 402-669-0546**
Alternate:	
Bill Imig – Olsson Associates:	**402-458-5903** **Cell: 402-314-4568**
Alternate:	
Miki Esposito – Environmental Project Management Team:	**402-441-6173**

Agencies/Railroad Authorities:

Nebraska Department of Environmental Quality:	**402-471-2186 or 877-253-2603**

After Hours, Weekends and Holidays:

Nebraska State Patrol Dispatch:	**402-471-4545**
BNSF Railway Company Resource Operations Center:	**800-832-5452**
Union Pacific Railroad Security:	**888-877-7267**
National Response Center:	**800-424-8802**

ALL OTHER INCIDENTS

Fire and Police: **Dial 911**

LIST OF ACRONYMS

CR	Contractor's Representative
SMP	Soil Management Plan
EPMT	City of Lincoln Environmental Project Management Team
PM	Project Manager
TR	Environmental Project Management Team Technical Representative
WHRS	West Haymarket Redevelopment Site

SUBLEASE AGREEMENT
BETWEEN AMTRAK AND
WEST HAYMARKET JOINT PUBLIC AGENCY
LINCOLN, NE

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered into as of this 28th day of January, 2011, by and between **National Railroad Passenger Corporation**, a corporation organized under the Rail Passenger Service Act now codified at Title 49 U.S. Code Section 24101 et seq. (the "Act") and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, DC 20002 ("Amtrak"), **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska, having its principal office and place of business at 555 South 10th Street, Lincoln, Nebraska (the "Subtenant").

RECITALS:

WHEREAS, BNSF Railway Company (the "Prime Landlord") and Amtrak entered into that certain lease agreement dated as of January 28, 2011 (the "Prime Lease"), for certain real property and facilities owned by the Prime Landlord and located at an address in Lincoln, Nebraska to be established in connection with the West Haymarket Project (defined below) and amended into this Sublease and shown as shaded on **Exhibit A** attached to this Sublease and by this reference made a part hereof (the "Subleased Premises"); and

WHEREAS, in an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, Subtenant has proposed the introduction of additional entertainment, recreational, lodging, office and retail activities; expanding the amount and quality of parking services and upgrade of surface transportation access to the area, in part through the construction of an approximately 16,000-seat arena, a privately owned and operated hotel of approximately 200 rooms, surface and garage parking, space for intercity passenger rail service in the vicinity of the Subleased Premises, retail, office and service businesses, recreational facilities and other complimentary uses (collectively "West Haymarket Project") in the West Haymarket Redevelopment Area ("Project Area"); and

WHERAS, the West Haymarket Project includes a new train station, including a new depot to be constructed by Subtenant on property owned by Subtenant, and a new intercity rail passenger platform and canopy (together the "New Platform") to be constructed and maintained by Subtenant, at no cost or expense to Amtrak, on the Subleased Premises (the new depot, passenger platform and canopy are collectively referred to as the "New Depot"); and

WHEREAS, as part of the West Haymarket Project the parties anticipate that certain of Prime Landlord's tracks will be realigned and once construction of the New Depot has been completed in accordance with plans and specifications approved by Amtrak, Amtrak operations will be relocated, at Subtenant's expense, to the New Depot, and the existing platform and depot

will be closed. The track relocation will require Prime Landlord to terminate the use and cause the removal of its Passenger Main Line Track No. 2 (including platform and canopy) currently utilized by Amtrak's intercity passenger trains after it has constructed a new passenger main line track (Passenger Main Line Track No. 4) to be utilized by Amtrak intercity passenger trains as shown on **Exhibit B** (i.e., Exhibits M-2 and N from the Master Agreement between the Subtenant and Prime Landlord) attached hereto and incorporated herein by this reference; and

WHEREAS, the Subtenant 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 for the purpose of assuming the responsibilities of the City of Lincoln for constructing the West Haymarket Project; and

WHEREAS, 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; and

WHEREAS, Subtenant and Amtrak desire to enter into this Sublease in connection with the construction and maintenance of the Subleased Premises by Subtenant.

NOW, THEREFORE, Amtrak and Subtenant agree that the foregoing recitals are incorporated into this Sublease by this reference and further agree as follows:

AGREEMENT:

1. **Sublease.** Amtrak hereby subleases the Subleased Premises unto the Subtenant, and the Subtenant hereby subleases the Subleased Premises from the Amtrak, upon the terms and conditions hereinafter set forth. The trackside boundaries of the Subleased Premises shall commence at the edges of the ballasted right of way, and shall be measured by the trackside edge of platforms where they exist, or are built. JPA shall have no right to use the Subleased Premises for providing rail service without the express written consent of BNSF. This Sublease is subject to Amtrak's statutory rights of use the facilities as outlined in 49 U.S.C. § 24101 *et seq.*; and

2. **Commencement Date and Termination.** This Sublease shall become effective upon written notice from Amtrak to Subtenant that the Prime Lease has commenced (the "Commencement Date") and shall continue in effect until it is terminated by Amtrak giving Subtenant at least sixty (60) days' prior written notice.

If for any reason the term of the Prime Lease is terminated during the term of this Sublease, this Sublease shall thereupon terminate, and Amtrak shall not be liable to Subtenant, for damages or otherwise, by reason thereof. Rent paid in advance by Subtenant, if any, will be prorated as of the date of such termination.

3. **Surrender of the Subleased Premises.** Upon the termination of this Sublease by Amtrak, Subtenant shall quit and surrender the Subleased Premises to Amtrak in the same condition as at the Commencement Date, as, and to the extent, improved by the construction of the New Platform or otherwise.

4. **Rent.** Subtenant shall pay Amtrak at the Amtrak's office or at such place as Amtrak may from time to time designate in writing, Base Rent, as described herein, and Additional Rental, as described herein (collectively referred to from time to time as "Rent"), during the Term as follows:

(a) **Base Rental.** Beginning upon the Commencement Date and continuing thereafter, Subtenant shall pay to Amtrak an annual rental fee of One Dollar ($1.00) (the "Base Rent.

(b) **Additional Rent.** Subtenant shall pay to Amtrak, as additional rent, any pass through of any increases in operating expenses and real estate taxes payable by Amtrak to Prime Landlord under the Prime Lease.

5. **New Depot Design**. Amtrak has reviewed and approved Prime Landlord's final design for its track relocation work with respect to track layouts and functional arrangement of the new depot and the station boarding tracks, and the New Platform (collectively "Station Track Design"). Amtrak acknowledges that it has reviewed preliminary design plans for the New Depot ("Plans"), a copy of which are attached hereto as **Exhibit C**, and found them to be acceptable as to form, fit and function. Based upon said review, Amtrak has determined that the design plans include all facilities needed to relocate Amtrak's operations, subject to Amtrak's review and approval of the final design and construction documents for the New Depot ("Final Plans") which approval shall not be unreasonably withheld. Amtrak's approval of the Station Track Design, Plans, Final Plans or any other plans or work shall only mean that designs, plans, or work meet Amtrak's subjective standards, and such approval shall not be deemed to mean that the designs, plans and specifications or construction contemplated therein or any work performed is structurally sound or appropriate or meets applicable regulations, laws, statutes or local ordinances, and/or building codes. The Final Plans shall be submitted to Amtrak's Deputy Chief Engineer – Construction, National Railroad Passenger Corporation, 2955 Market Street, 4SO29, Philadelphia, PA 19101, for Amtrak's review and approval. Amtrak shall approve or disapprove the Final Plans within thirty (30) days following receipt of the Final Plans. If Amtrak disapproves the Final Plans, Amtrak shall advise Subtenant in what manner the Final Plans fail to comply with the Plans as to form, fit and function and what changes are needed in order to obtain Amtrak's approval. The New Depot shall be constructed, operated and maintained by Subtenant in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and orders in effect, including the provisions of the Americans with Disabilities Act. The Final Plans shall include the following elements:

(i) The new depot shall have a minimum of 1,750 square feet of space for Amtrak operations.

(ii) Passenger Main Line Track No. 4 shall be located next to the new depot and shall be the track closest to the New Platform.

6. **Construction of New Platform.** Subtenant will construct the New Platform pursuant to the Station Track Design at Subtenant's expense. The Station Track Design shall include the following elements:

(i) The platform shall have a minimum length of 1,200 feet and a minimum width of 15 feet with 22-foot wide baggage cart turnarounds at each end;

(ii) At least 800 feet of the platform shall have a canopy covering to protect passengers from the sun and rain;

(iii) The platform height shall be 8 inches above top of rail. The platform shall be offset by 5 feet 4 inches from the centerline of the track or tangent sections.

7. **Relocation of Amtrak Operations**. Prior to the termination of the Passenger Main Line Track No. 2, and following completion of construction of the New Depot in accordance with Final Plans (as defined in Paragraph 5 above) approved by Amtrak and Prime Landlord and receipt of all required permits and approvals, Amtrak will, at Subtenant's expense, relocate Amtrak's operations from the existing station facilities to the New Depot.

Amtrak agrees, subject to the completion by Subtenant of various exhibits and to Amtrak's approval of such exhibits, to execute the Station Lease attached hereto as **Exhibit D** on that date which is thirty (30) days after an occupancy permit is issued for the New Depot and which is no earlier than the date Prime Landlord's new passenger main track no. 4 (MT4) is constructed and Amtrak has commenced operations on such track.

8. **Passenger Rail Service**. Amtrak intends to stop its revenue trains, discharge and board passengers at the New Station, provided the following conditions are met:

(a) Subtenant is not in breach of any of its obligations as set forth in this Sublease or in any other agreement with Amtrak;

(b) Prime Landlord does not limit or restrict Amtrak's operations at this location; and

(c) The trains which stop at the New Depot are funded in whole (or at a level acceptable to Amtrak) by the State of Nebraska Department of Transportation or another governmental agency or authority.

In no event will Amtrak be required to stop trains at the New Depot if all of the conditions listed in subparts (a) - (c) above are not met.

9. **Ownership of New Platform.** Amtrak and Subtenant understand and acknowledge that following Subtenant's completion of construction of the New Platform, the New Platform will be owned by Subtenant until this Sublease expires or is terminated.

Subtenant agrees and acknowledges that it is leasing the Subleased Premises in "as is" condition, and that neither Amtrak nor the Prime Landlord has any obligation to make any repairs or alterations of whatsoever nature in or to any part of the Subleased Premises, including but not limited to alterations required to comply with the Americans with Disabilities Act or any other

governmental requirement, or to maintain any part of the Subleased Premises in any manner. Subtenant shall not knowingly create or permit any condition on the Subleased Premises that could present a threat to human health or to the environment. Subtenant shall be responsible for the cost of any utilities associated with the Subleased Premises.

10. Insurance.

(a) Subtenant and any of its contractors performing work on or adjacent to the Subleased Premises shall obtain and keep in full force and effect at all time during the term of this Sublease, at its sole cost and expense, the following types of insurance coverage with at least the limits set forth below. All insurance will be placed with insurance carriers acceptable to Amtrak and licensed to do business in Nebraska. Subtenant shall require all contractors performing work on or adjacent to the Subleased Premises to carry the insurance required herein, or Subtenant may, at its option, provide the coverage for any or all contractors, provided the evidence of insurance submitted by Subtenant to Amtrak so stipulates. Subtenant shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of construction or demolition. In addition, Subtenant agrees to provide certified copies of the insurance policies for the required insurance within 30 days of Amtrak's written request. The insurance shall provide for ten (10) days prior written notice to Amtrak in the event the policy is cancelled for nonpayment of premium and thirty (30) days prior written notice to Amtrak if the policy is canceled for any other reason or non-renewed. No acceptance by Amtrak of any insurance certificate required hereunder will constitute or be construed as a waiver by Amtrak of the insurance requirements of this Section which will be and remain the sole responsibility of Subtenant as to compliance therewith.

In the event the Nebraska Political Subdivisions' Tort Claims Act is modified, repealed or replaced, Amtrak may modify the required insurance coverage and such modification will be implemented promptly by the Subtenant. Not more frequently than once every five (5) years, Amtrak may reasonably modify the required insurance coverage to reflect then-current risk management practices in the passenger railroad industry and underwriting practices in the insurance industry which request shall not unreasonably be denied by Subtenant. All of the Subtenant's insurance shall remain in force until this Sublease has been terminated and all of Subtenant's personnel and equipment have been removed from the Subleased Premises. All of the Subtenant's contractors' insurance shall remain in force until such contractor's work has been completed, all of the contractor's personnel and equipment have been removed from the Subleased Premises and the work has been accepted.

Subtenant may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except however that Subtenant shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Subtenant's failure to comply with the insurance requirements set forth herein shall constitute a default of this Sublease.

The City of Lincoln, Nebraska may provide the coverages as required in this section for Subtenant, provided the City of Lincoln, Nebraska includes Subtenant as a named insured on its policies and the evidence of insurance provided by the Subtenant to Amtrak so stipulates.

(i) **Workers' Compensation Insurance** complying with the requirements of the statutes of the State of Nebraska, covering all employees of Subtenant. Employer's Liability coverage with limits of not less than $1,000,000 each accident or illness shall be included. A waiver of subrogation in favor of Amtrak and Prime Landlord is required.

(ii) **Commercial General Liability Insurance** covering liability of Subtenant with respect to all services and operations to be performed and all obligations assumed by Subtenant under the terms of this Sublease. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad and any Explosion/Collapse/Underground (X-C-U) exclusions deleted.

The policy shall name National Railroad Passenger Corporation and, as appropriate, the Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. In addition the policy shall include an ISO endorsement form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory as respects any other insurance the additional insureds carry. A separations of insureds clause must be included. A waiver of subrogation in favor of Amtrak, and Prime Landlord must be included.

Coverage under this policy shall have limits of liability of not less than $5 million each occurrence and $10 million annual aggregate, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

(iii) **Automobile Liability Insurance** covering the liability of Subtenant arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the State of Nebraska, and which are not covered under Subtenant's Commercial General Liability insurance. The policy shall name National Railroad Passenger Corporation and, as appropriate the Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the services and operations to be performed. Coverage under this policy shall have limits of liability of not less than $1 million each occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability. A separations of insureds clause is included. A waiver of subrogation in favor of Amtrak, and Prime Landlord is required.

In the event Subtenant or any contractor or subcontractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to $5 million each occurrence.

(iv) **Railroad Protective Liability (RRP) Insurance** covering the Operations performed by Subtenant or any contractor or subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of the National Railroad Passenger Corporation (and as appropriate, Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than $5 million each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A $10 million annual aggregate shall apply. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

> "It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of demolition or construction.

In the alternative, and upon Amtrak's approval, Subtenant may elect to have Subtenant or its contractor insure the demolition, construction and/or services to be provided by Subtenant under Amtrak's Blanket RRP Liability Insurance Program. The premium, which shall be determined by the rate schedule promulgated by the insurer in effect as of the Commencement Date of this Sublease, shall be prepaid by Subtenant. In the event Amtrak and Subtenant agree to insure the demolition, construction and/or services to be provided by Subtenant under Amtrak's RRP Program, Subtenant shall include the RRP premium of $8,501.00 in addition to the Permit Fee, and send its check made payable to National Railroad Passenger Corporation to the individual set forth below prior to commencement of any demolition or construction.

(v) **All Risk Property Insurance** covering physical loss or damage to all property used in the performance of the demolition, construction and/or services to be provided by Subtenant and its contractors hereunder on a full replacement cost basis. The policy shall have limits of liability adequate to cover all property of Subtenant and its contractors (including personal property of others in Subtenant's care, custody or control) and shall include a waiver of subrogation against Amtrak, as appropriate, Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue.

(vi) **Contractor's Pollution Liability Insurance** covering the liability of the Subtenant and its contractors arising out of any sudden and/or accidental pollution or impairment of the environment, including clean up costs and defense, that arise from operations of Subtenant and its contractors with National Passenger Rail Corporation, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall not have limits of liability of not less than $2 million each occurrence. The coverage shall be maintained during the term of the project and for at lease two (2) years following completion of the lease.

(vii) **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Subtenant, its contractor or transporter, as well as the disposal site operator, shall maintain this insurance. Subtenant shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation, Prime Landlord and all commuter agencies and railroads that operate over the Subleased Property or tracks at issue as additional insureds, with limits of liability of not less than $2 million per claim.

Further, any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Subtenant.

(viii) **Professional Liability Insurance** covering the liability of contractor for any and all errors or omissions committed by contractor in the performance of the demolition, construction and/or services to be provided by contractor, regardless of the type of damages. The coverage shall be maintained for at least three (3) years following the termination of this Sublease. The policy shall have limits of liability of not less than $2 million per claim and in the annual aggregate. The policy may contain a deductible of a maximum of two hundred fifty thousand dollars ($250,000), but in such case the deductible is the sole responsibility of contractor, and no portion of such deductible is the responsibility of Amtrak. This requirement may also be satisfied by the use of a Project Specific Professional Liability insurance policy provided by the Subtenant.

A contractor that is not providing design and engineering services may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

Claims-Made Insurance - **If any liability insurance specified above shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy shall provide that:**

1. The retroactive date shall coincide with or precede the Commencement Date hereof (including subsequent policies purchased as renewals or replacements);

2. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;

3. Subtenant will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., Commercial General Liability, Professional Liability) for at least three (3) years following the termination of this Sublease; and

4. If insurance is terminated for any reason, Subtenant will purchase an extended reporting provision of at least two (2) years to report claims arising from the demolition, construction and/or services to be provided by Subtenant.

(b) Evidence of Insurance. Subtenant shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing the Sublease or any demolition or construction. THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING. The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Subtenant begin demolition or construction without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Director Project Initiation & Development
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817

(c) Subtenant shall pay all premiums and charges for such insurance, and if Subtenant shall fail to obtain such insurance, Amtrak may, but shall not be obligated to, obtain the same, in which event the amount of the premium paid shall be paid by Subtenant to Amtrak upon Amtrak's demand therefor, shall be deemed Additional Rent and shall be collectible by Amtrak in the same manner and with the same remedies as though said sums were Additional Rent reserved hereunder. Such liability insurance policy shall include a provision to the effect that the same will be non-cancelable except upon thirty (30) days' advance written notice to Amtrak and that the act or omission of Subtenant will not invalidate the policy as to Amtrak. Certified copies of the original insurance policies or appropriate certificates thereof shall be promptly deposited with Amtrak, together with any renewals, replacements or endorsements thereto.

(d) Subtenant acknowledges that Amtrak will not carry any insurance in favor of Subtenant, and that neither Prime Landlord nor Amtrak will carry insurance on Subtenant's furniture and/or furnishings or any fixtures or equipment, improvements or appurtenances of Subtenant in or about the Subleased Premises.

(e) Not more frequently than once every five years Amtrak retains the right to reasonably modify the required insurance coverage to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(f) Subtenant is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automobile Liability and up to $750,000 per occurrence and $750,000 aggregate on Workers' Compensation Liability without further consent or approval from Amtrak. Subtenant's contractors are allowed to self insure up to $250,000 per occurrence and aggregate. Subtenant is obligated to pay all claims within the self insured retention; Amtrak has no duty to make any payments with respect to any self insured retention.

(g) Subtenant agrees that to the extent any insurance required of Amtrak, Subtenant or any contractors by Prime Landlord with respect to the Lincoln, NE Station and New Platform is greater than the insurance required herein, Subtenant and/or its contractors shall provide insurance in compliance with the Prime Landlord insurance requirements.

11. Indemnification. Subtenant shall defend, indemnify and hold harmless Amtrak, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "Indemnified Parties") and Prime Landlord, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, and expenses incidental thereto (including costs of defense and attorneys' fees), which any of the Indemnified Parties or Prime Landlord (and its officers, directors, employees, agents, servants, successors, assigns and subsidiaries) may hereafter incur, be responsible for, or pay as a result of:

(i) injury, death, disease, or occupational disease of any person (including employees of Subtenant), or

(ii) damage (including environmental contamination and loss of use) to or loss of any property, including the Subleased Premises,

arising out of, in any degree directly or indirectly caused by, or resulting from materials, products or equipment supplied by, or from activities of, or work performed by Amtrak, Prime Landlord, Subtenant, and/or their officers, employees, agents, servants, contractors, subcontractors or any other person acting for or with the permission of them, or as a result of Subtenant's failure to perform its obligations in compliance with this Sublease except to the extent such loss, liability, penalty, fine, forfeiture, demand, claim, cause of action, suit, cost, or expense results directly from the sole negligence of the Indemnified Parties

Subtenant shall be responsible for all damages and expenses on account of injuries (including death) to any of its employees, agents, contractors or subcontractors while on the Subleased Premises and shall indemnify, defend and hold Amtrak and Prime Landlord harmless from all claims or damage suits which may arise in consequences of such injuries. Subtenant shall also repair or replace any property of Amtrak or Prime Landlord which is damaged by Subtenant's employees, agents, contractors or subcontractors while performing its obligations hereunder.

Subtenant hereby agrees to purchase a policy of insurance covering all or any part of the liability which might be incurred under the Nebraska Political Subdivision's Tort Claims Act, including, but not limited to, those claims specifically excepted from liability by §13-910 of such Tort Claims Act, and Subtenant agrees that, with respect to any claim against Amtrak or the Prime Landlord for which Amtrak or the Prime Landlord is entitled to be indemnified by Subtenant pursuant to this Sublease, Subtenant is not entitled to avoid providing such indemnification of Amtrak or the Prime Landlord based on any defenses or immunity Subtenant may have with respect to the underlying claim. Further, Subtenant acknowledges that Subtenant's agreement to waive such protections and defenses and its agreement to purchase such insurance is a material inducement without which Amtrak would not have entered into this Sublease. In the event Amtrak incurs any expense or makes any payment (voluntarily or

involuntarily) in connection with any claim for which, but for the application of the Nebraska Political Subdivision's Tort Claims Act, Subtenant would have been responsible under this Section 11, all such expenses and payments shall be considered Additional Rent.

12. Worker Training; Protection

(a) Subtenant and any of its contractors, employees or agents who perform work on the Subleased Premises within fifty (50) feet, vertically or horizontally, of the railroad tracks shall have the proper skill and Federal Railroad Administration required training necessary to perform such work. Proof of such skill and training shall be furnished upon request.

(b) All work to be performed by Subtenant or its contractors, employees or agents on the Subleased Premises within fifty (50) feet, vertically or horizontally, of the railroad tracks must include proper railroad protective services (e.g., flagging), obtained from Prime Landlord if necessary, to avoid interference with any active rail service. Subtenant is obligated to notify Prime Landlord in advance and to make arrangements with Prime Landlord for such protective services. Subtenant shall reimburse Prime Landlord for the cost of providing flagging or other railroad protective services, as deemed necessary by Prime Landlord, in connection with Subtenant's maintenance of the New Platform.

(c) Subtenant or its contractors, employees or agents on the Subleased Premises shall comply with Amtrak Specification 01141A entitled *Safety and Protection of Railroad Traffic and Property* attached hereto as **Exhibit E**, as such Specification may be revised by Amtrak from time to time.

13. Signage. Subtenant shall not place any signs on the New Platform without the prior written consent of Amtrak. Subtenant shall comply with Amtrak's Graphic Standards Signage Manual and any other signage requirements made known to Subtenant.

14. Taxes; Assessments Subtenant shall pay all taxes and assessments, general, special or otherwise, which may be charged, assessed, imposed or payable in connection with the New Platform for the term of this Sublease, even though such charges may not become due and payable until after termination of this Sublease.

15. Subordination to and Incorporation of Terms of Prime Lease. This Sublease is in all respects subject and subordinate to the terms and conditions of the Prime Lease and to the matters to which the Prime Lease is or shall be subordinate. Except as otherwise expressly provided in this Sublease, the terms, provisions, covenants, stipulations, conditions, rights, obligations, remedies and agreements of the Prime Lease are incorporated in this Sublease by reference and made a part hereof as if herein set forth at length, and shall, as between Amtrak and Subtenant (as if they were the Lessor and Lessee respectively, under the Prime Lease and, as if the Sublease Premises were the Prime Leased Premises demised under the Prime Lease), constitute the terms of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified or eliminated by, the terms of this Sublease. Amtrak and Subtenant acknowledge and agree that Subtenant has reviewed and is familiar with the Prime Lease and Amtrak hereby represents that the copy delivered to Subtenant for such purpose and attached hereto as **Exhibit F** is a true, correct and complete copy of such Prime Lease.

In all provisions of the Prime Lease requiring the approval or consent of the Prime Landlord, Subtenant shall be required to obtain the approval or consent of Prime Landlord and of Amtrak. In all provisions of the Prime Lease requiring that notice be given to Prime Landlord, Subtenant shall be required to give notice to Prime Landlord and Amtrak.

16. **Use of Subleased Premises**. Subtenant will not (a) use, occupy or permit the use or occupancy of the Subleased Premises in any manner which violates any law, statute, regulation, ordinance, order, covenant, restriction or decision of any court of competent jurisdiction, or is dangerous to life or property, or creates a public or private nuisance, or for a use other than the permitted use hereunder; (b) keep, or permit to be kept, any substance in or conduct, or permit to be conducted, any operation from the Subleased Premises which might emit offensive odors or conditions, or make undue noise or create undue vibrations; or (c) commit or permit to remain any waste to the Subleased Premises; provided, however, that such restrictions shall not apply to approved demolition and/or construction projects.

17. **Construction or Demolition Projects.** When proposing construction or demolition projects on the Subleased Premises, Subtenant shall provide Amtrak and Prime Landlord each with a set of plans and specifications for Amtrak's and Prime Landlord's review and approval prior to the start of construction or demolition, which approval shall not be unreasonably withheld, delayed or conditioned. Subtenant understands that Amtrak's or Prime Landlord's approval of any plans or specifications shall not be deemed to mean that the construction contemplated therein, nor completed in accordance therewith, is structurally sound or appropriate or meets applicable regulations, laws, statutes or local ordinances, and/or building codes. Subtenant will be solely responsible for determining whether its plans and specifications, construction, and maintenance meet its needs and will provide for safe operation. For such construction or demolition projects, Subtenant will fully indemnify Amtrak against any and all risks, liabilities, claims, losses and judgments arising from, or growing out of, or related in any way to the acts or negligence of Subtenant's contractors performing such construction or demolition work, their agents, employees, subcontractors, and their agents and employees and/or Amtrak, its agents or employees, excepting only such risks, liabilities, claims, losses, and judgments that result from Amtrak's sole negligence. Subtenant will require its contractors to execute and deliver a Prime Landlord such right of entry agreements as Subtenant and Prime Landlord agree upon for any construction or maintenance work to be performed on the Subleased Premises by Subtenant. Subtenant will require its contractors, after Subtenant has fully assured itself of contractual compliance in every respect, to certify in writing that the project work is of good quality and has been performed in accordance with the contract and provide appropriate lien waivers, as a condition precedent to final disbursement of project funds.

18. **Liens.** If, because of any act or omission of Subtenant or its agents, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Prime Landlord or any portion of the Subleased Premises, Subtenant shall, at its own expense, cause the same to be discharged of record within thirty (30) days after becoming aware of such lien or after written notice from either Amtrak or Prime Landlord to Subtenant of the filing thereof , and shall indemnify and save harmless Amtrak and Prime Landlord against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom. Should Subtenant become aware of a possible or actual filing of lien in the above instances, it shall notify Amtrak in writing of same in a

timely fashion. Should Amtrak receive notice of any lien filed against any portion of the Subleased Premises, Amtrak shall notify Subtenant of the same in a timely fashion.

19. Assignment and Subletting. Subtenant may not assign this Sublease nor sublet the Subleased Premises or any part thereof without the prior written consent of Amtrak, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Subtenant, without Amtrak's prior written consent, may assign this Sublease or sublet the whole of the Subleased Premises to a legal entity which is any one of the following: (i) the City of Lincoln, Nebraska, (ii) the successor, by merger or otherwise, to all or substantially all of Subtenant's assets and liabilities, or (iii) controls or is controlled by or is under common control with Subtenant, directly or indirectly (for purposes of this Sublease, the term "controlled" shall mean holding more than fifty percent (50%) of the ownership interest in or having voting control of the subject entity).

20. Notices.

Except as may be more specifically provided herein, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Sublease to be made, given or furnished to the other party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to Subtenant:
555 South 10th Street
Lincoln, NE 68508
Attn: Mayor of the City of Lincoln

With a copy to:
City Attorney
City of Lincoln, Nebraska
555 South 10th Street, Suite 300
Lincoln, NE 68508

If to Amtrak:
National Railroad Passenger Corporation
30th Street Station, 5th Floor South
Philadelphia, PA 19104
Attn: Assistant Vice President
Real Estate Development

With a copy to:
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.W.
Washington, D.C. 20002
Attn: Vice President, Policy and Development

21. Dispute Resolution. In the event a dispute arises under this Sublease which cannot be resolved between the parties, a mediator shall be selected by the parties and the parties

agree to mediate the issue in a good faith effort to resolve the same. In the event mediation fails to resolve the issue, either Subtenant or Amtrak may commence an action only in federal court.

22. **Non-Discrimination**. Subtenant expressly agrees that it will not discriminate in employment or the provision of services on the basis of any characteristic or condition upon which state or federal law or regulation prohibits discrimination.

23. **Labor Claims**. Subtenant shall be responsible for any valid claims made by Prime Landlord labor unions for any work performed by Amtrak, Subtenant and/or their contractors within the Subleased Premises. Amtrak will promptly notify Subtenant of Amtrak's receipt of any such claim and will assist Subtenant in its defense of any such claim. Both Amtrak's and Subtenant's obligations pursuant to this Paragraph 23 shall survive the termination or expiration of this Sublease.

24. **Contingencies**. Amtrak's and Subtenant's obligations under this Sublease shall be contingent upon the following:

(a) Execution of a Joint Facility Agreement between Union Pacific Railroad Company (UP) and Prime Landlord, with terms and conditions acceptable to Subtenant, Amtrak, Prime Landlord, and UP;

(b) Completion of the First Closing between the Prime Landlord and Subtenant pursuant to the Land Exchange Agreement between the Prime Landlord and Subtenant effective as of October 18, 2010;

(c) Obtaining any necessary permits, consents and approvals authorizing the transactions contemplated by this Sublease.

25. **Brokers**. Subtenant warrants that it has had no dealings with any real estate broker or agent in connection with this Sublease that would give rise to a valid claim for a commission. Amtrak warranties that it has had no dealings with any real estate broker or agent in connection with this Sublease that would give rise to a valid claim to a commission.

26. **Severability**. If any term of this Sublease is declared to be illegal or unenforceable, the unaffected terms shall remain in full force and effect.

27. **Successors and Assigns**. Except as otherwise provided in this Sublease, all of the covenants, conditions and provisions of this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

28. **Parties**. The words "Amtrak" and "Subtenant" as used herein shall include the parties to the Sublease, whether singular or plural, masculine or feminine, or corporate, partnership, limited liability company or other entity and their heirs, personal representatives, successors and assigns.

29. **Controlling Law**. This Sublease shall be enforced and construed in accordance with the laws of Nebraska.

30. **Captions.** The captions of the paragraphs of this Sublease and its Exhibits are for convenience only and are not a part of this Sublease, and do not in any way limit or amplify the terms or provisions of this Sublease, and shall not be considered in the construction or interpretation of any provision hereof.

31. **Entire Agreement.** This Sublease, together with any later written modifications or amendments thereto, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede any prior or contemporaneous agreements or understandings, whether written or oral, which the parties, their agents or representatives may have had relating to the subject matter hereof. No modification, alteration or waiver of any term, condition or covenant of this Sublease shall be valid unless in writing, dated and signed by the Amtrak and the Subtenant. No waiver shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION ("Amtrak"):

By: B. Looloian
Name: Bruce Looloian
Title: Assistant Vice President,
Real Estate Development

WEST HAYMARKET JOINT PUBLIC AGENCY ("Subtenant"):

By: Jayne Snyder
Name: Jayne Snyder
Title: Chair of the West Haymarket Joint Public Agency Board of Representative

EXHIBIT A

Subleased Premises

The Subleased Premises consists of the parcel of land situate in Lincoln, Nebraska containing a total of 50722 sq. ft. (1.16 A.C.) more or less and depicted as the shaded area on the drawing dated December 28, 2010 attached hereto as Exhibit A-1.

Exhibit A-1
Dated December 28, 2010

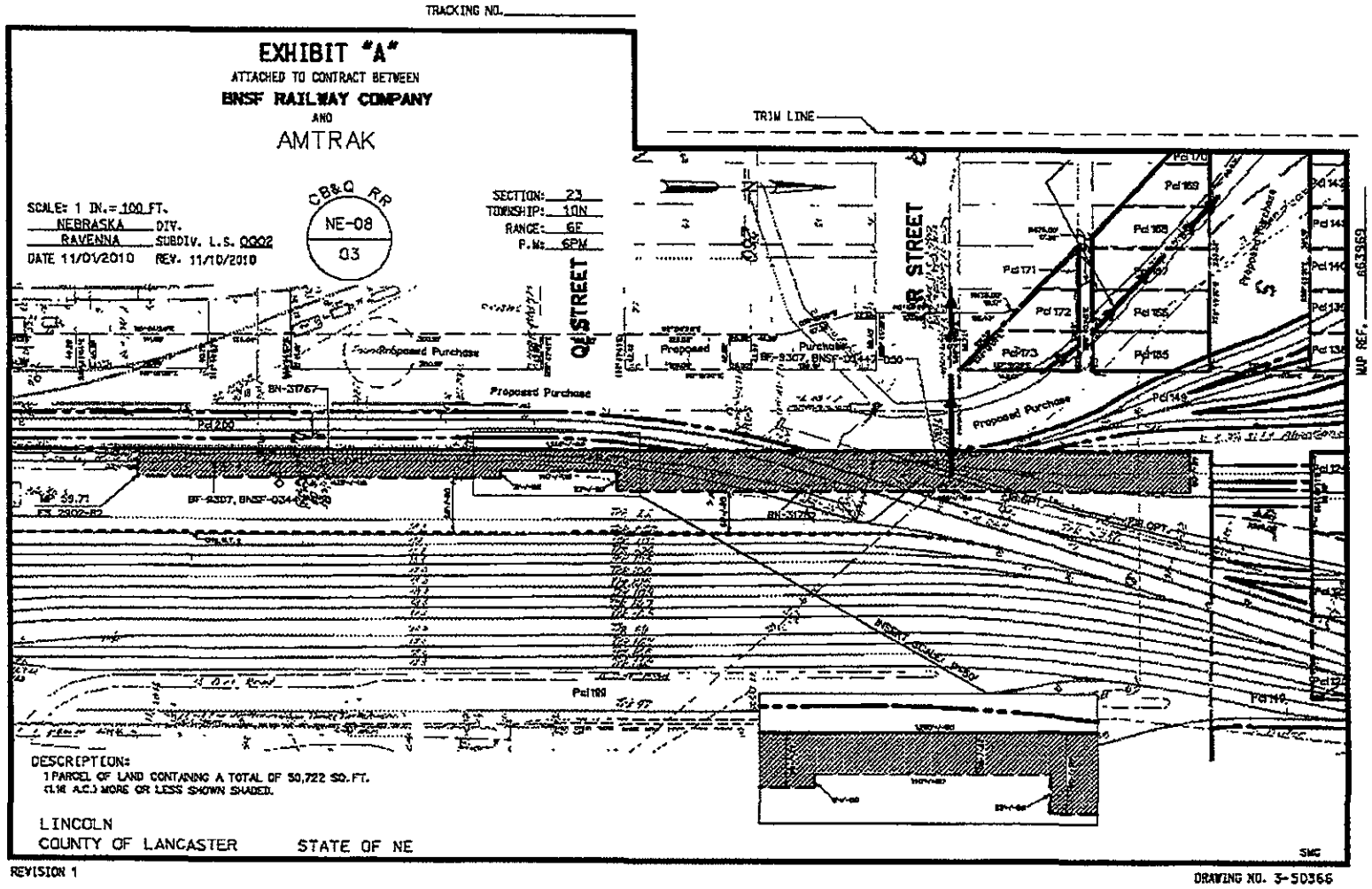


EXHIBIT B

Prime Landlord's Main Line Track Realignment

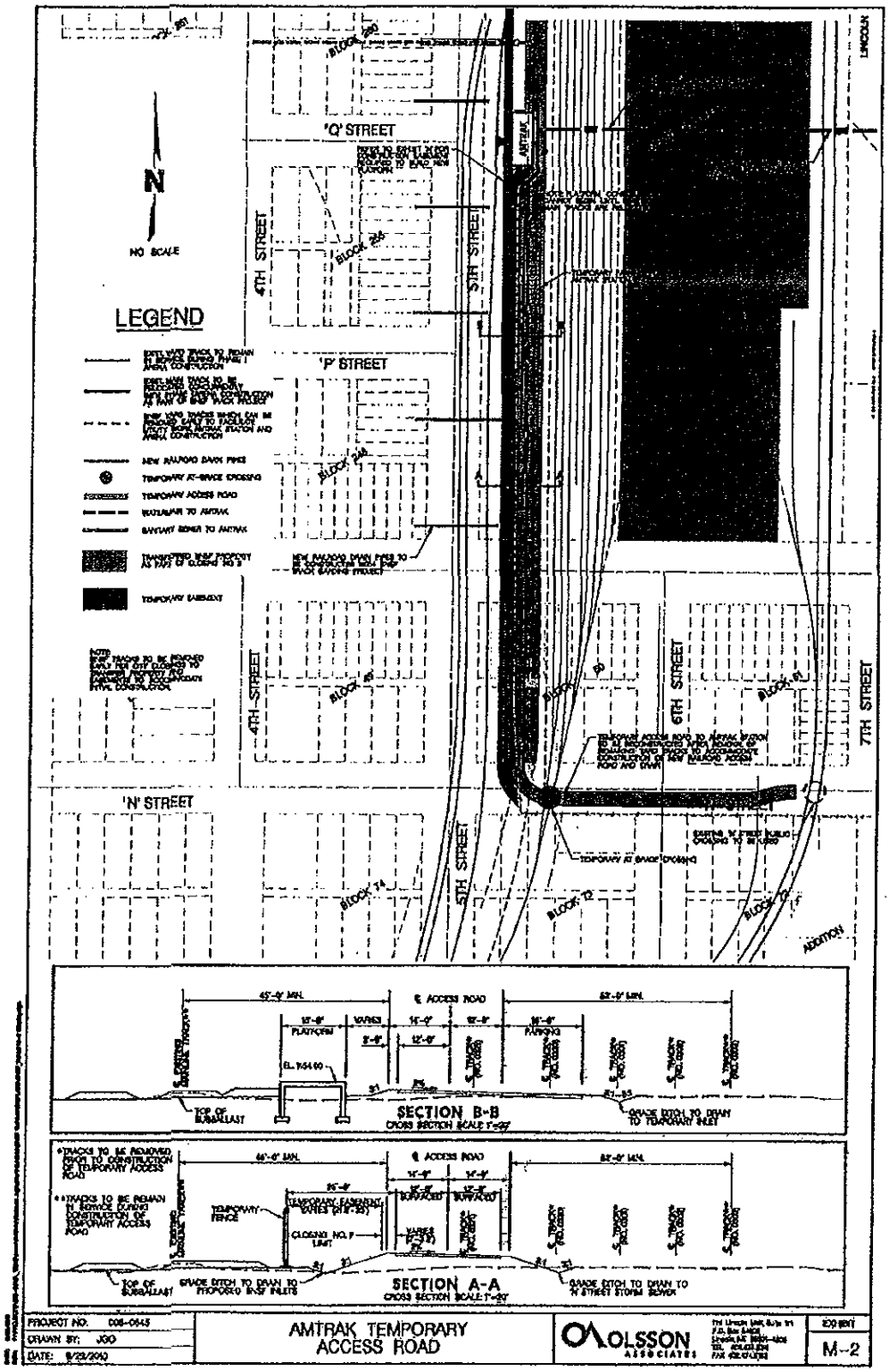

'Q' STREET
'P' STREET
'N' STREET
4TH STREET
5TH STREET
6TH STREET
7TH STREET
AMTRAK
LINCOLN
N
NO SCALE
LEGEND
SECTION B-B
SECTION A-A
AMTRAK TEMPORARY ACCESS ROAD
OLSSON ASSOCIATES
M-2

EXHIBIT B

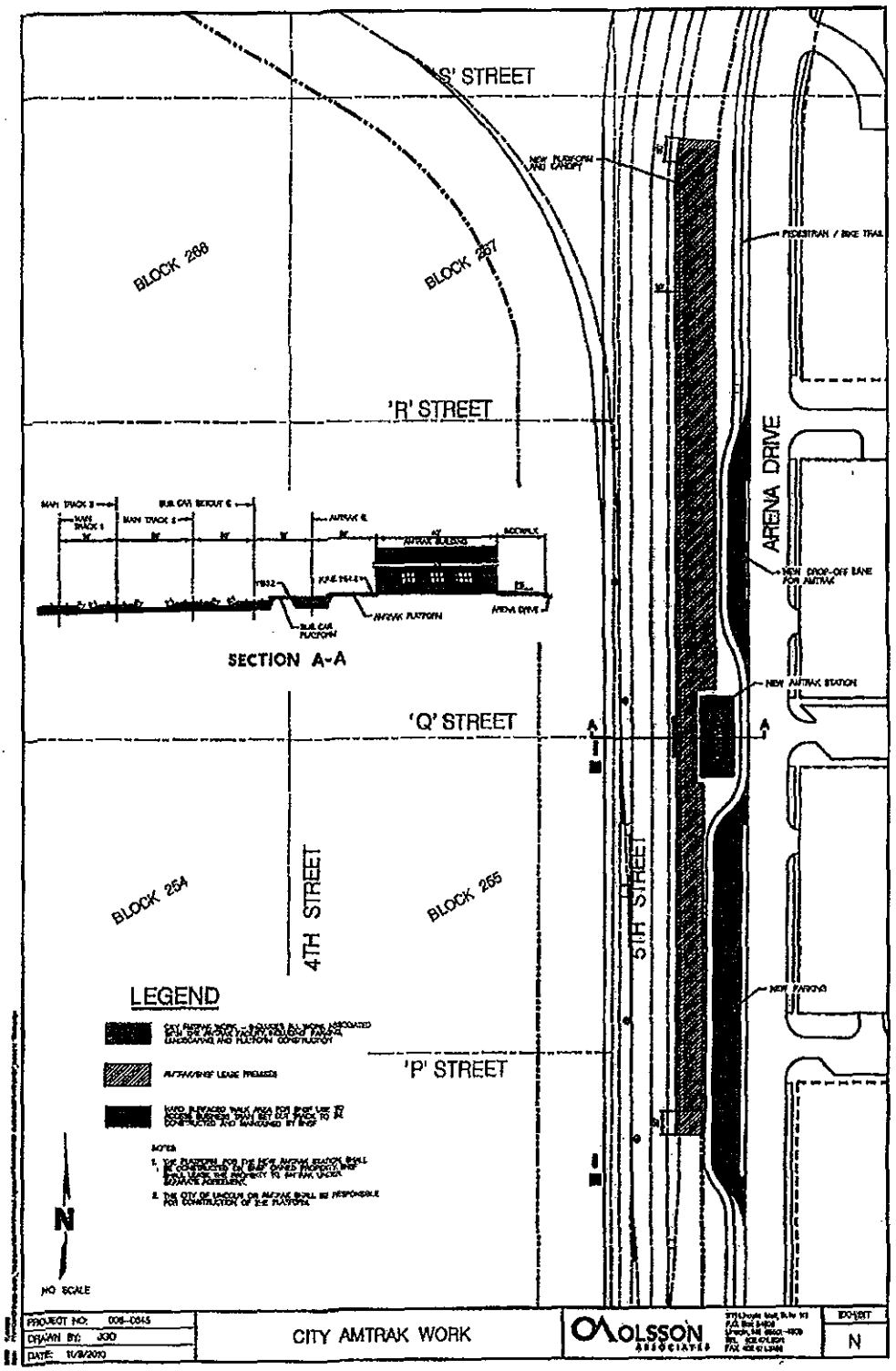
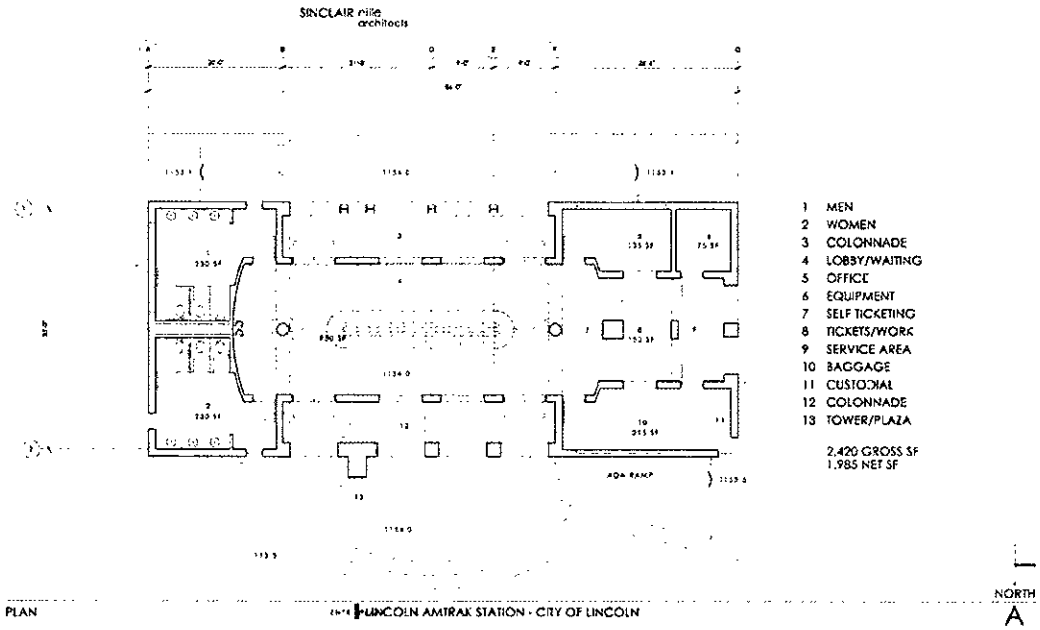
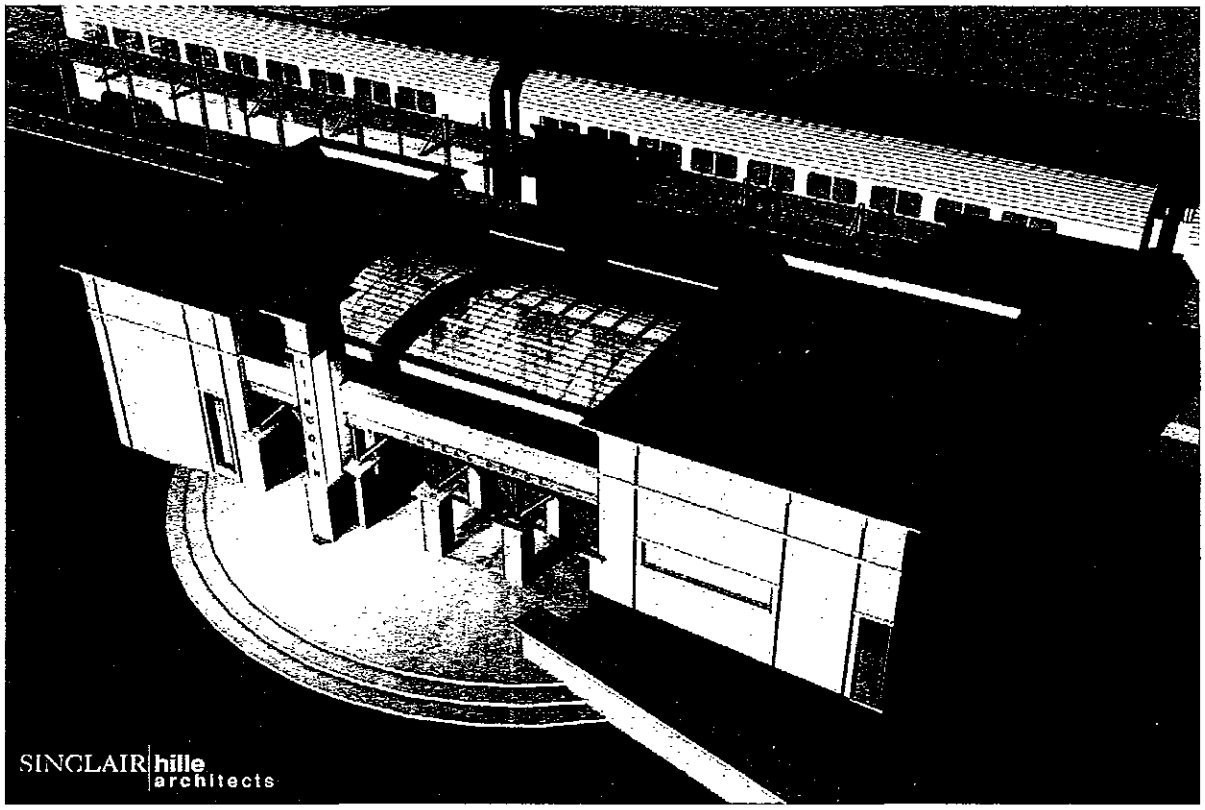

'S' STREET
BLOCK 266
BLOCK 267
'R' STREET
ARENA DRIVE
SECTION A-A
'Q' STREET
BLOCK 254
4TH STREET
BLOCK 255
5TH STREET
LEGEND
'P' STREET
N
NO SCALE
CITY AMTRAK WORK
OLSSON ASSOCIATES
N

EXHIBIT C

New Depot Design Plans




SINCLAIR hille
architects

DRAFT

Exhibit D

LEASE AGREEMENT
(West Haymarket Station)

This Lease Agreement ("Lease") is made and entered into as of this _____ day of _____, 201___, by and between the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska ("JPA"), and National Railroad Passenger Corporation, a corporation organized under the former Rail Passenger Service Act and the laws of the District of Columbia, with offices at 30th Street Station, 5th Floor South Tower, Philadelphia, PA 19104 ("AMTRAK").

BACKGROUND

WHEREAS, JPA owns certain real property in the City of Lincoln, located at _____, together with all improvements constructed thereon, including that certain building commonly known as West Haymarket Station ("Station"), being more particularly described and shown on Exhibit "A" and Exhibit "B" attached hereto, respectively, and made a part hereof; and,

WHEREAS, AMTRAK desires to lease a portion of the Station as set forth in Section 1 below.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, JPA and AMTRAK do hereby agree as follows:

1. PREMISES

a. JPA hereby leases to AMTRAK and AMTRAK leases from JPA for the Term upon all the conditions set forth herein, One Thousand Seven Hundred Fifty (1,750) square feet ("Premises") of the Two Thousand Four Hundred Fifty (2,450) total square feet of space in the Station as delineated on the plan attached and incorporated herein as Exhibit "C". JPA reserves the right to lease other portions of the Station to other tenants providing such leasing does not interfere with AMTRAK's "Use" (as herein after defined).

b. JPA also hereby grants to AMTRAK, its employees, agents, licensees, contractors, passengers and invitees, the nonexclusive right in common with JPA and all others designated by JPA for the use of the common areas and common facilities in the Station and on the land on which the Station is located. The Station and the land on which it is located are collectively referred to herein as the "Property." Common areas include common sidewalks necessary to access the Station, hallways, stairways, elevators, public bathrooms, common entrances, lobbies, waiting area for passengers, and other public portions of the Property ("Common Areas"). The Common Areas shall provide reasonable ingress and egress for AMTRAK and its employees, passengers, invitees, licensees, and agents from abutting public right-of-way to the Station. AMTRAK shall have the right to enter in and upon the Common Areas to: a) install, repair and maintain AMTRAK's ticket machines, passenger information display systems (including station signage and public address systems), and video monitors, if

any; b) provide reasonable services to passengers, including the sale of tickets; c) maintain railroad operating facilities, communication lines, and other equipment; and d) perform other functions required in connection with the provision of intercity rail passenger service.

2. TERM

a. The initial term of this Lease shall be for thirty-five (35) years ("Term") commencing thirty (30) days after an occupancy permit is issued for the Premises ("Commencement Date"); provided that the Commencement Date shall not be earlier than the date BNSF Railway Co's ("BNSF") new passenger main track no. 4 (MT4) is constructed and Amtrak has commenced operations on such track. The Term will end thirty-five (35) years thereafter, unless (a) sooner terminated (1) by AMTRAK giving thirty (30) days' prior written notice to JPA that AMTRAK's rail passenger service to Lincoln, Nebraska will relocate or cease or (2) in the event JPA elects not to rebuild the Station as provided in paragraphs 14 and 15 in this Lease or (b) extended by AMTRAK as provided below.

b. On or about the Commencement Date, JPA shall execute and deliver to AMTRAK a Declaration of Commencement ("Declaration") in the form attached hereto as Exhibit D. AMTRAK shall promptly execute such Declaration confirming the Commencement Date and return such to JPA. JPA shall record this Lease in the appropriate recorder of deeds office.

c. AMTRAK shall have the option to extend the Term of this Lease for three (3) additional five (5) year terms by giving notice of its intent to exercise this option at least sixty (60) days before the end of the then current term. Any extended term shall be upon all the same terms and conditions as set forth in this Lease.

3. RENT

AMTRAK shall pay rent in the amount of Two Thousand Four Hundred Twenty-five and 00/100ths Dollars ($2,425.00) per month or the amount of AMTRAK's monthly rent at its current station in effect upon termination of AMTRAK's tenancy, whichever is greater ("Rent"). The Rent shall be increased for inflation on an annual basis beginning at the commencement of the second year of the Term and each succeeding year thereafter utilizing the Consumer Price Index for all Urban Consumer's (CPI-U) over the last twelve months before seasonable adjustment as reported for the month of adjustment is made by the U.S. Bureau of Labor Statistics (or its successor) or a comparable Consumer Price Index in the event the CPI-U is discontinued. Rent shall be due and payable on the first day of each calendar month during the term of this Lease. Should the lease commence and/or terminate on a day other than the first day of a calendar month, such rental for such month's shall be reduced proportionately.

4. USE

AMTRAK may occupy and use the Premises for railroad passenger services and any lawful purpose reasonably related to the operation of a rail passenger station and AMTRAK'S business operations, including ticketing, related mail, package, baggage, and express services and office, mechanical and/or engineering facilities, connecting bus service and operations incidental to AMTRAK'S business. AMTRAK shall be permitted to assign and/or sublease portions of the

Premises to third parties for retail use for the convenience of AMTRAK'S passengers, such as newsstands, coffee stands, ATM and vending machines beverage and snack stands (collectively "USE").

5. PARKING

Public parking improvements to serve the West Haymarket Project (including AMTRAK) will be constructed by the JPA. The public parking improvements at full build out are envisioned to contain 1700 – 1800 parking spaces in two new parking garages as well as some on-street metered public parking spaces abutting the West Haymarket Station ("Parking"). The Parking shall be available for AMTRAK's passengers, employees, licensees, and invitees on a nonexclusive basis twenty-four hours per day, seven days per week at the City of Lincoln Nebraska's or JPA's standard rates for public Parking.

6. HOURS OF OPERATION

AMTRAK shall have the right to keep the Premises open at all such times as it desires.

7. UTILITIES

The JPA shall provide water and sanitary sewer service to Common Areas. The JPA shall further provide electricity and natural gas to the Premises. AMTRAK shall pay its proportionate share of such utility costs for the Premises (to be determined by dividing the total square footage of the Premises by the total rental square footage in the Station) providing such amount shall not exceed Seven Hundred Two Dollars ($702) per month for the Term.

8. JPA'S WORK

JPA agrees to provide AMTRAK, at no cost to AMTRAK, with leasehold improvements within the Premises in accordance with the plans and specifications attached hereto and incorporated herein as Exhibit E, attached hereto and made a part hereof, by the Commencement Date. All such leasehold improvements shall be constructed in accordance with all applicable statutes, laws, rules, regulations, ordinances and codes, including without limitation, the Americans with Disabilities Act of 1990, as amended, and the regulations promulgated thereunder and must be constructed in accordance with AMTRAK'S safety, security, operation and engineering procedures, as applicable.

Exhibit D

9. SIGNS

a. AMTRAK shall submit to the JPA for its review and approval all of AMTRAK'S business signs proposed to be erected, placed, or maintained by AMTRAK on the Premises and/or on the exterior of the Station or the Property grounds. AMTRAK may (a) keep and maintain all approved signs throughout the Term of this Lease, and (b) replace any or all approved signs with new signs of similar content when such replacement is warranted in AMTRAK'S sole discretion, provided AMTRAK shall not erect, install, or replace any approved sign in violation of any applicable law, ordinance, rule or regulation of the City of Lincoln, Nebraska or any other governmental agency.

b. JPA shall not place any signs at the Station without the prior written consent of AMTRAK, which consent shall not unreasonably be withheld.

c. In collaboration with AMTRAK, JPA shall provide trail blazing signs providing directions to the Station.

10. TRADE FIXTURES

AMTRAK may install on the Premises and remove therefrom such trade fixtures as AMTRAK may deem necessary or appropriate for its business operations.

11. MAINTENANCE, REPAIR AND SERVICES

a. JPA Responsibilities. JPA, at its sole cost and expense, shall:

(i) Maintain the sidewalks, pedestrian surfaces, parking lots and landscaping on the Property and keep such cleared of snow and ice;

(ii) Maintain and repair the interior and exterior of the Station (including entrances and exits) and all fixtures, equipment, components and systems that are a part of the Station or necessary to and for the operation of the Station and AMTRAK'S use and occupancy of its Premises, including structural and roof repairs and maintenance;

(iii) Pay all costs, expenses, fees, taxes and sums related to its ownership, operation and maintenance of the Station before delinquency;

(iv) Provide heating, ventilation and air conditioning ("HVAC") for the Station, including the Premises, during all hours of scheduled passenger train (and bus) operations, sufficient to maintain temperatures in the interior portions of the Station at commercially reasonable levels, provided that in no event shall JPA maintain heating settings below 68 degrees DB. or air conditioning settings above 72 degrees DB. 50 % relative humidity, as appropriate depending on the outside weather conditions. At the Lease Commencement, AMTRAK shall provide to the JPA a written schedule of AMTRAK'S then current passenger train (and bus) operations. Throughout the Term, AMTRAK shall keep a current written schedule of AMTRAK'S passenger train (and bus) operations at the Station and available for JPA'S review upon JPA'S request. JPA may stop the heating and cooling systems when necessary by reason of accident or emergency or for repairs, alterations, replacements or improvements, which, in the reasonable judgment of JPA, are desirable or necessary. JPA agrees to make any necessary repairs, alterations, replacements or improvements to the heating and cooling systems as quickly as possible, with due diligence, and with the minimum interference with AMTRAK'S use of the Premises;

(iv) Provide janitorial services to the Common Areas, including emptying wastepaper baskets, dry mop and wet mop, vacuum, clean restrooms, and supply toiletries as reasonably needed;

(v) Provide hot and cold water sufficient for drinking, lavatory, toilet and ordinary cleaning purposes to be drawn from approved fixtures in the Common Areas;

(vi) Replace lighting tubes, lamp ballasts, starters and bulbs in the Common Areas;

(vii) Arrange for extermination and pest control in the Station, included the Premises as often as may be deemed necessary in the exercise of prudent management practices, and in no event less than semi-annually. To the greatest extent possible, such work shall be performed at times other than when passenger train and bus operations are not scheduled;

(viii) Have a building manager or engineer capable of responding to AMTRAK'S requests for service within two (2) hours thereafter during all times when AMTRAK'S passenger train (and bus) operations are scheduled;

(ix) Provide panic button(s) under the AMTRAK ticket counter at locations as specified by AMTRAK, and ensure that all panic buttons are connected directly to and will contact directly the nearest local police station;

b. AMTRAK Responsibilities. AMTRAK, at its own cost and expense, shall:

(i) Keep and maintain the Premises in good and safe condition at all times during the term of the Lease;

(ii) Provide janitorial services in the Premises, including emptying of wastepaper baskets, dry mop and wet mop, and vacuum as reasonably necessary;

(iii) Maintain and repair any trade fixtures, equipment or other personal property of AMTRAK located on or within the Premises;

(iv) Replace lighting tubes, lamp ballasts, starters and bulbs in the Premises;

c. At JPA's sole cost and expense, AMTRAK shall maintain and repair and keep in good, unobstructed (including snow and ice removal) the train platforms adjacent to the Station ("Platforms"). JPA shall pay to AMTRAK any and all costs and expenses related to AMTRAK's maintenance and repair or replacement of the Platforms. Such payments shall be made to AMTRAK within 20 days of receipt of invoice. AMTRAK may, in its sole discretion, off set such costs against any Rent, costs or other charges or fees owed to JPA.

d. Failure to Maintain, Repair, or Provide Services.

