

**AGENDA FOR THE WEST HAYMARKET**  
**JOINT PUBLIC AGENCY (JPA)**  
**TO BE HELD TUESDAY, June 19, 2012 AT 3:00 P.M.**

**CITY-COUNTY BUILDING**  
**555 S. 10<sup>TH</sup> STREET**  
**CITY COUNCIL CHAMBERS ROOM 112**  
**LINCOLN, NE 68508**

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)
2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

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

3. Approval of the minutes from the JPA meeting held June 1, 2012 (Chair Beutler)
  - (Staff recommendation is for the JPA Board to approve the minutes as presented)
4. Approval of Payment Registers (Steve Hubka)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the payment registers)
5. Review of the May 2012 Expenditure Reports (Steve Hubka)
  - Public Comment
6. WH 12-36 Resolution authorizing the Chair to execute on behalf of the West Haymarket Joint Public Agency the Corporation Warranty Deed and all closing documents associated with conveyance of City Parcel One and City Parcel Two to Star City, LLC and conveyance of the Star City Parcel to the West Haymarket Joint Public Agency. (Rick Peo)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
7. WH 12-37 Resolution approving Amendment No. 13 to the Agreement for Engineering Services with Olsson Associates for the Haymarket Infrastructure Design Project for Construction Phase Services for the Core Area Roadway Project and the Historic Canopy Renovation Project. (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
8. WH 12-38 Resolution approving the Agreement with Hawkins Construction Company for the West Haymarket JPA Infrastructure Improvements Core Area Roadway and Utilities Project (Bid No. 12-128) in the amount of \$14,168,272.94. (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)

9. WH 12-39 Resolution approving the Agreement with Hawkins Construction Company for the West Haymarket JPA Historic Canopy Renovation Project - Phase 2 (Bid No. 12-129) in the amount of \$1,254,000.00. (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
10. WH 12-40 Resolution approving the Agreement with Judds Brothers Construction Company for the West Haymarket Railroad Track Removal Project No. 870908 (Bid No. 12-151) in the amount of \$146,026.00. (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
11. WH 12-41 Resolution approving Amendment No. 1 to the Sublease Agreement between Amtrak and the West Haymarket Joint Public Agency which amends the Sublease by amending Exhibit C, Final Plans, for the New Station to reflect the redesign of the New Station to add an Amtrak crew base and to provide for Amtrak to pay \$25,000 toward the redesign of the New Station, and by amending Exhibit D, the Station Lease, to provide that Amtrak pay additional rent in the amount of \$420.00 per month due to the additional space being occupied by the crew base and to restrict access from the New Station to the Platform except during the period of time that Amtrak trains have arrived at the New Station and are parked along the Platform for boarding and deboarding of passengers. (Chris Connolly)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
12. Set Next Meeting Date: Friday, July 6, 2012 at 3:00 in City Council Chambers Room 112
  
13. Motion to Adjourn

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

Meeting Began At: 3:03 P.M.

Meeting Ended At: 3:45 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

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

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

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

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

**Item 3 -- Approval of the minutes from the JPA meeting held May 15, 2012**

Beutler asked for corrections or changes to the minutes of the May 15, 2012 meeting. Carroll moved approval of the minutes as submitted. Clare seconded the motion. Motion carried 3-0.

**Item 4 -- West Haymarket Progress Report**

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

Yancey began by reviewing the 'N' Street work. Constructors has installed new pavement from 9<sup>th</sup> Street west as shown on the first image. Two old abandoned tanks were found under the sidewalk and the environmental team, Benesch, is doing the appropriate closure on those. The next image shows pouring of a retaining wall on the south side of 'N' Street, with a third showing a poured sidewalk. The project will be completed in August of this year.

On the view of the new Amtrak Canopy from the north, the structural steel can be seen prior to painting. Another view shows the completed exterior brickwork in the process of being cleaned on the Amtrak Station. On the inside, the installed skylight is shown, which is the main architectural feature of this building. All the rest of the interior finishes are progressing and the building is 'dried in' with substantial completion of the building on June 15. The BNSF tracks are expected to be turned over to the new Amtrak Station on June 25.

The next major project is the DEC Building. Hawkins Construction is erecting the structural steel. This building is expected to be 'dried in' in August as well.

To the north on the aerial view of the Haymarket Site as of May 2012, the arena is shown where they are finishing the poured-in-place concrete, as well as installing some structural steel in a stair tower to the east. Rough-ins for mechanical, electrical, plumbing, ductwork all continue. Once the tracks are out in July, the cranes will return and finish the drilling operations on the east and west sides of the building.

Just south of the arena block on the image to the left is the developer block. They will begin construction this fall. To the west of the arena are the new tracks that have been installed. The Amtrak Building is shown and it also shows where the DEC Plant is being installed. Corridor roadway bids were received yesterday. Those are under review, and the award is planned to be before the Board at the June 19 meeting.

Jane Kinsey, Watchdogs of Lincoln Government, came forward. She asked what was in the tanks, what remediation is being done, and how far out the testing will go. She wondered if these were left over from the railroad or if there is a record of the tanks somewhere in Lincoln history. Finally, she questioned whether testing results would be available to the public.

Yancey explained that these were not owned by the railroad, but that we are unsure the origin of the tanks. They appear to be 50-70 years old and empty. The testing is to determine what was in the tanks previously and of the soils around the tanks for any contamination.

Frank Uhlarik, Alfred Benesch Company, indicated that they came across an old 1928 fire insurance map showing two dots indicating GT for gas tanks, but do not know what type of operation was supported. These were in front of Midwest Steel. There is no knowledge of use from the current owner. Black Hills came across the tanks as they were doing the gas line. They did not see or smell any odor of petroleum. Ground water had infiltrated the tanks – which is typical in tanks that old. They will be drilling and sampling next week to see if there was a release. How far out from the tanks they test will be in accordance with Fire Marshall and DEQ guidelines. They are also doing more comprehensive investigation to the north on the Jaylyn and Alter property in the next three to six months. As in the past investigations, all results will be available to the public.

**Item 5 -- WH 12-30 Resolution to approve a Management Services Agreement with Marvin Investment Management Co. to provide management oversight of the West Haymarket Redevelopment Project for a term of 18 months commencing on June 15, 2012 and expiring on December 15, 2013. (Rick Peo)**

Rick Peo, City Attorney's Office, clarified that Marvin Investment Management Co. is more commonly known as Dan Marvin. This is a contract to extend professional management services in the West Haymarket area for an additional 18 months -- to expire December 15, 2013 when activities will be brought to substantial completion. The fee is \$72,000 for the 18-month period. The scope of services is similar to the current scope of services except for elimination of completed or obsolete items and the addition of a few services such as work on a business improvement district.

Clare asked for clarification on payment arrangements. Item 4 refers to a “lump sum” payment and later it refers to monthly payments. Clare also offered that Exhibit A setting forth the scope of services is not reflective of all the work and time Dan has given this project – his efforts are truly appreciated.

Peo agreed and confirmed it would be a maximum of \$72,000 for the 18 months payable on a monthly basis, or approximately \$4,000 per month. There is \$10,000 in expenses equaling about \$555 per month.

There was no public comment. Clare moved approval of the resolution. Carroll seconded the motion. Motion carried 3-0.

**Item 6 -- WH 12-32 Resolution to approve a Purchase Agreement between the JPA and Lincoln Depot Limited Partnership for the (1) purchase of fee title to part of Lot 2 and all of Lot 4, Lincoln Station Addition; (2) the acquisition of easements and other rights to Lot 2, Lincoln Station Addition, for additional right-of-way, temporary and permanent access, construction and utility easements, and (3) reimbursement of lost storage. (Dan Marvin/Chris Connolly)**

Dan Marvin started with some history on this agreement. They began negotiating with Mr. Arter, who is on hand today, in the fall of last year. After many conversations and reiterations, this particular purchase includes a variety of things needed to keep this project moving forward. It secures the Iron Horse Parking Lot to the north of the Lincoln Station Building, it secures ‘Q’ Street and ‘R’ Street land for the roads through to the project area, it secures all the utility easements needed for this project at a very reasonable rate, and it secures an easement for the train.

The old 710 train has to be moved south to get cars through the area. This train has been a squatter on this property for a number of years. Mr. Arter has been reasonable and allowed that to sit on what is technically his property for a long time. This agreement secures numerous easements -- for the train, for pedestrians to walk along ‘Q’ Street, temporary easements for work, and related construction easements. It also secured easements for the boxcars and removal of those, which has already been done.

One of the complicating elements regarding this negotiation was the valuation. An existing lease between the City of Lincoln and Lincoln Station extends back to 1989. It has an inflation escalator built in until about 2039. So judging the cost of the property involved understanding the existing agreement. Marvin believes it was a fair negotiation and good deal for the taxpayers of Lincoln.

Chris Connolly, City Attorney’s Office, added that the pedestrian access easement has not been well defined up to this point. This agreement now memorializes that there is an agreement with Mr. Arter and his group for this access easement. This will be a big plus for the entire project. The lease amendment has been in front of the City Council and will be up for a final vote this next Monday.

Carroll asked what types of improvements were covered by the \$50,000 to be paid on the pedestrian easement. Marvin explained that, when the boxcars were removed, a void was left between the canopies. There is interest in making traditional type of City improvements; and, in exchange, we would want to have pedestrian access over those areas. However, ownership and long-term maintenance and care of that area would still reside with Lincoln Station.

They have had preliminary discussions with Clark Enersen about development of some environmental elements, such as a rain garden, to make the area look attractive and work well for both pedestrians and Lincoln Station. No cars would be allowed. Long term, the amount of overhead cover and the electrical availability could lend itself to other functionality on the backside of Lincoln Station to have active outdoor activities. The weekly farmer's market does extend back there.

Clare asked for clarification on the total financial terms. Marvin confirmed the agreement is for \$1.266 million total. The agreement is to pay \$75,000 at closing as a deposit. The pedestrian easement on the back of Lincoln Station could be a negotiated item for an additional \$50,000 in improvements. At present, the lease agreement that Lincoln Station partners receive is \$60,000 annually with an inflation escalator. We unwind that current obligation in exchange for the \$1.266 million and acquire the property and other easements needed to move this property forward. Connolly clarified that the \$50,000 would not necessarily be money paid out to Mr. Arter. Although his property would benefit, it depends on the nature of the improvements as to whether we pay directly for the improvements or not. Marvin added that it might cover drainage or hardscape improvements.

Clare summarized that the \$1.266, out of which \$75,000 is put down initially, plus the \$50,000 layout of possible funds will give us unfettered rights to be able to proceed with this portion of the project. Marvin confirmed that to be the case. Along with the Watson Brickson and the Alter Scrap, this is the third and final land transaction. Clare asked if any environmental inspections were completed. Marvin and Connolly affirmed that there had been inspections and nothing was discovered.

Jane Kinsey questioned if the \$1.266 was to purchase the Lincoln Station or if Mr. Arter would retain ownership. Marvin restated that we will not be acquiring Lincoln Station. There is a parking lot to the north described as Iron Horse Parking Lot partially owned by Lincoln Station. We will acquire all of that parking lot, along with the land for the extension of 'Q' Street into the project area. \$8,000 covers temporary easements to cover work operations. The train, which is the property of the taxpayers of Lincoln, will sit on a permanent easement owned by Lincoln Station and move slightly south. Although the boxcars were removed, the 710 Engine and the coal car and most likely the caboose will stay. There are power lines that need to go underground behind Lincoln Station and there will be permanent easements acquired for those.

Clare asked if all total land acquisition costs are within the budget. Marvin responded that they had an idea of what was needed, so this is all within the updated budget that was approved in January.

Being no further public comment, Clare made a motion to approve Resolution WH 12-32. Carroll seconded the motion. Motion carried 3-0.

Beutler thanked Mr. Arter for working with the City in a positive manner, his willingness to make his piece of the project special, and his enthusiasm for the entire project. The Board looks forward to working with him in the future.

**Item 7 -- WH 12-33 Resolution to approve a Memorandum of Agreement between the West Haymarket Joint Public Agency and Nebraska Department of Environmental Quality. (Miki Esposito)**

Miki Esposito, Department of Public Works & Utilities, introduced the agreement. This is a simple agreement similar to one used previously with NDEQ to provide compliance oversight to the south of 'O' Street properties (Alter, Jaylyn and little slice of UP if required). There is a \$2,000 application fee and \$3,000 participation fee. This will result in an enforcement bar, so that the EPA and State have a somewhat hands-off approach in enforcement while we are trying to comply voluntarily with environmental rules and regulations. They also shepherd us through the process. The agreement is unsigned as we are required to sign prior to execution by the State.

Clare asked if this is the typical process we follow on all cleanups. Moreover, if this results in us getting a sort of clean bill of health at the end. Esposito explained that whenever you are doing a voluntary cleanup process the State has this program you can enter into -- this is the beginning of the process. The "no further action" letter marks the end of the process. We will be receiving a "no further action" letter for the north of 'O' properties.

Peter Bleed indicated that his comments involve properties south of 'O' Street in the project area. He is interested in the history and historic resources in this area, and specifically in Block 51. This area certainly holds historic resources that have been relatively well handled by the project. They have been sensitively leveled and isolated so they are in a steady state. However, he sees no current plan for assessing this part of the area. In its early stages, before the bond vote, the Haymarket development did note the responsibility of the project to these resources. The budget and schedule included mitigating impact. However, excavating all of Block 51 ('N' to 'O' and 6<sup>th</sup> to 7<sup>th</sup> Streets -- essentially the Watson Brickson property) would be a very large project which, in his opinion, may yield a great deal of uninteresting and redundant information. Therefore, what is needed is a testing procedure to assess this area. He is especially interested in the historic feature of the manufactured gas plant. There is much study of these and they are a potential source of point pollutants. One method of approaching this would be with a technique like ground penetrating radar (GPR). The property is now accessible. Some sort of research is going to be needed on the gas plant. With GPR, you bring a machine back and forth across the site using radar to see what is below the surface. He personally does not do this, but there is a private contractor in Lincoln that does offer this type of service. It results in a map of the area about a yard below the surface. He shared a photo using this technique and stated that it is pretty good data to an archeologist that could be interpreted. He believes a systematic assessment of Block 51 would show what resources remain, and allow for carefully targeted research on issues that the project and community would feel worth investigating, as well as assist with the environmental assessment of the area.

Beutler thanked Mr. Bleed for the introduction to those possible techniques. Clare asked if this made sense with the cleanup. Esposito said we do need to rule out any potential problems prior to excavation and offered to work with Mr. Bleed. There should be plenty of time for investigation and remediation. Beutler asked Esposito to assess the situation and get back to the Board with what is involved.

There was no further public comment. Carroll made a motion to approve Resolution WH 12-33. Clare seconded the motion. Motion carried 3-0.

**Item 8 -- WH 12-34 Resolution to approve Amendment No. 6 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to add previously planned Task 22 and 23 to provide additional required remediation activities. (Miki Esposito)**

Miki Esposito presented Amendment No. 6 for environmental remediation efforts south of 'O' Street. This area is shown on the final image of the attached monthly information. Two of the tasks have to do with the Jaylyn and Alter sites. This site is going to be more intense in the type of contamination that may need addressed – polychlorinated biphenyls (PCBs), heavy metals, and, because we are dealing with a manufactured gas plant, naphthalene free product under the old lumberyard. The investigation effort is schedule for this summer. The process will be similar to what was done north of 'O' Street. That is by tasks 22 and 23. The projected fees are \$192,630 to address the former Jaylyn property and \$81,253 to address the former Alter property. The additional funding is for assessing and/or mitigation of the tanks discussed on 'N' Street to assess any groundwater or soil impact. In addition, to support ongoing compliance efforts with respect to dewatering, groundwater and auger cast pilings that are being screened. The estimated fee for that work is \$64,708. The total is \$338,591 for completion of the work on Amendment No. 6. This is accounted for and planned for within the budget.

Carroll clarified that this is for investigation efforts to develop a remedial plan. Esposito confirmed that this would give us a picture to fill in data gaps for the State and tell us how much or if remediation would be required. Remediation is likely.

Peter Bleed commented that there is some interesting archeology in the area. We need to be sensitive to that, and he is glad we have a means of holding those conversations.

Being no further public comment, Carroll made a motion for approval. Clare seconded the motion. Motion carried 3-0.

**Item 9 -- WH 12-35 Resolution to approve Amendment No. 1 to the Agreement for Construction Observation and Testing Services for the Arena, Arena Garage and Ramp Construction Sites to include Arena floor subgrade testing between Alfred Benesch & Company and the West Haymarket Joint Public Agency. (Paula Yancey)**

Paula Yancey explained that this amendment is with Benesch Geotechnical -- as opposed to the environmental aspects. That is why there are two separate amendments. About a year ago we entered into a Benesch testing contract for the arena pile inspections and geotechnical testing services on the arena site. After the first phase of piling installation was completed, the contract was reviewed. They were able to look at what testing would be needed for the next round of pile installations (which a credit was received for) and look at the future subgrade testing required with the track removal and the increase in soil levels on the east and west sides of the building. Also, to review testing needed while Mortenson is preparing to pour slab on grade on the arena floor to make sure the foundation, soil, and compaction are adequate to support those floors. This amendment is for \$24,675, which added to the original contract equals \$190,819.50. This amount is within the budget.

There was no public comment. Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 10 – Set Next Meeting Date**

The next meeting date is set for Tuesday, June 19, 2012 at 3:00 in City Council Chambers Room 112

**Item 11 -- Motion to Adjourn**

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:45 P.M.

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





**Pinnacle Bank Arena**



# **PINNACLE BANK ARENA**

**& Associated Infrastructure  
Projects**

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

# N STREET

9<sup>th</sup> & N Street



New pavement on N Street looking West from 9<sup>th</sup> Street

# POURING RETAINING WALL SOUTH SIDE OF N STREET



# SIDEWALK PAVEMENT BETWEEN 8<sup>TH</sup> & 9<sup>TH</sup> STREET



# CANOPY LOOKING NORTH



View to the North from the building of the unpainted canopy structural steel.

# AMTRAK



Cleaning north face of Amtrak Masonry

# AMTRAK



# DEC



# DEC



**Hawkins is currently working on structural steel and slab on grade**

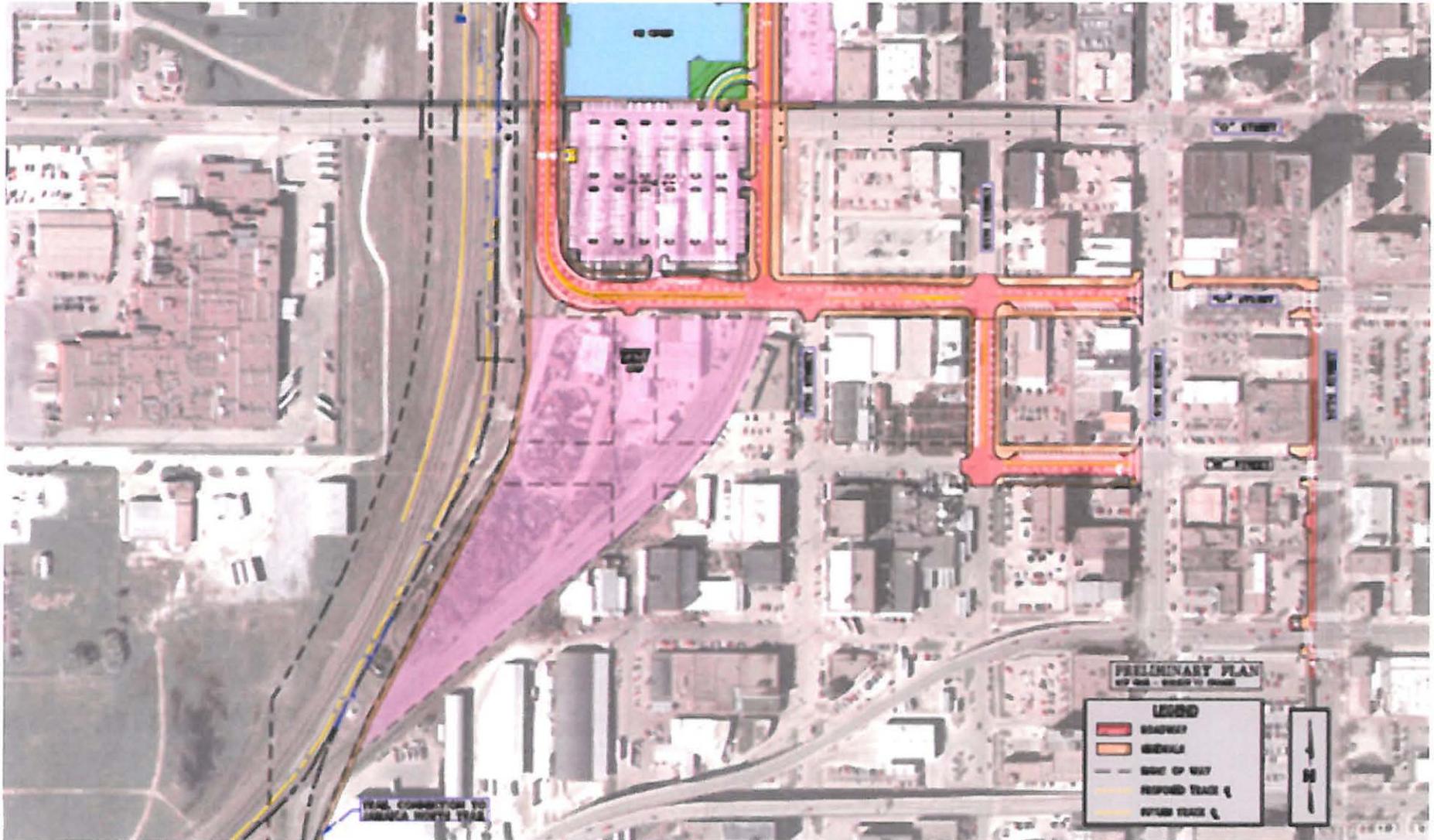


# OVERALL AERIAL OF SITE MAY 2012



5-15-12

# ENVIRONMENTAL REMEDIATION SOUTH OF "O"



City of Lincoln, NE  
 West Haymarket Joint Public Agency  
 Job Cost Report  
 As of May 31, 2012

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
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00951	West Haymarket Capital Proj						
70090	West Haymarket Park						
	870000 WH General Coordination	6,674,522	4,354,276	2,601,940	281,694-		281,694-
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70090	West Haymarket Park	6,674,522	4,354,276	2,601,940	281,694-		281,694-
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70091	Arena						
	870100 WH Arena	178,107,742	42,081,493	129,714,731	6,311,518		6,311,518
	870101 WH Arena Contingency	5,143,925			5,143,925		5,143,925
	870203 WH Arena Parking Garage	698,599	551,143	174,651	27,195-		27,195-
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70091	Arena	183,950,266	42,632,636	129,889,382	11,428,248		11,428,248
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70092	Parking						
	870201 WH HymktPkLot,FestSp&PedGrdStr	13,080,079	571,535	994,575	11,513,969		11,513,969
	870202 WH Parking Garage #1	15,066,244	405,223	606,193	14,054,828		14,054,828
	870204 WH Parking Garage #2	232,000	202,106	29,608	286		286
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70092	Parking	28,378,323	1,178,864	1,630,376	25,569,083		25,569,083
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70093	Roads						
	870301 WH Charleston Bridge/Roadway	264,403	252,015	390,766	378,378-		378,378-
	870302 WH "M"&"N" St,7th to 10th St	2,818,574	1,857,363	92,332	868,879		868,879
	870303 WH USPS Parking Lot Reconstctn	713,947	666,208	25,787	21,952		21,952
	870304 WH 10th & Salt Creek Road Impr	3,420,647	3,415,649	7,927	2,929-		2,929-
	870305 WH Core Area Roadway & Utility	13,531,642	642,971	333,904	12,554,767		12,554,767
	870306 WH Traffic Analysis	125,095	57,635	28,148	39,312		39,312
	870307 WH Streetscape	405,706	179,526	226,812	632-		632-
	870308 WH Sun Valley Blvd & West "O"	40,000	22,938	16,433	629		629
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70093	Roads	21,320,014	7,094,305	1,122,109	13,103,600		13,103,600

City of Lincoln, NE  
West Haymarket Joint Public Agency  
Job Cost Report  
As of May 31, 2012

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
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00951 West Haymarket Capital Proj						
70094 Pedestrian Ways						
870401 WH Plaza						
870402 WH Canopy Phase II	1,000,000	22		999,978		999,978
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70094 Pedestrian Ways	1,000,000	22		999,978		999,978
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70095 Utilities						
870501 WH Sanitary Sewer Relocation	1,492,905	1,492,905				
870502 WH Fiber Optic Comm & Other	650,880	506,035	31,547	113,298		113,298
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70095 Utilities	2,143,785	1,998,940	31,547	113,298		113,298
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70096 Environmental						
870601 WH NDEQ T-200	2,276,402	1,566,412	37,967	672,023	80,945	752,968
870602 WH Voluntary Clean-up Program	1,725,156	655,169	45,545	1,024,442		1,024,442
870603 WH Environmental Contngy Pln	2,124,947	1,175,723	10,565	938,659		938,659
870604 WH Other/Miscellaneous	525,600	508,482	233,114	215,996-		215,996-
870605 WH Canopy Phase I-Lead Abatemt	80,000			80,000		80,000
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70096 Environmental	6,732,105	3,905,786	327,191	2,499,128	80,945	2,580,073
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70097 Dirt Moving						
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF	2,305,770			2,305,770		2,305,770
870703 WH Initial Haymarket Site Prep	6,730,240	5,931,969	822,182	23,911-		23,911-
870704 WH Other Stormwater Mitigation						
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70097 Dirt Moving	9,036,010	5,931,969	822,182	2,281,859		2,281,859
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70098 TIF Improvements						
870800 WH TIF Improvements						
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70098 TIF Improvements						

City of Lincoln, NE  
 West Haymarket Joint Public Agency  
 Job Cost Report  
 As of May 31, 2012

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
70099	Site Purchase						
	870901 WH BNSF Land Acquisition	1,051,078	1,054,365		3,287-		3,287-
	870902 WH Alter Site Purchase	4,860,881	4,060,434		800,447		800,447
	870903 WH Jaylynn Site Purchase	1,796,652	1,603,161		193,491		193,491
	870904 WH UP Site Purchase	1,326,248	1,326,248				
	870905 WH BNSF Const, Rehab, Reloc	47,961,214	50,224,360		2,263,146-		2,263,146-
	870906 WH Amtrak Station	2,338,345	1,591,418	720,631	26,296		26,296
	870907 WH UP Track Mod West of Bridge	1,236,000	1,166,994		69,006		69,006
	870908 WH Other Private Prop Acqstns	1,880,587	603,747		1,276,840		1,276,840
70099	Site Purchase	62,451,005	61,630,727	720,631	99,647		99,647
70100	Other Costs						
	870951 WH ITS & Dynamic Message Signs	1,826,827	87,515	88,376	1,650,936		1,650,936
	870952 WH Community Space & Civic Art	1,500,000	21,760	39,050	1,439,190		1,439,190
70100	Other Costs	3,326,827	109,275	127,426	3,090,126		3,090,126
70105	Bond Related Costs						
	870975 WH Miscellaneous	5,160,000			5,160,000		5,160,000
	870976 WH Line of Credit		53,227		53,227-		53,227-
	870977 WH Series 1 JPA Debt		1,535,168		1,535,168-		1,535,168-
	870978 WH Series 2 JPA Debt		1,221,802		1,221,802-		1,221,802-
	870979 WH Series 3 JPA Debt		577,661		577,661-		577,661-
	870980 WH Series 4 JPA Debt		1,243,825		1,243,825-		1,243,825-
70105	Bond Related Costs	5,160,000	4,631,683		528,317		528,317
00951	West Haymarket Capital Proj	330,172,857	133,468,483	137,272,784	59,431,590	80,945	59,512,535

City of Lincoln, NE  
 West Haymarket Joint Public Agency  
 Operating Expenditure Report  
 As of May 31, 2012

00950 West Haymarket Reven  
 06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies	250			250		250
5261 Postage	1,000			1,000	1,271	271-
11 Materials & Supplies	1,250			1,250	1,271	21-
12 Other Services & Charges						
5621 Misc Contractual Services	428,698			428,698	203,122	225,576
5624 Auditing Service	15,000			15,000	15,000	
5631 Data Processing Service	10,855			10,855	786	10,069
5633 Software	1,000			1,000		1,000
5637 Engineering & Design	1,828,566			1,828,566	546,523	1,282,043
5643 Management Services	95,043			95,043	74,862	20,181
5762 Photocopying	500			500	125	375
5763 Printing	500			500	171	329
5794 Public Officials	30,000			30,000		30,000
5928 Rent of Co/City Bldg Space	2,456			2,456	1,842	614
5931 Parking Rent Bldg Comm	267			267	200	67
5952 Advertising/Media Serv	2,850			2,850	1,451	1,399
12 Other Services & Charges	2,415,735			2,415,735	844,082	1,571,653
06095 W Haymarket O & M	2,416,985			2,416,985	845,353	1,571,632

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket Joint Public Agency  
Operating Expenditure Report  
As of May 31, 2012

2  
06/05/12  
09:49:46

00950 West Haymarket Reven  
195011 JPA 2010A Debt Servi

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----						
195011 JPA 2010A Debt Servic						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg					524	524-
6235 Bd Trustee Pmt-Interest	4,651,510			4,651,510	4,651,510	
-----						
15 Debt Service	4,651,510			4,651,510	4,652,034	524-
-----						
195011 JPA 2010A Debt Servic	4,651,510			4,651,510	4,652,034	524-

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket Joint Public Agency  
Operating Expenditure Report  
As of May 31, 2012

3  
06/05/12  
09:49:46

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

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----						
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg					424	424-
6235 Bd Trustee Pmt-Interest	5,874,323			5,874,323	5,874,323	
-----						
15 Debt Service	5,874,323			5,874,323	5,874,747	424-
-----						
195021 JPA 2010B/C Debt Serv	5,874,323			5,874,323	5,874,747	424-

City of Lincoln, NE  
West Haymarket Joint Public Agency  
Operating Expenditure Report  
As of May 31, 2012

00950 West Haymarket Reven  
195031 JPA 2011 Debt Servic

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
195031 JPA 2011 Debt Service						
15 Debt Service						
6235 Bd Trustee Pmt-Interest	3,711,614			3,711,614	3,711,614	
-----	-----	-----	-----	-----	-----	-----
15 Debt Service	3,711,614			3,711,614	3,711,614	
-----	-----	-----	-----	-----	-----	-----
195031 JPA 2011 Debt Service	3,711,614			3,711,614	3,711,614	
-----	-----	-----	-----	-----	-----	-----
00950 West Haymarket Revenue	16,654,432			16,654,432	15,083,748	1,570,684

West Haymarket JPA  
Payment Register  
5/1/2012 through 5/31/2012

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
594773	Alfred Benesch & Company	Environ assmt 2/20-3/18/12	870604	WH Other/Miscellaneous	OV	1359913	35,411.42	05/02/12	469478
594773	Alfred Benesch & Company	Environ assmt 2/20-3/18/12	870603	WH Environmental Contngy Pln	OV	1359913	7,000.55	05/02/12	469478
594773	Alfred Benesch & Company	Environ assmt 2/20-3/18/12	870602	WH Voluntary Clean-up Program	OV	1359913	13,421.11	05/02/12	469478
594773	Alfred Benesch & Company	Environ assmt 2/20-3/18/12	870601	WH NDEQ T-200	OV	1359915	12,647.63	05/02/12	469478
249308	DLR Group Inc	Mar'12 Arena design	870100	WH Arena	OV	1360702	195,000.00	05/03/12	52854
249308	DLR Group Inc	Mar'12 Ded Wrk Area LNC	870100	WH Arena	OV	1360703	1,504.59	05/03/12	52854
249308	DLR Group Inc	Mar'12 Prkg Garage design	870203	WH Arena Parking Garage	OV	1360705	16,906.39	05/03/12	52854
249308	DLR Group Inc	Mar'12 Ramp & Elev Plz	870100	WH Arena	OV	1360706	5,134.96	05/03/12	52854
249308	DLR Group Inc	Mar'12 Signage CattLyon	870100	WH Arena	OV	1360707	11,591.80	05/03/12	52854
249308	DLR Group Inc	Mar'12 Fixed Reimb Exps	870100	WH Arena	OV	1360708	10,000.00	05/03/12	52854
596877	Olsson Associates	Design, 2/5-3/10/12	870703	WH Initial Haymarket Site Prep	OV	1359924	23,008.59	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870303	WH USPS Parking Lot Reconstrctn	OV	1359924	28.01	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870952	WH Community Space & Civic Art	OV	1359924	19,377.50	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870000	WH General Coordination	OV	1359924	48,679.97	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870204	WH Parking Garage #2	OV	1359924	5,952.05	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870951	WH ITS & Dynamic Message Signs	OV	1359924	10,296.15	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870202	WH Parking Garage #1	OV	1359924	61,689.85	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870305	WH Core Area Roadway & Utility	OV	1359924	161,261.54	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1359924	121,517.86	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870906	WH Amtrak Station	OV	1359924	4,636.70	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870307	WH Streetscape	OV	1359924	18,205.40	05/03/12	52883
596877	Olsson Associates	Design, 2/5-3/10/12	870302	WH "M"&"N" St,7th to 10th St	OV	1359924	45,489.73	05/03/12	52883
82368	State of Nebraska	Mar'2012 Monitoring #10620	870602	WH Voluntary Clean-up Program	PV	1362800	2,962.59	05/09/12	469937
196867	Terracon Consultants Inc	Feb,2012 Arena testing	870100	WH Arena	OV	1362114	24,954.79	05/09/12	469938
196867	Terracon Consultants Inc	Amtrak testing to 2/4/12	870906	WH Amtrak Station	OV	1362119	3,197.75	05/09/12	469938
594773	Alfred Benesch & Company	Testing,2/27-3/25/12	870100	WH Arena	OV	1362754	822.65	05/09/12	469939
594773	Alfred Benesch & Company	Testing,2/27-3/25/12	870100	WH Arena	OV	1362755	3,359.55	05/09/12	469939
594773	Alfred Benesch & Company	Testing,3/26-4/22/12	870100	WH Arena	OV	1362756	2,961.55	05/09/12	469939
600474	Del Peterson & Assoc	Appraisal-Arter Grp Railcars	870908	WH Other Private Prop Acqstns	PV	1362799	405.00	05/09/12	469940
185050	TCW Construction Inc	Pr#870302 02/15/12-02/18/12	870302	WH "M"&"N" St,7th to 10th St	OV	1362251	7,975.63	05/10/12	53002
185050	TCW Construction Inc	Pr#870302 02/29/12-03/14/12	870302	WH "M"&"N" St,7th to 10th St	OV	1362256	23,096.21	05/10/12	53002
185050	TCW Construction Inc	Pr#870302 03/15/12-04/30/12	870302	WH "M"&"N" St,7th to 10th St	OV	1362261	40,985.20	05/10/12	53002
185050	TCW Construction Inc	#870302,Partial retainage	870302	WH "M"&"N" St,7th to 10th St	OV	1362267	31,060.63	05/10/12	53002
249308	DLR Group Inc	Prkg Garage work,Feb,2012	870203	WH Arena Parking Garage	OV	1362107	18,021.24	05/10/12	53010
594458	Ronco Construction Company Inc	Amtrk Stn work to 3/30/12	870906	WH Amtrak Station	OV	1362092	192,846.60	05/10/12	53074
598263	PC Sports LLC	April,2012 Program mgmt	870000	WH General Coordination	OV	1362194	68,050.00	05/10/12	53087
598263	PC Sports LLC	April,2012 Arena mgmt	870100	WH Arena	OV	1362194	30,450.00	05/10/12	53087
599315	Legends Sales & Marketing LLC	March,12 retainer plus exps	870100	WH Arena	OV	1362111	21,367.65	05/10/12	53091
97885	Copy Services	Customer 595381	06095	W Haymarket O & M	PV	1363747	34.93	05/16/12	470274
102154	Public Building Commission	Finance- Mark L 05/12	06095	W Haymarket O & M	PV	1363750	204.62	05/16/12	470275
102154	Public Building Commission	Finance- Mark L 05/12	06095	W Haymarket O & M	PV	1363750	22.24	05/16/12	470275
108417	Citizen Information Center	WHJPA Video 4-6-12, 4-20-12	06095	W Haymarket O & M	PV	1363752	202.50	05/16/12	470276
131481	Public Works Business Office	City Staff-Pam Gadeken	06095	W Haymarket O & M	PV	1363754	414.92	05/16/12	470277
90261	Stephens & Smith Construction Co Inc	Amtrk Pltfrm work to 3/31	870906	WH Amtrak Station	OV	1364061	279,303.30	05/17/12	53158
591846	Marvin Investment Management Co	Program Admin 3/16/12-4/15/12	06095	W Haymarket O & M	PV	1363756	7,063.00	05/17/12	53226
593485	Thought District Inc	10-JPA-0007 On-Going Mgmt	06095	W Haymarket O & M	PV	1363759	2,000.00	05/17/12	53231
596579	SMG	T Lorenz Pollstar registration	870100	WH Arena	PV	1363552	699.00	05/17/12	53237
596579	SMG	Hotel,I Rosenbaum,2/29-3/2/12	870100	WH Arena	PV	1363553	231.00	05/17/12	53237
596579	SMG	Feb,2012 consulting	870100	WH Arena	OV	1363554	5,000.00	05/17/12	53237
596608	M A Mortenson Company	Apr,2012 scheduling	870000	WH General Coordination	OV	1363556	16,666.00	05/17/12	53238
77921	County/City Property Management	CITY CONTROLLER-JPA	06095	W Haymarket O & M	PV	1365312	59.99	05/23/12	470860
66501	Hofeling Enterprises Inc		870302	WH "M"&"N" St,7th to 10th St	PV	1365673	4,660.00	05/24/12	53300
90261	Stephens & Smith Construction Co Inc	AmtrkPltfrm work to 4/30/12	870906	WH Amtrak Station	OV	1365602	12,916.80	05/24/12	53326

West Haymarket JPA  
 Payment Register  
 5/1/2012 through 5/31/2012

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
90261	Stephens & Smith Construction Co Inc	AmtrkPltfrm pay part retnge	870906	WH Amtrak Station	OV	1365603	25,706.65	05/24/12	53326
185050	TCW Construction Inc	Final on remediation work	870602	WH Voluntary Clean-up Program	OV	1365475	301,967.87	05/24/12	53366
185050	TCW Construction Inc	Final on remediation work	870603	WH Environmental Contngy Pln	OV	1365475	618,904.83	05/24/12	53366
222586	Don Herz	Services for April, 2012	06095	W Haymarket O & M	PV	1365313	852.50	05/24/12	53370
594458	Ronco Construction Company Inc	AmtrkStatn work to 4/30/12	870906	WH Amtrak Station	OV	1365522	246,974.40	05/24/12	53422
98642	Information Services	04/12 Data Processing	06095	W Haymarket O & M	PV	1367558	78.42	05/30/12	471256
103499	Register of Deeds	Filing fees,quitclaim deed	870000	WH General Coordination	PV	1365671	41.50	05/30/12	471257
131481	Public Works Business Office	City Staff-Pam Gadeken	06095	W Haymarket O & M	PV	1367559	472.15	05/30/12	471258
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2010A	195011	JPA 2010A Debt Service	PV	1367537	2,325,755.00	05/30/12	471259
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2010B	195021	JPA 2010B/C Debt Service	PV	1367538	1,855,980.00	05/30/12	471259
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2010C	195021	JPA 2010B/C Debt Service	PV	1367539	1,081,181.25	05/30/12	471259
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2011	195031	JPA 2011 Debt Service	PV	1367540	2,295,843.75	05/30/12	471259
591416	Excellence Opto Inc		870302	WH "M"&"N" St,7th to 10th St	PV	1367488	369.00	05/30/12	471260
591416	Excellence Opto Inc		870302	WH "M"&"N" St,7th to 10th St	PV	1367488	222.60	05/30/12	471260
591416	Excellence Opto Inc		870302	WH "M"&"N" St,7th to 10th St	PV	1367488	598.80	05/30/12	471260
591416	Excellence Opto Inc		870302	WH "M"&"N" St,7th to 10th St	PV	1367488	294.00	05/30/12	471260
593619	ESA Inc	Cust#420885	870903	WH Jaylynn Site Purchase	PV	1365656	895.00	05/30/12	471261
594773	Alfred Benesch & Company	Remedial work 3/19-4/15/12	870601	WH NDEQ T-200	OV	1367495	3,393.89	05/30/12	471262
594773	Alfred Benesch & Company	Remedial work 3/19-4/15/12	870602	WH Voluntary Clean-up Program	OV	1367496	8,115.95	05/30/12	471262
594773	Alfred Benesch & Company	Remedial work 3/19-4/15/12	870604	WH Other/Miscellaneous	OV	1367496	22,057.87	05/30/12	471262
594773	Alfred Benesch & Company	Remedial work 3/19-4/15/12	870603	WH Environmental Contngy Pln	OV	1367496	2,177.00	05/30/12	471262
38391	Lincoln Journal Star	Cust#60016059	870305	WH Core Area Roadway & Utility	PV	1365660	22.05	05/31/12	53471
38391	Lincoln Journal Star	Cust#60016059	870402	WH Canopy Phase II	PV	1365670	22.05	05/31/12	53471
249308	DLR Group Inc	Apr,2012 Arena consulting	870100	WH Arena	OV	1367489	142,500.00	05/31/12	53541
249308	DLR Group Inc	Apr'2012 Ded Wrk Area LNC	870100	WH Arena	OV	1367490	1,504.55	05/31/12	53541
249308	DLR Group Inc	Apr,2012 Ramp & Elev Plaza	870100	WH Arena	OV	1367491	10,255.77	05/31/12	53541
249308	DLR Group Inc	Apr,2012 Fixed Reimb Exps	870100	WH Arena	OV	1367492	10,000.00	05/31/12	53541
249308	DLR Group Inc	Apr,2012 Signage Cattlyon	870100	WH Arena	OV	1367493	21,787.50	05/31/12	53541
249308	DLR Group Inc	Apr,2012 Arena Tekla Model	870100	WH Arena	OV	1367494	36,000.00	05/31/12	53541
253930	Clean Harbors Env Services	PO#WH870603 Soil testing	870603	WH Environmental Contngy Pln	PV	1367487	18,690.82	05/31/12	53542
591846	Marvin Investment Management Co	Program Admin 4/16/12-5/15/12	06095	W Haymarket O & M	PV	1367560	7,063.00	05/31/12	53558
596608	M A Mortenson Company	Apr,2012 Arena work	870100	WH Arena	OV	1367498	4,512,813.00	05/31/12	53564
599315	Legends Sales & Marketing LLC	Apr,2012 retainer+rent+sal	870100	WH Arena	OV	1367497	20,055.68	05/31/12	53565
Grand total							14,599,418.25		

West Haymarket JPA  
Public Works Engineering Costs  
5/1/2012 through 5/31/2012

Description	Fund	Project	Description	Do Ty	Document Number	Object	Sub	Amount	G/L Date
Design Engineering	00951	870000	WH General Coordination	EU	339306	6153	130	2,193.54	05/03/12
Design Engineering	00951	870201	WH HymktPkLot, FestSp&PedGrdStr	EU	339306	6153	130	238.79	05/03/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	339306	6153	130	1,373.05	05/03/12
Design Engineering	00951	870303	WH USPS Parking Lot Reconstctn	EU	339306	6153	130	119.41	05/03/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	339306	6153	130	1,790.95	05/03/12
Design Engineering	00951	870951	WH ITS & Dynamic Message Signs	EU	339306	6153	130	182.79	05/03/12
Design Engineering	00951	870000	WH General Coordination	EU	340300	6153	130	2,347.66	05/17/12
Design Engineering	00951	870201	WH HymktPkLot, FestSp&PedGrdStr	EU	340300	6153	130	238.79	05/17/12
Construction Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	340300	6153	320	100.86	05/17/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	340300	6153	130	1,973.74	05/17/12
Traffic	00951	870302	WH "M"&"N" St,7th to 10th St	EU	340300	6153	355	74.54	05/17/12
Design Engineering	00951	870303	WH USPS Parking Lot Reconstctn	EU	340300	6153	130	119.41	05/17/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	340300	6153	130	6,387.77	05/17/12
Design Engineering	00951	870307	WH Streetscape	EU	340300	6153	130	599.87	05/17/12
Design Engineering	00951	870000	WH General Coordination	EU	341287	6153	130	2,664.19	05/31/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	341287	6153	130	1,611.87	05/31/12
Observer/Inspections	00951	870302	WH "M"&"N" St,7th to 10th St	EU	341287	6153	325	97.62	05/31/12
Design Engineering	00951	870304	WH 10th & Salt Creek Road Impr	EU	341287	6153	130	416.61	05/31/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	341287	6153	130	2,147.32	05/31/12
Design Engineering	00951	870306	WH Traffic Analysis	EU	341287	6153	130	182.79	05/31/12
Design Engineering	00951	870307	WH Streetscape	EU	341287	6153	130	31.44	05/31/12

Grand  
total

24,893.01

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

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

2 Agency:

3 That the Chair of the West Haymarket Joint Public Agency Board of Representatives, is  
4 hereby authorized to execute on behalf of the West Haymarket Joint Public Agency the attached  
5 Corporation Warranty Deed and all closing documents associated with conveyance of City Parcel One  
6 and City Parcel Two to Star City Federal LLC and the Star City Parcel to the West Haymarket Joint  
7 Public Agency. City Parcel One, City Parcel Two and the Star City Parcel are defined in the Land  
8 Exchange Agreement between the City of Lincoln, Nebraska, the West Haymarket Joint Public  
9 Agency and Star City Federal LLC approved by Resolution No. WH 00110 adopted by the Board of  
10 Representatives on April 14, 2011. Said Land Exchange Agreement authorized the conveyance of  
11 City Parcel One and City Parcel Two to Star City Federal LLC and the acceptance of the Star City  
12 Parcel but failed to specifically provide that the Chair, could sign the Corporation Warranty Deed and  
13 other closing documents on behalf of the West Haymarket Joint Public Agency.

14 The City Clerk is directed to return the original Warranty Deed to Rick Peo, Chief Assistant  
15 City Attorney, for delivery to Star City Federal at Closing.

16 Adopted this \_\_\_\_\_ day of June, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

## CORPORATION WARRANTY DEED

### KNOW ALL MEN BY THESE PRESENTS:

That **WEST HAYMARKET JOINT PUBLIC AGENCY**, a political subdivision and body corporate politic of the State of Nebraska, **corporation**, herein called the "*Grantor*," in consideration of One Dollar and other valuable consideration, (\$1.00 & OVC), received from *Grantee*, does grant, bargain, sell, convey, and confirm unto **STAR CITY/ FEDERAL, LLC**, a Nebraska limited liability company, herein called the "*Grantee*," the following described real property:

**City Parcel One** - A tract of land composed of a part of Lots 2-7, C.J. Hulls Subdivision, a part of Lot 4, Block 14, North Lincoln Addition, a part of vacated 8th Street, and a part of vacated unnamed right-of-way north of C.J. Hulls Subdivision, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described on Exhibit A attached hereto.

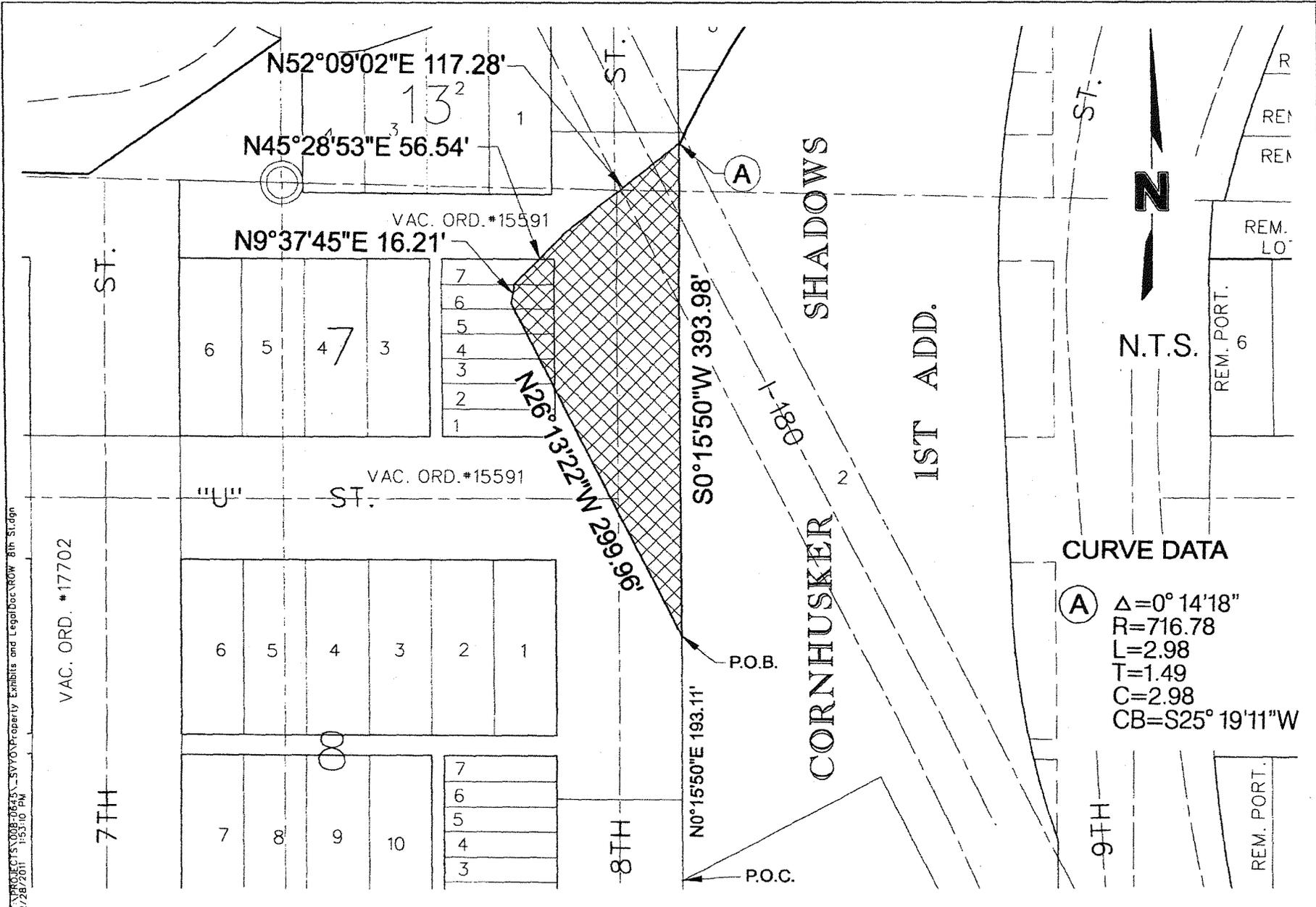
### AND ALSO

**City Parcel Two** - A tract of land composed of a part of the remaining portion of Lots 2 & 3, Block 14, North Lincoln Addition, a part of the remaining portion of Lot 1, Block 6, Original Town of Lincoln, and a part of the unnamed right-of-way south of Block 14, North Lincoln Addition, all being part of land acquired with the 10th Street Viaduct Project, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th Principal Meridian, Lancaster County, Nebraska, more particularly described on Exhibit B attached hereto.

To have and hold the above described premises together with all tenements, hereditaments, and appurtenances thereto belonging unto the Grantee and to Grantee's heirs and assigns forever.

The Grantor for itself and its successors does hereby covenant with the Grantee and with Grantee's heirs and assigns that the Grantor is lawfully seized of said premises; that they are free from encumbrance except for easements and restrictions of record and other permitted exceptions as defined in the Land Exchange Agreement (Star City/Federal) effective April 14, 2011 between the Grantor, Grantee, and the City of Lincoln, Nebraska; that Grantor has good, right, and lawful





F:\PROJECTS\008-0645\SVY\Property Exhibits and Legal Docs\08 St.dgn  
 2/28/2011 1:53:10 PM

**CURVE DATA**

(A)  $\Delta = 0^\circ 14' 18''$   
 $R = 716.78$   
 $L = 2.98$   
 $T = 1.49$   
 $C = 2.98$   
 $CB = S25^\circ 19' 11'' W$

PROJECT NO: 010-2431  
 DRAWN BY: TDB  
 DATE: February 28th, 2011

CITY PARCEL ONE

  
 1111 Lincoln Mall, Suite 111  
 P.O. Box 84608  
 Lincoln, NE 68501-4608  
 TEL 402.474.6311  
 FAX 402.474.5160

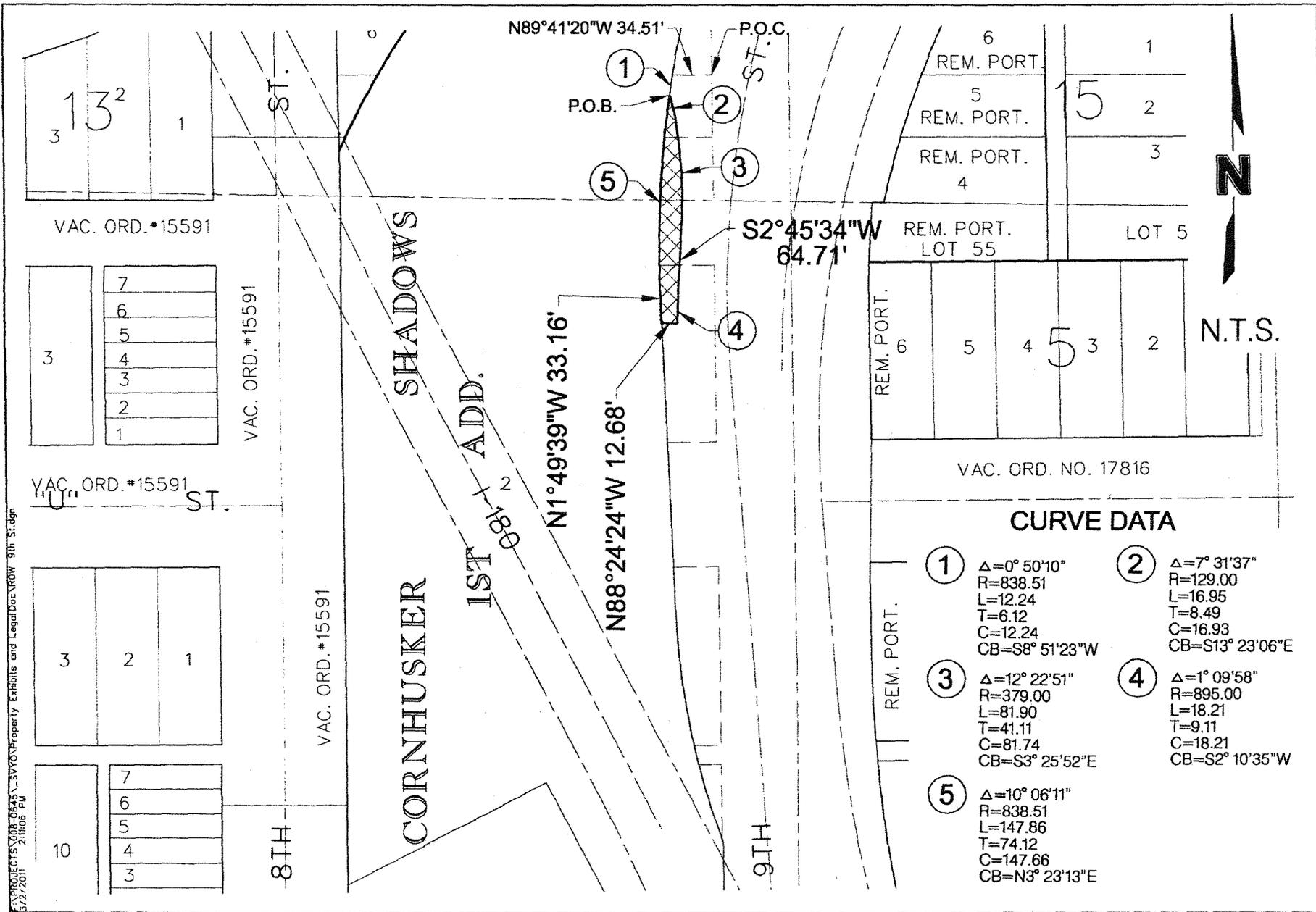
Exhibit  
**A**  
 Page 1 of 2

CITY PARCEL ONE

CITY PROPERTY TO BE TRANSFERED  
LOTS 2-7, C.J. HULLS SUBDIVISION,  
LOT 4, BLOCK 14, NORTH LINCOLN ADDITION,  
VACATED 8<sup>TH</sup> STREET,  
VACATED UN-NAMED RIGHT-OF-WAY NORTH OF C.J. HULLS SUBDIVISION

A TRACT OF LAND COMPOSED OF A PART OF LOTS 2-7, C.J. HULLS SUBDIVISION, A PART OF LOT 4, BLOCK 14, NORTH LINCOLN ADDITION, A PART OF VACATED 8<sup>TH</sup> STREET, AND A PART OF VACATED UN-NAMED RIGHT-OF-WAY NORTH OF C.J. HULLS SUBDIVISION, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF LOT 2, CORNHUSKER SHADOWS 1<sup>ST</sup> ADDITION; THENCE ON AN ASSUMED BEARING OF NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 2, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF VACATED 8<sup>TH</sup> STREET, A DISTANCE OF 193.11 FEET TO THE POINT OF BEGINNING; THENCE NORTH 26 DEGREES 13 MINUTES 22 SECONDS WEST, A DISTANCE OF 299.96 FEET TO A POINT; THENCE NORTH 9 DEGREES 37 MINUTES 45 SECONDS EAST, A DISTANCE OF 16.21 FEET TO A POINT; THENCE NORTH 45 DEGREES 28 MINUTES 53 SECONDS EAST, A DISTANCE OF 56.54 FEET TO A POINT; THENCE NORTH 52 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 117.28 FEET TO A POINT ON THE WEST LINE OF LOT 2, CORNHUSKER SHADOWS 1<sup>ST</sup> ADDITION, AND A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 2.98 FEET, HAVING A RADIUS OF 716.78 FEET, A CENTRAL ANGLE OF 0 DEGREES 14 MINUTES 18 SECONDS, A CHORD BEARING OF SOUTH 25 DEGREES 19 MINUTES 11 SECONDS WEST, AND A CHORD DISTANCE OF 2.98 FEET TO THE NORTHWEST CORNER OF SAID LOT 2, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF VACATED 8<sup>TH</sup> STREET; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST, ALONG THE EAST RIGHT-OF-WAY LINE OF VACATED 8<sup>TH</sup> STREET, A DISTANCE OF 393.98 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 27,751 SQUARE FEET, (0.64 ACRES) MORE OR LESS.



PROJECTS: 008-06245 - SYVO Property Exhibits and Legal Doc VROW 9th St.dgn  
 5/27/2011 2:18:06 PM

PROJECT NO: 010-2431  
 DRAWN BY: TDB  
 DATE: February 28th, 2011

CITY PARCEL TWO

**MOLSSON**  
 ASSOCIATES

1111 Lincoln Mall, Suite 111  
 P.O. Box 84608  
 Lincoln, NE 68501-4608  
 TEL 402.474.6311  
 FAX 402.474.5160

Exhibit  
**B**  
 Page 1 of 2

**CURVE DATA**

- |   |  |
|---|--|
| <p>① <math>\Delta=0^{\circ} 50'10''</math><br/> <math>R=838.51</math><br/> <math>L=12.24</math><br/> <math>T=6.12</math><br/> <math>C=12.24</math><br/> <math>CB=S8^{\circ} 51'23''W</math></p>     | <p>② <math>\Delta=7^{\circ} 31'37''</math><br/> <math>R=129.00</math><br/> <math>L=16.95</math><br/> <math>T=8.49</math><br/> <math>C=16.93</math><br/> <math>CB=S13^{\circ} 23'06''E</math></p> |
| <p>③ <math>\Delta=12^{\circ} 22'51''</math><br/> <math>R=379.00</math><br/> <math>L=81.90</math><br/> <math>T=41.11</math><br/> <math>C=81.74</math><br/> <math>CB=S3^{\circ} 25'52''E</math></p>   | <p>④ <math>\Delta=1^{\circ} 09'58''</math><br/> <math>R=895.00</math><br/> <math>L=18.21</math><br/> <math>T=9.11</math><br/> <math>C=18.21</math><br/> <math>CB=S2^{\circ} 10'35''W</math></p>  |
| <p>⑤ <math>\Delta=10^{\circ} 06'11''</math><br/> <math>R=838.51</math><br/> <math>L=147.86</math><br/> <math>T=74.12</math><br/> <math>C=147.66</math><br/> <math>CB=N3^{\circ} 23'13''E</math></p> |  |

CITY PARCEL TWO

CITY PROPERTY TO BE TRANSFERRED

LOTS 2 & 3, BLOCK 14, NORTH LINCOLN ADDITION,  
LOT 1, BLOCK 6, ORIGINAL TOWN OF LINCOLN,  
THE UN-NAMED RIGHT-OF-WAY SOUTH OF BLOCK 14, N. LINCOLN ADD.

A TRACT OF LAND COMPOSED OF A PART OF THE REMAINING PORTION OF LOTS 2 & 3, BLOCK 14, NORTH LINCOLN ADDITION, A PART OF THE REMAINING PORTION OF LOT 1, BLOCK 6, ORIGINAL TOWN OF LINCOLN, AND A PART OF THE UN-NAMED RIGHT-OF-WAY SOUTH OF BLOCK 14, NORTH LINCOLN ADDITION, ALL BEING PART OF LAND ACQUIRED WITH THE 10<sup>TH</sup> STREET VIADUCT PROJECT, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 2, BLOCK 14, NORTH LINCOLN ADDITION; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 41 MINUTES 20 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 34.51 FEET TO A POINT ON THE EASTERLY LINE OF LOT 2, CORNHUSKER SHADOWS 1<sup>ST</sup> ADDITION, SAID POINT ALSO BEING A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 12.24 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 0 DEGREES 50 MINUTES 10 SECONDS, A CHORD BEARING OF SOUTH 8 DEGREES 51 MINUTES 23 SECONDS WEST, AND A CHORD DISTANCE OF 12.24 FEET A POINT OF CURVATURE AND THE POINT OF BEGINNING; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 16.95 FEET, HAVING A RADIUS OF 129.00 FEET, A CENTRAL ANGLE OF 7 DEGREES 31 MINUTES 37 SECONDS, A CHORD BEARING OF SOUTH 13 DEGREES 23 MINUTES 06 SECONDS EAST, AND A CHORD DISTANCE OF 16.93 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 81.90 FEET, HAVING A RADIUS OF 379.00 FEET, A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 51 SECONDS, A CHORD BEARING OF SOUTH 3 DEGREES 25 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 81.74 FEET TO A POINT; THENCE SOUTH 2 DEGREES 45 MINUTES 34 SECONDS WEST, A DISTANCE OF 64.71 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 18.21 FEET, HAVING A RADIUS OF 895.00 FEET, A CENTRAL ANGLE OF 1 DEGREE 09 MINUTES 58 SECONDS, A CHORD BEARING OF SOUTH 2 DEGREES 10 MINUTES 35 SECONDS WEST, AND A CHORD DISTANCE OF 18.21 FEET TO A POINT; THENCE NORTH 88 DEGREES 24 MINUTES 24 SECONDS WEST, A DISTANCE OF 12.68 FEET TO A POINT ON THE EAST LINE OF SAID LOT 2, CORNHUSKER SHADOWS 1<sup>ST</sup> ADDITION; THENCE NORTH 1 DEGREE 49 MINUTES 39 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 33.16 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 147.86 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 10 DEGREES 06 MINUTES 11 SECONDS, A CHORD BEARING OF NORTH 3 DEGREES 23 MINUTES 13 SECONDS EAST, AND A CHORD DISTANCE OF 147.66 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 2,477 SQUARE FEET, (0.06 ACRES) MORE OR LESS.

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

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

3 That Amendment No. 13 to the Agreement for Engineering Services with Olsson  
4 Associates for the Haymarket Infrastructure Design Project for Construction Phase Services  
5 (including testing and inspection) for the Core Area Roadway Project and the Historic Canopy  
6 Renovation Project is hereby accepted and approved and the Chairperson of the West Haymarket  
7 Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment  
8 No. 12 on behalf of the West Haymarket Joint Public Agency.

9 The total estimated fee for the work associated with this Amendment No. 13 is  
10 \$816,590.00, which increases the total contract amount from \$8,976,216.00 to \$9,792,806.00.

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

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

**AMENDMENT NO. 13**  
**to AGREEMENT for ENGINEERING SERVICES**  
**between OLSSON ASSOCIATES**  
**dba LINCOLN HAYMARKET INFRASTRUCTURE TEAM and the**  
**WEST HAYMARKET JOINT PUBLIC AGENCY**  
**HAYMARKET INFRASTRUCTURE DESIGN PROJECT**  
**Project No. 870305 & 870307**

This Contract Amendment is made by and between Olsson Associates, dba Lincoln Haymarket Infrastructure Team, hereinafter called ENGINEER, and the West Haymarket Joint Public Agency, hereinafter called JPA, this \_\_\_\_\_ day of \_\_\_\_\_ 2012 and approved by Resolution No. \_\_\_\_\_.

WHEREAS, it is the mutual desire of the parties hereto to amend the Agreement to provide professional services associated with the Haymarket Infrastructure Design Contract which was entered into on November 18, 2010 under Resolution WH-12, hereinafter called the existing Agreement. The description of work to be added to the existing Agreement under this Amendment generally shall include the Construction Phase Services for the Core Area Roadway and Utilities & Historic Canopy Renovation projects. A detailed breakdown of scope of services for project A-10 is included in the attachments and as shown below:

- Core Area Roadway and Utilities/Historic Canopy Renovation – Construction Phase Services – Appendix A-10

The additional fee for Core Area Roadway and Utilities/Historic Canopy Renovation – Construction Phase Services is \$816,590. With this additional work, the total contract amount increases from \$8,976,216 to \$9,792,806.

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described herein.

This AMENDMENT shall be deemed a part of, and shall be subject to all terms and conditions of the existing Agreement. Except as modified above, the existing Agreement shall remain in full force and effect.