Notwithstanding anything to the contrary in this Lease, if any party fails in any of its obligations under this Section 11, and such failure continues for more than three (3) consecutive days after notice from the non-defaulting party of such failure, the non-defaulting party may provide any such maintenance, repairs and services or arrange for the provision of such. In the event the non-defaulting party provides any such maintenance, repairs or service, the defaulting party shall reimburse the non-defaulting party for the cost and expense of such maintenance, repairs and services within forty-five (45) days of notice from the non-defaulting party for such payment.

12. ALTERATIONS AND IMPROVEMENTS

At its expense, JPA may make alterations and improvements to Common Areas of the Station which improvements shall be owned and maintained by the JPA. The JPA reserves the right from time to time (i) to install, use, maintain, repair, replace, relocate for service to the Premises and/or other parts of the Station the pipes, ducts, conduits, wires and appurtenant fixtures and mechanical systems, wherever located in the Premises or the Station; and (ii) to alter, remodel, close, or relocate any facility in the Common Areas, so long as AMTRAK'S access to the Premises, restrooms, and ingress and egress to all abutting public rights-of-way and Platforms and is not unreasonably impeded thereby. Before JPA may make any alterations or improvements to the Station, it must obtain AMTRAK's written approval. AMTRAK's approval shall not unreasonably be withheld.

At its expense, AMTRAK shall have the right to make alterations and improvements to the Premises subject to the following terms and conditions:

a. No alterations or improvements made by AMTRAK shall in any way impair the structural stability of the Premises.

b. AMTRAK shall request JPA's approval prior to making any alterations or improvements and all alterations or improvements must be approved in writing by JPA. JPA's approval shall not be unreasonably withheld, conditioned or delayed.

c. AMTRAK shall keep the Premises and every part of the Station free and clear of any mechanic's lien or materialmen's liens arising out of the construction of any such alterations or improvements and further agrees to hold JPA harmless from any liability or liens therefor.

d. All alterations and improvements that are permanently affixed to the Station shall become the property of the JPA and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease or any extension of the Term of this Lease.

e. AMTRAK'S personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of AMTRAK and may be removed by AMTRAK at any time during the Term or upon the expiration or sooner termination of this Lease (including any extension term). AMTRAK shall repair any damage to the Premises or Station caused by AMTRAK'S removal of its personal property, trade fixtures, or equipment. All of AMTRAK'S personal property not removed within thirty (30) days following expiration or sooner termination of this Lease shall be conclusively presumed to have been abandoned and shall automatically become the property of the JPA.

13. INSURANCE AND INDEMNIFICATION

a. INSURANCE.

AMTRAK is insured under its corporate wide self-insurance program and excess railroad liability insurance program. If at any time AMTRAK does not have a self-insurance program AMTRAK shall provide the following:

(i) Liability Insurance. At AMTRAK'S expense, a general liability policy for personal injury (including sexual harassment and abuse), bodily injury, death, or property damage in or about the Station and grounds surrounding the Station as specified in this paragraph resulting from or related to AMTRAK'S use of the Premises.

(ii) Terms of Insurance. The insurance policy maintained pursuant to this Lease Agreement shall name JPA as an additional insured per ISO form CG 2011. The policy shall further provide that there shall be no cancellation, non-renewal, termination for any reason, or modification without at least thirty (30) days prior written notification to JPA. A copy of the policy shall be delivered to and retained by JPA.

(iii) The Commercial General Liability Insurance policy shall provide no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney for the City of Lincoln.

Coverage Min Amt Notes	
General	$2,000,000 Aggregate
Products and Completed Operations	$2,000,000 Aggregate
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage Limit	$ 100,000 any one fire
Medical Damage Limit	$ 10,000 any one person

(iv) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

c. <u>INDEMNIFICATION</u>.

(i) AMTRAK shall indemnify, defend, and hold harmless JPA, its officers, agents, and employees from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the sole and direct negligence, gross negligence, or willful misconduct of AMTRAK, its employees or agents, in connection with this Lease or AMTRAK's failure to comply with any of its obligations contained in this Lease, except for any loss or damage or portion of loss or damage that is caused by the sole and direct negligence, gross negligence, or willful misconduct of JPA, its officers, agents, contractors or employees.

(ii) AMTRAK shall cover its indemnity obligations hereto under its corporate-wide self-insurance program. AMTRAK warrants that adequate self insurance levels will be maintained during the Term of this Lease.

(iii) AMTRAK shall cause all its subcontractors who perform work at the Station to add JPA and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

(iv) JPA shall indemnify, defend and hold harmless AMTRAK, its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the sole and direct negligence, gross negligence or willful misconduct of JPA, its officers, officials, directors, its employees or agents in connection with this Lease, or JPA's failure to comply with any of its obligations contained in this Lease, except for any loss or damage or portion of loss or damage that is caused by the sole and direct negligence, gross negligence or willful misconduct of AMTRAK.

(v) JPA shall cause all its subcontractors who perform work at the Station to add JPA and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

(vi) During the Term, JPA shall obtain and keep in force and effect fire and extended property coverage insurance for the Station and Amtrak Improvements and Public Liability Insurance, in such reasonable amounts with such reasonable deductions as would a prudent owner of a similar building in the area. AMTRAK acknowledges that it will not be a named insured in such policy, that it has no right to receive any proceeds from any such insurance policies carried by JPA.

(vii) All of AMTRAK's personal property, including fixtures kept, stored or maintained on the Property shall be kept, stored, or maintained at the sole risk of AMTRAK. AMTRAK may, in its sole discretion, procure and maintain throughout the Term of this Lease, Fire and Extended Coverage Insurance, including vandalism and malicious mischief coverage in an amount equal to the full replacement value of all personal property of AMTRAK. AMTRAK may self-insure this risk at its option.

(viii) Waiver and Subrogation. Each party hereto hereby waives any and all claims or right of recovery which such party or anyone claiming through such party may have against the other party (or such other party's owners, officers, agents, or employees) for, or with respect to, any loss of or damage to such waiving party's property or for any business interruption

which is insured or indemnified under valid policies, whether or not such loss, damage, or business interruption is caused by the negligence of such other party or such other party's owners, officers, agents, employees, or any other person or persons for whose actions such other party may be responsible or liable; provided, that the foregoing waiver shall be effective only to the extent of the insurance proceeds actually collected under such policies in respect of such loss, damage, or business interruption and only when permitted by the applicable insurance policy. Any self-insurance by AMTRAK shall be deemed to include such waiver of subrogation.

14. DAMAGE OR DESTRUCTION

In the event of destruction, or substantial damage, to the Premises during the Term of this Lease which renders the Premises unusable to AMTRAK, in AMTRAK'S sole discretion, JPA shall have the option of:

a. Within one hundred eighty (180) days after such damage or destruction, replacing or rebuilding the Station, including the Premises, and in such manner and according to such plans and specifications which would restore the Station, including the Premises, to substantially the same condition as immediately before its destruction or substantial damage, in which event JPA or the City of Lincoln Nebraska shall provide suitable temporary facilities while such replacement or rebuilding is ongoing; or

b. Declining to replace or rebuild, in which event AMTRAK shall have the option of terminating this Lease Agreement by written notice. If JPA does not rebuild the Station, JPA or the City of Lincoln Nebraska shall provide AMTRAK with suitable alternative space to use as a passenger station.

c. JPA shall notify AMTRAK within thirty (30) days after such damages or destruction of JPA'S decision to rebuild the Station including the Premises or declining to rebuild. During the 180 day repair or replacement period identified in Subsection (a) above, AMTRAK shall have no obligation to: (1) Pay any costs or expenses associated with the Station, including the Premises, required under this Lease; or (2) Provide any services including janitorial services to the Premises required under this Lease.

15. EMINENT DOMAIN

Eminent domain proceedings resulting in the condemnation of part of the Premises herein that leave the remaining portion usable by AMTRAK for purposes of the business for which the Premises are leased in, AMTRAK'S sole opinion, will not terminate this Lease Agreement. If AMTRAK, in its sole opinion, determines that the remaining portion is not usable by AMTRAK, AMTRAK may terminate this Lease by giving written notice of termination to JPA no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should AMTRAK not terminate this Lease, will be to terminate this Lease Agreement as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Rent and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall be that of JPA, except to the extent that part of the award is allocated as damages to fixtures on the Station which were furnished by AMTRAK, damages for the value of AMTRAK's leasehold estate or relocation expenses for AMTRAK.

16. ACCEPTANCE

AMTRAK hereby acknowledges that when it occupies the Premises it shall be deemed to have received the Premises in good order and condition unless AMTRAK notifies JPA of defects or problems with the Premises within one (1) year after AMTRAK takes occupancy. If AMTRAK notifies JPA as aforesaid, JPA shall correct and repair any defects or problems identified by AMTRAK within thirty (30) days after the date of the notice.

17. SUBLEASE AND ASSIGNMENT

Except as provided in this Lease, AMTRAK shall not assign or sublet the whole or any part of the Premises without JPA'S prior written consent. This provision requiring JPA's consent shall not apply, and AMTRAK shall be permitted to assign or sublet to any entity whose management and operation is indirectly or directly controlling, controlled by or under common control with AMTRAK or if such assignment or subletting is due to or arises out of any judicial or legislative action or mandate, and any such transfers shall not be deemed an assignment or subletting.

18. DEFAULT BY AMTRAK

The failure of AMTRAK to perform substantially or keep or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease Agreement within thirty (30) days after written notice from JPA identifying the specific term, covenant, or condition and requesting AMTRAK to correct or to commence correction for any such deficiency or default or such longer time period if the correction cannot be completed within said 30 days, provided that AMTRAK has commenced such correction, shall constitute an "Event of Default" by AMTRAK.

19. RIGHTS OF JPA AFTER DEFAULT BY AMTRAK

a. If an Event of Default by AMTRAK occurs, as provided in Section 18, JPA shall have the right (unless otherwise specified in the termination notice), in addition to any rights of the JPA at law or in equity and after written notice to AMTRAK, to terminate this Lease and enter and take possession of the Premises and expel, oust and remove any and all parties who may occupy any portion of the Premises, all in accordance with all applicable laws and procedures.

b. In case of any termination, re-entry, reletting and/or dispossession by the JPA in accordance with lawful proceedings:

(i) The Rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration; and

(ii) JPA may relet the Premises or any part or parts thereof, either in the name of JPA or otherwise, for a term or terms which may at JPA's option be less than or exceed the period which would otherwise have constituted the balance of the Term of the Agreement.

20. JPA'S DEFAULT

In the event JPA fails to perform any covenant or obligation required to be performed under this Lease, and such failure continues for more than thirty (30) days after notice from AMTRAK identifying such failure, such failure shall constitute an "Event of Default" by JPA. If an Event of Default by JPA occurs, AMTRAK, at its sole option and discretion, may: (1) perform such covenant or obligation on behalf of JPA in which event the JPA shall reimburse AMTRAK all costs and expenses associated with AMTRAK'S performance (including attorney's fees) within twenty (20) days after AMTRAK presents an invoice to JPA for such performance; (2) terminate this Lease; or (3) pursue any and all rights and remedies available at law or in equity.

21. QUIET ENJOYMENT

If and so long as AMTRAK shall keep all the covenants and agreements required by it to be kept under this Lease, JPA covenants and agrees that it and anyone claiming by through or under JPA shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by AMTRAK.

22. RIGHT OF ENTRY UPON PREMISES

JPA and its agents and employees shall have the right to enter upon the Premises, if accompanied by an AMTRAK employee, to inspect the same to determine if AMTRAK is performing the covenants of this Lease, on its part to be performed, to post such reasonable notices as JPA may desire to protect its rights, and to perform service and maintenance pursuant to its obligations under this Lease. AMTRAK shall make an AMTRAK employee available for such inspection during normal hours of operation.

23. TAXES

Pursuant to 49 U.S.C. §24301(l), AMTRAK is exempt from all state and local taxes, surcharges, or fees.

24. COMPLIANCE WTH LAWS, ORDINANCES, AND RULES

AMTRAK agrees to conform to and not violate any applicable laws, ordinances, rules, regulations, and requirements of federal authorities now existing or hereinafter created affecting AMTRAK'S use and occupancy of the Premises. In no event shall AMTRAK be required to make physical changes in the Premises unless the physical changes are necessitated by AMTRAK'S acts or omissions. JPA agrees to conform and comply with all applicable laws, ordinances, rules, regulations and requirements of federal, state, county or other governmental authorities and various departments there of now existing or hereinafter created regarding JPA's ownership and maintenance of the Station, including the Americans with Disabilities Act. Nothing in this Lease shall be interpreted as making AMTRAK a responsible party for purposes of accessibility requirements under the Americans with Disabilities Act.

Exhibit D

25. CONDITION OF PREMISES UPON SURRENDER

When AMTRAK vacates the Premises at the expiration of the Term or earlier termination of this Lease, whichever occurs first, AMTRAK shall leave the Premises in the same condition as when AMTRAK received possession, ordinary wear and tear, damage by fire or other casualty, or condemnation excepted and as may be altered, modified or improved in accordance with the terms of this Lease.

26. NON-WAIVER

Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver. Any waiver shall not operate to bar or prevent the waiving party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

27. PARTNERSHIP DISCLAIMER

It is mutually understood and agreed that nothing in this Lease is intended or shall be construed in any way as creating or establishing the relationship of partners or joint venturers between the parties hereto, or as constituting AMTRAK as an agent or representative of JPA for any purpose or in any manner whatsoever.

28. PARTIES BOUND

Except as otherwise specifically provided in this Lease, this Lease shall bind and inure to the benefit of the parties hereto and their respective administrators, legal representatives, successors and assigns.

29. NOTICES

Notices given under the terms of this Lease must be in writing and shall be deemed properly served if such notice is hand delivered or mailed by certified mail, return receipt requested, or sent by an established overnight commercial courier for delivery on the next business day with delivery charges prepaid, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

JPA:	AMTRAK:
City Attorney City of Lincoln, Nebraska 555 South 10th Street Lincoln, NE 68508	AMTRAK 30th Street Station, 5th Floor South Philadelphia, PA 19104 Attn: Assistant Vice President Real Estate Development

Notice mailed in accordance with the provisions hereof shall be deemed to have been given as to the date of hand delivery or the third business day following the date of such mailing, whichever is earlier.

30. LEGAL CONSTRUCTION

In the event any one or more of the provisions contained in this Lease Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

31. TIME OF ESSENCE, BINDING UPON HEIRS, ETC.

Time is of the essence of each and all the terms and provisions of this Lease t and the terms and provisions of this Lease Agreement shall extend to and be binding upon and inure to the benefit of the, administrators, successors and assigns of the respective parties hereto.

32. NUMBER AND GENDER

All words used herein in the singular number shall include plural and the present tense shall include the future, and the masculine gender shall include the feminine and neuter.

33. ENTIRE AGREEMENT

This Lease contains the sole and only agreement of the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect.

34. LANGUAGE CONSTRUCTION

The language of each and all paragraphs, terms, and/or provisions of this Lease shall, in all cases and for any and all purposes, and any and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identify or status of any person or persons who drafted all or any portion of this Lease.

35. HOLDING OVER

If AMTRAK shall hold over the Premises, after expiration of the Term or any extension thereof, such holding over shall be construed to be only a tenancy from month to month subject to all of the covenants, conditions and obligations contained in this Lease provided, however, that nothing in this paragraph shall be construed to give AMTRAK any rights to so hold over and to continue in possession of the Premises without the consent of JPA.

36. AMENDMENT

This Lease, including any exhibits hereto, shall not be amended, except in writing signed by the parties. Any amendment or addendum to this Lease shall expressly refer to this Lease.

37. AUDIT RIGHTS

AMTRAK or the Federal Railroad Administration, their respective agents, designees and accountants shall have the right at any time or from time to time after advance notice to JPA and/or the City of Lincoln, Nebraska to make any examination or audit of JPA's JPA and/or the City of Lincoln, Nebraska's books and records which relate in any way to the Station or Premises. If it is determined that costs, expenses or amounts that AMTRAK paid to JPA are in error, then JPA shall pay any overpayment to AMTRAK and AMTRAK shall pay any underpayment to JPA.

38. RUN WITH THE LAND

This Lease shall be recorded by JPA. AMTRAK's rights hereunder shall run with the land for the Term, as may be extended, modified or altered and all succeeding landlords of the Station shall be bound by the terms herein. JPA and all succeeding landlords shall notify AMTRAK of a sale, assignment or other disposition of the Station and provide AMTRAK with a nondisturbance agreement approved by AMTRAK, in its sole discretion, prior to any disposition of the Station.

39. CONTROLLING LAW

This Lease Agreement shall be enforced and construed in accordance with the laws of the State of Nebraska and adjudicated in Federal Courts.

DRAFT

Exhibit D

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

"JPA"	"AMTRAK"
WEST HAYMARKET JOINT PUBLIC AGENCY	NATIONAL RAILROAD PASSENGER CORPORATION
By_____	By_____
Jayne Snyder Chairperson of the West Haymarket Joint Public Agency Board of Representatives	Bruce Looloian Assistant Vice President Real Estate Development

The City of Lincoln, Nebraska agrees to be bound by paragraphs 14 and 37 herein. Further, if at any time JPA is no longer in existence or does not have the funds to fulfill its obligations hereunder, the City of Lincoln, Nebraska hereby assumes all of the obligations of JPA hereunder and agrees to be bound by the terms of this Lease as the landlord or JPA.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

By_____
Chris Beutler
Mayor of Lincoln, Nebraska

DRAFT

Exhibit D

Exhibit A to Station Lease

DRAFT

Exhibit D

Exhibit C to Station Lease

DRAFT

Exhibit D

Exhibit C to Station Lease

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Exhibit D

DECLARATION OF COMMENCEMENT

THIS DECLARATION OF COMMENCEMENT dated _____ __, ___ between the National Railroad Passenger Corporation ("Amtrak") and West Haymarket Joint Public Agency ("JPA").

BACKGROUND

A. By lease agreement dated _____ __, 201_ ("Lease"), JPA leased to Amtrak that certain premises located in the building commonly known as West Haymarket Station in the City of Lincoln, State of Nebraska, as more fully described ("Premises").

C. Amtrak is in possession of the Premises.

D. Under Section 2 of the Lease, JPA agreed to execute and deliver to Amtrak an agreement setting forth the "Commencement Date" (as defined in the Lease) of the Lease and Amtrak agreed to confirm such date.

NOW, THEREFORE, JPA and Amtrak confirm the following:

1. The Commencement Date of the Lease is_____

2. Nothing in this Declaration of Commencement is intended to change or modify the rights of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Commencement to be executed as of the day and year first above written.

AMTRAK:
NATIONAL RAILROAD PASSENGER CORPORATION

By: _____
Bruce Looloian
Assistant Vice President, Real Estate Development

JPA:
WEST HAYMARKET JOINT
PUBLIC AGENCY

By:_____
Jayne Snyder
Chairperson of the West Haymarket
Joint Public Agency Board of
Representatives

EXHIBIT E

Amtrak Specification 01141A
Safety and Protection of Railroad Traffic and Property

SECTION 01141A – SAFETY AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY

PART 1 - GENERAL

1.1 SCOPE

A. This specification describes the safety procedures and protection provisions for Contractors and Permittees entering and working upon railroad property.

B. Use of this specification is as required by Amtrak, as described in Amtrak Engineering Practice EP3014.

1.2 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

1.3 DEFINITIONS

A. CHIEF ENGINEER: Amtrak Chief Engineer

B. RAILROAD: National Railroad Passenger Corporation (Amtrak), and/or the duly authorized representative

C. ENGINEERING PRACTICE: Amtrak Engineering Practices establish a system of uniform practices, notices and instructions for the Amtrak Engineering Department, providing current, permanent and temporary, departmental procedures and policies.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 PRE-ENTRY MEETING

A. Before entry of Permittee and/or Contractors onto Railroad's property, a pre-entry meeting shall be held at which time Permittee and/or Contractors shall submit for written approval of the Chief Engineer, plans, computations and a detailed description of proposed methods for accomplishing the work, including methods for protecting Railroad's traffic. Any such written approval shall not relieve Permittee and/or Contractor of their complete responsibility for the adequacy and safety of their operations.

3.2 RULES, REGULATIONS AND REQUIREMENTS

A. Railroad traffic shall be maintained at all times with safety and continuity, and Permittee and/or Contractors shall conduct their operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad's property. Permittee and/or Contractors shall be responsible for acquainting themselves with such rules, regulations and requirements. Any violation of Railroads safety rules, regulations, or requirements shall be grounds for the immediate suspension of the Permittee and/or Contractor work, and the re-training of all personnel, at the Permittee's expense.

3.3 MAINTENANCE OF SAFE CONDITIONS

A. If tracks or other property of Railroad are endangered during the work, Permittee and/or Contractor shall immediately take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee and/or Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad's trains, tracks, right-of-way or other property caused by the operations of Permittee and/or Contractors, shall be paid by Permittee.

3.4 PROTECTION IN GENERAL

A. Permittee and/or Contractors shall consult with the Chief Engineer to determine the type and extent of protection required to insure safety and continuity of railroad traffic. Any Inspectors, Track Foremen, Track Watchmen, Flagman, Signalmen, Electric Traction Linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee and/or Contractors. The cost of same shall be paid directly to Railroad by Permittee. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee and/or Contractors from their complete responsibility for the adequacy and safety of their operations.

3.5 PROTECTION FOR WORK NEAR ELECTRIFIED TRACK OR WIRE

A. Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad's requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted to work near overhead wires, except when protected by a Class A employee of Railroad. Permittee and/or Contractors must supply an adequate length of grounding cable (4/0 copper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.

3.6 FOULING OF TRACK OR WIRE

A. No work will be permitted within twenty-five (25) feet of the centerline of track or the energized wire or have potential of getting within twenty-five (25) feet of track wire without the approval of the Chief Engineer's representative. Permittee and/or Contractors shall conduct their work so that no part of any equipment or material shall foul an active track or overhead

wire without the written permission of the Chief Engineer's representative. When Permittee and/or Contractors desire to foul an active track, they must provide the Chief Engineer's representative with their site-specific work plan a minimum of twenty-one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of Railroad. Any equipment shall be considered to be fouling a track or overhead wire when located (a) within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire, or (b) in such a position that failure of same, with or without a load, would bring it within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire and requires the presence of the proper Railroad protection personnel.

B. If acceptable to the Chief Engineer's representative, a safety barrier (approved temporary fence or barricade) may be installed at fifteen (15) feet from centerline of track or overhead wire to afford the Permittee and/or Contractor with a work area that is not considered fouling. Nevertheless, protection personnel may be required at the discretion of the Chief Engineer's representative.

3.7 TRACK OUTAGES

A. Permittee and/or Contractors shall verify the time and schedule of track outages from Railroad before scheduling any of their work on, over, under, within, or adjacent to Railroad's right-of-way. Railroad does not guarantee the availability of any track outage at any particular time. Permittee and/or Contractors shall schedule all work to be performed in such a manner as not to interfere with Railroad operations. Permittee and/or Contractors shall use all necessary care and precaution to avoid accidents, delay or interference with Railroad's trains or other property.

3.8 DEMOLITION

A. During any demolition, the Contractor must provide horizontal and vertical shields, designed by a Professional Engineer registered in the state in which the work takes place. These shields shall be designed in accordance with the Railroad's specifications and approved by the Railroad, so as to prevent any debris from falling onto the Railroad's right-of-way or other property. A grounded temporary vertical protective barrier must be provided if an existing vertical protective barrier is removed during demolition. In addition, if any openings are left in an existing bridge deck, a protective fence must be erected at both ends of the bridge to prohibit unauthorized persons from entering onto the bridge.

B. Ballasted track structure shall be kept free of all construction and demolition debris. Geo-textiles or canvas shall be placed over the track ties and ballast to keep the ballast clean.

3.9 EQUIPMENT CONDITION

A. All equipment to be used in the vicinity of operating tracks shall be in "certified" first-class condition so as to prevent failures that might cause delay to trains or damage to Railroad's property. No equipment shall be placed or put into operation near or adjacent to operating tracks without first obtaining permission from the Chief Engineer's representative. Under no circumstances shall any equipment or materials be placed or stored within twenty-five (25) feet from the centerline of an outside track, except as approved by the Site Specific

Safety Work Plan. To insure compliance with this requirement, Permittee and/or Contractors must establish a twenty-five (25) foot foul line prior to the start of work by either driving stakes, taping off or erecting a temporary fence, or providing an alternate method as approved by the Chief Engineer's representative. Permittee and/or Contractors will be issued warning stickers which must be placed in the operating cabs of all equipment as a constant reminder of the twenty-five (25) foot clearance envelope.

3.10 STORAGE OF MATERIALS AND EQUIPMENT

A. No material or equipment shall be stored on Railroad's property without first having obtained permission from the Chief Engineer. Any such storage will be on the condition that Railroad will not be liable for loss of or damage to such materials or equipment from any cause.

B. If permission is granted for the storage of compressed gas cylinders on Railroad property, they shall be stored a minimum of 25 feet from the nearest track in an approved lockable enclosure. The enclosure shall be locked when the Permittee and/or Contractor is not on the project site.

3.11 CONDITION OF RAILROAD'S PROPERTY

A. Permittee and/or Contractors shall keep Railroad's property clear of all refuse and debris from its operations. Upon completion of the work, Permittee and/or Contractors shall remove from Railroad's property all machinery, equipment, surplus materials, falsework, rubbish, temporary structures, and other property of the Permittee and/or Contractors and shall leave Railroad's property in a condition satisfactory to the Chief Engineer.

3.12 SAFETY TRAINING

A. All individuals, including representatives and employees of the Permittee and/or Contractors, before entering onto Railroad's property or coming within twenty-five (25) feet of the centerline of the track or energized wire shall first attend Railroad's Safety Contractor/Lessee Employee Training Class. The Safety Orientation Class will be provided by Railroad's Safety Representative at Permittee's expense. A photo I.D. will be issued and must be worn/displayed while on Railroad property. All costs of complying with Railroad's safety training shall be at the sole expense of Permittee. Permittee and/or Contractors shall appoint a qualified person as their Safety Representative. The Safety Representative shall continuously assure that all individuals comply with Railroad's safety requirements. All safety training records shall be maintained with site specific work plan.

3.13 NO CHARGES TO RAILROAD

A. It is expressly understood that neither these Specifications, nor any document to which they are attached, include any work for which Railroad is to be billed by Permittee and/or Contractors, unless Railroad gives a written request that such work be performed at Railroad's expense.

END OF SECTION 01141A

Exhibit F

Prime Lease Attached

LEASE AGREEMENT
BETWEEN AMTRAK AND BNSF
FOR CERTAIN FACILITIES AT THE
LINCOLN, NE STATION

This Lease Agreement (the "Agreement") is entered into by and between the **National Railroad Passenger Corporation**, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia ("Amtrak"), and **BNSF Railway Company**, a Delaware corporation ("BNSF").

WHEREAS, the City of Lincoln or the West Haymarket Joint Public Agency, a political subdivision and corporate body of the State of Nebraska created and established by and between the Board of Regents of the University of Nebraska and the City pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended) for the purpose of constructing, equipping, furnishing, and financing public facilities including, but not limited to, the Haymarket Project (collectively, the "JPA") is undertaking a redevelopment project in the vicinity of the Leased Premises (as hereinafter defined) (the "Haymarket Project"); and

WHERAS, the Haymarket Project includes a new train station, including a new depot to be constructed by the JPA on property owned by the JPA, and a new intercity rail passenger platform and canopy (together the "New Platform") to be constructed by the JPA under the Sublease (as hereinafter defined) on land owned or controlled by BNSF (the new depot, passenger platform and canopy are collectively referred to as the "New Depot"); and

WHEREAS, as part of the Haymarket Project the parties anticipate that certain of BNSF's tracks and other property, including tracks and platform areas currently used for Amtrak service, will be realigned and BNSF's interest in the underlying land will be conveyed to the JPA, and, once construction of the New Depot has been completed in accordance with plans and specifications approved by Amtrak, Amtrak operations will be relocated to the New Depot, and the existing platform and depot will be closed; and

WHEREAS, Amtrak has consented to and concurred with the conveyance, realignment and change in location, and subject to the construction of the New Depot in accordance with approved specifications and plans, intends to enter into a new depot lease with the JPA for such new depot in a form substantially similar to Exhibit D to the Sublease (defined below) (the "Amtrak/JPA Lease") and relocate its operations to the New Depot; and

WHEREAS, Amtrak and BNSF are currently parties to a certain agreement dated September 1, 1996, as amended, which relates to the provision of Intercity Passenger Rail Service on BNSF rail lines (the "Operating Agreement"); and

WHEREAS, BNSF and Amtrak desire to enter into this Agreement to formalize their relationship with each other concerning the use of the Leased Premises; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances herein contained, and with the intent to be legally bound hereby, BNSF and Amtrak mutually agree that the foregoing recitals are incorporated into this Agreement by this reference and further agree as follows:

1. **Leased Premises.** In consideration of the promises herein, and for an annual rental fee of one dollar ($1.00), Amtrak does hereby lease from BNSF all real property and facilities owned by BNSF shown as shaded on **Exhibit A** attached to this Agreement and by this reference made a part hereof (the "Leased Premises"). The address of the Leased Premises will be established in connection with the Haymarket Project and amended into this Agreement. The trackside boundaries of the Leased Premises shall commence at the edges of the ballasted right of way, and shall be measured by the trackside edge of platforms where they exist, or are built. The Leased Premises include areas used exclusively by Amtrak, including but not limited to platforms, station facilities, connecting walkways and parking areas to the extent such areas fall within the shaded area on **Exhibit A**. All passenger boarding platforms within the Leased Premises shall be deemed to be used exclusively by Amtrak.

The Leased Premises may also include areas and facilities used jointly by or for the benefit of both Amtrak and BNSF, to the extent such areas fall within the shaded area on **Exhibit A** (the "Shared Facilities"). All designated parking areas within the Leased Premises shall be Shared Facilities, and no stalls shall be reserved or specifically allocated to either party, except those parking stalls reserved for physically disabled passengers. BNSF reserves for itself, its employees, agents and contractors, an irrevocable right to use the Shared Facilities in common with Amtrak as may be necessary or desirable for conducting BNSF's business.

If the Leased Premises include a station building that is used by both BNSF and Amtrak, then all elements of such building that are used by or for the benefit of both Amtrak and BNSF (e.g., the roof, exterior walls, parking areas and shared restrooms) shall be included as part of the Shared Facilities under this Agreement. A station building that is used jointly by both Amtrak and BNSF as of the Commencement Date is referred to herein as a "Jointly Used Facility". Elements of any Jointly Used Facility that are used exclusively by either party are excluded from the definition of Shared Facilities.

Specifically excluded from the Leased Premises are: (a) facilities used exclusively by BNSF that may be adjacent to or a portion of the land and improvements depicted on **Exhibit A**, (b) facilities that, as of the Commencement Date, are leased to a third party or are vacant, and (c) facilities that are within the shaded area but are not owned by BNSF (collectively, the "Excluded Facilities") all as determined on the Commencement Date.

If the Leased Premises includes Shared Facilities, BNSF shall reimburse Amtrak on a pro rata basis for its share of capital expenditures (excluding capital expenditures made by Amtrak using funds received by Amtrak pursuant to its 2009 American Recovery and Reinvestment Act grant) and operating expenses incurred by Amtrak in connection with the Shared Facilities (including, but not limited to, maintenance, repair, utility, and snow/ice removal costs).

If the Leased Premises include a Jointly Used Facility, the parties' pro rata shares shall be calculated based upon the portions of the Jointly Used Facility used exclusively by each party, by dividing the square footage used exclusively by BNSF or Amtrak, as the case may be, by the total square footage of the Jointly Used Facility that is a part of the Leased Premises. For purposes of the foregoing calculations, any Shared Facilities within any Jointly Used Facility on the Leased Premises shall be excluded from the total square footage of such building, and any unused vacant space within any building shall be deemed to be used exclusively by BNSF. The parties shall mutually agree upon the allocation of pro rata shares using the formulas shown below.

Category of use	**Square Footage**	**Formula for allocating costs associated with a Jointly Used Facility**	**Cost for Sample $1000 repair**
Gross Square Footage of Jointly Used Facility	1100 sf	N/A	
Shared Facilities (e.g. shared restrooms)	100 sf	N/A	
Net Square Footage of Jointly Used Facility (Gross Square Footage Less Shared Facilities)	1000 sf	N/A	$1000
Portion used exclusively by BNSF (including vacant space)	600 sf	600 sf/1000 sf	$600
Portion used exclusively by Amtrak	400 sf	400 sf/1000 sf	$400

If the Leased Premises include Shared Facilities but do not include a Jointly Used Facility, the parties agree to compute each party's pro rata share of capital expenditures and operating expenses incurred by Amtrak in connection with the Shared Facilities based upon each party's use of the Shared Facilities.

2. **Duration of Lease.** The term of this Agreement shall commence upon satisfaction of the Conditions Precedent (defined below) (the "Commencement Date") and continue in effect for a period co-terminus with the

Operating Agreement, as it may be amended or replaced. However, at any time after two (2) years from the Commencement Date, Amtrak may terminate this Agreement if the Leased Premises no longer meets Amtrak's operational needs (for example, if Amtrak ceases to provide intercity passenger rail services at the station) by giving BNSF at least ninety (90) days' prior written notice.

The following conditions precedent (the "Conditions Precedent") all must be satisfied before Amtrak will have any rights or obligations with respect to the Leased Premises: (i) the JPA and Amtrak have entered into the Amtrak/JPA Lease; (ii) the land underlying the New Depot has been conveyed from BNSF to the JPA; (iii) BNSF has completed all construction activities within the Leased Premises, including all of its work relating to track serving the New Platform; (iv) the JPA and Amtrak have entered into the Sublease; and (v) BNSF has completed all of its work relating to track serving the New Depot and New Platform. In the event any of the Conditions Precedent has not occurred within a period of three (3) years from the execution of this Agreement by Amtrak, this Agreement shall expire without any further action.

In the event the JPA is unable to construct the New Platform due, in whole or in part, to the quality of BNSF's ownership interest in the Leased Premises, any restrictions, liens, encumbrances, assessments, easements, zoning or other limitation on the Leased Premises or its use, Amtrak may, in its sole discretion, terminate this Lease by giving BNSF at least thirty (30) days' prior written notice.

The period of time commencing on the Commencement Date and ending on the date on which Amtrak agrees that the New Depot and New Platform are at final completion is the "Initial Construction Period". Amtrak's agreement as to the final completion of the New Depot and New Platform shall not be unreasonably withheld or delayed and Amtrak agrees to notify BNSF once Amtrak and the JPA have reached agreement regarding such final completion.

Upon commencement of operations by Amtrak on the Leased Premises, Amtrak shall surrender to BNSF any BNSF land and other property used by Amtrak at its existing station location in Lincoln, NE. Surrender of such land and other property shall not terminate or affect any liabilities of the parties arising prior to the date of such surrender. Amtrak has waived any rights it may have with respect to the acquisition of its existing station location, and upon commencement of operations on the Leased Premises shall have waived any rights it may have with respect to the use of its existing station location. Except as expressly set forth herein, nothing in this Agreement shall be deemed to be a surrender or waiver of Amtrak's rights or BNSF's obligations to Amtrak at law or under the Operating Agreement or any under any existing agreement between BNSF and Amtrak.

3. **Use of Leased Premises.** Except during the Initial Construction Period, the Leased Premises may be used by Amtrak during the term of this Agreement in connection with the provision of Intercity Rail Passenger Service, as defined in the Operating Agreement. Amtrak shall have no right to enter onto or otherwise use the Leased Premises during the Initial Construction Period, and during such time the JPA shall only have the right to use the Leased Premises for construction of the New Platform as Amtrak's subtenant pursuant to the Sublease. BNSF shall permit reasonable ingress and egress to and from the Leased Premises over BNSF property.

In its use of the Leased Premises for the aforesaid purposes, Amtrak will not permit new parking within twenty-five (25) feet of the center line of any track without prior approval of BNSF. All Leased Premises shall be subject to BNSF's present and future pole line and signal installation purposes, and to purposes of maintaining its right of way and operating its railroad. Parking areas within the Leased Premises shall not be used to store materials or heavy equipment, other than on a temporary basis in connection with a construction or demolition project.

All Leased Premises shall be subject to all existing utility agreements and easements, and BNSF reserves unto itself, its successors and assigns and licensees the right to operate, maintain and renew such improvements in the ballasted right of way, crossing signals, utilities, pipelines, telephone, telegraph and signal lines, electric transmission lines, and other facilities of like character, as may now exist on, over or under said Leased Premises, and to construct operate, maintain, and renew such additional facilities thereon so long as the same will not interfere with the use of said Leased Premises for the purposes set forth herein.

Amtrak will not (a) use, occupy or permit the use or occupancy of the Leased Premises in any manner which violates any law, statute, regulation, ordinance, order, covenant, restriction or decision of any court of competent jurisdiction, or is dangerous to life or property, or creates a public or private nuisance, or for a use other than the permitted use hereunder; (b) keep, or permit to be kept, any substance in or conduct, or permit to be conducted, any operation from the Leased Premises which might emit offensive odors or conditions, or make undue noise or create undue vibrations; or (c) commit or permit to remain any waste to the Leased Premises; provided, however, that such restrictions shall not apply to approved demolition and/or construction projects.

4. **Maintenance; Special Assessments**. During the term of this Agreement, Amtrak shall maintain, repair as necessary, and replace to the extent required for Amtrak service, the Leased Premises, including without limitation platforms, canopies, lighting facilities, sidewalks, entrances and exits, and shall keep the same in a state of order and cleanliness corresponding to standards applicable to other public buildings and grounds owned or operated by Amtrak; provided, however, that Amtrak shall have no responsibility or liability for the condition of the Leased Premises during the Initial Construction Period. Amtrak agrees and acknowledges that it is leasing the Leased Premises in "as is" condition, and that BNSF has no obligation to make any repairs or alterations of whatsoever nature in or to any part of the Leased Premises (other than Shared Facilities), including but not limited to alterations required to comply with the Americans with Disabilities Act or any other governmental requirement, or to maintain any part of the Leased Premises in any manner. Nothing in this Agreement shall relieve BNSF of any obligation to make alterations to the Shared Facilities and/or Excluded Facilities that are required, as a result of BNSF's use of the Shared Facilities and/or Excluded Facilities, to comply with the Americans with Disabilities Act or any other governmental requirement, or to maintain the Excluded Facilities. Amtrak shall not knowingly create or permit any condition on the Leased Premises that could present a threat to human health or to the environment. Amtrak shall be responsible for the cost of any utilities associated with the Leased Premises where Amtrak is the sole occupant. Accordingly, BNSF shall transfer the utility accounts for Leased Premises where Amtrak is the sole occupant to Amtrak for the term of this Agreement as of a date to be mutually agreed upon by BNSF and Amtrak. If the Leased Premises include a Jointly Used Facility, each party shall be responsible for utility accounts for its exclusively used area to the extent separately metered. Utility accounts for Shared Facilities and for Leased Premises where Amtrak's exclusively used areas are not separately metered shall remain in BNSF's name, and BNSF will continue to charge Amtrak its pro rata share for utilities at such location using the same allocation set forth in Paragraph 1 above. Except as provided in Paragraph 1 hereof, BNSF will not be obligated to fund any capital or maintenance costs associated with the Leased Premises unless mutually agreed to.

   Should the Leased Premises be subject to special assessment for public improvements, Amtrak shall be obligated to pay such assessments (or its pro rata share of such assessments) for the term of this Agreement, even though such charges may not become due and payable until after termination of this Agreement.

   When necessary, Amtrak shall promptly remove ice and snow from the Leased Premises, including without limitation platforms, entrances, exits, sidewalks, driveways and parking areas constructed or maintained under the terms of this Agreement.

5. **Indemnification.** Subject to the terms and conditions set forth in Paragraph 9 of this Agreement, during the term of this Agreement, risk of liability and damage shall be governed by Section 7.2 of the Operating Agreement. For purposes of construing Section 7.2 of the Operating Agreement as it applies to this Agreement, the Leased Premises shall be deemed to be Amtrak's property and Amtrak contractors shall be deemed to be Amtrak employees.

   Notwithstanding anything herein to the contrary, Amtrak shall have no responsibility or indemnification obligations for any acts or omissions of, the JPA, its employees, contractors, agents or invitees in connection with the construction of the New Platform during the Initial Construction Period, nor shall the JPA, its employees or its contractors (or subcontractors) be deemed to be Amtrak employees in connection with the construction of the New Platform during the Initial Construction Period. Except for its rights with respect to approval of plans and specifications, Amtrak shall have no right to supervise, direct, or otherwise participate in the JPA's construction of the New Platform.

6. **Effect of Termination.**

(a) When either this Agreement or the Operating Agreement has been terminated for any reason, the Leased Premises, including any subsequent improvements approved by BNSF to be affixed to the Leased Premises, shall become the property of BNSF without payment or reimbursement by BNSF to Amtrak or any other party. Improvements that are not affixed to the Leased Premises or approved by BNSF to remain in the Leased Premises following termination shall be removed by Amtrak.

(b) If either party to this Agreement shall fail to perform its substantive duties and obligations hereunder, and such failure continues for more than thirty (30) days after written notice from the other party to cure such failure, such other party may terminate this Agreement. After such termination, each party may pursue such legal remedies as it may elect to protect its own interests, but subject to Paragraph 6(a) above. After the termination of this Agreement, the rights and obligations of the parties with respect to the Leased Premises shall be governed by the Rail Passenger Service Act and/or the Operating Agreement, as either or both may apply.

7. **Third Party Services**. It is understood and agreed that Amtrak may contract with outside parties to furnish construction, maintenance or operational services in and about the Leased Premises for the functions permitted under this Agreement.

8. **Construction or Demolition Projects**. When proposing construction or demolition projects on the Leased Premises, Amtrak shall provide BNSF with a set of plans and specifications for BNSF's review and approval prior to the start of construction or demolition, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, with regard to the initial construction of the New Platform Amtrak shall direct the JPA to provide such plans and specifications to BNSF rather than being required to provide directly to BNSF itself. The parties understand that BNSF's approval of any plans or specifications shall not be deemed to mean that the construction contemplated therein, nor completed in accordance therewith, is structurally sound or appropriate or meets applicable regulations, laws, statutes or local ordinances, and/or building codes. Amtrak will be solely responsible for determining whether its plans and specifications, construction, and maintenance meet its needs and will provide for safe operation. For such construction or demolition projects (excluding the Haymarket Project), Amtrak will fully indemnify BNSF against any and all risks, liabilities, claims, losses and judgments arising from, or growing out of, or related in any way to the acts or negligence of BNSF, its agents or employees, of the contractors performing such construction or demolition work, their agents, employees, subcontractors, and their agents and employees, and will require its contractors to execute and deliver a BNSF Contractor's Right of Entry in the form attached as **Exhibit B** hereto, unless BNSF notifies Amtrak in writing that a Contractor's Right of Entry is not required. Notwithstanding the foregoing, Amtrak's indemnification obligations shall be limited during the Initial Construction Period as set forth in Section 5 above, and Amtrak shall not be required to obtain a Contractor's Right of Entry for the initial construction of or maintenance work on the New Platform to be performed on the Leased Premises by the JPA during the Initial Construction Period. Amtrak will require its construction and demolition contractors, after Amtrak has fully assured itself of contractual compliance in every respect, to certify in writing that the project work is of good quality and has been performed in accordance with the contract and provide appropriate lien waivers, as a condition precedent to final disbursement of project funds.

9. **Liens.** If, because of any act or omission of Amtrak or its agents, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against BNSF or any portion of the Leased Premises, Amtrak shall, at its own expense, cause the same to be discharged of record within thirty (30) days after becoming aware of such lien or after written notice from BNSF to Amtrak of the filing thereof, and shall indemnify and save harmless BNSF against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom; provided that Amtrak shall have no obligations with respect to any liens, charges or orders of payment created by or through the JPA during the Initial Construction Period. Should Amtrak become aware of a possible or actual filing of lien in the above instances, it shall notify the BNSF Amtrak Operations Officer in writing of same in a timely fashion. Should the BNSF Amtrak Operations Officer receive notice of any lien filed against any portion of the Leased Premises, the BNSF Amtrak Operations Officer shall notify Amtrak of the same in a timely fashion. In the event Amtrak incurs additional costs as a result of the BNSF Amtrak Operations Officer's failure after he or she has received notice a) to notify Amtrak in a timely manner, or b) to appear and prosecute or defend an action covered by the preceding sentences where BNSF has standing to do so

and Amtrak does not and where BNSF has not given Amtrak sufficient legal rights to represent BNSF, Amtrak shall have the right to pursue its legal remedies and to recover such costs from BNSF.

10. **Renegotiation**. At any time after three (3) years from the execution of this Agreement by Amtrak, and at the request of either party, the location, size and/or configuration of the Leased Premises may be renegotiated. In the event of such a renegotiation, the parties shall cooperate with one another to resolve the circumstances giving rise to the request for renegotiation. **Exhibit A** to this Agreement shall be amended to reflect any agreed upon change in the Leased Premises.

11. **Entire Agreement.** This Agreement (including the Operating Agreement referenced herein), signed by both parties, constitutes a final written expression of all the terms of this Agreement, and is a complete and exclusive statement of those terms. If the terms and conditions of this Agreement and the Operating Agreement conflict, the terms of this Agreement shall control. No other agreement or understanding of any nature concerning the same has been made or entered into. The parties agree that upon the execution of this Agreement by both parties, any lease between the parties covering all or a portion of the Leased Premises that is in effect as of the date hereof, if any such lease exists, is hereby deemed to have been terminated by mutual agreement effective immediately; provided, however, that any right or obligation in an existing lease which, by its nature, would ordinarily survive the termination of the existing lease (such as the obligation to make an outstanding payment) shall survive the termination of the existing lease until it is satisfied.

12. **Severability.** In the event a court of competent jurisdiction finds and determines that any provision of this Agreement, in whole or in part, is invalid, the remaining provisions of this Agreement shall remain in full force and effect.

13. **Non-Waiver.** The failure or delay of BNSF or Amtrak to exercise or enforce any of the rights granted to them under this Agreement or any of the obligations or duties imposed on them as may be set forth in this Agreement shall not be construed as or constitute a waiver by BNSF or Amtrak of any such rights, obligations or duties. Amtrak has waived any rights it may have with respect to the acquisition of its existing station location, and upon commencement of operations on the Leased Premises shall have waived any rights it may have with respect to the use of its existing station location. Except as expressly set forth herein, nothing in this Agreement shall waive or derogate any of the parties' rights or responsibilities under law or statute.

14. **Subletting.** Subject to the terms and conditions of this Agreement and the Operating Agreement, Amtrak shall have the right to sublease a portion of the Leased Premises to any third-party sublessee (each a "Permitted Sublessee"), without prior notice, consent or approval by BNSF; *provided, however, that* (i) such Permitted Sublessees shall be limited to newsstands, food and beverage concessions, vending machines, telephones, automated teller/ticketing machines, and direct telephone line connections for local hotel, restaurants, entertainment, sports and convention centers and car rentals; (ii) except as expressly permitted below, Amtrak shall not assign this Agreement or sublease "*substantially all*" of the Leased Premises without the prior written consent of BNSF, which consent shall not be unreasonably withheld, conditioned or delayed; (iii) BNSF shall have the right to impose operational and safety requirements and restrictions upon any Permitted Sublessee (e.g., fencing separating outdoor dining areas from platforms and tracks, prohibitions against sale of alcoholic beverages, etc.); and (iv) no billboards or other advertising materials or signage shall be permitted on or about the Leased Premises without BNSF's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. In the event the rent, concession fees or other revenue received by Amtrak from a Permitted Sublessee at any location exceeds One Thousand Dollars ($1,000) per month, Amtrak shall remit to BNSF on a monthly basis fifty percent (50%) of any such excess amount. Amtrak shall provide written notice to BNSF within thirty (30) days after the execution of an agreement with a Permitted Sublessee, together with supporting documentation substantiating the amount of any rent or other payments to be paid by such Permitted Sublessees. Reimbursement to Amtrak by the JPA or any Permitted Sublessee of engineering fees or any other costs or expenses for services provided by Amtrak to, on behalf of or in the assistance of the JPA or such Permitted Sublessee shall not be considered rent, commission or other revenue under this Agreement even if the monies are defined as such in any agreement between Amtrak and the JPA or such Permitted Sublessee.

    Notwithstanding the preceding paragraph, subject to the other terms and conditions of this Agreement and the Operating Agreement, Amtrak shall have the right to sublease all or a portion of the Leased Premises to the JPA pursuant to the form of Sublease Agreement attached as **Exhibit C** hereto (the "Sublease"), without any

requirement of further consent or approval by BNSF. BNSF acknowledges that: (i) the Sublease grants the JPA the right to construct the New Platform on the Leased Premises, (ii) the Sublease provides that the JPA will own and maintain the New Platform so long as the Sublease is in effect, and (iii) upon the termination of the Sublease, the New Platform will be considered an improvement approved by BNSF and affixed to the Leased Premises under this Agreement.

Dated this_____of _____, 2011.

National Railroad Passenger Corporation

_____

By: Bruce Looloian
Its: Assistant Vice President
Real Estate Development

BNSF Railway Company

_____

By: _____
Its: _____

Exhibit A

Description of Leased Premises

The Leased Premises consists of the land in the shaded area depicted on Exhibit 1-A dated _____, 2010 where the New Platform will be constructed attached hereto. The Leased Premises does NOT include any Shared Facilities nor a Jointly Used Facility.

Exhibit A-1
Lincoln, NE

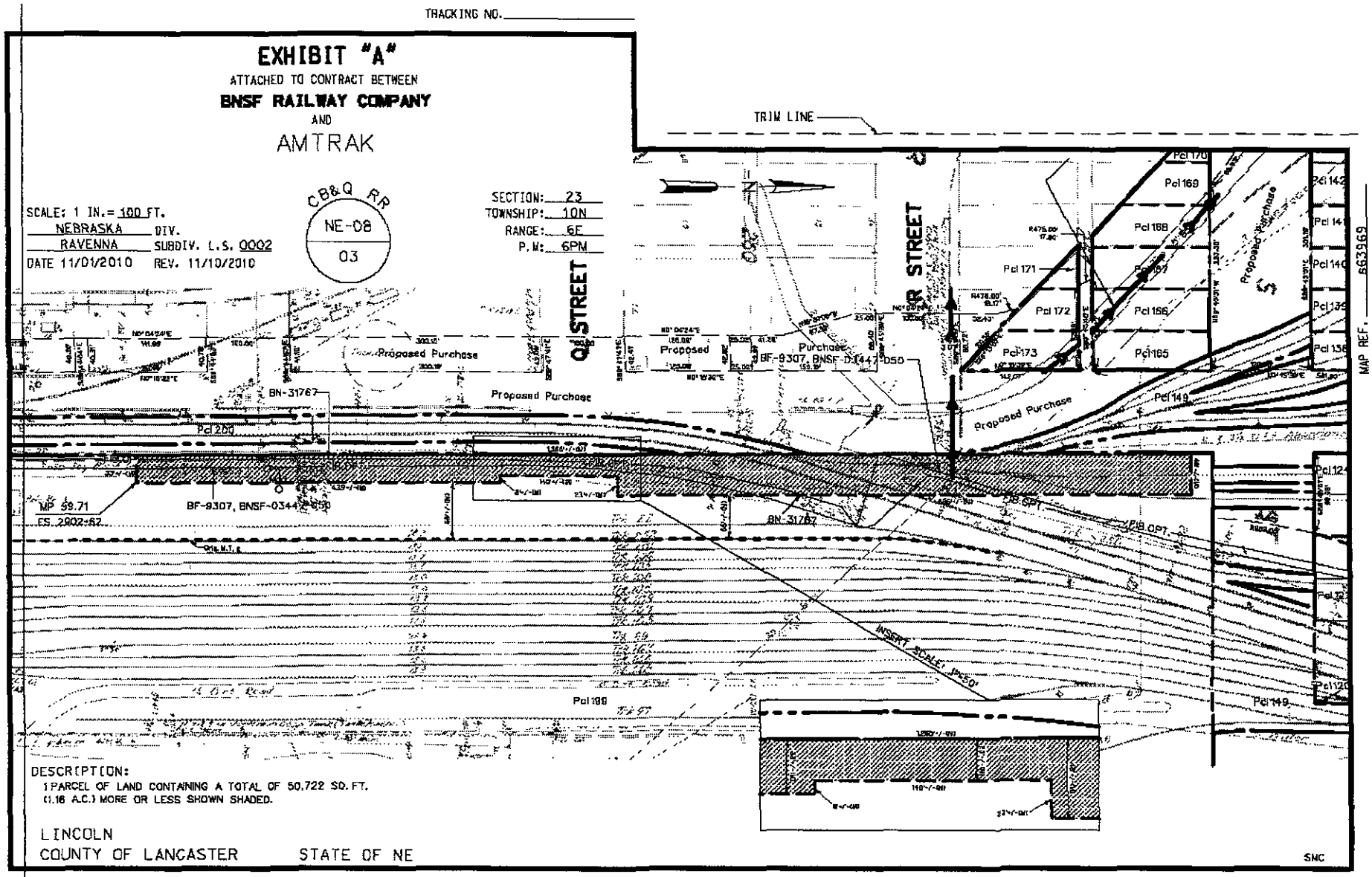


Exhibit B

BNSF CONTRACTOR'S RIGHT OF ENTRY AGREEMENT FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF BNSF RAILWAY COMPANY

This Right of Entry Agreement ("**Agreement**") is made to be effective _____, 20__, by and between **BNSF RAILWAY COMPANY** ("**Railroad**"), a Delaware corporation, and _____, a(n) _____ ("**Contractor**").

WHEREAS, Railroad operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, The National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, (hereinafter referred to as "Amtrak"), desires Contractor to perform certain construction services adjacent to and upon Railroad's right of way and/or property, and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railroad entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises (defined herein), Contractor agrees with Railroad as follows:

SECTION 1. SCOPE OF SERVICES

Contractor will perform the following services, hereinafter described as "**Work**": _____.

Performance of the Work will necessarily require Contractor to enter Railroad's right of way and property ("**Premises**"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railroad, and (ii) Contractor provides Railroad with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railroad with evidence certifying that the signatory is empowered to execute this Agreement.

SECTION 2. PAYMENT OF FEES

Amtrak will be solely responsible for paying Contractor for the Work.

SECTION 3. RELEASE OF LIABILITY AND INDEMNITY

(a) Contractor agrees to release Railroad and Railroad's duly authorized representative from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against Railroad, regardless of the negligence of Railroad, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of Railroad.

(b) Contractor shall indemnify and hold harmless Railroad and Railroad's duly authorized representative for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railroad's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder. **THE LIABILITY ASSUMED BY CONTRACTOR SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.**

(c) **THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

(d) Contractor further agrees, at its expense, in the name and on behalf of Railroad, that it shall adjust and settle all claims made against Railroad, and shall, at Railroad's discretion, appear and defend any suits or actions

at law or in equity brought against Railroad on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railroad is liable or is alleged to be liable. Railroad shall give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railroad's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railroad from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

(e) With regard to any construction or maintenance work to be done in the State of Nebraska, pursuant to Neb. Rev. Stat. S 25-21, 187:

Nothing in this contract is intended to be construed to indemnify or hold harmless Contractor from Railroad's own negligence.

(f) In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

(g) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

SECTION 4. INSURANCE

(a) Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverages:

(i) Commercial General Liability Insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by the contract holder. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

It is agreed that the Workers' Compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(ies) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

No other endorsements limiting coverage may be included on the policy with regard to the work being performed under this Agreement or otherwise with respect to any obligations under this Agreement.

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

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

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

Waiver of subrogation in favor of and acceptable to Railroad.

Additional insured endorsement in favor or and acceptable to Railroad.
Separation of insureds.
The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

(iv) Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

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

Waiver of subrogation in favor of and acceptable to Railroad.

(v) Railroad Protective Liability Insurance. This insurance must name only Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93).
Endorsed to include the Limited Seepage and Pollution Endorsement.
Endorsed to include Evacuation Expense Coverage Endorsement.
No other endorsements restricting coverage may be added.
The original policy must be provided to Railroad prior to performing any work or services under this Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in Railroad's Blanket Railroad Protective Liability Insurance Policy. The limits of coverage are the same as above. The cost is $_____.

I **elect** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any);

I **elect not** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any).

(b) In addition to the foregoing, the following other requirements shall apply to this Agreement:

Where allowable by law, all policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad, for loss of its owned or leased property or property under its care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to Railroad an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this Section 4 will entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Contractor will make available any required policy covering such claim or lawsuit.

For purposes of this Section 4, "**Railroad**" means "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

SECTION 5. CONTRACTOR REQUIREMENTS

(a) While on or about the Premises, Contractor must fully comply with Railroad's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be solely responsible for fully informing itself as to Railroad's "Contractor Requirements".

(b) Contractor must ensure that each of its employees, subcontractors, agents or invitees entering upon the Premises completes the safety training program at the following Internet Website: "www.contractororientation.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering the Premises. Contractor must renew the Safety Orientation annually.

(c) Prior to entering the Premises, Contractor must prepare and implement a safety action plan acceptable to Railroad. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the Premises and will be available for inspection by Railroad at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least 50 feet from the centerline of Railroad's nearest track. Contractor must not cross Railroad's tracks except at existing open public crossings.