**West Haymarket Joint Public Agency**

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

**Engineer – Olsson Associates dba  
Lincoln Haymarket Infrastructure Team**

By: Bud [Signature]  
Title: President

By: Jared Olsson [Signature]  
Title: S.V.P.

## **APPENDIX A**

### **Scope of Services**

#### **HAYMARKET CORE AREA ROADWAY AND UTILITIES AND HISTORIC CANOPY RENOVATION, PHASE 2, CONSTRUCTION PHASE SERVICES**

JPA Project Number 870305 and 870307

#### **General Description of Scope of Services**

This scope of services generally includes construction phase services for the Core Area Roadway and Utility Construction Project and the Historic Canopy Renovation, Phase 2. The services to be provided under this contract will include normal and customary construction administration, construction observation of the work; geotechnical observation and soils testing for the excavation, over-excavation, embankment construction, surveys to verify final quantities; and other testing work such as compaction testing for utility trench backfill, concrete testing for concrete construction, asphalt testing, and Testing Laboratory support as necessary.

The following are the task items that are included as part of the scope of services for the Core Area Roadway and Utilities and Historic Canopy Phase 2 Construction Services Project.

#### **Task 1. Construction Administration**

LHIT shall furnish a Construction Administrator and Administrative Assistant to manage and oversee the construction work, develop and maintain project documents and reporting procedures and respond to contract related questions or changes in conditions that may be encountered. It is assumed that the Construction Administrator will be utilized full time based on a 40 hour work week for the projected construction period starting July 23, 2012 and continuing through project close out expected to be on or before December 16, 2013. For the purposes of estimating hours it is assumed the duration of the project shall be 73 weeks. Specific services performed by the Construction Administrator are as follows:

**a. Pre-Construction Conference**

On a date and at a time and place set by LHIT the Construction Administrator will prepare an agenda and conduct a pre-construction conference. The pre-construction conference will include a discussion of the Contractor's tentative schedule, procedures for transmittal and review of the Contractor's submittals, processing payment applications, critical work sequencing, change orders, record documents, and other items pertaining to execution of the contract documents as well as the Contractor's responsibilities for safety and first aid. Meeting minutes will be distributed to those in attendance.

**b. Review Contractor's Submittals**

Review Contractor submittals, for equipment, materials, and construction. All requests for variations from the contract documents will be reviewed with LHIT and PC Sports before issuing an approval to the contractor. Records will be maintained to indicate the disposition of each submittal.

**c. Pay Requests**

Review LHIT field personnel postings of stored materials and work items completed, generate, approve and submit payment document to PC Sports for final processing.

The City of Lincoln Aurigo Project Reporting System will be used to develop and document Contractor Pay Estimates.

**d. Project Modifications**

Coordinate plan changes with LHIT and PC Sports. Review contractor RFI and/or Proposed Change Order requests and determine applicable action in the issuance of field orders or Work Change Directives. Submit Work Change Directives with supporting documentation to PC Sports for inclusion in a subsequent Change Order. PC Sports will determine approval or rejection and authorize work modification to proceed. Upon receipt of PC Sports signed Change Order the cost and/or time modification will be documented as a Change Order in the City of Lincoln Aurigo Reporting System.

**e. Project Files and Project Documentation**

Set up and maintain appropriate project files that relate to the work. Including but not limited to: project correspondence, contractor requests for information (RFI), field orders (FO), work change directives (WCD), change orders (CO), meeting minutes, material certifications, test reports, weekly construction summaries and project schedules.

**f. Document Interpretation and Clarification**

Provide written interpretation and clarification of contract documents for the owner and general contractor.

**g. Progress Meetings**

Coordinate with General Contractor and assist in developing the agenda for the weekly progress meetings. Insure that the Contractor provides minutes of the meetings to those in attendance. Meetings will include discussion of the Contractors progress as it relates to the schedule and maintaining project schedules, site coordination, defects and deficiencies in the work and resolution to conflicts.

**h. Substantial Completion**

Upon receipt of written notification from the Contractor of substantial completion, schedule a walk through to identify items to be completed or corrected prior to accepting substantial completion.

**i. Final Completion**

In the company of the PC Sports, Design Engineer and Contractor, conduct a final completion walk through to identify items requiring completion or correction prior to final payment.

**j. Project Closeout**

Coordinate appropriate information relating to final closeout of the project including a final set of record drawings for distribution as well as securing all necessary documentation allowing for processing of final payment.

## **Task 2. Construction Observation**

LHIT shall furnish full time Resident Project Representatives (RPR's), and other staff to assist in observing performance of the work of the contractor over the projected construction period starting July 23, 2012 and continuing through project close out which is expected to occur on or about December 16, 2013. This will include all work associated with the Core Area Roadway and Utility installations for proposed Phase 1A through Phase IE and Phase I through Phase IV.

This work will generally include observation of site clearing and demolitions, water and sanitary sewer construction, storm sewer construction, coordination of dry utilities (gas, electrical, telephone, etc.) shoring and structure construction, pavement construction, coordination with soils testing and placement operations.

Through more extensive on-site observations of the work in progress and field checks of materials, the RPR and assistants shall endeavor to provide further protection for the JPA against defects and deficiencies in the work. Specific services to be performed are as follows:

### **a. General Site Observation**

Provide full time construction observation during all Phases of the project. This may include observation during evening hours and on weekends to adequately observe the contractor's work. For the purpose of estimating hours it is assumed that the contractor and/or his subcontractors will be working an average of 9 hours per day for an average of 6 days per week during the work up through substantial completion.

### **b. Schedules**

Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by contractor and consult with Construction Administrator concerning acceptability.

### **c. Meetings**

Attend meetings with contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.

### **d. Liaison**

Serve as Construction Administrators liaison with contractor, working principally through contractor's superintendent and assist Contractors in understanding the intent of the Contract Documents, assist the Construction Administrator in serving as PC Sports liaison with contractors when their work affects other on-site developer operations.

### **e. Shop Drawings and Samples**

Record date of receipt of Shop Drawings and samples, receive samples which are furnished at the site by contractor, and notify Construction Administrator of availability of samples for examination. Advise the Construction Administrator and Contractor of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved.

### **f. Review of Work, Rejection of Defective Work, Observations and Tests**

Conduct on-site observations of the Work in progress to assist Construction Administrator in determining if the Work is in general proceeding in accordance with the Contract Documents.

Report to Construction Administrator whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any governing agency, test or approval required to be made; and advise Construction Administrator of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, or approval.

**g. Modifications**

Consider and evaluate Contractor's suggestions for modifications to the Plans and Specifications and report with RPR's recommendations to Construction Administrator. Transmit to Contractor decisions as issued by PC Sports and/or the Construction Administrator.

**h. Records**

Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents. In hard bound Field Books keep detailed notes, computations and measurements, records of quantities of pay items constructed and basis of acceptance of installed materials.

Maintain a Daily Work Report (DWR) using the City of Lincoln's Aurigo reporting software documenting project quantities for removals and installations hours contractors are on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures.

**i. Reports**

Furnish Construction Administrator weekly summary reports and photo log which include but are not limited to progress of the Work and Contractor's compliance with the progress schedule.

**j. Payment Requests**

Each day post completed work and stored materials in RPR's DWR on the City of Lincoln Aurigo Reporting System for review and approval by the Construction Administrator. These posting become the basis for progress payments to the Contractors.

**k. NPDES**

Review the Contractor's documentation of the erosion and sediment control plan. Notify the Owner and the Contractor when documentation is observed to be in non-compliance. The implementation and documentation required to meet the requirements of the NPDES permit are not included in this scope of work.

**l. Substantial Completion**

Schedule and attend substantial completion walk through with PC Sports, Contractor and Construction Administrator. Prepare and distribute substantial completion punch list.

**m. Final Completion**

Schedule and attend the final completion walk through with PC Sports, Design Engineer, Contractor and Construction Administrator. Prepare and distribute final completion punch list. Observe that all items on final list have been completed or corrected and make recommendations to Construction Administrator concerning acceptance.

**n. Record Drawings**

Maintain record drawings and specifications based on site observation and the Contractor's record drawings. This information will be combined and one set of redlined record drawings will be provided to PC Sports at the completion of the project. Electronic files of the record drawings are not included in this scope of work.

**Task 3. Survey**

LHIT shall provide Survey Crews as needed to assist RPR's in verification of Plan grades and alignment. This will include verification of final elevations at pad sites prior to transferring the site to others, verification of paving grades at critical locations, verification of utility flow lines and alignments, and other critical items of work as determined by the Program Manager. On an as needed basis, Survey crews will also be utilized to measure completed construction quantities through use of GPS equipment to determine As-Built quantities.

**Task 4. Geotechnical Observation and Soils Testing**

LHIT shall provide a full time on-site soils technician and an on call Geotechnical Engineer during the completion of the excavation, over-excavation, embankment construction for the work associated with the Core Area Roadway and Utility Construction Project. This includes verification of unsuitable soils that need to be removed (and verification that it is suitable for beneficial reuse), monitoring of re-usable excavated material and stock piled soils for fills, compaction testing for fill material.

**Task 5. Materials and Other Testing**

LHIT shall provide materials testing and other testing as required for construction of the new utilities and pavements on the Core Area Roadway and Utility Installation Project. This would include concrete testing for new pavement and structure construction, compaction testing for pavement construction, coring and density testing at new asphalt construction, and compaction testing for trench backfill and backfill at structures. Final quantities and frequency of testing will be dependent on the construction schedule, but the hourly rate and unit prices proposed will remain the same for the duration of the project. The following is based on a construction schedule typically seen in the area for a similar size project from a testing agencies perspective.

**a. Structural Fill – Excavation, Over excavation**

LHIT will observe the exposed subgrade within the construction limits of the site grading and over excavation to verify that soils unsuitable as structural fill are removed and that a stable working sub base is achieved prior to fill placement. A proof roll will be performed when accessible prior to structural fill.

**b. Structural Fill/Backfill Placement**

LHIT will obtain samples of materials proposed for use as structural fill for laboratory testing. Laboratory tests, including standard Proctors and Atterberg limits tests, will be performed to classify and determine physical properties of the proposed fill materials. LHIT will observe and perform field density tests on structural fill placed within the footprint of the core-out area. We have assumed the following number of Proctors and atterbergs required for testing of soil to be used as structural fill and backfill:

- Off-site borrow material – 3 Standard Proctors
- Off-site borrow material – 3 Atterberg Limits

**c. Utility Backfill**

LHIT will obtain samples of backfill material for standard Proctor and Atterberg limits testing. Field moisture-density tests will be performed in backfill placed within segments of the utility trenches. Testing will be performed at a minimum of one test per 150 lf of backfill placed for the storm sewer, sanitary sewer and water main. We have assumed the following number of Proctors and atterbergs required for testing of soil to be used as backfill:

- Off-site borrow material – 2 Standard Proctors
- Off-site borrow material – 2 Atterberg Limits

**d. Concrete – Pavement/Structures**

LHIT will observe placement of reinforcing steel in the footings, floor slabs, and exterior pavement for the proposed project. Field tests, including slump, air entrainment and temperature, will be performed on composite samples of concrete. Cylinders will be cast from the concrete used in the construction of the structures for compressive strength testing. The following have been assumed:

- Concrete Structures – 54 sets
- Pavement Concrete – 312 sets

**e. Reporting**

LHIT field professionals will prepare typed field reports summarizing each day's field observations, presenting test results, and detailing items not in compliance with the project drawings and/or specifications.

Field reports will be reviewed by our project engineer and summarized in letters transmitted to the Client, Architect, Structural Engineer, and General Contractor. LHIT is not responsible for the Contractor's means or methods and does not have the obligation or authority to stop Contractor's work. LHIT responsibility as special inspector is to report our field observations and test results to the Contractor and Client as provided herein.

**Task 6. As-Constructed Plans**

LHIT shall prepare final "as-constructed" plans based upon the red-lined markups provided by field staff and the contractor. The as-constructed plans shall show the final alignments for all utilities along with the final geometrics along the roadways, drives and sidewalks. Final as-constructed plans shall be submitted to the JPA and City in both hard copy and electronic format for filing.

**Appendix A-10  
Total Project Fee  
Core Area Roadway and Utilities/Historic Canopy Renovation, Phase 2  
Construction Phase Services  
JPA Project Numbers 870305 and 870307**

<b>Task No.</b>	<b>Task Description</b>	<b>Fee Estimate</b>
1	Construction Administration	\$563,128.00
2	Field Observation	\$522,500.00
3	Survey	\$38,478.00
4	Geotechnical and Soils Testing	\$87,250.00
5	Materials and Other Testing	\$85,424.00
6	As-Constructed Plans	\$32,320.00
7	Not Used	\$0.00
8	Not Used	\$0.00
9	Not Used	\$0.00
	<b>Expenses (Includes Subconsultant)</b>	<b>\$72,490.00</b>
	<b>Total Project Cost</b>	<b>\$1,401,590.00</b>
<b>Transfer from other approved projects</b>		
*1	General Design Coordination and Support: A-1	(\$200,000)
*2	Charleston Bridge and Roadway: A-8	(\$350,000)
*3	Parking Deck No. 2: A-18	(\$25,000)
*4	Sun Valley Traffic Analysis and Interim Des.: A-20 (A11/A12)	(\$10,000)
	<b>Total - Transfer from other projects for Core Area CPS</b>	<b>(\$585,000)</b>
	<b>Final Value - Amendment No. 13</b>	<b>\$816,590.00</b>

\*1 Based on efficiencies to date, it is possible to reduce the budget for this project.

\*2 The first submittal made for this project in 2011 will stand as the final deliverable. No further work is authorized or expected at this time, though it may be revisited at a later date.

\*3 This transfer negates the need to preserve budget as outlined in the memorandum to Paula Yancey of 2/28/12.

\*4 This project provided a traffic study and alternative analysis for Interim improvements at Sun Valley Blvd. and West "O" Street as well as the 1st Street and Cornhusker Highway intersections. Conceptual design work has not been completed as outlined in the original scope. This budget transfer renders the project complete and no further work is authorized or expected at this time.

**PAY RATES (BASED ON HOURLY RATE SCHEDULE PER CLASSIFICATION)**

Overhead Rate : 0%

Profit : 0%

<b>Personnel</b>		<b>Total Hr.</b>	<b>Salary \$ Per Hr.</b>	<b>Labor Cost</b>	<b>Total Cost</b>
Principal/Project Manager	P/PM	0	\$186.00	\$0	\$0.00
Team Leader	TL	0	\$167.00	\$0	\$0.00
Contract Administrator	CA	2838	\$144.00	\$408,672	\$408,672.00
Senior Engineer	SE	232	\$160.00	\$37,120	\$37,120.00
Senior Project Engineer	SPE	366	\$146.00	\$53,436	\$53,436.00
Project Engineer	PE	0	\$124.00	\$0	\$0.00
Associate Engineer	AE	0	\$101.00	\$0	\$0.00
Assistant Engineer	ASE	0	\$87.00	\$0	\$0.00
Senior Field Representative	SFR	6258	\$95.00	\$594,510	\$594,510.00
Field Representative	FR	0	\$80.00	\$0	\$0.00
Senior Field Technician	SFT	0	\$72.00	\$0	\$0.00
Associate Field Technician	AFT	480	\$62.00	\$29,760	\$29,760.00
Field Technician	FT	504	\$51.00	\$25,704	\$25,704.00
Surveyor	SM	178	\$82.00	\$14,596	\$14,596.00
Survey Crew Member (CM)	SCM	178	\$62.00	\$11,036	\$11,036.00
Technical Manager	TM	0	\$122.00	\$0	\$0.00
Design Technician	DT	240	\$86.00	\$20,640	\$20,640.00
Senior Technician	ST	93	\$82.00	\$7,626	\$7,626.00
Technicain	Tech	0	\$75.00	\$0	\$0.00
Administrative Coordinator	AC	1680	\$75.00	\$126,000	\$126,000.00
Administrative Assistant	AA	0	\$60.00	\$0	\$0.00
<b>Expenses</b>					<b>\$72,490.00</b>
		<b>13047</b>		<b>\$1,329,100</b>	<b>\$1,401,590.00</b>

**TOTAL EXPENSES**

<b>Expenses</b>	<b>Amount</b>		<b>\$ Ea.</b>		<b>Cost</b>
<b>Design</b>					
Travel, mile (car)	0	MILES	0.56		\$0.00
Travel, mile (survey vehicle)	500	MILES	0.75		\$375.00
Subconsultant (SHA)	1	L.S.	18932		\$18,932.00
Half Size Plots (each)	25000	EA.	0.25		\$6,250.00
Mylars, Half Size Plots (each)	0	EA.	4		\$0.00
Allowance for Material Testing Expenses	1	L.S.	15000		\$15,000.00
Miscellaneous Expenses(Plots, Copies, Reports, etc.)	1	L.S.	9933		\$9,933.00
Site Vehicle	420	Day	50		\$21,000.00
			<b>Sub Total</b>		<b>\$71,490.00</b>
<b>Survey Expenses</b>					<b>\$1,000.00</b>
<b>Public Involvement Expenses</b>					
			<b>Total</b>		<b>\$72,490.00</b>

MAN-HOUR ESTIMATE - INITIAL SITE PREPARATION AND USPS PARKING LOT CONSTRUCTION PHASE SERVICES

Task No	Description of Work Item / Tasks	PM	TL	QA	SL	S/PE	PE	AE	ASC	SFR	HR	SFT	AFF	FT	SM	SDM	TM	OT	ST	Tech	AI	AA	Manhours	Total Labor Fee	Overhead 0.00%	Total (A+B)	Profit 0.00%	Total Fee (A+B+C)	
<b>1 Construction Administration</b>																													
	Pre-Construction Conference		0	6		4				8										4	8		30	\$3,136	\$0	\$3,136	\$0	\$3,136.00	
	General Construction Administration	0	0	2800																	1400		4200	\$508,200	\$0	\$508,200	\$0	\$508,200.00	
	Review Contractor Submittals					40																	40	\$5,840	\$0	\$5,840	\$0	\$5,840.00	
	Pay Requests			32																			32	\$4,608	\$0	\$4,608	\$0	\$4,608.00	
	Project Modifications					40																	40	\$5,840	\$0	\$5,840	\$0	\$5,840.00	
	Project Files																						40	\$3,000	\$0	\$3,000	\$0	\$3,000.00	
	Davis Bacon Wage Documentation																						40	\$3,000	\$0	\$3,000	\$0	\$3,000.00	
	Document Interpretation & Clarification					80																	40	\$14,880	\$0	\$14,880	\$0	\$14,880.00	
	Progress Meetings	0				20																	120	\$10,420	\$0	\$10,420	\$0	\$10,420.00	
	Periodic Site Visits	0				20																	20	\$2,820	\$0	\$2,820	\$0	\$2,820.00	
	Substantial Completion	0				2																	6	\$592	\$0	\$592	\$0	\$592.00	
	Final Completion	0				2																	6	\$592	\$0	\$592	\$0	\$592.00	
	Project Closeout																						4	\$300	\$0	\$300	\$0	\$300.00	
																										\$563,128.00			
<b>2 Construction Observation</b>																													
	General Site Observation (1 full line & 1 Part Time)									5600													5600	\$522,500	\$0	\$522,500	\$0	\$522,500.00	
	Canopy Observation (SHA Subconsultant Expense)																						0	\$0	\$0	\$0	\$0	\$0.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																										\$522,500.00			
<b>3 Survey</b>																													
	Identify Survey Control Points for Contractor	0										8	8							4			20	\$1,480	\$0	\$1,480	\$0	\$1,480.00	
	As-built survey of pad sites	0				10						50	50							25			155	\$10,710	\$0	\$10,710	\$0	\$10,710.00	
	Survey at North 48th Street					8						20	20							10			58	\$4,868	\$0	\$4,868	\$0	\$4,868.00	
	Verification Critical Paving Grades	0				10						50	50							25			155	\$10,710	\$0	\$10,710	\$0	\$10,710.00	
	Verification of Utilities	0				10						50	50							25			135	\$10,710	\$0	\$10,710	\$0	\$10,710.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																										\$38,478.00			
<b>4 Geotechnical Observation &amp; Soils Testing</b>																													
	Soils Testing & Geotech Engineer				100					750													850	\$87,250	\$0	\$87,250	\$0	\$87,250.00	
																										\$87,250.00			
<b>5 Materials and Other Testing</b>																													
	Trench Backfill at Utilities				40								200	240									480	\$31,040	\$0	\$31,040	\$0	\$31,040.00	
	Concrete Testing				40								200	240									480	\$31,040	\$0	\$31,040	\$0	\$31,040.00	
	Asphalt Testing				12								80	24									92	\$6,880	\$0	\$6,880	\$0	\$6,880.00	
	North 48th Street Construction Testing													24									24	\$1,224	\$0	\$1,224	\$0	\$1,224.00	
	SWPPP Review/Inspection					40																	40	\$5,840	\$0	\$5,840	\$0	\$5,840.00	
	Testing PM and Administration				40																	40	\$9,400	\$0	\$9,400	\$0	\$9,400.00		
																										\$85,424.00			
<b>6 Prepare As-Constructed Plans</b>																													
	As Constructed Plans	0				80														240			320	\$32,320	\$0	\$32,320	\$0	\$32,320.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																										\$32,320.00			
<b>7 Not Used</b>																													
																							0	\$0	\$0	\$0	\$0	\$0.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																										\$0.00			
<b>8 Not Used</b>																													
																							0	\$0	\$0	\$0	\$0	\$0.00	
																							0	\$0	\$0	\$0	\$0	\$0.00	
																										\$0.00			
<b>9 Not Used</b>																													
																							0	\$0	\$0	\$0	\$0	\$0.00	
																										\$0.00			
																										\$0.00			
<b>Total Manhours</b>																													
		0	0	2838	232	368	0	0	0	6258	0	0	480	504	178	178	0	240	83	0	1680	0	13047						
<b>Total</b>																													
		\$0	\$0	\$408,672	\$37,120	\$63,436	\$0	\$0	\$0	\$594,510	\$0	\$0	\$29,760	\$25,704	\$14,598	\$11,036	\$0	\$20,840	\$7,826	\$0	\$126,000	\$0	\$1,329,100	\$1,329,100	\$0	\$1,329,100	\$0	\$1,329,100.00	
<b>Total Labor, OH &amp; Profit</b>																													
		\$0	\$0	\$408,672	\$37,120	\$63,436	\$0	\$0	\$0	\$594,510	\$0	\$0	\$29,760	\$25,704	\$14,598	\$11,036	\$0	\$20,840	\$7,826	\$0	\$126,000	\$0	\$1,329,100	\$1,329,100	\$0	\$1,329,100	\$0	\$1,329,100.00	

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

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

3           That the attached Contract Agreement between the JPA and Hawkins Construction  
4 Company for the West Haymarket JPA Infrastructure Improvements Core Area Roadway and  
5 Utilities Project, pursuant to Bid No. 12-128, under the terms and conditions of said Contract  
6 Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency  
7 Board of Representatives is hereby authorized to execute said Contract Agreement on behalf of  
8 the JPA.

9           The City Clerk is directed to return one fully executed copy of the Contract Agreement to  
10 Rick Peo for transmittal to Hawkins Construction Company.

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

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**

**BID NO. 12-128**

**CONTRACT AGREEMENT**

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into as of \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **HAWKINS CONSTRUCTION COMPANY**, hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

**RECITALS**

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 Notice to Bidders advertisement for and in connection with said Work, to wit:

West Haymarket JPA Infrastructure Improvements Core Area Roadway and Utilities Project  
Bid No. 12-128

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.

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 Bid. Copies of the Bid Opportunity Detail, Notice to Bidders, Addendums 1, 3 and 4, Supplier Response, and the Contractor's Base Bid of \$14,168,272.94 (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, since the Work will be carried out on property owned by BNSF, the terms and conditions of the applicable Temporary License(s) for the Work and the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA ("C&M Agreement") are applicable to the performance of the Work and Contractor must comply with the applicable provisions of the License and C&M Agreement concerning work on or within 50 feet of BNSF Property including, but not limited to the BNSF Insurance Requirements. The Licenses are attached hereto as Exhibit B. The C&M Agreement is attached hereto as Exhibit C.

WHEREAS, since the Work will be performed within 50 feet of BNSF railroad tracks used by the National Railroad Passenger Corporation ("Amtrak"), the Contractor must obtain two policies of Railroad Protection Liability Insurance, one naming BNSF as the insured railroad, and the other naming Amtrak as the insured railroad.

WHEREAS, Contractor understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Work and therefore this Contract is subject to the Davis-Bacon Act; and that the Contractor is required to comply with the Contract clauses in 29 C.F.R. §5.5(a) which are made part of this Contract.

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with the Highway Construction General Wage Decision NE120034 dated 03/16/2012 ("NE34 Wage Decision") for the street paving work and the Heavy Construction General Wage Decision NE120057 dated 01/06/2012 ("NE57 Wage Decision") for the utility work.

WHEREAS, the NE34 and the NE57 Wage Decisions are hereinafter referred to as the "Effective Wage Decisions."

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

WHEREAS, the use of the term "Contracting Officer" in 29 C.F.R. parts 1, 3 and 5 shall be deemed to refer to the JPA.

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 Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein and incorporating all of the above Recitals into this Contract as if fully set forth herein, the Contractor and JPA have agreed and hereby agree as follows:

**PERFORMANCE OF WORK** - 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 as set forth in Exhibit A.

**CHANGE IN SCOPE OF SERVICES.** If an additive or subtractive change in scope is encountered on the site or requested by the JPA, a detailed Proposed Change Order request is to be provided by the Contractor. This must include a breakout of the estimated labor, materials, tools, and equipment required to complete the actual work. The maximum markup for all other

items not associated with the work shall be ten percent (10%). This is to include all onsite and offsite overhead, all general conditions, profit, and any other costs not associated with the actual performance of the work.

**BNSF CONTRACT REQUIREMENTS.** Contractor agrees that the provisions in the C&M Agreement are made part of this Contract. Contractor agrees that since the Work will be performed within 50 feet of BNSF Property, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Contractor understands and agrees that prior to commencing the Work, the Contractor must:

(a) Obtain all required insurance, evidenced by certificates of insurance as required by the JPA, City Legal, BNSF, and any other required insurance.

(b) Submit the signed C-1A agreement and all required insurance certificates to [BNSF@certfocus.com](mailto:BNSF@certfocus.com) and to PC Sports.

(c) Submit copies of signed C-1A agreement and all required insurance certificates to Michael Schaefer (BNSF):

Michael Schaefer  
Michael.Schaefer2@BNSF.com  
402-458-7379 (office)  
402-304-1437 (cell)  
402-458-7457 (fax)

(d) Receive the BNSF executed C-1A agreement from Michael Schaefer.

Contractor further agrees that should it be necessary to enter upon the BNSF Property to perform the Work, Contractor must prior to such entry:

(a) Complete the BNSF Contractor Safety Orientation at [www.contractororientation.com](http://www.contractororientation.com). All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(b) Complete the e-RAILSAFE security orientation training program at [www.erailsafe.com](http://www.erailsafe.com). All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(c) Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Michael Schaefer, along with a list of all personnel who have taken both programs. This includes employees of subcontractors employed by the Contractor.

(d) Assume and comply with the terms and conditions of any right-of-entry agreement, license and/or easement between BNSF and the JPA governing access to such BNSF Property.

**COMPENSATION** - 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 Contractor's Bid awarded by the JPA to the Contractor award, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

**COMPLETION DATE** - 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 within the number of calendar days allowed and prior to the stated completion date.

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

A. **INDEMNIFICATION OF JPA**. Contractor agrees to defend, indemnify and hold harmless JPA to the same extent and under the same terms and conditions as required by the Indemnification of JPA in the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. **INDEMNIFICATION OF BNSF**. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor's Right of Entry.

**INSURANCE** – The following insurance requirements are in lieu of the Insurance Requirements for all City Contracts found in Article X.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **JPA Insurance Requirements**. Contractor shall at all times during the term of this Agreement purchase and maintain in place insurance coverage as required by the Insurance Requirements for All West Haymarket Joint Public Agency Contracts included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. **BNSF Insurance Requirements**. Contractor shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Insurance requirements of BNSF found in the C&M Agreement (Exhibit C).

Contractor agrees to provide all types of insurance required by either the JPA or BNSF. Contractor will furnish coverages against any and all perils required by either the JPA or BNSF. In the event there is a difference between the JPA and BNSF coverage limits, Contractor will provide the larger amount satisfying both JPA and BNSF requirements.

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

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

Contractor further agrees to pay the prevailing wages set forth in the Effective Wage Decisions. Said Effective Wage Decisions are included in the Other Attached Contract Documents (Exhibit D). Contractor agrees to attach the Effective Wage Decisions and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Contractor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decisions and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decisions.

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

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

1. Bid Documents (Exhibit A).
2. Exhibit B – Temporary Grading License for Arena Drive and Parking Lot Construction and Temporary Construction and Access License
3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).
  - 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 (approved March 2012).
  - e. Executive Order No 83319.
  - f. 29 C.F.R. § 5.5(a) Contract Provisions.

- g. Effective Wage Decisions.
  - h. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
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 JPA Resolution No. WH00195.
  - b. Lincoln Standard Plans 2010.
  - c. Addendum 2, Addendum 2 Plans, Project Plans, Special Provisions, 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 tax.
  - f. Requirements in 29 C.F.R. parts 1, 3 and 5.
  - g. Any Bid Documents and/or Bid Attachments located in the Bid Opportunity Detail and not attached as part of Exhibit A.

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

The 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:**

**HAWKINS CONSTRUCTION COMPANY**

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

**JPA:**

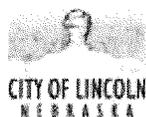
**WEST HAYMARKET JOINT PUBLIC  
AGENCY**

By: \_\_\_\_\_,  
Chairperson of the West  
Haymarket Joint Public Agency Board of  
Representatives

**EXHIBIT A**

**Bid Documents**

*Approved by Law*  
6-6-2012



[Return to Login](#) • [Supplier Registration](#)

## Bid Opportunity Detail

**Bid Number** 12-128 Addendum 4 (West Haymarket JPA Infrastructure Improvements Core Area Roadway & Utilities, Project 870305 (PW/U))

**Close Date & Time** 5/31/2012 12:00:00 PM Central

**Bid Duration** 1 month 4 days

### Bid Information

**Bid Type** Bid (Sealed)  
**Issue Date & Time** 4/27/2012 3:00:00 PM Central  
**Close Date & Time** 5/31/2012 12:00:00 PM Central  
**Bid Status** Unsealed  
**Bid Notes** See Activities section for Pre-bid information.

### Contact Information

**Contact Name** Vince Mejer Purchasing Agent  
**Address** Purchasing\City & County  
 440 S. 8th St.  
 Lincoln, NE 68508 USA  
**Contact Phone** 1 (402) 441-8314  
**Contact Fax** 1 (402) 441-6513  
**Contact Email** vmejer@lincoln.ne.gov

This bid is tied to West Haymarket JPA Historical Canopy Renovation, Project 870307, Bid No. 12-129.

### Event Activities

Activity Date	Title	Description
5/9/2012 9:00:00 AM CST	Prebid Meeting at Engineering Services	Prebid Meeting - On Wednesday, May 9, 2012 at 9:00 a.m. at the Training Room, Engineering Service, 901 W. Bond Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.
5/23/2012 12:00:00 PM CST	General Contractors - Call 402-441-7417 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.
5/23/2012 12:00:00 PM CST	Sub-Contractors - Call 402-441-7417 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

### 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 12-128 adv.pdf (7KB)	Notice to Bidders
Header FTP site.pdf (327KB)	Special Provisions, Plan/Drawings, Sample Contract and Exhibits
Header 12-128ad1.pdf (6KB)	Addendum No. 1
Header FTP site.pdf (327KB)	Addendum No. 2
Header ADDENDUM NO 3 - NO SEAL Core Area Roadway and Utilities.pdf (303KB)	Addendum 3
Header ADDENDUM NO 4 - Core Area Roadway and Utilities Project 870305.pdf (238KB)	Addendum 4
Header Bid Tabs.pdf (9.70MB)	ITEMIZED PRICING
Line 1 12-128 Bid Proposal.XLS (269KB)	Pricing (Base Bid) (Per Addendum 3)
Line 5 12-128a Bid Proposal.XLS (199KB)	Pricing Sheet (Alternate 1)
Line 6 12-128b Bid Proposal.XLS (197KB)	Pricing Sheet (Alternate 2)
Line 7 12-128c Bid Proposal.XLS (194KB)	Pricing Sheet (Alternate 3)

## FTP directory /12-128/ at ftp.lincoln.ne.gov

To view this FTP site in Windows Explorer, click **Page**, and then click **Open FTP Site in Windows Explorer**.

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User logged in

Welcome to the City/County FTP Server. Unauthorized use is strictly prohibited.

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### Up to higher level directory

05/15/2012 09:41AM	Directory	.
06/04/2012 11:56AM	Directory	..
04/27/2012 12:00AM	6,377,378	<u>12-128 Sample Contract w Exhibits.pdf</u>
04/26/2012 12:00AM	129,633,886	<u>870305 Final Plans Section 01 watermark.pdf</u>
04/26/2012 12:00AM	82,696,053	<u>870305 Final Plans Section 02 watermark.pdf</u>
04/26/2012 12:00AM	112,077,914	<u>870305 Final Plans Section 03 watermark.pdf</u>
04/27/2012 12:00AM	16,393,406	<u>870305 Final Special Provisions.pdf</u>
05/15/2012 09:41AM	Directory	<u>Addendum No. 2</u>

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**Advertise 1 time  
Friday, April 27, 2012**

**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, Wednesday, May 23, 2012** for providing the following:

**JPA Haymarket Infrastructure Improvements  
Core Area Roadway & Utilities  
Project 870305  
Bid No. 12-128**

This Project is tied to JPA Historic Canopy Renovation Project 870307, Bid No. 12-129.

***A Pre-bid meeting will be held Wednesday, May 9, 2012 at 9:00 a.m., at Engineering Services, 901 W. Bond, Training Room, 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](http://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](mailto:vmejer@lincoln.ne.gov)

**Addendum #1**  
**West Haymarket JPA Infrastructure Improvements**  
**Core Area Roadway & Utilities, Project 870305**  
**Bid No. 12-128**

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:

**The Pre-Bid address has been corrected under the Activities tab. It should read '901 W. Bond Street'.**

All other terms and conditions shall remain unchanged.

Dated this 8th day of May, 2012.

Vince Mejer  
Purchasing Agent

**ADDENDUM NO. 3**

**WEST HAYMARKET JOINT PUBLIC AGENCY  
HAYMARKET INFRASTRUCTURE IMPROVEMENT  
CORE AREA ROADWAYS AND UTILITIES  
PROJECT NO. 870305  
BID NO. 12-128**

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

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

**Please be advised of the following changes and clarifications to the City's specification and bidding documents:**

1. Refer to the Notice to Bidders and revise the bid date as follows:

“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 (noon), Thursday, May 31, 2012** for providing the following:

**JPA Haymarket Infrastructure Improvements  
Core Area Roadway & Utilities  
Project 870305  
Bid No. 12-128**

2. Refer to the Notice to Bidders and add the following:

“All questions regarding the project shall be submitted to the Purchasing Agent no later than 3:00 pm on Thursday, May 24, 2012. Questions submitted after this date and time will not receive responses prior to bids being received for this project.”

3. Refer to the Sample Contract that is included with the Bid Documents:

Exhibit “D” of the Sample Contract includes information on the Davis Bacon Wage requirements for this project. The Davis Bacon Wage requirements shown for the “Heavy Construction Projects” shall be deleted from the sample contract and the **Davis Bacon requirements for “Highway Construction Projects” shall apply to all work completed on this project.**

4. Refer to the Bid Form for the Base Bid and the Summary of Quantities, Sheet 3 in the plans. The following bid items have been updated as follows:

The following bid quantities have been revised to reflect the quantities as shown below:

21.03342	42" RCP Storm Sewer, Class III	699 LF
21.03348	48" RCP Storm Sewer, Class III	930 LF

5. Refer to the Special Provisions, page 1, "General Contract Requirements".

Add the following paragraph at the end of this Special Provision:

"The Contractor shall be responsible for printing all copies of the plans, Special Provisions and other contract documents necessary for their use and the use of their subcontractors in completion of the work. The JPA will not provide any hard copies of the plans or Special Provisions and the PDF documents provided for bidding shall be used by the Contractor to produce the required number of plan sets for use in construction of the project."

6. Refer to the Addendum No. 2, the revision to Special Provisions, page 6, "Substantial and Final Completion".

Revise the Substantial Completion Dates for the work associated with Contract Phase IC shown in the Early NTP and Late NTP tables that were included with Addendum No. 2 as follows to match the original contract completion dates:

Substantial and Final Completion Based Upon Early NTP of August 1, 2012				
Contract Phase	Substantial Completion Date	Substantial Completion LD/Day	Final Completion Date	Final Completion LD/Day
IC	11-12-12	\$1,000	5-13-13	\$1,000

Substantial and Final Completion Based Upon Late NTP of September 13, 2012				
Contract Phase	Substantial Completion Date	Substantial Completion LD/Day	Final Completion Date	Final Completion LD/Day
IC	11-12-12	\$1,000	5-13-13	\$1,000

With the additional work associated with the removal of the unsuitable material at the "Yard Block", the Contractor will be allowed to begin demolition and earthwork construction at the "Yard Block" prior to the substantial completion of the work for Phase IA. Work at the "Yard Block" may begin as soon as the final closing with the BNSF is completed. The final property closing is anticipated to be complete September 12, 2012 and as such the Contractor may be able to begin demolition work at the "Yard Block" on September 13, 2012. In order to start the excavation

work as soon as possible following the closing the Contractor will need to divert the flows in the existing storm sewer, west at "Q" Street. The Contractor shall take this into consideration when preparing their bids on the project and the scheduling of resources necessary to complete the work by the aforementioned dates. The Contractor shall also provide Lincoln Parking Services a minimum of 35 calendar days advanced notice of when they will begin work at the Iron Horse Parking lot so that they can arrange to relocate existing monthly parkers to other locations.

7. Refer to the Special Provisions:

Attach the following Special Provision regarding construction of concrete paving on this project:

#### **CONCRETE CONSTRUCTION AT CURVED PAVEMENT**

All back of curb lines at returns and along horizontally curved roadways or curved pavement areas shall be constructed to match the horizontal curvature as shown on the geometric plans. The use of short tangent form sections to form the curvilinear alignment shall not be allowed unless otherwise approved in advance by the Engineer. The Contractor shall utilize appropriate means and methods to construct all curb lines at returns and horizontally curved areas to produce a smooth curvilinear alignment to match the proposed geometrics at the back of curb or edge of pavement as shown on the plans. This shall apply to the construction of all concrete or hard surfaced paving at streets, driveways, parking areas, sidewalks and bike paths.

8. Refer to the Plans, Sheet No. 185, Fencing Details:

Add the following note to the plan sheet regarding acceptable alternate coatings to the specified vinyl coated system for the fence framework.

"If the Contractor elects to use the alternate Allied SS-40 or Wheatland Tube WT-40 pipe material for the fencing, then the coating system for those portions of the fencing including gates may utilize a polymer powder coated system equivalent to the Ameristar Permacoat system. This system shall provide a galvanized coating and a powder coating system that provides for moisture/corrosion resistance and enhanced UV resistance and color retention."

9. Refer to the Plans, Sheet No. 201, Storm Drainage:

Refer to the Build Note for the Concrete Box Storm Sewer and revise the stationing for the box storm sewer to read as follows:

"Station 1205+60.14 to Station 1206+08.55".

10. Refer to the attached questions from prospective bidders and the responses to those questions.

Dated this 21<sup>st</sup> day of May 2012.

## Questions from Prospective Bidders

1. The rolling gate detail on sheet no. 186 shows a rolling gate utilizing a pipe track and double rolling wheel assemblies at the ends of the gate. Note 1 on the same sheet requires that the gates are to conform to the requirements of ASTM F 1184 Type II Class I. This standard is for a cantilever type slide gate, designed to span an opening without the requirement for top or bottom support within that opening. The Class I allows for steel or aluminum gates utilizing external rollers. The ASTM F 1184 Type II gates will be a more cost effective option as they will not require a concrete strip. They Type II class II gates will also be a longer lasting and lower maintenance gate than the rolling gate shown in the detail, please clarify which gate is required.

Response: Addendum No. 2 included a revised plan sheet that shows a cantilevered gate rather than a rolling gate and the bid proposal and Special Provisions have been updated to specify cantilevered gates. The concrete pad will still be required per BNSF requirements. As an alternative to the concrete pad the Contractor may extend the drive paving to 2'-0" beyond the fence line into the BNSF property. Additional compensation will not be made for the extended drive paving and these costs shall be subsidiary to the cantilevered gate.

2. In consideration of the high strength SS-40 or WT-40 type cold rolled tubing, the cold rolled high strength tubing materials when polymer coated are typically manufactured with a polyester powder coated finish rather than the vinyl coating as allowed in the specifications. Polyester powder coated finish is in fact a higher quality more durable coating when compared to vinyl. PPC has better adhesion to the steel tube, is less likely to peel, has higher resistance to the elements, and retains its color/finish longer. I have attached one manufacturer's literature comparing the polyester powder coated finish and vinyl coating. Would polyester powder coating be an acceptable alternative to vinyl coating on the fence framework?

Response: Addendum No. 3 approves the use of polyester powder coating equivalent to the Ameristar PermCoat system for a finish at the fence framework as an approved alternate to the vinyl coating for the fencing on this project.

3. According to the schedule based on the Early NTP, the paving is to be constructed in November and the first 2 weeks of December. Will a winter suspension be granted if the weather prevents the construction of the paving?

Response: Per Section VII, Paragraph E of the General Conditions for the City of Lincoln Standard Specifications for Municipal Construction, the Contractor may request to suspend the work due to unsuitable weather or conditions unsuitable for prosecution of the work. Final determination on approval of a winter suspension of the work shall be made by the JPA and the Program Manager. The Contractor should take into consideration in preparing their bids that they may need to incorporate means and methods to allow for pavement construction during November and early December when colder temperatures are typical. This may include the need to incorporate measures for cold weather protection of the

subgrade and paving. Cold temperatures shall not be the sole basis for approval of a winter shutdown of the work.

4. According to Addendum #2, Pre-bid Meeting Minutes, Davis-Bacon wages apply to this project. Which determination is applicable?

Response: The sample contract that is included with the bid documents has the applicable Davis-Bacon wage requirements included as Exhibit D for "Highway Construction Projects" and "Heavy Construction Projects". The minimum wage rates shown in Exhibit D for "Heavy Construction Projects" shall apply to all work associated with construction of the sanitary sewers and water mains on this project. All other work shall comply with the minimum wage rates shown in Exhibit D for "Highway Construction Projects".

5. According to the plans and special provisions, the asphalt Parking Lot Surfacing is to include a 6" crushed rock Foundation Course Material. Will it be acceptable to substitute Aggregate Foundation Course as is specified for the 9" Concrete Pavement?

Response: Aggregate Foundation Course as outlined in the Special Provisions may be used in lieu of the 6" crushed rock base course for the foundation course material at the "Parking Lot Surfacing".

6. I want to confirm the lineal footage of the following pipe as I had different quantities than what is shown in the summary page (42" I get 699 lf, 48" I get 930 lf).

Response: The quantity for the 42" RCP Storm Sewer Class III should be 699 linear feet and the quantity for the 48" RCP Storm Sewer Class III should be 930 linear feet. These quantities have been corrected as part of Addendum No. 3.

7. How long is the box culvert? The station # at the start and end of the box are not similar.

Response: The correct station at the beginning of the box is Sta. 1205+60.14 and the length of the box culvert is 48.14 linear feet.

8. Does the box culvert rebar need to be epoxy coated as specified? NDOR standard box plans do not require epoxy rebar. Can we substitute precast box sections for the cast in place box? If so, does the reinforcing steel need to be epoxy coated?

Response: The rebar for the box culvert shall be epoxy coated as specified on the plans. Precast box sections can be substituted for the cast in place box. The precast box storm sewer shall comply with the requirements outlined in the City of Lincoln Standard Specification for Municipal Construction, Chapter 21, Subsection 21.01, Paragraph I for Precast Box Culverts. This section required the precast box to be manufactured in accordance with the requirements of "Standard Specification for Precast Reinforced Concrete Box Sections for Culverts, Storm Drains and Sewers", ASTM Designation C 1433. Per City of Lincoln, all reinforcing for the

precast box storm sewer shall be epoxy coated similar to the cast in place box storm sewer.

9. What is the D-Load requirement for the RCP?

Response: Per the City of Lincoln Standard Specification for Municipal Construction, Chapter 21, RCP storm sewer pipe unless otherwise specified on the plans shall be manufactured in accordance with ASTM Designation C 76 for Class III Pipe with Wall B. The D-Load requirement shall be 1,350 pounds.

10. Are gasket joints required for the RCP storm sewer Pipe? If so, what type of gasket material is required?

Response: Refer to Chapter 21 of the City of Lincoln Standard Specifications for Municipal Construction. Section 21.03, Subsection A, states that the joint space and lift holes shall be filled with mortar or in lieu of the mortar joint, joints may be made of approved rubber gaskets or cold mix asphalt jointing compound. Refer to Chapter 21, Subsection 21.01 for additional information on rubber gaskets for storm sewer pipe.

11. What are the Davis Bacon Wage Rates?

Response: The sample contract that is included with the bid documents has the applicable Davis-Bacon wage requirements included as Exhibit D for "Highway Construction Projects" and "Heavy Construction Projects". The minimum wage rates shown in Exhibit D for "Heavy Construction Projects" shall apply to all work associated with construction of the sanitary sewers and water mains on this project. All other work shall comply with the minimum wage rates shown in Exhibit D for "Highway Construction Projects".

12. Are there special manhole detail drawings for special manhole 1251+56.57 and 1963+23.06?

Response: Refer to plan Sheet 35 and the table for the Special Manholes at Sta. 1963+23.06 and Sta. 1251+56.57. The tables provide information on the size of the special manholes along with information on the top slab thickness and required reinforcing (the top slab dimensions and reinforcing at the special manholes at these stations differ from the standard manhole details). The walls, base and cast iron frame and cover at the manholes shall be constructed in accordance with the details shown on LSP 141 for a Type M-1 manhole (cast-in-place concrete with reinforcing) as referenced in the note at the bottom of the table. A detail of the top slab at the special manholes is shown on this sheet to use in construction of the manhole and the Contractor shall refer to LSP 141 for additional details regarding the manhole construction.

13. If concrete is used for the parking lot surfacing in the Base Bid and Alternate Bid No. 2, is it to be L3500, or can an alternate mix with the same compressive strength requirement be used?

Response: Development of concrete mix designs take into consideration criteria other than just compressive strength to ensure overall performance and durability. As such any alternate mix designs would need to be submitted and approved in advance of receiving bids for the project.

14. For "Park Space Finish" we are required to cover all non-paved areas within the limits of the project with 2" of topsoil and raked. Is the topsoil part of the embankment or above it? Is backfill of the curbs incidental to this item?

Response: The volume of the 2" top soil is included in the embankment quantities shown in the Earthwork Summary Table (the finished grade lines at the cross sections reflect the top of pavement or finished grade at turf areas). The backfill at the curbs is part of the earthwork embankment construction. The final grading and any additional costs associated with the furnishing and placement of the 2" of top soil at the upper portion of the embankment shall be considered part of the cost for the "Park Space Finish" work.

15. The sample contract with the JPA has two (2) wage decisions attached. One is labeled as "Highway" and the other as "Heavy". Both wage decisions have the same worker classifications but have different rates and fringes. Please identify which wage decision should be used for this project and if both are to be used please provide a clear definition of which scope of work goes with which wage decision.

Response: The sample contract that is included with the bid documents has the applicable Davis-Bacon wage requirements included as Exhibit D for "Highway Construction Projects" and "Heavy Construction Projects". The minimum wage rates shown in Exhibit D for "Heavy Construction Projects" shall apply to all work associated with construction of the sanitary sewers and water mains on this project. All other work shall comply with the minimum wage rates shown in Exhibit D for "Highway Construction Projects".

16. How are hydrant extensions paid for and who installs hydrant extensions?

Response: Refer to the plans, sheet 236. The note at the bottom of the summary of water main quantities states that the hydrant extensions shall be furnished and installed by the Lincoln Water System and the contractor will be billed for this work. This is consistent with Chapter 23, Subsection 23.08, Paragraph B of the City of Lincoln Standard Specifications for Municipal Construction. LWS is currently determining the applicable cost that will be billed to the Contractor for the hydrant extension and this will be included in a subsequent addendum.

**ADDENDUM NO. 4**

**WEST HAYMARKET JOINT PUBLIC AGENCY  
HAYMARKET INFRASTRUCTURE IMPROVEMENT  
CORE AREA ROADWAYS AND UTILITIES  
PROJECT NO. 870305  
BID NO. 12-128**

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

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

**Please be advised of the following changes and clarifications to the City's specification and bidding documents:**

1. Refer to Addendum 3, Item No. 3, "Sample Contract that is included with the Bid Documents":

Delete the response shown in Addendum No. 3, Item 3 and replace with the following:

"Exhibit "D" of the Sample Contract includes information on the Davis Bacon Wage requirements for this project. The Davis Bacon Wage requirements shown for the "Heavy Construction Projects" shall apply to all work associated with the construction of the sanitary sewers and new water mains on this project. The Davis Bacon requirements for "Highway Construction Projects" shall apply to all other work to be completed on this project."

2. Refer to the Water Main Plans, Sheet 236:

Replace the note at the bottom of the Water Main Items Table with the following:

- \* Hydrant extensions shall be furnished and installed by the Lincoln Water System and the Contractor will be billed for this work. The amount to be billed to the Contractor for furnishing and installing the hydrant extension, regardless of size, shall be \$550 per each hydrant extension. The Contractor shall be responsible for performing the necessary excavation and backfill at the hydrant to allow Lincoln Water System personnel to install the hydrant extension.

Dated this 22<sup>nd</sup> day of May 2012.

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

Bid Information		Contact Information		Ship to Information
Bid Creator	Anna Farlow	Address	Purchasing\City & County	Address
Email	afarlow@lincoln.ne.gov		440 S. 8th St.	
Phone			Lincoln, NE 68508	Contact
Fax		Contact	Vince Mejer	
Bid Number	12-128 Addendum 4		Purchasing Agent	Department
Title	West Haymarket JPA Infrastructure Improvements Core Area Roadway & Utilities, Project 870305 (PW/U)	Department		Building
Bid Type	Bid	Floor/Room		Floor/Room
Issue Date	04/27/2012	Telephone	1 (402) 441-8314	Telephone
Close Date	5/31/2012 12:00:00 PM CST	Fax	1 (402) 441-6513	Fax
Need by Date		Email	vmejer@lincoln.ne.gov	Email

## Supplier Information

Company Hawkins Construction Company  
 Address 2516 Deer Park Blvd  
 Omaha, NE 68105  
 Contact  
 Department  
 Building  
 Floor/Room  
 Telephone 1 (402) 342-1607  
 Fax 1 (402) 342-3221  
 Email  
 Submitted 5/31/2012 11:37:38 AM CST  
 Total \$14,886,036.03

Signature \_\_\_\_\_

## Supplier Notes

## Bid Notes

See Activities section for Pre-bid information. <br><br>

This bid is tied to West Haymarket JPA Historical Canopy Renovation, Project 870307, Bid No. 12-129.

## Bid Activities

Date	Name	Description
5/9/2012 9:00:00 AM	Prebid Meeting at Engineering Services	Prebid Meeting - On Wednesday, May 9, 2012 at 9:00 a.m. at the Training Room, Engineering Service, 901 W. Bond Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.

5/23/2012 12:00:00 PM    General Contractors - Call    Suppliers who will bid as a general contractor on this bid.  
402-441-7417 or e-mail  
purchasing@lincoln.ne.gov to be  
added to this list.

5/23/2012 12:00:00 PM    Sub-Contractors - Call    Suppliers who will bid as a sub-contractor.  
402-441-7417 or e-mail  
purchasing@lincoln.ne.gov to be  
added to this list.

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**Bid Messages**

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Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at:  <a href="http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdndspec/index.htm">http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdndspec/index.htm</a>	Yes
2	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
3	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
4	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
5	Special Provisions	I acknowledge reading and understanding the Special Provisions.	Yes
6	Drawings	I acknowledge reading and understanding the Project Drawings.	Yes
7	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.  <b>YOU MUST INDICATE YOUR METHOD OF BID BOND SUBMISSION IN BOX TO RIGHT!</b>	I have scanned and attached my bid bond.
8	Davis Bacon	I acknowledge reading and understanding the Davis Bacon Requirements in 29 CFR 5.5 information and Wage Rates.	Yes
9	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
10	Performance/Payment Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes

11	Tax Exempt Certification Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby excluding the purchases of pipes to be installed in water lines and purchase of water meters.)	Yes
12	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 within the number of calendar days allowed and prior to the stated completion date. The completion date shall be as stated in the Special Provisions.	YES
13	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
14	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.	Yes
15	Unit Pricing Rules	I acknowledge the Excel spreadsheet is attached to this bid in the Response Attachment Section. The unit price of the Excel Spreadsheet takes precedence over the total submitted in Line Items.	Yes
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.	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: See Bid Attachments section for Addendum information.	Yes
19	Agreement to Addendum No. 4	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

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**Line Items**

#	Qty	UOM	Description	Response
1	1	Lump Sum	West Haymarket JPA Infrastructure Improvements Core Area Roadway & Utilities, Project 870305 - Base Bid	\$14,168,272.94
Item Notes: Note that Item No's. 58, 223, 315, 328 and 335 have a required price already entered.   Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes: Unsuitable material from yard block excavation will either go to 5905 West O street or to 48th street landfill.				
2	1	Lump Sum	West Haymarket JPA Infrastructure Improvements Core Area Roadway & Utilities, Project 870305 - Alternate Bid 1	\$488,697.29
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
3	1	Lump Sum	West Haymarket JPA Infrastructure Improvements Core Area Roadway & Utilities, Project 870305 - Alternate Bid 2	\$105,782.90
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
4	1	Lump Sum	West Haymarket JPA Infrastructure Improvements Core Area Roadway & Utilities, Project 870305 - Alternate Bid 3	\$123,282.90
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
				Response Total: \$14,886,036.03

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## HAWKINS CONSTRUCTION CO

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
001	1.00001	Mobilization	1.0000	LS	\$1,400,000.00	\$1,400,000.00	GENERAL	Base Bid
002	1.01001	Const Staking	1.0000	LS	\$59,836.75	\$59,836.75	GENERAL	Base Bid
003	1.02001	Survey Monument and Box	18.0000	EA	\$300.93	\$6,496.74	GENERAL	Base Bid
004	1.04001	Pav't & Sidewalk Rem	4,724.0000	CY	\$22.55	\$106,526.20	GENERAL	Base Bid
005	1.05001	Sawing, Type "A"	238.0000	LF	\$7.99	\$1,901.62	GENERAL	Base Bid
006	1.06001	Sawing, Type "B"	343.0000	LF	\$2.14	\$734.02	GENERAL	Base Bid
007	1.07001	Sawing, Type "C"	179.0000	LF	\$2.14	\$383.06	GENERAL	Base Bid
008	1.09001	Wheel Sawing	485.0000	LF	\$5.85	\$2,837.25	GENERAL	Base Bid
009	1.11001	Adj MH to Grade	23.0000	EA	\$224.23	\$5,157.29	GENERAL	Base Bid
010	1.13001	Adj Water Valve Box To Grade	97.0000	EA	\$113.35	\$10,994.95	GENERAL	Base Bid
011	2.01001	Gen Clearing & Grubbing	1.0000	LS	\$298,627.34	\$298,627.34	EARTHWORK	Base Bid
012	2.02012	Tree Rem (12" to 23")	3.0000	EA	\$556.98	\$1,670.94	EARTHWORK	Base Bid
013	2.05001	Excavation	12,382.0000	CY	\$4.90	\$60,671.80	EARTHWORK	Base Bid
014	2.05002	Over-Excavation	57,932.0000	CY	\$3.51	\$203,341.32	EARTHWORK	Base Bid
015	2.08001	Earthwork Measured in Embankment	187,922.0000	CY	\$7.77	\$1,460,153.94	EARTHWORK	Base Bid
016	2.09001	Parking Space Finish	62,600.0000	SY	\$1.06	\$66,358.00	EARTHWORK	Base Bid
017	3.06001	Flowable Fill	60.0000	CY	\$77.98	\$4,678.80	PAVING	Base Bid
018	4.09106	PCC Pavt w/Int Curb, 6"	1,842.0000	SY	\$27.74	\$51,097.08	PAVING	Base Bid
019	4.09109	PCC Pavt w/ Int Curb, 9"	37,160.0000	SY	\$32.62	\$1,212,159.20	PAVING	Base Bid
020	4.09304	Conc Sidewalk, 4"	88,413.0000	SF	\$2.50	\$221,032.50	PAVING	Base Bid
021	4.09306	Conc Sidewalk, 6"	8,438.0000	SF	\$3.22	\$27,170.36	PAVING	Base Bid
022	4.09406	Conc Driveway, 6"	9,592.0000	SF	\$3.49	\$33,476.08	PAVING	Base Bid
023	4.09505	Conc Bikeway, 5"	48,290.0000	SF	\$2.42	\$116,861.80	PAVING	Base Bid
024	4.09601	Combined Curb & Gutter	779.0000	LF	\$14.94	\$11,638.26	PAVING	Base Bid
025	4.098	Conc Median Nose	3.0000	EA	\$501.53	\$1,504.59	PAVING	Base Bid
026	4.09804	Conc Median Surfacing, 4"	2,364.0000	SF	\$2.82	\$6,666.48	PAVING	Base Bid
027	4.10008	PCC Alley Pavt, 8"	1,889.0000	SY	\$33.24	\$62,790.36	PAVING	Base Bid
028	4.11001	Detectable Warning Panels	682.0000	SF	\$20.23	\$13,796.86	PAVING	Base Bid
029	7.0801	Conc for Steps & Retaining Walls	80.5000	CY	\$407.93	\$32,838.37	PAVING	Base Bid
030	7.0802	Reinf Stl for Steps & Retaining Walls	8,185.0000	LBS	\$1.11	\$9,085.35	PAVING	Base Bid
031	9.03001	Crushed Rock Roadway Surfacing	350.0000	TON	\$29.52	\$10,332.00	PAVING	Base Bid
032	13.02501	Grvd Prfmd Plstc Mkg, Lt Arrow	1.0000	EA	\$473.43	\$473.43	PAVEMENT MARKINGS	Base Bid
033	13.02508	Grvd Prfmd Plstc Mkg, Triangles	3.0000	EA	\$167.09	\$501.27	PAVEMENT MARKINGS	Base Bid
034	13.02601	Grvd Prfmd Plstc Mkg, Bike	13.0000	EA	\$946.87	\$12,309.31	PAVEMENT MARKINGS	Base Bid
035	13.02602	Grvd Prfmd Plstc Mkg, Bike Arrow	6.0000	EA	\$807.63	\$4,845.78	PAVEMENT MARKINGS	Base Bid
036	13.02604	Grvd Prfmd Plstc Mkg, Bike Sharrow	2.0000	EA	\$1,503.86	\$3,007.72	PAVEMENT MARKINGS	Base Bid
037	13.04512	Grvd Liquid Polyurea Mkg - Type I, 12" W	427.0000	LF	\$12.81	\$5,469.87	PAVEMENT MARKINGS	Base Bid
038	13.04513	Grvd Liquid Polyurea Mkg - Type I, 12" Y	28.0000	LF	\$12.81	\$358.68	PAVEMENT MARKINGS	Base Bid
039	13.04524	Grvd Liquid Polyurea Mkg - Type I, 24" W	1,210.0000	LF	\$23.95	\$28,979.50	PAVEMENT MARKINGS	Base Bid
040	13.06504	Grvd Liquid Polyurea Mkg - Type III, 4" W	5,567.0000	LF	\$3.34	\$18,593.78	PAVEMENT MARKINGS	Base Bid
041	13.06505	Grvd Liquid Polyurea Mkg - Type III, 4" Y	14,764.0000	LF	\$1.95	\$28,789.80	PAVEMENT MARKINGS	Base Bid
042	13.07004	Paint Mkg, 4" W	11,687.0000	LF	\$0.84	\$9,817.08	PAVEMENT MARKINGS	Base Bid
043	13.0801	Raised Pavt Markers	7.0000	EA	\$16.71	\$116.97	PAVEMENT MARKINGS	Base Bid
044	13.09001	Tubular Markers, Channel Mount	1.0000	EA	\$94.88	\$94.88	PAVEMENT MARKINGS	Base Bid
045	13.09002	Tubular Markers, Surface Mount	12.0000	EA	\$94.88	\$1,138.56	PAVEMENT MARKINGS	Base Bid
046	14.0101	Traffic Sign, < 4 Sq Ft	135.0000	EA	\$122.54	\$16,542.90	SIGNING	Base Bid
047	14.01011	Traffic Sign, FYG, < 4 SQ FT	6.0000	EA	\$161.52	\$969.12	SIGNING	Base Bid
048	14.01012	Traffic Sign, 4 Sq Ft < 9 Sq Ft	27.0000	EA	\$139.25	\$3,759.75	SIGNING	Base Bid
049	14.01014	Traffic Sign, 9 Sq Ft or >	4.0000	EA	\$417.73	\$1,670.92	SIGNING	Base Bid
050	14.01015	Traffic Sign, FYG, 9 SQ FT or >	12.0000	EA	\$473.43	\$5,681.16	SIGNING	Base Bid
051	14.01111	Remove Traffic Sign and Post	4.0000	EA	\$55.70	\$222.80	SIGNING	Base Bid
052	14.01112	Rel Sign and Post	1.0000	EA	\$139.25	\$139.25	SIGNING	Base Bid
053	14.0321	"U" Channel Sign Posts	527.0000	LF	\$8.35	\$4,400.45	SIGNING	Base Bid
054	14.03211	Ground Sleeve	24.0000	EA	\$128.11	\$3,074.64	SIGNING	Base Bid
055	14.0401	Street Name Posts (Round)	222.0000	LF	\$13.92	\$3,090.24	SIGNING	Base Bid
056	15.09001	Traffic Control for Const	1.0000	LS	\$106,383.88	\$106,383.88	TRAFFIC CONTROL	Base Bid
057	15.094	Conc Protect Barrier	75.0000	LF	\$11.14	\$835.50	TRAFFIC CONTROL	Base Bid
058	20.05001	Found Material	300.0000	CY	\$35.00	\$10,500.00	UTILITIES & STRUCTURES	Base Bid
059	20.06108	Directional Drilling for 8" Water Main	87.0000	LF	\$59.04	\$5,136.48	WATER	Base Bid
060	20.06112	Directional Drilling for 12" Water Main	251.0000	LF	\$72.41	\$18,174.91	WATER	Base Bid
061	20.07001	Conc for Collars, Elbows, Plugs & Hdws	10.8400	CY	\$590.11	\$6,396.79	STORM DRAINAGE	Base Bid
062	20.07002	Reinf Steel for Collars, Elbows, Plugs & Hdws	713.0000	LBS	\$0.72	\$513.36	STORM DRAINAGE	Base Bid
063	20.09001	Conc for Thrust Blocks & Anchorages	28.9000	CY	\$334.19	\$9,658.09	WATER	Base Bid
064	20.09002	Reinf Stl for Thrust Blks & Anchorages	950.4000	LBS	\$1.11	\$1,054.94	WATER	Base Bid
065	21.03012	Rem Storm Sewer Pipe, 12"	47.0000	LF	\$4.28	\$201.16	STORM DRAINAGE	Base Bid
066	21.03015	Rem Storm Sewer Pipe, 15"	382.0000	LF	\$4.28	\$1,634.96	STORM DRAINAGE	Base Bid
067	21.03018	Rem Storm Sewer Pipe, 18"	405.0000	LF	\$4.28	\$1,733.40	STORM DRAINAGE	Base Bid
068	21.03024	Rem Storm Sewer Pipe, 24"	192.0000	LF	\$4.28	\$821.76	STORM DRAINAGE	Base Bid
069	21.03036	Rem Storm Sewer Pipe, 36"	18.0000	LF	\$6.66	\$119.88	STORM DRAINAGE	Base Bid
070	21.03042	Rem Storm Sewer Pipe, 42"	561.0000	LF	\$6.66	\$3,736.26	STORM DRAINAGE	Base Bid
071	21.0306	Rem Storm Sewer Pipe, 60"	43.0000	LF	\$6.66	\$286.38	STORM DRAINAGE	Base Bid
072	21.03315	RCP Storm Sewer, CI III, 15"	1,708.0000	LF	\$29.92	\$51,103.36	STORM DRAINAGE	Base Bid
073	21.03318	RCP Storm Sewer, CI III, 18"	1,281.0000	LF	\$39.08	\$50,061.48	STORM DRAINAGE	Base Bid
074	21.03321	RCP Storm Sewer, CI III, 21"	444.0000	LF	\$38.23	\$16,974.12	STORM DRAINAGE	Base Bid
075	21.03324	RCP Storm Sewer, CI III, 24"	363.0000	LF	\$45.39	\$16,476.57	STORM DRAINAGE	Base Bid
076	21.0333	RCP Storm Sewer, CI III, 30"	251.0000	LF	\$55.94	\$14,040.94	STORM DRAINAGE	Base Bid
077	21.03336	RCP Storm Sewer, CI III, 36"	871.0000	LF	\$70.52	\$61,422.92	STORM DRAINAGE	Base Bid
078	21.03342	RCP Storm Sewer, CI III, 42"	699.0000	LF	\$95.36	\$66,656.64	STORM DRAINAGE	Base Bid
079	21.03348	RCP Storm Sewer, CI III, 48"	930.0000	LF	\$107.69	\$100,151.70	STORM DRAINAGE	Base Bid
080	21.03354	RCP Storm Sewer, CI III, 54"	777.0000	LF	\$138.73	\$107,793.21	STORM DRAINAGE	Base Bid
081	21.03372	RCP Storm Sewer, CI III, 72"	1,013.0000	LF	\$306.31	\$310,292.03	STORM DRAINAGE	Base Bid
082	21.05001	Tap Ex Storm Sewer MH & Replace	1.0000	EA	\$1,609.05	\$1,609.05	STORM DRAINAGE	Base Bid
083	21.05002	Tap Ex Storm Sewer Inlet & Replace	1.0000	EA	\$967.03	\$967.03	STORM DRAINAGE	Base Bid
084	21.05003	Tap Ex RC Pipe	7.0000	EA	\$274.92	\$1,924.44	STORM DRAINAGE	Base Bid
085	21.05004	Tap Ex RC Box	6.0000	EA	\$365.43	\$2,192.58	STORM DRAINAGE	Base Bid
086	21.06001	Reinforcing Steel for Structures	9,520.0000	LBS	\$1.11	\$10,567.20	STORM DRAINAGE	Base Bid
087	21.06002	Concrete for Structures	41.5800	CY	\$440.31	\$18,308.09	STORM DRAINAGE	Base Bid
088	21.07015	Storm Sewer MH, 15" - 30"	7.0000	EA	\$3,212.52	\$22,487.64	STORM DRAINAGE	Base Bid
089	21.07036	Storm Sewer MH, to 36"	2.0000	EA	\$3,925.22	\$7,850.44	STORM DRAINAGE	Base Bid
090	21.07048	Storm Sewer MH, 42"-48"	5.0000	EA	\$4,685.73	\$23,428.65	STORM DRAINAGE	Base Bid
091	21.0706	Storm Sewer MH, 54"-60"	1.0000	EA	\$7,684.97	\$7,684.97	STORM DRAINAGE	Base Bid
092	21.07072	Storm Sewer MH, 66"-72"	2.0000	EA	\$7,034.17	\$14,068.34	STORM DRAINAGE	Base Bid
093	21.08001	Storm Sewer Inlet, 72"	53.0000	EA	\$1,857.84	\$98,465.52	STORM DRAINAGE	Base Bid
094	21.08002	Canted Storm Sewer Inlet, 72"	27.0000	EA	\$1,916.56	\$51,747.12	STORM DRAINAGE	Base Bid
095	21.08003	Radius Storm Sewer Inlet, 72"	1.0000	EA	\$1,846.67	\$1,846.67	STORM DRAINAGE	Base Bid
096	21.08011	Grate Inlet, Ty "F"-1"	6.0000	EA	\$1,096.88	\$6,581.28	STORM DRAINAGE	Base Bid
097	21.08014	Grate Inlet, Ty "H"	6.0000	EA	\$2,052.26	\$12,313.56	STORM DRAINAGE	Base Bid
098	21.12015	Rem RC FES, 15"	1.0000	EA	\$25.66	\$25.66	STORM DRAINAGE	Base Bid
099	21.12018	Rem RC FES, 18"	3.0000	EA	\$25.66	\$76.98	STORM DRAINAGE	Base Bid