SECTION 6. PROTECTION OF RAILROAD FACILITIES / FLAGGER SERVICES

(a) Railroad flagger and protective services and devices will be required and furnished when Railroad determines, in Railroad's sole discretion, that such services and devices are necessary for safety purposes, including but not limited to the following events:

(i) when Work is located over, under or within twenty-five (25) feet from the center line of the nearest track;
(ii) when cranes or similar equipment are positioned outside of 25-foot horizontally from track center line but could foul the track in the event of tip-over or other catastrophic occurrence;
(iii) when any excavation is performed below the bottom of tie elevation, if, in Railroad's sole opinion track or other Railroad facilities may be subject to movement or settlement.
(iv) when Work in any way interferes, or is likely to interfere, with the safe operation of trains at timetable speeds.
(v) when persons, material, equipment, blasting or other hazardous activities in the vicinity present any actual or potential threat to Railroad's personnel, track, communications, signal, electrical, or other facilities.

Special permission must be obtained from Railroad before moving heavy or cumbersome objects or equipment which might result in damage, injury or making the track impassable.

(b) Contractor must give Railroad's Roadmaster (telephone _____) a minimum of thirty (30) working days' advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (*i.e.*, bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and the parties hereto subsequently determine that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days' advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

(c) Flagging services will be performed solely by qualified Railroad flaggers. The costs for flaggers shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Railroad and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railroad labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. The flagging rate in effect at the time of performance by Contractor will be used to calculate the costs of flagging pursuant to this **Section 6(c)**.

(i) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by Railroad's representative.

(ii) The cost of flagger services provided by Railroad, when deemed necessary by Railroad's representative, will be borne by Contractor.

SECTION 7. INDEPENDENT CONTRACTOR

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railroad in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

SECTION 8. TRAIN DELAYS

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in writing in advance by Railroad's representative. Additionally, Contractor must not, at any time, impair the safety of Railroad operations or the operations of Railroad's lessees, licensees or other Railroad invitees. Delays to freight or passenger trains affect Railroad's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be responsible to Railroad, including its subsidiaries, affiliated companies, partners, successors and assigns, for all economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

(i) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railroad performing Work.

(ii) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with Railroad. Under such arrangements, if Railroad does not meet its contract service commitments, Railroad may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railroad which are attributable to a train delay caused by Contractor or its subcontractors.

(iii) The contractual relationship between Railroad and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railroad will share information relevant to any train delay to the maximum extent consistent with Railroad confidentiality obligations.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date above.

RAILROAD:

BNSF Railway Company, a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

CONTRACTOR:

_____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit C

Form of Sublease

[See Attached]

8

FIRST AMENDMENT TO EXCHANGE AGREEMENT

THIS FIRST AMENDMENT TO EXCHANGE AGREEMENT ("**First Amendment**") is dated to be effective the 28th day of January, 2011 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**JPA**").

RECITALS

A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, and in support of the plans of the City (defined below) and JPA to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**"), BNSF and the City of Lincoln, Nebraska, a Nebraska municipal corporation ("**City**") entered into, among other agreements, that certain: (i) Master Development Agreement dated October 18, 2010 (as amended from time to time, the "**Master Agreement**"), (ii) Exchange Agreement dated October 18, 2010 (as amended from time to time, the "**Exchange Agreement**") and (iii) Construction and Maintenance Agreement dated October 18, 2010 (as amended from time to time, the "**C&M Agreement**").

B. Pursuant to the provisions of that certain Consent to Assignment and Assumption Agreement dated October 19, 2010, BNSF consented to City's assignment and transfer of its right, title and interest in and to the Exchange Agreement to JPA. For purposes of this First Amendment, the use of the term "City" in replacement language for the Exchange Agreement is used for consistency's sake with the wording of the Exchange Agreement and shall be deemed to include JPA and its legal representatives, successors and assigns.

C. BNSF and JPA desire to amend the Exchange Agreement to: (i) acknowledge that the Station Lease will not be executed by Amtrak and the JPA in time for the First Closing and (ii) modify the timing and circumstances related to the satisfaction of certain other contingencies under the Exchange Agreement, all as set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I. **Amtrak.** The Parties acknowledge that the City and Amtrak do not intend to execute the Station Lease until such time as the Replacement Station (as defined below) has been fully designed and constructed and Amtrak has accepted same. JPA further acknowledges and agrees that BNSF will not remove Passenger Track No. 2 from service or otherwise proceed to the Fourth and Fifth City Closings unless and until: (i) Amtrak has: (i) ceased intercity rail passenger operations and vacated its existing intercity railroad passenger station facility ("**Existing Station**") situated in the City of Lincoln and (ii) commenced full intercity rail passenger operations at the Replacement Station. Accordingly, Section 7 of the Exchange Agreement is hereby deleted in its entirety and replaced with the following:

"**Section 7.** **Amtrak.**

7.1 City acknowledges that the Replacement City Property is subject to that certain agreement between National Rail Passenger Service Corporation ("**Amtrak**") and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated September 1, 1996, as amended ("**Operating Agreement**"). City also acknowledges that BNSF is obligated to provide property in the City of Lincoln for intercity rail passenger use under the terms of the federal Rail Passenger Service Act (Title 49 United States Code Section 24308(a)). As more particularly described in the Master Agreement, City shall enter into an agreement with

Amtrak for a new station lease ("**Station Lease**") for City to provide an intercity railroad passenger station facility ("**Replacement Station**") for Lincoln, Nebraska for Amtrak on the Replacement City Property (or on other equitable replacement property), on terms and conditions mutually acceptable to City and Amtrak. The Station Lease shall be binding upon and inure to the benefit of City and Amtrak, and their respective successors and assigns. City does not guarantee that Amtrak will enter into the Station Lease. Also as more particularly set forth in the Master Agreement, BNSF agrees to use commercially reasonable efforts to enter into the Amtrak/BNSF Lease (as defined in the Master Agreement) with Amtrak. BNSF anticipates that BNSF and Amtrak will enter into the Amtrak/BNSF Lease on or prior to the First Closing; provided, however, BNSF does not guarantee that Amtrak will enter into the Amtrak/BNSF Lease.

7.2 On or prior to the Fourth City Closing, City shall have constructed the Replacement Station and entered into the Station Lease with Amtrak. Notwithstanding the foregoing, however, or anything to the contrary in this Agreement, until such time as: (a) City and Amtrak have entered into the Station Lease, (b) Amtrak has ceased intercity rail passenger operations at the Existing Station and (c) Amtrak has commenced full intercity rail passenger operations at the Replacement Station, BNSF has no obligation whatsoever to: (i) remove Passenger Track No. 2 from service, or (ii) proceed to the Fourth City Closing or the Fifth City Closing. JPA expressly acknowledges and assumes the risk of any delays and increased costs and expenses that may arise in connection with the JPA's failure to satisfy such conditions precedent.

Article II. **Joint Facilities Agreement.** JPA acknowledges that UP and BNSF have not yet executed the JFA as defined and described in Section 16 of the Master Agreement. JPA has requested that BNSF waive execution of the JFA as a condition to the First Closing, and BNSF has agreed to such waiver; provided, however, that such waiver is made with the understanding that full execution of the JFA shall be a condition precedent to BNSF's obligation to proceed to the Third City Closing.

Article III. **Closing Conditions.** In connection with the timing of Amtrak transactions and the execution of the JFA described in Articles I and II above, respectively, the parties agree to amend the Exchange Agreement as follows:

1. First Closing. Sections 8.2.10 and 8.3.6 of the Exchange Agreement are hereby deleted and replaced with the words "Intentionally deleted".

2. Third City Closing. Section 8.9 of the Exchange Agreement is hereby deleted and replaced with the following:

"8.9 BNSF's obligations to close on the Third City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Third City Closing:

8.9.1 The Second City Closing has taken place;

8.9.2 BNSF and UP have entered into the JFA (as defined in the Master Agreement); and

8.9.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods."

3. Fourth City Closing.

(a) Section 8.11 of the Exchange Agreement is hereby deleted and replaced with the following:

"8.11 BNSF's obligations to close on the Fourth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fourth City

Closing:

8.11.1 The Third City Closing has taken place;

8.11.2 City and Amtrak have entered into the Station Lease;

8.11.3 The Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same;

8.11.4 Amtrak has ceased intercity rail passenger operations at the Existing Station;

8.11.5 Amtrak has commenced full intercity rail passenger operations at the Replacement Station;

8.11.6 Passenger Track No. 2 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.11.7 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods."

(b) Section 9.2.2 of the Exchange Agreement is hereby deleted and replaced with the following:

"9.2.2 With respect to the Fourth City Closing, BNSF's receipt of reasonable documentation showing that: (i) City and Amtrak have entered into the Station Lease, (ii) the Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same, (iii) Amtrak has ceased intercity rail passenger operations at the Existing Station and (iv) Amtrak has commenced full intercity rail passenger operations at the Replacement Station."

(c) Section 9.5.3 of the Exchange Agreement is hereby deleted and replaced with the following:

"9.5.3 A bill of sale quitclaiming to City the excavated fill described in **Section 11.2.4** below, the cost of which is included in the Cash Payment."

(d) The following provision is hereby added as new Section 9.5.9 to the Exchange Agreement:

"9.5.9 With respect to the Fourth City Closing, BNSF's receipt of reasonable documentation showing that: (i) City and Amtrak have entered into the Station Lease, (ii) the Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same, (iii) Amtrak has ceased intercity rail passenger operations at the Existing Station and (iv) Amtrak has commenced full intercity rail passenger operations at the Replacement Station."

Article IV. **Excavated Fill.** As the parties acknowledge that excavated fill, if any, may be quitclaimed from BNSF to JPA from time to time, rather than at the First Closing as set forth in Section 11.2.4 of the Exchange Agreement, the next-to-last sentence of Section 11.2.4 is hereby modified to read as follows:

" City further acknowledges that BNSF plans to excavate materials from Exchange Properties and to quitclaim such fill materials to City by quitclaim bill of sale."

Article V. **Property Conveyance at First Closing**. In connection with its proposed activities on the Replacement City Property, JPA has requested that a portion of the Replacement City Property shown on **Exhibit J-5** that was to be quitclaimed to JPA at the Fifth City Closing (the "**J-5 Parcel**") be instead quitclaimed to JPA at the First Closing, and BNSF is agreeable to such quitclaim. **Exhibits J, J-1** and **J-5** attached to the Exchange Agreement are hereby deleted and replaced with revised **Exhibits J, J-1** and **J-5**

attached hereto and incorporated herein by reference.

Article VI. **No Waiver.** JPA expressly acknowledges and agrees that BNSF's agreement to enter into this First Amendment shall not be deemed to waive any of BNSF's rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and/or any or all other agreements entered into by the Parties in connection with the West Haymarket Project (collectively, the "**West Haymarket Project Agreements**"). BNSF expressly reserves all of its rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and all other West Haymarket Project Agreements, and BNSF's execution of this Second Amendment is not to be construed as a waiver of any such rights.

Article VII. **Ratification.** Except as expressly modified by this First Amendment, all of the terms and provisions of the Exchange Agreement are hereby reaffirmed and remain in full force and effect. As of the Effective Date, this First Amendment shall constitute a part of the Exchange Agreement. All capitalized terms in this First Amendment shall have the same meaning as given in the Exchange Agreement unless otherwise specifically defined herein. In the event there is a conflict between the terms and provisions of the Exchange Agreement and the terms and provisions of this First Amendment, the terms and provisions of this First Amendment shall control.

Article VIII. **Miscellaneous.** This First Amendment (i) shall be binding upon and inure to the benefit of BNSF and JPA and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this First Amendment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes. The parties acknowledge and agree the use of the term "City" in replacement language for the Exchange Agreement shall be deemed to include JPA and its legal representatives, successors and assigns.

[Signature page follows]

IN WITNESS WHEREOF, BNSF and JPA have executed this First Amendment to the Exchange Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date.

BNSF:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

JPA:

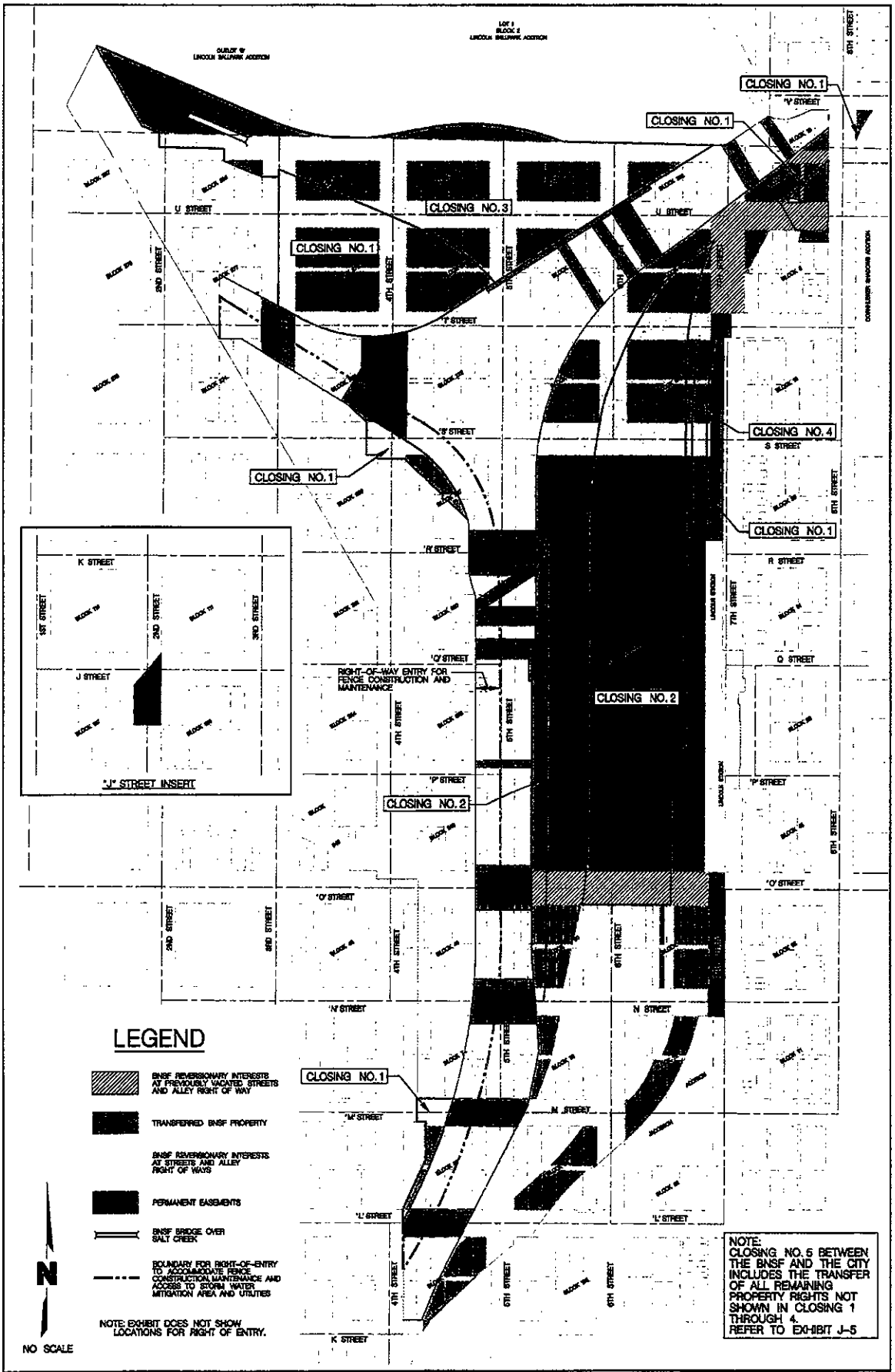
West Haymarket Joint Public Agency, a Nebraska joint public agency

By: _____

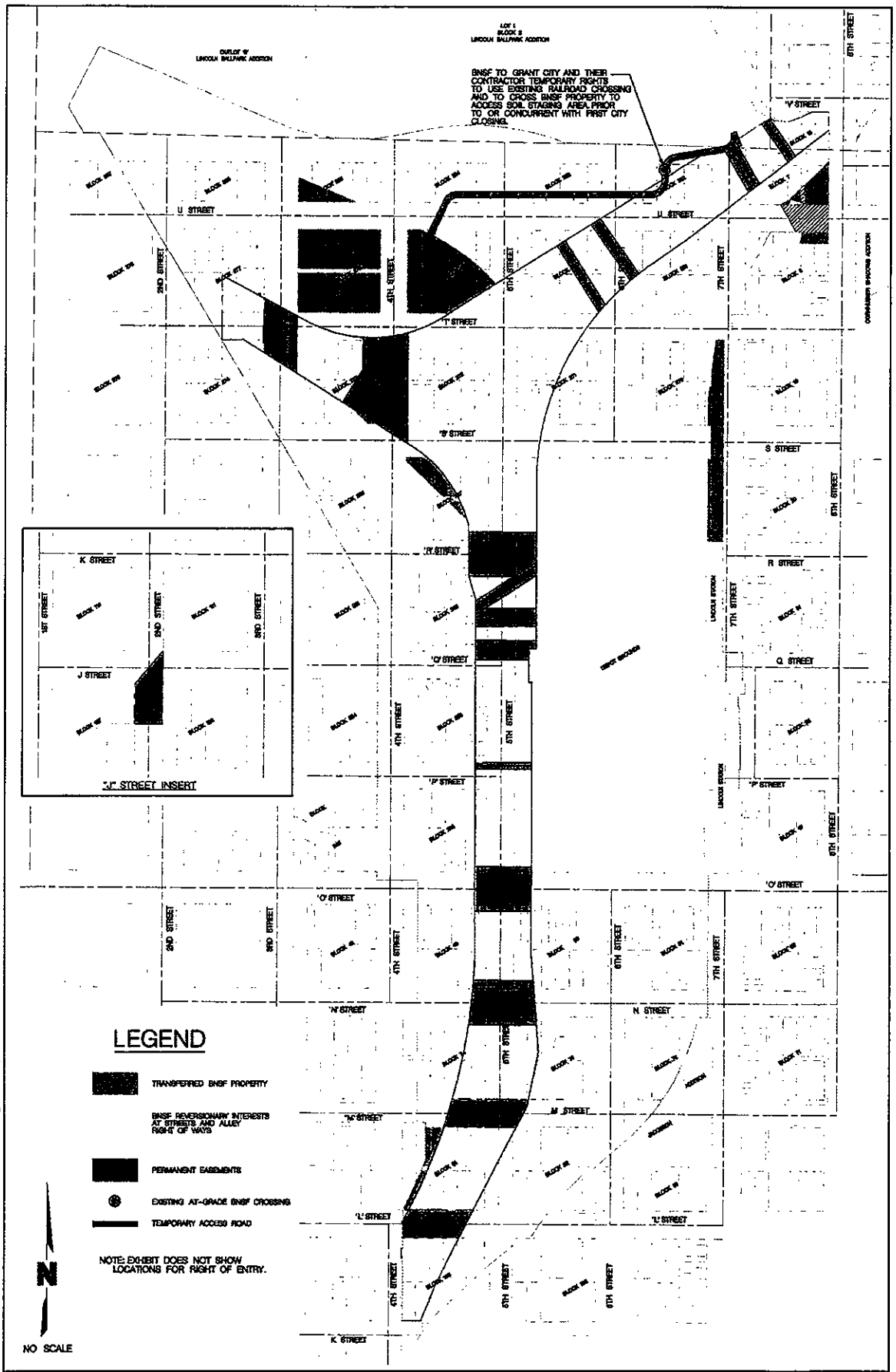
Name: Jayne Snyder

Title: Chair

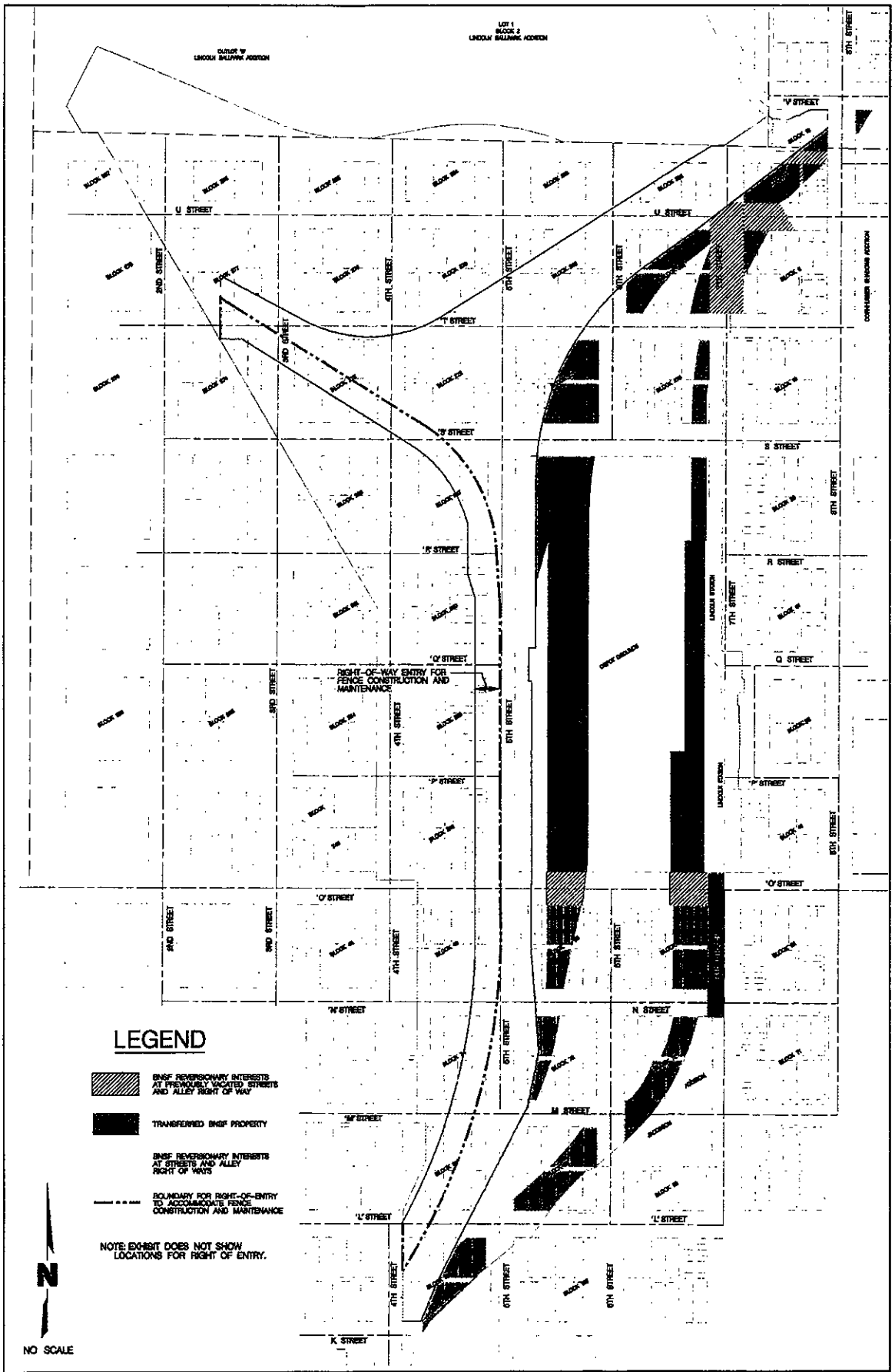
Date: 1/28/2011



PROJECT NO: 008-0645	REPLACEMENT CITY PROPERTY CITY CLOSINGS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J
DATE: 1/24/2011			



PROJECT NO: 008-0645	FIRST CITY CLOSING FOR SOIL STAGING AREA AND PERMANENT UTILITY EASEMENTS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68508-4608 TEL 402.474.6311 FAX 402.474.5160	J-1
DATE: 1/24/2011			



PROJECT NO: 008-0845	FIFTH CITY CLOSING FOR REMAINING BNSF PROPERTY RIGHTS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J-5
DATE: 1/24/2011			

DATE: 1/24/2011
DWG: P:\PROJECTS\008-0845_TRAIN-Bee\BNSF\Railroad Agreement\BNSF\BNSF_Exhibit\CAD\BNSF_EXHIBIT-5 Display.dgn

SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT ("**Second Amendment**") is dated to be effective the 28th day of January, 2011 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**JPA**").

RECITALS

A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, and in support of the plans of the City (defined below) and JPA to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**"), BNSF and the City of Lincoln, Nebraska, a Nebraska municipal corporation ("**City**") entered into, among other agreements, that certain: (i) Master Development Agreement dated October 18, 2010 (as amended by that certain First Omnibus Amendment to Master Development Agreement and Construction Agreement dated December 29, 2010 [the "**First Amendment**"] and otherwise from time to time, the "**Master Agreement**"), (ii) Exchange Agreement dated October 18, 2010 (as amended from time to time, the "**Exchange Agreement**") and (iii) Construction and Maintenance Agreement dated October 18, 2010 (as amended by the First Amendment, the "**C&M Agreement**").

B. Pursuant to the provisions of that certain Consent to Assignment and Assumption Agreement dated October 19, 2010, BNSF consented to City's assignment and transfer of its right, title and interest in and to the Master Agreement to JPA. For purposes of this Second Amendment, the use of the term "City" in replacement language for the Master Agreement is used for consistency's sake with the wording of the Master Agreement and shall be deemed to include JPA and its legal representatives, successors and assigns.

C. BNSF and JPA desire to amend the Master Agreement to: (i) acknowledge that the Station Lease will not be executed by Amtrak and the JPA in time for the First Closing under the Exchange Agreement and (ii) modify the timing and circumstances related to the satisfaction of certain other contingencies under the Master Agreement, all as set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I. **Amtrak.**

A. The Parties acknowledge and agree that JPA and Amtrak have proceeded directly to negotiate the terms of the Station Lease for the Replacement Station to be entered into at a later date as provided for in the Sublease between Amtrak and the JPA ("Amtrak Agreement") (as both terms are defined in the Exchange Agreement) concerning the City Amtrak Work and the Replacement Station. BNSF and JPA hereby agree to waive all requirements in the Master Agreement (including but not limited to the requirements in Sections 7.1, 7.4, 22.1.5 and 22.2.4) that JPA and Amtrak enter into the Station Lease as part of the Amtrak Agreement; provided, however, that such waiver is made with the understanding that, prior to the Fourth City Closing, JPA will provide documentation reasonably satisfactory to BNSF that: (i) JPA and Amtrak have entered into the Station Lease, (ii) the Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same, (iii) Amtrak has ceased intercity rail passenger operations at the Existing Station and (iv) Amtrak has commenced full intercity rail passenger operations at the Replacement Station, and BNSF's receipt of all such documentation described in (i), (ii), (iii), and (iv) shall be conditions precedent to BNSF's obligation to proceed to the Fourth City Closing. JPA expressly acknowledges and assumes the risk of any delays and increased costs and expenses that may arise in connection with the JPA's failure to satisfy such conditions precedent.

B. In addition to the provisions of the Master Agreement concerning the design and construction of the Replacement Station, including but not limited to the provisions of Section 7 thereof, the Parties agree that the Replacement Station shall be designed such that only Amtrak passengers and authorized Amtrak and BNSF personnel will have access to the station platform of the Replacement Station. The Parties agree to work with Amtrak to revise the Amtrak Final Design accordingly. In addition to Amtrak's review and approval rights, BNSF shall also have the right to review and approve the Amtrak Final Design with respect to the required restriction on access to the station platform and other aspects of the Amtrak Final Design related to rail operations, including but not limited to: (i) establishing adequate clearances and elevation and offsets from track, (ii) confirming that foundations will not infringe upon track integrity and (iii) verifying accessibility to the track for maintenance purposes.

Article II. **Timeline.** Pursuant to the Timeline attached as **Exhibit Q** to the Master Agreement, the First Closing was scheduled to occur on October 22, 2010. Given that the First Closing has been delayed to January 31, 2011, the Parties will update the Timeline and substitute a revised **Exhibit Q** within a reasonable time after the First Closing; provided that the Parties also agree that the Timeline may need further revisions from time to time based on changes in project sequencing and other factors identified and mutually agreed to by the Parties.

Article III. **Delays to Closing Schedules.** In the event Closings are delayed for any reason, whether as a result of weather, delays in property acquisition, or otherwise, JPA will take reasonable steps, as directed by BNSF in BNSF's reasonable discretion, to protect job sites and ensure that there is no interference with BNSF's operations.

Article IV. **Property Conveyance at First Closing**. In connection with its proposed activities on the Replacement City Property, JPA has requested that a portion of the Replacement City Property that was to be quitclaimed to JPA at the Fifth City Closing (the "**J-5 Parcel**") be instead quitclaimed to JPA at the First Closing, and BNSF is agreeable to such quitclaim. **Exhibits J** and **J-1** attached to the Master Agreement are hereby deleted and replaced with revised **Exhibits J** and **J-1** attached hereto and incorporated herein by reference.

Article V. **Joint Facilities Agreement.** JPA acknowledges that UP and BNSF have not yet executed the JFA discussed in Section 16 of the Master Agreement. JPA has requested that BNSF waive execution of the JFA as a condition to the First Closing, and BNSF has agreed to such waiver; provided, however, that such waiver is made with the understanding that full execution of the JFA shall be a condition precedent to BNSF's obligation to proceed to the Third City Closing.

Article VI. **No Waiver.** JPA expressly acknowledges and agrees that BNSF's agreement to enter into this Second Amendment shall not be deemed to waive any of BNSF's rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and/or any or all other agreements entered into by the Parties in connection with the West Haymarket Project (collectively, the "**West Haymarket Project Agreements**"). BNSF expressly reserves all of its rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and all other West Haymarket Project Agreements, and BNSF's execution of this Second Amendment is not to be construed as a waiver of any such rights.

Article VII. **Ratification.** Except as expressly modified by this Second Amendment, all of the terms and provisions of the Master Agreement are hereby reaffirmed and remain in full force and effect. As of the Effective Date, this Second Amendment shall constitute a part of the Master Agreement. All capitalized terms in this Second Amendment shall have the same meaning as given in the Master Agreement unless otherwise specifically defined herein. In the event there is a conflict between the terms and provisions of the Master Agreement, the First Amendment and the terms and provisions of this Second Amendment, the terms and provisions of this Second Amendment shall control.

Article VIII. **Miscellaneous.** This Second Amendment (i) shall be binding upon and inure to the benefit of BNSF and JPA and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts,

each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Second Amendment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes. The parties acknowledge and agree the use of the term "City" in replacement language for the Master Agreement shall be deemed to include JPA and its legal representatives, successors and assigns.

[Signature page follows]

IN WITNESS WHEREOF, BNSF and JPA have executed this Second Amendment to the Master Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date.

BNSF:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

JPA:

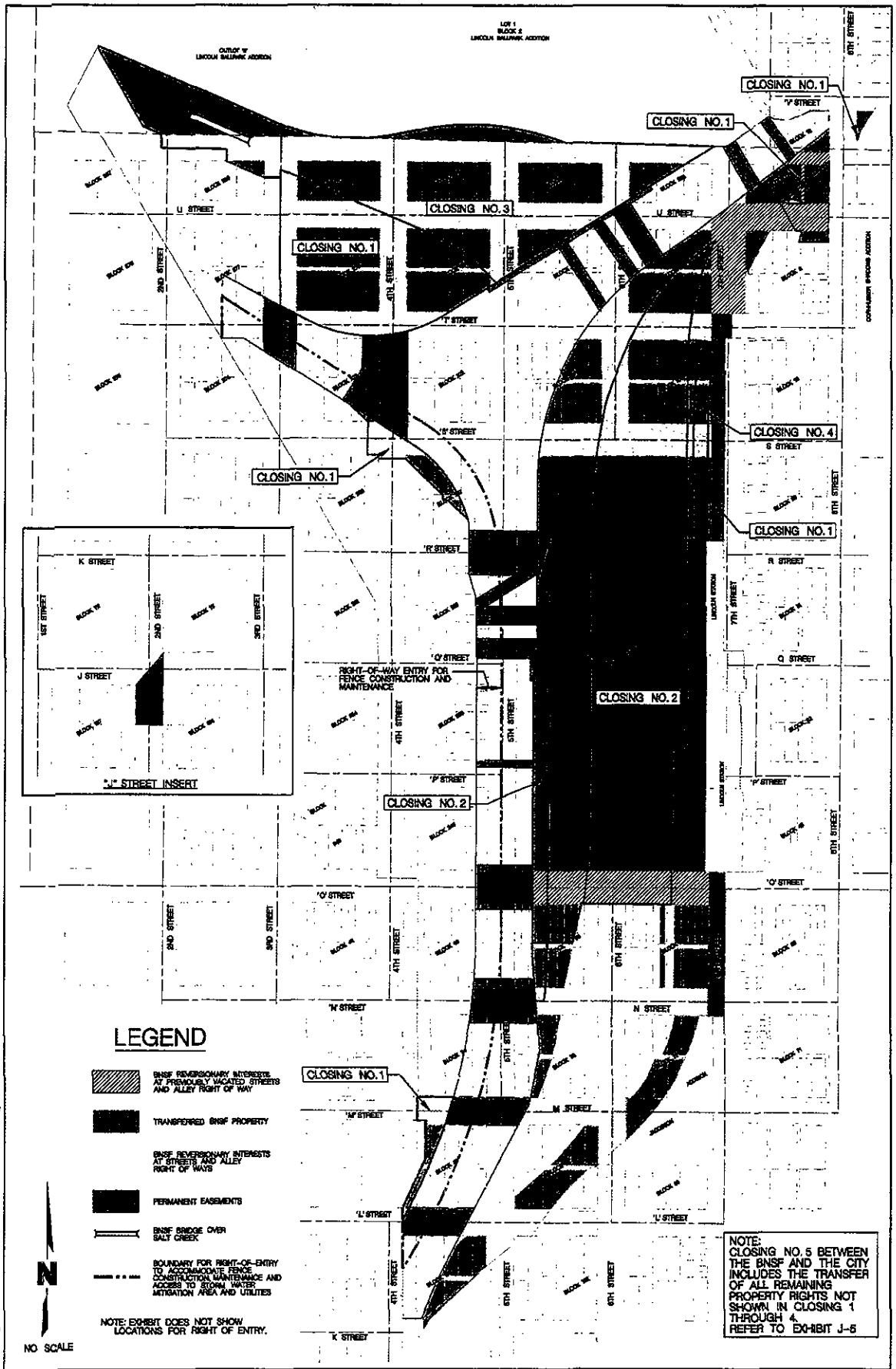
West Haymarket Joint Public Agency, a Nebraska joint public agency

By: _____

Name: Jayne Snyder

Title: Chair

Date: 1/28/2011



PROJECT NO: 008-0645	REPLACEMENT CITY PROPERTY CITY CLOSINGS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J
DATE: 1/24/2011			

BNSF TO GRANT CITY AND THEIR CONTRACTOR TEMPORARY RIGHTS TO USE EXISTING RAILROAD CROSSING AND TO CROSS BNSF PROPERTY TO ACCESS SOIL STAGING AREA PRIOR TO OR CONCURRENT WITH FIRST CITY CLOSING.

"J" STREET INSERT

LEGEND

- TRANSFERRED BNSF PROPERTY
- BNSF REVERSIONARY INTERESTS AT STREETS AND ALLEY RIGHT OF WAYS
- PERMANENT EASEMENTS
- EXISTING AT-GRADE BNSF CROSSING
- TEMPORARY ACCESS ROAD

NOTE: EXHIBIT DOES NOT SHOW LOCATIONS FOR RIGHT OF ENTRY.

N

NO SCALE

PROJECT NO: 008-0645	FIRST CITY CLOSING FOR SOIL STAGING AREA AND PERMANENT UTILITY EASEMENTS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J-1
DATE: 1/24/2011			

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

A. GENERAL INFORMATION

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

Construction Performance Bond
Construction Payment Bond

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

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

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

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

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

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

B. COMPLETING THE FORMS

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

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

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

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

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

CONSTRUCTION PERFORMANCE BOND

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

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

CONSTRUCTION CONTRACT
Date:
Amount:

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

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp.Seal)

Signature:_____
Name and Title: Name and Title:

Signature:_____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Definitions.

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

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

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

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

CONSTRUCTION PAYMENT BOND

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

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

CONSTRUCTION CONTRACT
Date:
Amount:

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

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this ____ day of _____, 2011.

By: _____

Title:_____

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On _____, 2011, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

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

_____
Notary Public

(S E A L)

INSURANCE REQUIREMENTS FOR ALL WEST HAYMARKET JOINT PUBLIC AGENCY CONTRACTS

1. GENERAL PROVISIONS

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

B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and JPA against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

C. **Occurrence Basis Coverage.** All insurance shall be provided on an ***occurrence basis*** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.

D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.

E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide JPA thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.

F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage**. The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(1) Claims under workers' compensation, disability benefit, or other employee benefit acts;

(2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;

(3) Claims customarily covered under personal injury liability coverage;

(4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;

(5) Claims arising out of ownership, maintenance or use of any motor vehicle;

(6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. **Worker's Compensation Insurance and Employer's Liability Insurance**. The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	$500,000	each accident
	Bodily Injury by disease	$500,000	each employee
	Bodily Injury	$500,000	policy limit

C. Commercial General Liability Insurance.

(1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	$10,000,000	Aggregate
Products and Completed Operations	$10,000,000	Aggregate
Personal and Advertising Injury	$ 5,000,000	
Each Occurrence	$ 5,000,000	
Fire Damage Limit	$ 100,000	any one fire
Medical Damage Limit	$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

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

D. **Vehicle liability insurance coverage.**

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.

- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. **Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of $5,000,000 per occurrence, $10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

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

G. **JPA included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that JPA is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include JPA as an additional insured for purposes of Products and Completed Operations. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA.

3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

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

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

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

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

(2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

C. The obligations of indemnification herein shall not include or extend to:

(1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and

(2) Any claims arising out of the negligence of the JPA to the extent the same is the sole and proximate cause of the injury or damage so claimed.

D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.

B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.

B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be $5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.

C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.

D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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

CITY OF LINCOLN
MAYOR CHRIS BEUTLER

CITY OF LINCOLN
EXECUTIVE ORDER

NO. 083319

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 28 day of July, 2010.

Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney

EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

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

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

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

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

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

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

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

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

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska)
) ss.
County of _____)

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

_____
Notary Public

RECEIVED
OCT 31 2011
LAW DEPT.

Jamie Stamper
Manager-Risk Management

BNSF Railway Company
P.O. Box 961073
Fort Worth, Texas 61
2500 Lou Menk Drive
Fort Worth, Texas 76131-2828
Telephone 817-352-3485
Fax 817-352-7207
Email Address
Jamie.Stamper@bnsf.com

October 21, 2011

WEST HAYMARKET JOINT AGENCY (JPA),

BNSF Railway Company (BNSF) is pleased to advise that we are modifying our insurance certification process. This new process will ***improve your ease of doing business with BNSF*** and increase the efficiency of insurance certification. We have partnered with CertFocus, an industry leader in the automation of certificate of insurance review and validation. Once a certificate is received, BNSF's Risk Management Department will work directly with customers, contractors, and vendors to resolve any variances between submitted certificates and contractual requirements.

The new process will begin November 1, 2011. To minimize the impact to entities submitting certificates of insurance, we will be transitioning as follows:

- **New agreements** processed on or after November 1, 2011, please e-mail your current certificate(s) of insurance to BNSF@certfocus.com.
- **Existing agreements** with BNSF requiring insurance which renews on or after November 1, 2011, please e-mail renewal certificate(s) of insurance to BNSF@certfocus.com. Any insurance renewal prior to November 1, 2011 should be directed to BNSF@Ebix.com until December 31, 2011.
- **Effective January 1, 2012 all certificates of insurance should be e-mailed to BNSF@certfocus.com.**
- For all certificates of insurance submitted on or after November 1, 2011, we also ask that you update the address in the certificate holder box to read as follows:

  BNSF Railway Company
  PO Box 140528
  Kansas City, MO 64114

Thank you for your patience and understanding as we transition to our new process; we apologize in advance for any confusion or angst this transition may cause in the short term, but we also would remind you that the new process will improve your experience with BNSF as respects to insurance certification.

If you have any questions or would like further information on our new process, please contact Jamie Stamper, Manager – Risk Management at (817) 352-3485 or Jamie.Stamper@bnsf.com or Vickie Barnett, Assistant Manager – Risk Management at (817) 352-2414 or Vickie.Barnett@bnsf.com

Sincerely,

Jamie Stamper
Vickie Barnett

WH 11-94 Introduce: 12-8-11

RESOLUTION NO. WH- _____

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

That Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to enter into, on behalf of the West Haymarket Joint Public Agency, a Contract with the lowest responsible bidder for construction of the Amtrak station and canopy over the platform.

Adopted this _____ day of December, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Tim Clare

_____
Chris Beutler

_____
Eugene Carroll

WH 11-94

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-94 by accepting the attached Substitute Resolution with regard to a contract for construction of the Amtrak station and canopy.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Law Department

Reasons for Request: To identify and accept the lowest responsible bid contract.

WH 11-94S Introduce: 12-8-11

RESOLUTION NO. WH- _____

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

That Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, is hereby authorized to enter into, on behalf of the West Haymarket Joint Public Agency, the attached Contract with Ronco Construction Company, Inc. ("Contractor") for construction of the Amtrak station and canopy over the platform for the sum of $1,282,300.00 per Contractor's 11-246 Addendum 3 Base Bid as modified by the Selected Alternate Nos. 1, 2, 4 and 6.

Adopted this _____ day of December, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Tim Clare

_____
Chris Beutler

_____
Eugene Carroll

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
BID NO. 11-245 ADDENDUM 3
PROJECT

C O N T R A C T A G R E E M E N T

THIS CONTRACT is made and entered into this ____ day of December, 2011, by and between **Ronco Construction Company, Inc**., hereinafter called the Contractor, and the **West Haymarket Joint Public Agency**, hereinafter called JPA.

WITNESS, that:

WHEREAS, JPA has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to wit:

West Haymarket JPA Amtrak Station and Canopy

and

WHEREAS, the Contractor, in response to such advertisement, has submitted to the JPA, in the manner and at the time specified, a sealed Bid in accordance with the terms of said advertisement; and,

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Bids submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest and best bidder for the said Work for the sum or sums named in the Contractor's 11-246 Addendum 3 Base Bid as modified by the selected Alternates Nos. 1, 2, 4 and 6, a copy thereof being attached hereto as Exhibit A; and

WHEREAS, a portion of the Project will be carried out on property owned by BNSF Railway Company (BNSF) or to which BNSF has been granted an easement for exclusive use; and

WHEREAS, the Work is subject to the terms and conditions of the Temporary Access License for Amtrak Work between BNSF Railway Company (BNSF) and the JPA, a copy of which is attached hereto as Exhibit B, and pursuant to the License is subject to the terms and conditions of the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA, a copy of which is attached hereto as Exhibit C.

WHEREAS, the Work is located upon property leased to the National Railroad Passenger Corporation ("Amtrak") and subleased to the JPA and is subject to the terms and

conditions of the Sublease Agreement between Amtrak and the JPA, a copy of which is attached hereto as Exhibit D.

WHEREAS, Contractor possesses certain skills, experience, education and competency to perform the Work on behalf of the JPA and the JPA desires to engage Contractor for such services on the terms and conditions provided herein.

WHEREAS, Contractor is willing and able to perform the Work in accordance with this Agreement. Contractor hereby understands and acknowledges that Contractor will be required to comply with restrictions on the Work imposed on the JPA as Licensee and Subtenant in the License and Sublease Agreement, respectively, subject to the provisions of this Agreement. Contractor hereby further understands and acknowledges that Contractor is deemed to be the JPA's Contractor under the C&M Agreement and in such capacity is required to comply with the Contractor Requirements in the C&M Agreement, subject to the terms of this Agreement

WHEREAS, the use of the term "City of Lincoln" in the License, the C&M Agreement, and other Contract Documents shall be deemed to refer to the JPA.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and JPA have agreed and hereby agree as follows:

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete Work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by JPA's official award of this Contract to the Contractor, such award being based on the acceptance by JPA of the Contractor's Bid of $1,282,300 as set forth in Exhibit A.

JPA agrees to pay to the Contractor for the performance of the work embraced in this Contract, and the Contractor agrees to accept as full compensation therefore, the sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided in the General Provisions and Requirements.

COMPLETION DATE - The Contractor agrees that time is of the essence of this Agreement and that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than June 15, 2012.

GUARANTEE - The guarantee periods as stated in Section IX, Paragraph A of the City of Lincoln Standard Specifications for Municipal Construction shall not be applicable to this project.

INDEMNIFICATION - The following Indemnification provisions are in addition to and not in lieu of the Assumption of Liability and Indemnification provisions in the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. INDEMNIFICATION OF JPA.

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR'S CONTRACTOR PARTIES IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WORK AREA;

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF BNSF'S RIGHT-OF-WAY OR OTHER BNSF PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF BNSF'S RIGHT-OF-WAY OR OTHER BNSF PROPERTY IN CONNECTION WITH PERFORMANCE OF THE WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WORK BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH

TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF JPA, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY JPA'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF JPA.

B. INDEMNIFICATION OF BNSF. Contractor understands and acknowledges that the Indemnification requirements of the Contractor to indemnify and hold harmless BNSF found in the C&M Agreement and the Contractor's Right of Entry are in addition to, and not in lieu of, the above obligations of Contractor to indemnify and hold harmless the JPA.

INSURANCE - The following Insurance provisions are in addition to and not in lieu of the "Insurance Requirements for all West Haymarket Joint Public Agency Contracts" and "Contractor's Insurance" in the City of Lincoln Standard Specifications for Municipal Corporations (2011 Edition). In the event of a discrepancy in coverage limits, the Contractor will provide the larger amount.

Insurance Coverage. Contractor shall at all times during the term of this Agreement maintain insurance coverage as follows:

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

- ISO endorsement form CG 24-27-10-01 or its equivalent providing contractual liability coverage for railroads as additional insureds.
- Bodily Injury and Property Damage (including loss of use)

- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

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

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

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to JPA employees.
No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this Agreement.

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

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

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

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor or and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.

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

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $1,000,000 each accident, $1,000,000 by disease policy limit, $1,000,000 by disease each employee.

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

- Waiver of subrogation in favor of Amtrak, BNSF and JPA and acceptable to JPA.

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000.00 per occurrence and $10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

In lieu of providing a Railroad Protective Liability Policy, City may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to City and City Contractors.

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

Other Requirements: All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the

extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against JPA for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor must furnish to JPA acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, non-renewal, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. This cancellation provision must be indicated on the certificate of insurance. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

City of Lincoln
c/o Bill Kostner, Risk Manager
555 South 10th Street
Lincoln, NE 68508

Any insurance policy must be written by a reputable insurance company reasonably acceptable to JPA or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release,

defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by this section will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

BNSF Requirements. Contractor agrees to comply with the Contractor requirements (Exhibit C to the C&M Agreement) and to execute and deliver a Contractor Right of Entry in the form of Exhibit C-1(A) prior to entering BNSF property or easement area to perform the Work. Contractor further agrees that prior to entering BNSF property or easement area to perform the Work, Contractor shall complete the safety training program at the website www.contractororientation.com and the e-RAILSAFE as more particularly set forth in Section 3.3.4 o the C&M Agreement. Contractor further agrees that each and every employee of the Contractor must possess a card certifying completion of the safety training program and the e-RAILSAFE security program prior to entering upon BNSF property.

BNSF and Amtrak Insurance Requirements. Contractor understands and acknowledges that the Insurance requirements of BNSF found in the C&M Agreement and the Contractor's Right of Entry and the insurance requirements of Amtrak found in the Sublease Agreement are in addition to and not in lieu of the above obligations of Contractor. Contractor agrees to provide all types of insurance required by the JPA, Amtrak or BNSF. Contractor will furnish coverages against any and all perils required by the JPA, Amtrak or BNSF. In the event Contractor discovers a discrepancy in coverage limits, Contractor will provide the larger amount satisfying JPA, Amtrak and BNSF requirements.

CONTRACT DOCUMENTS - The Contract Documents comprise the Contract, and consist of the following, whether or not attached hereto:

1. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA's Change Order Process adopted by Resolution No. WH00195.
2. Notice to Bidders; Instructions to Bidders; Addendum Nos. 1, 2 and 3.
3. Supplier Response to Bid Request No. 11-246 Addendum 3 (Exhibit A).
4. Commentary to Accompany Construction Bonds.

5. Construction Performance Bond.
6. Construction Payment Bond.
7. Insurance Requirements for all West Haymarket Joint Public Agency Contracts.
8. Lincoln Standard Plans 2010.
9. Project Plans, Specifications,and Profile Detail Sheets
10. Any executed Addenda or Change Orders.
11. Any portion of this project used for **providing water service**, such as pipe for water mains, **are not tax exempt and are subject to sales and use tax**.
12. The **remainder** of this project, including items exclusively used for providing fire protection, such as fire hydrants, **are exempt from sales and use taxes**.
13. Sales tax exempt forms will be provided upon award of bid.
14. The License (Exhibit B), the C&M Agreement (Exhibit C) including, but not limited to, Exhibits C and C-1(A) attached to the C&M Agreement.
15. Executive Order. No. 83319.
16. Sublease Agreement (Exhibit D).

This Contract Agreement, together with the other Contract Documents herein above mentioned, form this Contract and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and JPA hereby agree that all the terms and conditions of this Contract shall, by these presents, be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and JPA do hereby execute this Contract.

CONTRACTOR: **RONCO CONSTRUCTION COMPANY, INC.**

By: _____
President

JPA: **WEST HAYMARKET JOINT PUBLIC AGENCY**

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

EXHIBIT A

Contractor's 11-246 Addendum 3 Base Bid
as Modified by the Selected Alternates Nos. 1, 2, 4 and 6

EXHIBIT B

Temporary Access License for Amtrak Work Between BNSF and the JPA

EXHIBIT C

Construction and Maintenance Agreement
Between BNSF and the City of Lincoln

EXHIBIT D

Sublease Agreement

OTHER CONTRACT DOCUMENTS

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

Bid Information

Bid Creator	Deb Winkler Systems Administrator
Email	dwinkler@lincoln.ne.gov
Phone	1 (402) 441-7410
Fax	1 (402) 441-6513
Bid Number	11-246 Addendum 3
Title	West Haymarket JPA Amtrak Station and Canopy
Bid Type	Bid
Issue Date	11/02/2011
Close Date	11/22/2011 12:00:00 PM CST
Need by Date	

Contact Information

Address	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508
Contact	Vince Mejer Purchasing Agent
Department	
Building	
Floor/Room	
Telephone	1 (402) 441-8314
Fax	1 (402) 441-6513
Email	vmejer@lincoln.ne.gov

Ship to Information

Address	
Contact	
Department	
Building	
Floor/Room	
Telephone	
Fax	
Email	

Supplier Information

Company	Ronco Construction Company, Inc.
Address	1717 No. 74th St. Omaha, NE 68114
Contact	Zak Olsen
Department	
Building	
Floor/Room	
Telephone	1 (402) 397-9109
Fax	1 (402) 397-8799
Email	zako@roncoomaha.com
Submitted	11/22/2011 11:57:19 AM CST
Total	$1,309,900.00

Signature _____

Supplier Notes

Bid Notes

Attached Addendum No. 3

A pre-bid meeting will be held Thursday, November 10, 2011 at 1:30 p.m. at the Purchasing Division, 440 S. 8th St., Ste. 200, Lincoln, NE

If you need assistance in preparing your bid, there are several options.

1) Click the "Help" button in the upper right hand corner of any screen; 2) Contact our office for a training session in Purchasing or assistance over the phone; 3) View the PowerPoint presentation at http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt

Bid Activities

Date	Name	Description
11/10/2011 1:30:00 PM	Pre-Bid Meeting	A pre-bid meeting will be held Thursday, November 10, 2011 at 1:30 p.m. at the Purchasing Division, 440 S. 8th St., Ste. 200, Lincoln, NE
11/22/2011 12:00:00 PM	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.
11/22/2011 12:00:00 PM	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
2	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
3	Additional Insurance Requirements	I acknowledge reading and understanding the additional Insurance Requirements listed below. The RR Protective Liability Insurance may be purchased through BNSF. The Contractor's Right of Entry for C&M Work (Exhibit C-1(B)) attached to the C&M Agreement with BNSF has the insurance requirements for the Amtrak work. A certificate of insurance must be submitted to and approved by Ebix. Contact information for Ebix is included in the Right of Entry Agreement. All BNSF Insurance requirements , the requirement that the contractor enter into the Right of Entry Agreement and be bound by the terms of C& M Agreement and the Temporary Access and construction License for the Amtrak Work issued to the JPA to perform the Amtrak work need to be part of the bid requirements	Yes
4	Specifications	I acknowledge reading and understanding the Specifications.	Yes
5	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
6	Form of Bonds	I acknowledge that the Performance Bond and Payment Bond in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
7	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes

8	Bid Bond Submission - City	I acknowledge and understand that my bid will not be considered unless a bid bond or certified check in the sum of five percent (5%) of the total amount of the bid is made payable to the order of the City Treasurer as a guarantee of good faith prior to the bid opening. The bid security may be scanned and attached to the 'Response Attachments' section of your response or faxed to the Purchasing Office (402)441-6513. The original bond/check must then be received in the Purchasing Office, 440 S. 8th Street, Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing. YOU MUST INDICATE YOUR METHOD OF BID BOND SUBMISSION IN BOX TO RIGHT!	I have scanned and attached my bid bond.
9	Project Dates	The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work as stated in the specifications.	YES
10	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
11	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notorize and attach the Employee Classification Act Affidavit to my contract.	Yes
12	DBA	I acknowledge reading and understanding the Davis Bacon Act.	Yes
13	Contact	Name of person submitting this bid:	Zak Olsen
14	Electronic Signature	Please check here for your electronic signature.	Yes
15	HVAC Unit	State name of manufacturer of the HVAC unit.	Will Provide within 24 hours
16	Agreement to Addendum No. 1	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: Attached Addendum No. 1.	Yes
17	Agreement to Addendum No. 2	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: Attached Addendum No. 2 (Updated Davis Bacon Act).	Yes
18	Agreement to Addendum No. 3	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: Attached Addendum No. 3.	Yes

Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	West Haymarket JPA Amtrak Station and Canopy - Total Lump Sum Bid	$1,309,900.00

Item Notes:

Supplier Notes:

Item Attributes: Please review the following and respond where necessary

#	Name	Note	Response
1	Alternate No. 01: Decorative Print.	1. Base Bid: Glazing at frames AL 2 and AL 3 to be Glass Type IG-3 (088000.G) as specified in Section 088000 "Glazing". 2. Alternate: Glazing at frames AL 2 and AL 3 to be Glass Type IG-2 (088000.B) as specified in Section 088000 "Glazing".	3200.00
2	Alternate No. 02: Graphic Wall Covering	1. Base Bid: Under the Base Bid, Graphic Wall Covering 097225.A and 097225.B, as found in Section 097225, are the only graphic wall coverings included in the project. The wall surface indicated to receive Wall Covering 097225.C shall be a painted finish. 2. Alternate: Graphic Wall Covering 097225.C, as defined in Section 097225 shall be added to the wall surface indicated in the contract documents, which is the curved north wall of Great Hall 103.	2000.00
3	Alternate No. 03: Platform Canopy Design	1. Base Bid: Under the Base Bid, the platform canopy shall be fabricated out of standard steel shapes and sizes as scheduled and detailed in the structural drawings. The roof assembly will consist of a metal deck, cover board and EPDM membrane. All structural steel shall be galvanized. Structural columns, framing and fascia channels will not be painted. Underside of roof deck to be painted. 2. Alternate: Platform canopy structure to be a manufactured system designed around Chief Building Systems as the Basis-of-Design. All framing members to be galvanized. Soffit panels and fascia panels/trim to have a pre-finished powder coated paint. Roof assembly to be a galvalume standing seam assembly.	-85000.00
4	Alternate No. 04: Platform Canopy Paint – Structural Steel Assembly	1. Base Bid: If the final platform canopy is fabricated out of standard steel shapes and sizes, the steel frame and fascia channels will be galvanized. 2. Alternate: Provide primed steel in lieu of galvanized steel for the frame and fascia channels and paint in the field as specified in Section 099113.	-42000.00
5	Alternate No. 05: Platform Canopy Paint – Chief Building System	1. Base Bid: If the final platform canopy is selected to be a manufactured system based on Chief Building Systems, the framing members will be galvanized. 2. Alternate: Provide primed steel in lieu of galvanized steel for the framing members and paint in the field as specified in Section 099113.	-16000.00

6	Alternate No. 06: Rooftop Units – Additional Options	1. Base Bid: Provide rooftop units with electric cooling and gas heat configuration and associated options as indicated in schedule on Sheet M-501. 2. Alternate: Provide rooftop units with heat pump and backup gas heat configuration and associated options as indicated in Schedule on Sheet M-501.	9200.00	
7	Alternate No. 07: Alternate Date of Substantial Completion	1. Base Bid: Provide a Lump sum Base Bid cost based on June 15, 2012 as the Date of Substantial Completion. 2. Alternate: Provide a Lump Sum Base Bid cost based on August 3, 2012 as the Date of Substantial Completion.	-5000.00	
8	Alternate No. 08: HVAC Unit	1. Base Bid: Under the Base Bid, the performance specification for the mechanical system was written around an AAON. 2. Alternate: Other manufacturers are acceptable, to include but not limited to Trane, Carrier and York, if their unit meets the specifications.	0.00	
			Response Total:	$1,309,900.00

Haymarket Amtrak Station/Canopy Bids

November 28, 2011

Scenario A	NGC Group (Lincoln)	Ronco Construction (Omaha)
Base Bid	$1,309,632.00	$1,309,900.00
Alt. #1 - Decorative Paint	$3,003.48	$3,200.00
Alt. #2 - Graphic Wall Covering	$1,820.19	$2,000.00
Alt. #3 - Platform Canopy (Chief based option)	-$98,343.70	-$85,000.00
Alt. #4 - Painted Steel Canopy		
Alt. #5 - Painted Chief based Canopy		
Alt. #6 - Roof top Units (added options)	$9,697.40	$9,200.00
Total	*$1,225,809.37*	*$1,239,300.00*

Difference ***$13,490.63***

Scenario B	NGC Group (Lincoln)	Ronco Construction (Omaha)
Base Bid	$1,309,632.00	$1,309,900.00
Alt. #1 - Decorative Paint	$3,003.48	$3,200.00
Alt. #2 - Graphic Wall Covering	$1,820.19	$2,000.00
Alt. #3 - Platform Canopy (Chief based option)		
Alt. #4 - Painted Steel Canopy	-$19,756.93	-$42,000.00
Alt. #5 - Painted Chief based Canopy		
Alt. #6 - Roof top Units (added options)	$9,697.40	$9,200.00
Total	*$1,304,396.14*	*$1,282,300.00*

-$22,096.14

Scenario C	NGC Group (Lincoln)	Ronco Construction (Omaha)
	$1,309,632.00	$1,309,900.00
Alt. #1 - Decorative Paint	$3,003.48	$3,200.00
Alt. #2 - Graphic Wall Covering	$1,820.19	$2,000.00
Alt. #3 - Platform Canopy (Chief based option)		
Alt. #4 - Painted Steel Canopy		
Alt. #5 - Painted Chief based Canopy	$1,544.34	-$16,000.00
Alt. #6 - Roof top Units (added options)	$9,697.40	$9,200.00
Total	*$1,325,697.41*	*$1,308,300.00*

-$17,397.41

Alt. #7 - Alt. Date for Completion	$0.00	-$5,000.00
Alt. #8 - HVAC unit	$0.00	$0.00

TEMPORARY ACCESS AND CONSTRUCTION LICENSE FOR AMTRAK WORK

THIS TEMPORARY ACCESS AND CONSTRUCTION LICENSE FOR AMTRAK WORK ("**License**") is made to be effective as of the 12th day of May, 2011 ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**Licensee**").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. **GENERAL.**

1.1 Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to use (i) the area of Licensor's property labeled "Temporary Access Road" on **Exhibit M-2**, attached hereto and incorporated herein by reference, and shown as light blue thereon, and (ii) the area of Licensor's property labeled "Temporary Easement" on **Exhibit M-2** and shown as red thereon (excluding the red circle labeled "Temporary At-Grade Crossing"), situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (collectively, the "**Premises**") for the purposes specified in **Section 1.3** below (the "**Permitted Uses**").