100	21.13001	Rem Ex Manhole	7.0000	EA	\$380.33	\$2,662.31	STORM DRAINAGE	Base Bid
101	21.13002	Rem Ex Inlet	2.0000	EA	\$69.81	\$139.22	STORM DRAINAGE	Base Bid
102	21.13004	Rem Ex Grate Inlet	11.0000	EA	\$69.81	\$765.71	STORM DRAINAGE	Base Bid
103	21.16001	Geotextile Filter Fabric	5,636.0000	SY	\$1.95	\$10,990.20	STORM DRAINAGE	Base Bid
104	22.03001	Tap Ex MH and Replace Invert	1.0000	EA	\$668.38	\$668.38	WASTEWATER	Base Bid
105	22.03101	Rem Ex Sanitary Sewer MH	7.0000	EA	\$1,113.97	\$7,797.79	WASTEWATER	Base Bid
106	22.03102	Fill and Abandon Ex MH	2.0000	EA	\$1,670.95	\$3,341.90	WASTEWATER	Base Bid
107	22.04001	Abandonment of Sanitary Sewer Main	1.0000	EA	\$2,450.73	\$2,450.73	WASTEWATER	Base Bid
108	22.05008	Sanitary Sewer Pipe, 8"	731.0000	LF	\$53.47	\$39,086.57	WASTEWATER	Base Bid
109	22.0501	Sanitary Sewer Pipe, 10"	553.0000	LF	\$56.81	\$31,415.93	WASTEWATER	Base Bid
110	22.05012	Sanitary Sewer Pipe, 12"	1,010.0000	LF	\$61.27	\$61,882.70	WASTEWATER	Base Bid
111	22.05208	Sanitary Sewer Plug, 8"	1.0000	EA	\$22.28	\$22.28	WASTEWATER	Base Bid
112	22.07002	Std MH, Ty "P"	1.0000	EA	\$5,569.83	\$5,569.83	WASTEWATER	Base Bid
113	22.07003	Std MH, Ty "S"	11.0000	EA	\$2,227.93	\$24,507.23	WASTEWATER	Base Bid
114	22.07102	Std MH, Ty "P" VF	14.2000	VF	\$389.89	\$5,536.44	WASTEWATER	Base Bid
115	22.07103	Std MH, Ty "S" VF	136.8000	VF	\$167.09	\$22,857.91	WASTEWATER	Base Bid
116	22.08086	Wye, 8" x 6"	4.0000	EA	\$222.79	\$891.16	WASTEWATER	Base Bid
117	22.08106	Wye, 10" x 6"	1.0000	EA	\$276.27	\$276.27	WASTEWATER	Base Bid
118	22.08201	Construct Sanitary Sewer Service	11.0000	EA	\$891.18	\$9,802.98	WASTEWATER	Base Bid
119	22.08202	Reconstruct Sanitary Sewer Service	1.0000	EA	\$891.19	\$891.19	WASTEWATER	Base Bid
120	22.08306	Pipe Sewer Service, 6"	638.0000	LF	\$51.25	\$32,897.50	WASTEWATER	Base Bid
121	23.04006	Rem 6" Water Main	286.0000	LF	\$11.14	\$3,186.04	WATER	Base Bid
122	23.04008	Rem 8" Water Main	214.0000	LF	\$11.14	\$2,383.96	WATER	Base Bid
123	23.04012	Rem 12" Water Main	136.0000	LF	\$14.88	\$2,023.68	WATER	Base Bid
124	23.04016	Rem 16" Water Main	10.0000	LF	\$22.28	\$222.80	WATER	Base Bid
125	23.04101	Rem & Salvage Hydrant	7.0000	EA	\$891.18	\$6,238.28	WATER	Base Bid
126	23.04105	Rem & Salvage Gate Valve and Box	12.0000	EA	\$111.39	\$1,336.68	WATER	Base Bid
127	23.04106	Rem & Salvage Reducer	1.0000	EA	\$111.39	\$111.39	WATER	Base Bid
128	23.04107	Rem & Salvage Bend	11.0000	EA	\$111.39	\$1,225.29	WATER	Base Bid
129	23.04109	Rem & Salvage Tee	2.0000	EA	\$111.39	\$222.78	WATER	Base Bid
130	23.04111	Rem & Reset Hydrant	1.0000	EA	\$1,782.34	\$1,782.34	WATER	Base Bid
131	23.04119	Rem & Reset Tee	1.0000	EA	\$222.79	\$222.79	WATER	Base Bid
132	23.07006	Water Main, 6"	148.0000	LF	\$50.13	\$7,419.24	WATER	Base Bid
133	23.07008	Water Main, 8"	1,572.0000	LF	\$55.70	\$87,560.40	WATER	Base Bid
134	23.07012	Water Main, 12"	3,103.0000	LF	\$66.84	\$207,404.52	WATER	Base Bid
135	23.07016	Water Main, 16"	594.0000	LF	\$77.98	\$46,320.12	WATER	Base Bid
136	23.0707	Anchoring Elbow, MJ, 6"	16.0000	EA	\$155.95	\$2,495.20	WATER	Base Bid
137	23.07072	Anchoring Coupling, MJ (L=18"), 6"	40.0000	EA	\$148.16	\$5,926.40	WATER	Base Bid
138	23.07083	Reducer, MJ, 12" x 8"	2.0000	EA	\$190.49	\$380.98	WATER	Base Bid
139	23.07084	Reducer, MJ, 16" x 6"	1.0000	EA	\$417.73	\$417.73	WATER	Base Bid
140	23.07086	Reducer, MJ, 16" x 12"	1.0000	EA	\$389.89	\$389.89	WATER	Base Bid
141	23.07103	Deg Bend, MJ, 12" X 90	1.0000	EA	\$355.36	\$355.36	WATER	Base Bid
142	23.07104	Deg Bend, MJ, 16" X 90	2.0000	EA	\$767.52	\$1,535.04	WATER	Base Bid
143	23.07111	Deg Bend, MJ, 8" X 45	6.0000	EA	\$147.04	\$882.24	WATER	Base Bid
144	23.07113	Deg Bend, MJ, 16" X 45	6.0000	EA	\$563.66	\$3,381.96	WATER	Base Bid
145	23.07133	Deg Bend, MJ, 12" X 11.25	2.0000	EA	\$265.09	\$510.18	WATER	Base Bid
146	23.07202	Cross, MJ, 8" x 8"	1.0000	EA	\$301.89	\$301.89	WATER	Base Bid
147	23.07302	Tee, MJ, 8" X 6"	10.0000	EA	\$238.39	\$2,383.90	WATER	Base Bid
148	23.07303	Tee, MJ, 8" X 8"	1.0000	EA	\$271.81	\$271.81	WATER	Base Bid
149	23.07304	Tee, MJ, 12" X 6"	17.0000	EA	\$357.59	\$6,079.03	WATER	Base Bid
150	23.07305	Tee, MJ, 12" X 8"	4.0000	EA	\$405.48	\$1,621.92	WATER	Base Bid
151	23.07306	Tee, MJ, 12" X 12"	3.0000	EA	\$497.95	\$1,493.85	WATER	Base Bid
152	23.07307	Tee, MJ, 16" X 6"	1.0000	EA	\$687.32	\$687.32	WATER	Base Bid
153	23.07309	Tee, MJ, 16" X 12"	2.0000	EA	\$873.35	\$1,746.70	WATER	Base Bid
154	23.0731	Tee, MJ, 16" X 16"	1.0000	EA	\$1,090.57	\$1,090.57	WATER	Base Bid
155	23.07407	Offset, 18" Drop, MJ, 12"	2.0000	EA	\$683.98	\$1,367.96	WATER	Base Bid
156	23.07409	Offset, 18" Drop, MJ, 16"	2.0000	EA	\$2,597.77	\$5,195.54	WATER	Base Bid
157	23.07506	Solid Sleeve, MJ (L=12"), 6"	3.0000	EA	\$119.20	\$357.60	WATER	Base Bid
158	23.07508	Solid Sleeve, MJ (L=12"), 8"	8.0000	EA	\$163.75	\$1,310.00	WATER	Base Bid
159	23.07512	Solid Sleeve, MJ (L=12"), 12"	10.0000	EA	\$280.72	\$2,807.20	WATER	Base Bid
160	23.07516	Solid Sleeve, MJ (L=15"), 16"	5.0000	EA	\$513.54	\$2,567.70	WATER	Base Bid
161	23.07612	Dual Purpose Sleeve, MJ (L=12"), 12"	1.0000	EA	\$556.98	\$556.98	WATER	Base Bid
162	23.07712	Plug, MJ, 12"	2.0000	EA	\$133.68	\$267.36	WATER	Base Bid
163	23.07804	Retainer Glands, MJ, 4"	1.0000	EA	\$36.76	\$36.76	WATER	Base Bid
164	23.07806	Retainer Glands, MJ, 6"	21.0000	EA	\$41.22	\$865.62	WATER	Base Bid
165	23.07808	Retainer Glands, MJ, 8"	80.0000	EA	\$65.73	\$5,258.40	WATER	Base Bid
166	23.07812	Retainer Glands, MJ, 12"	111.0000	EA	\$142.59	\$15,827.49	WATER	Base Bid
167	23.07816	Retainer Glands, MJ, 16"	45.0000	EA	\$311.91	\$14,035.95	WATER	Base Bid
168	23.08006	Gate Valve, MJ, 6"	31.0000	EA	\$936.84	\$29,042.04	WATER	Base Bid
169	23.08008	Gate Valve, MJ, 8"	11.0000	EA	\$1,754.50	\$19,299.50	WATER	Base Bid
170	23.08012	Gate Valve, MJ, 12"	13.0000	EA	\$3,094.60	\$40,229.80	WATER	Base Bid
171	23.08116	Butterfly Valve, MJ, 16"	2.0000	EA	\$4,119.45	\$8,238.90	WATER	Base Bid
172	23.08205	Tapping Sleeve & Valve, MJ, 8" x 6"	2.0000	EA	\$3,158.09	\$6,316.18	WATER	Base Bid
173	23.08208	Tapping Sleeve & Valve, MJ, 12" x 4"	1.0000	EA	\$3,089.04	\$3,089.04	WATER	Base Bid
174	23.08209	Tapping Sleeve & Valve, MJ, 12" x 6"	1.0000	EA	\$3,388.69	\$3,388.69	WATER	Base Bid
175	23.08355	Hydrant, L=5.5"	11.0000	EA	\$2,860.67	\$31,467.37	WATER	Base Bid
176	23.08355	Hydrant, L=6.5"	17.0000	EA	\$2,937.54	\$49,938.18	WATER	Base Bid
177	23.084	Hydrant Extension	4.0000	EA	\$1,292.20	\$5,168.80	WATER	Base Bid
178	23.09001	Temporary Hydrant and Blow-off	4.0000	EA	\$1,113.97	\$4,455.88	WATER	Base Bid
179	23.102	Copper Water Service Pipe, 2"	67.0000	LF	\$53.47	\$3,582.49	WATER	Base Bid
180	23.10901	Reconstruct Water Service	4.0000	EA	\$724.08	\$2,896.32	WATER	Base Bid
181	23.11001	Abandonment of Water Main	1.0000	LS	\$2,227.93	\$2,227.93	WATER	Base Bid
182	24.01012	Rem Street Light Pole	7.0000	EA	\$309.68	\$2,167.76	TRAFFIC SIGNAL & LIGHTING	Base Bid
183	24.01021	Rem Street Light Pole Foundation	4.0000	EA	\$167.09	\$668.36	TRAFFIC SIGNAL & LIGHTING	Base Bid
184	24.01022	Rem Pull Box	2.0000	EA	\$227.25	\$454.50	TRAFFIC SIGNAL & LIGHTING	Base Bid
185	24.01102	Ret Street Light Pole (req Foundation)	4.0000	EA	\$1,472.66	\$5,890.64	TRAFFIC SIGNAL & LIGHTING	Base Bid
186	24.0312	Conduit, 2", Bored	370.0000	LF	\$32.75	\$12,117.50	TRAFFIC SIGNAL & LIGHTING	Base Bid
187	24.0313	Conduit, 3", Bored	45.0000	LF	\$42.73	\$1,922.85	TRAFFIC SIGNAL & LIGHTING	Base Bid
188	24.0314	Conduit, 4", Bored	1,273.0000	LF	\$44.06	\$56,088.38	TRAFFIC SIGNAL & LIGHTING	Base Bid
189	24.03215	Conduit, 1 1/2", Trenched	8,810.0000	LF	\$6.20	\$54,622.00	TRAFFIC SIGNAL & LIGHTING	Base Bid
190	24.0322	Conduit, 2", Trenched	2,635.0000	LF	\$7.08	\$18,655.80	TRAFFIC SIGNAL & LIGHTING	Base Bid
191	24.0323	Conduit, 3", Trenched	450.0000	LF	\$13.23	\$5,953.50	TRAFFIC SIGNAL & LIGHTING	Base Bid
192	24.0324	Conduit, 4", Trenched	28,233.0000	LF	\$15.86	\$447,775.38	TRAFFIC SIGNAL & LIGHTING	Base Bid
193	24.04	Locate Stick	1.0000	EA	\$471.21	\$471.21	TRAFFIC SIGNAL & LIGHTING	Base Bid
194	24.05006	Pull Box, T6	6.0000	EA	\$842.16	\$5,052.96	TRAFFIC SIGNAL & LIGHTING	Base Bid
195	24.05009	Pull Box, T9	16.0000	EA	\$959.13	\$15,346.08	TRAFFIC SIGNAL & LIGHTING	Base Bid
196	24.06015	Riser, 1 1/2"	1.0000	EA	\$734.11	\$734.11	TRAFFIC SIGNAL & LIGHTING	Base Bid
197	24.0602	Riser, 2"	2.0000	EA	\$946.87	\$1,893.74	TRAFFIC SIGNAL & LIGHTING	Base Bid
198	24.0843	Pole, Street Light, SL-A-C-30-6-3	4.0000	EA	\$2,131.02	\$8,524.08	TRAFFIC SIGNAL & LIGHTING	Base Bid
199	24.121	Cable, Tracer Wire	23,036.0000	LF	\$1.19	\$27,412.84	TRAFFIC SIGNAL & LIGHTING	Base Bid
200	24.12204	Cable, No 4 Circuit Ground	1,064.0000	LF	\$4.52	\$4,809.28	TRAFFIC SIGNAL & LIGHTING	Base Bid
201	24.12206	Cable, No 6 Circuit Ground	2,922.0000	LF	\$4.49	\$13,119.78	TRAFFIC SIGNAL & LIGHTING	Base Bid
202	24.12208	Cable, No 8 Circuit Ground	5,460.0000	LF	\$4.21	\$22,966.60	TRAFFIC SIGNAL & LIGHTING	Base Bid
203	24.12502	Cable, No 2 Street Light	3,298.0000	LF	\$6.43	\$21,206.14	TRAFFIC SIGNAL & LIGHTING	Base Bid
204	24.12504	Cable, No 4 Street Light	5,844.0000	LF	\$4.88	\$28,518.72	TRAFFIC SIGNAL & LIGHTING	Base Bid
205	24.12506	Cable, No 6 Street Light	13,008.0000	LF	\$4.49	\$58,405.92	TRAFFIC SIGNAL & LIGHTING	Base Bid
206	24.12508	Cable, No 8 Street Light	360.0000	LF	\$4.21	\$1,515.60	TRAFFIC SIGNAL & LIGHTING	Base Bid
207	24.12704	Cable, No. 4 Street Light Triplex	1,302.0000	LF	\$8.58	\$11,171.16	TRAFFIC SIGNAL & LIGHTING	Base Bid

**EXHIBIT A TO CONTRACT AGREEMENT**

208	24.12812	Cable, 12 Single Mode Fiber	252.0000	LF	\$3.52	\$887.04	TRAFFIC SIGNAL & LIGHTING	Base Bid
209	24.14015	Luminaire, 150W HPSV-PC	28.0000	EA	\$577.04	\$16,157.12	TRAFFIC SIGNAL & LIGHTING	Base Bid
210	24.14125	Luminaire, 250W HPSV-SC	4.0000	EA	\$588.18	\$2,352.72	TRAFFIC SIGNAL & LIGHTING	Base Bid
211	30.07002	Seeding, Ty "B"	10.8900	AC	\$3,174.81	\$33,938.72	EROSION CTRL	Base Bid
212	30.08001	Sodding	97,673.0000	SF	\$0.87	\$84,975.51	EROSION CTRL	Base Bid
213	31.03001	Select Topsoil	177.0000	CY	\$12.81	\$2,267.37	EROSION CTRL	Base Bid
214	32.01001	SWPPP Updating	6.0000	EA	\$178.23	\$1,069.38	EROSION CTRL	Base Bid
215	32.02001	Synthetic Fabric Silt Fence Inst	8,410.0000	LF	\$2.62	\$22,034.20	EROSION CTRL	Base Bid
216	32.02002	Synthetic Fabric Silt Fence Maint	8,410.0000	LF	\$0.95	\$7,989.50	EROSION CTRL	Base Bid
217	32.02003	Synthetic Fabric Silt Fence Rem	8,410.0000	LF	\$0.56	\$4,709.60	EROSION CTRL	Base Bid
218	32.03001	Construction Entrance Surfacing	3,190.0000	TON	\$25.06	\$79,941.40	EROSION CTRL	Base Bid
219	32.04001	Curb Inlet Protection Inst	80.0000	EA	\$105.82	\$8,465.60	EROSION CTRL	Base Bid
220	32.04002	Curb Inlet Protection Maint	80.0000	EA	\$55.70	\$4,456.00	EROSION CTRL	Base Bid
221	32.04003	Curb Inlet Protection Rem	80.0000	EA	\$33.41	\$2,672.80	EROSION CTRL	Base Bid
222	32.05101	BD ECB, Type I	9,079.0000	SY	\$1.23	\$11,167.17	EROSION CTRL	Base Bid
223	50.00001	Petroleum Contaminated Soil Load Fee	350.0000	EA	\$5.00	\$1,750.00	MISC	Base Bid
224	50.00001	Wye, 12" x 6"	4.0000	EA	\$501.29	\$2,005.16	MISC	Base Bid
225	50.00001	12" Offset, 24" Drop, M.J.	2.0000	EA	\$892.29	\$1,784.58	MISC	Base Bid
226	50.00001	Anchoring Coupling, MJ (L=13"), 12"	10.0000	EA	\$540.27	\$5,402.70	MISC	Base Bid
227	50.00001	Anchoring Coupling, MJ (L=18"), 8"	9.0000	EA	\$306.34	\$2,757.06	MISC	Base Bid
228	50.00001	Remove Light Tower	1.0000	EA	\$5,723.56	\$5,723.56	MISC	Base Bid
229	50.00001	Combination Meter/Panel Assembly	2.0000	EA	\$3,796.40	\$7,592.80	MISC	Base Bid
230	50.00001	Pole, Street Light, SL-A-C-35-6-3 (Galvanized Pole Painted Black)	53.0000	EA	\$2,426.22	\$128,569.66	MISC	Base Bid
231	50.00001	SL Pole, SL-A-C-35-12T-5.0 (Galvanized Pole Painted Black)	5.0000	EA	\$2,281.41	\$11,407.05	MISC	Base Bid
232	50.00001	Wood Pole 35/4-6-3.0	3.0000	EA	\$1,630.84	\$4,892.52	MISC	Base Bid
233	50.00001	Wood Pole 35/4-T6/6-3.0	9.0000	EA	\$1,604.11	\$14,436.99	MISC	Base Bid
234	50.00001	Relocate Flood Light Fixture	2.0000	EA	\$1,334.54	\$2,669.08	MISC	Base Bid
235	50.00001	SL Pole, SL-BT-C-35-T6/6-3.0 (Galvanized Pole Painted Black)	4.0000	EA	\$2,977.83	\$11,910.52	MISC	Base Bid
236	50.00001	SL Pole, SL-A-C-25-6-3.0 (Galvanized Pole Painted Black)	5.0000	EA	\$2,203.43	\$11,017.15	MISC	Base Bid
237	50.00001	SL Pole, SL-A-C-20-6-3.0 (Modify to 2"-0" Raised Conc. Foundation)	1.0000	EA	\$2,157.75	\$2,157.75	MISC	Base Bid
238	50.00001	SL Pole, SL-A-C-20-T6/6-3.0 (Modify to 2"-0" Raised Conc. Foundation)	3.0000	EA	\$2,490.83	\$7,472.49	MISC	Base Bid
239	50.00001	In-Grade Fixture, Type "B"	6.0000	EA	\$1,569.58	\$9,417.48	MISC	Base Bid
240	50.00001	Install Relay Pedestal (Type A and B)	3.0000	EA	\$2,014.05	\$6,042.15	MISC	Base Bid
241	50.00001	Remove Combination Meter/Panel Pedestal	2.0000	EA	\$843.27	\$1,686.54	MISC	Base Bid
242	50.00001	Install LED Luminaire	71.0000	EA	\$304.11	\$21,591.81	MISC	Base Bid
243	50.00001	Fiber Vault (30" x 48" x 36")	18.0000	EA	\$4,973.86	\$89,529.48	MISC	Base Bid
244	50.00001	Install Fiber Vault (BNSF)	2.0000	EA	\$3,893.31	\$7,786.62	MISC	Base Bid
245	50.00001	Tunnel Wall Penetration	2.0000	EA	\$1,516.11	\$3,032.22	MISC	Base Bid
246	50.00001	Haymarket Parking Garage Building Entrance	1.0000	EA	\$1,709.94	\$1,709.94	MISC	Base Bid
247	50.00001	Install Pedestal (TWC)	1.0000	EA	\$841.04	\$841.04	MISC	Base Bid
248	50.00001	Install Manhole (TWC) (48" x 72" x 48")	6.0000	EA	\$7,175.06	\$43,050.36	MISC	Base Bid
249	50.00001	Manhole (Windstream) (48"x96"x84")	11.0000	EA	\$16,083.46	\$176,918.06	MISC	Base Bid
250	50.00001	Manhole (Windstream) (48"x78"x84")	1.0000	EA	\$15,605.57	\$15,605.57	MISC	Base Bid
251	50.00001	Install Tracer Wire Pedestal (LES)	12.0000	EA	\$764.18	\$9,170.16	MISC	Base Bid
252	50.00001	Paint Mkg, Handicap Stall Symbol	9.0000	EA	\$417.73	\$3,759.57	MISC	Base Bid
253	50.00001	Grvd Prfmd Plstc Mkg, Bike Right Arrow	1.0000	EA	\$807.83	\$807.83	MISC	Base Bid
254	50.00001	Remove and Salvage Gate	3.0000	EA	\$334.19	\$1,002.57	MISC	Base Bid
255	50.00001	Remove Parking Meter Post	21.0000	EA	\$55.70	\$1,169.70	MISC	Base Bid
256	50.00001	Abandon Monitoring Well	4.0000	EA	\$445.59	\$1,782.36	MISC	Base Bid
257	50.00001	Remove and Reset Bench	2.0000	EA	\$194.95	\$389.90	MISC	Base Bid
258	50.00001	Steel Pipe Bollard	18.0000	EA	\$714.63	\$12,863.34	MISC	Base Bid
259	50.00001	Removable Pipe Bollard	3.0000	EA	\$987.30	\$2,961.90	MISC	Base Bid
260	50.00001	Remove Bollard	18.0000	EA	\$66.84	\$1,203.12	MISC	Base Bid
261	50.00001	Parking Meter Post	75.0000	EA	\$144.90	\$10,867.50	MISC	Base Bid
262	50.00001	Special Storm Sewer Manhole at Station 1963+23.06	1.0000	EA	\$13,154.11	\$13,154.11	MISC	Base Bid
263	50.00001	Special Storm Sewer Manhole at Station 1967+36.52	1.0000	EA	\$29,294.48	\$29,294.48	MISC	Base Bid
264	50.00001	Special Storm Sewer Manhole at Station 1971+20.22	1.0000	EA	\$50,391.70	\$50,391.70	MISC	Base Bid
265	50.00001	Special Storm Sewer Manhole at Station 1251+56.57	1.0000	EA	\$7,509.29	\$7,509.29	MISC	Base Bid
266	50.00001	Area Drain	6.0000	EA	\$736.55	\$4,419.30	MISC	Base Bid
267	50.00001	Storm Sewer Clean-Out	10.0000	EA	\$649.99	\$6,499.90	MISC	Base Bid
268	50.00001	Pothole Existing Utility	22.0000	EA	\$233.93	\$5,146.46	MISC	Base Bid
269	50.00001	30'-0" Vinyl Coated Chain Link Fence Cantilevered Gate	1.0000	EA	\$1,448.16	\$1,448.16	MISC	Base Bid
270	50.00001	24'-0" Vinyl Coated Chain Link Fence Cantilevered Gate	3.0000	EA	\$1,336.77	\$4,010.31	MISC	Base Bid
271	50.00001	48" Vinyl Coated Chain Link Fence Walk Gate	2.0000	EA	\$445.59	\$891.18	MISC	Base Bid
272	50.00001	24"-0" Chain Link Fence Double Swing Gate	3.0000	EA	\$668.38	\$2,005.14	MISC	Base Bid
273	50.00001	Tee, 12" x 10"	1.0000	EA	\$556.98	\$556.98	MISC	Base Bid
274	50.00001	Reconstruct Existing Sanitary Manhole	1.0000	EA	\$2,784.92	\$2,784.92	MISC	Base Bid
275	50.00001	Furnish Dewatering Container	4.0000	EA	\$3,174.81	\$12,699.24	MISC	Base Bid
276	50.00001	Adjust Fiber Vault to Grade	2.0000	EA	\$2,489.72	\$4,979.44	MISC	Base Bid
277	50.00005	Cable, No 12 SL	720.0000	LF	\$3.82	\$2,750.40	MISC	Base Bid
278	50.00005	Cable, No 2 CG	2,034.0000	LF	\$7.21	\$14,665.14	MISC	Base Bid
279	50.00005	Cable, No 1/0 SL	3,929.0000	LF	\$10.80	\$42,433.20	MISC	Base Bid
280	50.00005	Cable, No 4/0 SL	1,940.0000	LF	\$20.88	\$40,507.20	MISC	Base Bid
281	50.00005	Chain Link Fence, 96"	4,061.0000	LF	\$19.49	\$79,148.89	MISC	Base Bid
282	50.00005	Vinyl Coated Chain Link Fence, 96"	4,813.0000	LF	\$33.84	\$162,871.92	MISC	Base Bid
283	50.00005	Temporary Chain Link Fence	3,625.0000	LF	\$9.19	\$33,313.75	MISC	Base Bid
284	50.00005	Remove Fence	8,249.0000	LF	\$2.78	\$22,932.22	MISC	Base Bid
285	50.00005	Remove Platform	1,472.0000	LF	\$20.05	\$29,513.60	MISC	Base Bid
286	50.00005	Remove Railroad Tracks	655.0000	LF	\$25.06	\$16,414.30	MISC	Base Bid
287	50.00005	Remove and Salvage Railing	198.0000	LF	\$2.23	\$441.54	MISC	Base Bid
288	50.00005	Remove Sanitary Sewer Pipe	1,560.0000	LF	\$22.82	\$35,599.20	MISC	Base Bid
289	50.00005	Remove Existing Casing	60.0000	LF	\$27.85	\$1,671.00	MISC	Base Bid
290	50.00005	Remove Box Storm Sewer	561.0000	LF	\$43.95	\$24,655.95	MISC	Base Bid
291	50.00005	10" PVC Storm Sewer	55.0000	LF	\$26.77	\$1,472.35	MISC	Base Bid
292	50.00005	12" PVC Storm Sewer	416.0000	LF	\$33.21	\$13,815.36	MISC	Base Bid
293	50.00005	RCP Storm Sewer, Cl III, 12"	46.0000	LF	\$43.46	\$1,999.16	MISC	Base Bid
294	50.00005	15" C.M.P. Storm Sewer	61.0000	LF	\$41.75	\$2,546.75	MISC	Base Bid
295	50.00005	30" C.M.P. Storm Sewer	25.0000	LF	\$103.55	\$2,588.75	MISC	Base Bid
296	50.00005	2" P.V.C. Pipe Sleeve	1,383.0000	LF	\$6.46	\$8,934.18	MISC	Base Bid
297	50.00005	6" P.V.C. Pipe Sleeve	1,383.0000	LF	\$10.99	\$15,199.17	MISC	Base Bid
298	50.00005	12" Sanitary Sewer Pipe (C900 P.V.C.)	222.0000	LF	\$66.84	\$14,838.48	MISC	Base Bid
299	50.00005	Pipe Sewer Service, 10"	20.0000	LF	\$55.70	\$1,114.00	MISC	Base Bid
300	50.00005	DIP Water Main, Class 52, 6"	236.0000	LF	\$63.50	\$14,986.00	MISC	Base Bid
301	50.00005	DIP Water Main, Class 52, 8"	796.0000	LF	\$71.29	\$56,746.84	MISC	Base Bid
302	50.00005	DIP Water Main, Class 52, 12"	795.0000	LF	\$105.82	\$84,128.90	MISC	Base Bid
303	50.00005	Restrained Joint Water Main, 12"	251.0000	LF	\$85.77	\$21,528.27	MISC	Base Bid
304	50.00005	Restrained Joint Water Main, 8"	345.0000	LF	\$61.27	\$21,138.15	MISC	Base Bid
305	50.00005	Dewatering for Storm Sewers	4,000.0000	LF	\$2.99	\$11,960.00	MISC	Base Bid
306	50.00005	Dewatering for Sanitary Sewers	2,400.0000	LF	\$2.23	\$5,352.00	MISC	Base Bid
307	50.00005	Dewatering for Water Mains	1,000.0000	LF	\$2.23	\$2,230.00	MISC	Base Bid
308	50.00005	Install Conduit, 4" Bored	192.0000	LF	\$51.02	\$9,795.84	MISC	Base Bid
309	50.00005	Install Conduit, 2" Trenched	5,696.0000	LF	\$6.64	\$37,821.44	MISC	Base Bid
310	50.00005	Install Conduit, 4" Trenched	6,474.0000	LF	\$15.59	\$100,929.66	MISC	Base Bid
311	50.00005	Install Conduit, 6" Trenched	6,414.0000	LF	\$24.50	\$157,143.00	MISC	Base Bid
312	50.00005	Install Multi-Duct Conduit 4", Bored	84.0000	LF	\$79.43	\$6,672.12	MISC	Base Bid
313	50.00005	Install Multi-Duct Conduit 4", Trenched	1,283.0000	LF	\$46.79	\$60,031.57	MISC	Base Bid
314	50.00001	Excavation for Beneficial Reuse Soils	64,222.0000	CY	\$11.08	\$711,579.76	MISC	Base Bid
315	50.00001	Grading and Placement of Beneficial Reuse Soils	64,222.0000	CY	\$1.25	\$80,277.50	MISC	Base Bid

316	50.00015	Reconstruct 7th Street Irrigation System	1.0000	LS	\$5,569.83	\$5,569.83	MISC	Base Bid
317	50.00015	Construction Field Office	1.0000	LS	\$13,924.59	\$13,924.59	MISC	Base Bid
318	50.00015	Circuit Reconnection at Iron Horse Park	1.0000	LS	\$16,598.11	\$16,598.11	MISC	Base Bid
319	50.00015	Bypass Pumping for Sewer Construction at Station 1969+13.00	1.0000	LS	\$1,113.97	\$1,113.97	MISC	Base Bid
320	50.00015	Bypass Pumping for Sewer Construction at Station 2204+51.78	1.0000	LS	\$1,113.97	\$1,113.97	MISC	Base Bid
321	50.00015	Bypass Pumping for Sewer Construction at Station 2211+28.34	1.0000	LS	\$1,113.97	\$1,113.97	MISC	Base Bid
322	50.00015	Bypass Pumping for Sewer Construction at Station 1205+76.05	1.0000	LS	\$1,113.97	\$1,113.97	MISC	Base Bid
323	50.00015	Bypass Pumping for Sewer Construction at Station 2206+11.36	1.0000	LS	\$1,113.97	\$1,113.97	MISC	Base Bid
324	50.00015	Bypass Pumping for Sewer Construction at Station 2306+02.65	1.0000	LS	\$1,113.97	\$1,113.97	MISC	Base Bid
325	50.00015	Temporary Shoring at Station 1962+91.00	1.0000	LS	\$11,139.67	\$11,139.67	MISC	Base Bid
326	50.00015	Temporary Shoring at Station 2303+89.00	1.0000	LS	\$24,841.47	\$24,841.47	MISC	Base Bid
327	50.00015	GPS Information for Water Main Construction	1.0000	LS	\$1,091.68	\$1,091.68	MISC	Base Bid
328	50.00015	Extra Work Items	1.0000	LS	\$500,000.00	\$500,000.00	MISC	Base Bid
329	50.00015	Remove Stairwell and Tunnel	1.0000	LS	\$10,104.85	\$10,104.85	MISC	Base Bid
330	50.00015	Remove and Relocate Building	1.0000	LS	\$27,835.44	\$27,835.44	MISC	Base Bid
331	50.0002	Cover Crop Seeding	18.3600	AC	\$763.07	\$14,009.97	MISC	Base Bid
332	50.00035	Disposal of Construction and Demolition Waste	4,000.0000	TON	\$14.81	\$59,240.00	MISC	Base Bid
333	50.00035	Disposal of Petroleum Contaminated Soils	12,800.0000	TON	\$28.85	\$369,280.00	MISC	Base Bid
334	50.00035	Granular Material for Subgrade Stabilization	5,000.0000	TON	\$27.85	\$139,250.00	MISC	Base Bid
335	50.00035	Occupation Tax	6,250.0000	TON	\$7.00	\$43,750.00	MISC	Base Bid
336	50.0004	Geotextile for Subgrade Stabilization	8,000.0000	SY	\$3.98	\$31,840.00	MISC	Base Bid
337	50.0004	Special Street Paving	1,603.0000	SY	\$52.11	\$83,532.33	MISC	Base Bid
338	50.0004	Parking Lot Surfacing	15,726.0000	SY	\$20.57	\$323,483.82	MISC	Base Bid
339	50.0004	Temporary Surfacing	1,353.0000	SY	\$29.37	\$39,737.61	MISC	Base Bid
340	50.0004	Foundation Course	27,581.0000	SY	\$6.73	\$185,620.13	MISC	Base Bid
341	50.00045	Remove and Salvage Brick Pavers	276.0000	SF	\$7.80	\$2,152.80	MISC	Base Bid
342	50.00045	Concrete Driveway, 9" Thick	6,877.0000	SF	\$4.23	\$29,089.71	MISC	Base Bid
343	50.00045	Brick Pavers	706.0000	SF	\$22.17	\$15,652.02	MISC	Base Bid
344	50.00045	Temporary Sidewalk	2,270.0000	SF	\$2.66	\$6,038.20	MISC	Base Bid
345	50.0005	Construction Staking for Utilities	40.0000	HR	\$155.95	\$6,238.00	MISC	Base Bid
346	50.0006	Dewatering Container Usage	1,440.0000	CDAY	\$57.22	\$82,396.80	MISC	Base Bid
347	50.0006	Dewatering for Over-Excavation Work	120.0000	CDAY	\$55.70	\$6,684.00	MISC	Base Bid
348	23.07081	Reducer, MJ, 8" X 6"	1.0000	EA	\$130.34	\$130.34	WATER	Base Bid
349	23.07122	Deg Bend, MJ, 8" X 22.5	2.0000	EA	\$151.50	\$303.00	WATER	Base Bid
350	50.00005	Steel Casing Pipe, Open Cut, 16" Dia.	93.0000	LF	\$94.68	\$8,805.24	MISC	Base Bid
351	50.00005	Steel Casing Pipe, Bored in Place, 16" Dia.	155.0000	LF	\$240.62	\$37,296.10	MISC	Base Bid
352	50.00010	Excavation of Unsuitable Material	17,500.0000	CY	\$19.99	\$349,825.00	MISC	Base Bid
353	50.00015	Temporary Shoring Sta. 1306+34 to Sta. 1307+95	1.0000	LS	\$42,486.71	\$42,486.71	MISC	Base Bid

\$14,168,272.94 Total Amount

12-128a

**HAWKINS CONSTRUCTION CO**

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
01	01.00001	Mobilization	1.0000	LS	\$4,230.58	\$4,230.58	GENERAL	Base Bid
02	01.01001	Const Staking	1.0000	LS	\$4,834.62	\$4,834.62	GENERAL	Base Bid
03	04.09106	PCC Pavt w/Int Curb, 6"	13,692.0000	SY	\$27.74	\$379,816.08	PAVING	Base Bid
04	04.09109	PCC Pavt w/ Int Curb, 9"	248.0000	SY	\$32.62	\$8,089.76	PAVING	Base Bid
05	04.09304	Conc Sidewalk, 4"	787.0000	SF	\$2.50	\$1,967.50	PAVING	Base Bid
06	04.09406	Conc Driveway, 6"	393.0000	SF	\$3.49	\$1,371.57	PAVING	Base Bid
07	04.09804	Conc Median Surfacing, 4"	1,366.0000	SF	\$2.82	\$3,852.12	PAVING	Base Bid
08	13.06504	Grvd Liquid Polyurea Mkg - Type III, 4" W	95.0000	LF	\$3.34	\$317.30	PAVEMENT MARKINGS	Base Bid
09	13.07005	Paint Mkg, 4" Y	8,490.0000	LF	\$0.84	\$7,131.60	PAVEMENT MARKINGS	Base Bid
10	14.01010	Traffic Sign, < 4 Sq Ft	9.0000	EA	\$122.54	\$1,102.86	SIGNING	Base Bid
11	14.03210	"U" Channel Sign Posts	28.0000	LF	\$8.35	\$233.80	SIGNING	Base Bid
12	14.03211	Ground Sleeve	4.0000	EA	\$128.11	\$512.44	SIGNING	Base Bid
13	21.03315	RCP Storm Sewer, CI III, 15"	14.0000	LF	\$29.92	\$418.88	STORM DRAINAGE	Base Bid
14	21.08001	Storm Sewer Inlet, 72"	2.0000	EA	\$1,857.84	\$3,715.68	STORM DRAINAGE	Base Bid
15	24.03215	Conduit, 1 1/2", Trenched	1,240.0000	LF	\$6.20	\$7,688.00	TRAFFIC SIGNAL & LIGHTING	Base Bid
16	24.08430	Pole, Street Light, SL-A-C-30-6-3	3.0000	EA	\$2,131.02	\$6,393.06	TRAFFIC SIGNAL & LIGHTING	Base Bid
17	24.12206	Cable, No 6 Circuit Ground	1,231.0000	LF	\$4.49	\$5,527.19	TRAFFIC SIGNAL & LIGHTING	Base Bid
18	24.12208	Cable, No 8 Circuit Ground	9.0000	LF	\$4.21	\$37.89	TRAFFIC SIGNAL & LIGHTING	Base Bid
19	24.12504	Cable, No 4 Street Light	2,462.0000	LF	\$4.88	\$12,014.56	TRAFFIC SIGNAL & LIGHTING	Base Bid
20	24.12506	Cable, No 6 Street Light	18.0000	LF	\$4.49	\$80.82	TRAFFIC SIGNAL & LIGHTING	Base Bid
21	24.14015	Luminaire, 150W HPSV-PC	21.0000	EA	\$577.04	\$12,117.84	TRAFFIC SIGNAL & LIGHTING	Base Bid
22	50.00001	Pole, Street Light, SL-A-C-30-T6/6-3	9.0000	EA	\$2,655.70	\$23,901.30	MISC	Base Bid
23	50.00001	Paint Mkg, Handicap Stall Symbol	8.0000	EA	\$417.73	\$3,341.84	MISC	Base Bid

**\$488,697.29 Total Amount**

12-128b

**HAWKINS CONSTRUCTION CO**

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
01	01.00001	Mobilization	1.0000	LS	\$1,859.39	\$1,859.39	GENERAL	Base Bid
02	01.01001	Const Staking	1.0000	LS	\$1,637.54	\$1,637.54	GENERAL	Base Bid
03	04.09304	Conc Sidewalk, 4"	146.0000	SF	\$2.50	\$365.00	PAVING	Base Bid
04	04.09601	Combined Curb & Gutter	345.0000	LF	\$14.94	\$5,154.30	PAVING	Base Bid
05	13.07005	Paint Mkg, 4" Y	2,341.0000	LF	\$0.84	\$1,966.44	PAVEMENT MARKINGS	Base Bid
06	14.01010	Traffic Sign, < 4 Sq Ft	6.0000	EA	\$122.54	\$735.24	SIGNING	Base Bid
07	14.03210	"U" Channel Sign Posts	45.0000	LF	\$8.35	\$375.75	SIGNING	Base Bid
08	24.03215	Conduit, 1 1/2", Trenched	43.0000	LF	\$6.20	\$266.60	TRAFFIC SIGNAL & LIGHTING	Base Bid
09	24.06015	Riser, 1 1/2"	1.0000	EA	\$734.11	\$734.11	TRAFFIC SIGNAL & LIGHTING	Base Bid
10	24.12206	Cable, No 6 Circuit Ground	196.0000	LF	\$4.49	\$880.04	TRAFFIC SIGNAL & LIGHTING	Base Bid
11	24.12504	Cable, No 4 Street Light	392.0000	LF	\$4.88	\$1,912.96	TRAFFIC SIGNAL & LIGHTING	Base Bid
12	24.12704	Cable, No 4 Street Light Triplex	200.0000	LF	\$8.58	\$1,716.00	TRAFFIC SIGNAL & LIGHTING	Base Bid
13	24.14015	Luminaire, 150W HPSV-PC	6.0000	EA	\$577.04	\$3,462.24	TRAFFIC SIGNAL & LIGHTING	Base Bid
14	50.00001	Wood Pole, 35/4-T6/6-3.0	3.0000	EA	\$1,604.11	\$4,812.33	MISC	Base Bid
15	50.00001	Paint Mkg, Handicap Stall Symbol	5.0000	EA	\$417.73	\$2,088.65	MISC	Base Bid
16	50.00040	Parking Lot Surfacing	3,783.0000	SY	\$20.57	\$77,816.31	MISC	Base Bid

**\$105,782.90 Total Amount**

12-128c

## HAWKINS CONSTRUCTION CO

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
1	50.00001	Ped Pole, Type A	30.0000	EA	\$4,109.43	\$123,282.90	MISC	Base Bid
						<b>\$123,282.90</b>	<b>Total Amount</b>	

**EXHIBIT B**

**Temporary Grading License for Arena Drive and Parking Lot Construction  
and  
Temporary Construction and Access License**

*Approved by Law*  
6-6-2012



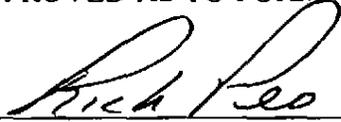
**WEST HAYMARKET JOINT PUBLIC AGENCY  
ADMINISTRATIVE ORDER NO. 11-05**

By the virtue of the authority delegated to me in Article III, Section 4(c) of the Rules of Governance West Haymarket Joint Public Agency, I hereby approve and have executed on behalf of the West Haymarket Joint Public Agency ("JPA") the attached Temporary Grading License for Arena Drive and Parking Lot Construction and the attached Temporary Construction and Access License previously approved as to form and attached to the Master Development Agreement between BNSF and the City of Lincoln as assigned to the JPA as Exhibits KK and EE.

Dated this 18 day of April, 2011.

  
\_\_\_\_\_  
Dan Marvin, Project Manager/Secretary  
West Haymarket Joint Public Agency

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Legal Counsel

*Two separate  
Licenses approved  
by AO 11-05*

**RECEIVED**  
JUN 09 2011  
BY: \_\_\_\_\_

## TEMPORARY GRADING LICENSE FOR ARENA DRIVE AND PARKING LOT CONSTRUCTION

THIS TEMPORARY GRADING LICENSE FOR ARENA DRIVE AND PARKING LOT CONSTRUCTION ("License") is made to be effective as of the 18<sup>th</sup> day of April, 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 the areas of Licensor's property labeled as "Temporary Right-of-Entry" and shown red on the Exhibits AA – AA-7, attached hereto and incorporated herein by reference, situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (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 grading (the "Grading"). 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.

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 (defined below)), or (ii) December 31, 2014.

### **3. COMPENSATION.**

3.1 Licensee shall pay Licensor, prior to the Effective Date, the sum of No Dollars (\$) 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 February 11, 2011 (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 that certain Master Development Agreement between Licensor and Licensee dated February 1, 2011 (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, complete the Grading in such a manner 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 completion of the Grading, 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 Grading shall be completed within one (1) year of the Effective Date. Upon completion of the Grading, Licensee shall, at Licensee's own cost and expense, restore

Licensors premises to their former state as of the Effective Date of this License, subject only to the Grading.

7.6 If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Grading, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Grading as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor.

7.7 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.

7.8 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.

7.9 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:

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

7.9.2 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.

7.10 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:

7.10.1 remove all of its equipment from the Premises;

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

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

7.10.4 leave the Premises in the condition which existed as of the Effective Date, subject only to the Grading.

7.11 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.

**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 Grading 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.

***[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.

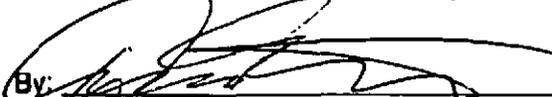
**LICENSOR:**

**BNSF Railway Company, a Delaware corporation**

By:   
Name: David P. Schneider  
Title: General Director - Land Revenue Management  
Date: 4/15/2011

**LICENSEE:**

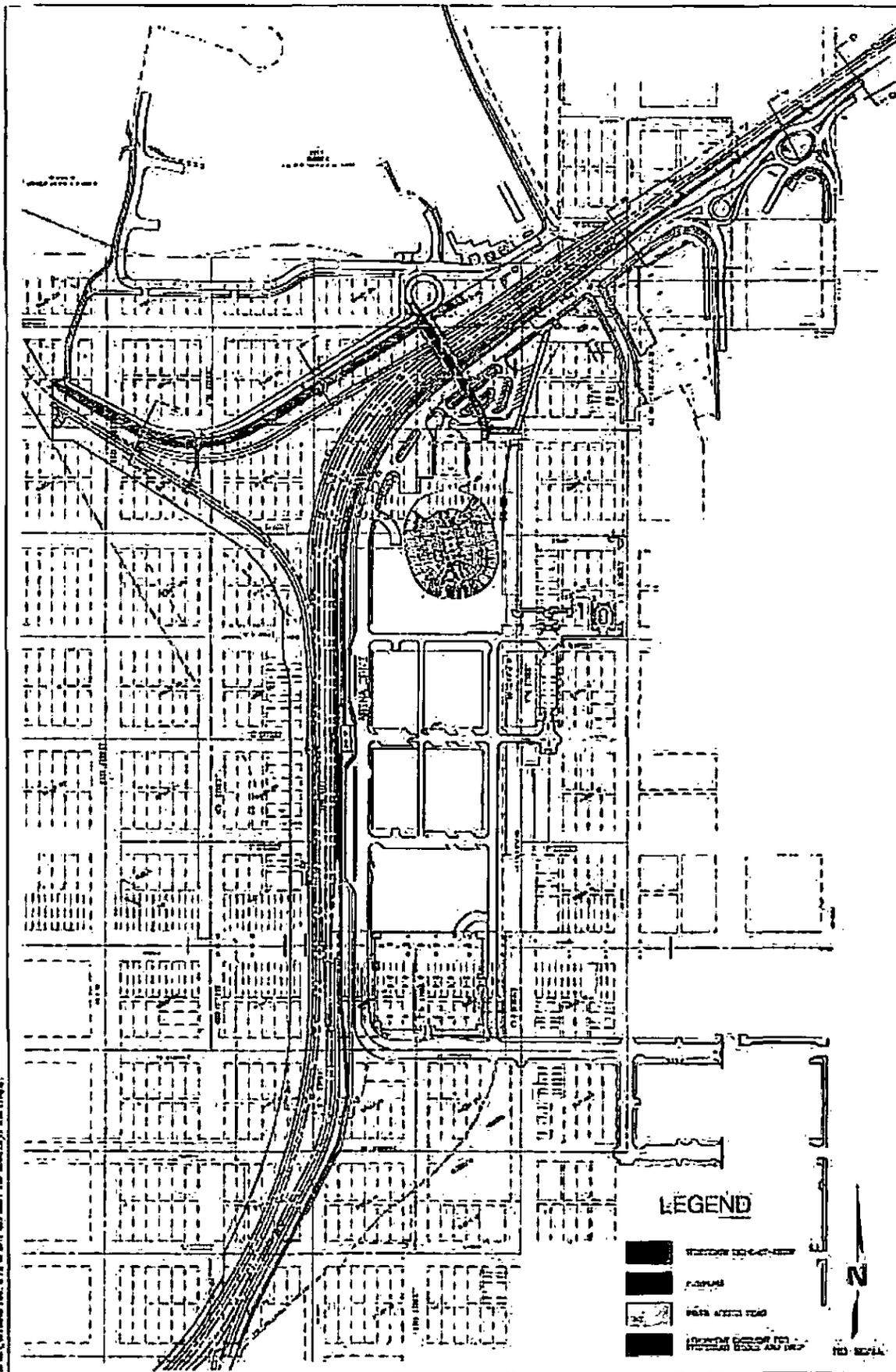
**West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska**

By:   
Dan Marvin, Project Manager/Secretary  
West Haymarket Joint Public Agency  
Date: 4/15/2011

**Exhibits AA – AA-7**

**Premises**

**[See attached]**



**LEGEND**

-  TEMPORARY RIGHT OF ENTRY
-  DRIVE
-  DRIVE ACCESS ROAD
-  TEMPORARY CONSTRUCTION AREA



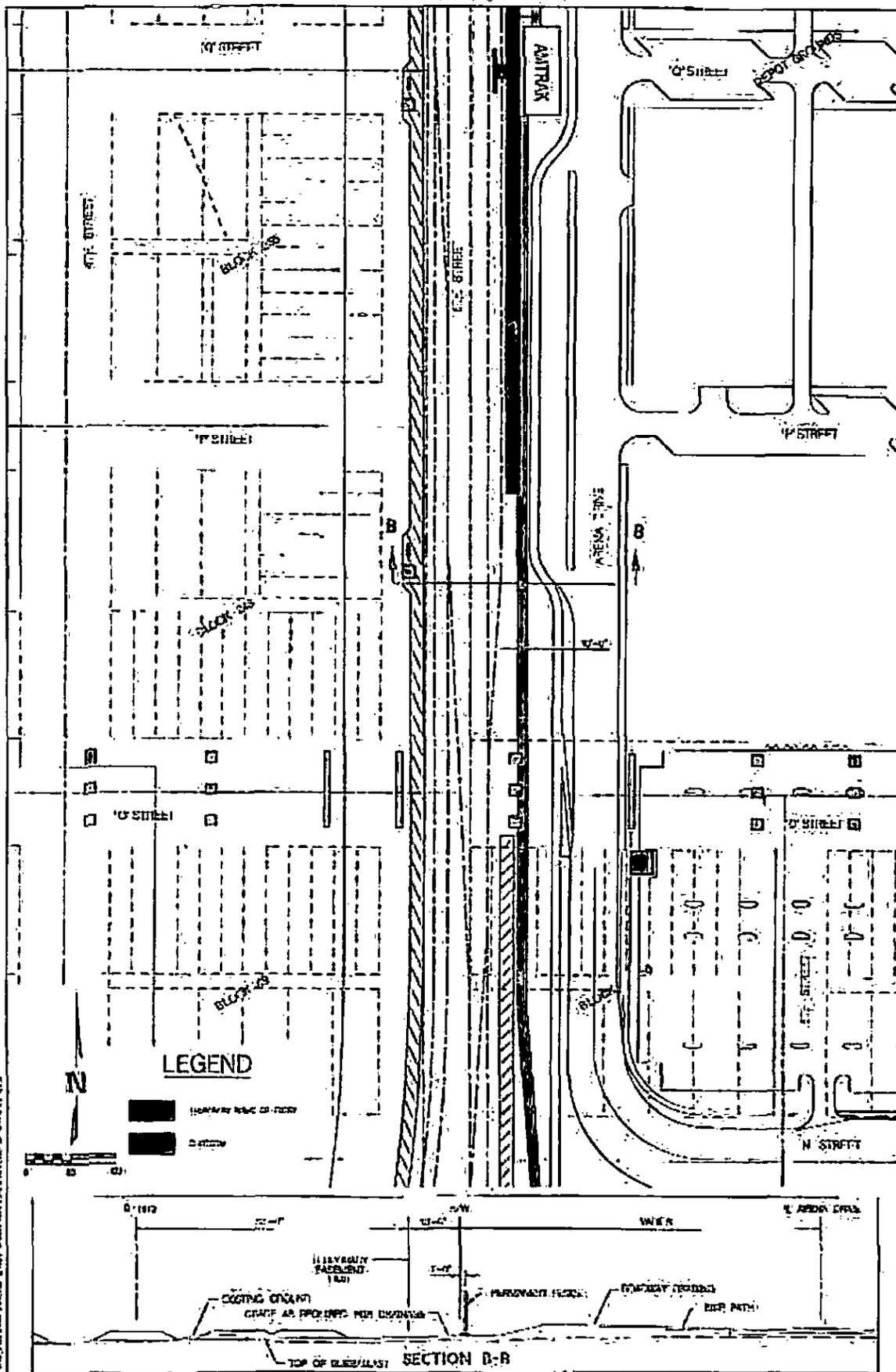
CONTRACT NO. 001-0019  
 DRAWN BY: JGG  
 DATE: 8/8/20

TEMPORARY RIGHT OF ENTRY FOR ARENA  
 DRIVE & PARKING LOT CONSTRUCTION

**OLSSON**  
 ASSOCIATES  
 ALL INFORMATION ON THIS PLAN IS  
 THE PROPERTY OF OLSSON  
 ASSOCIATES  
 1000 15TH AVENUE  
 SUITE 1000  
 DENVER, CO 80202

PROJECT  
 11A





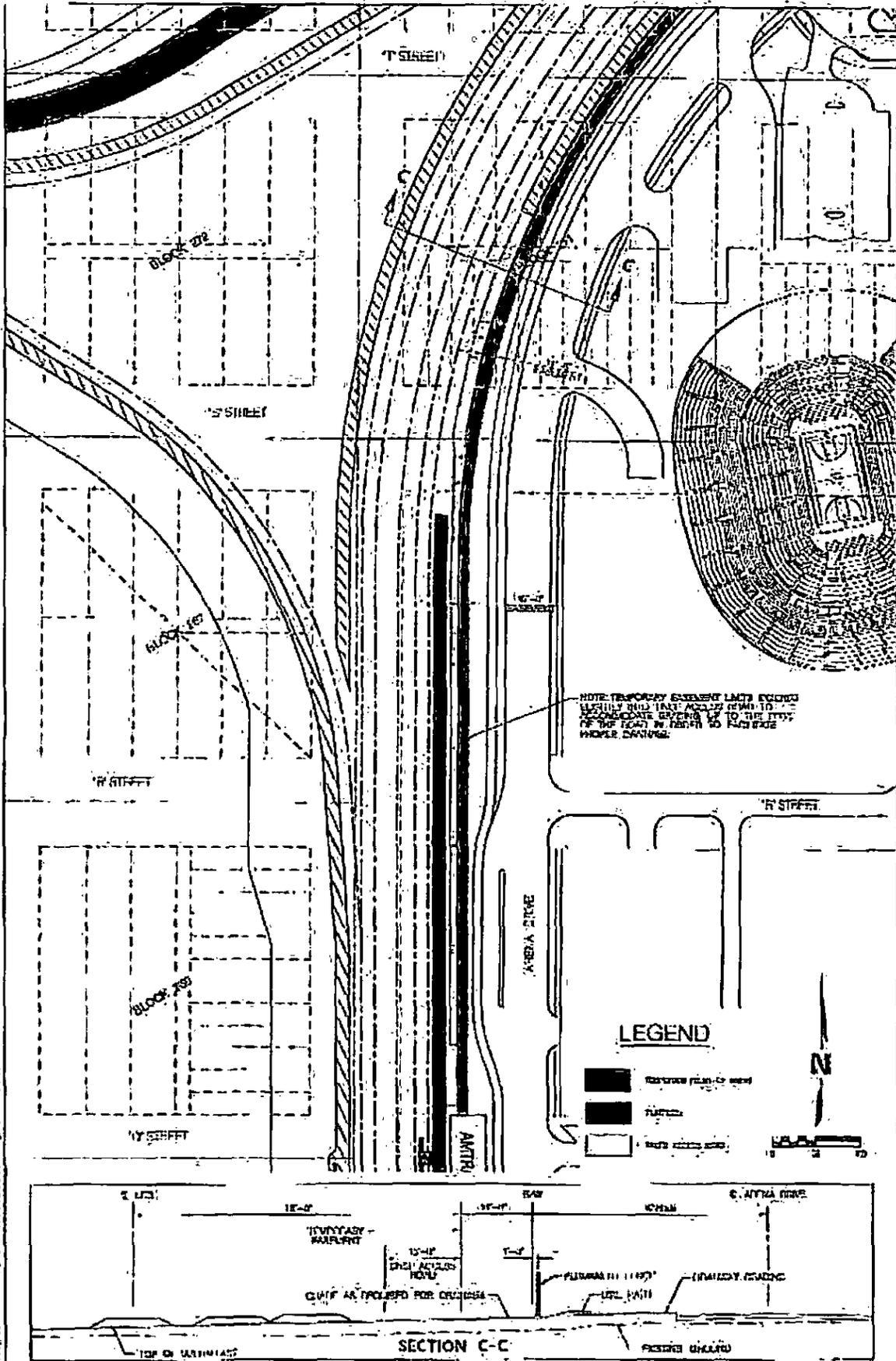
PROJECT NO. 92-020  
 DRAWN BY JCT  
 DATE: 5/10/99

TEMPORARY RIGHT-OF-WAY FOR ARENA DRIVE & PARKING LOT CONSTRUCTION

**OLSSON**  
 ASSOCIATES

22444 14th Ave NW  
 Seattle, WA 98149-3200  
 TEL: 425.485.7700  
 FAX: 425.485.7701

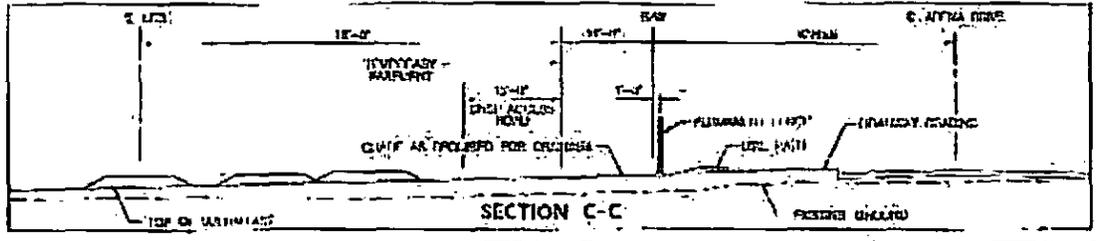
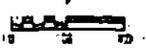
DATE: 5/10/99  
 SHEET: AA-2



NOTE: TEMPORARY EXISTENT LOTS BEHIND TRUNKWAY ARE TO BE RECONSTRUCTED BY THE CITY OF THE CITY IN ORDER TO PROVIDE PROPER DRAINAGE.