1.2 In the event the Permitted Uses will affect any improvements or facilities of Licensor or Licensor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "**Other Improvements**"), if any, or interfere with the use of the Other Improvements, Licensee will be responsible at Licensee's sole risk to locate and make any adjustments necessary to such Other Improvements. Licensee must contact the owner(s) of the Other Improvements notifying them of any work that may damage and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses.

1.3 Licensee shall use the Premises exclusively as a site for construction, and ingress and egress to and from the construction site for the Amtrak Work (as defined in that certain Master Development Agreement between Licensor and Licensee dated October 19, 2010 [the "**Master Agreement**"]). Licensee shall not use the Premises for any other purpose whatsoever. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("**CERCLA**") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

1.4 Licensor and Licensee mutually agree that no construction activities for the Permitted Uses, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on Licensor's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to Licensor's Network Operations Center (telephone number: 800 832-5452). Licensor and Licensee mutually understand and agree that trains cannot be subjected to delay during this time period.

1.5 In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.

1.6 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

1.7 Upon completion of the Platform and Canopy, Licensee shall deliver to Licensor a bill of sale (the "**Bill of Sale**") in form and substance reasonably acceptable to Licensor, conveying to Licensor all of Licensee's right, title, and interest in and to the Platform and Canopy. Licensee acknowledges and agrees that Licensee has already received good and valuable consideration for the Platform and Canopy pursuant to the provisions of a separate agreement between Licensor and Licensee.

2. TERM. This License shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until completion of the Permitted Uses, but in no event later than the date that is the earliest to occur of: (i) the end of the Development Period (as defined in the Master Agreement), or (ii) December 31, 2014.

3. COMPENSATION.

3.1 Licensee shall pay Licensor, prior to the Effective Date, the sum of No Dollars ($0) as compensation for the use of the Premises.

3.2 Subject to the provisions of the C&M Agreement (as defined below) concerning Licensee's reimbursement of costs and expenses, including without limitation flagging costs, incurred by Licensor in connection with Licensee's use of the Premises, Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all other costs and expenses incurred by Licensor in connection with Licensee's use of the Premises. All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

4.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the use of the Premises.

4.2 Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all of Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Website "http://contractororientation.com". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

4.3 Licensee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Licensor and Licensee dated October 19, 2010 (the "**C&M Agreement**"). In the event of conflicts between the terms of this License and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

5. **DEFINITION OF COST AND EXPENSE.** For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

6. **RIGHT OF LICENSOR TO USE.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

6.1 to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

6.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

6.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the Permitted Uses.

7. **LICENSEE'S OPERATIONS.**

7.1 Licensee shall notify Licensor's Project Engineer, Gerald Maczuga, at 201 N. 7th Street, Lincoln, NE 68508, telephone (402) 458-7537, at least ten (10) business days prior to initially entering the Premises and prior to entering the Premises for any subsequent maintenance thereon (if applicable). After completion of use of the Premises for the Permitted Uses, Licensee shall notify Licensor in writing that such use has been completed.

7.2 In performing the Permitted Uses, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other. In the event Licensee must cross from one side of Licensor's tracks to the other at a location or locations other than a public roadway, and such location or locations are approved by Licensor in advance, then Licensee shall enter into Licensor's Agreement for Private Crossing for each such private crossing location, each such Agreement for Private Crossing to be in the form attached to the Master Agreement as Exhibit UU.

7.3 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to stop using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

7.4 Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, locate and construct the Platform and Canopy in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of Licensor's railroad. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this **Section 7.4**, Licensor may, at its option, itself perform such work as it deems necessary for

the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

7.5 During the construction of the Platform and Canopy, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Platform and Canopy shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Platform and Canopy, Licensee shall, at Licensee's own cost and expense, restore the Premises to their former state as of the Effective Date.

7.6 Prior to Licensee conducting any excavating or boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g.*, consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested entry on the Premises, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines on the Premises. Prior to conducting any such boring work, Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

7.7 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

7.8 Any open hole, boring or well constructed upon Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

7.8.1 filled in to surrounding ground level with compacted bentonite grout; or

7.8.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on the Premises for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

7.9 Upon completion of Licensee's work on the Premises or upon termination of this License, whichever shall occur first, Licensee shall, at its sole cost and expense:

7.9.1 remove all of its equipment from the Premises;

7.9.2 report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;

7.9.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

7.9.4 leave the Premises in the condition which existed as of the Effective Date.

7.10 Licensee's on-site supervisors shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

8. LIABILITY. During the term of this License, Licensee shall comply with all provisions contained in Sections 3.6 and 3.7 of the C&M Agreement, and all such provisions contained in Sections 3.6 and 3.7 of the C&M Agreement are hereby incorporated herein by reference.

9. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF LICENSOR.

10. INSURANCE. During the term of this License, Licensee shall comply with all provisions contained in Section 3.8 of the C&M Agreement, and all such provisions contained in Section 3.8 of the C&M Agreement are hereby incorporated herein by reference; provided, however, if any portion of the operation is to be subcontracted by Licensee, Licensee must require that Licensee's contractors provide and maintain the insurance coverages set forth in the C&M Agreement, naming Licensor as an additional insured; provided further, however, that policy limits for Commercial General Liability Insurance may be reduced to $2,000,000 per occurrence and an aggregate limit of $4,000,000, but in no event less than the amount otherwise carried by Licensee's contractors. In addition, Licensee must require that Licensee's contractors release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor in the C&M Agreement.

11. ENVIRONMENTAL.

11.1 Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

11.2 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

11.3 In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Platform and Canopy which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

11.4 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

12. ALTERATIONS. Licensee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

13. NO WARRANTIES. LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. QUIET ENJOYMENT. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

15. DEFAULT. If default shall be made in any of the covenants or agreements of Licensee contained in this License, Licensor may pursue any and all remedies set forth in Section 24 of the Master Agreement. The remedy set forth in this **Section 15** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

16. LIENS. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 16** or any other Section of this License.

17. TERMINATION. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

18. ASSIGNMENT. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this

License or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

19. NOTICES. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: West Haymarket Joint Public Agency
c/o City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

20. SURVIVAL. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

21. RECORDATION. It is understood and agreed that this License shall not be filed of record with the Lancaster County, Nebraska Register of Deeds Office or otherwise recorded in the official records of Lancaster County, Nebraska.

22. APPLICABLE LAW. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

23. VENUE. To the fullest extent permitted by law any dispute arising under or in connection with this License or related to any subject matter which is the subject of this License shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by Licensor and Licensee to be mandatory and not permissive. Licensor and Licensee each hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

24. SEVERABILITY. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of

this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

25. INTEGRATION. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

26. MISCELLANEOUS.

26.1 In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

26.2 The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

26.3 All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26.4 Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

[Signature page follows]

IN WITNESS WHEREOF, this License has been duly executed by the parties as of the date below each party's signature; to be effective, however, as of the Effective Date above.

LICENSOR:

BNSF Railway Company

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska

By: _____
Jayne Snyder
Chairperson

Date: 5-10-2011

IN WITNESS WHEREOF, this License has been duly executed by the parties as of the date below each party's signature; to be effective, however, as of the Effective Date above.

LICENSOR:

BNSF Railway Company

By: David P. Schneider

Name: David P. Schneider

Title: General Director – Land Revenue Management

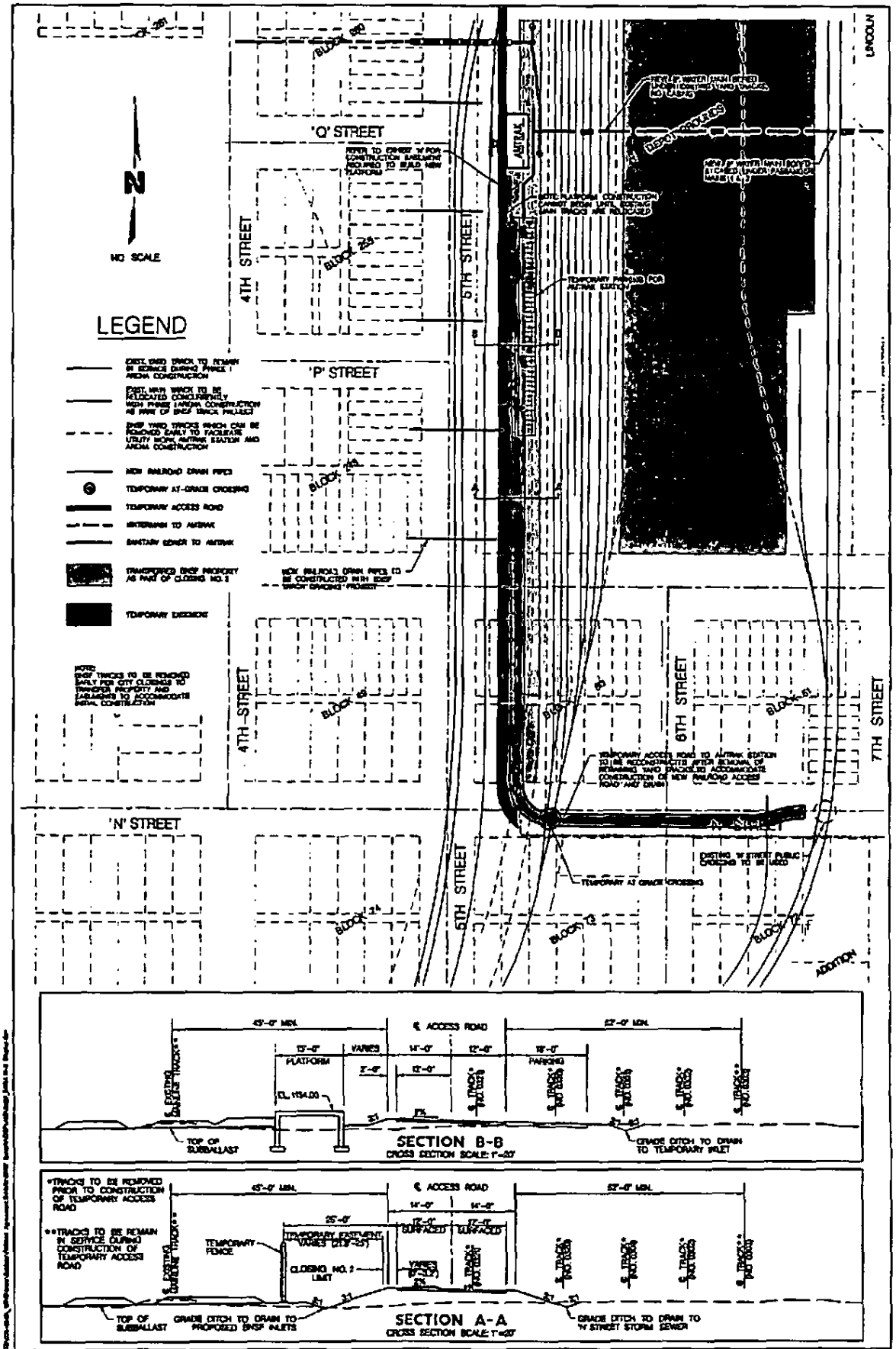
Date: _____

LICENSEE:

West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska

By: _____
Jayne Snyder
Chairperson

Date: _____



PROJECT NO: 008-0845	AMTRAK TEMPORARY ACCESS ROAD	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO			M-2
DATE: 9/29/2010			

A- 86070

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be effective the 18th day of October, 2010 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**City**"). City and BNSF, respectively, are sometimes referred to in this C&M Agreement each as a "**Party**" and collectively, as the "**Parties**".

RECITALS

A. BNSF owns and operates a line of railroad in and through the City of Lincoln, State of Nebraska

B In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, City plans to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**") in the area shown on the map attached hereto as **Exhibit A** and incorporated herein by reference ("**Project Area**") The West Haymarket Project will include, among other things, an approximately 16,000-seat arena (the "**Arena**"), an ice center facility (the "**Ice Center**"), a district energy facility, and upgrades to parking, utilities, and surface transportation access to the area.

C. City and BNSF have entered into that certain Master Development Agreement of even date herewith (the "**Master Agreement**"). In connection with certain economic development objectives of City as set forth in the Master Agreement, City desires that BNSF grant certain permanent or temporary license and/or easement rights to City and certain third parties (each a "**Right of Entry**" and, in multiples, "**Rights of Entry**") for certain activities on BNSF's Property (defined below) (each a "**Right of Entry Work**" and collectively, "**Rights of Entry Work**"). For the purposes of this C&M Agreement, the term "BNSF's Property" shall mean the applicable Existing BNSF Property, Retained BNSF Property, and/or Replacement BNSF Property which is under BNSF ownership at the time work is done under the Right of Entry. All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I – CITY C&M WORK. The provisions of this C&M Agreement, in addition to and not in limitation of the provisions contained in the applicable Rights of Entry, shall apply with respect to the Rights of Entry Work and any other construction, maintenance, Operation (as defined in the Master Agreement), or other work being performed on or adjacent to BNSF property by or for City (collectively, the "**City C&M Work**"). In the event of conflicts between the terms of this C&M Agreement and any applicable Right of Entry agreement, the most restrictive provisions shall apply to City.

ARTICLE II – BNSF OBLIGATIONS. In consideration of the covenants of City set forth herein and the faithful performance thereof, BNSF agrees to do the following:

2.1 Grant to City the following temporary Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.1.1 The Temporary Access License for Initial Construction as defined and described in Section 3.2.1 of the Master Agreement and attached thereto as Exhibit EE;

2.1.2 The Temporary Grading License for Storm Water Mitigation as defined and described in Section 3.2.2(a) of the Master Agreement and attached thereto as Exhibit FF-1;

2.1.3 The Temporary Access License for Soil Staging as defined and described in Section 3.2.3 of the Master Agreement and attached thereto as Exhibit GG;

2.1.4 The Temporary Access License for Construction Staging - Pedestrian Bridge as defined and described in Section 3.2.4(a) of the Master Agreement and attached thereto as Exhibit HH-1;

2.1.5 The Temporary Access License for Amtrak Work as defined and described in Section 3.2.5 of the Master Agreement and attached thereto as Exhibit II;

2.1.6 The Temporary Grading License for Arena Drive and Parking Lot Construction as defined and described in Section 3.2.9 of the Master Agreement and attached thereto as Exhibit KK;

2.1.7 The Temporary Access License for Survey / Geotech / Environmental Activities as defined and described in Section 3.2.11(a) of the Master Agreement and attached thereto as Exhibit BB;

2.1.8 The Crossing Agreements as defined and described in Section 3.2.12 of the Master Agreement and attached thereto as Exhibit UU.

2.1.9 The Temporary Construction and Access License for Sanitary Sewer Work as defined and described in Section 3.2.11(b) of the Master Agreement and attached thereto as Exhibit BB-1.

2.2 Grant to City the following permanent Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.2.1 The Storm Water Mitigation Easement as defined and described in Section 3.2.2(b) of the Master Agreement and attached thereto as Exhibit FF;

2.2.2 The Pedestrian Bridge Easement as defined and described in Section 3.2.4(b) of the Master Agreement and attached thereto as Exhibit HH; and

2.2.3 The City Utility Easements as defined and described in Section 3.2.7 of the Master Agreement and attached thereto as Exhibit TT and Exhibit TT-1.

2.2.4 The 2nd & J Utility Easement as defined and described in Section 3.2.10 of the Master Agreement and attached thereto as Exhibit TT.

2.3 Grant to City the Security Fencing License in accordance with and as defined and described in Section 3.2.8 of the Master Agreement and attached thereto as Exhibit JJ.

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

3.1.1 If any City C&M Work is not included in the City Work Final Design (as defined in the Master Agreement), City must furnish to BNSF four sets of plans and specifications for such City C&M Work (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, for approval prior to commencement of any construction. For each set of such plans and specifications submitted by City to BNSF, BNSF shall approve or reject such plans and specifications within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans and specifications shall be approved or rejected in the manner hereinbefore provided. BNSF will give City final written approval of the plans and specifications substantially in the form of **Exhibit B**, attached hereto and incorporated herein by reference. Upon BNSF's final written approval of the plans and specifications (the "**Approved Plans**"), the Approved Plans will

become part of this C&M Agreement and incorporated herein. Any approval of the Approved Plans by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the Approved Plans meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the Approved Plans or construction is structurally sound and appropriate or that the Approved Plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

3.1.2 City must provide for and maintain minimum vertical and horizontal clearances, as required in the Contractor Requirements in **Exhibit C**, attached hereto and incorporated herein by reference, and as approved by BNSF as part of the City Work Final Design or any other Approved Plans.

3.1.3 Prior to the start of any segment of City C&M Work on or affecting BNSF's property, City must provide to BNSF, and BNSF must approve, exact minimum vertical and horizontal clearances for such segment of City C&M Work being constructed pursuant to the City Work Final Design. Upon BNSF's approval of each segment of City C&M Work, BNSF and City agree to execute an amendment to this C&M Agreement incorporating the approved clearances into this C&M Agreement as **Exhibit D** ("**Final Clearances**"). City shall not deviate from the Final Clearances for the applicable segment of City C&M Work without the prior written approval of BNSF.

3.1.4 City or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Project Engineer (defined below) for approval. The shoring, falsework or cribbing used by City Contractors (defined below) shall comply with all applicable requirements *promulgated by state and federal agencies, departments, commissions and other legislative bodies.*

3.1.5 (a) For purposes of notices required under this C&M to be made to BNSF's Project Engineer, Division Engineer, Manager Signal, and Director Engineering Services, the following contact information is in effect at the Effective Date:

(i) BNSF's "**Project Engineer**" is:

Gerald Maczuga
Gerald.Maczuga@BNSF.com
402-458-7537 (office)
206-265-2427 (cell)
402-458-4376 (fax)

(ii) BNSF's "**Division Engineer**" is:

Andrew Shearer
Andrew.Shearer@BNSF.com
402-458-7724 (office)

(iii) BNSF's "**Manager Signal**" is:

Mike Koetter
Michael.Koetter@BNSF.com
402-458-7504 (office)
402-458-7590 (fax)

(iv) BNSF's "***Director Engineering Services***" is:

Tom Schmidt
Thomas.Schmidt@BNSF.com
913-551-4330 (office)

(b) The contact information in **Section 3.1.5(a)** may be changed from time to time in accordance with the notice provisions of **Section 4.6** below.

3.2 Additional City Requirements.

3.2.1 City must supervise and inspect the operations of all City Contractors to assure compliance with the City Work Final Design and all other Approved Plans, the terms of this C&M Agreement and all communicated and applicable safety requirements of BNSF.

3.2.2 City must make any required applications and obtain all required permits and approvals for the City C&M Work.

3.2.3 City must acquire all rights of way necessary for the City C&M Work.

3.2.4 City must furnish all labor, materials, tools and equipment for the performance of the City C&M Work.

3.2.5 City must advise BNSF's Project Engineer in writing of: (i) the completion date of each Right of Entry Work within thirty (30) days after each such completion date and (ii) the date on which City and/or City Contractor will meet with BNSF for the purpose of making final inspection of each Right of Entry Work.

3.2.6 City must notify and obtain prior authorization from BNSF's Project Engineer before entering BNSF's right-of-way for inspection, construction, maintenance, or any other purposes. Prior to performing any inspection, construction or maintenance with its own personnel, City shall: comply with all of BNSF's communicated and applicable safety rules and regulations; require any City employee performing maintenance to complete the safety training program at the Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of **Exhibit C** or **Section 3.3.6** below, flaggers are required to be present; and procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

3.2.7 City agrees to reimburse BNSF for work of an emergency nature caused by City or City Contractors in connection with the City C&M Work which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such emergency work may be performed by BNSF without prior approval of City and City agrees to fully reimburse BNSF for all such work.

3.2.8 The City C&M Work must be performed by City or City Contractors in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

3.2.9 City must include the following provisions in any contract with City Contractors:

3.2.9.1 City Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "**Lines**") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. City Contractor will be responsible for contacting BNSF's Project Engineer, BNSF's Manager Signal, and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. City Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. City Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

3.2.9.2 City Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the City C&M Work. City Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

3.2.9.3 Failure to mark or identify these Lines will be sufficient cause for BNSF's Project Engineer to stop all or any part of the City C&M Work at no cost to City or BNSF until these items are completed.

3.2.9.4 All City C&M Work performed within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF.

3.2.9.5 Changes or modifications during the City C&M Work that affect safety or BNSF operations must be subject to BNSF's approval.

3.2.9.6 No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(A)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.7 Notwithstanding the provisions of **Section 3.2.9.6** above, solely for the temporary Rights of Entry described in **Sections 2.1.1**, **2.1.3**, **2.1.4**, and **2.1.5** above, no work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work under the referenced temporary Rights of Entry have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(B)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.8 To facilitate scheduling for the City C&M Work, City Contractors shall give BNSF's Project Engineer eight (8) weeks' advance notice of the proposed times and dates for work windows, except in case of emergency, in which event City Contractors must notify BNSF's Project Engineer by telephone at (402) 458-7537 as soon as practicable and shall promptly thereafter follow up with written notice to BNSF's Project Engineer at City Contractor's earliest opportunity. Notwithstanding the foregoing, in no event shall City or any City Contractors enter onto BNSF's property prior to receiving written approval for such entry from BNSF's Project Engineer. BNSF and the City Contractors will establish mutually agreeable work windows for the City C&M Work. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the City C&M Work.

3.3 Construction and Contractor Requirements.

3.3.1 Contractor Requirements. For the City C&M Work, City must comply, and cause all of its contractors (each a "**City Contractor**", and collectively the "**City Contractors**") to comply, with the obligations set forth in **Exhibit C** attached hereto and incorporated herein by reference, and cause all City Contractor(s) for such work to execute and deliver a Contractor Right of Entry ("**CROE**") in the form of **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable. In addition, all City C&M Work must comply with all of the following requirements:

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each

portion of the City C&M Work must be promptly commenced by the Party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the City C&M Work which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from BNSF's Project Engineer.

3.3.3 Site Cleanup and Restoration. City shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, *contaminated soils, asphalt debris, litter and other waste materials resulting from the City C&M Work to the* reasonable satisfaction of BNSF's Division Engineer.

3.3.4 Safety/Security.

3.3.4.1 During the City C&M Work, City, at City's sole cost, shall perform all activities and work in such a manner as to preclude personal injury or property damage to BNSF or any other party, and shall ensure that there is no interference with the railroad operations or other activities of BNSF, or anyone present on BNSF's property with the authority or permission of BNSF. City shall not disturb any improvements of BNSF or BNSF's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements, except as permitted by **Section 3.3.5** below.

3.3.4.2 Prior to entering BNSF's property to perform the City C&M Work, City shall *cause all City Contractor(s) to comply with all of BNSF's communicated and applicable safety and security* rules and regulations and complete the safety training program at the Website "www.contractororientation.com" or then-current program designated by BNSF (the "**Safety Orientation**") and eRAILSAFE or then-current security program designated by BNSF (the "**Security Orientation**") within one year prior to entering upon BNSF's property. Additionally, City must ensure that each and every employee of all City Contractors possess a card certifying completion of the Safety Orientation and the Security Orientation prior to entering upon BNSF's property. City must renew the Safety Orientation and Security Orientation annually.

3.3.4.3 City must supervise and inspect the activities of all City Contractors entering onto BNSF's property to perform the City C&M Work, and assure compliance with the applicable Approved Plans, the terms of this C&M Agreement, and all communicated and applicable safety requirements of BNSF. BNSF will have the right to stop work if any of the following events take place: (i) If BNSF determines that proper supervision and inspection are not being performed by City at any time during the City C&M Work, (ii) any City Contractor performs any work in a manner contrary to the applicable Approved Plans; (iii) any City Contractor, in BNSF's opinion, prosecutes its work in a manner which is hazardous to BNSF property, facilities, personnel, or the safe and expeditious movement of railroad traffic; or (iv) the insurance described herein or in **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable, is canceled or expires. The work stoppage will continue until all necessary actions are taken by City to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have under this C&M Agreement or an applicable Right of Entry. In the event that BNSF desires to stop work, BNSF agrees to immediately notify City. Notwithstanding the foregoing, BNSF has no duty or obligation to observe or inspect, or to halt work by any City Contractor on BNSF's property, it being solely City's responsibility to ensure that work performed by any City Contractor is conducted in compliance with *the terms of this C&M Agreement, all Legal Requirements and the applicable Approved Plans.*

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "**Other Improvements**"). City must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. City must also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or

Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this **Section 3.3.5**, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

3.3.6 Flagging. Subject to modification in writing by BNSF's Division Engineer, no City Contractor shall conduct any activities on, or be present on, any portion of BNSF's property that is within twenty-five (25) feet of any active railroad track or where any such activities have the potential to foul any active railroad track, except in the presence of a flagger. In addition to and not in limitation of the foregoing, City shall, and shall cause its City Contractors to, comply with all BNSF requirements concerning flagging, including without limitation the provisions of Section 1.05 of **Exhibit C**. BNSF shall arrange for the presence of flaggers as soon as practicable after receipt of notice from City in accordance with Section 1.05.01 of **Exhibit C**; provided, however, BNSF shall not be held responsible for City delays when flaggers are not available.

3.3.7 Flagging Costs. Flagging costs of the Included BNSF Work (as defined in the Master Agreement) are the responsibility of BNSF to the extent described in Section 2.2(i) of the Master Agreement. All other flagging costs, including without limitation flagging costs for City C&M Work, BNSF Additional Cost Work and any other work that is or becomes a part of the West Haymarket Project, shall be at City's cost and expense; provided, however, to the extent BNSF is performing work requiring flagging that is the responsibility of BNSF (under the first sentence of this **Section 3.3.7**) at the same time and in the same location as the City C&M Work, BNSF Additional Cost Work and/or any other work that is or becomes a part of the West Haymarket Project, such flagging costs and expenses shall be deemed to be part of the Included BNSF Work. Notwithstanding the foregoing, however, if the City C&M Work, BNSF Additional Cost Work or any other work that is or becomes part of the West Haymarket Project is of such magnitude that additional flaggers or additional flagging time is required, then City shall be responsible for all flagging costs and expenses for such incremental flaggers and additional flagging time as BNSF Additional City Cost Work. As further described in Section 1.05.03c of **Exhibit C**, the governmental flagging rate in effect at the time of performance by the flaggers will be used to calculate flagging costs. As more particularly described in Section 2.7.2 of the Master Agreement and also in the Escrow Agreement (as defined in the Master Agreement), City shall deposit additional amounts, including amounts for estimated flagging costs, into escrow for BNSF Additional City Cost Work.

3.3.8 No Unauthorized Tests or Digging. No City Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on BNSF's property, except after City has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.

3.3.9 Drainage. Any and all cuts and fills, excavations or embankments as part of the City C&M Work shall be deemed to be a part of the City C&M Work and shall be made by City in such manner, form and to the extent as will provide adequate drainage of and from BNSF's property and any adjoining BNSF right of way. Wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from either or both BNSF's property and BNSF's adjoining right of way, City shall construct such culverts or drains to preserve such natural and pre-existing drainage, and such culverts or drains shall also be deemed to be a part of the City C&M Work. City shall wherever necessary with respect to the City C&M Work, construct extensions of existing drains, culverts or ditches through or along BNSF's property (which extensions will also be deemed to be a part of the City C&M Work), such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

3.3.10 Liens. City shall promptly pay and discharge any and all liens arising out of any construction done, suffered or permitted to be done by City. BNSF is hereby authorized to post any notices

or take any other action upon or with respect to BNSF's property that is or may be permitted by Legal Requirements to prevent the attachment of any such liens to any portion of BNSF's property; provided, however, that failure of BNSF to take any such action shall not relieve City of any obligation or liability under this Section or any other section of this C&M Agreement. City shall include in its contracts with all City Contractors, and require all contractors performing any work on BNSF's property or providing materials to include in their contracts with their subcontractors, a notice and acknowledgement by the party providing work or materials that BNSF is not liable for any amounts due such contractor or contractors and waiving any right to place a lien on BNSF's property.

3.4 Environmental Compliance and Notification.

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to strictly comply with all federal, state and local environmental laws and regulations in its use of BNSF's property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to the BNSF property. City and its contractors, if any, shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on BNSF's property. City and its contractors, if any, shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in BNSF's property and as encountered in the City C&M Work and then only in compliance with Environmental Laws and the SMP (defined below), and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the City C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any BNSF property.

3.4.2 Notice of Release. City shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from BNSF's property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of BNSF's property. City shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in this C&M Agreement only in compliance with Environmental Laws and the SMP. City shall also give BNSF notice of all measures undertaken on City's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

3.4.3 Remediation of Release. In the event City has notice of a release or violation of Environmental Laws which occurred or may occur as a result of City's activities contemplated in this C&M Agreement, City shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting BNSF's property or improvements. If during the City C&M Work, soils or other materials considered to be environmentally contaminated are exposed, City will remove and safely dispose of said contaminated soils only in compliance with Environmental Laws and the SMP. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

3.4.4 Evidence of Compliance. City agrees to periodically to furnish BNSF upon written request with reasonable proof that it is in compliance with this **Article III, Section 3.4**.

3.4.5 Soil Management Plan. In addition to the other obligations of City and City Contractors as set forth herein, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the Soil Management Plan attached hereto as **Exhibit E** ("**SMP**") sets forth additional obligations of City and BNSF with respect to the proper management of impacted environmental media during the Development Period (as defined in the Master Agreement).

3.5 Timing.

3.5.1 City will use commercially reasonable efforts to perform all City C&M Work in accordance with the Timeline.

3.5.2 BNSF and City mutually agree that no construction activities for the City C&M Work, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on BNSF's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). BNSF and City mutually understand and agree that trains cannot be subjected to delay during this time period.

3.6 Indemnifications.

3.6.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF *AND BNSF'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL* REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):**

(i) **ANY RIGHTS OR INTERESTS GRANTED TO CITY OR ANY CITY PARTY (DEFINED BELOW) PURSUANT TO THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THIS C&M AGREEMENT;**

(ii) **THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CITY CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY *WORK PERFORMED BY CITY OR ANY CITY PARTY IN, ON, OR ABOUT BNSF'S PROPERTY OR* RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING (AS DEFINED IN THE MASTER AGREEMENT), OR STORM WATER MITIGATION (AS DEFINED IN THE MASTER AGREEMENT) BY CITY;**

(iii) **ANY ENVIRONMENTAL MATTERS ARISING FROM THE WEST HAYMARKET PROJECT AND/OR AFFECTING THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO;**

(iv) **ANY AND ALL CLAIMS BROUGHT BY ANY PARTY RELATED TO OR ARISING FROM THE ACQUISITION AND/OR DEVELOPMENT OF ANY AND ALL PROPERTY AS PART OF THE WEST HAYMARKET PROJECT, INCLUDING WITHOUT LIMITATION PROPERTY DESCRIBED IN THIS C&M AGREEMENT, THE MASTER AGREEMENT, THE EXCHANGE AGREEMENT, AND/OR THE RIGHTS OF ENTRY AGREEMENTS;**

(v) **THE CONDITION OF THE REPLACEMENT BNSF PROPERTY, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS RELATED TO OR ARISING FROM THE EXISTENCE OF ANY THIRD PARTY RESERVED RIGHTS AND/OR ANY THIRD PARTY'S EXERCISE OF ITS RESERVED RIGHTS;**

(vi) **ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CITY OR ANY CITY PARTY, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS**

OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(vii) **CITY'S OR ANY CITY PARTY'S BREACH OF THE TERMS AND CONDITIONS OF THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THE MASTER AGREEMENT;**

(viii) **ANY ACT OR OMISSION OF CITY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS, OR A CITY PARTY, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

THE LIABILITY ASSUMED BY CITY AND THE CITY CONTRACTORS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY BNSF'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

3.6.2 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.**

3.6.3 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES, AND SHALL CAUSE CITY'S CONTRACTORS TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CITY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

3.6.4 City agrees that its obligations under the provisions of this **Section 3.6** expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement and the Rights of Entry agreements.

3.7 Waiver of Municipal and Sovereign Immunity. To the fullest extent permitted by law, City waives its municipal immunity and its sovereign immunity with respect to BNSF for matters arising out of the West Haymarket Project, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and this C&M Agreement, including, without limitation, (i) for environmental and other conditions of the Replacement BNSF Property that City is conveying to BNSF pursuant to the Master Agreement and the Exchange Agreement; (ii) for environmental and other conditions of the real property that BNSF is quitclaiming to City pursuant to the Master Agreement and the Exchange Agreement and of property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest, including remediation costs beyond Nebraska Department of Environmental Quality Title 200 funds ("**Title 200 Funding**"); (iii) for claims arising out of work performed by City or its contractors pursuant to the provisions of this C&M Agreement, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and the Exchange Agreement; and (iv) for claims arising out of continuing rights of City to enter onto property of BNSF, including work performed by City and City Contractors on such property of BNSF. Any lawful waiver of City's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of City's sovereign immunity pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement, and the Rights of Entry agreements.

3.8 Insurance Obligations.

3.8.1 During the Development Period, City shall, at its sole cost and expense, procure and maintain the following insurance:

3.8.1.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability in an amount of at least $25,000,000 per occurrence and an aggregate limit of $50,000,000, but in no event less than the amount otherwise carried by City. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

3.8.1.4 Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000.00 per occurrence and $10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- *Endorsed to remove any exclusion for punitive damages.*
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

In lieu of providing a Railroad Protective Liability Policy, City may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to City and City Contractors.

3.8.1.5 Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

City agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. City further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under City's care, custody or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

City is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automotive Liability and up to $500,000 per occurrence and $500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions

of this C&M Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the City C&M Work, City must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Upon notification to BNSF of cancellation, non-renewal, substitution or material alteration of any such policy(ies), BNSF shall have the option to (i) if feasible, pay, on behalf of the City, any and all such premiums, penalties, fees or expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market and procure such policy(ies) of insurance on behalf of City as required by this C&M Agreement at the then-current market rate. Upon any of the above occurrences, BNSF shall invoice the City for reimbursement of all such premiums, penalties, fees or expenses advanced on City's behalf plus an additional fifteen (15%) of such advanced amounts as remuneration for BNSF's overhead. Such amounts advanced by BNSF shall be paid by City within thirty (30) days after delivery of a statement for such expense. Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

City represents that this C&M Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by City to procure the insurance coverage required by this C&M Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. City represents that it understands and its insurance agent(s)/broker(s) have been informed that the City's insurance coverage being procured by City herein is to protect, defend, indemnify and hold harmless BNSF from any and all Liabilities, as such term is defined herein, that may arise in connection with this C&M Agreement and City, to the fullest extent allowed by law, waives its sovereign and municipal immunity and any caps or limitations on legal liability that may result therefrom.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by City, City must require that City Contractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured; provided, however, that policy limits for Commercial General Liability Insurance may be reduced to $5,000,000 per occurrence and an aggregate limit of $10,000,000, but in no event less than the amount otherwise carried by the City Contractor. In addition, City must require that City Contractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Section 3.8** will entitle, but not require, Railroad to immediately suspend, until such default is cured, any and/or all work under this C&M Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work, and (iii) any other work on or affecting any BNSF property, subject to termination as provided in the Master Agreement. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by City will not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this C&M Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this **Section 3.8**, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

3.8.2 During the Post-Development Period (as defined in the Master Agreement), City shall, and shall require City Contractors to, at City's sole cost and expense, procure and maintain the insurance coverages listed in the applicable Rights of Entry, continuing thereafter so long as the C&M Agreement and/or any Right of Entry agreement is in effect.

3.9 Adherence to Timeline. City must require City Contractors to reasonably adhere to the Timeline. The Parties mutually agree that BNSF's failure to complete the BNSF Work in accordance with *the Timeline due to inclement weather or unforeseen railroad emergencies will not constitute a breach of* this C&M Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the Timeline, BNSF reserves the right to reallocate the labor forces assigned to complete the BNSF Work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The Parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this C&M Agreement by BNSF.

ARTICLE IV – MISCELLANEOUS

4.1 Any books, papers, receipts, and accounts of the Parties relating to the City C&M Work and the BNSF Additional City Cost Work will at all reasonable times and upon reasonable prior written notice be open to inspection and audit by the agents and authorized representatives of the Parties for a period of one (1) year after the date of the final disbursement from the Escrow Account.

4.2 The terms and conditions of indemnification and liability provisions of **Sections 3.6** and **3.7** shall survive expiration or termination of this C&M Agreement, the Master Agreement and the Exchange Agreement, and all Closings under the Exchange Agreement.

4.3 The covenants and provisions of this C&M Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding the preceding sentence, neither Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this C&M Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) City's entire interest under the Master Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to JPA.

4.4 This C&M Agreement shall be in effect for so long as the Master Agreement and/or any Right of Entry is in effect; provided, however, that if the Master Agreement and all Rights of Entry have expired or been terminated, BNSF has the right to terminate this C&M Agreement upon written notice to City.

4.5 Neither termination nor expiration of this C&M Agreement will release either Party from any liability or obligation under this C&M Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

4.6 Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party no less than thirty (30) days' advance written notice of such change in address.

If to BNSF: BNSF Railway Company
P.O. Box 961034
Fort Worth, TX 76161-0034.
Attn: Robert J. Boileau, P.E., Assistant Vice President, Engineering Services

If to City: City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

4.7 Time is of the essence of this C&M Agreement.

4.8 In any action (declaratory or otherwise) brought by either Party in connection with or arising out of the terms of this C&M Agreement, the prevailing Party in such action will be entitled to recover from the non-prevailing Party all actual costs, actual damages, and actual expenses, including, without limitation, reasonable attorneys' fees and charges to the fullest extent permitted by law.

4.9 Each Party and its counsel have reviewed and revised this C&M Agreement. The Parties agree that the rule of construction that any ambiguities are to be resolved against the drafting Party must not be employed to interpret this C&M Agreement or its amendments or exhibits.

4.10 If any clause or provision of this C&M Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this C&M Agreement, then and in that event, it is the intention of the Parties that the remainder of this C&M Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this C&M Agreement that is illegal, invalid or unenforceable, there be added, as a part of this C&M Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

4.11 This C&M Agreement, the Master Agreement, the Exchange Agreement, and, to the extent executed, the Right of Entry licenses and/or easements described herein, contain the entire agreement between BNSF and City with respect to the West Haymarket Project. Oral statements or prior written matters not specifically incorporated into this C&M Agreement are superseded hereby. No variation, modification, or change to this C&M Agreement, the Exchange Agreement or the Rights of Entry agreements shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party's right to require strict compliance with any term of this C&M Agreement. The captions next to the section numbers of this C&M Agreement are for reference only and do not modify or affect this C&M Agreement.

4.12 No director, officer, elected or appointed official, or employee of either of the Parties shall be personally liable in the event of any default.

4.13 This C&M Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.

4.14 As of this same Effective Date, City and BNSF have also entered into the Master Agreement, the Exchange Agreement and to the extent executed, certain Right of Entry licenses and/or easements. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Right of Entry licenses and/or easements. City and BNSF agree that, except as otherwise stated in **Article 1** of this C&M Agreement: (i) in the event the terms of the Master Agreement and the terms of the C&M Agreement, the Exchange Agreement and the various licenses and/or easements are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement and the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the Exchange Agreement shall prevail, and (iii) in the event the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the C&M Agreement shall prevail.

4.15 All aspects of this C&M Agreement shall be governed by the laws of the State of Nebraska.

4.16 To the fullest extent permitted by law any dispute arising under or in connection with this C&M Agreement or related to any subject matter which is the subject of this C&M Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive. Each Party hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

4.17 By signing below, the Parties affirm they have the legal authority to enter into this C&M Agreement.

4.18 Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Party shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this C&M Agreement.

[*Signature page follows*]

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David L. Freeman, Vice President – Engineering

Date: _____

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

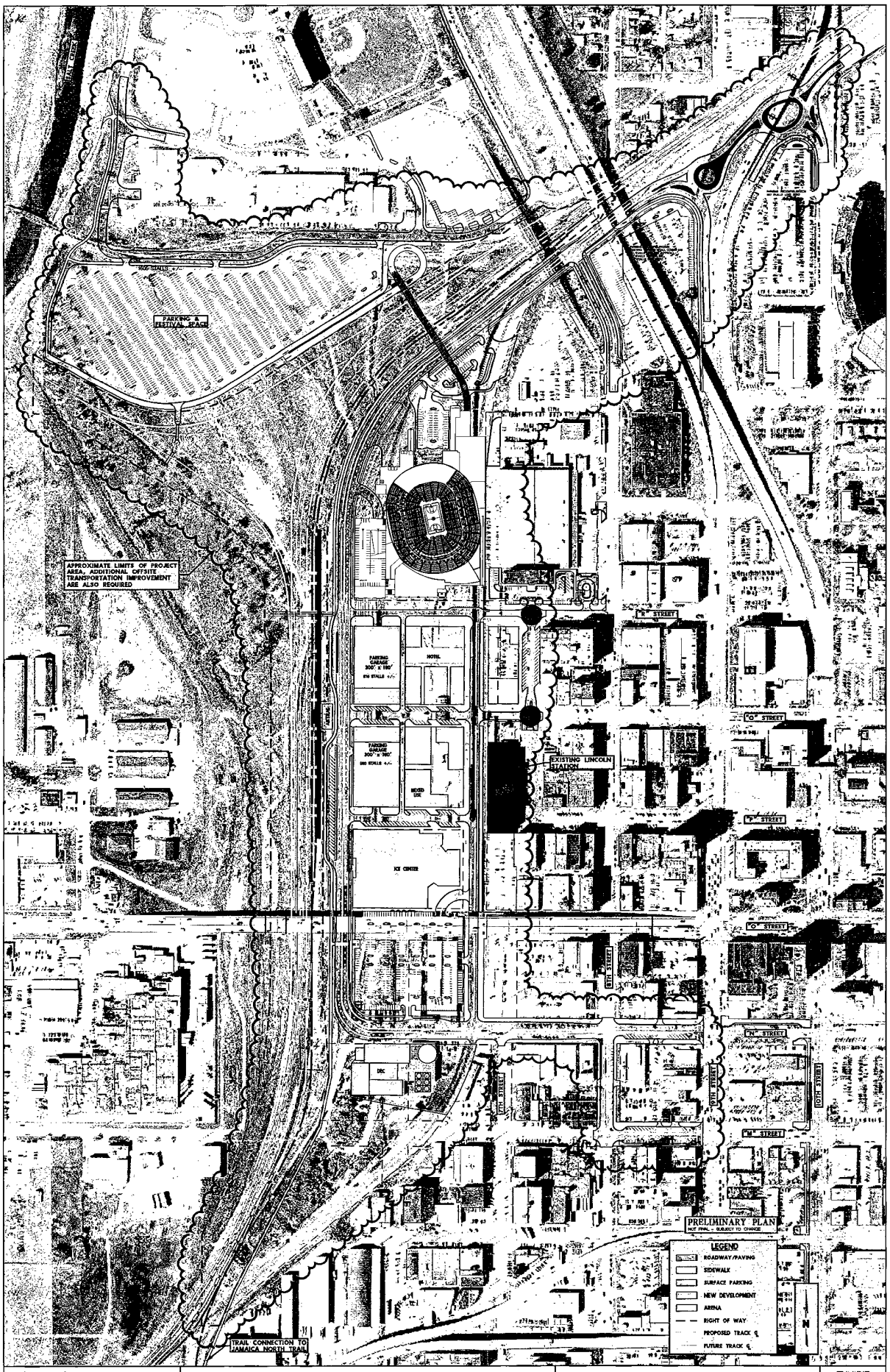
By: _____
David L. Freeman, Vice President – Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]



PROJECT NO: 008-0645 DRAWN BY: JGO DATE: 8/23/2010	WEST HAYMARKET REDEVELOPMENT AREA	OLSSON ASSOCIATES 1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	EXHIBIT A

DATE: 8/23/2010
DGN: f:\projects\008-0645_mw\base\sch\bls\railroad_agreement\exhibits\BNSF Exhibits\DISPLAYS\BNSF_Exhibit A Display.dgn

EXHIBIT B

Form of BNSF Plan Approval

Gerald Maczuga
Project Engineer

BNSF Railway Company
201 N 7th St
Lincoln, NE 68508
402-458-7537 (office)
402-458-4376 (fax)
Gerald.Maczuga@BNSF.com

Date: _____

Ernest R. Peo, III
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: Chief Assistant City Attorney

Re: Review of Plans and Specifications dated September 2, 2010, drafted by Olsson Associates (hereinafter called the "**Plans and Specifications**")

Dear Mr. Peo:

This letter serves as BNSF Railway Company's ("**BNSF**") response to its review of the Plans and Specifications covering the construction of the West Haymarket Utility Relocation - Project Number 870501. BNSF has reviewed these plans and no exceptions are taken. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design of the project. These comments are given to the City of Lincoln, Nebraska ("**City**") pursuant to Section 3.1.1 of that certain Construction and Maintenance Agreement between BNSF and City, dated _____, 2010. If the Plans and Specifications are revised by City subsequent to the date set forth above, this letter shall no longer serve as BNSF's written comments and City must resubmit said Plans and Specifications to BNSF for review.

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

  Roger Figard, City Engineer
  Department of Public Works and Utilities
  City of Lincoln, Nebraska
  555 South 10th Street
  Lincoln, NE 68508

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway's Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to Railway's Property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on Railway's Property. Contractor shall not handle, transport, release or suffer the release of "hazardous

waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in Railway Property and as encountered in the C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway Property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give Railway notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting Railway Property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish Railway upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.

- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.

- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.

- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the *Contractor such that the C&M Work may be handled and performed in an efficient manner.* The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.**

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's

operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

  - 15' Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained:

  - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
  - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge

- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.

- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor, upon completion of the C&M Work, must promptly remove from the Railway Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway's Project Engineer to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site **www.contractororientation.com**, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

  Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.

- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01 C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Railway Property, except after Contractor has obtained written approval from Railway Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.**

- **1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the**

personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.**

- **1.06.04 When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.**

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF**

THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

- **1.07.05** Contractor will be responsible at no cost to Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway Property (collectively, "**Other Improvements**"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway improvements and Other Improvements in the field in order to verify their locations. Contractor must also use all reasonable methods when working on or near Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting Railway Property, in a manner that does not adversely impact utility service to Railway.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1 (800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1 (817) 352-7595 and to the Railway's Project Engineer no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St
2. Date: _____ Time: _____ County:
3. Temperature:
4. Weather
   (if non-Railway location)

5. Social Security #

6. Name (last, first, mi)

7. Address: Street: _____ City: St._____ Zip:

8. Date of Birth: _____ and/or Age _____ Gender:
   (if available)

9. (a) Injury: _____ (b) Body Part:
   (i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
    __ First Aid Only
    __ Required Medical Treatment
    __ Other Medical Treatment

13. Dr. Name _____ 30. Date: _____

14. Dr. Address:
    Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name:

16. Hospital Address:
    Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis:

FAX TO RAILWAY AT (817) 352-7595
AND COPY TO RAILWAY ROADMASTER FAX

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

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

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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

_____	
(Contractor)	**BNSF Railway Company**
By:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*
Contact Person: _____	Accepted and effective this _____day of 20__.
Address: _____	
_____	
City:_____ State:___ Zip:____	
Fax: _____	
Phone: _____	
E-mail:_____	

EXHIBIT C-1(B)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000.00 per occurrence, and $4,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- *Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)*
- Endorsed to include the Limited Seepage and Pollution Endorsement.

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently $382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

[Signature page follows]

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

_____	
(Contractor)	**BNSF Railway Company**
By:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*
Contact Person: _____	Accepted and effective this _____day of 20__.
Address: _____	
_____	
City:_____ State:___ Zip:____	
Fax: _____	
Phone: _____	
E-mail:_____	

EXHIBIT D

Final Clearances

Pursuant to the provisions of **Section 3.1.3** of the C&M Agreement, approved Final Clearances for each segment of City C&M Work being constructed pursuant to the City Work Final Design are attached hereto as **Exhibit D**.

EXHIBIT E

Soil Management Plan

In addition to and not in limitation of the requirements and obligations of City and City Contractors contained in the C&M Agreement, the following requirements shall apply to City and City Contractors with respect to management of impacted environmental media. In the event of conflicts between the terms of this **Exhibit E** and the rest of the C&M Agreement, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the most restrictive provisions shall apply to City and City Contractors.

Proper Management of Impacted Media

1. Access

Access to the West Haymarket Redevelopment Site (WHRS) is restricted to railroad and City of Lincoln personnel and contractors conducting work in their official capacity as employees or contractors of their respective organizations. Access to Railroad operating property for purposes of providing construction – related services is subject to specific safety and rules training certifications and requirements found at: **www.contractororientation.com**. Access to other non-railroad private property for purposes of performing construction – related services within the WHRS must be arranged through the EPMT.

2. Management Practices

Due to the potential risks and penalties involved in management of impacted media and protection of rare and unique saline wetlands as well as the wide applicability of these issues to planned construction activity, prescriptive management practices for these areas are as follows:

2.1 Impacted Soil and Debris Management

Attachment 3 - NDEQ Environmental Guidance Document 05-061 "Investigation Derived Waste and Remediation Considerations" (GD 05-061) is provided as reference. Relevant and critical points extracted from GD 05-061 as well as NDEQ's Title 132 (Integrated Solid Waste Management Regulations) for purposes of implementation and compliance is as follows:

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.

2. Title 132, Chapter 1, Section 041 defines fill as: "*solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material*".

3. The "*use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment*".

4. From pg. 2 of NDEQ GD 05-161: "*Activity not related to investigation or remediation is not considered "active management" under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation.*"

5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

contaminants of concern (if any) and allowable re-use (including use as fill), alternatives to be employed for excess soil or debris to be generated associated with his/her respective work task. The project manager will work with the construction representative and advise where excess soils or debris shall be stored. Provisions for temporary storage of potentially impacted soil/debris must be explicitly agreed upon.

2.2 Grading/Excavation

Construction grading and excavation activities associated with applicable WHRS project activities require coordination and compliance as follows:

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.

2. The PM/CR must arrange for all utility clearance.

3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).

4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation***.

5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.

7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.

8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

2.3 Utility Work

Contractors performing utility work including all intrusive work (trenching, boring, digging, etc.) where surface features (soil, concrete, asphalt, vegetated surfaces) will be disturbed require conformance to the following procedures:

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.

2. The PM/CR must arrange for all related utility clearance.

3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).

4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.

7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.

8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.

9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:

Frank Uhlarik – Alfred Benesch & Company:	**402-333-5792** **Cell: 402-669-0546**
Alternate:	
Bill Imig – Olsson Associates:	**402-458-5903** **Cell: 402-314-4568**
Alternate:	
Miki Esposito – Environmental Project Management Team:	**402-441-6173**

Agencies/Railroad Authorities:

Nebraska Department of Environmental Quality:	**402-471-2186 or 877-253-2603**

After Hours, Weekends and Holidays:

Nebraska State Patrol Dispatch:	**402-471-4545**
BNSF Railway Company Resource Operations Center:	**800-832-5452**
Union Pacific Railroad Security:	**888-877-7267**
National Response Center:	**800-424-8802**

ALL OTHER INCIDENTS

Fire and Police: **Dial 911**

LIST OF ACRONYMS

CR	Contractor's Representative
SMP	Soil Management Plan
EPMT	City of Lincoln Environmental Project Management Team
PM	Project Manager
TR	Environmental Project Management Team Technical Representative
WHRS	West Haymarket Redevelopment Site

SUBLEASE AGREEMENT
BETWEEN AMTRAK AND
WEST HAYMARKET JOINT PUBLIC AGENCY
LINCOLN, NE

THIS SUBLEASE AGREEMENT (this "Sublease") is made and entered into as of this 28th day of January, 2011, by and between **National Railroad Passenger Corporation**, a corporation organized under the Rail Passenger Service Act now codified at Title 49 U.S. Code Section 24101 et seq. (the "Act") and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, DC 20002 ("Amtrak"), **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska, having its principal office and place of business at 555 South 10th Street, Lincoln, Nebraska (the "Subtenant").

RECITALS:

WHEREAS, BNSF Railway Company (the "Prime Landlord") and Amtrak entered into that certain lease agreement dated as of January 28, 2011 (the "Prime Lease"), for certain real property and facilities owned by the Prime Landlord and located at an address in Lincoln, Nebraska to be established in connection with the West Haymarket Project (defined below) and amended into this Sublease and shown as shaded on **Exhibit A** attached to this Sublease and by this reference made a part hereof (the "Subleased Premises"); and

WHEREAS, in an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, Subtenant has proposed the introduction of additional entertainment, recreational, lodging, office and retail activities; expanding the amount and quality of parking services and upgrade of surface transportation access to the area, in part through the construction of an approximately 16,000-seat arena, a privately owned and operated hotel of approximately 200 rooms, surface and garage parking, space for intercity passenger rail service in the vicinity of the Subleased Premises, retail, office and service businesses, recreational facilities and other complimentary uses (collectively "West Haymarket Project") in the West Haymarket Redevelopment Area ("Project Area"); and

WHERAS, the West Haymarket Project includes a new train station, including a new depot to be constructed by Subtenant on property owned by Subtenant, and a new intercity rail passenger platform and canopy (together the "New Platform") to be constructed and maintained by Subtenant, at no cost or expense to Amtrak, on the Subleased Premises (the new depot, passenger platform and canopy are collectively referred to as the "New Depot"); and

WHEREAS, as part of the West Haymarket Project the parties anticipate that certain of Prime Landlord's tracks will be realigned and once construction of the New Depot has been completed in accordance with plans and specifications approved by Amtrak, Amtrak operations will be relocated, at Subtenant's expense, to the New Depot, and the existing platform and depot

will be closed. The track relocation will require Prime Landlord to terminate the use and cause the removal of its Passenger Main Line Track No. 2 (including platform and canopy) currently utilized by Amtrak's intercity passenger trains after it has constructed a new passenger main line track (Passenger Main Line Track No. 4) to be utilized by Amtrak intercity passenger trains as shown on **Exhibit B** (i.e., Exhibits M-2 and N from the Master Agreement between the Subtenant and Prime Landlord) attached hereto and incorporated herein by this reference; and

WHEREAS, the Subtenant 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 for the purpose of assuming the responsibilities of the City of Lincoln for constructing the West Haymarket Project; and

WHEREAS, 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; and

WHEREAS, Subtenant and Amtrak desire to enter into this Sublease in connection with the construction and maintenance of the Subleased Premises by Subtenant.

NOW, THEREFORE, Amtrak and Subtenant agree that the foregoing recitals are incorporated into this Sublease by this reference and further agree as follows:

AGREEMENT:

1. **Sublease.** Amtrak hereby subleases the Subleased Premises unto the Subtenant, and the Subtenant hereby subleases the Subleased Premises from the Amtrak, upon the terms and conditions hereinafter set forth. The trackside boundaries of the Subleased Premises shall commence at the edges of the ballasted right of way, and shall be measured by the trackside edge of platforms where they exist, or are built. JPA shall have no right to use the Subleased Premises for providing rail service without the express written consent of BNSF. This Sublease is subject to Amtrak's statutory rights of use the facilities as outlined in 49 U.S.C. § 24101 *et seq.*; and

2. **Commencement Date and Termination.** This Sublease shall become effective upon written notice from Amtrak to Subtenant that the Prime Lease has commenced (the "Commencement Date") and shall continue in effect until it is terminated by Amtrak giving Subtenant at least sixty (60) days' prior written notice.

If for any reason the term of the Prime Lease is terminated during the term of this Sublease, this Sublease shall thereupon terminate, and Amtrak shall not be liable to Subtenant, for damages or otherwise, by reason thereof. Rent paid in advance by Subtenant, if any, will be prorated as of the date of such termination.

3. **Surrender of the Subleased Premises.** Upon the termination of this Sublease by Amtrak, Subtenant shall quit and surrender the Subleased Premises to Amtrak in the same condition as at the Commencement Date, as, and to the extent, improved by the construction of the New Platform or otherwise.

4. **Rent.** Subtenant shall pay Amtrak at the Amtrak's office or at such place as Amtrak may from time to time designate in writing, Base Rent, as described herein, and Additional Rental, as described herein (collectively referred to from time to time as "Rent"), during the Term as follows:

(a) **Base Rental.** Beginning upon the Commencement Date and continuing thereafter, Subtenant shall pay to Amtrak an annual rental fee of One Dollar ($1.00) (the "Base Rent.

(b) **Additional Rent.** Subtenant shall pay to Amtrak, as additional rent, any pass through of any increases in operating expenses and real estate taxes payable by Amtrak to Prime Landlord under the Prime Lease.

5. **New Depot Design**. Amtrak has reviewed and approved Prime Landlord's final design for its track relocation work with respect to track layouts and functional arrangement of the new depot and the station boarding tracks, and the New Platform (collectively "Station Track Design"). Amtrak acknowledges that it has reviewed preliminary design plans for the New Depot ("Plans"), a copy of which are attached hereto as **Exhibit C**, and found them to be acceptable as to form, fit and function. Based upon said review, Amtrak has determined that the design plans include all facilities needed to relocate Amtrak's operations, subject to Amtrak's review and approval of the final design and construction documents for the New Depot ("Final Plans") which approval shall not be unreasonably withheld. Amtrak's approval of the Station Track Design, Plans, Final Plans or any other plans or work shall only mean that designs, plans, or work meet Amtrak's subjective standards, and such approval shall not be deemed to mean that the designs, plans and specifications or construction contemplated therein or any work performed is structurally sound or appropriate or meets applicable regulations, laws, statutes or local ordinances, and/or building codes. The Final Plans shall be submitted to Amtrak's Deputy Chief Engineer – Construction, National Railroad Passenger Corporation, 2955 Market Street, 4SO29, Philadelphia, PA 19101, for Amtrak's review and approval. Amtrak shall approve or disapprove the Final Plans within thirty (30) days following receipt of the Final Plans. If Amtrak disapproves the Final Plans, Amtrak shall advise Subtenant in what manner the Final Plans fail to comply with the Plans as to form, fit and function and what changes are needed in order to obtain Amtrak's approval. The New Depot shall be constructed, operated and maintained by Subtenant in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and orders in effect, including the provisions of the Americans with Disabilities Act. The Final Plans shall include the following elements:

(i) The new depot shall have a minimum of 1,750 square feet of space for Amtrak operations.

(ii) Passenger Main Line Track No. 4 shall be located next to the new depot and shall be the track closest to the New Platform.