**LEGEND**

-  RESTRICTED RIGHT-OF-WAY
-  EXISTING PAVEMENT
-  NEW PAVEMENT



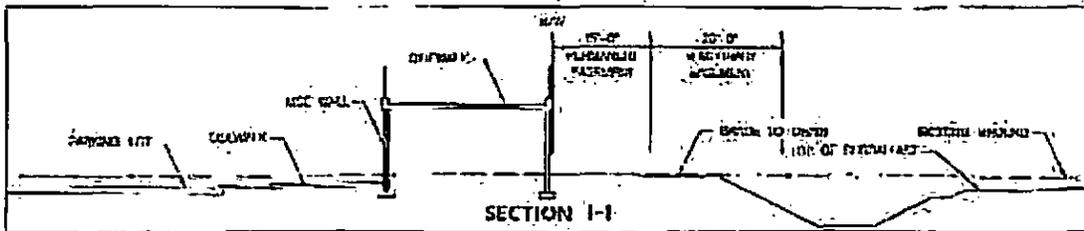
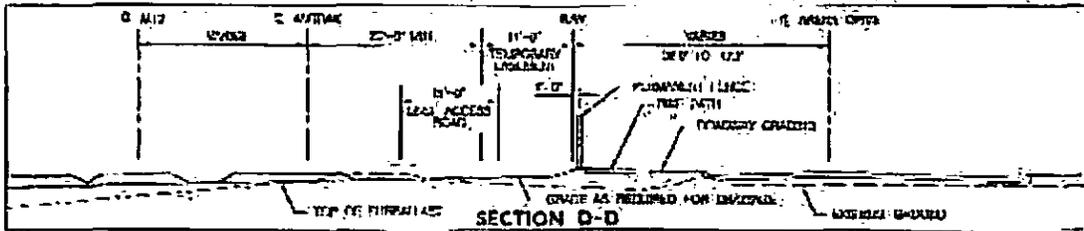
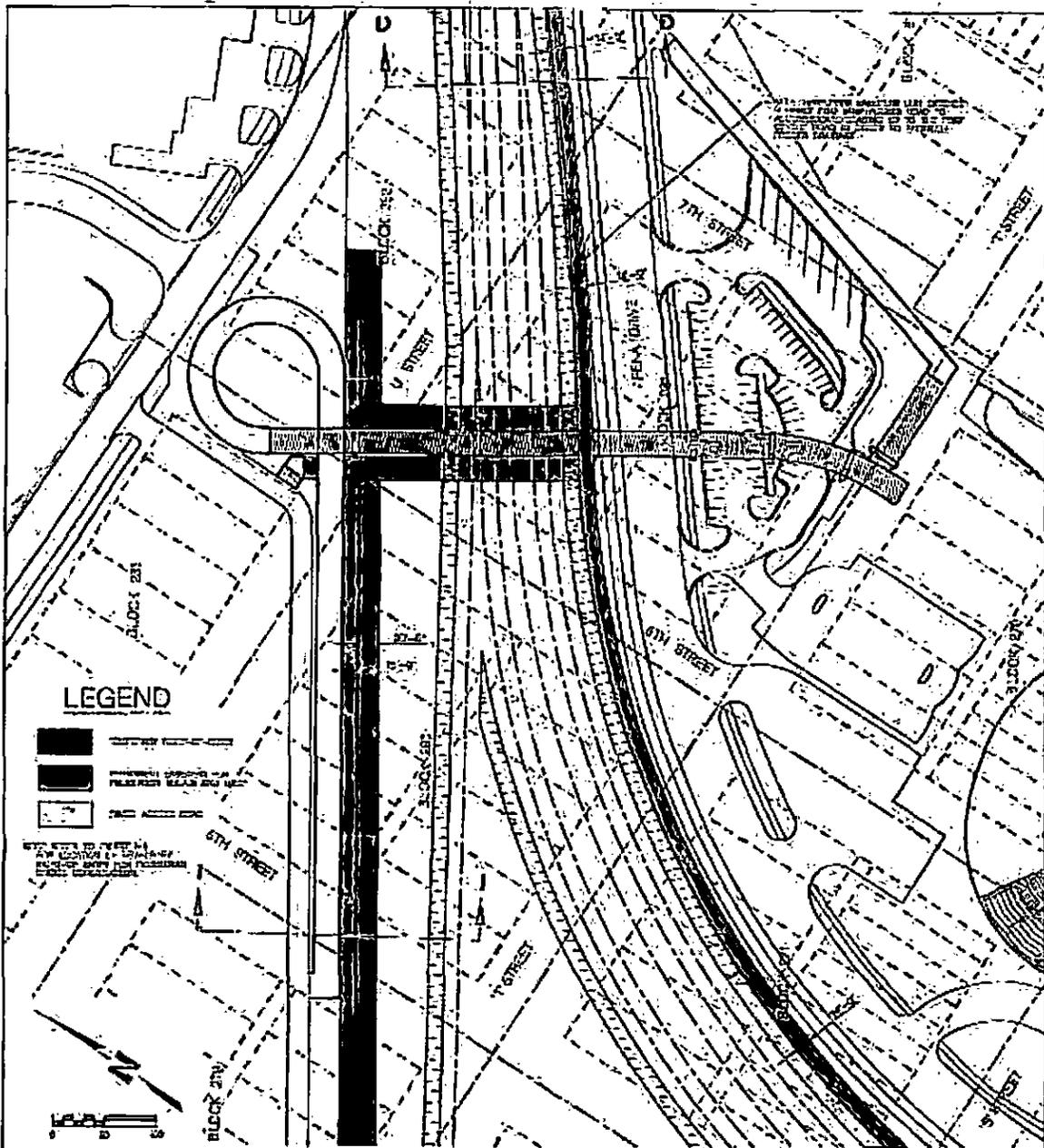
PROJECT NO. 05A-0548  
 DRAWN BY: JRT  
 DATE: 01/26/00

TEMPORARY RIGHT-OF-WAY FOR ARENA DRIVE & PARKING LOT CONSTRUCTION

**OLSSON**  
 ASSOCIATES

221 South 10th Street  
 St. Paul, MN 55102  
 Tel: 612-222-1100  
 Fax: 612-222-1105

DC INT  
 M-3



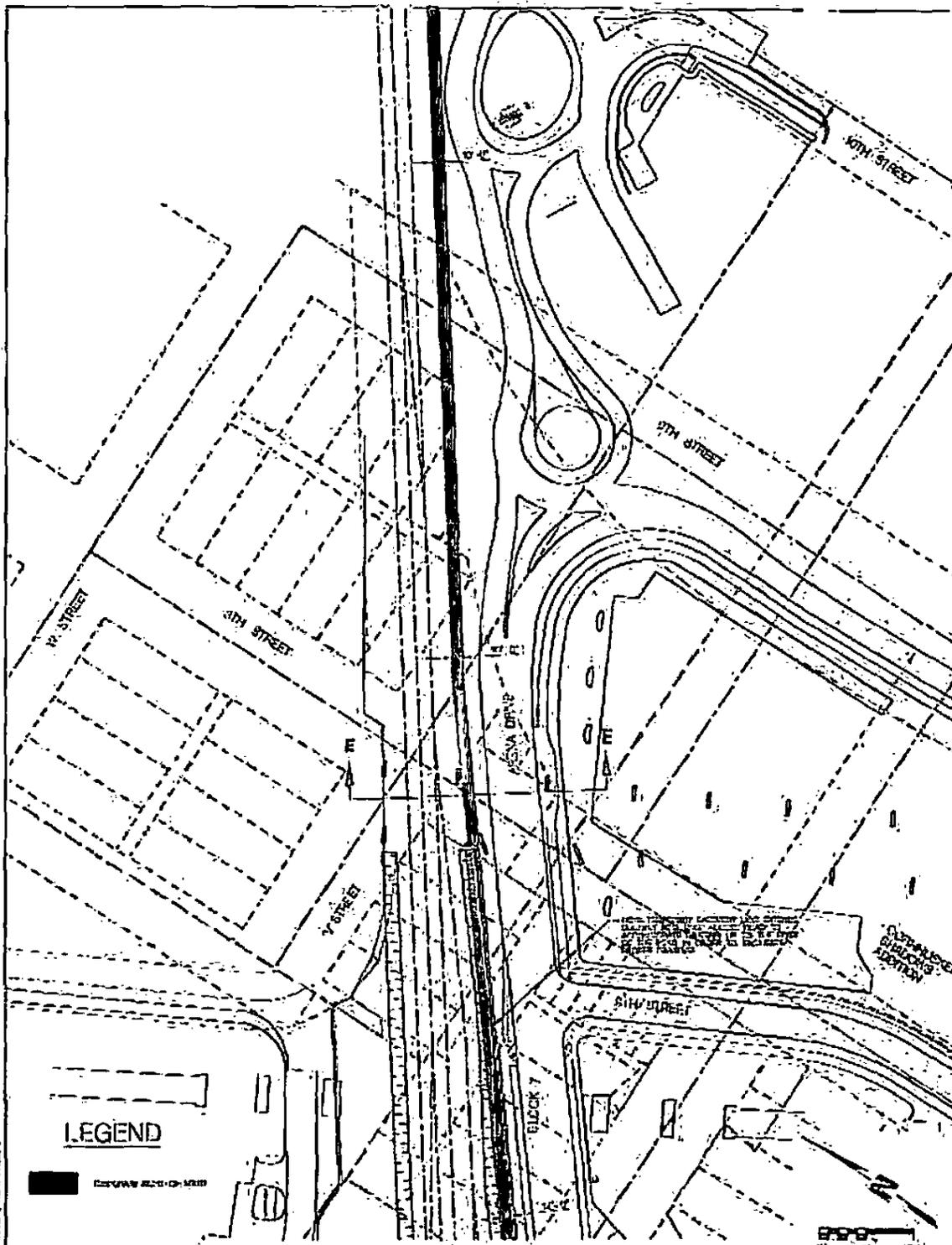
PROJECT NO. 100-0000  
 DRAWING NO. 100  
 DATE: 10/1/20

TEMPORARY RIGHT-OF-WAY ENTRY FOR ARENA DRIVE & PARKING LOT CONSTRUCTION

**MOLSSON ASSOCIATES**

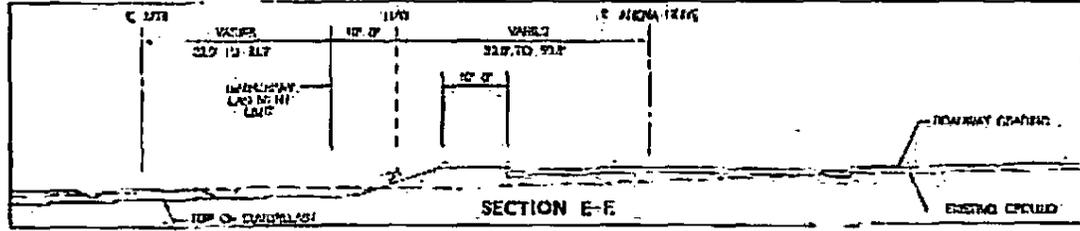
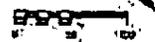
WE BUILD THE WAY WE  
 LIVE. WE BUILD THE WAY  
 WE WORK. WE BUILD THE WAY  
 WE PLAY. WE BUILD THE WAY  
 WE LIVE.

LD 1011  
 AA-1



**LEGEND**

EXISTING RIGHT-OF-WAY



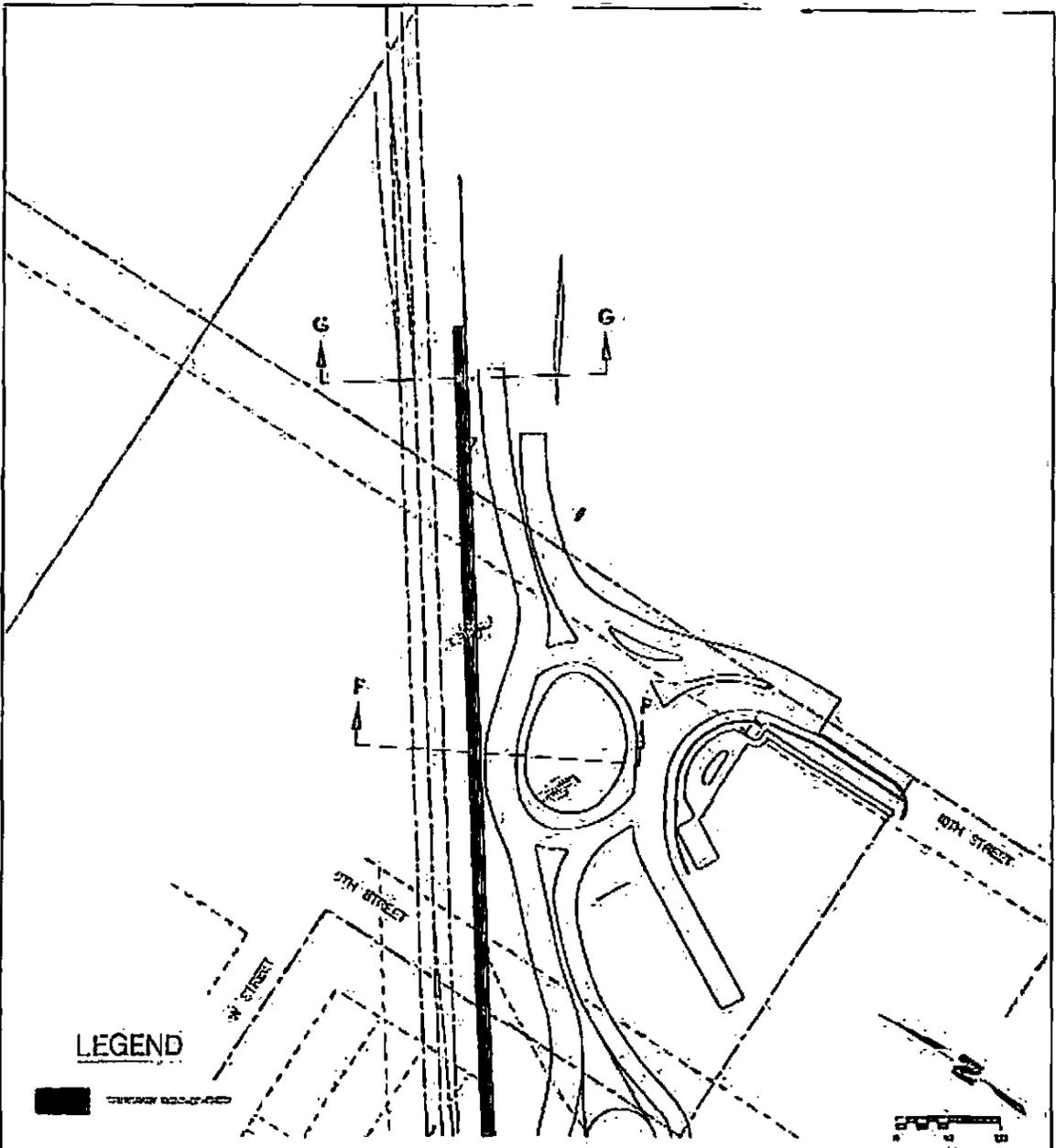
PREPARED BY: JES-200  
 DRAWN BY: JES  
 DATE: 5/21/07

TEMPORARY RIGHT-OF-ENTRY FOR ARENA DRIVE & PARKING LOT CONSTRUCTION

**OLSSON**  
 ASSOCIATES

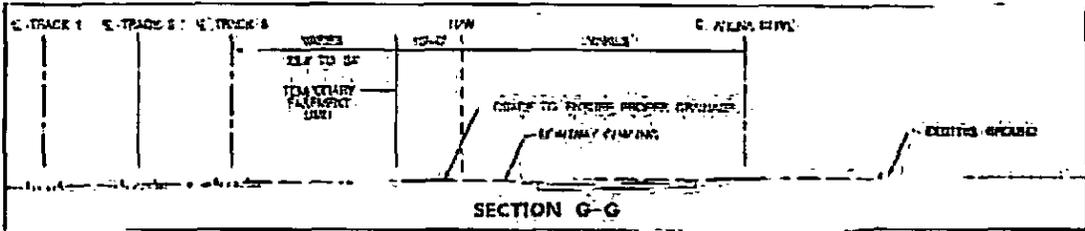
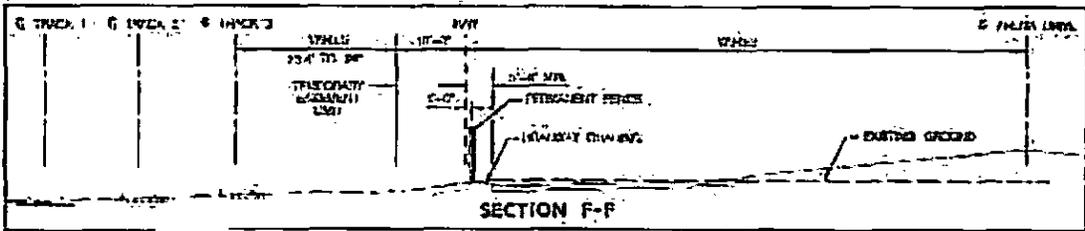
THIS PLAN IS THE PROPERTY OF OLSSON ASSOCIATES AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SHOWN ON THIS PLAN.

EXHIBIT  
 AA-6



**LEGEND**

TEMPORARY RIGHT-OF-ENTRY



ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE SPECIFIED.

PROJECT NO. 001 004  
 DRAWING NO. 1001  
 DATE 12/15/00

**TEMPORARY RIGHT-OF-ENTRY FOR ARENA  
 DRIVE & PARKING LOT CONSTRUCTION**

**COLLISON**  
 ASSOCIATES

NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF COLLISON ASSOCIATES

ORIENT  
**AA 6**



## TEMPORARY CONSTRUCTION AND ACCESS LICENSE

THIS TEMPORARY CONSTRUCTION AND ACCESS LICENSE ("License") is made to be effective as of the 10<sup>th</sup> day of April, 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 those three (3) areas of Licensor's property each labeled as "Temporary Access Road", generally located at Q, R, and T streets and shown as blue on Exhibit M-1 attached hereto and incorporated herein by reference, 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 ingress and egress, site preparation approved by Licensor in writing in advance, and initial construction approved by Licensor in writing in advance (collectively, the "Advance Construction"). 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.

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 [defined below]), 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 February 1, 2011 (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 that certain Master Development Agreement between Licensor and Licensee dated February 1, 2011 (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, complete the Advance Construction in such a manner 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 completion of the Advance Construction, 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 Advance Construction shall be completed within one (1) year of the Effective Date.

7.6 If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Advance Construction, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Advance Construction as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor.

7.7 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.

7.8 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.

7.9 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:

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

7.9.2 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.

7.10 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:

7.10.1 remove all of its equipment from the Premises;

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

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

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

7.11 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 Advance Construction 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.

**[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.

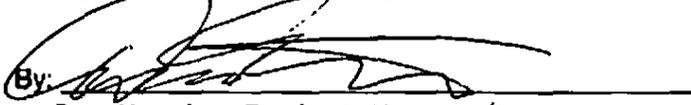
**LICENSOR:**

**BNSF Railway Company, a Delaware corporation**

By:   
Name: David P. Schneider  
Title: General Director - Land Revenue Management  
Date: 4/15/2011

**LICENSEE:**

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

By:   
Dan Marvin, Project Manager/Secretary  
West Haymarket Joint Public Agency  
Date: 4/12/2011



**EXHIBIT C**

**Construction and Maintenance Agreement  
Between BNSF and the City of Lincoln**

*Approved by Law*  
6-6-2012

## CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be effective the 18<sup>th</sup> 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 ("**CR OE**") 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 of 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**

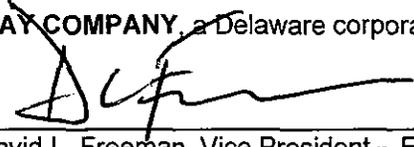
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

**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]



APPROXIMATE LIMITS OF PROJECT AREA. ADDITIONAL OFFSITE TRANSPORTATION IMPROVEMENT ARE ALSO REQUIRED

LEGEND

[Symbol]	ROADWAY/PARKING
[Symbol]	SIDWALK
[Symbol]	SURFACE PARKING
[Symbol]	NEW DEVELOPMENT
[Symbol]	ARENA
[Symbol]	RIGHT OF WAY
[Symbol]	PROPOSED TRACK
[Symbol]	FUTURE TRACK

TRAIL CONNECTION TO JAMACKA HOVULE TRAIL

PRELIMINARY PLAN

DATE: 8/23/2010  
 DRAWN BY: JGO  
 PROJECT NO: 008-0645

PROJECT NO: 008-0645  
 DRAWN BY: JGO  
 DATE: 8/23/2010

WEST HAYMARKET REDEVELOPMENT AREA

**MOLSSON**  
 ASSOCIATES

1111  
 P.O. Box 34538  
 Lincoln, NE 68501-4608  
 TEL: 402.474.6311  
 FAX: 402.474.5160

EXHIBIT C TO CONTRACT AGREEMENT

A

**EXHIBIT B**

**Form of BNSF Plan Approval**



Gerald Maczuga  
Project Engineer

BNSF Railway Company  
201 N 7<sup>th</sup> St  
Lincoln, NE 68508  
402-458-7537 (office)  
402-458-4376 (fax)  
[Gerald.Maczuga@BNSF.com](mailto: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](http://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](http://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

EXHIBIT C TO CONTRACT AGREEMENT

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](http://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 TO CONTRACT AGREEMENT**

**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 or 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](mailto: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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

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 or 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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

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](http://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

**EXHIBIT D**

**Other Contract Documents**

*Approved by Law*  
6-6-2012

## 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 practicable 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; and
  - 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 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 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: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

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 charges 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)

**INDEMNIFICATION AND INSURANCE REQUIREMENTS  
FOR ALL WEST HAYMARKET JOINT  
PUBLIC AGENCY CONTRACTS**

**1. INDEMNIFICATION**

**A. Indemnification of JPA**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
  - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

## 2. INSURANCE GENERAL PROVISIONS

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Certificates of insurance may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA, including by specific endorsement where necessary, as indicated in the following requirements.

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

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

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

Upon notification to JPA of cancellation, non-removal, substitution or material alteration of any such policy(ies), JPA shall have the option to (i) if feasible, pay, on behalf of the Contractor, any and all such premiums, penalties, fees for expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market to procure such policy(ies) of insurance on behalf of Contractor as required by this Agreement at the then current market rate. Upon any of the above occurrences, JPA shall invoice the Contractor for reimbursement of such premiums, penalties, fees, or expenses advanced on the JPA's behalf plus an additional fifteen percent (15%) of such advanced amounts as remuneration for JPA's overhead. Such amounts advanced by JPA shall be paid by the Contractor within thirty (30) days after delivery of a statement for such expense.

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

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

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

### 3. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of the Contract such insurance in the forms and minimum amounts as specified in this Section and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

**B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of JPA."

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
<b>Worker's Comp.</b>			
	State	Statutory	
	Applicable Federal	Statutory	
<b>Employer's Liability</b>			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

Coverage	Min Amt	Notes
General	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Products and Completed Operations	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Personal and Advertising Injury	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

- (2) The required Commercial General Liability Insurance shall also include coverage for the following:
- Bodily injury and property damage.
  - Fire legal liability
  - Coverage for all premises and operations.
  - Personal and advertising injury.
  - Operations by independent contractors.
  - X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
  - Any fellow employee exclusions shall be deleted.
  - Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
  - Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
  - Liability coverage which shall include contractually assumed defense costs in addition to any policy limits.
  - Contractual liability coverage.
- (3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
  - Endorsement to provide the general aggregate per project endorsement.
  - Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
  - Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
  - Separation of insureds.
  - Additional insured endorsement in favor of and acceptable to the JPA.
- (4) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer). The definition of insured contract shall be amended to remove any exclusion or other limitation for any work done within fifty (50) feet of railroad property.

**D. Vehicle liability insurance coverage.**

The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

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

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

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor of and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.
- Endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

**E. Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

**F. Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$5,000,000 per occurrence, \$10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following endorsements:

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

No other endorsements restricting coverage may be added. The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in ANY RAILROAD'S Blanket Railroad Protective Liability Insurance Policy available to JPA and JPA Contractors.

**G. Special Provision.** At the JPA's option, the minimum insurance requirements specified above may be increased or decreased by special provision in a JPA contract.

**4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.**

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

**5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

**6. PROPERTY INSURANCE/ BUILDER'S RISK.**

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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7-26-10/law/tb



CITY OF LINCOLN  
EXECUTIVE ORDER

NO. 083319

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

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

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

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

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

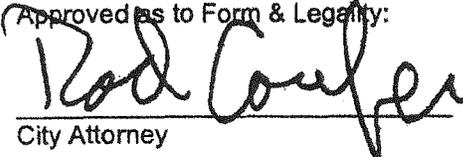
under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period 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  
**EXHIBIT D to Contract Agreement**

## 29 C.F.R. § 5.5

Code of Federal Regulations Currentness

## Title 29. Labor

## Subtitle A. Office of the Secretary of Labor

Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

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

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

(1) Minimum wages.

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

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

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

the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

**EXHIBIT D to Contract Agreement**

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

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

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-014
(a)(1)(ii)(C)	1215-014
(a)(1)(iv)	1215-014
(a)(3)(i)	1215-0140, 1215-00:
(a)(3)(ii)(A)	1215-014
(c)	1215-0140, 1215-00:

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

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

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

#### NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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General Decision Number: NE120034 03/16/2012 NE34

Superseded General Decision Number: NE20100044

State: Nebraska

Construction Type: Highway

Counties: Lancaster, Saunders and Seward Counties in Nebraska.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/06/2012
1	03/16/2012

ELEC0022-018 06/01/2011

Saunders County - East of Highway 109 and North of Alternate Highway 30)

	Rates	Fringes
ELECTRICIAN.....	\$ 30.80	13.40
-----		
ELEC0265-005	09/01/2011	

REMAINDER OF SAUNDERS COUNTY

	Rates	Fringes
Electricians:		
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 [Mileage from main Post Office in Lincoln]  
 Zone 1: 0 to 35 miles  
 Zone 2: 36 to 50 miles  
 Zone 3: 51 to 75 miles  
 Zone 4: 76 miles and over

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.

\* SUNE2011-023 08/29/2011

	Rates	Fringes
CARPENTER (Includes Form Work)...	\$ 18.51	
CEMENT MASON/CONCRETE FINISHER		
Lancaster County.....	\$ 18.48	5.86
Seward, Saunders Counties...	\$ 18.17	5.86

ELECTRICIAN, Includes Installation of Traffic Signals Lancaster, Seward Counties..\$	28.83	
HIGHWAY/PARKING LOT STRIPING:		
Laborer		
Lancaster County.....\$	11.82	
Saunders County.....\$	12.37	
Seward County.....\$	11.27	
IRONWORKER, REINFORCING.....\$	19.35	
LABORER (COMMON OR GENERAL)		
Lancaster County.....\$	12.58	
Saunders County.....\$	12.55	
Seward County.....\$	12.20	
LABORER: Concrete Saw (Hand Held/Walk Behind).....\$	16.07	6.55
LABORER: Mason Tender (Cement/Concrete).....\$	10.44	
LABORER: Traffic Control - Flagger and Cone/Barrel Setter		
Lancaster County.....\$	11.87	
Seward County.....\$	9.00	
Operating Engineers: (Skid Loader)		
Lancaster County.....\$	10.56	
Saunders County.....\$	12.51	
Seward County.....\$	14.85	
OPERATOR: Asphalt Spreader.....\$	18.74	
OPERATOR: Backhoe Loader Combo.....\$	15.94	
OPERATOR: Backhoe/Excavator		
Lancaster County.....\$	19.91	6.07
Saunders County.....\$	19.47	6.07
Seward County.....\$	16.15	
OPERATOR: Broom.....\$	11.43	
OPERATOR: Bulldozer		
Lancaster County.....\$	16.78	
Seward, Saunders Counties...\$	16.34	
OPERATOR: Compactor.....\$	13.36	
OPERATOR: Concrete Saw		
Lancaster, Seward Counties..\$	20.87	
OPERATOR: Crane.....\$	22.38	
OPERATOR: Hydrohammer.....\$	17.03	

OPERATOR: Loader		
Lancaster County.....	\$ 17.44	
Saunders County.....	\$ 17.19	
Seward County.....	\$ 16.04	
OPERATOR: Mechanic.....	\$ 19.58	
OPERATOR: Milling Machine.....	\$ 12.80	
OPERATOR: Oiler.....	\$ 16.21	
OPERATOR: Paver		
Lancaster County.....	\$ 14.79	
Seward, Saunders Counties...	\$ 16.13	
OPERATOR: Roller		
Lancaster County.....	\$ 13.00	
Saunders County.....	\$ 13.45	
Seward County.....	\$ 14.04	
OPERATOR: Scraper		
Lancaster County.....	\$ 14.80	
Seward, Saunders Counties...	\$ 14.83	
OPERATOR: Tractor		
Lancaster County.....	\$ 9.50	
Seward, Saunders Counties...	\$ 10.65	
OPERATOR: Grader/Blade		
Lancaster County.....	\$ 16.09	
Seward, Saunders Counties...	\$ 16.04	
TRUCK DRIVER, Includes Dump and Tandem Truck		
Lancaster County.....	\$ 14.51	
Saunders County.....	\$ 14.47	
Seward County.....	\$ 14.16	
TRUCK DRIVER: Lowboy Truck.....	\$ 15.93	
TRUCK DRIVER: Semi-Trailer Truck		
Lancaster County.....	\$ 13.48	
Seward, Saunders Counties...	\$ 14.09	
TRUCK DRIVER: Water Truck.....	\$ 18.00	6.40

-----

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)).

-----

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

#### Union Identifiers

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

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

#### Non-Union Identifiers

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

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

-----

#### 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

**EXHIBIT D to Contract Agreement**

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



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

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WAGE DETERMINATION APPEALS PROCESS

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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





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

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

3           That the attached Contract Agreement between the JPA and Hawkins Construction  
4 Company for the West Haymarket JPA Historic Canopy Renovation Project – Phase 2, pursuant  
5 to Bid No. 12-129, under the terms and conditions of said Contract Agreement, is hereby  
6 approved and the Chairperson of the West Haymarket Joint Public Agency Board of  
7 Representatives is hereby authorized to execute said Contract Agreement on behalf of the JPA.

8           The City Clerk is directed to return one fully executed copy of the Contract Agreement to  
9 Rick Peo for transmittal to Hawkins Construction Company.

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

Introduced by:  
  
\_\_\_\_\_

Approved as to Form & Legality:  
  
\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency  
Board of Representatives  
  
\_\_\_\_\_  
Chris Beutler, Chair  
  
\_\_\_\_\_  
Tim Clare  
  
\_\_\_\_\_  
Eugene Carroll

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**

**BID NO. 12-129**

**CONTRACT AGREEMENT**

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into as of \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **HAWKINS CONSTRUCTION COMPANY**, hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

**RECITALS**

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 Notice to Bidders advertisement for and in connection with said Work, to wit:

West Haymarket JPA Historic Canopy Renovation Project – Phase 2  
Bid No. 12-129

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.

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 Bid. Copies of the Bid Opportunity Detail, Notice to Bidders, Addendums 1-4, Supplier Response, and the Contractor's Base Bid in the amount of \$1,254,000 (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, if any of the Work will be carried out on property owned by BNSF, the terms and conditions of the applicable Temporary License for the Work and the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA ("C&M Agreement") are applicable to the performance of the Work and Contractor must comply with the applicable provisions of the License and C&M Agreement concerning work on or within 50 feet of BNSF Property including, but not limited to the BNSF Insurance Requirements. The C&M Agreement is attached hereto as Exhibit C.

WHEREAS, if any of the Work will be performed within 50 feet of BNSF railroad tracks used by the National Railroad Passenger Corporation ("Amtrak"), the Contractor must obtain two policies of Railroad Protection Liability Insurance, one naming BNSF as the insured railroad, and the other naming Amtrak as the insured railroad.

WHEREAS, Contractor understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Work and therefore this Contract is subject to the Davis-Bacon Act; and that the Contractor is required to comply with the Contract clauses in 29 C.F.R. §5.5(a) which are made part of this Contract.

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Building Construction General Wage Decision NE120065 dated 03/30/2012 ("NE65 Wage Decision").

WHEREAS, the applicable NE65 Wage Decision is hereinafter referred to as the "Effective Wage Decision."

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

WHEREAS, the use of the term "Contracting Officer" in 29 C.F.R. parts 1, 3 and 5 shall be deemed to refer to the JPA.

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 Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein and incorporating all of the above Recitals into this Contract as if fully set forth herein, the Contractor and JPA have agreed and hereby agree as follows:

**PERFORMANCE OF WORK** - 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 as set forth in Exhibit A.

**CHANGE IN SCOPE OF SERVICES.** If an additive or subtractive change in scope is encountered on the site or requested by the JPA, a detailed Proposed Change Order request is to be provided by the Contractor. This must include a breakout of the estimated labor, materials, tools, and equipment required to complete the actual work. The maximum markup for all other items not associated with the work shall be ten percent (10%). This is to include all onsite and offsite overhead, all general conditions, profit, and any other costs not associated with the actual performance of the work.

**BNSF CONTRACT REQUIREMENTS**. Contractor agrees that if any portion of the Work is performed on or within 50 feet of BNSF Property, the provisions in the C&M Agreement are made part of this Contract. Contractor agrees that in such event, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Contractor understands and agrees that prior to commencing the Work, the Contractor must:

(a) Obtain all required insurance, evidenced by certificates of insurance as required by the JPA, City Legal, BNSF, and any other required insurance.

(b) Submit the signed C-1A agreement and all required insurance certificates to [BNSF@certfocus.com](mailto:BNSF@certfocus.com) and to PC Sports.

(c) Submit copies of signed C-1A agreement and all required insurance certificates to Michael Schaefer (BNSF):

Michael Schaefer  
Michael.Schaefer2@BNSF.com  
402-458-7379 (office)  
402-304-1437 (cell)  
402-458-7457 (fax)

(d) Receive the BNSF executed C-1A agreement from Michael Schaefer.

Contractor further agrees that should it be necessary to enter upon the BNSF Property to perform the Work, Contractor must prior to such entry:

(a) Complete the BNSF Contractor Safety Orientation at [www.contractororientation.com](http://www.contractororientation.com). All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(b) Complete the e-RAILSAFE security orientation training program at [www.erailsafe.com](http://www.erailsafe.com). All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(c) Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Michael Schaefer, along with a list of all personnel who have taken both programs. This includes employees of subcontractors employed by the Contractor.

(d) Assume and comply with the terms and conditions of any right-of-entry agreement, license and/or easement between BNSF and the JPA governing access to such BNSF Property.

**COMPENSATION** - 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 Contractor's Bid awarded by the JPA to the Contractor award, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

**COMPLETION DATE** - 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 within the number of calendar days allowed and prior to the stated completion date.

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

A. **INDEMNIFICATION OF JPA**. Contractor agrees to defend, indemnify and hold harmless JPA to the same extent and under the same terms and conditions as required by the Indemnification of JPA in the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. **INDEMNIFICATION OF BNSF**. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor's Right of Entry.

**INSURANCE** – The following insurance requirements are in lieu of the Insurance Requirements for all City Contracts found in Article X.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **JPA Insurance Requirements**. Contractor shall at all times during the term of this Agreement purchase and maintain in place insurance coverage as required by the Insurance Requirements for All West Haymarket Joint Public Agency Contracts included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. **BNSF Insurance Requirements**. If any portion of the Work is performed on or within 50 feet of BNSF Property, Contractor shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Insurance requirements of BNSF found in the C&M Agreement (Exhibit C).

Contractor agrees to provide all types of insurance required by either the JPA or BNSF. Contractor will furnish coverages against any and all perils required by either the JPA or

BNSF. In the event there is a difference between the JPA and BNSF coverage limits, Contractor will provide the larger amount satisfying both JPA and BNSF requirements.

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

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

Contractor further agrees to pay the prevailing wages set forth in the Effective Wage Decision. Said Effective Wage Decision is included in the Other Attached Contract Documents (Exhibit D). Contractor agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Contractor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

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

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

1. Bid Documents (Exhibit A).
2. Exhibit B – Intentionally Omitted.
3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).
  - 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 (approved March 2012).
  - e. Executive Order No 83319.
  - f. 29 C.F.R. § 5.5(a) Contract Provisions.

- g. Effective Wage Decision.
  - h. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
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 JPA Resolution No. WH00195.
  - b. Lincoln Standard Plans 2010.
  - c. Project Plans, Special Provisions, 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 tax.
  - f. Requirements in 29 C.F.R. parts 1, 3 and 5.
  - g. Any Bid Documents and/or Bid Attachments listed in the Bid Opportunity Detail and not attached as part of Exhibit A.

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

The 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:**

**HAWKINS CONSTRUCTION COMPANY**

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

**JPA:**

**WEST HAYMARKET JOINT PUBLIC  
AGENCY**

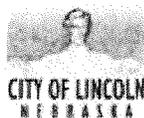
By: \_\_\_\_\_

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

**EXHIBIT A**

**Bid Documents**

*Approved by Law*  
6-6-2012



[Return to Login](#) • [Supplier Registration](#)

## Bid Opportunity Detail

**Bid Number** 12-129 Addendum 4 (West Haymarket JPA Historic Canopy Renovation, Project 870307 (PW/U))  
**Close Date & Time** 5/31/2012 12:00:00 PM Central  
**Bid Duration** 1 month 4 days

### Bid Information

**Bid Type** Bid (Sealed)  
**Issue Date & Time** 4/27/2012 3:55:00 PM Central  
**Close Date & Time** 5/31/2012 12:00:00 PM Central  
**Bid Status** Unsealed  
**Bid Notes** See Activities section for Pre-bid information.