6. **Construction of New Platform.** Subtenant will construct the New Platform pursuant to the Station Track Design at Subtenant's expense. The Station Track Design shall include the following elements:

(i) The platform shall have a minimum length of 1,200 feet and a minimum width of 15 feet with 22-foot wide baggage cart turnarounds at each end;

(ii) At least 800 feet of the platform shall have a canopy covering to protect passengers from the sun and rain;

(iii) The platform height shall be 8 inches above top of rail. The platform shall be offset by 5 feet 4 inches from the centerline of the track or tangent sections.

7. **Relocation of Amtrak Operations**. Prior to the termination of the Passenger Main Line Track No. 2, and following completion of construction of the New Depot in accordance with Final Plans (as defined in Paragraph 5 above) approved by Amtrak and Prime Landlord and receipt of all required permits and approvals, Amtrak will, at Subtenant's expense, relocate Amtrak's operations from the existing station facilities to the New Depot.

Amtrak agrees, subject to the completion by Subtenant of various exhibits and to Amtrak's approval of such exhibits, to execute the Station Lease attached hereto as **Exhibit D** on that date which is thirty (30) days after an occupancy permit is issued for the New Depot and which is no earlier than the date Prime Landlord's new passenger main track no. 4 (MT4) is constructed and Amtrak has commenced operations on such track.

8. **Passenger Rail Service**. Amtrak intends to stop its revenue trains, discharge and board passengers at the New Station, provided the following conditions are met:

(a) Subtenant is not in breach of any of its obligations as set forth in this Sublease or in any other agreement with Amtrak;

(b) Prime Landlord does not limit or restrict Amtrak's operations at this location; and

(c) The trains which stop at the New Depot are funded in whole (or at a level acceptable to Amtrak) by the State of Nebraska Department of Transportation or another governmental agency or authority.

In no event will Amtrak be required to stop trains at the New Depot if all of the conditions listed in subparts (a) - (c) above are not met.

9. **Ownership of New Platform.** Amtrak and Subtenant understand and acknowledge that following Subtenant's completion of construction of the New Platform, the New Platform will be owned by Subtenant until this Sublease expires or is terminated.

Subtenant agrees and acknowledges that it is leasing the Subleased Premises in "as is" condition, and that neither Amtrak nor the Prime Landlord has any obligation to make any repairs or alterations of whatsoever nature in or to any part of the Subleased Premises, including but not limited to alterations required to comply with the Americans with Disabilities Act or any other

governmental requirement, or to maintain any part of the Subleased Premises in any manner. Subtenant shall not knowingly create or permit any condition on the Subleased Premises that could present a threat to human health or to the environment. Subtenant shall be responsible for the cost of any utilities associated with the Subleased Premises.

10. Insurance.

(a) Subtenant and any of its contractors performing work on or adjacent to the Subleased Premises shall obtain and keep in full force and effect at all time during the term of this Sublease, at its sole cost and expense, the following types of insurance coverage with at least the limits set forth below. All insurance will be placed with insurance carriers acceptable to Amtrak and licensed to do business in Nebraska. Subtenant shall require all contractors performing work on or adjacent to the Subleased Premises to carry the insurance required herein, or Subtenant may, at its option, provide the coverage for any or all contractors, provided the evidence of insurance submitted by Subtenant to Amtrak so stipulates. Subtenant shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of construction or demolition. In addition, Subtenant agrees to provide certified copies of the insurance policies for the required insurance within 30 days of Amtrak's written request. The insurance shall provide for ten (10) days prior written notice to Amtrak in the event the policy is cancelled for nonpayment of premium and thirty (30) days prior written notice to Amtrak if the policy is canceled for any other reason or non-renewed. No acceptance by Amtrak of any insurance certificate required hereunder will constitute or be construed as a waiver by Amtrak of the insurance requirements of this Section which will be and remain the sole responsibility of Subtenant as to compliance therewith.

In the event the Nebraska Political Subdivisions' Tort Claims Act is modified, repealed or replaced, Amtrak may modify the required insurance coverage and such modification will be implemented promptly by the Subtenant. Not more frequently than once every five (5) years, Amtrak may reasonably modify the required insurance coverage to reflect then-current risk management practices in the passenger railroad industry and underwriting practices in the insurance industry which request shall not unreasonably be denied by Subtenant. All of the Subtenant's insurance shall remain in force until this Sublease has been terminated and all of Subtenant's personnel and equipment have been removed from the Subleased Premises. All of the Subtenant's contractors' insurance shall remain in force until such contractor's work has been completed, all of the contractor's personnel and equipment have been removed from the Subleased Premises and the work has been accepted.

Subtenant may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except however that Subtenant shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Subtenant's failure to comply with the insurance requirements set forth herein shall constitute a default of this Sublease.

The City of Lincoln, Nebraska may provide the coverages as required in this section for Subtenant, provided the City of Lincoln, Nebraska includes Subtenant as a named insured on its policies and the evidence of insurance provided by the Subtenant to Amtrak so stipulates.

(i) **Workers' Compensation Insurance** complying with the requirements of the statutes of the State of Nebraska, covering all employees of Subtenant. Employer's Liability coverage with limits of not less than $1,000,000 each accident or illness shall be included. A waiver of subrogation in favor of Amtrak and Prime Landlord is required.

(ii) **Commercial General Liability Insurance** covering liability of Subtenant with respect to all services and operations to be performed and all obligations assumed by Subtenant under the terms of this Sublease. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad and any Explosion/Collapse/Underground (X-C-U) exclusions deleted.

The policy shall name National Railroad Passenger Corporation and, as appropriate, the Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. In addition the policy shall include an ISO endorsement form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory as respects any other insurance the additional insureds carry. A separations of insureds clause must be included. A waiver of subrogation in favor of Amtrak, and Prime Landlord must be included.

Coverage under this policy shall have limits of liability of not less than $5 million each occurrence and $10 million annual aggregate, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

(iii) **Automobile Liability Insurance** covering the liability of Subtenant arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the State of Nebraska, and which are not covered under Subtenant's Commercial General Liability insurance. The policy shall name National Railroad Passenger Corporation and, as appropriate the Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the services and operations to be performed. Coverage under this policy shall have limits of liability of not less than $1 million each occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability. A separations of insureds clause is included. A waiver of subrogation in favor of Amtrak, and Prime Landlord is required.

In the event Subtenant or any contractor or subcontractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to $5 million each occurrence.

(iv) **Railroad Protective Liability (RRP) Insurance** covering the Operations performed by Subtenant or any contractor or subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of the National Railroad Passenger Corporation (and as appropriate, Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than $5 million each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A $10 million annual aggregate shall apply. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

> "It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of demolition or construction.

In the alternative, and upon Amtrak's approval, Subtenant may elect to have Subtenant or its contractor insure the demolition, construction and/or services to be provided by Subtenant under Amtrak's Blanket RRP Liability Insurance Program. The premium, which shall be determined by the rate schedule promulgated by the insurer in effect as of the Commencement Date of this Sublease, shall be prepaid by Subtenant. In the event Amtrak and Subtenant agree to insure the demolition, construction and/or services to be provided by Subtenant under Amtrak's RRP Program, Subtenant shall include the RRP premium of $8,501.00 in addition to the Permit Fee, and send its check made payable to National Railroad Passenger Corporation to the individual set forth below prior to commencement of any demolition or construction.

(v) **All Risk Property Insurance** covering physical loss or damage to all property used in the performance of the demolition, construction and/or services to be provided by Subtenant and its contractors hereunder on a full replacement cost basis. The policy shall have limits of liability adequate to cover all property of Subtenant and its contractors (including personal property of others in Subtenant's care, custody or control) and shall include a waiver of subrogation against Amtrak, as appropriate, Prime Landlord, and all commuter agencies and railroads that operate over the property or tracks at issue.

(vi) **Contractor's Pollution Liability Insurance** covering the liability of the Subtenant and its contractors arising out of any sudden and/or accidental pollution or impairment of the environment, including clean up costs and defense, that arise from operations of Subtenant and its contractors with National Passenger Rail Corporation, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall not have limits of liability of not less than $2 million each occurrence. The coverage shall be maintained during the term of the project and for at lease two (2) years following completion of the lease.

(vii) **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Subtenant, its contractor or transporter, as well as the disposal site operator, shall maintain this insurance. Subtenant shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation, Prime Landlord and all commuter agencies and railroads that operate over the Subleased Property or tracks at issue as additional insureds, with limits of liability of not less than $2 million per claim.

Further, any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Subtenant.

(viii) **Professional Liability Insurance** covering the liability of contractor for any and all errors or omissions committed by contractor in the performance of the demolition, construction and/or services to be provided by contractor, regardless of the type of damages. The coverage shall be maintained for at least three (3) years following the termination of this Sublease. The policy shall have limits of liability of not less than $2 million per claim and in the annual aggregate. The policy may contain a deductible of a maximum of two hundred fifty thousand dollars ($250,000), but in such case the deductible is the sole responsibility of contractor, and no portion of such deductible is the responsibility of Amtrak. This requirement may also be satisfied by the use of a Project Specific Professional Liability insurance policy provided by the Subtenant.

A contractor that is not providing design and engineering services may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

Claims-Made Insurance - **If any liability insurance specified above shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy shall provide that:**

1. The retroactive date shall coincide with or precede the Commencement Date hereof (including subsequent policies purchased as renewals or replacements);

2. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;

3. Subtenant will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., Commercial General Liability, Professional Liability) for at least three (3) years following the termination of this Sublease; and

4. If insurance is terminated for any reason, Subtenant will purchase an extended reporting provision of at least two (2) years to report claims arising from the demolition, construction and/or services to be provided by Subtenant.

(b) Evidence of Insurance. Subtenant shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing the Sublease or any demolition or construction. THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING. The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Subtenant begin demolition or construction without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Director Project Initiation & Development
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817

(c) Subtenant shall pay all premiums and charges for such insurance, and if Subtenant shall fail to obtain such insurance, Amtrak may, but shall not be obligated to, obtain the same, in which event the amount of the premium paid shall be paid by Subtenant to Amtrak upon Amtrak's demand therefor, shall be deemed Additional Rent and shall be collectible by Amtrak in the same manner and with the same remedies as though said sums were Additional Rent reserved hereunder. Such liability insurance policy shall include a provision to the effect that the same will be non-cancelable except upon thirty (30) days' advance written notice to Amtrak and that the act or omission of Subtenant will not invalidate the policy as to Amtrak. Certified copies of the original insurance policies or appropriate certificates thereof shall be promptly deposited with Amtrak, together with any renewals, replacements or endorsements thereto.

(d) Subtenant acknowledges that Amtrak will not carry any insurance in favor of Subtenant, and that neither Prime Landlord nor Amtrak will carry insurance on Subtenant's furniture and/or furnishings or any fixtures or equipment, improvements or appurtenances of Subtenant in or about the Subleased Premises.

(e) Not more frequently than once every five years Amtrak retains the right to reasonably modify the required insurance coverage to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(f) Subtenant is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automobile Liability and up to $750,000 per occurrence and $750,000 aggregate on Workers' Compensation Liability without further consent or approval from Amtrak. Subtenant's contractors are allowed to self insure up to $250,000 per occurrence and aggregate. Subtenant is obligated to pay all claims within the self insured retention; Amtrak has no duty to make any payments with respect to any self insured retention.

(g) Subtenant agrees that to the extent any insurance required of Amtrak, Subtenant or any contractors by Prime Landlord with respect to the Lincoln, NE Station and New Platform is greater than the insurance required herein, Subtenant and/or its contractors shall provide insurance in compliance with the Prime Landlord insurance requirements.

11. Indemnification. Subtenant shall defend, indemnify and hold harmless Amtrak, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "Indemnified Parties") and Prime Landlord, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs, and expenses incidental thereto (including costs of defense and attorneys' fees), which any of the Indemnified Parties or Prime Landlord (and its officers, directors, employees, agents, servants, successors, assigns and subsidiaries) may hereafter incur, be responsible for, or pay as a result of:

(i) injury, death, disease, or occupational disease of any person (including employees of Subtenant), or

(ii) damage (including environmental contamination and loss of use) to or loss of any property, including the Subleased Premises,

arising out of, in any degree directly or indirectly caused by, or resulting from materials, products or equipment supplied by, or from activities of, or work performed by Amtrak, Prime Landlord, Subtenant, and/or their officers, employees, agents, servants, contractors, subcontractors or any other person acting for or with the permission of them, or as a result of Subtenant's failure to perform its obligations in compliance with this Sublease except to the extent such loss, liability, penalty, fine, forfeiture, demand, claim, cause of action, suit, cost, or expense results directly from the sole negligence of the Indemnified Parties

Subtenant shall be responsible for all damages and expenses on account of injuries (including death) to any of its employees, agents, contractors or subcontractors while on the Subleased Premises and shall indemnify, defend and hold Amtrak and Prime Landlord harmless from all claims or damage suits which may arise in consequences of such injuries. Subtenant shall also repair or replace any property of Amtrak or Prime Landlord which is damaged by Subtenant's employees, agents, contractors or subcontractors while performing its obligations hereunder.

Subtenant hereby agrees to purchase a policy of insurance covering all or any part of the liability which might be incurred under the Nebraska Political Subdivision's Tort Claims Act, including, but not limited to, those claims specifically excepted from liability by §13-910 of such Tort Claims Act, and Subtenant agrees that, with respect to any claim against Amtrak or the Prime Landlord for which Amtrak or the Prime Landlord is entitled to be indemnified by Subtenant pursuant to this Sublease, Subtenant is not entitled to avoid providing such indemnification of Amtrak or the Prime Landlord based on any defenses or immunity Subtenant may have with respect to the underlying claim. Further, Subtenant acknowledges that Subtenant's agreement to waive such protections and defenses and its agreement to purchase such insurance is a material inducement without which Amtrak would not have entered into this Sublease. In the event Amtrak incurs any expense or makes any payment (voluntarily or

involuntarily) in connection with any claim for which, but for the application of the Nebraska Political Subdivision's Tort Claims Act, Subtenant would have been responsible under this Section 11, all such expenses and payments shall be considered Additional Rent.

12. Worker Training; Protection

(a) Subtenant and any of its contractors, employees or agents who perform work on the Subleased Premises within fifty (50) feet, vertically or horizontally, of the railroad tracks shall have the proper skill and Federal Railroad Administration required training necessary to perform such work. Proof of such skill and training shall be furnished upon request.

(b) All work to be performed by Subtenant or its contractors, employees or agents on the Subleased Premises within fifty (50) feet, vertically or horizontally, of the railroad tracks must include proper railroad protective services (e.g., flagging), obtained from Prime Landlord if necessary, to avoid interference with any active rail service. Subtenant is obligated to notify Prime Landlord in advance and to make arrangements with Prime Landlord for such protective services. Subtenant shall reimburse Prime Landlord for the cost of providing flagging or other railroad protective services, as deemed necessary by Prime Landlord, in connection with Subtenant's maintenance of the New Platform.

(c) Subtenant or its contractors, employees or agents on the Subleased Premises shall comply with Amtrak Specification 01141A entitled *Safety and Protection of Railroad Traffic and Property* attached hereto as **Exhibit E**, as such Specification may be revised by Amtrak from time to time.

13. Signage. Subtenant shall not place any signs on the New Platform without the prior written consent of Amtrak. Subtenant shall comply with Amtrak's Graphic Standards Signage Manual and any other signage requirements made known to Subtenant.

14. Taxes; Assessments Subtenant shall pay all taxes and assessments, general, special or otherwise, which may be charged, assessed, imposed or payable in connection with the New Platform for the term of this Sublease, even though such charges may not become due and payable until after termination of this Sublease.

15. Subordination to and Incorporation of Terms of Prime Lease. This Sublease is in all respects subject and subordinate to the terms and conditions of the Prime Lease and to the matters to which the Prime Lease is or shall be subordinate. Except as otherwise expressly provided in this Sublease, the terms, provisions, covenants, stipulations, conditions, rights, obligations, remedies and agreements of the Prime Lease are incorporated in this Sublease by reference and made a part hereof as if herein set forth at length, and shall, as between Amtrak and Subtenant (as if they were the Lessor and Lessee respectively, under the Prime Lease and, as if the Sublease Premises were the Prime Leased Premises demised under the Prime Lease), constitute the terms of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified or eliminated by, the terms of this Sublease. Amtrak and Subtenant acknowledge and agree that Subtenant has reviewed and is familiar with the Prime Lease and Amtrak hereby represents that the copy delivered to Subtenant for such purpose and attached hereto as **Exhibit F** is a true, correct and complete copy of such Prime Lease.

In all provisions of the Prime Lease requiring the approval or consent of the Prime Landlord, Subtenant shall be required to obtain the approval or consent of Prime Landlord and of Amtrak. In all provisions of the Prime Lease requiring that notice be given to Prime Landlord, Subtenant shall be required to give notice to Prime Landlord and Amtrak.

16. **Use of Subleased Premises**. Subtenant will not (a) use, occupy or permit the use or occupancy of the Subleased Premises in any manner which violates any law, statute, regulation, ordinance, order, covenant, restriction or decision of any court of competent jurisdiction, or is dangerous to life or property, or creates a public or private nuisance, or for a use other than the permitted use hereunder; (b) keep, or permit to be kept, any substance in or conduct, or permit to be conducted, any operation from the Subleased Premises which might emit offensive odors or conditions, or make undue noise or create undue vibrations; or (c) commit or permit to remain any waste to the Subleased Premises; provided, however, that such restrictions shall not apply to approved demolition and/or construction projects.

17. **Construction or Demolition Projects.** When proposing construction or demolition projects on the Subleased Premises, Subtenant shall provide Amtrak and Prime Landlord each with a set of plans and specifications for Amtrak's and Prime Landlord's review and approval prior to the start of construction or demolition, which approval shall not be unreasonably withheld, delayed or conditioned. Subtenant understands that Amtrak's or Prime Landlord's approval of any plans or specifications shall not be deemed to mean that the construction contemplated therein, nor completed in accordance therewith, is structurally sound or appropriate or meets applicable regulations, laws, statutes or local ordinances, and/or building codes. Subtenant will be solely responsible for determining whether its plans and specifications, construction, and maintenance meet its needs and will provide for safe operation. For such construction or demolition projects, Subtenant will fully indemnify Amtrak against any and all risks, liabilities, claims, losses and judgments arising from, or growing out of, or related in any way to the acts or negligence of Subtenant's contractors performing such construction or demolition work, their agents, employees, subcontractors, and their agents and employees and/or Amtrak, its agents or employees, excepting only such risks, liabilities, claims, losses, and judgments that result from Amtrak's sole negligence. Subtenant will require its contractors to execute and deliver a Prime Landlord such right of entry agreements as Subtenant and Prime Landlord agree upon for any construction or maintenance work to be performed on the Subleased Premises by Subtenant. Subtenant will require its contractors, after Subtenant has fully assured itself of contractual compliance in every respect, to certify in writing that the project work is of good quality and has been performed in accordance with the contract and provide appropriate lien waivers, as a condition precedent to final disbursement of project funds.

18. **Liens.** If, because of any act or omission of Subtenant or its agents, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Prime Landlord or any portion of the Subleased Premises, Subtenant shall, at its own expense, cause the same to be discharged of record within thirty (30) days after becoming aware of such lien or after written notice from either Amtrak or Prime Landlord to Subtenant of the filing thereof , and shall indemnify and save harmless Amtrak and Prime Landlord against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom. Should Subtenant become aware of a possible or actual filing of lien in the above instances, it shall notify Amtrak in writing of same in a

timely fashion. Should Amtrak receive notice of any lien filed against any portion of the Subleased Premises, Amtrak shall notify Subtenant of the same in a timely fashion.

19. Assignment and Subletting. Subtenant may not assign this Sublease nor sublet the Subleased Premises or any part thereof without the prior written consent of Amtrak, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Subtenant, without Amtrak's prior written consent, may assign this Sublease or sublet the whole of the Subleased Premises to a legal entity which is any one of the following: (i) the City of Lincoln, Nebraska, (ii) the successor, by merger or otherwise, to all or substantially all of Subtenant's assets and liabilities, or (iii) controls or is controlled by or is under common control with Subtenant, directly or indirectly (for purposes of this Sublease, the term "controlled" shall mean holding more than fifty percent (50%) of the ownership interest in or having voting control of the subject entity).

20. Notices.

Except as may be more specifically provided herein, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Sublease to be made, given or furnished to the other party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to Subtenant:
555 South 10th Street
Lincoln, NE 68508
Attn: Mayor of the City of Lincoln

With a copy to:
City Attorney
City of Lincoln, Nebraska
555 South 10th Street, Suite 300
Lincoln, NE 68508

If to Amtrak:
National Railroad Passenger Corporation
30th Street Station, 5th Floor South
Philadelphia, PA 19104
Attn: Assistant Vice President
Real Estate Development

With a copy to:
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.W.
Washington, D.C. 20002
Attn: Vice President, Policy and Development

21. Dispute Resolution. In the event a dispute arises under this Sublease which cannot be resolved between the parties, a mediator shall be selected by the parties and the parties

agree to mediate the issue in a good faith effort to resolve the same. In the event mediation fails to resolve the issue, either Subtenant or Amtrak may commence an action only in federal court.

22. **Non-Discrimination**. Subtenant expressly agrees that it will not discriminate in employment or the provision of services on the basis of any characteristic or condition upon which state or federal law or regulation prohibits discrimination.

23. **Labor Claims**. Subtenant shall be responsible for any valid claims made by Prime Landlord labor unions for any work performed by Amtrak, Subtenant and/or their contractors within the Subleased Premises. Amtrak will promptly notify Subtenant of Amtrak's receipt of any such claim and will assist Subtenant in its defense of any such claim. Both Amtrak's and Subtenant's obligations pursuant to this Paragraph 23 shall survive the termination or expiration of this Sublease.

24. **Contingencies**. Amtrak's and Subtenant's obligations under this Sublease shall be contingent upon the following:

(a) Execution of a Joint Facility Agreement between Union Pacific Railroad Company (UP) and Prime Landlord, with terms and conditions acceptable to Subtenant, Amtrak, Prime Landlord, and UP;

(b) Completion of the First Closing between the Prime Landlord and Subtenant pursuant to the Land Exchange Agreement between the Prime Landlord and Subtenant effective as of October 18, 2010;

(c) Obtaining any necessary permits, consents and approvals authorizing the transactions contemplated by this Sublease.

25. **Brokers**. Subtenant warrants that it has had no dealings with any real estate broker or agent in connection with this Sublease that would give rise to a valid claim for a commission. Amtrak warranties that it has had no dealings with any real estate broker or agent in connection with this Sublease that would give rise to a valid claim to a commission.

26. **Severability**. If any term of this Sublease is declared to be illegal or unenforceable, the unaffected terms shall remain in full force and effect.

27. **Successors and Assigns**. Except as otherwise provided in this Sublease, all of the covenants, conditions and provisions of this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

28. **Parties**. The words "Amtrak" and "Subtenant" as used herein shall include the parties to the Sublease, whether singular or plural, masculine or feminine, or corporate, partnership, limited liability company or other entity and their heirs, personal representatives, successors and assigns.

29. **Controlling Law**. This Sublease shall be enforced and construed in accordance with the laws of Nebraska.

30. **Captions.** The captions of the paragraphs of this Sublease and its Exhibits are for convenience only and are not a part of this Sublease, and do not in any way limit or amplify the terms or provisions of this Sublease, and shall not be considered in the construction or interpretation of any provision hereof.

31. **Entire Agreement.** This Sublease, together with any later written modifications or amendments thereto, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede any prior or contemporaneous agreements or understandings, whether written or oral, which the parties, their agents or representatives may have had relating to the subject matter hereof. No modification, alteration or waiver of any term, condition or covenant of this Sublease shall be valid unless in writing, dated and signed by the Amtrak and the Subtenant. No waiver shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION ("Amtrak"):

By: B. Looloian
Name: Bruce Looloian
Title: Assistant Vice President,
Real Estate Development

WEST HAYMARKET JOINT PUBLIC AGENCY ("Subtenant"):

By: Jayne Snyder
Name: Jayne Snyder
Title: Chair of the West Haymarket Joint Public Agency Board of Representative

EXHIBIT A

Subleased Premises

The Subleased Premises consists of the parcel of land situate in Lincoln, Nebraska containing a total of 50722 sq. ft. (1.16 A.C.) more or less and depicted as the shaded area on the drawing dated December 28, 2010 attached hereto as Exhibit A-1.

Exhibit A-1
Dated December 28, 2010

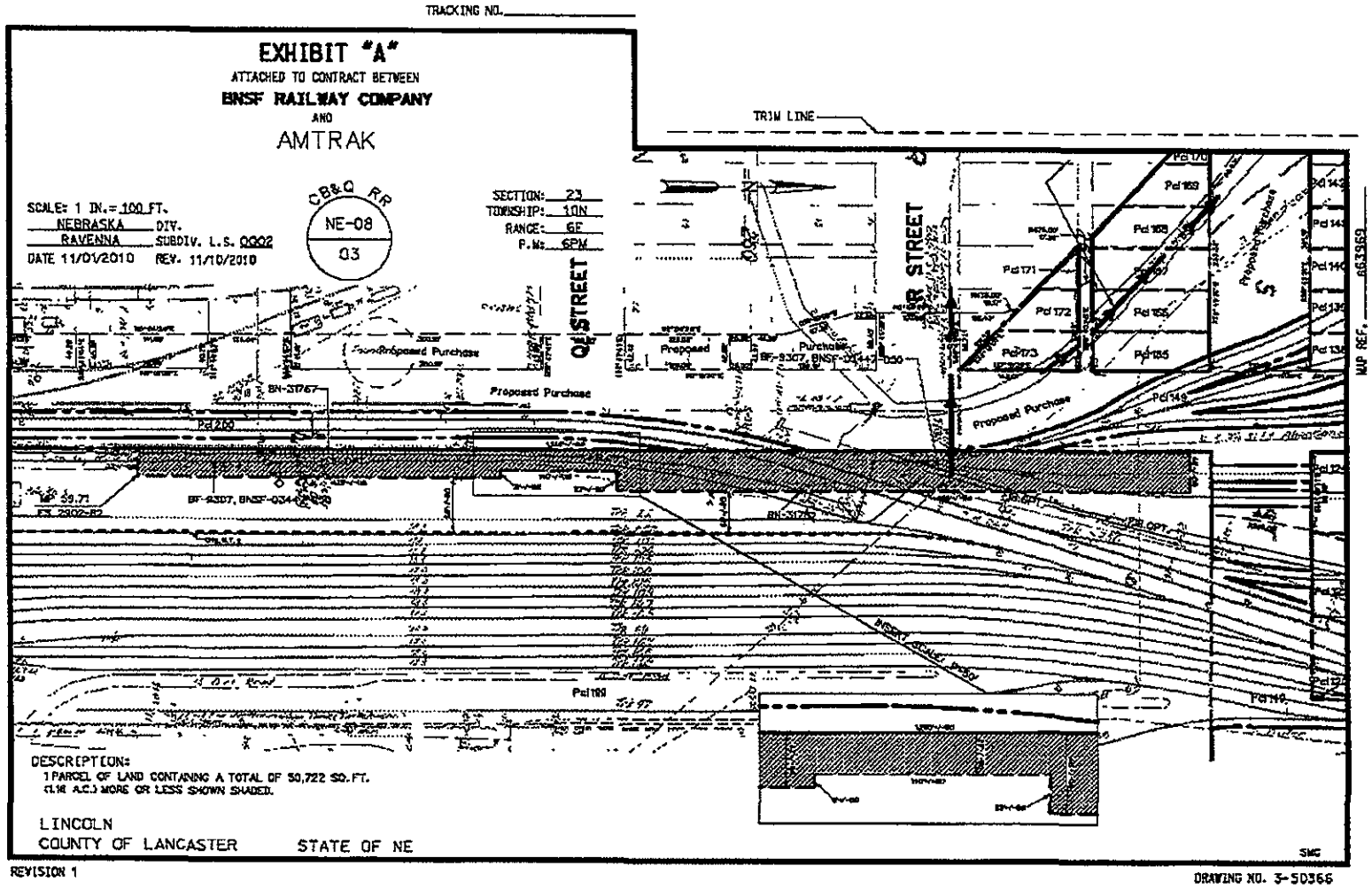


EXHIBIT B

Prime Landlord's Main Line Track Realignment

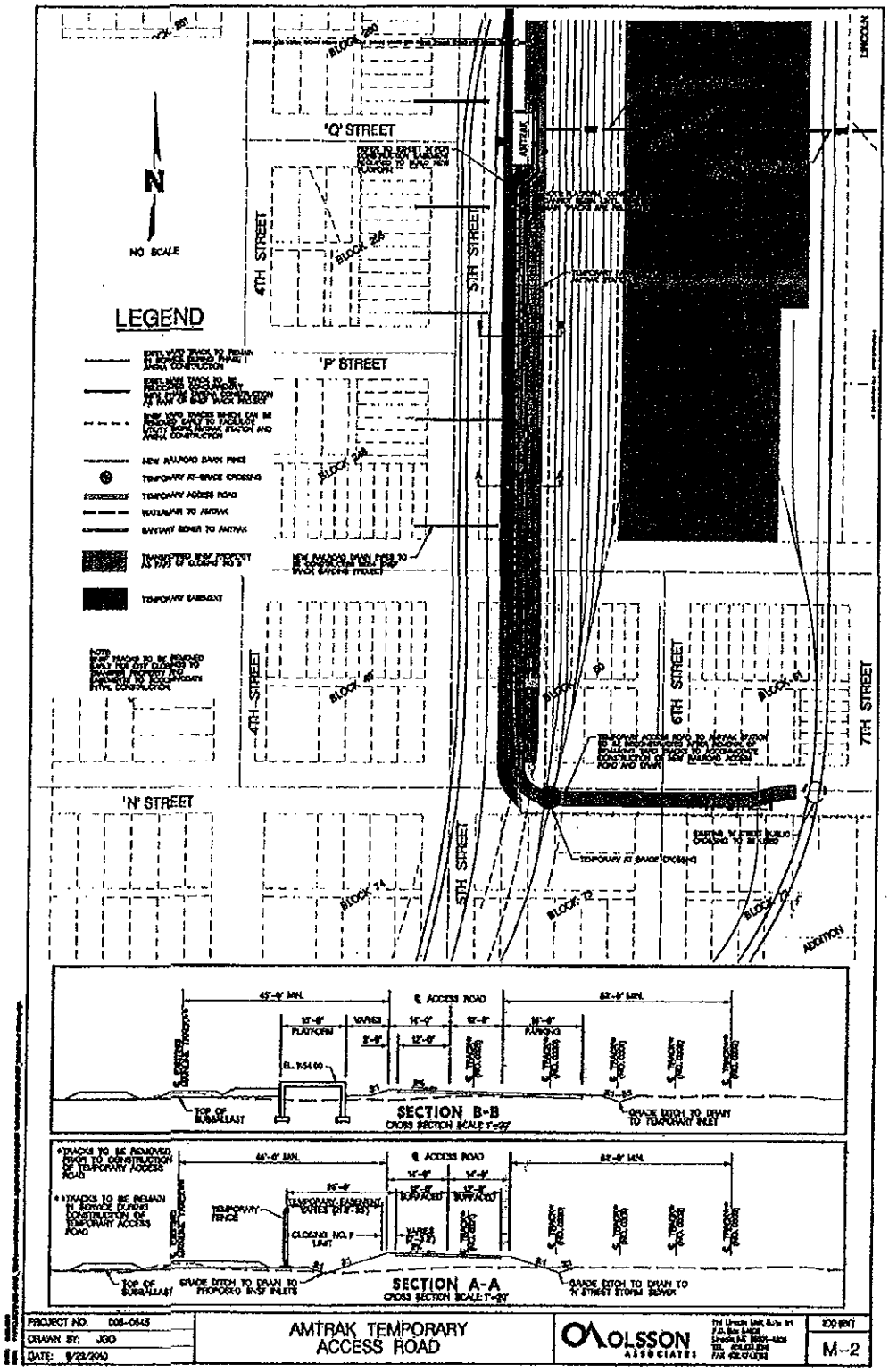

'Q' STREET
'P' STREET
'N' STREET
4TH STREET
5TH STREET
6TH STREET
7TH STREET
AMTRAK
LINCOLN
N
NO SCALE
LEGEND
SECTION B-B
SECTION A-A
AMTRAK TEMPORARY ACCESS ROAD
OLSSON ASSOCIATES
M-2

EXHIBIT B

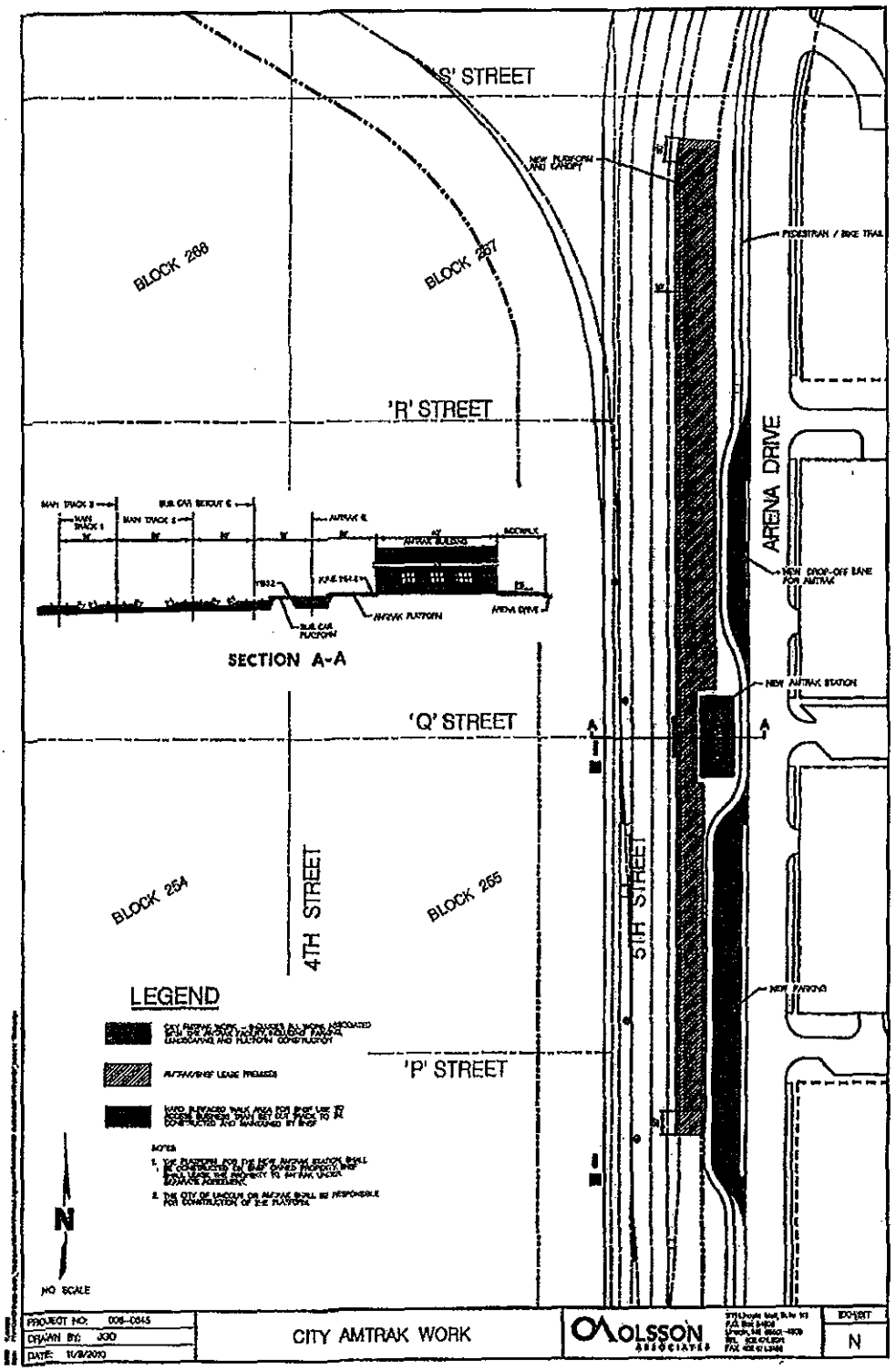
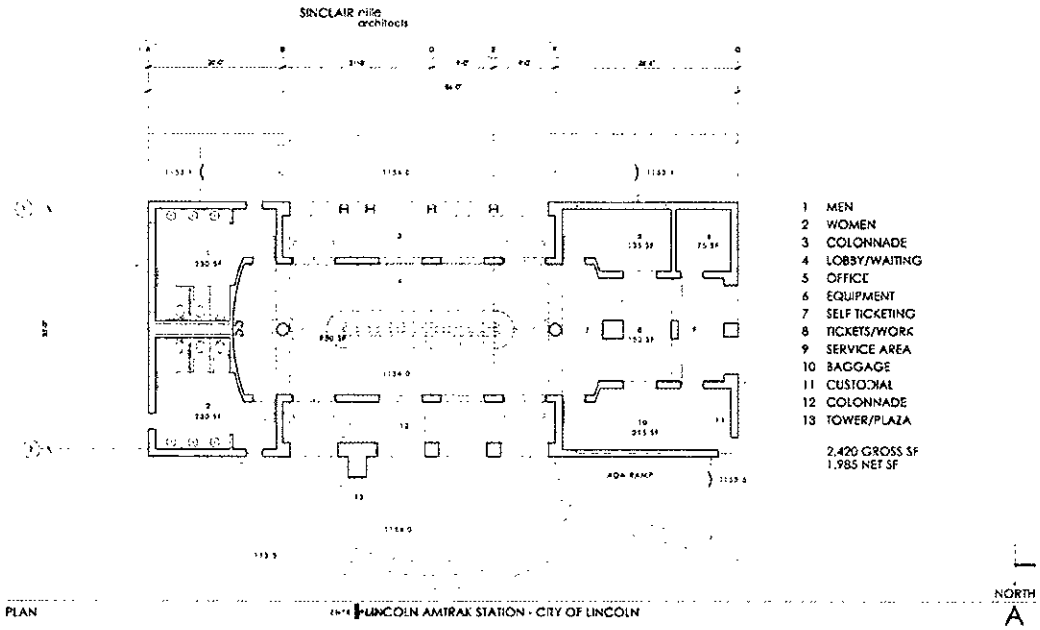
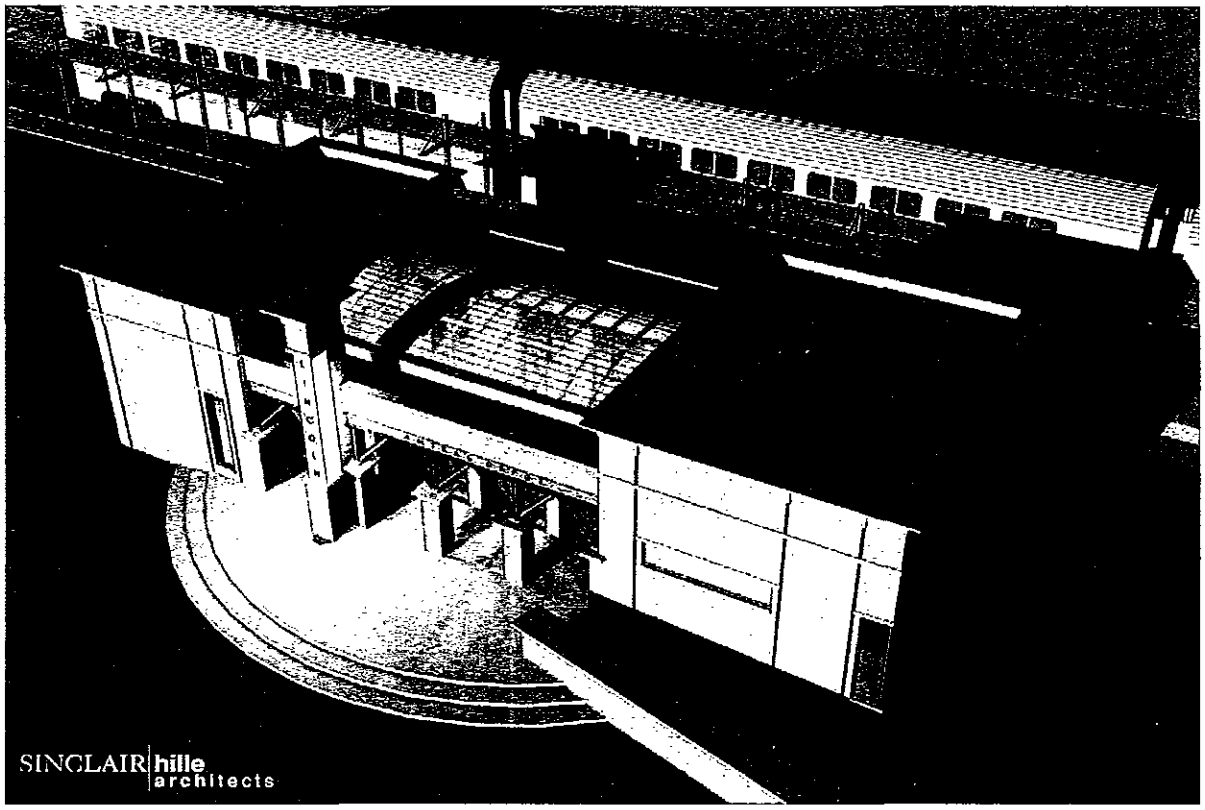

'S' STREET
BLOCK 266
BLOCK 267
'R' STREET
ARENA DRIVE
SECTION A-A
'Q' STREET
BLOCK 254
4TH STREET
BLOCK 255
5TH STREET
LEGEND
'P' STREET
N
NO SCALE
CITY AMTRAK WORK
OLSSON ASSOCIATES
N

EXHIBIT C

New Depot Design Plans




SINCLAIR hille
architects

DRAFT

Exhibit D

LEASE AGREEMENT
(West Haymarket Station)

This Lease Agreement ("Lease") is made and entered into as of this _____ day of _____, 201___, by and between the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska ("JPA"), and National Railroad Passenger Corporation, a corporation organized under the former Rail Passenger Service Act and the laws of the District of Columbia, with offices at 30th Street Station, 5th Floor South Tower, Philadelphia, PA 19104 ("AMTRAK").

BACKGROUND

WHEREAS, JPA owns certain real property in the City of Lincoln, located at _____, together with all improvements constructed thereon, including that certain building commonly known as West Haymarket Station ("Station"), being more particularly described and shown on Exhibit "A" and Exhibit "B" attached hereto, respectively, and made a part hereof; and,

WHEREAS, AMTRAK desires to lease a portion of the Station as set forth in Section 1 below.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, JPA and AMTRAK do hereby agree as follows:

1. PREMISES

a. JPA hereby leases to AMTRAK and AMTRAK leases from JPA for the Term upon all the conditions set forth herein, One Thousand Seven Hundred Fifty (1,750) square feet ("Premises") of the Two Thousand Four Hundred Fifty (2,450) total square feet of space in the Station as delineated on the plan attached and incorporated herein as Exhibit "C". JPA reserves the right to lease other portions of the Station to other tenants providing such leasing does not interfere with AMTRAK's "Use" (as herein after defined).

b. JPA also hereby grants to AMTRAK, its employees, agents, licensees, contractors, passengers and invitees, the nonexclusive right in common with JPA and all others designated by JPA for the use of the common areas and common facilities in the Station and on the land on which the Station is located. The Station and the land on which it is located are collectively referred to herein as the "Property." Common areas include common sidewalks necessary to access the Station, hallways, stairways, elevators, public bathrooms, common entrances, lobbies, waiting area for passengers, and other public portions of the Property ("Common Areas"). The Common Areas shall provide reasonable ingress and egress for AMTRAK and its employees, passengers, invitees, licensees, and agents from abutting public right-of-way to the Station. AMTRAK shall have the right to enter in and upon the Common Areas to: a) install, repair and maintain AMTRAK's ticket machines, passenger information display systems (including station signage and public address systems), and video monitors, if

any; b) provide reasonable services to passengers, including the sale of tickets; c) maintain railroad operating facilities, communication lines, and other equipment; and d) perform other functions required in connection with the provision of intercity rail passenger service.

2. TERM

a. The initial term of this Lease shall be for thirty-five (35) years ("Term") commencing thirty (30) days after an occupancy permit is issued for the Premises ("Commencement Date"); provided that the Commencement Date shall not be earlier than the date BNSF Railway Co's ("BNSF") new passenger main track no. 4 (MT4) is constructed and Amtrak has commenced operations on such track. The Term will end thirty-five (35) years thereafter, unless (a) sooner terminated (1) by AMTRAK giving thirty (30) days' prior written notice to JPA that AMTRAK's rail passenger service to Lincoln, Nebraska will relocate or cease or (2) in the event JPA elects not to rebuild the Station as provided in paragraphs 14 and 15 in this Lease or (b) extended by AMTRAK as provided below.

b. On or about the Commencement Date, JPA shall execute and deliver to AMTRAK a Declaration of Commencement ("Declaration") in the form attached hereto as Exhibit D. AMTRAK shall promptly execute such Declaration confirming the Commencement Date and return such to JPA. JPA shall record this Lease in the appropriate recorder of deeds office.

c. AMTRAK shall have the option to extend the Term of this Lease for three (3) additional five (5) year terms by giving notice of its intent to exercise this option at least sixty (60) days before the end of the then current term. Any extended term shall be upon all the same terms and conditions as set forth in this Lease.

3. RENT

AMTRAK shall pay rent in the amount of Two Thousand Four Hundred Twenty-five and 00/100ths Dollars ($2,425.00) per month or the amount of AMTRAK's monthly rent at its current station in effect upon termination of AMTRAK's tenancy, whichever is greater ("Rent"). The Rent shall be increased for inflation on an annual basis beginning at the commencement of the second year of the Term and each succeeding year thereafter utilizing the Consumer Price Index for all Urban Consumer's (CPI-U) over the last twelve months before seasonable adjustment as reported for the month of adjustment is made by the U.S. Bureau of Labor Statistics (or its successor) or a comparable Consumer Price Index in the event the CPI-U is discontinued. Rent shall be due and payable on the first day of each calendar month during the term of this Lease. Should the lease commence and/or terminate on a day other than the first day of a calendar month, such rental for such month's shall be reduced proportionately.

4. USE

AMTRAK may occupy and use the Premises for railroad passenger services and any lawful purpose reasonably related to the operation of a rail passenger station and AMTRAK'S business operations, including ticketing, related mail, package, baggage, and express services and office, mechanical and/or engineering facilities, connecting bus service and operations incidental to AMTRAK'S business. AMTRAK shall be permitted to assign and/or sublease portions of the

Premises to third parties for retail use for the convenience of AMTRAK'S passengers, such as newsstands, coffee stands, ATM and vending machines beverage and snack stands (collectively "USE").

5. PARKING

Public parking improvements to serve the West Haymarket Project (including AMTRAK) will be constructed by the JPA. The public parking improvements at full build out are envisioned to contain 1700 – 1800 parking spaces in two new parking garages as well as some on-street metered public parking spaces abutting the West Haymarket Station ("Parking"). The Parking shall be available for AMTRAK's passengers, employees, licensees, and invitees on a nonexclusive basis twenty-four hours per day, seven days per week at the City of Lincoln Nebraska's or JPA's standard rates for public Parking.

6. HOURS OF OPERATION

AMTRAK shall have the right to keep the Premises open at all such times as it desires.

7. UTILITIES

The JPA shall provide water and sanitary sewer service to Common Areas. The JPA shall further provide electricity and natural gas to the Premises. AMTRAK shall pay its proportionate share of such utility costs for the Premises (to be determined by dividing the total square footage of the Premises by the total rental square footage in the Station) providing such amount shall not exceed Seven Hundred Two Dollars ($702) per month for the Term.

8. JPA'S WORK

JPA agrees to provide AMTRAK, at no cost to AMTRAK, with leasehold improvements within the Premises in accordance with the plans and specifications attached hereto and incorporated herein as Exhibit E, attached hereto and made a part hereof, by the Commencement Date. All such leasehold improvements shall be constructed in accordance with all applicable statutes, laws, rules, regulations, ordinances and codes, including without limitation, the Americans with Disabilities Act of 1990, as amended, and the regulations promulgated thereunder and must be constructed in accordance with AMTRAK'S safety, security, operation and engineering procedures, as applicable.

Exhibit D

9. SIGNS

a. AMTRAK shall submit to the JPA for its review and approval all of AMTRAK'S business signs proposed to be erected, placed, or maintained by AMTRAK on the Premises and/or on the exterior of the Station or the Property grounds. AMTRAK may (a) keep and maintain all approved signs throughout the Term of this Lease, and (b) replace any or all approved signs with new signs of similar content when such replacement is warranted in AMTRAK'S sole discretion, provided AMTRAK shall not erect, install, or replace any approved sign in violation of any applicable law, ordinance, rule or regulation of the City of Lincoln, Nebraska or any other governmental agency.

b. JPA shall not place any signs at the Station without the prior written consent of AMTRAK, which consent shall not unreasonably be withheld.

c. In collaboration with AMTRAK, JPA shall provide trail blazing signs providing directions to the Station.

10. TRADE FIXTURES

AMTRAK may install on the Premises and remove therefrom such trade fixtures as AMTRAK may deem necessary or appropriate for its business operations.

11. MAINTENANCE, REPAIR AND SERVICES

a. JPA Responsibilities. JPA, at its sole cost and expense, shall:

(i) Maintain the sidewalks, pedestrian surfaces, parking lots and landscaping on the Property and keep such cleared of snow and ice;

(ii) Maintain and repair the interior and exterior of the Station (including entrances and exits) and all fixtures, equipment, components and systems that are a part of the Station or necessary to and for the operation of the Station and AMTRAK'S use and occupancy of its Premises, including structural and roof repairs and maintenance;

(iii) Pay all costs, expenses, fees, taxes and sums related to its ownership, operation and maintenance of the Station before delinquency;

(iv) Provide heating, ventilation and air conditioning ("HVAC") for the Station, including the Premises, during all hours of scheduled passenger train (and bus) operations, sufficient to maintain temperatures in the interior portions of the Station at commercially reasonable levels, provided that in no event shall JPA maintain heating settings below 68 degrees DB. or air conditioning settings above 72 degrees DB. 50 % relative humidity, as appropriate depending on the outside weather conditions. At the Lease Commencement, AMTRAK shall provide to the JPA a written schedule of AMTRAK'S then current passenger train (and bus) operations. Throughout the Term, AMTRAK shall keep a current written schedule of AMTRAK'S passenger train (and bus) operations at the Station and available for JPA'S review upon JPA'S request. JPA may stop the heating and cooling systems when necessary by reason of accident or emergency or for repairs, alterations, replacements or improvements, which, in the reasonable judgment of JPA, are desirable or necessary. JPA agrees to make any necessary repairs, alterations, replacements or improvements to the heating and cooling systems as quickly as possible, with due diligence, and with the minimum interference with AMTRAK'S use of the Premises;

(iv) Provide janitorial services to the Common Areas, including emptying wastepaper baskets, dry mop and wet mop, vacuum, clean restrooms, and supply toiletries as reasonably needed;

(v) Provide hot and cold water sufficient for drinking, lavatory, toilet and ordinary cleaning purposes to be drawn from approved fixtures in the Common Areas;

(vi) Replace lighting tubes, lamp ballasts, starters and bulbs in the Common Areas;

(vii) Arrange for extermination and pest control in the Station, included the Premises as often as may be deemed necessary in the exercise of prudent management practices, and in no event less than semi-annually. To the greatest extent possible, such work shall be performed at times other than when passenger train and bus operations are not scheduled;

(viii) Have a building manager or engineer capable of responding to AMTRAK'S requests for service within two (2) hours thereafter during all times when AMTRAK'S passenger train (and bus) operations are scheduled;

(ix) Provide panic button(s) under the AMTRAK ticket counter at locations as specified by AMTRAK, and ensure that all panic buttons are connected directly to and will contact directly the nearest local police station;

b. AMTRAK Responsibilities. AMTRAK, at its own cost and expense, shall:

(i) Keep and maintain the Premises in good and safe condition at all times during the term of the Lease;

(ii) Provide janitorial services in the Premises, including emptying of wastepaper baskets, dry mop and wet mop, and vacuum as reasonably necessary;

(iii) Maintain and repair any trade fixtures, equipment or other personal property of AMTRAK located on or within the Premises;

(iv) Replace lighting tubes, lamp ballasts, starters and bulbs in the Premises;

c. At JPA's sole cost and expense, AMTRAK shall maintain and repair and keep in good, unobstructed (including snow and ice removal) the train platforms adjacent to the Station ("Platforms"). JPA shall pay to AMTRAK any and all costs and expenses related to AMTRAK's maintenance and repair or replacement of the Platforms. Such payments shall be made to AMTRAK within 20 days of receipt of invoice. AMTRAK may, in its sole discretion, off set such costs against any Rent, costs or other charges or fees owed to JPA.

d. Failure to Maintain, Repair, or Provide Services.

Notwithstanding anything to the contrary in this Lease, if any party fails in any of its obligations under this Section 11, and such failure continues for more than three (3) consecutive days after notice from the non-defaulting party of such failure, the non-defaulting party may provide any such maintenance, repairs and services or arrange for the provision of such. In the event the non-defaulting party provides any such maintenance, repairs or service, the defaulting party shall reimburse the non-defaulting party for the cost and expense of such maintenance, repairs and services within forty-five (45) days of notice from the non-defaulting party for such payment.

12. ALTERATIONS AND IMPROVEMENTS

At its expense, JPA may make alterations and improvements to Common Areas of the Station which improvements shall be owned and maintained by the JPA. The JPA reserves the right from time to time (i) to install, use, maintain, repair, replace, relocate for service to the Premises and/or other parts of the Station the pipes, ducts, conduits, wires and appurtenant fixtures and mechanical systems, wherever located in the Premises or the Station; and (ii) to alter, remodel, close, or relocate any facility in the Common Areas, so long as AMTRAK'S access to the Premises, restrooms, and ingress and egress to all abutting public rights-of-way and Platforms and is not unreasonably impeded thereby. Before JPA may make any alterations or improvements to the Station, it must obtain AMTRAK's written approval. AMTRAK's approval shall not unreasonably be withheld.

At its expense, AMTRAK shall have the right to make alterations and improvements to the Premises subject to the following terms and conditions:

a. No alterations or improvements made by AMTRAK shall in any way impair the structural stability of the Premises.

b. AMTRAK shall request JPA's approval prior to making any alterations or improvements and all alterations or improvements must be approved in writing by JPA. JPA's approval shall not be unreasonably withheld, conditioned or delayed.

c. AMTRAK shall keep the Premises and every part of the Station free and clear of any mechanic's lien or materialmen's liens arising out of the construction of any such alterations or improvements and further agrees to hold JPA harmless from any liability or liens therefor.

d. All alterations and improvements that are permanently affixed to the Station shall become the property of the JPA and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease or any extension of the Term of this Lease.

e. AMTRAK'S personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of AMTRAK and may be removed by AMTRAK at any time during the Term or upon the expiration or sooner termination of this Lease (including any extension term). AMTRAK shall repair any damage to the Premises or Station caused by AMTRAK'S removal of its personal property, trade fixtures, or equipment. All of AMTRAK'S personal property not removed within thirty (30) days following expiration or sooner termination of this Lease shall be conclusively presumed to have been abandoned and shall automatically become the property of the JPA.

13. INSURANCE AND INDEMNIFICATION

a. INSURANCE.

AMTRAK is insured under its corporate wide self-insurance program and excess railroad liability insurance program. If at any time AMTRAK does not have a self-insurance program AMTRAK shall provide the following:

(i) Liability Insurance. At AMTRAK'S expense, a general liability policy for personal injury (including sexual harassment and abuse), bodily injury, death, or property damage in or about the Station and grounds surrounding the Station as specified in this paragraph resulting from or related to AMTRAK'S use of the Premises.

(ii) Terms of Insurance. The insurance policy maintained pursuant to this Lease Agreement shall name JPA as an additional insured per ISO form CG 2011. The policy shall further provide that there shall be no cancellation, non-renewal, termination for any reason, or modification without at least thirty (30) days prior written notification to JPA. A copy of the policy shall be delivered to and retained by JPA.

(iii) The Commercial General Liability Insurance policy shall provide no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney for the City of Lincoln.

Coverage Min Amt Notes	
General	$2,000,000 Aggregate
Products and Completed Operations	$2,000,000 Aggregate
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Fire Damage Limit	$ 100,000 any one fire
Medical Damage Limit	$ 10,000 any one person

(iv) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

c. <u>INDEMNIFICATION</u>.

(i) AMTRAK shall indemnify, defend, and hold harmless JPA, its officers, agents, and employees from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the sole and direct negligence, gross negligence, or willful misconduct of AMTRAK, its employees or agents, in connection with this Lease or AMTRAK's failure to comply with any of its obligations contained in this Lease, except for any loss or damage or portion of loss or damage that is caused by the sole and direct negligence, gross negligence, or willful misconduct of JPA, its officers, agents, contractors or employees.

(ii) AMTRAK shall cover its indemnity obligations hereto under its corporate-wide self-insurance program. AMTRAK warrants that adequate self insurance levels will be maintained during the Term of this Lease.

(iii) AMTRAK shall cause all its subcontractors who perform work at the Station to add JPA and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

(iv) JPA shall indemnify, defend and hold harmless AMTRAK, its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the sole and direct negligence, gross negligence or willful misconduct of JPA, its officers, officials, directors, its employees or agents in connection with this Lease, or JPA's failure to comply with any of its obligations contained in this Lease, except for any loss or damage or portion of loss or damage that is caused by the sole and direct negligence, gross negligence or willful misconduct of AMTRAK.

(v) JPA shall cause all its subcontractors who perform work at the Station to add JPA and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

(vi) During the Term, JPA shall obtain and keep in force and effect fire and extended property coverage insurance for the Station and Amtrak Improvements and Public Liability Insurance, in such reasonable amounts with such reasonable deductions as would a prudent owner of a similar building in the area. AMTRAK acknowledges that it will not be a named insured in such policy, that it has no right to receive any proceeds from any such insurance policies carried by JPA.

(vii) All of AMTRAK's personal property, including fixtures kept, stored or maintained on the Property shall be kept, stored, or maintained at the sole risk of AMTRAK. AMTRAK may, in its sole discretion, procure and maintain throughout the Term of this Lease, Fire and Extended Coverage Insurance, including vandalism and malicious mischief coverage in an amount equal to the full replacement value of all personal property of AMTRAK. AMTRAK may self-insure this risk at its option.

(viii) Waiver and Subrogation. Each party hereto hereby waives any and all claims or right of recovery which such party or anyone claiming through such party may have against the other party (or such other party's owners, officers, agents, or employees) for, or with respect to, any loss of or damage to such waiving party's property or for any business interruption

which is insured or indemnified under valid policies, whether or not such loss, damage, or business interruption is caused by the negligence of such other party or such other party's owners, officers, agents, employees, or any other person or persons for whose actions such other party may be responsible or liable; provided, that the foregoing waiver shall be effective only to the extent of the insurance proceeds actually collected under such policies in respect of such loss, damage, or business interruption and only when permitted by the applicable insurance policy. Any self-insurance by AMTRAK shall be deemed to include such waiver of subrogation.

14. DAMAGE OR DESTRUCTION

In the event of destruction, or substantial damage, to the Premises during the Term of this Lease which renders the Premises unusable to AMTRAK, in AMTRAK'S sole discretion, JPA shall have the option of:

a. Within one hundred eighty (180) days after such damage or destruction, replacing or rebuilding the Station, including the Premises, and in such manner and according to such plans and specifications which would restore the Station, including the Premises, to substantially the same condition as immediately before its destruction or substantial damage, in which event JPA or the City of Lincoln Nebraska shall provide suitable temporary facilities while such replacement or rebuilding is ongoing; or

b. Declining to replace or rebuild, in which event AMTRAK shall have the option of terminating this Lease Agreement by written notice. If JPA does not rebuild the Station, JPA or the City of Lincoln Nebraska shall provide AMTRAK with suitable alternative space to use as a passenger station.

c. JPA shall notify AMTRAK within thirty (30) days after such damages or destruction of JPA'S decision to rebuild the Station including the Premises or declining to rebuild. During the 180 day repair or replacement period identified in Subsection (a) above, AMTRAK shall have no obligation to: (1) Pay any costs or expenses associated with the Station, including the Premises, required under this Lease; or (2) Provide any services including janitorial services to the Premises required under this Lease.

15. EMINENT DOMAIN

Eminent domain proceedings resulting in the condemnation of part of the Premises herein that leave the remaining portion usable by AMTRAK for purposes of the business for which the Premises are leased in, AMTRAK'S sole opinion, will not terminate this Lease Agreement. If AMTRAK, in its sole opinion, determines that the remaining portion is not usable by AMTRAK, AMTRAK may terminate this Lease by giving written notice of termination to JPA no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should AMTRAK not terminate this Lease, will be to terminate this Lease Agreement as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Rent and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall be that of JPA, except to the extent that part of the award is allocated as damages to fixtures on the Station which were furnished by AMTRAK, damages for the value of AMTRAK's leasehold estate or relocation expenses for AMTRAK.

16. ACCEPTANCE

AMTRAK hereby acknowledges that when it occupies the Premises it shall be deemed to have received the Premises in good order and condition unless AMTRAK notifies JPA of defects or problems with the Premises within one (1) year after AMTRAK takes occupancy. If AMTRAK notifies JPA as aforesaid, JPA shall correct and repair any defects or problems identified by AMTRAK within thirty (30) days after the date of the notice.

17. SUBLEASE AND ASSIGNMENT

Except as provided in this Lease, AMTRAK shall not assign or sublet the whole or any part of the Premises without JPA'S prior written consent. This provision requiring JPA's consent shall not apply, and AMTRAK shall be permitted to assign or sublet to any entity whose management and operation is indirectly or directly controlling, controlled by or under common control with AMTRAK or if such assignment or subletting is due to or arises out of any judicial or legislative action or mandate, and any such transfers shall not be deemed an assignment or subletting.

18. DEFAULT BY AMTRAK

The failure of AMTRAK to perform substantially or keep or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease Agreement within thirty (30) days after written notice from JPA identifying the specific term, covenant, or condition and requesting AMTRAK to correct or to commence correction for any such deficiency or default or such longer time period if the correction cannot be completed within said 30 days, provided that AMTRAK has commenced such correction, shall constitute an "Event of Default" by AMTRAK.

19. RIGHTS OF JPA AFTER DEFAULT BY AMTRAK

a. If an Event of Default by AMTRAK occurs, as provided in Section 18, JPA shall have the right (unless otherwise specified in the termination notice), in addition to any rights of the JPA at law or in equity and after written notice to AMTRAK, to terminate this Lease and enter and take possession of the Premises and expel, oust and remove any and all parties who may occupy any portion of the Premises, all in accordance with all applicable laws and procedures.

b. In case of any termination, re-entry, reletting and/or dispossession by the JPA in accordance with lawful proceedings:

(i) The Rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration; and

(ii) JPA may relet the Premises or any part or parts thereof, either in the name of JPA or otherwise, for a term or terms which may at JPA's option be less than or exceed the period which would otherwise have constituted the balance of the Term of the Agreement.

20. JPA'S DEFAULT

In the event JPA fails to perform any covenant or obligation required to be performed under this Lease, and such failure continues for more than thirty (30) days after notice from AMTRAK identifying such failure, such failure shall constitute an "Event of Default" by JPA. If an Event of Default by JPA occurs, AMTRAK, at its sole option and discretion, may: (1) perform such covenant or obligation on behalf of JPA in which event the JPA shall reimburse AMTRAK all costs and expenses associated with AMTRAK'S performance (including attorney's fees) within twenty (20) days after AMTRAK presents an invoice to JPA for such performance; (2) terminate this Lease; or (3) pursue any and all rights and remedies available at law or in equity.

21. QUIET ENJOYMENT

If and so long as AMTRAK shall keep all the covenants and agreements required by it to be kept under this Lease, JPA covenants and agrees that it and anyone claiming by through or under JPA shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by AMTRAK.

22. RIGHT OF ENTRY UPON PREMISES

JPA and its agents and employees shall have the right to enter upon the Premises, if accompanied by an AMTRAK employee, to inspect the same to determine if AMTRAK is performing the covenants of this Lease, on its part to be performed, to post such reasonable notices as JPA may desire to protect its rights, and to perform service and maintenance pursuant to its obligations under this Lease. AMTRAK shall make an AMTRAK employee available for such inspection during normal hours of operation.

23. TAXES

Pursuant to 49 U.S.C. §24301(l), AMTRAK is exempt from all state and local taxes, surcharges, or fees.

24. COMPLIANCE WTH LAWS, ORDINANCES, AND RULES

AMTRAK agrees to conform to and not violate any applicable laws, ordinances, rules, regulations, and requirements of federal authorities now existing or hereinafter created affecting AMTRAK'S use and occupancy of the Premises. In no event shall AMTRAK be required to make physical changes in the Premises unless the physical changes are necessitated by AMTRAK'S acts or omissions. JPA agrees to conform and comply with all applicable laws, ordinances, rules, regulations and requirements of federal, state, county or other governmental authorities and various departments there of now existing or hereinafter created regarding JPA's ownership and maintenance of the Station, including the Americans with Disabilities Act. Nothing in this Lease shall be interpreted as making AMTRAK a responsible party for purposes of accessibility requirements under the Americans with Disabilities Act.

Exhibit D

25. CONDITION OF PREMISES UPON SURRENDER

When AMTRAK vacates the Premises at the expiration of the Term or earlier termination of this Lease, whichever occurs first, AMTRAK shall leave the Premises in the same condition as when AMTRAK received possession, ordinary wear and tear, damage by fire or other casualty, or condemnation excepted and as may be altered, modified or improved in accordance with the terms of this Lease.

26. NON-WAIVER

Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver. Any waiver shall not operate to bar or prevent the waiving party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

27. PARTNERSHIP DISCLAIMER

It is mutually understood and agreed that nothing in this Lease is intended or shall be construed in any way as creating or establishing the relationship of partners or joint venturers between the parties hereto, or as constituting AMTRAK as an agent or representative of JPA for any purpose or in any manner whatsoever.

28. PARTIES BOUND

Except as otherwise specifically provided in this Lease, this Lease shall bind and inure to the benefit of the parties hereto and their respective administrators, legal representatives, successors and assigns.

29. NOTICES

Notices given under the terms of this Lease must be in writing and shall be deemed properly served if such notice is hand delivered or mailed by certified mail, return receipt requested, or sent by an established overnight commercial courier for delivery on the next business day with delivery charges prepaid, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

JPA:	AMTRAK:
City Attorney City of Lincoln, Nebraska 555 South 10th Street Lincoln, NE 68508	AMTRAK 30th Street Station, 5th Floor South Philadelphia, PA 19104 Attn: Assistant Vice President Real Estate Development

Notice mailed in accordance with the provisions hereof shall be deemed to have been given as to the date of hand delivery or the third business day following the date of such mailing, whichever is earlier.

30. LEGAL CONSTRUCTION

In the event any one or more of the provisions contained in this Lease Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

31. TIME OF ESSENCE, BINDING UPON HEIRS, ETC.

Time is of the essence of each and all the terms and provisions of this Lease t and the terms and provisions of this Lease Agreement shall extend to and be binding upon and inure to the benefit of the, administrators, successors and assigns of the respective parties hereto.

32. NUMBER AND GENDER

All words used herein in the singular number shall include plural and the present tense shall include the future, and the masculine gender shall include the feminine and neuter.

33. ENTIRE AGREEMENT

This Lease contains the sole and only agreement of the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect.

34. LANGUAGE CONSTRUCTION

The language of each and all paragraphs, terms, and/or provisions of this Lease shall, in all cases and for any and all purposes, and any and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identify or status of any person or persons who drafted all or any portion of this Lease.

35. HOLDING OVER

If AMTRAK shall hold over the Premises, after expiration of the Term or any extension thereof, such holding over shall be construed to be only a tenancy from month to month subject to all of the covenants, conditions and obligations contained in this Lease provided, however, that nothing in this paragraph shall be construed to give AMTRAK any rights to so hold over and to continue in possession of the Premises without the consent of JPA.

36. AMENDMENT

This Lease, including any exhibits hereto, shall not be amended, except in writing signed by the parties. Any amendment or addendum to this Lease shall expressly refer to this Lease.

37. AUDIT RIGHTS

AMTRAK or the Federal Railroad Administration, their respective agents, designees and accountants shall have the right at any time or from time to time after advance notice to JPA and/or the City of Lincoln, Nebraska to make any examination or audit of JPA's JPA and/or the City of Lincoln, Nebraska's books and records which relate in any way to the Station or Premises. If it is determined that costs, expenses or amounts that AMTRAK paid to JPA are in error, then JPA shall pay any overpayment to AMTRAK and AMTRAK shall pay any underpayment to JPA.

38. RUN WITH THE LAND

This Lease shall be recorded by JPA. AMTRAK's rights hereunder shall run with the land for the Term, as may be extended, modified or altered and all succeeding landlords of the Station shall be bound by the terms herein. JPA and all succeeding landlords shall notify AMTRAK of a sale, assignment or other disposition of the Station and provide AMTRAK with a nondisturbance agreement approved by AMTRAK, in its sole discretion, prior to any disposition of the Station.

39. CONTROLLING LAW

This Lease Agreement shall be enforced and construed in accordance with the laws of the State of Nebraska and adjudicated in Federal Courts.

DRAFT

Exhibit D

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

"JPA"	"AMTRAK"
WEST HAYMARKET JOINT PUBLIC AGENCY	NATIONAL RAILROAD PASSENGER CORPORATION
By_____	By_____
Jayne Snyder Chairperson of the West Haymarket Joint Public Agency Board of Representatives	Bruce Looloian Assistant Vice President Real Estate Development

The City of Lincoln, Nebraska agrees to be bound by paragraphs 14 and 37 herein. Further, if at any time JPA is no longer in existence or does not have the funds to fulfill its obligations hereunder, the City of Lincoln, Nebraska hereby assumes all of the obligations of JPA hereunder and agrees to be bound by the terms of this Lease as the landlord or JPA.

CITY OF LINCOLN, NEBRASKA
a municipal corporation

By_____
Chris Beutler
Mayor of Lincoln, Nebraska

DRAFT

Exhibit D

Exhibit A to Station Lease

DRAFT

Exhibit D

Exhibit C to Station Lease

DRAFT

Exhibit D

Exhibit C to Station Lease

DRAFT

Exhibit D

DECLARATION OF COMMENCEMENT

THIS DECLARATION OF COMMENCEMENT dated _____ __, ___ between the National Railroad Passenger Corporation ("Amtrak") and West Haymarket Joint Public Agency ("JPA").

BACKGROUND

A. By lease agreement dated _____ __, 201_ ("Lease"), JPA leased to Amtrak that certain premises located in the building commonly known as West Haymarket Station in the City of Lincoln, State of Nebraska, as more fully described ("Premises").

C. Amtrak is in possession of the Premises.

D. Under Section 2 of the Lease, JPA agreed to execute and deliver to Amtrak an agreement setting forth the "Commencement Date" (as defined in the Lease) of the Lease and Amtrak agreed to confirm such date.

NOW, THEREFORE, JPA and Amtrak confirm the following:

1. The Commencement Date of the Lease is_____

2. Nothing in this Declaration of Commencement is intended to change or modify the rights of the parties under the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Commencement to be executed as of the day and year first above written.

AMTRAK:
NATIONAL RAILROAD PASSENGER CORPORATION

By: _____
Bruce Looloian
Assistant Vice President, Real Estate Development

JPA:
WEST HAYMARKET JOINT
PUBLIC AGENCY

By:_____
Jayne Snyder
Chairperson of the West Haymarket
Joint Public Agency Board of
Representatives

EXHIBIT E

Amtrak Specification 01141A
Safety and Protection of Railroad Traffic and Property

SECTION 01141A – SAFETY AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY

PART 1 - GENERAL

1.1 SCOPE

A. This specification describes the safety procedures and protection provisions for Contractors and Permittees entering and working upon railroad property.

B. Use of this specification is as required by Amtrak, as described in Amtrak Engineering Practice EP3014.

1.2 RELATED DOCUMENTS

A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this Section.

1.3 DEFINITIONS

A. CHIEF ENGINEER: Amtrak Chief Engineer

B. RAILROAD: National Railroad Passenger Corporation (Amtrak), and/or the duly authorized representative

C. ENGINEERING PRACTICE: Amtrak Engineering Practices establish a system of uniform practices, notices and instructions for the Amtrak Engineering Department, providing current, permanent and temporary, departmental procedures and policies.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION

3.1 PRE-ENTRY MEETING

A. Before entry of Permittee and/or Contractors onto Railroad's property, a pre-entry meeting shall be held at which time Permittee and/or Contractors shall submit for written approval of the Chief Engineer, plans, computations and a detailed description of proposed methods for accomplishing the work, including methods for protecting Railroad's traffic. Any such written approval shall not relieve Permittee and/or Contractor of their complete responsibility for the adequacy and safety of their operations.

3.2 RULES, REGULATIONS AND REQUIREMENTS

A. Railroad traffic shall be maintained at all times with safety and continuity, and Permittee and/or Contractors shall conduct their operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad's property. Permittee and/or Contractors shall be responsible for acquainting themselves with such rules, regulations and requirements. Any violation of Railroads safety rules, regulations, or requirements shall be grounds for the immediate suspension of the Permittee and/or Contractor work, and the re-training of all personnel, at the Permittee's expense.

3.3 MAINTENANCE OF SAFE CONDITIONS

A. If tracks or other property of Railroad are endangered during the work, Permittee and/or Contractor shall immediately take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee and/or Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad's trains, tracks, right-of-way or other property caused by the operations of Permittee and/or Contractors, shall be paid by Permittee.

3.4 PROTECTION IN GENERAL

A. Permittee and/or Contractors shall consult with the Chief Engineer to determine the type and extent of protection required to insure safety and continuity of railroad traffic. Any Inspectors, Track Foremen, Track Watchmen, Flagman, Signalmen, Electric Traction Linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee and/or Contractors. The cost of same shall be paid directly to Railroad by Permittee. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee and/or Contractors from their complete responsibility for the adequacy and safety of their operations.

3.5 PROTECTION FOR WORK NEAR ELECTRIFIED TRACK OR WIRE

A. Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad's requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted to work near overhead wires, except when protected by a Class A employee of Railroad. Permittee and/or Contractors must supply an adequate length of grounding cable (4/0 copper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.

3.6 FOULING OF TRACK OR WIRE

A. No work will be permitted within twenty-five (25) feet of the centerline of track or the energized wire or have potential of getting within twenty-five (25) feet of track wire without the approval of the Chief Engineer's representative. Permittee and/or Contractors shall conduct their work so that no part of any equipment or material shall foul an active track or overhead

wire without the written permission of the Chief Engineer's representative. When Permittee and/or Contractors desire to foul an active track, they must provide the Chief Engineer's representative with their site-specific work plan a minimum of twenty-one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of Railroad. Any equipment shall be considered to be fouling a track or overhead wire when located (a) within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire, or (b) in such a position that failure of same, with or without a load, would bring it within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire and requires the presence of the proper Railroad protection personnel.

B. If acceptable to the Chief Engineer's representative, a safety barrier (approved temporary fence or barricade) may be installed at fifteen (15) feet from centerline of track or overhead wire to afford the Permittee and/or Contractor with a work area that is not considered fouling. Nevertheless, protection personnel may be required at the discretion of the Chief Engineer's representative.

3.7 TRACK OUTAGES

A. Permittee and/or Contractors shall verify the time and schedule of track outages from Railroad before scheduling any of their work on, over, under, within, or adjacent to Railroad's right-of-way. Railroad does not guarantee the availability of any track outage at any particular time. Permittee and/or Contractors shall schedule all work to be performed in such a manner as not to interfere with Railroad operations. Permittee and/or Contractors shall use all necessary care and precaution to avoid accidents, delay or interference with Railroad's trains or other property.

3.8 DEMOLITION

A. During any demolition, the Contractor must provide horizontal and vertical shields, designed by a Professional Engineer registered in the state in which the work takes place. These shields shall be designed in accordance with the Railroad's specifications and approved by the Railroad, so as to prevent any debris from falling onto the Railroad's right-of-way or other property. A grounded temporary vertical protective barrier must be provided if an existing vertical protective barrier is removed during demolition. In addition, if any openings are left in an existing bridge deck, a protective fence must be erected at both ends of the bridge to prohibit unauthorized persons from entering onto the bridge.

B. Ballasted track structure shall be kept free of all construction and demolition debris. Geo-textiles or canvas shall be placed over the track ties and ballast to keep the ballast clean.

3.9 EQUIPMENT CONDITION

A. All equipment to be used in the vicinity of operating tracks shall be in "certified" first-class condition so as to prevent failures that might cause delay to trains or damage to Railroad's property. No equipment shall be placed or put into operation near or adjacent to operating tracks without first obtaining permission from the Chief Engineer's representative. Under no circumstances shall any equipment or materials be placed or stored within twenty-five (25) feet from the centerline of an outside track, except as approved by the Site Specific

Safety Work Plan. To insure compliance with this requirement, Permittee and/or Contractors must establish a twenty-five (25) foot foul line prior to the start of work by either driving stakes, taping off or erecting a temporary fence, or providing an alternate method as approved by the Chief Engineer's representative. Permittee and/or Contractors will be issued warning stickers which must be placed in the operating cabs of all equipment as a constant reminder of the twenty-five (25) foot clearance envelope.

3.10 STORAGE OF MATERIALS AND EQUIPMENT

A. No material or equipment shall be stored on Railroad's property without first having obtained permission from the Chief Engineer. Any such storage will be on the condition that Railroad will not be liable for loss of or damage to such materials or equipment from any cause.

B. If permission is granted for the storage of compressed gas cylinders on Railroad property, they shall be stored a minimum of 25 feet from the nearest track in an approved lockable enclosure. The enclosure shall be locked when the Permittee and/or Contractor is not on the project site.

3.11 CONDITION OF RAILROAD'S PROPERTY

A. Permittee and/or Contractors shall keep Railroad's property clear of all refuse and debris from its operations. Upon completion of the work, Permittee and/or Contractors shall remove from Railroad's property all machinery, equipment, surplus materials, falsework, rubbish, temporary structures, and other property of the Permittee and/or Contractors and shall leave Railroad's property in a condition satisfactory to the Chief Engineer.

3.12 SAFETY TRAINING

A. All individuals, including representatives and employees of the Permittee and/or Contractors, before entering onto Railroad's property or coming within twenty-five (25) feet of the centerline of the track or energized wire shall first attend Railroad's Safety Contractor/Lessee Employee Training Class. The Safety Orientation Class will be provided by Railroad's Safety Representative at Permittee's expense. A photo I.D. will be issued and must be worn/displayed while on Railroad property. All costs of complying with Railroad's safety training shall be at the sole expense of Permittee. Permittee and/or Contractors shall appoint a qualified person as their Safety Representative. The Safety Representative shall continuously assure that all individuals comply with Railroad's safety requirements. All safety training records shall be maintained with site specific work plan.

3.13 NO CHARGES TO RAILROAD

A. It is expressly understood that neither these Specifications, nor any document to which they are attached, include any work for which Railroad is to be billed by Permittee and/or Contractors, unless Railroad gives a written request that such work be performed at Railroad's expense.

END OF SECTION 01141A

Exhibit F

Prime Lease Attached

LEASE AGREEMENT
BETWEEN AMTRAK AND BNSF
FOR CERTAIN FACILITIES AT THE
LINCOLN, NE STATION

This Lease Agreement (the "Agreement") is entered into by and between the **National Railroad Passenger Corporation**, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia ("Amtrak"), and **BNSF Railway Company**, a Delaware corporation ("BNSF").

WHEREAS, the City of Lincoln or the West Haymarket Joint Public Agency, a political subdivision and corporate body of the State of Nebraska created and established by and between the Board of Regents of the University of Nebraska and the City pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended) for the purpose of constructing, equipping, furnishing, and financing public facilities including, but not limited to, the Haymarket Project (collectively, the "JPA") is undertaking a redevelopment project in the vicinity of the Leased Premises (as hereinafter defined) (the "Haymarket Project"); and

WHERAS, the Haymarket Project includes a new train station, including a new depot to be constructed by the JPA on property owned by the JPA, and a new intercity rail passenger platform and canopy (together the "New Platform") to be constructed by the JPA under the Sublease (as hereinafter defined) on land owned or controlled by BNSF (the new depot, passenger platform and canopy are collectively referred to as the "New Depot"); and

WHEREAS, as part of the Haymarket Project the parties anticipate that certain of BNSF's tracks and other property, including tracks and platform areas currently used for Amtrak service, will be realigned and BNSF's interest in the underlying land will be conveyed to the JPA, and, once construction of the New Depot has been completed in accordance with plans and specifications approved by Amtrak, Amtrak operations will be relocated to the New Depot, and the existing platform and depot will be closed; and

WHEREAS, Amtrak has consented to and concurred with the conveyance, realignment and change in location, and subject to the construction of the New Depot in accordance with approved specifications and plans, intends to enter into a new depot lease with the JPA for such new depot in a form substantially similar to Exhibit D to the Sublease (defined below) (the "Amtrak/JPA Lease") and relocate its operations to the New Depot; and

WHEREAS, Amtrak and BNSF are currently parties to a certain agreement dated September 1, 1996, as amended, which relates to the provision of Intercity Passenger Rail Service on BNSF rail lines (the "Operating Agreement"); and

WHEREAS, BNSF and Amtrak desire to enter into this Agreement to formalize their relationship with each other concerning the use of the Leased Premises; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances herein contained, and with the intent to be legally bound hereby, BNSF and Amtrak mutually agree that the foregoing recitals are incorporated into this Agreement by this reference and further agree as follows:

1. **Leased Premises.** In consideration of the promises herein, and for an annual rental fee of one dollar ($1.00), Amtrak does hereby lease from BNSF all real property and facilities owned by BNSF shown as shaded on **Exhibit A** attached to this Agreement and by this reference made a part hereof (the "Leased Premises"). The address of the Leased Premises will be established in connection with the Haymarket Project and amended into this Agreement. The trackside boundaries of the Leased Premises shall commence at the edges of the ballasted right of way, and shall be measured by the trackside edge of platforms where they exist, or are built. The Leased Premises include areas used exclusively by Amtrak, including but not limited to platforms, station facilities, connecting walkways and parking areas to the extent such areas fall within the shaded area on **Exhibit A**. All passenger boarding platforms within the Leased Premises shall be deemed to be used exclusively by Amtrak.

The Leased Premises may also include areas and facilities used jointly by or for the benefit of both Amtrak and BNSF, to the extent such areas fall within the shaded area on **Exhibit A** (the "Shared Facilities"). All designated parking areas within the Leased Premises shall be Shared Facilities, and no stalls shall be reserved or specifically allocated to either party, except those parking stalls reserved for physically disabled passengers. BNSF reserves for itself, its employees, agents and contractors, an irrevocable right to use the Shared Facilities in common with Amtrak as may be necessary or desirable for conducting BNSF's business.

If the Leased Premises include a station building that is used by both BNSF and Amtrak, then all elements of such building that are used by or for the benefit of both Amtrak and BNSF (e.g., the roof, exterior walls, parking areas and shared restrooms) shall be included as part of the Shared Facilities under this Agreement. A station building that is used jointly by both Amtrak and BNSF as of the Commencement Date is referred to herein as a "Jointly Used Facility". Elements of any Jointly Used Facility that are used exclusively by either party are excluded from the definition of Shared Facilities.

Specifically excluded from the Leased Premises are: (a) facilities used exclusively by BNSF that may be adjacent to or a portion of the land and improvements depicted on **Exhibit A**, (b) facilities that, as of the Commencement Date, are leased to a third party or are vacant, and (c) facilities that are within the shaded area but are not owned by BNSF (collectively, the "Excluded Facilities") all as determined on the Commencement Date.

If the Leased Premises includes Shared Facilities, BNSF shall reimburse Amtrak on a pro rata basis for its share of capital expenditures (excluding capital expenditures made by Amtrak using funds received by Amtrak pursuant to its 2009 American Recovery and Reinvestment Act grant) and operating expenses incurred by Amtrak in connection with the Shared Facilities (including, but not limited to, maintenance, repair, utility, and snow/ice removal costs).

If the Leased Premises include a Jointly Used Facility, the parties' pro rata shares shall be calculated based upon the portions of the Jointly Used Facility used exclusively by each party, by dividing the square footage used exclusively by BNSF or Amtrak, as the case may be, by the total square footage of the Jointly Used Facility that is a part of the Leased Premises. For purposes of the foregoing calculations, any Shared Facilities within any Jointly Used Facility on the Leased Premises shall be excluded from the total square footage of such building, and any unused vacant space within any building shall be deemed to be used exclusively by BNSF. The parties shall mutually agree upon the allocation of pro rata shares using the formulas shown below.

Category of use	**Square Footage**	**Formula for allocating costs associated with a Jointly Used Facility**	**Cost for Sample $1000 repair**
Gross Square Footage of Jointly Used Facility	1100 sf	N/A	
Shared Facilities (e.g. shared restrooms)	100 sf	N/A	
Net Square Footage of Jointly Used Facility (Gross Square Footage Less Shared Facilities)	1000 sf	N/A	$1000
Portion used exclusively by BNSF (including vacant space)	600 sf	600 sf/1000 sf	$600
Portion used exclusively by Amtrak	400 sf	400 sf/1000 sf	$400

If the Leased Premises include Shared Facilities but do not include a Jointly Used Facility, the parties agree to compute each party's pro rata share of capital expenditures and operating expenses incurred by Amtrak in connection with the Shared Facilities based upon each party's use of the Shared Facilities.

2. **Duration of Lease.** The term of this Agreement shall commence upon satisfaction of the Conditions Precedent (defined below) (the "Commencement Date") and continue in effect for a period co-terminus with the

Operating Agreement, as it may be amended or replaced. However, at any time after two (2) years from the Commencement Date, Amtrak may terminate this Agreement if the Leased Premises no longer meets Amtrak's operational needs (for example, if Amtrak ceases to provide intercity passenger rail services at the station) by giving BNSF at least ninety (90) days' prior written notice.

The following conditions precedent (the "Conditions Precedent") all must be satisfied before Amtrak will have any rights or obligations with respect to the Leased Premises: (i) the JPA and Amtrak have entered into the Amtrak/JPA Lease; (ii) the land underlying the New Depot has been conveyed from BNSF to the JPA; (iii) BNSF has completed all construction activities within the Leased Premises, including all of its work relating to track serving the New Platform; (iv) the JPA and Amtrak have entered into the Sublease; and (v) BNSF has completed all of its work relating to track serving the New Depot and New Platform. In the event any of the Conditions Precedent has not occurred within a period of three (3) years from the execution of this Agreement by Amtrak, this Agreement shall expire without any further action.

In the event the JPA is unable to construct the New Platform due, in whole or in part, to the quality of BNSF's ownership interest in the Leased Premises, any restrictions, liens, encumbrances, assessments, easements, zoning or other limitation on the Leased Premises or its use, Amtrak may, in its sole discretion, terminate this Lease by giving BNSF at least thirty (30) days' prior written notice.

The period of time commencing on the Commencement Date and ending on the date on which Amtrak agrees that the New Depot and New Platform are at final completion is the "Initial Construction Period". Amtrak's agreement as to the final completion of the New Depot and New Platform shall not be unreasonably withheld or delayed and Amtrak agrees to notify BNSF once Amtrak and the JPA have reached agreement regarding such final completion.

Upon commencement of operations by Amtrak on the Leased Premises, Amtrak shall surrender to BNSF any BNSF land and other property used by Amtrak at its existing station location in Lincoln, NE. Surrender of such land and other property shall not terminate or affect any liabilities of the parties arising prior to the date of such surrender. Amtrak has waived any rights it may have with respect to the acquisition of its existing station location, and upon commencement of operations on the Leased Premises shall have waived any rights it may have with respect to the use of its existing station location. Except as expressly set forth herein, nothing in this Agreement shall be deemed to be a surrender or waiver of Amtrak's rights or BNSF's obligations to Amtrak at law or under the Operating Agreement or any under any existing agreement between BNSF and Amtrak.

3. **Use of Leased Premises.** Except during the Initial Construction Period, the Leased Premises may be used by Amtrak during the term of this Agreement in connection with the provision of Intercity Rail Passenger Service, as defined in the Operating Agreement. Amtrak shall have no right to enter onto or otherwise use the Leased Premises during the Initial Construction Period, and during such time the JPA shall only have the right to use the Leased Premises for construction of the New Platform as Amtrak's subtenant pursuant to the Sublease. BNSF shall permit reasonable ingress and egress to and from the Leased Premises over BNSF property.

In its use of the Leased Premises for the aforesaid purposes, Amtrak will not permit new parking within twenty-five (25) feet of the center line of any track without prior approval of BNSF. All Leased Premises shall be subject to BNSF's present and future pole line and signal installation purposes, and to purposes of maintaining its right of way and operating its railroad. Parking areas within the Leased Premises shall not be used to store materials or heavy equipment, other than on a temporary basis in connection with a construction or demolition project.

All Leased Premises shall be subject to all existing utility agreements and easements, and BNSF reserves unto itself, its successors and assigns and licensees the right to operate, maintain and renew such improvements in the ballasted right of way, crossing signals, utilities, pipelines, telephone, telegraph and signal lines, electric transmission lines, and other facilities of like character, as may now exist on, over or under said Leased Premises, and to construct operate, maintain, and renew such additional facilities thereon so long as the same will not interfere with the use of said Leased Premises for the purposes set forth herein.

Amtrak will not (a) use, occupy or permit the use or occupancy of the Leased Premises in any manner which violates any law, statute, regulation, ordinance, order, covenant, restriction or decision of any court of competent jurisdiction, or is dangerous to life or property, or creates a public or private nuisance, or for a use other than the permitted use hereunder; (b) keep, or permit to be kept, any substance in or conduct, or permit to be conducted, any operation from the Leased Premises which might emit offensive odors or conditions, or make undue noise or create undue vibrations; or (c) commit or permit to remain any waste to the Leased Premises; provided, however, that such restrictions shall not apply to approved demolition and/or construction projects.

4. **Maintenance; Special Assessments**. During the term of this Agreement, Amtrak shall maintain, repair as necessary, and replace to the extent required for Amtrak service, the Leased Premises, including without limitation platforms, canopies, lighting facilities, sidewalks, entrances and exits, and shall keep the same in a state of order and cleanliness corresponding to standards applicable to other public buildings and grounds owned or operated by Amtrak; provided, however, that Amtrak shall have no responsibility or liability for the condition of the Leased Premises during the Initial Construction Period. Amtrak agrees and acknowledges that it is leasing the Leased Premises in "as is" condition, and that BNSF has no obligation to make any repairs or alterations of whatsoever nature in or to any part of the Leased Premises (other than Shared Facilities), including but not limited to alterations required to comply with the Americans with Disabilities Act or any other governmental requirement, or to maintain any part of the Leased Premises in any manner. Nothing in this Agreement shall relieve BNSF of any obligation to make alterations to the Shared Facilities and/or Excluded Facilities that are required, as a result of BNSF's use of the Shared Facilities and/or Excluded Facilities, to comply with the Americans with Disabilities Act or any other governmental requirement, or to maintain the Excluded Facilities. Amtrak shall not knowingly create or permit any condition on the Leased Premises that could present a threat to human health or to the environment. Amtrak shall be responsible for the cost of any utilities associated with the Leased Premises where Amtrak is the sole occupant. Accordingly, BNSF shall transfer the utility accounts for Leased Premises where Amtrak is the sole occupant to Amtrak for the term of this Agreement as of a date to be mutually agreed upon by BNSF and Amtrak. If the Leased Premises include a Jointly Used Facility, each party shall be responsible for utility accounts for its exclusively used area to the extent separately metered. Utility accounts for Shared Facilities and for Leased Premises where Amtrak's exclusively used areas are not separately metered shall remain in BNSF's name, and BNSF will continue to charge Amtrak its pro rata share for utilities at such location using the same allocation set forth in Paragraph 1 above. Except as provided in Paragraph 1 hereof, BNSF will not be obligated to fund any capital or maintenance costs associated with the Leased Premises unless mutually agreed to.

   Should the Leased Premises be subject to special assessment for public improvements, Amtrak shall be obligated to pay such assessments (or its pro rata share of such assessments) for the term of this Agreement, even though such charges may not become due and payable until after termination of this Agreement.

   When necessary, Amtrak shall promptly remove ice and snow from the Leased Premises, including without limitation platforms, entrances, exits, sidewalks, driveways and parking areas constructed or maintained under the terms of this Agreement.

5. **Indemnification.** Subject to the terms and conditions set forth in Paragraph 9 of this Agreement, during the term of this Agreement, risk of liability and damage shall be governed by Section 7.2 of the Operating Agreement. For purposes of construing Section 7.2 of the Operating Agreement as it applies to this Agreement, the Leased Premises shall be deemed to be Amtrak's property and Amtrak contractors shall be deemed to be Amtrak employees.

   Notwithstanding anything herein to the contrary, Amtrak shall have no responsibility or indemnification obligations for any acts or omissions of, the JPA, its employees, contractors, agents or invitees in connection with the construction of the New Platform during the Initial Construction Period, nor shall the JPA, its employees or its contractors (or subcontractors) be deemed to be Amtrak employees in connection with the construction of the New Platform during the Initial Construction Period. Except for its rights with respect to approval of plans and specifications, Amtrak shall have no right to supervise, direct, or otherwise participate in the JPA's construction of the New Platform.

6. **Effect of Termination.**

(a) When either this Agreement or the Operating Agreement has been terminated for any reason, the Leased Premises, including any subsequent improvements approved by BNSF to be affixed to the Leased Premises, shall become the property of BNSF without payment or reimbursement by BNSF to Amtrak or any other party. Improvements that are not affixed to the Leased Premises or approved by BNSF to remain in the Leased Premises following termination shall be removed by Amtrak.

(b) If either party to this Agreement shall fail to perform its substantive duties and obligations hereunder, and such failure continues for more than thirty (30) days after written notice from the other party to cure such failure, such other party may terminate this Agreement. After such termination, each party may pursue such legal remedies as it may elect to protect its own interests, but subject to Paragraph 6(a) above. After the termination of this Agreement, the rights and obligations of the parties with respect to the Leased Premises shall be governed by the Rail Passenger Service Act and/or the Operating Agreement, as either or both may apply.

7. **Third Party Services**. It is understood and agreed that Amtrak may contract with outside parties to furnish construction, maintenance or operational services in and about the Leased Premises for the functions permitted under this Agreement.

8. **Construction or Demolition Projects**. When proposing construction or demolition projects on the Leased Premises, Amtrak shall provide BNSF with a set of plans and specifications for BNSF's review and approval prior to the start of construction or demolition, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, with regard to the initial construction of the New Platform Amtrak shall direct the JPA to provide such plans and specifications to BNSF rather than being required to provide directly to BNSF itself. The parties understand that BNSF's approval of any plans or specifications shall not be deemed to mean that the construction contemplated therein, nor completed in accordance therewith, is structurally sound or appropriate or meets applicable regulations, laws, statutes or local ordinances, and/or building codes. Amtrak will be solely responsible for determining whether its plans and specifications, construction, and maintenance meet its needs and will provide for safe operation. For such construction or demolition projects (excluding the Haymarket Project), Amtrak will fully indemnify BNSF against any and all risks, liabilities, claims, losses and judgments arising from, or growing out of, or related in any way to the acts or negligence of BNSF, its agents or employees, of the contractors performing such construction or demolition work, their agents, employees, subcontractors, and their agents and employees, and will require its contractors to execute and deliver a BNSF Contractor's Right of Entry in the form attached as **Exhibit B** hereto, unless BNSF notifies Amtrak in writing that a Contractor's Right of Entry is not required. Notwithstanding the foregoing, Amtrak's indemnification obligations shall be limited during the Initial Construction Period as set forth in Section 5 above, and Amtrak shall not be required to obtain a Contractor's Right of Entry for the initial construction of or maintenance work on the New Platform to be performed on the Leased Premises by the JPA during the Initial Construction Period. Amtrak will require its construction and demolition contractors, after Amtrak has fully assured itself of contractual compliance in every respect, to certify in writing that the project work is of good quality and has been performed in accordance with the contract and provide appropriate lien waivers, as a condition precedent to final disbursement of project funds.

9. **Liens.** If, because of any act or omission of Amtrak or its agents, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against BNSF or any portion of the Leased Premises, Amtrak shall, at its own expense, cause the same to be discharged of record within thirty (30) days after becoming aware of such lien or after written notice from BNSF to Amtrak of the filing thereof, and shall indemnify and save harmless BNSF against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom; provided that Amtrak shall have no obligations with respect to any liens, charges or orders of payment created by or through the JPA during the Initial Construction Period. Should Amtrak become aware of a possible or actual filing of lien in the above instances, it shall notify the BNSF Amtrak Operations Officer in writing of same in a timely fashion. Should the BNSF Amtrak Operations Officer receive notice of any lien filed against any portion of the Leased Premises, the BNSF Amtrak Operations Officer shall notify Amtrak of the same in a timely fashion. In the event Amtrak incurs additional costs as a result of the BNSF Amtrak Operations Officer's failure after he or she has received notice a) to notify Amtrak in a timely manner, or b) to appear and prosecute or defend an action covered by the preceding sentences where BNSF has standing to do so

and Amtrak does not and where BNSF has not given Amtrak sufficient legal rights to represent BNSF, Amtrak shall have the right to pursue its legal remedies and to recover such costs from BNSF.

10. **Renegotiation**. At any time after three (3) years from the execution of this Agreement by Amtrak, and at the request of either party, the location, size and/or configuration of the Leased Premises may be renegotiated. In the event of such a renegotiation, the parties shall cooperate with one another to resolve the circumstances giving rise to the request for renegotiation. **Exhibit A** to this Agreement shall be amended to reflect any agreed upon change in the Leased Premises.

11. **Entire Agreement.** This Agreement (including the Operating Agreement referenced herein), signed by both parties, constitutes a final written expression of all the terms of this Agreement, and is a complete and exclusive statement of those terms. If the terms and conditions of this Agreement and the Operating Agreement conflict, the terms of this Agreement shall control. No other agreement or understanding of any nature concerning the same has been made or entered into. The parties agree that upon the execution of this Agreement by both parties, any lease between the parties covering all or a portion of the Leased Premises that is in effect as of the date hereof, if any such lease exists, is hereby deemed to have been terminated by mutual agreement effective immediately; provided, however, that any right or obligation in an existing lease which, by its nature, would ordinarily survive the termination of the existing lease (such as the obligation to make an outstanding payment) shall survive the termination of the existing lease until it is satisfied.

12. **Severability.** In the event a court of competent jurisdiction finds and determines that any provision of this Agreement, in whole or in part, is invalid, the remaining provisions of this Agreement shall remain in full force and effect.

13. **Non-Waiver.** The failure or delay of BNSF or Amtrak to exercise or enforce any of the rights granted to them under this Agreement or any of the obligations or duties imposed on them as may be set forth in this Agreement shall not be construed as or constitute a waiver by BNSF or Amtrak of any such rights, obligations or duties. Amtrak has waived any rights it may have with respect to the acquisition of its existing station location, and upon commencement of operations on the Leased Premises shall have waived any rights it may have with respect to the use of its existing station location. Except as expressly set forth herein, nothing in this Agreement shall waive or derogate any of the parties' rights or responsibilities under law or statute.

14. **Subletting.** Subject to the terms and conditions of this Agreement and the Operating Agreement, Amtrak shall have the right to sublease a portion of the Leased Premises to any third-party sublessee (each a "Permitted Sublessee"), without prior notice, consent or approval by BNSF; *provided, however, that* (i) such Permitted Sublessees shall be limited to newsstands, food and beverage concessions, vending machines, telephones, automated teller/ticketing machines, and direct telephone line connections for local hotel, restaurants, entertainment, sports and convention centers and car rentals; (ii) except as expressly permitted below, Amtrak shall not assign this Agreement or sublease "*substantially all*" of the Leased Premises without the prior written consent of BNSF, which consent shall not be unreasonably withheld, conditioned or delayed; (iii) BNSF shall have the right to impose operational and safety requirements and restrictions upon any Permitted Sublessee (e.g., fencing separating outdoor dining areas from platforms and tracks, prohibitions against sale of alcoholic beverages, etc.); and (iv) no billboards or other advertising materials or signage shall be permitted on or about the Leased Premises without BNSF's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. In the event the rent, concession fees or other revenue received by Amtrak from a Permitted Sublessee at any location exceeds One Thousand Dollars ($1,000) per month, Amtrak shall remit to BNSF on a monthly basis fifty percent (50%) of any such excess amount. Amtrak shall provide written notice to BNSF within thirty (30) days after the execution of an agreement with a Permitted Sublessee, together with supporting documentation substantiating the amount of any rent or other payments to be paid by such Permitted Sublessees. Reimbursement to Amtrak by the JPA or any Permitted Sublessee of engineering fees or any other costs or expenses for services provided by Amtrak to, on behalf of or in the assistance of the JPA or such Permitted Sublessee shall not be considered rent, commission or other revenue under this Agreement even if the monies are defined as such in any agreement between Amtrak and the JPA or such Permitted Sublessee.

    Notwithstanding the preceding paragraph, subject to the other terms and conditions of this Agreement and the Operating Agreement, Amtrak shall have the right to sublease all or a portion of the Leased Premises to the JPA pursuant to the form of Sublease Agreement attached as **Exhibit C** hereto (the "Sublease"), without any

requirement of further consent or approval by BNSF. BNSF acknowledges that: (i) the Sublease grants the JPA the right to construct the New Platform on the Leased Premises, (ii) the Sublease provides that the JPA will own and maintain the New Platform so long as the Sublease is in effect, and (iii) upon the termination of the Sublease, the New Platform will be considered an improvement approved by BNSF and affixed to the Leased Premises under this Agreement.

Dated this_____of _____, 2011.

National Railroad Passenger Corporation

_____

By: Bruce Looloian
Its: Assistant Vice President
Real Estate Development

BNSF Railway Company

_____

By: _____
Its: _____

Exhibit A

Description of Leased Premises

The Leased Premises consists of the land in the shaded area depicted on Exhibit 1-A dated _____, 2010 where the New Platform will be constructed attached hereto. The Leased Premises does NOT include any Shared Facilities nor a Jointly Used Facility.

Exhibit A-1
Lincoln, NE

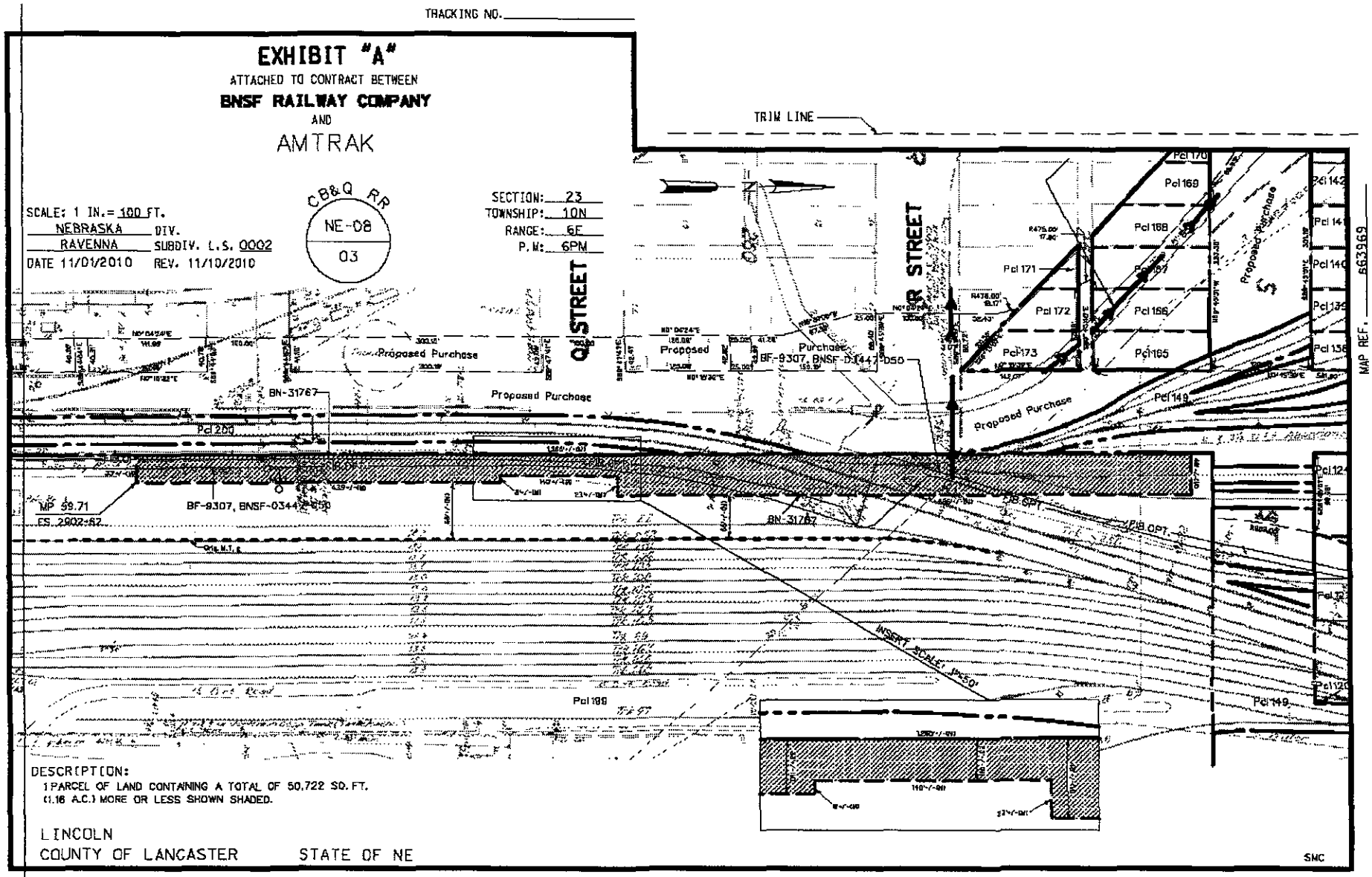


Exhibit B

BNSF CONTRACTOR'S RIGHT OF ENTRY AGREEMENT FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF BNSF RAILWAY COMPANY

This Right of Entry Agreement ("**Agreement**") is made to be effective _____, 20__, by and between **BNSF RAILWAY COMPANY** ("**Railroad**"), a Delaware corporation, and _____, a(n) _____ ("**Contractor**").

WHEREAS, Railroad operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, The National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, (hereinafter referred to as "Amtrak"), desires Contractor to perform certain construction services adjacent to and upon Railroad's right of way and/or property, and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railroad entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises (defined herein), Contractor agrees with Railroad as follows:

SECTION 1. SCOPE OF SERVICES

Contractor will perform the following services, hereinafter described as "**Work**": _____.

Performance of the Work will necessarily require Contractor to enter Railroad's right of way and property ("**Premises**"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railroad, and (ii) Contractor provides Railroad with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railroad with evidence certifying that the signatory is empowered to execute this Agreement.

SECTION 2. PAYMENT OF FEES

Amtrak will be solely responsible for paying Contractor for the Work.

SECTION 3. RELEASE OF LIABILITY AND INDEMNITY

(a) Contractor agrees to release Railroad and Railroad's duly authorized representative from any claims arising from the performance of this Agreement which Contractor or any of its employees, subcontractors, agents or invitees could otherwise assert against Railroad, regardless of the negligence of Railroad, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of Railroad.

(b) Contractor shall indemnify and hold harmless Railroad and Railroad's duly authorized representative for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railroad's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder. **THE LIABILITY ASSUMED BY CONTRACTOR SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.**

(c) **THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

(d) Contractor further agrees, at its expense, in the name and on behalf of Railroad, that it shall adjust and settle all claims made against Railroad, and shall, at Railroad's discretion, appear and defend any suits or actions

at law or in equity brought against Railroad on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railroad is liable or is alleged to be liable. Railroad shall give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railroad's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railroad from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

(e) With regard to any construction or maintenance work to be done in the State of Nebraska, pursuant to Neb. Rev. Stat. S 25-21, 187:

Nothing in this contract is intended to be construed to indemnify or hold harmless Contractor from Railroad's own negligence.

(f) In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

(g) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

SECTION 4. INSURANCE

(a) Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverages:

(i) Commercial General Liability Insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by the contract holder. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

It is agreed that the Workers' Compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(ies) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

No other endorsements limiting coverage may be included on the policy with regard to the work being performed under this Agreement or otherwise with respect to any obligations under this Agreement.

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

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

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

Waiver of subrogation in favor of and acceptable to Railroad.

Additional insured endorsement in favor or and acceptable to Railroad.
Separation of insureds.
The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

(iv) Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.

Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

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

Waiver of subrogation in favor of and acceptable to Railroad.

(v) Railroad Protective Liability Insurance. This insurance must name only Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93).
Endorsed to include the Limited Seepage and Pollution Endorsement.
Endorsed to include Evacuation Expense Coverage Endorsement.
No other endorsements restricting coverage may be added.
The original policy must be provided to Railroad prior to performing any work or services under this Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in Railroad's Blanket Railroad Protective Liability Insurance Policy. The limits of coverage are the same as above. The cost is $_____.

I **elect** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any);

I **elect not** to participate in Railroad's Blanket Policy for activities commencing as of the Effective Date (if any).

(b) In addition to the foregoing, the following other requirements shall apply to this Agreement:

Where allowable by law, all policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad, for loss of its owned or leased property or property under its care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to Railroad an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this Section 4 will entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving Railroad arising out of this Agreement, Contractor will make available any required policy covering such claim or lawsuit.

For purposes of this Section 4, "**Railroad**" means "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

SECTION 5. CONTRACTOR REQUIREMENTS

(a) While on or about the Premises, Contractor must fully comply with Railroad's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be solely responsible for fully informing itself as to Railroad's "Contractor Requirements".

(b) Contractor must ensure that each of its employees, subcontractors, agents or invitees entering upon the Premises completes the safety training program at the following Internet Website: "www.contractororientation.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering the Premises. Contractor must renew the Safety Orientation annually.

(c) Prior to entering the Premises, Contractor must prepare and implement a safety action plan acceptable to Railroad. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the Premises and will be available for inspection by Railroad at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least 50 feet from the centerline of Railroad's nearest track. Contractor must not cross Railroad's tracks except at existing open public crossings.

SECTION 6. PROTECTION OF RAILROAD FACILITIES / FLAGGER SERVICES

(a) Railroad flagger and protective services and devices will be required and furnished when Railroad determines, in Railroad's sole discretion, that such services and devices are necessary for safety purposes, including but not limited to the following events:

(i) when Work is located over, under or within twenty-five (25) feet from the center line of the nearest track;
(ii) when cranes or similar equipment are positioned outside of 25-foot horizontally from track center line but could foul the track in the event of tip-over or other catastrophic occurrence;
(iii) when any excavation is performed below the bottom of tie elevation, if, in Railroad's sole opinion track or other Railroad facilities may be subject to movement or settlement.
(iv) when Work in any way interferes, or is likely to interfere, with the safe operation of trains at timetable speeds.
(v) when persons, material, equipment, blasting or other hazardous activities in the vicinity present any actual or potential threat to Railroad's personnel, track, communications, signal, electrical, or other facilities.

Special permission must be obtained from Railroad before moving heavy or cumbersome objects or equipment which might result in damage, injury or making the track impassable.

(b) Contractor must give Railroad's Roadmaster (telephone _____) a minimum of thirty (30) working days' advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (*i.e.*, bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and the parties hereto subsequently determine that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days' advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

(c) Flagging services will be performed solely by qualified Railroad flaggers. The costs for flaggers shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Railroad and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railroad labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. The flagging rate in effect at the time of performance by Contractor will be used to calculate the costs of flagging pursuant to this **Section 6(c)**.

(i) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by Railroad's representative.

(ii) The cost of flagger services provided by Railroad, when deemed necessary by Railroad's representative, will be borne by Contractor.

SECTION 7. INDEPENDENT CONTRACTOR

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railroad in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

SECTION 8. TRAIN DELAYS

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in writing in advance by Railroad's representative. Additionally, Contractor must not, at any time, impair the safety of Railroad operations or the operations of Railroad's lessees, licensees or other Railroad invitees. Delays to freight or passenger trains affect Railroad's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be responsible to Railroad, including its subsidiaries, affiliated companies, partners, successors and assigns, for all economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

(i) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railroad performing Work.

(ii) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with Railroad. Under such arrangements, if Railroad does not meet its contract service commitments, Railroad may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railroad which are attributable to a train delay caused by Contractor or its subcontractors.

(iii) The contractual relationship between Railroad and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railroad will share information relevant to any train delay to the maximum extent consistent with Railroad confidentiality obligations.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date above.

RAILROAD:

BNSF Railway Company, a Delaware corporation

By: _____
Name: _____
Title: _____
Date: _____

CONTRACTOR:

_____

By: _____
Name: _____
Title: _____
Date: _____

Exhibit C

Form of Sublease

[See Attached]

8

FIRST AMENDMENT TO EXCHANGE AGREEMENT

THIS FIRST AMENDMENT TO EXCHANGE AGREEMENT ("**First Amendment**") is dated to be effective the 28th day of January, 2011 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**JPA**").

RECITALS

A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, and in support of the plans of the City (defined below) and JPA to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**"), BNSF and the City of Lincoln, Nebraska, a Nebraska municipal corporation ("**City**") entered into, among other agreements, that certain: (i) Master Development Agreement dated October 18, 2010 (as amended from time to time, the "**Master Agreement**"), (ii) Exchange Agreement dated October 18, 2010 (as amended from time to time, the "**Exchange Agreement**") and (iii) Construction and Maintenance Agreement dated October 18, 2010 (as amended from time to time, the "**C&M Agreement**").

B. Pursuant to the provisions of that certain Consent to Assignment and Assumption Agreement dated October 19, 2010, BNSF consented to City's assignment and transfer of its right, title and interest in and to the Exchange Agreement to JPA. For purposes of this First Amendment, the use of the term "City" in replacement language for the Exchange Agreement is used for consistency's sake with the wording of the Exchange Agreement and shall be deemed to include JPA and its legal representatives, successors and assigns.

C. BNSF and JPA desire to amend the Exchange Agreement to: (i) acknowledge that the Station Lease will not be executed by Amtrak and the JPA in time for the First Closing and (ii) modify the timing and circumstances related to the satisfaction of certain other contingencies under the Exchange Agreement, all as set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I. **Amtrak.** The Parties acknowledge that the City and Amtrak do not intend to execute the Station Lease until such time as the Replacement Station (as defined below) has been fully designed and constructed and Amtrak has accepted same. JPA further acknowledges and agrees that BNSF will not remove Passenger Track No. 2 from service or otherwise proceed to the Fourth and Fifth City Closings unless and until: (i) Amtrak has: (i) ceased intercity rail passenger operations and vacated its existing intercity railroad passenger station facility ("**Existing Station**") situated in the City of Lincoln and (ii) commenced full intercity rail passenger operations at the Replacement Station. Accordingly, Section 7 of the Exchange Agreement is hereby deleted in its entirety and replaced with the following:

"**Section 7.** **Amtrak.**

7.1 City acknowledges that the Replacement City Property is subject to that certain agreement between National Rail Passenger Service Corporation ("**Amtrak**") and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated September 1, 1996, as amended ("**Operating Agreement**"). City also acknowledges that BNSF is obligated to provide property in the City of Lincoln for intercity rail passenger use under the terms of the federal Rail Passenger Service Act (Title 49 United States Code Section 24308(a)). As more particularly described in the Master Agreement, City shall enter into an agreement with

Amtrak for a new station lease ("**Station Lease**") for City to provide an intercity railroad passenger station facility ("**Replacement Station**") for Lincoln, Nebraska for Amtrak on the Replacement City Property (or on other equitable replacement property), on terms and conditions mutually acceptable to City and Amtrak. The Station Lease shall be binding upon and inure to the benefit of City and Amtrak, and their respective successors and assigns. City does not guarantee that Amtrak will enter into the Station Lease. Also as more particularly set forth in the Master Agreement, BNSF agrees to use commercially reasonable efforts to enter into the Amtrak/BNSF Lease (as defined in the Master Agreement) with Amtrak. BNSF anticipates that BNSF and Amtrak will enter into the Amtrak/BNSF Lease on or prior to the First Closing; provided, however, BNSF does not guarantee that Amtrak will enter into the Amtrak/BNSF Lease.

7.2 On or prior to the Fourth City Closing, City shall have constructed the Replacement Station and entered into the Station Lease with Amtrak. Notwithstanding the foregoing, however, or anything to the contrary in this Agreement, until such time as: (a) City and Amtrak have entered into the Station Lease, (b) Amtrak has ceased intercity rail passenger operations at the Existing Station and (c) Amtrak has commenced full intercity rail passenger operations at the Replacement Station, BNSF has no obligation whatsoever to: (i) remove Passenger Track No. 2 from service, or (ii) proceed to the Fourth City Closing or the Fifth City Closing. JPA expressly acknowledges and assumes the risk of any delays and increased costs and expenses that may arise in connection with the JPA's failure to satisfy such conditions precedent.

Article II. **Joint Facilities Agreement.** JPA acknowledges that UP and BNSF have not yet executed the JFA as defined and described in Section 16 of the Master Agreement. JPA has requested that BNSF waive execution of the JFA as a condition to the First Closing, and BNSF has agreed to such waiver; provided, however, that such waiver is made with the understanding that full execution of the JFA shall be a condition precedent to BNSF's obligation to proceed to the Third City Closing.

Article III. **Closing Conditions.** In connection with the timing of Amtrak transactions and the execution of the JFA described in Articles I and II above, respectively, the parties agree to amend the Exchange Agreement as follows:

1. First Closing. Sections 8.2.10 and 8.3.6 of the Exchange Agreement are hereby deleted and replaced with the words "Intentionally deleted".

2. Third City Closing. Section 8.9 of the Exchange Agreement is hereby deleted and replaced with the following:

"8.9 BNSF's obligations to close on the Third City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Third City Closing:

8.9.1 The Second City Closing has taken place;

8.9.2 BNSF and UP have entered into the JFA (as defined in the Master Agreement); and

8.9.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods."

3. Fourth City Closing.

(a) Section 8.11 of the Exchange Agreement is hereby deleted and replaced with the following:

"8.11 BNSF's obligations to close on the Fourth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fourth City

Closing:

8.11.1 The Third City Closing has taken place;

8.11.2 City and Amtrak have entered into the Station Lease;

8.11.3 The Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same;

8.11.4 Amtrak has ceased intercity rail passenger operations at the Existing Station;

8.11.5 Amtrak has commenced full intercity rail passenger operations at the Replacement Station;

8.11.6 Passenger Track No. 2 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.11.7 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods."

(b) Section 9.2.2 of the Exchange Agreement is hereby deleted and replaced with the following:

"9.2.2 With respect to the Fourth City Closing, BNSF's receipt of reasonable documentation showing that: (i) City and Amtrak have entered into the Station Lease, (ii) the Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same, (iii) Amtrak has ceased intercity rail passenger operations at the Existing Station and (iv) Amtrak has commenced full intercity rail passenger operations at the Replacement Station."

(c) Section 9.5.3 of the Exchange Agreement is hereby deleted and replaced with the following:

"9.5.3 A bill of sale quitclaiming to City the excavated fill described in **Section 11.2.4** below, the cost of which is included in the Cash Payment."

(d) The following provision is hereby added as new Section 9.5.9 to the Exchange Agreement:

"9.5.9 With respect to the Fourth City Closing, BNSF's receipt of reasonable documentation showing that: (i) City and Amtrak have entered into the Station Lease, (ii) the Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same, (iii) Amtrak has ceased intercity rail passenger operations at the Existing Station and (iv) Amtrak has commenced full intercity rail passenger operations at the Replacement Station."

Article IV. **Excavated Fill.** As the parties acknowledge that excavated fill, if any, may be quitclaimed from BNSF to JPA from time to time, rather than at the First Closing as set forth in Section 11.2.4 of the Exchange Agreement, the next-to-last sentence of Section 11.2.4 is hereby modified to read as follows:

" City further acknowledges that BNSF plans to excavate materials from Exchange Properties and to quitclaim such fill materials to City by quitclaim bill of sale."

Article V. **Property Conveyance at First Closing**. In connection with its proposed activities on the Replacement City Property, JPA has requested that a portion of the Replacement City Property shown on **Exhibit J-5** that was to be quitclaimed to JPA at the Fifth City Closing (the "**J-5 Parcel**") be instead quitclaimed to JPA at the First Closing, and BNSF is agreeable to such quitclaim. **Exhibits J, J-1** and **J-5** attached to the Exchange Agreement are hereby deleted and replaced with revised **Exhibits J, J-1** and **J-5**

attached hereto and incorporated herein by reference.

Article VI. **No Waiver.** JPA expressly acknowledges and agrees that BNSF's agreement to enter into this First Amendment shall not be deemed to waive any of BNSF's rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and/or any or all other agreements entered into by the Parties in connection with the West Haymarket Project (collectively, the "**West Haymarket Project Agreements**"). BNSF expressly reserves all of its rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and all other West Haymarket Project Agreements, and BNSF's execution of this Second Amendment is not to be construed as a waiver of any such rights.

Article VII. **Ratification.** Except as expressly modified by this First Amendment, all of the terms and provisions of the Exchange Agreement are hereby reaffirmed and remain in full force and effect. As of the Effective Date, this First Amendment shall constitute a part of the Exchange Agreement. All capitalized terms in this First Amendment shall have the same meaning as given in the Exchange Agreement unless otherwise specifically defined herein. In the event there is a conflict between the terms and provisions of the Exchange Agreement and the terms and provisions of this First Amendment, the terms and provisions of this First Amendment shall control.

Article VIII. **Miscellaneous.** This First Amendment (i) shall be binding upon and inure to the benefit of BNSF and JPA and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this First Amendment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes. The parties acknowledge and agree the use of the term "City" in replacement language for the Exchange Agreement shall be deemed to include JPA and its legal representatives, successors and assigns.

[Signature page follows]

IN WITNESS WHEREOF, BNSF and JPA have executed this First Amendment to the Exchange Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date.

BNSF:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

JPA:

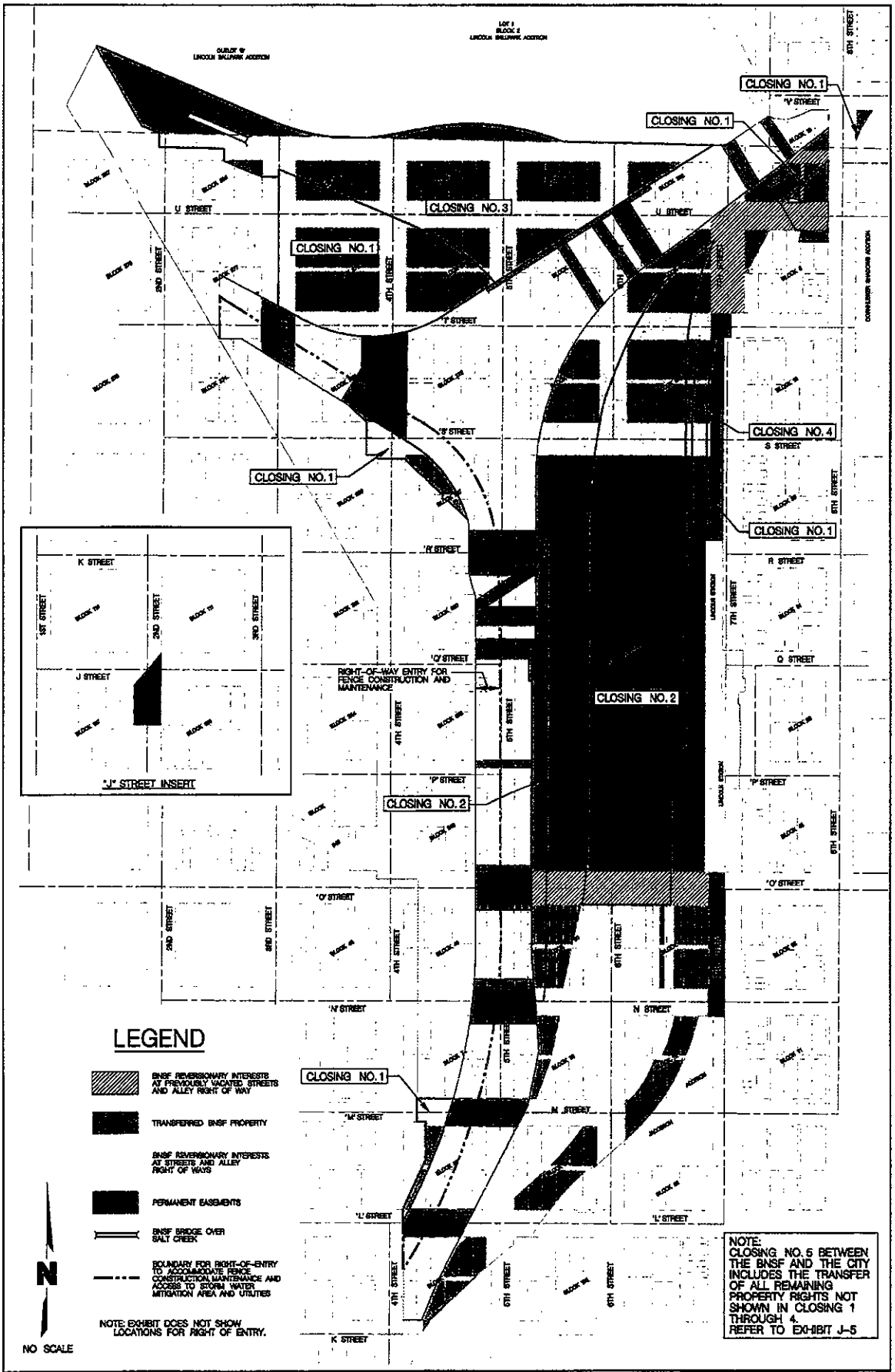
West Haymarket Joint Public Agency, a Nebraska joint public agency

By: _____

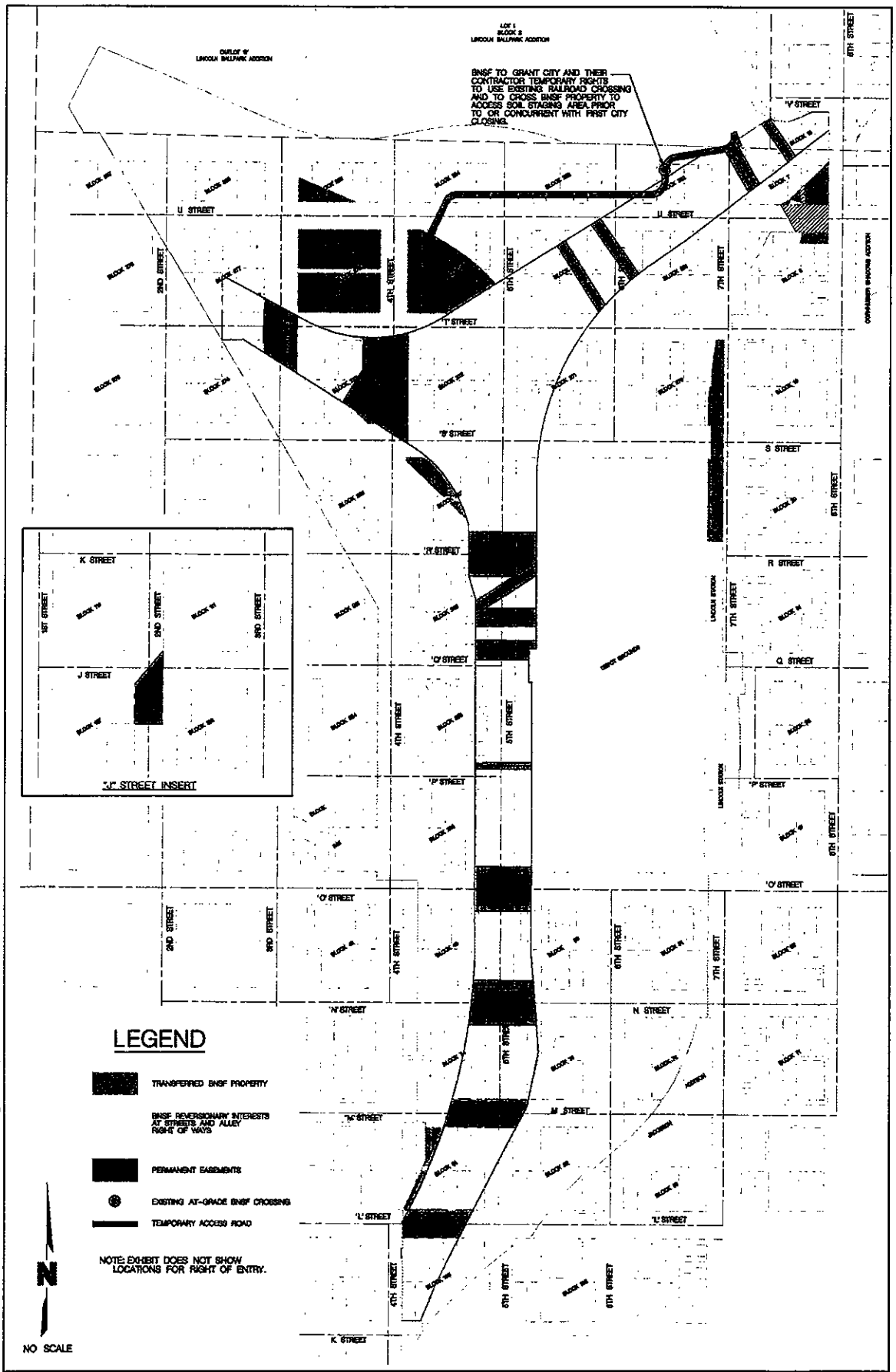
Name: Jayne Snyder

Title: Chair

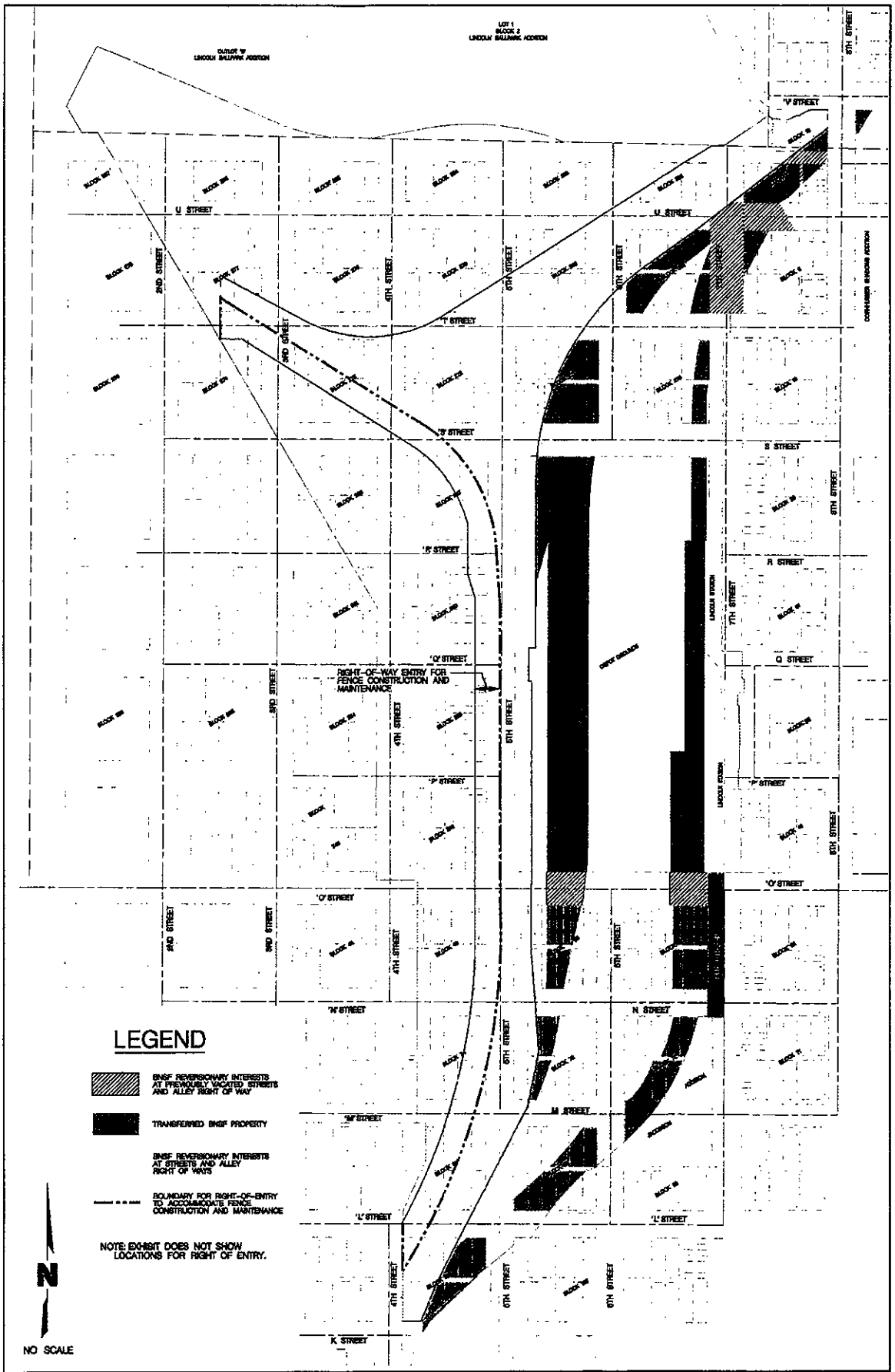
Date: 1/28/2011



PROJECT NO: 008-0645	REPLACEMENT CITY PROPERTY CITY CLOSINGS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J
DATE: 1/24/2011			



PROJECT NO: 008-0645	FIRST CITY CLOSING FOR SOIL STAGING AREA AND PERMANENT UTILITY EASEMENTS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68508-4608 TEL 402.474.6311 FAX 402.474.5160	J-1
DATE: 1/24/2011			



PROJECT NO: 008-0845	FIFTH CITY CLOSING FOR REMAINING BNSF PROPERTY RIGHTS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J-5
DATE: 1/24/2011			

DATE: 1/24/2011
DWG: P:\PROJECTS\008-0845_TRAIN-Bee\BNSF\Railroad Agreement\BNSF\BNSF_Exhibit\CAD\BNSF_EXHIBIT-5 Display.dgn

SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT ("**Second Amendment**") is dated to be effective the 28th day of January, 2011 (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq.* ("**JPA**").

RECITALS

A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, and in support of the plans of the City (defined below) and JPA to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**"), BNSF and the City of Lincoln, Nebraska, a Nebraska municipal corporation ("**City**") entered into, among other agreements, that certain: (i) Master Development Agreement dated October 18, 2010 (as amended by that certain First Omnibus Amendment to Master Development Agreement and Construction Agreement dated December 29, 2010 [the "**First Amendment**"] and otherwise from time to time, the "**Master Agreement**"), (ii) Exchange Agreement dated October 18, 2010 (as amended from time to time, the "**Exchange Agreement**") and (iii) Construction and Maintenance Agreement dated October 18, 2010 (as amended by the First Amendment, the "**C&M Agreement**").

B. Pursuant to the provisions of that certain Consent to Assignment and Assumption Agreement dated October 19, 2010, BNSF consented to City's assignment and transfer of its right, title and interest in and to the Master Agreement to JPA. For purposes of this Second Amendment, the use of the term "City" in replacement language for the Master Agreement is used for consistency's sake with the wording of the Master Agreement and shall be deemed to include JPA and its legal representatives, successors and assigns.

C. BNSF and JPA desire to amend the Master Agreement to: (i) acknowledge that the Station Lease will not be executed by Amtrak and the JPA in time for the First Closing under the Exchange Agreement and (ii) modify the timing and circumstances related to the satisfaction of certain other contingencies under the Master Agreement, all as set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I. **Amtrak.**

A. The Parties acknowledge and agree that JPA and Amtrak have proceeded directly to negotiate the terms of the Station Lease for the Replacement Station to be entered into at a later date as provided for in the Sublease between Amtrak and the JPA ("Amtrak Agreement") (as both terms are defined in the Exchange Agreement) concerning the City Amtrak Work and the Replacement Station. BNSF and JPA hereby agree to waive all requirements in the Master Agreement (including but not limited to the requirements in Sections 7.1, 7.4, 22.1.5 and 22.2.4) that JPA and Amtrak enter into the Station Lease as part of the Amtrak Agreement; provided, however, that such waiver is made with the understanding that, prior to the Fourth City Closing, JPA will provide documentation reasonably satisfactory to BNSF that: (i) JPA and Amtrak have entered into the Station Lease, (ii) the Replacement Station has been fully constructed in accordance with the Amtrak Final Design and Amtrak has accepted same, (iii) Amtrak has ceased intercity rail passenger operations at the Existing Station and (iv) Amtrak has commenced full intercity rail passenger operations at the Replacement Station, and BNSF's receipt of all such documentation described in (i), (ii), (iii), and (iv) shall be conditions precedent to BNSF's obligation to proceed to the Fourth City Closing. JPA expressly acknowledges and assumes the risk of any delays and increased costs and expenses that may arise in connection with the JPA's failure to satisfy such conditions precedent.

B. In addition to the provisions of the Master Agreement concerning the design and construction of the Replacement Station, including but not limited to the provisions of Section 7 thereof, the Parties agree that the Replacement Station shall be designed such that only Amtrak passengers and authorized Amtrak and BNSF personnel will have access to the station platform of the Replacement Station. The Parties agree to work with Amtrak to revise the Amtrak Final Design accordingly. In addition to Amtrak's review and approval rights, BNSF shall also have the right to review and approve the Amtrak Final Design with respect to the required restriction on access to the station platform and other aspects of the Amtrak Final Design related to rail operations, including but not limited to: (i) establishing adequate clearances and elevation and offsets from track, (ii) confirming that foundations will not infringe upon track integrity and (iii) verifying accessibility to the track for maintenance purposes.

Article II. **Timeline.** Pursuant to the Timeline attached as **Exhibit Q** to the Master Agreement, the First Closing was scheduled to occur on October 22, 2010. Given that the First Closing has been delayed to January 31, 2011, the Parties will update the Timeline and substitute a revised **Exhibit Q** within a reasonable time after the First Closing; provided that the Parties also agree that the Timeline may need further revisions from time to time based on changes in project sequencing and other factors identified and mutually agreed to by the Parties.

Article III. **Delays to Closing Schedules.** In the event Closings are delayed for any reason, whether as a result of weather, delays in property acquisition, or otherwise, JPA will take reasonable steps, as directed by BNSF in BNSF's reasonable discretion, to protect job sites and ensure that there is no interference with BNSF's operations.

Article IV. **Property Conveyance at First Closing**. In connection with its proposed activities on the Replacement City Property, JPA has requested that a portion of the Replacement City Property that was to be quitclaimed to JPA at the Fifth City Closing (the "**J-5 Parcel**") be instead quitclaimed to JPA at the First Closing, and BNSF is agreeable to such quitclaim. **Exhibits J** and **J-1** attached to the Master Agreement are hereby deleted and replaced with revised **Exhibits J** and **J-1** attached hereto and incorporated herein by reference.

Article V. **Joint Facilities Agreement.** JPA acknowledges that UP and BNSF have not yet executed the JFA discussed in Section 16 of the Master Agreement. JPA has requested that BNSF waive execution of the JFA as a condition to the First Closing, and BNSF has agreed to such waiver; provided, however, that such waiver is made with the understanding that full execution of the JFA shall be a condition precedent to BNSF's obligation to proceed to the Third City Closing.

Article VI. **No Waiver.** JPA expressly acknowledges and agrees that BNSF's agreement to enter into this Second Amendment shall not be deemed to waive any of BNSF's rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and/or any or all other agreements entered into by the Parties in connection with the West Haymarket Project (collectively, the "**West Haymarket Project Agreements**"). BNSF expressly reserves all of its rights under the Master Agreement, the Exchange Agreement, the C&M Agreement and all other West Haymarket Project Agreements, and BNSF's execution of this Second Amendment is not to be construed as a waiver of any such rights.

Article VII. **Ratification.** Except as expressly modified by this Second Amendment, all of the terms and provisions of the Master Agreement are hereby reaffirmed and remain in full force and effect. As of the Effective Date, this Second Amendment shall constitute a part of the Master Agreement. All capitalized terms in this Second Amendment shall have the same meaning as given in the Master Agreement unless otherwise specifically defined herein. In the event there is a conflict between the terms and provisions of the Master Agreement, the First Amendment and the terms and provisions of this Second Amendment, the terms and provisions of this Second Amendment shall control.

Article VIII. **Miscellaneous.** This Second Amendment (i) shall be binding upon and inure to the benefit of BNSF and JPA and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts,

each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Second Amendment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes. The parties acknowledge and agree the use of the term "City" in replacement language for the Master Agreement shall be deemed to include JPA and its legal representatives, successors and assigns.

[Signature page follows]

IN WITNESS WHEREOF, BNSF and JPA have executed this Second Amendment to the Master Agreement as of the date below each party's signature; to be effective, however, as of the Effective Date.

BNSF:

BNSF Railway Company, a Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

JPA:

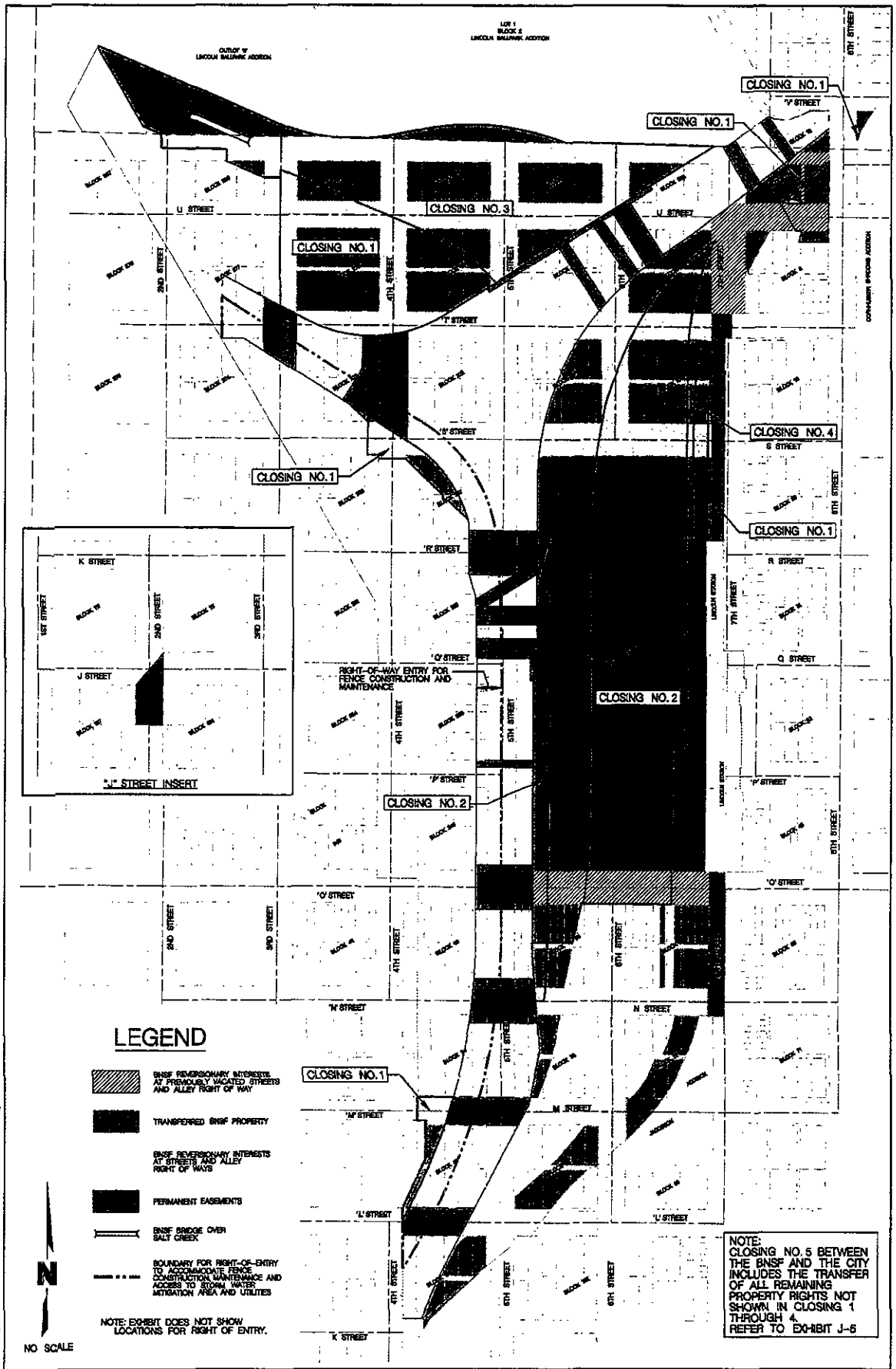
West Haymarket Joint Public Agency, a Nebraska joint public agency

By: _____

Name: Jayne Snyder

Title: Chair

Date: 1/28/2011



PROJECT NO: 008-0645	REPLACEMENT CITY PROPERTY CITY CLOSINGS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J
DATE: 1/24/2011			

BNSF TO GRANT CITY AND THEIR CONTRACTOR TEMPORARY RIGHTS TO USE EXISTING RAILROAD CROSSING AND TO CROSS BNSF PROPERTY TO ACCESS SOIL STAGING AREA PRIOR TO OR CONCURRENT WITH FIRST CITY CLOSING.

"J" STREET INSERT

LEGEND

- TRANSFERRED BNSF PROPERTY
- BNSF REVERSIONARY INTERESTS AT STREETS AND ALLEY RIGHT OF WAYS
- PERMANENT EASEMENTS
- EXISTING AT-GRADE BNSF CROSSING
- TEMPORARY ACCESS ROAD

NOTE: EXHIBIT DOES NOT SHOW LOCATIONS FOR RIGHT OF ENTRY.

N

NO SCALE

PROJECT NO: 008-0645	FIRST CITY CLOSING FOR SOIL STAGING AREA AND PERMANENT UTILITY EASEMENTS	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	J-1
DATE: 1/24/2011			

Advertise 1 time
Wednesday, November 2, 2011

City of Lincoln/Lancaster County
Purchasing Division
NOTICE TO BIDDERS

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Tuesday, November 22, 2011** for providing the following:

West Haymarket JPA
Amtrak Station and Canopy
Bid No. 11-246

A Pre-bid meeting will be held Thursday, November 10, 2011 at 1:30 p.m., at the Purchasing Division, City of Lincoln, 440 S. 8th St., Ste. 200, Lincoln, NE. All interested Vendors are strongly encouraged to attend.

Bidders must be registered on the City/County's E-Bid site in order to respond to the above Bid. To Register go to: lincoln.ne.gov (type: e-bid - in search box, then click "Supplier Registration")

Upon e-mail notification of registration approval, you may go to the E-Bid site to respond to this bid. Questions concerning this bid process may be directed to City/County Purchasing at (402) 441-8314 or (402) 441-7410 or *vmejer@lincoln.ne.gov*

INSTRUCTIONS TO BIDDERS
WEST HAYMARKET JOINT PUBLIC AGENCY
E-Bid

1. BIDDING PROCEDURE

1.1 Sealed bid, formal and informal, subject to Instructions and General Conditions and any special conditions set forth herein, will be received in the office of the Purchasing Division, 440 So. 8th St., Lincoln, NE 68508, until the bid closing date and time indicated for furnishing the West Haymarket Joint Public Agency, hereinafter referred to as "JPA", the materials, supplies, equipment or services shown in the electronic bid request.

1.2 Bidders shall use the electronic bid system for submitting bids and must complete all required fields.

1.3 Identify the item you will furnish by brand or manufacturer's name and catalog numbers. Also furnish specifications and descriptive literature if not bidding the specific manufacturer or model as listed in the specifications.

1.4 Any person submitting a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.

1.5 Bids received after the time and date established for receiving bids will be rejected.

1.6 The Bidders and public are invited, but not required, to attend the formal opening of bids. At the opening, prices will be displayed electronically and/or read aloud to the public. The pricing is also available for immediate viewing on-line. No decisions related to an award of a contract or purchase order will be made at the opening.

1.7 If bidding on a construction contract, the City's Standard Specifications for Municipal Construction 2006 shall apply.

1.7.1 Bidders may obtain this document from the City's Design Engineering Division of the Public Works & Utilities Department for a small fee.

1.7.2 Said document can be reviewed at Design Engineering or at the office of the Purchasing Division.

1.7.3 Said document is available on the web site.
http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspec/index.htm

2. BID SECURITY

2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bid bond, may be required to be submitted with this bidding document, as indicated on the bid.

2.1.1 Bid security, if required, shall be in the amount specified on the bid. The bid security must be scanned and attached to the "Response Attachments" section of your response or it can be faxed to the Purchasing Division at 402-441-6513. The original bid security should then be sent or delivered to the office of the Purchasing Division, 440 S. 8th St., Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing.

2.1.2 If bid security is not received in the office of the Purchasing Division as stated above, the vendor may be determined to be non-responsive.

2.2 If alternates are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.

2.3 Such bid security will be returned to the unsuccessful Bidders when the award of bid is made.

2.4 Bid security will be returned to the successful Bidder(s) as follows:

2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by JPA.

2.4.2 For all other contracts: upon approval by JPA of the executed contract and bonds.

2.5 JPA shall have the right to retain the bid security of Bidders to whom an award is being considered until either:

2.5.1 A contract has been executed and bonds have been furnished.

2.5.2 The specified time has elapsed so that the bids may be withdrawn.

2.5.3 All bids have been rejected.

2.6 Bid security will be forfeited to JPA as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this bidding document:

2.6.1 If the Bidder fails or refuses to enter into a contract on forms provided JPA, and/or if the Bidder fails to provide sufficient bonds or insurance within the time period as established in this bidding document.

3. BIDDER'S REPRESENTATION

3.1 Each Bidder by electronic signature and submitting a bid, represents that the Bidder has read and understands the bidding documents, and the bid has been made in accordance therewith.

3.2 Each Bidder for services further represents that the Bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bidding documents.

4. CLARIFICATION OF BIDDING DOCUMENTS

4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the bidding documents.

4.2 Bidders desiring clarification or interpretation of the bidding documents for formal bids shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of formal bids.

4.3 Changes made to the bidding documents will be issued electronically. All vendors registered for that bid will be notified of the addendum. Subsequent Bidders will only receive the bid with the addendum included.

4.4 Oral interpretations or changes to the bidding documents made in any manner other than written form will not be binding on JPA; and Bidders shall not rely upon such interpretations or changes.

5. ADDENDA

5.1 Addenda are instruments issued by JPA prior to the date for receipt of bids which modify or interpret the bidding document by addition, deletion, clarification or correction.

5.2 Addenda notification will be made available to all registered vendors immediately via e-mail for inspection on-line.

5.3 No formal addendums will be issued later than forty-eight (48) hours prior to the date and time for receipt of formal bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.

6. INDEPENDENT PRICE DETERMINATION

6.1 By signing and submitting this bid, the Bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder prior to bid opening directly or indirectly to any other Bidder or to any competitor; no attempt has been made, or will be made, by the Bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. ANTI-LOBBYING PROVISION

7.1 During the period between the bid advertisement date and the contract award, Bidders, including their agents and representatives, shall not lobby or promote their bid with the Mayor, any member of the City Council, or JPA Board and staff except in the course of JPA sponsored inquiries, briefings, interviews, or presentations, unless requested by JPA.

8. BRAND NAMES

8.1 Wherever in the specifications or bid that brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.

8.2 It is the Bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of JPA that said item is equal to, or better than, the product specified.

8.3 Bids for alternate items shall be stated in the appropriate space on the e-bid form, or if the proposal form does not contain blanks for alternates, Bidder MUST attach to its bid document on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation.

8.4 The Bidder must indicate any variances by item number from the bidding document no matter how slight.

8.5 If variations are not stated in the bid, it will be assumed that the item being bid fully complies with JPA's bidding documents.

9. DEMONSTRATIONS/SAMPLES

9.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from JPA.

9.2 Such demonstration can be at the JPA delivery location or a surrounding community.

9.3 If items are small and malleable, the Bidder is proposing an alternate product, the Bidder shall supply a sample of the exact item. Samples will be returned at Bidder's expense after receipt by JPA of acceptable goods. The Bidder must indicate how samples are to be returned.

10. DELIVERY (Non-Construction)

10.1 Each Bidder shall state on the bid the date upon which it can make delivery of all equipment or merchandise.

10.2 JPA reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the bid.

10.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. to JPA at the location specified by JPA, with all transportation charges paid.

10.4 At the time of delivery, a designated JPA employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

11. WARRANTIES, GUARANTEES AND MAINTENANCE

11.1 Copies of the following documents, if requested, shall accompany the bid proposal for all items being bid:
- 11.1.1 Manufacturer's warranties and/or guarantees.
- 11.1.2 Bidder's maintenance policies and associated costs.

11.2 As a minimum requirement of JPA, the Bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to JPA. Replacement parts of defective components shall be shipped at no cost to JPA. Shipping costs for defective parts required to be returned to the Bidder shall be paid by the Bidder.

12. ACCEPTANCE OF MATERIAL

12.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.

12.2 Material delivered under this proposal shall remain the property of the Bidder until:
- 12.2.1 A physical inspection and actual usage of the material is made and found to be acceptable to JPA; and
- 12.2.2 Material is determined to be in full compliance with the bidding documents and accepted bid.

12.3 In the event the delivered material is found to be defective or does not conform to the bidding documents and accepted bid, JPA reserves the right to cancel the order upon written notice to the Bidder and return materials to the Bidder at Bidder's expense.

12.4 Awarded Bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of JPA, as required by the bidding documents or purchase orders.

12.5 Awarded Bidder's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

13. BID EVALUATION AND AWARD

13.1 The electronic signature shall be considered an offer on the part of the Bidder. Such offer shall be deemed accepted upon issuance by JPA of purchase orders, contract award notifications, or other contract documents appropriate to the work.

13.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each Bidder so agrees in submitting the bid.

13.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.

13.4 The bid will be awarded to the lowest responsible, responsive Bidder whose bid will be most advantageous to JPA, and as JPA deems will best serve the requirements and interests of JPA.

13.5 JPA reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of JPA.

13.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by JPA. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.

13.7 JPA reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the bid incomplete, indefinite or ambiguous.

13.8 Any governmental agency may piggyback on any contract entered into from this bid.

14. INDEMNIFICATION

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

14.2 In any and all claims against JPA or any of its members, officers or employees by an employee of the Bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Bidder or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

15. TERMS OF PAYMENT

15.1 Unless stated otherwise, JPA will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

16. LAWS

16.1 The laws of the State of Nebraska shall govern the rights, obligations, and remedies of the parties under this bid and any contract reached as a result of this process.

16.2 Bidder agrees to abide by all applicable local, state and federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

17. EQUIPMENT TAX ASSESSMENT

17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. Indicating; every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract. The certified statement shall state that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

18. AFFIRMATIVE ACTION

18.1 The City of Lincoln provides equal opportunity for all Bidders and encourages minority businesses, women's businesses and locally owned business enterprises to participate in our bidding process.

19. LIVING WAGE

19.1 The Bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

20. INSURANCE

20.1 All Bidders shall take special notice of the insurance provisions required for all JPA contracts (see *Insurance Requirements for All JPA Contracts*).

21. EXECUTION OF AGREEMENT

21.1 Depending on the type of service provided, one of the following methods will be employed. The method applicable to this contract will be checked below:

____ a. **PURCHASE ORDER**, unless otherwise noted.

1. A copy of the Bidder's bid response (or referenced bid number) attached and that the same, in all particulars, becomes the contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents.

__X__ b. **CONTRACT,** unless otherwise noted.

1. JPA will furnish copies of the Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance (as required), surety bonds properly executed (as required), and Contract signed and dated.
2. The prepared documents shall be returned to the Purchasing Office within 10 days (unless otherwise noted).
3. JPA will sign and date the Contract.
4. Upon approval and signature, the JPA will return one copy to the successful Bidder.

22. TAXES AND TAX EXEMPTION CERTIFICATE

22.1 JPA is generally exempt from any taxes imposed by the state or federal government. A Tax Exemption Certificate will be provided as applicable.

23. AUDIT ADVISORY BOARD

23.1 All parties of any JPA agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make Available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.

24. E-VERIFY

24.1 In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

SINCLAIR hille
architects

Addendum #1

Project Name:	West Haymarket Joint Public Agency Amtrak Station Building and Canopy Lincoln, NE
SHA Project No.:	11022
DDI Project No.:	11-0070
City Project No.:	11-246
Issued:	November 14, 2011

This Addendum is issued by the City of Lincoln Purchasing Department to all known bidders working on the preparation of proposals associated with the Bid Documents dated November 2, 2011. This Addendum is to authorize the use of the following information in preparing proposals for the above named project.

GENERAL CLARIFICATIONS and QUESTIONS

ADD 1-1. **ALL QUESTIONS OR REQUESTS FOR SUBSTITUTIONS FROM VENDORS MUST BE RECEIVED BY PURCHASING PRIOR TO 12:00pm on November 17, 2011** if they are to be addressed by Addendum. Items received after this date will NOT be addressed.

ADD 1-2. A copy of the attendees of the Pre-Bid meeting is attached at the end of this Addendum.

ADD 1-3. A full size set of drawings should measure 22 inches by 34 inches. A half size set of drawings should measure 11 inches by 17 inches.

ADD 1-4. Refer to Civil Series Drawings:

Question: The scales indicated in the lower left corners of the Civil drawings do not seem to match with the graphic scale that is provided in the upper right corner of the same drawings. Can you confirm if the drawings are to scale and if so, what scale?

Response: The scale shown in the lower left corner is the scale for a half size sheet. The graphic scale shown in the upper right corner is correct for a full size sheet.

QUESTIONS and CLARIFICATIONS DISCUSSED AT PRE-BID

ADD 1-5. At one time, early plans called for the re-installation of some of the "existing canopy" located behind the current Depot Building to the new Amtrak site. This will NOT occur. Bid drawings as shown.

ADD 1-6. Question was raised as to whether-or-not the platform and grading contractor was determined. This has not been resolved at this time but should be resolved prior to construction activities starting on the Building and Canopy contract.

ADD 1-7. Building and Canopy contractor will need to coordinate with the Platform and Grading contractor for scheduling installation of under slab electrical and plumbing located beneath the platform slab. Plumbing and electrical work under this slab will all be the responsibility of the Building and Canopy contractor.

ADD 1-8. Review the specifications for substitution requests and submit your requests promptly. We are open to substitutions however you need to submit them within the appropriate time frame and with the information defined in the specifications.

ADD 1-9. Discussed submitting for permits while bidding is occurring which would take the costs out of the contractor's bid. Unless stated otherwise in writing, contractor shall still assume that they are responsible for all costs associated with permits, including the Building Permit.

ADD 1-10. Clarification for Flagging expenses associated with BNSF: Refer to Section 000000-C – BNSF Railway Special Provisions – Supplementary Conditions: The purpose of this section is to "overwrite" information provided in Section 000000-B. The contractor bidding this project does NOT need to include any costs associated with flagging. Those are already paid for under a separate agreement.

ADD 1-11. From prior experience on other LHIT West Haymarket projects, contractors are encouraged to look into railroad insurance coverage from either their insurance carrier OR from the BNSF carrier in order to lock in on the best rates available.

ADD 1-12. BNSF requirements include the need to complete an E-rail safety course. All contractors will be required to complete this online course.

ADD 1-13. Access in and around the site will be very tight. Contractor shall note that in particular, the access through the site along the east side of the building will be tight if building construction activities are occurring at the same time as site grading activities. Coordination will be important.

ADD 1-14. As stated in the specifications, there are NO liquidated damages at this time and Davis Bacon rates apply. Contractor shall use the most current rates published.

ADD 1-15. No site fencing should be required under this contract. Fencing will be covered under the existing M&N Street contract or as part of the Platform and Grading contract. You will however be responsible for securing your work site as you see fit.

MODIFICATIONS TO THE SPECIFICATIONS

ADD 1-16. Refer to Section 093000 – Tiling, Article 2.2, paragraph A.5; Change the color and size of the CT-5 tile shown in lines d and e respectively as follows;

d. Color: MT220 Rice
e. Size: 2" x 8"

ADD 1-17. Refer to Section 105113 – Metal Lockers, Article 2.2, paragraph B; Change the text to read:

B. Locker Arrangement: Single tier – 18 inch wide x 24 inch deep x 72 inch tall.

ADD 1-18. Section 125213 – Seating: Attached to this Addendum is a brochure of the seating that shall be required for the Lobby area. This product is intended as a basis-of-design. Any substitutions requested shall be submitted as indicated in the specifications.

Basis-of-Design: Arconas Flyaway Seating. Provide a quantity of twenty (20) total "seats" for the Lobby in the following breakdown:

(3) Six seat combo, back to back units.
(1) Two seat bench.

MODIFICATIONS TO THE DRAWINGS

ADD 1-19. Refer to Sheet G001, modify the following Keynotes to read:

105113.A HEAVY-DUTY METAL LOCKER – 18x24x72

ARCHITECTURAL – PRIOR APPROVALS

ADD 1-20. The following manufacturers have received prior approval for bidding purposes subject to shop drawing review:

a.	042000 – Flexible Flashing	Henry Blueskin TWF
b.	042000 – Brick Color A	Kansas Brick & Tile "550 Dark Modular"
c.	042000 – Brick Color B	Kansas Brick & Tile "510 Mingle Modular"
d.	042000 – Brick Color B	Yankee Hill "Prairie Broom Velour"
e.	079200 – Joint Sealants	Pecora 890NST
f.	105113 – Metal Lockers	Republic Storage; All-Welded Lockers

ADD 1-21. The following manufacturers are NOT approved:

a.	042000 – Brick Color A	Yankee Hill "Peach Velour"
b.	042000 – Brick Color B	Yankee Hill "Beige Velour"

PLUMBING / HVAC – PRIOR APPROVALS

ADD 1-22. The following manufacturers have received prior approval for bidding purposes subject to shop drawing review:

a.	233423 – HVAC Power Ventilators	Twin City Fan Company

End of Addendum #1

Attachments:

- Pre-Bid Sign-in Sheet
- Arconas Flyaway public seating brochure

PRE-BID

AMTRAK BUILDING & CANOPY
11-10-11

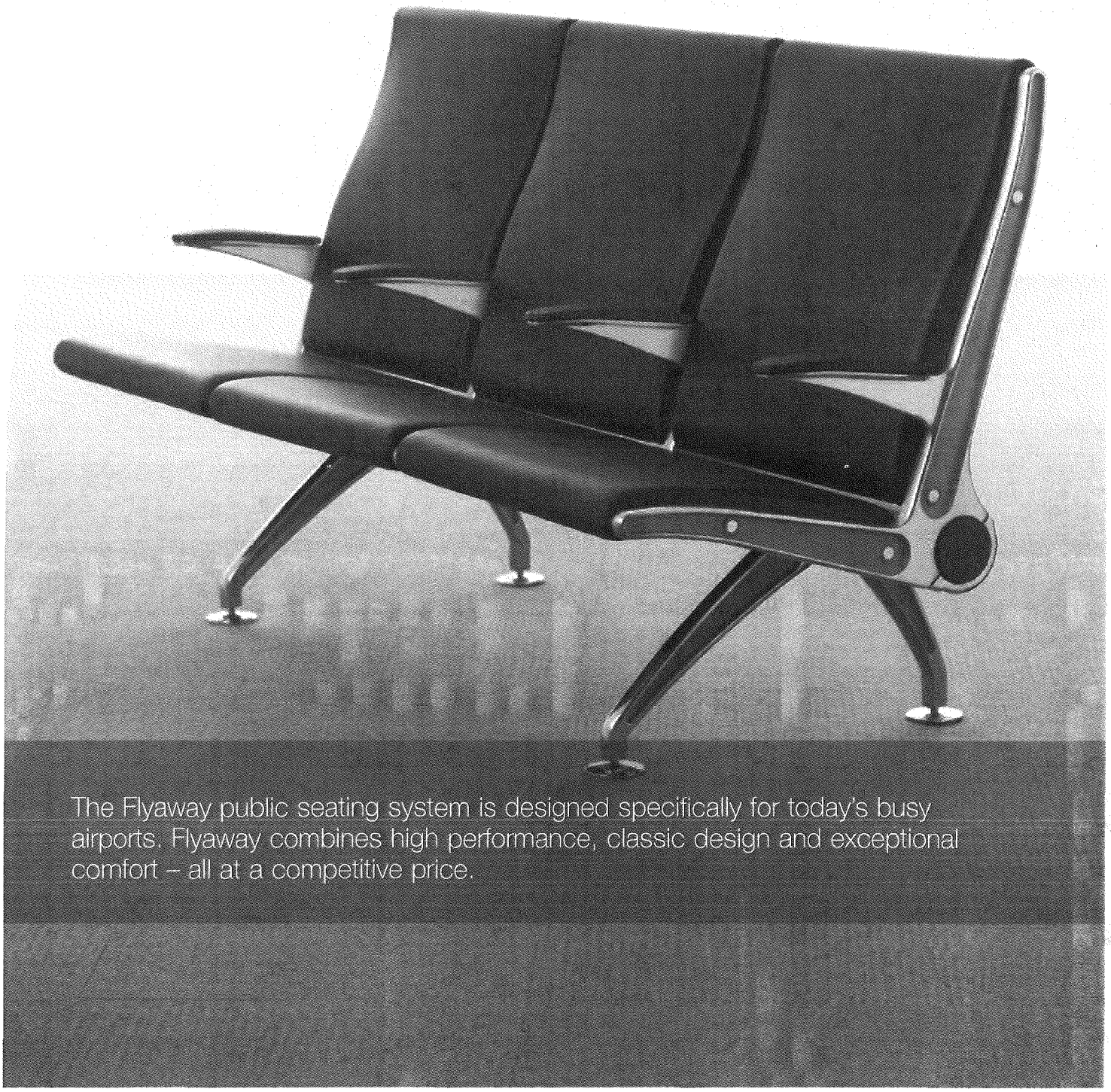
NAME	FIRM	EMAIL	PHONE
Vince Mejer	City	vmeyer@lincoln.ne.gov	402-441-8314
Don Hempel	Judds Bros.	dhempel@juddsbros.com	402-467-4666
Nick Hall	Judds Bros.	nhall@juddsbros.com	402-467-4666
Don Wanek	Aqua Plumbing & Heating LLC	aqua-plumbing@hotmail.com	(402)826-2101
Jon Carpenter	IES Electric Inc.	jon@ieselectricinc.com	(402) 890-4763
Tim Knickerbocker	Boyd Jones	Knickerbocker2383@yahoo.com	(402) 217-2367
George Schuler	Boyd Jones	gschuler@boydjones.biz	402-318-4794
Dan Withnell	Chevron Construction Company	dwithnell@chevronconstruction.com	402 477 6745
Stuart Johnson	Sampson Construction Company	stuart.johnson@sampson-construction.com	402-434-3934
DAVID QUADE	SINCLAIR HILLE	DQUADE@SINCLAIRHILLE.COM	402-476-7331
Randy Swanson	PC Sports	Randy@projectcontrol.com	402-477-0487
Rick Hart	Rogge G.C.	rrogge@roggeinc.com	402-470-1989
Bob Philippos	CECM	bphilippos@commonwealthelectric.com	402-474-1341
Matt Kibbon	Kiewit	mkibbons@hotmail.com	(402) 350-2895
PAUL RAHFELDT	KIEWIT	paul.rahfeldt@kiewit.com	402-977-5117
JAYMES KRAUCEK	HAUSMANN CNST	JAYMESK@HAUSMANNCONSTRUCTION.COM	402-326-7109
Josh Weekly	Chevron Const.	jweekly@chevronconstruction.com	402.477.6745
Eric Neff	NGC Group	eneff@ngcgroupinc.com	402-261-5489
Paul Scheel	HY-Electric	paschael@hy-electric.com	402-[illegible]
Jon Barck	Lund-Ross Constructors	jonb@lundross.com	402-342-2810
DUANE MUNOT	HAMPTON CONST.	DMUNOT@HAMPTON1.COM	402-489-8858
Mike Klockenga	Progressive Elect.	mike@progressiveelectric.net	402 466-4222
Brian Semerad	Kingery Const.	brians@kccobuilders.com	402-465-4400
Brad Jacobsen	A-J Roofing	brad@a-jroofing.com	402-476-7905

flyaway public seating

ARCONAS

Innovative Leader in Seating

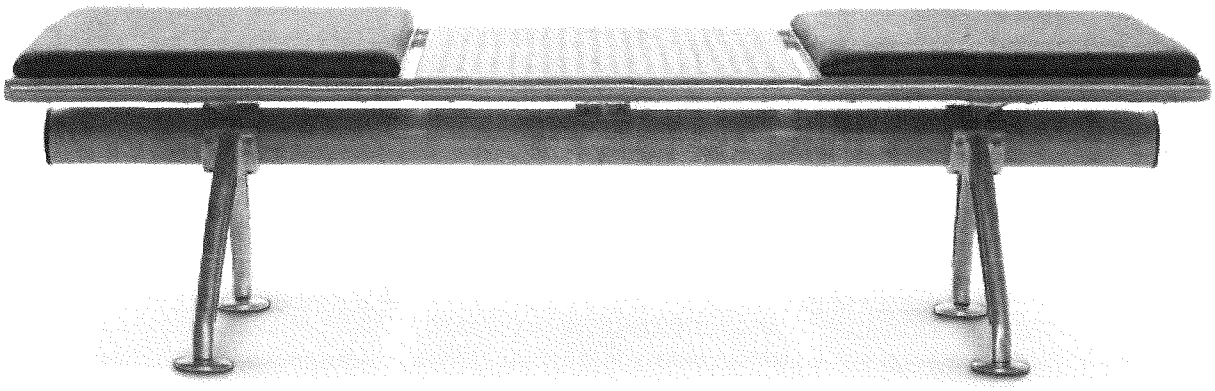
flyaway



The Flyaway public seating system is designed specifically for today's busy airports. Flyaway combines high performance, classic design and exceptional comfort – all at a competitive price.

End table

Intermediate table
Replaces an interior seat position.



Bench
Indoor and outdoor models are available. Stainless steel seat pan upgrade shown.

Safety and Security
Flyaway's open, under seat design improves waiting area sightlines for airport security personnel. The seating system exceeds ANSI-BIFMA standards, assuring passenger safety. Flyaway's solid structure resists tipping, while unit legs are positioned inboard to eliminate obstacles.

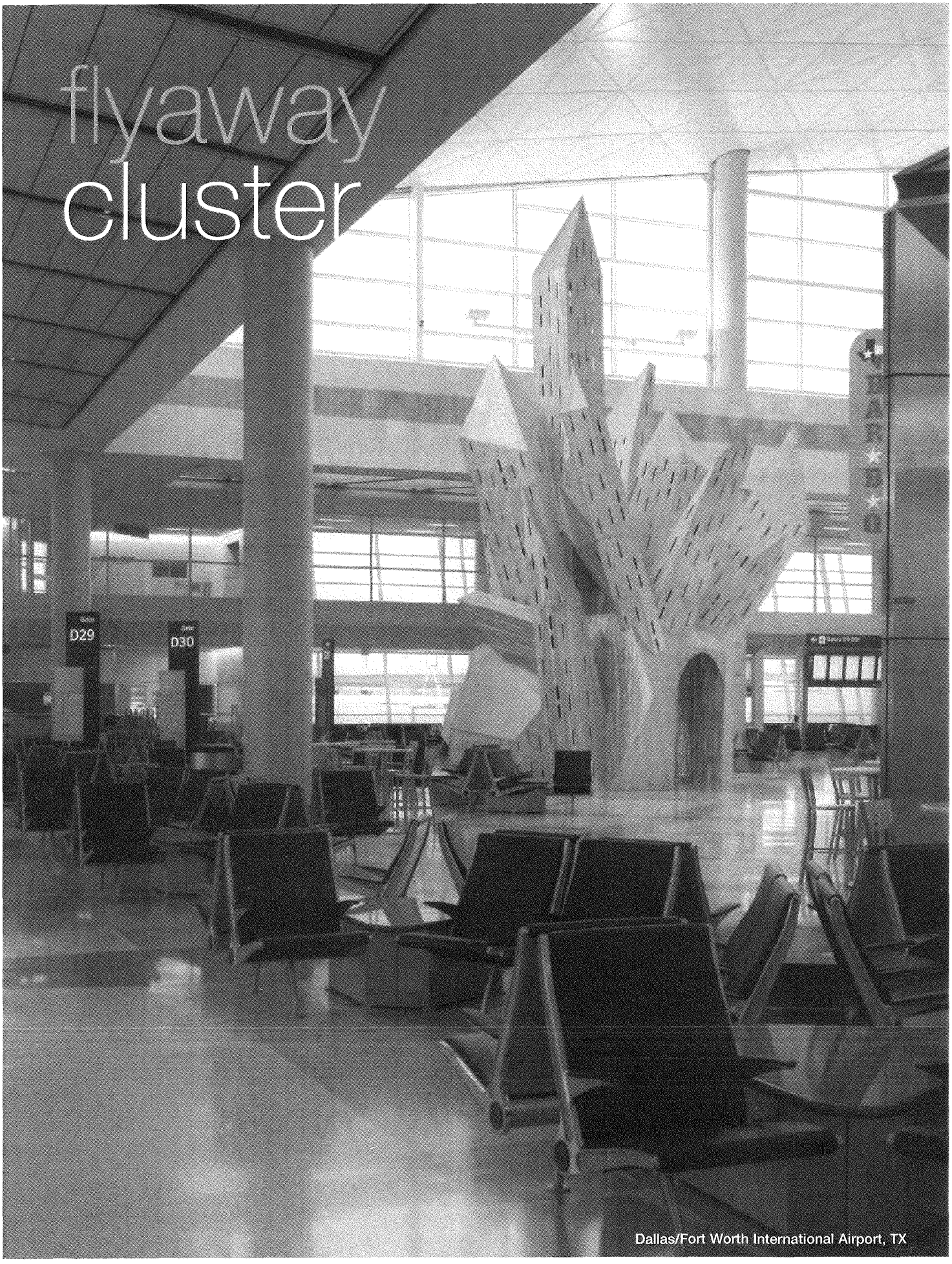
Installation and Configuration
Flyaway is designed for flexibility and ease of installation, including floor mounting. Many configurations are possible, including straight rows, corners and u-shapes in both single and back-to-back rows. Our locally trained installers ensure fast and continuous service.

Easy Maintenance
Floor cleaning becomes a simpler task due to Flyaway's minimal floor contact points. The low maintenance cushion design is nearly self-cleaning and can easily be reupholstered on-site. Flyaway's modular design and minimum number of parts ensures trouble-free maintenance over the unit's lifetime.

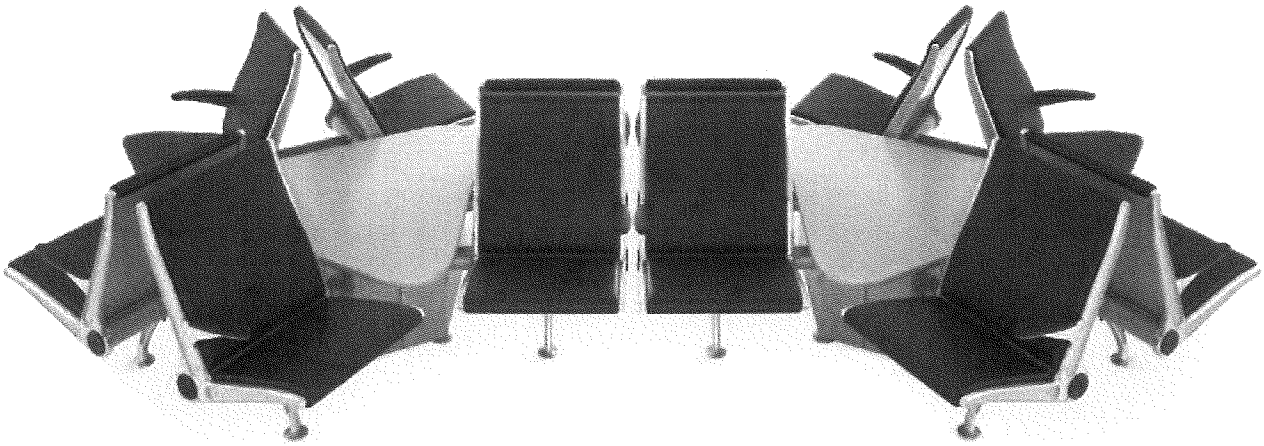
Clear sightlines

Logo embroidery

flyaway cluster



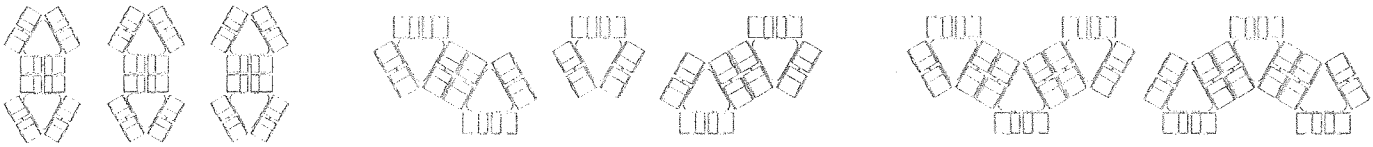
Dallas/Fort Worth International Airport, TX



Flyaway Cluster
Six seat Flyaway Cluster units create inviting waiting areas that offer increased personal space and table surface. Increased personal space results in higher seat utilization, while the large central table provides sufficient surface for all occupants to share.

Seating Layouts
Clusters can be ganged to form semi-circular seating arrangements suitable for families and small groups to gather. Combine Cluster units with linear Flyaway seating to create further interest.

Power Access
Optional power access creates a temporary workstation. Power outlets can be accessed from a seated position, just under the table's edge. Cords from portable electronic devices hang under the tabletop, out of the way. Logos can be embroidered on the seat backs to identify power access and Wi-Fi availability.



flyaway

designer douglas ball

The high performance Flyaway public seating system provides clean, graceful lines in a robust die-cast aluminum and steel structure, with an emphasis on user comfort for longer wait times.

seating units, tables & benches

construction
Supports, Legs and Arms
-- Die-cast aluminum
Seat and Back
-- Steel pans molded into CFC-free fire retardant HR urethane foam
Beam
-- Tubular steel
End Caps
-- Nylon
Arm Pad
-- Molded urethane pad
Tables
-- Laminate over wood core
-- Granite

glides
-- Adjustable

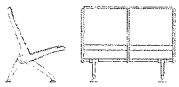
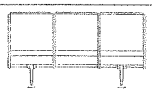
options
-- Arms
-- Floor mounting glides
-- Anti-slide glides
-- Custom embroidery on seat back
-- Power access on Cluster unit

finishes
Aluminum
-- Satin
-- Bright polished
Steel
-- Powder coat - Cloud silver
Arm Pad
-- Black
Tabletops
Laminate
-- Arconas standard laminates with vinyl edge
Granite
-- Black - Honed or Polished
-- Grey - Honed or Polished

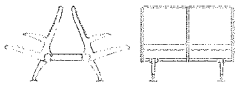
3 UNITS

1 UNIT

single units

FLY2S two seat unit	w 46" d 29.5" h 36.5" sh 17.5"	117 cm 75 cm 93 cm 44 cm	
FLY3S three seat unit	w 69" d 29.5" h 36.5" sh 17.5"	175 cm 75 cm 93 cm 44 cm	
FLY4S four seat unit	w 92" d 29.5" h 36.5" sh 17.5"	234 cm 75 cm 93 cm 44 cm	
FLY5S five seat unit	w 115" d 29.5" h 36.5" sh 17.5"	292 cm 75 cm 93 cm 44 cm	
FLYARM arm	w 2.75" d 11" ah 22.5"	7 cm 28 cm 57 cm	
FLYFREST footrest	w 20.75" d 21.75" h 18"	53 cm 55 cm 46 cm	

back to back units

FLY4D four seat unit (two per side)	w 46" d 61.5" h 36.5" sh 17.5"	117 cm 156 cm 93 cm 44 cm	
FLY6D six seat unit (three per side)	w 69"	175 cm	
FLY8D eight seat unit (four per side)	w 92"	234 cm	
FLY10D ten seat unit (five per side)	w 115"	292 cm	

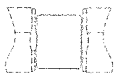
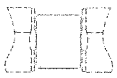
cluster unit

FLYCLUSTER cluster unit (six seats)	w 106" d 92" h 36.5" sh 17.5"	269 cm 234 cm 93 cm 44 cm	

benches

FLY2B two seat bench	w 45" d 26" h 18"	114 cm 66 cm 46 cm	
FLY3B three seat bench	w 68"	173 cm	
FLY4B four seat bench	w 91"	231 cm	
FLY5B five seat bench	w 114"	290 cm	

tables

FLYENDTAB end table	w 9" d 23" h 17.5"	23 cm 58 cm 44 cm	
FLYCORNTAB corner table	w 23" d 23" h 17.5"	58 cm 58 cm 44 cm	
FLYINTTAB intermediate table	w 21" d 23" h 17.5"	53 cm 58 cm 44 cm	
FLYCONNTAB connecting table	w 21" d 23" h 17.5"	53 cm 58 cm 44 cm	

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Addendum #2
For

West Haymarket Joint Public Agency Amtrack
Station Building and Canopy
Bid No. 11-246

Addenda are instruments issued by the City prior to the date for receipt of offers which will modify or interpret the specification document by addition, deletion, clarification or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

Be advised of the following changes and clarifications to the City's specification and bidding documents:

Disregard the Davis Bacon Act NE20080002, dated 10/29/2010 (Attachment No. 8 on the bid) and replace with the Davis Bacon Act NE20080005, dated 11/04/11 attached to this addendum.

All other terms and conditions shall remain unchanged.

Dated this 14th day of November, 2011.

Vince M. Mejer
Purchasing Agent

General Decision Number: NE100005 11/04/2011 NE5

Superseded General Decision Number: NE20080005

State: Nebraska

Construction Type: Building

County: Lancaster County in Nebraska.

BUILDING CONSTRUCTION PROECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/12/2010
1	03/19/2010
2	08/13/2010
3	10/29/2010
4	02/25/2011
5	09/09/2011
6	10/28/2011
7	11/04/2011

ASBE0039-002 06/27/2011

	Rates	Fringes
Insulator/asbestos worker Includes the application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems	$ 29.91	12.14

FOOTNOTE:
Work performed from a boatswain chair, staging, or scaffolding suspended from a permanent structure, more than thirty (30) feet above the floor or the ground: $1.00 per hour additional.

---

* ELEC0265-003 09/01/2011

	Rates	Fringes
ELECTRICIAN (includes low-voltage wiring for fire alarm systems, when installed in runways (including wire and cable pulling) when either the project involves new or major remodel construction, or the conductors for the fire alarm system are installed in conduit) (does not include the type of low-voltage work which is included in ELEC0265-004))		
Zone 1	$ 25.57	4.5%+8.75
Zone 2	$ 25.87	4.5%+8.75
Zone 3	$ 26.17	4.5%+8.75

Zone 4.....$ 26.57 4.5%+8.75

ZONE DEFINITIONS:

Zone 1: 0 to 35 miles from the main Post Office in Lincoln, NE

Zone 2: 36 to 50 miles from the main Post Office in Lincoln, NE

Zone 3: 51 to 75 miles from the main Post Office in Lincoln, NE

Zone 4: 76 miles and over from the main Post Office in Lincoln, NE

FOOTNOTE:
Work on scaffolds, hanging scaffolds, boatswains chairs or ladders, etc., in any area where the worker is in a position to fall 40 ft. or more, or where objects above the worker can fall 40 ft. or more: to be paid one and one-half times the straight-time rate of pay.

ELEC0265-004 12/01/2009

	Rates	Fringes
ELECTRICIAN (includes low-voltage wiring for computers and HVAC controls)		
Installer/technician.....	$ 21.00	4.0% + 7.67

Also includes Music, Intercom, Telephone, Burglar Alarm, Video

---

ELEV0028-001 01/01/2011

	Rates	Fringes
ELEVATOR MECHANIC.....	$ 37.71	21.985+a+b

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

IRON0021-005 06/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL (does not include metal building erection).....	$ 27.20	10.37

SHEE0003-007 07/01/2010

	Rates	Fringes
Sheet metal worker (includes HVAC duct work, and setting the unit; does not include HVAC piping, or metal building erection).....	$ 26.17	12.52

SUNE2000-002 03/30/2000

	Rates	Fringes
BRICKLAYER	$ 18.20	4.60
Carpenter - drywall hanging	$ 14.50	1.22
CARPENTER (includes cabinets, partitions, soft-floors and steel framing; does not include acoustical ceilings, batt and blown insulation, drywall finishing and/or E.I.F.S. (exterior insulation finish systems), drywall hanging, form work, and overhead doors)	$ 12.37	1.05
CEMENT MASON/CONCRETE FINISHER (includes form work and rebar)	$ 10.38	
DRYWALL FINISHER/TAPER (does not include E.I.F.S. (exterior isulation finish systems))	$ 14.42	.53
EXTERMINATOR	$ 13.99	4.00
GLAZIER	$ 16.00	2.57
HVAC MECHANIC (HVAC piping only)	$ 13.63	2.79
LABORER	$ 9.26	
METAL BUILDING ERECTOR	$ 10.60	
PAINTER (does not include drywall finishing and/or E.I.F.S. (exterior insulation finish systems); or striping))	$ 11.01	
PLUMBER (does not include HVAC piping, or setting the HVAC unit)	$ 15.46	1.53
Power equipment operators:		
Backhoe operator	$ 13.67	1.94
ROOFER, Including Built Up, Composition and Single Ply Roofs	$ 11.89	.60
SPRINKLER FITTER (FIRE)	$ 18.52	2.84
TILE SETTER	$ 14.70	

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

==========

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

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

Administrative Review Board

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

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

==========

END OF GENERAL DECISION

SINCLAIR hille architects

Addendum #3

Project Name:	West Haymarket Joint Public Agency Amtrak Station Building and Canopy Lincoln, NE
SHA Project No.:	11022
DDI Project No.:	11-0070
City Project No.:	11-246
Issued:	November 18, 2011

This Addendum is issued by the City of Lincoln Purchasing Department to all known bidders working on the preparation of proposals associated with the Bid Documents dated November 2, 2011. This Addendum is to authorize the use of the following information in preparing proposals for the above named project.

GENERAL CLARIFICATIONS and QUESTIONS

ADD 3-1. A question was raised as to whether-or-not the building will be located in the Flood Plain. The building will NOT be located in the flood plain. Work associated with the West Haymarket Development is placing the finished floor elevation of the Amtrak facility above the 100 year flood plain elevation.

ADD 3-2. Addendum No. 2 was issued to provide the appropriate Davis Bacon wage rates. The contractor shall note that the rates provided are for Building Construction, NOT Heavy Highway.

ADD 3-3. Refer to Section 000000-B – BNSF Railway Special Provisions:

Question: I am requesting clarification on the requirements for Railroad Protective Liability Insurance for the West Haymarket Amtrak Station project in Lincoln, NE. Will only the General Contractor be required to purchase Railroad Protective Liability Insurance or will subcontractors also be required to purchase said insurance? Is there a level of onsite work (1 or 2 man hours, 1 or 2 man days) that will not require the purchase of Railroad Protective Liability Insurance?

Response: Based on input from City Legal, only the General Contractors will have to carry the insurance. Sub-contractors will be covered under the General Contractor.

ADD 3-4. Refer to Specification Section 097225 – Graphic Wall Coverings:

Question: Do you know if the Owner is going to supply the graphics, wall film or if I need to provide the materials?

Response: The contractor will be required to provide any license necessary for use of graphic wall covering images. Clarifications have been made to this specification section as part of this Addendum to provide better

clarification on who might actually install and provide such images. In general, work under this section is anticipated to be provided and installed by Look Architectural Coatings or a similar fabricator/installer.

ADD 3-5. Refer to Civil Series Drawings:

Question: On Sheet C001 in paragraph 3 of the general notes it states, "THE CONTRACTOR SHALL COORDINATE THE CONSTRUCTION OF UTILITIES BY OTHERS, SUCH AS GAS MAINS, WATER MAINS AND ANY OTHER UTILITY." On the outside of the building to what extent do we connect to those utilities on Sheets C005 and C006? For example, on Sheet C005, note 3 states, "CONSTRUCT 330 LF OF 12" H.D.P.E STORM DRAINAGE PIPE AT 1.27% SLOPE." Example two, on Sheet C006 note 2 states, 'CONSTRUCT 130 LF OF 12" HDPE STORM DRAIN PIPE".

Response: Coordination will be required with contractors that are constructing utilities not included in this project. For example, the contractor will need to coordinate with Black Hills Energy's construction of the gas service line to the building. The storm drain shown on Sheet C005 and C006 is included in this project and is not by others.

ADD 3-6. Refer to Civil Series Drawings:

Statement: A call was received questioning the extent of grading work required under the Building and Canopy package. The following response will hopefully clarify the scope.

Response: The pad for the Amtrak Building has been graded by others to the approximate elevation needed for the construction of the building. Final grading of topsoil will be required around the building and should be graded to the contours shown on the **Grading Clarification Exhibit** included with this addendum.

ADD 3-7. Refer to Sheet A001:

Question: There is a gated emergency exit indicated on the exterior, north and south ends of the building. Are we supposed to include these gates? If so, please provide details.

Response: No. Gates shall be provided by the contractor responsible for the fencing, which is not associated with this particular project. You will be responsible for providing the appropriate hardware as is scheduled.

ADD 3-8. Refer to G1/A200, Entry Tower:

Question: Could you provide a little more clarification on the extent of glass at the entry tower?

Response: There should be (3) panels of glass on the east (as shown in the elevation). There are also (3) additional panels in the same configuration as the east panels located on both the north and south side of the tower. There will be (1) panel on the west and (2) panels on the top side of the tower. Details A10, H13 and E13 on A401 should clarify how the panels relate to one another and A1/A300 should show relationship of glass panels to the surrounding masonry conditions. The glass panels are attached back to the steel structure with swivel spider fittings (088000.F)

as indicated. These fittings and connections are to be detailed and designed by the glazing supplier.

ADD 3-9. Refer to Sheet A201, Detail A4:

Question: Please clarify whether the precast detectable warning pavers are part of the Platform Contract or the Building Contract.

Response: Warning pavers are part of the Platform Contract.

ADD 3-10. Refer to Sheet A400, Details A4 and A13:

Question: Anchor bolts are indicated for the metal track. Keynote 033000.I says we are to refer to structural. We don't see anything regarding these bolts on structural. Please clarify.

Response: Refer to Detail 2/S505 for requirements associated with connections anchoring stud wall assemblies to perimeter CMU.

ADD 3-11. Refer to Sheet A500, Details G4 and K7:

Question: On the left side of K7 at the niche to Data 106, it doesn't appear you are showing any tile at the wall base, is that correct? Also within the Vestibule 103A, where does the tile base go? The perspective shown on G4 indicates that the glass goes to the ground.

Response: Tile wall base should be shown within the niche mentioned on Detail K7. Tile in the Vestibule would be placed on the GWB wall surfaces only.

ADD 3-12. Refer to A10/A500, keynote 101400.B2; The specification indicate a cut aluminum sign panel mounted over a graphic wall covering but do not specify the actual size of the sign. Contractor should plan to install the graphic wall covering across the entire width of the space, from elevation 107'-4" to elevation 109'-0". The cut-out aluminum sign will approximately occupy the width of alcove over door 112a.

ADD 3-13. Refer to Structural Series Drawings:

Statement: It is unclear as to what size the wide flange beams are shown in sections along gridlines 2 and 4.

Response: Refer to Sheet S-102. There are three (3) beams on grid line 2 and grid line 4. The beams span from Grid A to Grid B, Grid B to Grid D and Grid D to Grid E. All beams shall be W14x22 and shall slope to match the slope of beams on Grid 1.

ADD 3-14. Refer to Sheet S103:

Statement: Please clarify what the large dashed circles around the 2 exhaust fan locations are indicating.

Response: Disregard those circles. They do not have anything to do with structural.

ADD 3-15. Telecommunications:

Question: Will the bid need to include any voice or data cables run in between the telephone termination board and the Amtrak/BNSF data rack?

Response: At this time, we are not certain what the extent of cabling will be at the location described however, we have added on **Attachment E-104.1** come additional conduits between the telephone board and the Amtrak data rack. Conduits shall include pullstrings.

MODIFICATIONS TO THE SPECIFICATIONS

ADD 3-16. Refer to Section 042000 – Unit Masonry, Article 2.3, paragraph B; The basis of design for the masonry colors are the Hebron Bricks indicated in this section. Requests for substitutions have been made by both Kansas Brick and Tile and Yankee Hill Brick and Tile. The Kansas Brick products were approved as substitutions in Addendum No. 01 however, not all of the Yankee Hill products were approved as submitted. Of particular note, the "Peach Velour" initially submitted for Brick A was NOT accepted as submitted however as part of this Addendum, we are accepting that as an option for Brick B. To help provide clarity to what the masonry options are for brick on this project, please replace paragraph 2.3.B.1 with the following:

a. Brick Color A (042000.A2):

   i. Hebron Brick Company, Velour, "Scoria"
   ii. Yankee Hill Brick and Tile, "Salmon Velour"
   iii. Kansas Brick and Tile, "550 Dark Modular"
   iv. Endicott Clay, "Rose Blend", Velour

b. Brick Color B (042000.A3):

   i. Hebron Brick Company, Velour, "Maple"
   ii. Yankee Hill Brick and Tile, "Peach Velour"
   iii. Kansas Brick and Tile, "510 Mingle Modular"
   iv. Endicott Clay, "Desert Ironspot Light", Velour

ADD 3-17. Refer to Section 051200 – Structural Steel Framing, Article 1.6, paragraph A; Add the following paragraph:

A qualified fabricator that does not participate in the AISC Quality Certification Program shall comply with the special inspection provisions listed in the International Building Code 2009, Chapter 17, Section 1704.2.1 and shall have provided structural steel and steel fabrications on a minimum of three (3) projects of equal size and scope.

ADD 3-18. Refer to Section 088000 – Glazing, Article 2.5, paragraph C. Add the following:

1. One image of steam locomotive wheels. Image found at www.shutterstock.com (33759292). Contractor responsible for obtaining license for use of final image selected.
2. One image of Railroad tracks. Contractor responsible for obtaining license for use of final image selected.

ADD 3-19. Refer to Section 088000 – Glazing, Article 2.9, paragraph A; Add the following information to the text:

HAFELE hardware indicated is intended to provide the design intent of the assembly. Contractor may utilize other comparable hardware from other manufacturers as needed to provide a functioning system. CR Laurence is one such supplier that would be acceptable to utilize.

ADD 3-20. Refer to Section 096813 – Tile Carpeting, Article 2.1; Replace with the following:

2.1 CARPET TILE

A. CPT-1 (096813.A):

1. Basis-of-Design Product: Requests for product substitutions prior to bidding will be reviewed and responded to in conformance with Division 1 requirements. Subject to compliance with requirements, provide **Miliken, Southern Analog, Panoramic** or a comparable product pre-approved for substitution during bidding:

   a. Color : PA114 Tungsten
   b. Fiber Content: 100 percent nylon 6.
   c. Fiber Type: Aquafil Econyl 75 Solution Dyed Nylon Type 6.

      1) Pile Characteristic: tufted Textured Loop.

   d. Density factor: 223,920.
   e. Pile Thickness: .10 inches (2.5 mm) for finished carpet tile.
   f. Gage: 1/12.
   g. Surface Pile Weight: 15 oz./sq. yd. (g/sq. m).
   h. Total Weight: 90.5 oz./sq. yd. (g/sq. m) for finished carpet tile.
   i. Primary Backing/Backcoating: Manufacturer's standard composite materials.
   j. Secondary Backing: Manufacturer's standard material.
   k. Backing System: PVC-Free Underscore™ ES cushion.
   l. Size: 19.7 by 19.7 inches (500 by 500 mm).
   m. Applied Soil-Resistance Treatment: Manufacturer's standard material.
   n. Antimicrobial Treatment: Manufacturer's standard material.
   o. Performance Characteristics: As follows:

      1) Appearance Retention Rating: Heavy traffic, 3.0 minimum according to ASTM D 7330.
      2) Dry Breaking Strength: Not less than 100 lbf (445 N) according to ASTM D 2646.
      3) Dimensional Tolerance: Within 1/32 inch (0.8 mm) of specified size dimensions, as determined by physical measurement.
      4) Dimensional Stability: 0.2 percent or less according to ISO 2551 (Aachen Test).
      5) Resistance to Insects: Comply with AATCC 24.
      6) Colorfastness to Crocking: Not less than 4, wet and dry, according to AATCC 165.
      7) Colorfastness to Light: Not less than 4 after 80 AFU (AATCC fading units) according to AATCC 16, Option E.
      8) Antimicrobial Activity: Not less than 2-mm halo of inhibition for gram-positive bacteria, not less than 1-mm halo of inhibition for gram-negative bacteria, and no fungal growth, according to AATCC 174.
      9) Electrostatic Propensity: Less than 3.5 kV according to AATCC 134.

B. CPT 2 (096813.B):

1. Basis-of-Design Product: Requests for product substitutions prior to bidding will be reviewed and responded to in conformance with Division 1 requirements. Subject to compliance with requirements, provide **Lee's Commercial Carpet, First Step Modular** or a comparable product pre-approved for substitution during bidding:

    a. Color: Charcoal Gray 508
    b. Pattern: Multi-Fleck
    c. Source: Lee's Commercial Carpet, 1-800-523-5647. Sales Representative, Mike Mitten (402) 502-0761.
    d. Fiber Content: 100 percent nylon 6, 6 with 100 percent nylon 6,6 scraper yarn.
    e. Fiber Type: Fortis with Sentry Soil Protection.
    f. Pile Characteristic: Performance Loop Pile.
    g. Pile Thickness: .25" for finished carpet tile[per ASTM D 6859].
    h. Stitches: 8.5 per inch
    i. Gage: 5/32"
    j. Surface Pile Weight: 38 oz/sq. yd.
    k. Backing System: Encycle-100% PVC-Free Thermoplastic Composite.
    l. Size: 24 by 24 inches

ADD 3-21. Refer to Section 097225 – Graphic Wall Coverings, Article 2.1.A; Add paragraph 2 as follows:

2. Graphic Wall Coverings to be provided and installed by Look Architectural Coatings. 8806 L. Street, Omaha, NE. Contact Dave LaFave, Jr. 402.981.7057 or davejr@lafaveco.com.

ADD 3-22. Refer to Section 097225 – Graphic Wall Coverings, Article 2.1, paragraph B; Replace with the following:

B. Graphic Content and Style: Provide images that match or are similar to images shown within drawings. Images are as follows:

1. Amtrak specific logos and images can be obtained from Amtrak or an Amtrak compliant vendor.
2. Images at wall around drinking fountain are a composite of three (3) separate images. Architect to confirm final images selected. Contractor is required to obtain any licenses needed for use of graphics for wall coverings.

    a. The background image is to be a map image of an old Nebraska Railroad Route. No specific image is required however we would like to have Lincoln on the map.
    b. One locomotive image of an old steam locomotive. No specific image is required however the image should orient as shown on the drawings.
    c. One locomotive image of an old zephyr locomotive. No specific image is required however the image should orient as shown on the drawings.

ADD 3-23. Refer to Section 097225 – Graphic Wall Coverings, Article 3.6, paragraph C.2; Replace with the following:

2. Graphic Image: Contractor to provide image based on descriptions provided by Architect and visual images shown in elevations. Contractor responsible for procurement of any licensing for use of images selected.

MODIFICATIONS TO THE DRAWINGS

ADD 3-24. Refer to A1/A100, Sheet Specific Notes 6 and 7, which are associated with the underslab piping at the platform. Eliminate Note 7 and replace Note 6 with the following:

NOTE 6 PLATFORM AND GRADING CONTRACTOR TO PROVIDE 4" ROUND PVC STORM LINE BELOW PLATFORM SLAB WITH DOWNSPOUT RECEIVER CONNECTION AS NEEDED TO TRANSITION BETWEEN UNDERSLAB PIPING AND VERTICAL DOWNSPOUT. DOWNSPOUT TO BE PROVIDED BY BUILDING AND CANOPY CONTRACTOR.

ADD 3-25. Refer to Detail A4/A202; Add Sheet Note 2 at two locations beneath the skylight assembly. Add Note 2 to the Sheet specific notes in the Legend. Note 2 shall read:

NOTE 2 EXPOSED FIRE SUPPRESSION PIPING AS INDICATED ON 1/P101. PIPING TO RUN EXPOSED BENEATH SKYLIGHT FRAMING. PAINT PIPING WHITE TO MATCH COLOR OF SKYLIGHT ASSEMBLY. SKYLIGHT ASSEMBLY TO BE DESIGNED TO SUPPORT WEIGHT OF SUPPRESSION ASSEMBLY, WHICH WILL BE APPROXIMATELY 3.6 PLF.

ADD 3-26. Refer to A4/A500; Eliminate keynote 088000.C. All of the glass associated with this "window assembly" shall be 3/8" glass.

ADD 3-27. Refer to A4/A500; Note that the intent is to provide hardware/components at the bottom of the glass assembly as well as the top of the assembly that "seat" both the fixed and operable panels. The current detailing implies that the fixed panels "beyond" are simply held in place by sealant joints and that is NOT the intent of the assembly.

ADD 3-28. Refer to Lighting Fixture Schedule on E601; Replace the schedule with the schedule attached with this addendum. **Attachment E601.1**

ADD 3-29. **ARCHITECTURAL – PRIOR APPROVALS**

ADD 3-30. The following manufacturers have received prior approval for bidding purposes subject to shop drawing review:

a.	042000 – Brick Color A	Yankee Hill "Salmon Velour"
b.	042000 – Brick Color A	Endicott Clay "Rose Blend Velour"
c.	042000 – Brick Color B	Yankee Hill "Peach Velour"
d.	042000 – Brick Color B	Endicott Clay "Desert Ironspot Light"
e.	054000 – Cold-Formed Metal Framing	MRI Steel Framing
f.	054000 – Cold-Formed Metal Framing	Custom Stud Inc.

PLUMBING / HVAC – PRIOR APPROVALS

ADD 3-31. The following manufacturers have received prior approval for bidding purposes subject to shop drawing review:

a.	221119 – Domestic Water Piping Specialties	Leonard (Mixing Valves)
b.	224000 – Plumbing Fixtures	Zurn (Vitreous China, Mop Basin and Manual Faucets Only)

c. 224714 – Pressure Water Coolers — Acorn

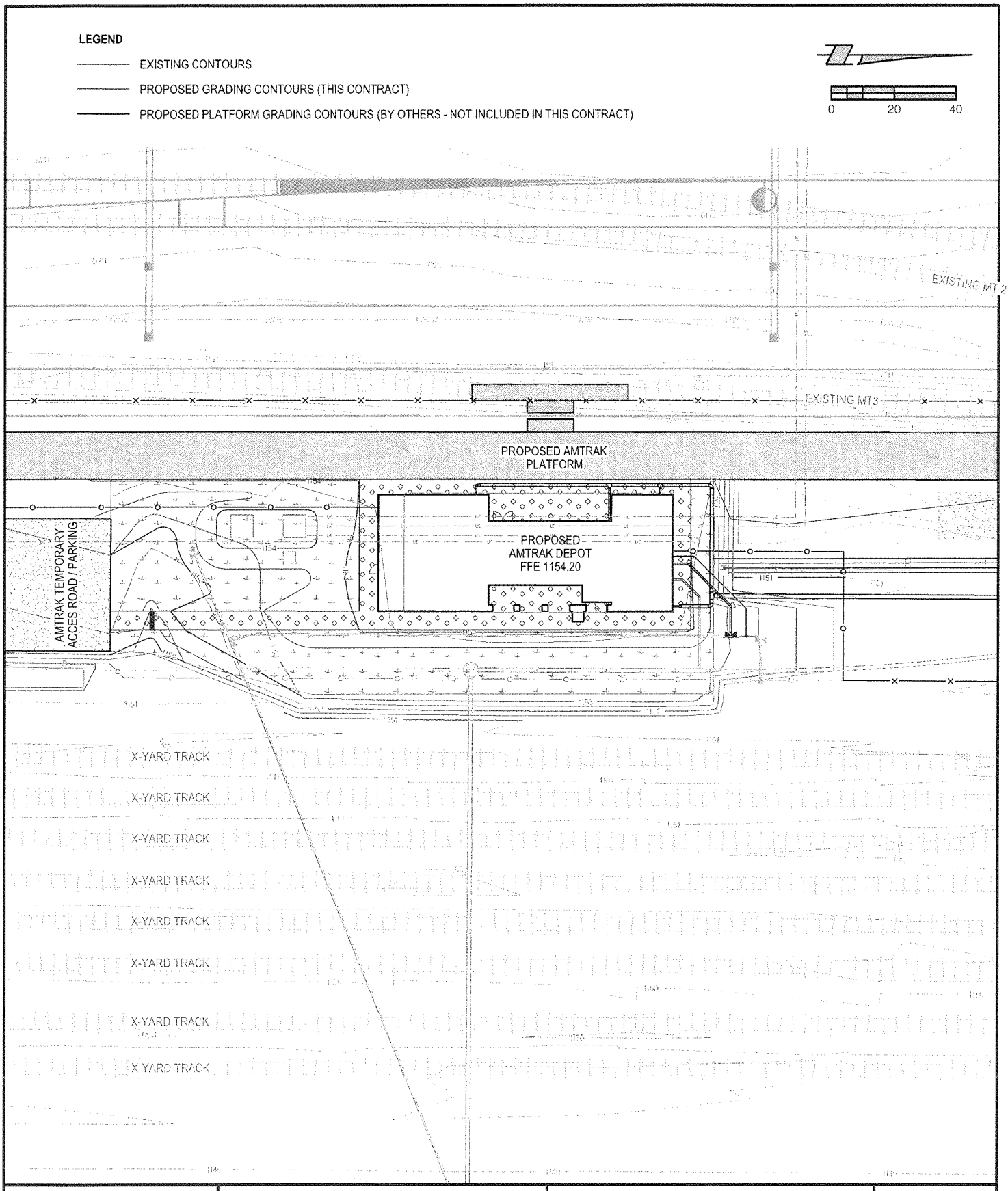
ADD 3-32. The following manufacturers are NOT approved:

a. 224000 – Plumbing Fixtures — Zurn (Electronic Flush Valves and Faucets)

End of Addendum #3

Attachments:

- Grading Clarification Exhibit
- Attachment E104.1
- Attachment E601.1



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engineers · scientists · planners

Alfred Benesch & Company
825 J Street
Lincoln, Nebraska 68508
402-479-2200

Job No. -

WH-14 AMTRAK STATION BUILDING AND CANOPY

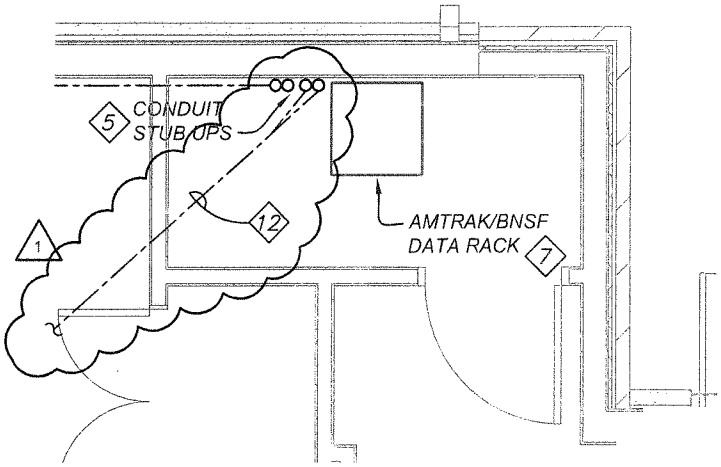
GRADING CLARIFICATION EXHIBIT

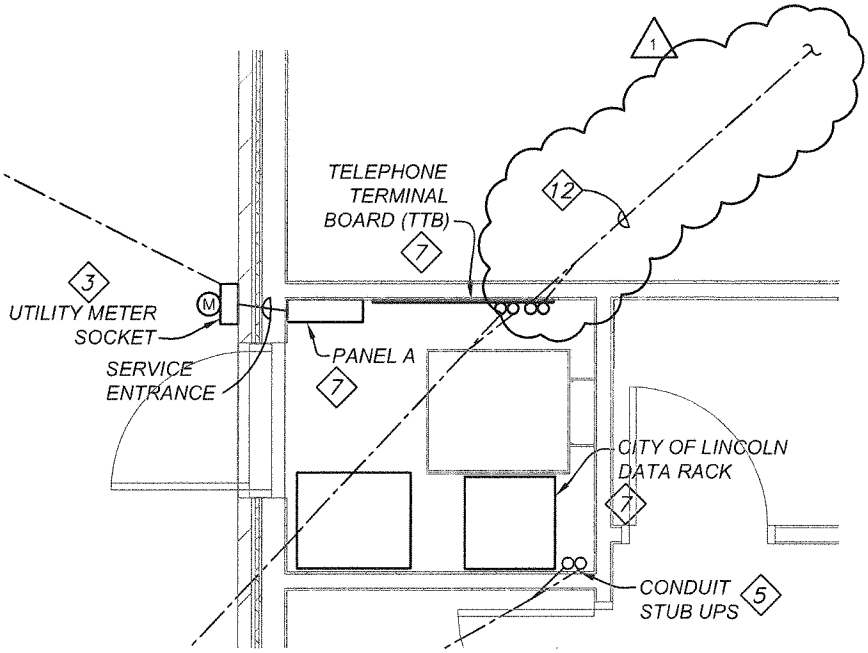
PROJECT: AMTRAK

DATE: 11/17/2011

SHEET: **1 OF 1**

F:\Transportation\00110149\Design\Sheets\Amtrak Platform Site\Platform\Addendum Exhibits\Grading Clarification 2011.11.17.DGN ~ 480.0000 FT / ft. ~ 11/17/2011





1 12 PROVIDE (2) 1 1/2" CONDUITS FOR TELEPHONE AND DATA SERVICE TO THE AMTRAK/BNSF DATA RACK. ROUTE BOTH CONDUITS FROM THE TTB TO ADJACENT TO THE AMTRAK/BNSF RACK. PROVIDE CONDUITS WITH PULLSTRING.

1 11/17/11 ADDENDUM #3

DAVIS DESIGN
ARCHITECTURE ENGINEERING INTERIOR DESIGN

VERMILLION
15 EAST MAIN STREET, STE. 201
VERMILLION SD 57069-3089
PHONE 605-624-1081

LINCOLN
211 NORTH 14TH STREET
LINCOLN NE 68508-1616
PHONE 402-476-9700
FAX 402-476-9722

Client Information

City of Lincoln

West Haymarket JPA

Project Information

Amtrak Station, Canopy, and Platform

Issue Date	11-17-2011
Job #	11-0070
Drawn by:	JDW
CADD file:	E104

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Drawing Title

Electrical Site Plan

From Sheet: E104

for CA use:

Drawing # E104.1

LIGHTING FIXTURE SCHEDULE

TYPE NO.	DESCRIPTION / SPEC. NO.	LAMPS NO.	LAMPS WATT	LAMPS TYPE	VOLT	MOUNTING	NOTES	OTHER MANUFACTURERS
A1	1 x 4 2L DIRECT/INDIRECT GRID TROFFER LITHONIA #AV-G-2-32-MDR-MVOLT-GEB10IS	2	32	F032-T8 BIPIN	120	RECESSED GRID	B,C,F	3,4,14
A2	1 x 4 2L ASSYMMETRIC GRID TROFFER PINNACLE #EW-1T5-4-G1-120-1C-W	1	28	F028-T5 BIPIN	120	RECESSED GRID	B,C,F	11
A3	1 x 10 6L ASSYMMETRIC GRID TROFFER PINNACLE #EW-1T5-10-G1-120-1C-W	3	28	F028-T5 BIPIN	120	RECESSED GRID	B,C,F	11
A4	1 x 2 1L ASSYMMETRIC GRID TROFFER PINNACLE #EW-1T5-2-G1-120-1C-W	1	14	F014-T5 BIPIN	120	RECESSED GRID	B,C,F	11
C1	6 INCH CFL DOWNLIGHT LITHONIA #LP6FN-26-42TRT-6O9A-MVOLT	1	42	42W TRT QUADPIN	120	VARIES	B,C,F	3,5,15
C2	6 INCH CFL WALLWASH DOWNLIGHT LITHONIA #LP6FN-26-42TRT-6W9A-MVOLT	1	42	42W TRT QUADPIN	120	RECESSED GYPSUM	B,C,F	3,5
C3	EXTERIOR 6 INCH CFL DOWNLIGHT LITHONIA #LP6FN-26-42TRT-6O9A-MVOLT-CW20	1	42	42W TRT QUADPIN	120	RECESSED GYPSUM	B,C,F,J	3,5,15
G1	1 X 4 2L INDUSTRIAL STRIP WITH 10% UPLIGHT LITHONIA #AF10-2-32-MVOLT-GEB10IS	2	32	F032-T8 BIPIN	120	CHAIN HUNG	E,C,F	3,4,14
G2	1 X 4 3L INDUSTRIAL STRIP WITH 10% UPLIGHT LITHONIA #AF10-3-32-MVOLT-GEB10IS	2	32	F032-T8 BIPIN	120	CHAIN HUNG	E,C,F	3,4,14
N1	EXTERIOR LED LINEAR TUBE ALC6A-36W-50-6LG-19.5'-360DP-VME-1-TW	LED FURNISHED WITH FIXTURE			120	PENDANT MOUNT	F,H	
S1	1 X 4 2L EXTERIOR SUSPENDED FLUORESCENT SELUX #SUR9-2T8-PC-F-004-SP-120-CW	2	32	F032-T8 BIPIN	120	CANOPY	B,C F,G,J	3,6,9,10,12,13,18
W1	4 FOOT FLUORESCENT VANITY WALL BRACKET LITHONIA #WC-1-32-MVOLT-GEB10IS	1	32	F032-T8 BIPIN	120	SURFACE WALL	A,B, C,F	3,4,14
W2	4 FOOT FLUORESCENT LINEAR WALL WASHER PINNACLE #EX4B-A-O-T8-1-2-4-WA-120-W-DG	3	32	F032-T8 BIPIN	120	SURFACE WALL	A,B, C,F,I	2,7,16
W3	EXTERIOR LED WALLPACK GUTH #SND-14-B-12L-G-1	18W LED FURNISHED WITH FIXTURE			120	SURFACE WALL	A,F,J	3,17,19
X1	INTERIOR LED EXIT SIGN LITHONIA #LQM-S-W-3-R-120/277	LED FURNISHED WITH FIXTURE			120	VARIES	A,D,F	3,8
X2	EXTERIOR LED EXIT SIGN DOUBLE SIDED LITHONIA #LV-S-W-2-R-120/277-UM	LED FURNISHED WITH FIXTURE			120	SURFACE CEILING	F	3,8
X3	EXTERIOR LED EXIT SIGN SINGLE SIDED LITHONIA #LV-S-W-1-R-120/277	LED FURNISHED WITH FIXTURE			120	SURFACE WALL	A,D,F	3,8

OTHER MANUFACTURERS:

1 LITHONIA
2 AXIS LIGHTING
3 COOPER
4 DAY-BRITE
5 OMEGA LIGHTING
6 LUMINAIRE LIGHTING
7 PRUDENTIAL LIGHTING
8 MCPHILBEN
9 KENALL
10 MORLITE
11 NEORAY
12 FAIL SAFE
13 ZUMTOBEL
14 COLUMBIA
15 PRESCOLITE
16 ALERA
17 INTENSE LIGHTING
18 ECLIPSE LIGHTING
19 VISIONAIRE

NOTES:

A CONTRACTOR TO PROVIDE BACKING FOR ALL WALL MOUNTED FIXTURES
B ALL FLUORESCENT LAMPS SHALL BE 80 CRI, 4100K
C ALL FLOURESCENT BALLASTS TO BE HIGH FREQUENCY ELECTRONIC INSTANT START TYPE, AND HAVE LESS THAN 10% THD AND AN A+ SOUND RATING
D MOUNT FIXTURE ABOVE DOOR
E CHAIN HANG FIXTURE BELOW PIPES AND DUCTS. COORDINATE WITH MECHANICAL CONTRACTOR. SUPPORT FIXTURES FROM STRUCTURE ONLY
F CONTRACTOR TO VERIFY LIGHT FIXTURE INSTALLATION REQUIREMENTS
G SEE MOUNTING DETAIL 2 AND DETAIL 8, SHEET E501 FOR INSTALLATION REQUIREMENTS
H SEE MOUNTING DETAIL 4, SHEET E501 FOR INSTALLATION REQUIREMENTS
I SEE MOUNTING DETAIL 1, SHEET E501 FOR INSTALLATION REQUIREMENTS
J PROVIDE FIXTURE WITH LOW TEMPERATURE BALLAST SUITABLE FOR OPERATION IN TEMPERATURES BELOW 0 DEGREES F.

1

1 11/16/11 ADDENDUM #3

DAVIS DESIGN
Architecture Engineering Interior Design

Vermillion
15 East Main Street, Ste. 201
Vermillion SD 57069-3089
Phone 605-624-1081

Lincoln
211 North 14th Street
Lincoln NE 68508-1616
Phone 402-476-9700
Fax 402-476-9722

Client Information
City of Lincoln
West Haymarket JPA

Project Information
Amtrak Station, Canopy, and Platform

Issue Date	11-16-2011
Job #	11-0070
Drawn by:	BJM
CADD file:	E601

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Drawing Title
Revised Lighting Fixture Schedule

From Sheet: E601
Drawing # E601.1
for CA use:

Nebraska Department of REVENUE

Nebraska Resale or Exempt Sale Certificate

for Sales Tax Exemption

• **Read instructions on reverse side/see note below**

FORM 13

NAME AND MAILING ADDRESS OF PURCHASER	NAME AND MAILING ADDRESS OF SELLER
Name: Joint Public Agency (JPA)	Name: Ronco Construction Company
Street or Other Mailing Address: 555 South 10th Street	Street or Other Mailing Address: 1717 No. 74th St.
City: Lincoln State: NE Zip Code: 68508	City: Omaha State: NE Zip Code: 68114

Check Type of Certificate

☐ Single Purchase ☑ Blanket If blanket is checked, this certificate is valid until revoked in writing by the purchaser.

I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:

Check One ☐ Purchase for Resale (Complete Section A) ☑ Exempt Purchase (Complete Section B) ☐ Contractor (Complete Section C)

SECTION A—Nebraska Resale Certificate

Description of Item or Service Purchased

I hereby certify that the purchase, lease, or rental of

from the above seller is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of our business, either in the form or condition in which purchased, or as an ingredient or component part of other property to be resold.

I further certify that we are engaged in business as a: ☐ Wholesaler ☐ Retailer ☐ Manufacturer ☐ Lessor

of Description of Product Sold, Leased, or Rented

If None, State Reason

and hold Nebraska Sales Tax Permit Number 01-

or Foreign State Sales Tax Number State

SECTION B—Nebraska Exempt Sale Certificate

The basis for this exemption is exemption category 1 (Insert appropriate category as described on reverse of this form.)

If exemption category 2 or 5 is claimed, enter the following information:

Description of Item(s) Purchased Intended Use of Item(s) Purchased

If exemption categories 3 or 4 are claimed, enter the Nebraska Exemption Certificate number. 05-

If exemption category 6 is claimed, seller must enter the following information and sign this form below:

Description of Item(s) Sold Date of Seller's Original Purchase Was Tax Paid when Purchased by Seller? ☐ YES ☐ NO Was Item Depreciable? ☐ YES ☐ NO

SECTION C—For Contractors Only

1. Purchases of Building Materials or Fixtures:

☐ As an Option 1 or Option 3 contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales or Consumer's Use Tax Permit Number is: 01-

2. Purchases Made Under Purchasing Agent Appointment on behalf of _____ (exempt entity):

☐ Pursuant to an **attached** Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, I hereby certify that purchases of building materials, and fixtures are exempt from Nebraska sales tax.

Any purchaser, or their agent, or other person who completes this certificate for any purchase which is other than for resale, lease, or rental in the regular course of the purchaser's business, or is not otherwise exempted from the sales and use tax under Neb. Rev. Stat. §§77-2701 through 77-27,135, shall in addition to any tax, interest, or penalty otherwise imposed, be subject to a penalty of $100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. With regard to a blanket certificate, this penalty shall apply to each purchase made during the period the blanket certificate is in effect. Under penalties of law, I declare that I am authorized to sign this certificate, and to the best of my knowledge and belief, it is correct and complete.

sign here ▶ Authorized Signature _____ Title: Purchasing Agent Date _____

NOTE: **Sellers must keep this certificate as part of their records. DO NOT SEND TO THE NEBRASKA DEPARTMENT OF REVENUE.**

Incomplete certificates cannot be accepted.

www.revenue.ne.gov, (800) 742-7474 (toll free in NE and IA), (402) 471-5729

NOTE: This form cannot be used to purchase materials, supplies, labor & service used for the WATER Division of the City of Lincoln. Said services are taxable per Reg. 066.14A or applicable laws.

6-134-1970 Rev. 3-2009
Supersedes 6-134-1970 Rev. 10-2007

INSTRUCTIONS

WHO MAY ISSUE A RESALE CERTIFICATE. Form 13, Section A, is to be issued by persons or organizations making purchases of property or taxable services in the **normal** course of their business for the purpose of resale either in the form or condition in which it was purchased, or as an ingredient or component part of other property.

WHO MAY ISSUE AN EXEMPT SALE CERTIFICATE. Form 13, Section B can only be issued by persons or organizations exempt from payment of the Nebraska sales tax by qualifying for one of the six enumerated **Categories of Exemption** (see below). Nonprofit organizations that have a 501(c) designation and are exempt from federal and state income tax are **not** automatically exempt from **sales** tax. Only the entities listed in the referenced regulations are exempt from paying Nebraska sales tax on their purchases when the exemption certificate is properly completed and provided to the seller. Organizations claiming a sales tax exemption may do so only on items purchased for their own use. For health care organizations, the exemption is limited to the specific level of health care they are licensed for. The exemption is not issued to the entire organization when multiple levels of health care or other activities are provided or owned by the organization. Items purchased by an exempt organization that will be resold must be supported by a properly completed Nebraska Resale Certificate, Form 13, Section A.

Indicate the category which properly reflects the basis for your exemption. Place the corresponding number in the space provided in Section B. If category 2 through 6 is the basis for exemption, you must complete the information requested in Section B.

Nebraska Sales and Use Tax Reg-1-013, Sale for Resale – Resale Certificate, and Reg-1-014, Exempt Sale Certificate, provide additional information on the proper issuance and use of this certificate. These and other regulations referred to in these instructions are available on our Web site: **www.revenue.ne.gov/legal/regs/slstaxregs**.

Use Form 13E for purchases of energy sources which qualify for exemption. Use Form 13ME for purchases of mobility enhancing equipment on a motor vehicle.

CONTRACTORS. Form 13, Section C, Part 1, must be completed by contractors operating under Option 1 or Option 3 to document their tax-free purchase of building materials or fixtures from their suppliers. Section C, Part 2, may be completed to exempt the purchase of building materials or fixtures pursuant to a Purchasing Agent Appointment, Form 17. See the contractor information guides on our Web site **www.revenue.ne.gov** for additional information.

WHERE TO FILE. Form 13 is given to the seller at the time of the purchase of the property or service or when sales tax is due. The certificate must be retained with the seller's records for audit purposes. Do not send to the Department of Revenue.

SALES TAX NUMBER. A purchaser who completes Section A and is engaged in business as a wholesaler or manufacturer is not required to provide an identification number. Out-of-state purchasers can provide their home state sales tax number. Section B does not require an identification number when exemption category 1, 2, or 5 is indicated.

PROPERLY COMPLETED CERTIFICATE. A purchaser must complete a certificate before issuing it to the seller. To properly complete the certificate, the purchaser must include: (1) identification of the purchaser and seller, (2) a statement whether the certificate is for a single purchase or is a blanket certificate, (3) a statement of basis for exemption including completion of all information for the basis chosen, (4) the signature of an authorized person, and (5) the date the certificate was issued.

PENALTIES. Any purchaser who gives a Form 13 to a seller for any purchase which is other than for resale, lease, or rental in the **normal** course of the purchaser's business, or is not otherwise exempted from sales and use tax under the Nebraska Revenue Act, shall be subject to a penalty of $100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse.

Any purchaser, or their agent, who fraudulently signs a Form 13 may be found guilty of a Class IV misdemeanor.

CATEGORIES OF EXEMPTION

1. Purchases made directly by certain governmental agencies identified in Nebraska Sales and Use Tax Reg-1-012, Exemptions; Reg-1-072, United States Government and Federal Corporations; and Reg-1-093, Governmental Units, are exempt from sales tax. A list of specific governmental units are provided in the above regulations. Governmental units are not assigned exemption numbers.

   Sales to the United States government, its agencies, and corporations wholly owned by the United States government are exempt from sales tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the United States government for the benefit of the public, generally are taxable. Construction projects for federal agencies have specific requirements, see Reg-1-017 Contractors.

   Purchases that are **not** exempt from Nebraska sales and use tax include, but are not limited to, governmental units of other states, sanitary and improvement districts, urban renewal authorities, rural water districts, railroad transportation safety districts, and county historical or agricultural societies.

2. Purchases when the intended use renders it exempt as set out in paragraph 012.02D of Reg-1-012, Exemptions. Complete the description of the item purchased and the intended use as required on the front of Form 13. Sellers of **repair parts** for agricultural machinery and equipment cannot accept a Form 13 to exempt such sales from tax.

3. Purchases made by organizations that have been issued a Nebraska Exempt Organization - Certificate of Exemption are exempt from sales tax. Reg-1-090, Nonprofit Organizations; Reg-1-091, Religious Organizations; and Reg-1-092, Educational Institutions, identify such organizations. These organizations will be issued a Nebraska state exemption identification number. This exemption number must be entered in Section B of the Form 13.

4. Purchases of common or contract carrier vehicles and repair and replacement parts for such vehicles.

5. Purchases of manufacturing machinery or equipment by a taxpayer engaged in business as a manufacturer for use predominantly in manufacturing. This includes the installation, repair, or maintenance of such qualified manufacturing machinery or equipment (see Revenue Ruling 01-08-2).

6. A sale that qualifies as an occasional sale, such as a sale of depreciable machinery and equipment productively used by the seller for more than one year and the seller previously paid tax on the item. The **seller** must sign and give the exemption certificate to the purchaser. The certificate must be retained by the purchaser for audit purposes (see Reg-1-014, Exempt Sale Certificate).

Nebraska Department of **REVENUE**

Purchasing Agent Appointment

and Delegation of Authority for Sales and Use Tax

FORM 17

PURCHASING AGENT APPOINTMENT

Name and Address of Prime Contractor	Name and Address of Governmental Unit or Exempt Organization
Name: Ronco Construction Company	Name: Joint Public Agency (JPA)
Street or Other Mailing Address: 1717 No. 74th St	Street or Other Mailing Address: 555 So. 10th St.
City: Omaha, State: NE Zip Code: 68114	City: Lincoln, State: NE Zip Code: 68508

Name and Location of Project	Appointment Information
Name: West Haymarket JPA Amtrak Station & Canopy	Effective Date (see Instructions): 12/12/11
Street or Other Mailing Address: Lincoln, NE	Expiration Date: 11/01/12
City / State / Zip Code	Nebraska Exemption Number (Exempt Organizations Only)

Identify Project 11-246

NOTE: This form cannot be used to purchase materials, supplies, labor & service used for the WATER Division of the City of Lincoln. Said services are taxable per Reg. 066.14A or applicable laws.

The undersigned governmental unit or exempt organization appoints the above-named contractor and the contractor's delegated subcontractors as its agent to purchase and pay for building materials that will be annexed to real estate by them into the tax exempt construction project stated above.

sign here ▶ Authorized Signature of Governmental Unit or Exempt Organization | Purchasing Agent (Title) | Date

DELEGATION OF PRIME CONTRACTOR'S AUTHORITY

Name and Address of Subcontractor	Delegation Information
Name	Effective Date
Street or Other Mailing Address	Expiration Date
City / State / Zip Code	Portion of Project

The undersigned prime contractor hereby delegates authority to act as the purchasing agent of the named governmental unit or exempt organization to the above-named subcontractor.

sign here ▶ Signature of Prime Contractor or Authorized Representative | Title | Date

INSTRUCTIONS

WHO MUST FILE. Any governmental unit or organization that is **exempt** from sales and use tax may appoint as its agent a prime contractor to purchase building materials and/or fixtures that will be annexed to property that belongs to or will belong to the governmental entity or exempt organization pursuant to a construction contract with the governmental unit or exempt organization. The appointment of the prime contractor as its agent is completed by issuing a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, to the prime contractor. The Form 17 is required to be given to the contractor **BEFORE** he or she annexes building materials. The exempt organization or governmental unit must identify the project (e.g., east wing, chapel construction, or new school auditorium).

The exemption from the payment of the Nebraska and local option sales and use taxes only applies if the governmental unit or exempt organization directly or through its contractor pays for the building materials.

WHEN TO FILE. A prime contractor engaging in a construction project with a governmental unit or exempt organization must receive a properly completed and signed Form 17 **BEFORE** any building materials are annexed. If Form 17 is not issued, the contractor must pay the sales and use taxes and the governmental unit or exempt organization may obtain a refund of the taxes paid by the contractor.

WHERE TO FILE. A copy of the completed form should be retained by the governmental unit or exempt organization

Visit our Web site: www.revenue.ne.gov or call 1-800-742-7474 (toll free in NE and IA) or 1-402-471-5729.

issuing the Form 17. The original is to be retained by the prime contractor. Copies of this form must be made by the prime contractor for delegation purposes to any subcontractors working on the project identified on this form.

APPOINTMENT INFORMATION. Enter the dates the purchasing agent appointment will become effective and when it will expire. This appointment will not allow any purchases without payment of the tax by the prime contractor or subcontractor before the effective date or after the expiration date. The dates the delegation becomes effective and the expiration dates must be completed. The phrase "upon completion" or similar phrase is not acceptable as an expiration date. The governmental unit or exempt organization may need to issue another Form 17 if the project is not completed within the prior "effective" and "expiration" dates. Exempt organizations must enter their Nebraska Sales and Use Tax Exemption number.

DELEGATION OF PRIME CONTRACTOR'S AUTHORITY. The prime contractor may delegate his or her authority to act as the purchasing agent of the governmental unit or exempt organization to a subcontractor. The prime contractor must complete his or her copy of Form 17 for each subcontractor who is delegated authority to act as a purchasing agent. Reproductions of this delegation must be provided to the subcontractor, who must retain a copy for his or her records, and to the governmental unit or exempt organization.

Enter the dates the delegation of the subcontractor will become effective, when it will expire, and the portion of the project delegated. This delegation will not allow any purchases without payment of the tax by the subcontractor before the delegation date or after the expiration date. Any further delegation from a subcontractor to additional subcontractors must be delegated by providing a copy of the Form 17 that they received from the prime contractor and attaching it to a separate Form 17 with any further delegation to other subcontractors. The purchasing agent appointment is limited to the contractor's purchase of building materials and/or fixtures for the specific project and is only valid during the appointment dates shown on the Form 17.

EXEMPT SALE CERTIFICATE. A prime contractor who has been appointed to act as a purchasing agent by a governmental unit or exempt organization, and who hires a subcontractor operating as an Option 1 contractor, must provide to that subcontractor a completed copy of Form 17 and a Nebraska Resale or Exempt Sale Certificate, Form 13, with Section C, Part 2, completed. The subcontractor will retain these forms in his or her records, and will not charge the contractor sales tax on any portion of the invoice involving the annexation of materials to the specific project identified on the Form 17. If these forms are not provided to the subcontractor operating under Option 1, the subcontractor must collect and remit sales tax on the charge for the separately stated building materials portion of the invoice. If the Option 1 subcontractor does not separately state the charge for the building materials from contractor labor, then the entire charge is taxable to the prime contractor.

Contractors operating under Option 2 (maintaining a tax-paid inventory) who have been issued a Form 17 from a governmental unit or an exempt organization, must furnish each vendor a copy of the Form 17 and a Form 13, completing Section C, Part 2, when purchasing building materials that will be annexed to real estate. Forms 13 and 17 must be retained with the vendor's and contractor's records for audit purposes. A contractor or subcontractor may reproduce copies of these documents which will be furnished to the vendors for each invoice or order made by them.

Invoices from vendors for the purchase of building materials by the contractor as purchasing agent, or the authorized subcontractor, must clearly identify that such purchase is for the specific Form 17 project.

CREDIT/REFUND OF SALES AND USE TAX. A contractor or subcontractor who has been appointed as a purchasing agent before any materials are annexed, may withdraw sales or use tax-paid materials from inventory that will be annexed to real estate or used to repair property annexed to real estate and receive a credit for the sales or use tax amount previously paid on those materials.

The contractor or subcontractor may take a credit either against his or her current tax liability, or file a Claim for Overpayment of Sales and Use Tax, Form 7, and receive a refund of the sales or use tax paid on those materials.

TOOLS, EQUIPMENT, AND SUPPLIES. The purchase, rental, or lease of tools, supplies, or equipment (i.e., scaffolding, barricades, machinery, etc.) by a contractor for use in the completion of an exempt project CANNOT be purchased tax free, even if the contractor has been issued a Form 17. These items do not become annexed to the real estate.

OPTION 1 CONTRACTOR ONLY. If an Option 1 contractor is the **only** contractor involved in performing work for a governmental unit or exempt organization, a Form 17 is NOT required. The Option 1 contractor must only obtain a Form 13, Section B, from the exempt project owner.

PENALTY. Any person who signs this document with the intent to evade payment of tax is liable for the sales and use tax, interest, and penalty, and may be found guilty of a misdemeanor. A contractor can confirm the exempt status of a governmental unit or organization by contacting the Nebraska Department of Revenue.

AUTHORIZED SIGNATURE. The Purchasing Agent Appointment must be signed by an officer of the exempt organization or proper government official. The Delegation of Prime Contractor's Authority must be signed by the owner, partner, corporate officer, or other individual authorized to sign by a power of attorney on file with the Nebraska Department of Revenue.

INSURANCE REQUIREMENTS FOR ALL WEST HAYMARKET JOINT PUBLIC AGENCY CONTRACTS

1. GENERAL PROVISIONS

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

B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and JPA against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

C. **Occurrence Basis Coverage.** All insurance shall be provided on an ***occurrence basis*** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.

D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.

E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide JPA thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.

F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage**. The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(1) Claims under workers' compensation, disability benefit, or other employee benefit acts;

(2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;

(3) Claims customarily covered under personal injury liability coverage;

(4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;

(5) Claims arising out of ownership, maintenance or use of any motor vehicle;

(6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. **Worker's Compensation Insurance and Employer's Liability Insurance**. The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	$500,000	each accident
	Bodily Injury by disease	$500,000	each employee
	Bodily Injury	$500,000	policy limit

C. Commercial General Liability Insurance.

(1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	$10,000,000	Aggregate
Products and Completed Operations	$10,000,000	Aggregate
Personal and Advertising Injury	$ 5,000,000	
Each Occurrence	$ 5,000,000	
Fire Damage Limit	$ 100,000	any one fire
Medical Damage Limit	$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

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

D. **Vehicle liability insurance coverage.**

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.

- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. **Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of $5,000,000 per occurrence, $10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

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

G. **JPA included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that JPA is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include JPA as an additional insured for purposes of Products and Completed Operations. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA.

3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

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

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

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

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

(2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

C. The obligations of indemnification herein shall not include or extend to:

(1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and

(2) Any claims arising out of the negligence of the JPA to the extent the same is the sole and proximate cause of the injury or damage so claimed.

D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.

B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.

B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be $5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.

C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.

D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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CITY OF LINCOLN
MAYOR CHRIS BEUTLER

CITY OF LINCOLN
EXECUTIVE ORDER

NO. 083319

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 28 day of July, 2010.

Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney

EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

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

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

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

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

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

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

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

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

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska)
) ss.
County of _____)

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

_____
Notary Public