### Contact Information

**Contact Name** Vince Mejer Purchasing Agent  
**Address** Purchasing\City & County  
 440 S. 8th St.  
 Lincoln, NE 68508 USA  
**Contact Phone** 1 (402) 441-8314  
**Contact Fax** 1 (402) 441-6513  
**Contact Email** vmejer@lincoln.ne.gov

This bid is tied to JPA  
 Haymarket Infrastructure  
 Improvements Core Area  
 Roadway & Utilities, Project  
 870305, Bid No. 12-128.

### Event Activities

Activity Date	Title	Description
5/9/2012 9:00:00 AM CST	Prebid Meeting at Engineering Services	Prebid Meeting - On Wednesday, May 9, 2012 at 9:00 a.m. at the Training Room, Engineering Service, 901 W. Bond Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.
5/23/2012 12:00:00 PM CST	General Contractors - Call 402-441-7417 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.
5/23/2012 12:00:00 PM CST	Sub-Contractors - Call 402-441-7417 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

### 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 12-129 adv.pdf (7KB)	Notice to Bidders
Header FTP site.pdf (327KB)	Special Provisions, Plan/Drawings, Sample Contract and Exhibits
Header 12-129ad1.pdf (6KB)	Addendum No. 1
Header 11020_Phase 2_Addendum 2.pdf (878KB)	Addendum No. 2
Header 11020_Phase 2_Addendum No.3.pdf (39KB)	Addendum 3
Header 11020_Phase 2_Addendum 4.pdf (50KB)	Addendum No. 4
Header Bid Tabs.pdf (331KB)	ITEMIZED PRICING
Line 1 12-129 Bid Proposal.XLS (194KB)	Pricing Sheet (Base bid)
Line 2 12-129a Bid Proposal.XLS (194KB)	Pricing Sheet (Alt. 02)
Line 2 12-129a Bid Proposal.XLS (194KB)	Pricing Sheet (Alt. 02)
Line 3 12-129b Bid Proposal.XLS (194KB)	Pricing Sheet (Alt. 03)
Line 4 12-129c Bid Proposal.XLS (194KB)	Pricing Sheet (Alt. 04)

**Advertise 1 time  
Friday, April 27, 2012**

**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, Wednesday, May 23, 2012** for providing the following:

**JPA Historic Canopy Renovation  
Project 870307  
Bid No. 12-129**

This Project is tied to JPA Haymarket Infrastructure Improvements Core Area Roadway & Utilities, Project 870305, Bid No. 12-128.

***A Pre-bid meeting will be held Wednesday, May 9, 2012 at 9:00 a.m., at Engineering Services, 901 W. Bond, Training Room, 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](http://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](mailto:vmejer@lincoln.ne.gov)

**Addendum #1**  
**West Haymarket JPA Historic Canopy Renovation,**  
**Project 870307**  
**Bid No. 12-129**

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:

**The Pre-Bid address has been corrected under the Activities tab. It should read '901 W. Bond Street'.**

All other terms and conditions shall remain unchanged.

Dated this 8th day of May, 2012.

Vince Mejer  
Purchasing Agent



## **Addendum #2**

**Project Name:** West Haymarket JPA Existing Historic Canopy Renovation, Phase 2  
1 block west of N. 7<sup>th</sup> Street, from N Street to R Street  
Lincoln, NE

**SHA Project No.:** 11020

**City Project No.:** 63-B-23

**Issued:** May 15, 2012

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This Addendum is issued by the City of Lincoln Purchasing Department to all known sub-contractors working on the preparation of proposals associated with the Bid Documents dated April 24, 2012. This Addendum is to authorize the use of the following information in preparing proposals for the above named project. The receipt of this addendum shall be acknowledged in the space provided in the Attribute Section of the Bid Form.

### **GENERAL QUESTIONS AND CLARIFICATIONS**

- ADD 2-1.** The **Pre-bid Agenda and Pre-bid Attendance Sheet** are included with this addendum.
- ADD 2-2.** Please be advised of the following changes and clarifications to the City's specification and bidding documents; Refer to the Notice to Bidders and revise the bid date as follows:
- “Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska BY ELECTRONIC BID PROCESS until: **2:00 pm, Friday, May 25, 2012.**”
- ADD 2-3.** Please be advised of the following changes and clarifications to the City's specification and bidding documents; Refer to the Notice to Bidders and add the following:
- “All questions regarding the project shall be submitted to the Purchasing Agent no later than 4:00 pm on Monday, May 21, 2012. Questions submitted after this date and time will not receive responses prior to bids being received for this project.”
- ADD 2-4.** Phased Construction dates are provided in the Summary section of the specifications, Article 1.6; these dates are defined to communicate when work is allowed to begin in the different Work Areas as noted on A100 of the plan set and outlined in ADD 2-11 below. The dates provided in Article 1.6 do not specifically define phasing operations and are not intended to dictate when work must begin; it is the responsibility of the Contractor to determine the phasing operations and when to complete the work in coordination with concurrent work outlined in Section 011000, “Summary”, Article 1.5.C.
- ADD 2-5.** Contractors are required to provide a list of their Sub Contractors with the bidding proposal for this project (West Haymarket JPA Existing Historic Canopy Renovation, Phase 2); see ADD 2-6.

**MODIFICATIONS TO THE SPECIFICATIONS**

**ADD 2-6.** Refer to Section 000000-A, "JPA Project Ties"; At the end of the sentence "In order to be eligible ..." add the following: **Bidders shall submit a list of Sub Contractors for each scope of work with their bidding proposal for this job.**

"In order to be eligible for award of this contract, bidders shall submit a completed bidding proposal for this job and all jobs listed. Bidders shall submit a list of Sub Contractors for each scope of work with their bidding proposal for this job."

**ADD 2-7.** Refer to Section 011000, "Summary", Article 1.6, Paragraph A; At the end of the first paragraph, replace the words "will require" with "may require".

"... work associated with the canopy renovation **may require** a phased approach."

**ADD 2-8.** Refer to Section 011000, "Summary", Part 1 - General, Paragraph 1.6 Phased Construction; Revise paragraph as follows:

B.1. Work in Area B as shown on Sheet A100 may begin on **July 5, 2012.**

**ADD 2-9.** Refer to Section 011000, "Summary", Part 1 – General, Paragraph 1.6 Phased Construction; Revise paragraph as follows:

D. Once property has been transferred to the JPA, the western construction fence can be removed, opening the available area for construction operations along Area C.

**ADD 2-10.** Refer to Section 012300 "Alternatives", Part 3 - Execution; Add the following:

3.2. The JPA reserves the right to award any, all or none of the bid alternates at the time of award of the base bid. The determination of the lowest responsive bidder will be based upon the total amount of the base bid along with the bid alternates selected by the JPA at the time of initial award of a contract for this project. Furthermore the JPA reserves the right to award any bid alternate not originally awarded with the base bid within a period of eight months past the initial project award date and the Contractor shall guarantee the original bid prices for all alternates during this period.

**MODIFICATIONS TO THE DRAWINGS**

**ADD 2-11.** Refer to Sheet A100; Refer to J1. The following revisions shall be noted:

- a. Sheet A100 – Overall Site Plan and Enlarged Plans. Refer to J1 "Area B" Dimension note. Revise note as follows: "CANOPY REMOVAL (MAY BEGIN JULY 5, 2012)"
- b. Sheet A100 – Overall Site Plan and Enlarged Plans. Refer to J1 "Area C" Dimension note. Revise note as follows: "CANOPY REMOVAL (MAY BEGIN JULY 6, 2012, WORK AREA LIMITED UNTIL AFTER SEPT. 12, 2012)"
- c. Sheet A100 – Overall Site Plan and Enlarged Plans. Refer to J1 "Area D" Dimension note. Revise note as follows: "CANOPY REMOVAL (MAY BEGIN JULY 6, 2012, WORK AREA LIMITED UNTIL AFTER SEPT. 12, 2012)."

**ADD 2-12.** Refer to Sheet E100; The following revisions shall be noted:

- a. Sheet E100 – Electrical Symbols, Overall Site Plan, Details & Schedules. Refer to the Light Fixture Schedule. Remove the Type B light fixture.

West Haymarket Joint Public Agency Existing Historic Canopy Renovation, Phase 2

- b. Sheet E100 – Electrical Symbols, Overall Site Plan, Details & Schedules. Refer to the Panelboard 'L1' Schedule. Rename the Load Served at breakers 15 and 16 as 'SPARE'.

**ADD 2-13.** Refer to Sheet E101; The following revisions shall be noted:

- a. Sheet E101 – Electrical Plans, Elevations & Sections. Refer to J1 and G1. Remove all Type B light fixtures and associated conduit and wiring.

**ADD 2-14.** Refer to Sheet E101, Sheet Specific Notes, Note 14; Revise note as follows:

Note 14 NOT USED.

**End of Addendum #2**



### **Addendum #3**

**Project Name:** West Haymarket JPA Existing Historic Canopy Renovation, Phase 2  
1 block west of N. 7<sup>th</sup> Street, from N Street to R Street  
Lincoln, NE  
**SHA Project No.:** 11020  
**City Project No.:** 63-B-23  
**Issued:** May 21, 2012

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This Addendum is issued by the City of Lincoln Purchasing Department to all known sub-contractors working on the preparation of proposals associated with the Bid Documents dated April 24, 2012. This Addendum is to authorize the use of the following information in preparing proposals for the above named project.

#### **GENERAL QUESTIONS AND CLARIFICATIONS**

**ADD 3-1.** Please be advised of the following changes and clarifications to the City's specification and bidding documents; Refer to the Notice to Bidders and revise the bid date as follows:

"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, Thursday, May 31, 2012.**"

**ADD 3-2.** Please be advised of the following changes and clarifications to the City's specification and bidding documents; Refer to the Notice to Bidders and add the following:

"All questions regarding the project shall be submitted to the Purchasing Agent no later than **3:00 pm on Thursday, May 24, 2012.** Questions submitted after this date and time will not receive responses prior to bids being received for this project."

**ADD 3-3.** Overhead Coiling Doors:

**Question:** *Details D1 and D10 on Sheet A200 show two new overhead coiling doors and Note 10 on A200 states to provide "New, manual powered, overhead coiling door as specified..."; the specification for the overhead coiling door cannot be found.*

**Response:** Refer to the Specifications, Section 083323 – Overhead Coiling Doors; there are six pages in this section of the specifications.

**ADD 3-4.** Decking:

**Question:** *2x6 wood decking is detailed as flat, square edged; the existing decking is beveled. Should wood decking be provided as shown or beveled similar to the existing condition?*

**Response:** Provide Tongue and Groove (T&G) decking with beveled edges similar to what is existing.

**ADD 3-5.** Fasteners:

**Question:** *Section 061053 2.3E of the specifications allows the use of hex head nuts for rough carpentry. Section 055000 does not indicate the type of fasteners. The existing hardware appears to be square head nuts. Please confirm hex nuts are acceptable for all connection hardware in both Section 061053 and Section 055000 of the Specifications.*

**Response:** Hex head nuts are acceptable for all connection hardware in both Section 061053 and Section 055000 of the Specifications.

**ADD 3-6.** Footings and Anchor Bolts:

**Question:** *Are the footings and anchor bolts to be set by the West Haymarket Historic Canopy Renovation project or the Core Area Roadway project? The Summary of Work seems to read it as part of the canopy renovation, but Note 6 on A100 reads that it will be part of the Core Area Roadway work.*

**Response:** The footings and anchor bolts are to be set as part of the West Haymarket Canopy Renovation project.

**ADD 3-7.** Base Plates:

**Question:** *There are notes about exposing the base plates and having them examined by the design team before removal. Is this work to be bid under the premise that all the current steel is structurally sound or is the bid to account for reworking all the base plates?*

**Response:** The contractor may bid under the premise that all the current steel is structurally sound. Eight of the 1905 base plates were removed as part of the previous phase of the canopy project and were determined to be good for re-use; therefore, it is assumed the 1927 base plates will also be structurally sound.

**ADD 3-8.** Prime and Finish Coats:

**Question:** *There are notes about "All Painting to Occur in the Field"; does this mean the canopy steel can only be primed off-site or can there also be finish coats applied to the steel off-site?*

**Response:** The contractor is allowed to apply both prime and finish coats off-site if they chose to.

**ADD 3-9.** Lead-Based Paint:

**Question:** *There is concern that the way the specification is written a licensed contractor will be required to perform the work when that may not be the intent. Section 011000, page 2, includes the term "lead-based paint abatement"; Section 028319 of the specification is called "Lead-Based Paint Remediation". Since the reason for the project to remove the lead paint is to place a new finish coat of paint, this should not be classified as "abatement" or "remediation"; this should be specified as removal of lead paint for new paint preparation."*

**Response:** Work to be performed does not constitute “abatement” as that term is used in Title 178 of the Nebraska Administrative Code, Chapter 23.

**ADD 3-10.** Communication Lines:

**Question:** *Supported from the bottom side of the canopy is a bunch of communication lines that appear to belong to Burlington Northern Santa Fe (BNSF); some of the lines appear to be in use and others appear to be abandoned. Is the contractor responsible for removing these or will BNSF be removing them?*

**Response:** BNSF will need to be able to maintain the existing conduits and communication lines along the canopy from the Lincoln Station building to the north until approximately June 25, 2012. BNSF is to complete the necessary modifications to their system and abandon these lines. It is the responsibility of the contractor to demo all existing conduits and wire; the contractor is to coordinate with Burlington Northern Santa Fe to ensure system modifications are complete and the communication line is abandoned prior to any removal work.

**Question:** *On top of the canopy there appears to be large steel electric or communication conduit running down the center of the canopy. Does this get removed, refurbished, and re-installed or will it just get removed?*

**Response:** The existing conduit that is attached to the top side of the canopy roof is to be removed and discarded.

**ADD 3-11.** Downspouts and Underground Piping:

**Question:** *There are no specifications found, other than the plan notes, for the galvanized downspouts, underground SDR piping and plumbing associated with the drinking fountain. Will specifications for these items be included in an addendum or are the plan notes the basis of bid?*

**Response:** The plan notes for the galvanized downspouts, underground SDR piping, and plumbing associated with the drinking fountain are the basis of bid.

**ADD 3-12.** Phasing:

**Question:** *Can the West Haymarket Historic Canopy Renovation work be phased in any manner in order to coordinate with the Core Area Roadway work?*

**Response:** Yes. The phasing operations of the West Haymarket Historic Canopy project are to be determined by the contractor and can be completed in effort to coordinate with Core Area Roadway work as long as Canopy work does not begin until after Amtrak Passenger Mains 1 and 2 are moved (July 5, 2012).

**End of Addendum #3**



## Addendum #4

**Project Name:** West Haymarket JPA Existing Historic Canopy Renovation, Phase 2  
1 block west of N. 7<sup>th</sup> Street, from N Street to R Street  
Lincoln, NE  
**SHA Project No.:** 11020  
**City Project No.:** 63-B-23  
**Issued:** May 25, 2012

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This Addendum is issued by the City of Lincoln Purchasing Department to all known sub-contractors working on the preparation of proposals associated with the Bid Documents dated April 24, 2012. This Addendum is to authorize the use of the following information in preparing proposals for the above named project.

### GENERAL QUESTIONS AND CLARIFICATIONS

**ADD 4-1.** Drinking Fountain: A 3/4" water line has already been installed as part of the construction associated with the new Amtrak Station. The water line exits the building below the frost line and near the center of the south wall (Electrical Room). The water line is tied directly to the buildings water service and a shut-off valve has been installed within the building before the line goes underground. Questions have been raised regarding the need for a backflow preventer. We do not believe a backflow preventer is required.

**ADD 4-2.** Salvaged Accessories: The drawings identify all of the accessories and components connected to the canopy structures that are expected to be salvaged and reinstalled.

It is our expectation that the existing conduits, fittings and boxes that are to remain on the structure after reinstallation (as shown and identified on Sheets A800 and A801), will be kept as historical in appearance after completion as they are prior to demolition. Care should be taken during construction operations to avoid any damage to the items scheduled to be salvaged and re-used.

New conduits and boxes installed as part of the new electrical systems do not need to be historical in appearance.

ALL conduit and accessories, new or re-used, are to be painted.

**ADD 4-3.** Storage and Refinishing Work

**Question:** *Is the responsibility of refinishing and storing existing electrical conduit / boxes after removal, that of the electrical contractor?*

**Response:** This is a means and methods item and the bidders will need to coordinate with one another on whose scope of work shall include the refinishing and storing of existing materials.

**ADD 4-4.** Existing Power and Cabling

**Question:** *It appears that a temporary power line has been tied into the cabling under the canopy – Will this be disconnected before demolition activities? Will all other cables be deactivated before demolition activities?*

**Response:** Yes, the West Haymarket Program Manager has indicated that BNSF will disconnect the power line prior to the demolition activities associated with this contract. All other cables will also be deactivated prior to the demolition activities associated with this contract.

**ADD 4-5.** Construction Timeline

**Question:** *Can canopy demolition dates for each phase be extended beyond the scheduled dates if the results do not impact the overall objective?*

**Response:** The final completion date of this project cannot be moved. However, as indicated in Addendum 2-1, Phased Construction dates are provided in the Summary section of the specifications, Article 1.6; these dates are defined to communicate when work is allowed to begin in the different Work Areas as noted on A100 of the plan set and outlined in Addendum 2-11. The dates provided in Article 1.6 do not specifically define phasing operations and are not intended to dictate when work must begin; it is the responsibility of the Contractor to determine the phasing operations and when to complete the work in coordination with concurrent work outlined in Section 011000, "Summary", Article 1.5.C.

**ADD 4-6.** Construction Timeline

**Question:** *What is the anticipated finish date? From my review of the Core Area Roadway work, I see the finish date of the canopy work obtainable by Nov. 1, 2013. Would this be correct/acceptable?*

**Response:** The reinstallation of the canopy, and its associated scope of work should be completed no later than August 31, 2013.

**ADD 4-7.** BNSF Operations

**Question:** *Does BNSF freight operations utilize tracks that are within the 25' distance of the canopy, which would require a flagman? If so, up to what date is a flagman required?*

**Response:** Flagging costs are not to be included in this contract. The West Haymarket Program Manager and BNSF have an agreement in place to coordinate flagging and the costs for flagman will be provided by others.

**ADD 4-8.** Canopy Relationship to BNSF Lines

**Statement:** *I can't tell where property lines are for the work near the new Amtrak station.*

**Response:** The location of the canopy shelter adjacent to the new Amtrak Station is outside of the 25'-0" distance from the centerline of the rail line.

**ADD 4-9. Fascia Thickness**

**Statement:** *The existing fascia appears thicker than the 3/4" nominal shown on F11/A102. Please confirm the desired thickness.*

**Response:** Provide a 1" nominal thickness as indicated.

**ADD 4-10. Canopy Bolts and Connections**

**Question:** *Are the bolts to be salvaged? If so, the best extent possible I would assume. Note 6 on sheet A800 refers to fascia and bolts – Are these to be salvaged and re-used?*

**Response:** The fascia carriage bolts are NOT to be salvaged or reused. You may provide EITHER a square nut or standard hex nut.

**ADD 4-11. Permits and Surveys**

**Question:** *Have these plans been submitted to the City of Lincoln for review? Will there be a building permit associated with this work? If so, is this to be paid by the contractor? Will the City provide lines and grades per 2011 City of Lincoln Standard Specifications General Conditions & Requirements (page 31)?*

**Response:** Plans have not been submitted for permits. Yes, you will need to obtain a permit for construction of the canopy. All fees associated with permits and application for permits will be the responsibility of the Contractor. The contractor is required to provide all services associated with location of lines and grades.

**MODIFICATIONS TO THE SPECIFICATIONS**

**ADD 4-12.** Refer to Section 013591, Article 3.5, Paragraph D.1; Replace with the following:

1. Expose structural steel for examination by Architect before proceeding with removal or dismantling.

**MODIFICATIONS TO THE DRAWINGS**

**ADD 4-13.** Refer to F11/A102; The current detail shows the fascia board extending to the underside of the T&G wood decking. The fascia board should stop at the top of the perimeter channel and the 2x wood purlins located at each support angle shall extend out to support the edge board.

**End of Addendum #4**

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

Bid Information		Contact Information		Ship to Information
Bid Creator	Anna Farlow	Address	Purchasing\City & County	Address
Email	afarlow@lincoln.ne.gov		440 S. 8th St.	
Phone			Lincoln, NE 68508	Contact
Fax		Contact	Vince Mejer	
Bid Number	12-129 Addendum 4		Purchasing Agent	Department
Title	West Haymarket JPA Historic Canopy Renovation, Project 870307 (PW/U)	Department		Building
		Building		Floor/Room
Bid Type	Bid	Floor/Room		Telephone
Issue Date	04/27/2012	Telephone	1 (402) 441-8314	Fax
Close Date	5/31/2012 12:00:00 PM CST	Fax	1 (402) 441-6513	Email
Need by Date		Email	vmejer@lincoln.ne.gov	

## Supplier Information

Company	Hawkins Construction Company
Address	2516 Deer Park Blvd
	Omaha, NE 68105
Contact	
Department	
Building	
Floor/Room	
Telephone	1 (402) 342-1607
Fax	1 (402) 342-3221
Email	
Submitted	5/31/2012 11:53:26 AM CST
Total	\$1,312,830.00

Signature \_\_\_\_\_

## Supplier Notes

## Bid Notes

See Activities section for Pre-bid information. <br><br>  
This bid is tied to JPA Haymarket Infrastructure Improvements Core Area Roadway & Utilities, Project 870305, Bid No. 12-128.

## Bid Activities

Date	Name	Description
5/9/2012 9:00:00 AM	Prebid Meeting at Engineering Services	Prebid Meeting - On Wednesday, May 9, 2012 at 9:00 a.m. at the Training Room, Engineering Service, 901 W. Bond Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.

5/23/2012 12:00:00 PM General Contractors - Call Suppliers who will bid as a general contractor on this bid.  
 402-441-7417 or e-mail  
 purchasing@lincoln.ne.gov to be  
 added to this list.

5/23/2012 12:00:00 PM Sub-Contractors - Call Suppliers who will bid as a sub-contractor.  
 402-441-7417 or e-mail  
 purchasing@lincoln.ne.gov to be  
 added to this list.

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## Bid Messages

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Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at:  <a href="http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdnspec/index.htm">http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdnspec/index.htm</a>	Yes
2	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
3	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
4	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
5	Special Provisions	I acknowledge reading and understanding the Special Provisions.	Yes
6	Drawings	I acknowledge reading and understanding the Project Drawings.	Yes
7	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.
8	Davis Bacon	I acknowledge reading and understanding the Davis Bacon Requirements in 29 CFR 5.5 information and Wage Rates.	Yes
9	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
10	Performance/Payment Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes

11	Tax Exempt Certification Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby excluding the purchases of pipes to be installed in water lines and purchase of water meters.)	Yes
12	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 within the number of calendar days allowed and prior to the stated completion date. The completion date shall be as stated in the Special Provisions.	YES
13	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
14	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.	Yes
15	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
16	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.	Yes
17	Subs List	I acknowledge that I have submitted a list of Sub Contractors for each scope of work to my bidding proposal for this job. (Per Addendum No. 2)	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: See Bid Attachments section for Addendum information.	Yes
19	Agreement to Addendum No. 4	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

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## Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	West Haymarket JPA Historic Canopy Renovation, Project 870307 - Base Bid	\$1,254,000.00
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
2	1	Lump Sum	Alternate No. 02: Material Storage Option 1	\$20,000.00
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
3	1	Lump Sum	Alternate No. 03: Upgraded Steel Paint Option	\$34,100.00
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
4	1	Lump Sum	Alternate No. 04: Upgraded Wood Deck Paint Option	\$4,730.00
Item Notes: Fill out the Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.				
Supplier Notes:				
Response Total:				\$1,312,830.00

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12-129

## HAWKINS CONSTRUCTION CO

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
1	50.00015	Canopy Renovation	1.0000	LS	\$1,254,000.00	\$1,254,000.00	MISC	Base Bid

**\$1,254,000.00 Total Amount**

12-129a

# HAWKINS CONSTRUCTION CO

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
1	50.00015	Misc LS	1.0000	LS	\$1,254,000.00	\$1,254,000.00	MISC	Base Bid
2	50.00015	Misc LS	1.0000	LS	\$20,000.00	\$20,000.00	MISC	Base Bid

**\$1,274,000.00 Total Amount**

12-129b

## HAWKINS CONSTRUCTION CO

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
1	50.00015	Canopy Renovation Base Bid	1.0000	LS	\$1,254,000.00	\$1,254,000.00	MISC	Base Bid
2	50.00015	Alt: Upgraded Steel Paint	1.0000	LS	\$34,100.00	\$34,100.00	MISC	Base Bid

**\$1,288,100.00 Total Amount**

12-129c

## HAWKINS CONSTRUCTION CO

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
1	50.00015	Canopy Renovation Base Bid	1.0000	LS	\$1,254,000.00	\$1,254,000.00	MISC	Base Bid
2	50.00015	Alt: Upgraded Wood Deck Paint	1.0000	LS	\$4,730.00	\$4,730.00	MISC	Base Bid

**\$1,258,730.00 Total Amount**

**Scope of Work**

SELECTIVE STRUCTURE DEMO, LEAD-BASED PAINT REMEDIATION, MAINT. OF PAINTING & COATINGS and EXTERIOR PAINTING and STAINING & TRANSPARENT FINISHING

EPDM ROOFING and SHEETMETAL FLASHING & TRIM

OVERHEAD COILING DOORS

DECORATIVE GLASS GLAZING

DRINKING FOUNTAIN & ROOF DRAINS

**Contractor**

BOCKMANN INC.

AAA ROOFING CO. INC.

OVERHEAD DOOR COMPANY OF LINCOLN

Keystone Glass

BOB & DON'S PLUMBING

**EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT C**

**Construction and Maintenance Agreement  
Between BNSF and the City of Lincoln**

## CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be effective the 18<sup>th</sup> 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 of 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**

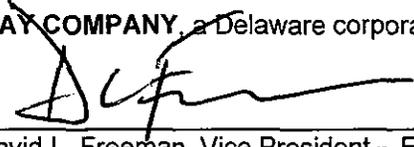
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

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

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

Date: \_\_\_\_\_

**BNSF RAILWAY COMPANY**, a Delaware corporation

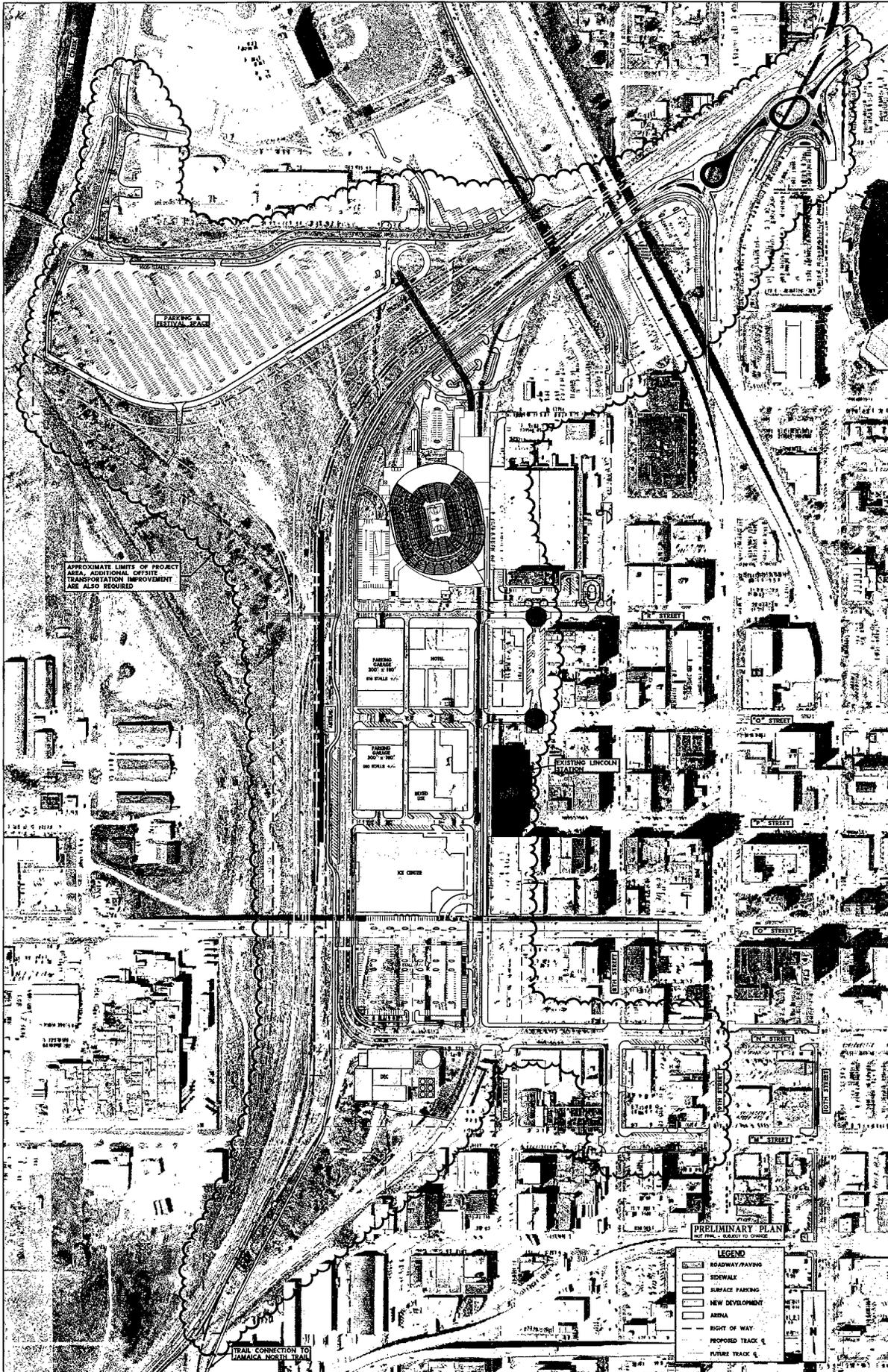
By:  \_\_\_\_\_  
David L. Freeman, Vice President - Engineering

Date: \_\_\_\_\_

**EXHIBIT A**

Project Area

[See attached]



APPROXIMATE LIMITS OF PROJECT AREA. ADDITIONAL OFFSITE TRANSPORTATION IMPROVEMENT ARE ALSO REQUIRED

PARKING A

PARKING BOND ST. 100 WIDE 400'

PARKING BOND ST. 100 WIDE 400'

ICE CENTER

EXISTING LINCOLN STATION

PRELIMINARY PLAN

TRAIL CONNECTION TO LINCOLN CENTER STATION

LEGEND	
[Symbol]	ROADWAY/PARKING
[Symbol]	SIDWALK
[Symbol]	SURFACE PARKING
[Symbol]	NEW DEVELOPMENT
[Symbol]	ARENA
[Symbol]	RIGHT OF WAY
[Symbol]	PROPOSED TRACK
[Symbol]	FUTURE TRACK

DATE: 8/23/2010  
 DRAWN BY: JGO  
 PROJECT NO: 008-0645

PROJECT NO: 008-0645  
 DRAWN BY: JGO  
 DATE: 8/23/2010

WEST HAYMARKET REDEVELOPMENT AREA

**MOLSSON**  
 ASSOCIATES

1111 Lincoln Mall, Suite 111  
 P.O. Box 84608  
 Lincoln, NE 68501-4608  
 TEL: 402.474.6311  
 FAX: 402.474.5160

EXHIBIT  
 A

**EXHIBIT B**

**Form of BNSF Plan Approval**



Gerald Maczuga  
Project Engineer

BNSF Railway Company  
201 N 7<sup>th</sup> St  
Lincoln, NE 68508  
402-458-7537 (office)  
402-458-4376 (fax)  
[Gerald.Maczuga@BNSF.com](mailto: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](http://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](http://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](http://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 or 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](mailto: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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

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 or 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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

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

**EXHIBIT D**

**Other Contract Documents**

## COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

### A. GENERAL INFORMATION

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

Construction Performance Bond  
Construction Payment Bond

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

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

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

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

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

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

### B. COMPLETING THE FORMS

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

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

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

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

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

CONSTRUCTION PERFORMANCE BOND

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

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CONTRACTOR (Name and Address):

SURETY (Name and Principal  
Place of Business):

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

CONSTRUCTION CONTRACT

Date:  
Amount:

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

BOND  
Date:  
Amount:  
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company:

(Corp. Seal) SURETY  
Company:

(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title: Name and Title:

Signature: \_\_\_\_\_

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

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable 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; and
  - 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 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 herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
  - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
  - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

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

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place  
Of Business):

Owner (Name and Address):

**West Haymarket Joint Public Agency  
555 South 10th St.  
Lincoln, NE 68508**

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

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

BOND

Date:

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

SURETY

Company:

(Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

Signature: \_\_\_\_\_

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
    2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly, and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
  11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
  13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
  14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
  15. DEFINITIONS
    - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
    - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and charges 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)

**INDEMNIFICATION AND INSURANCE REQUIREMENTS  
FOR ALL WEST HAYMARKET JOINT  
PUBLIC AGENCY CONTRACTS**

**1. INDEMNIFICATION**

**A. Indemnification of JPA**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
  - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

## 2. INSURANCE GENERAL PROVISIONS

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Certificates of insurance may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA, including by specific endorsement where necessary, as indicated in the following requirements.

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

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

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

Upon notification to JPA of cancellation, non-removal, substitution or material alteration of any such policy(ies), JPA shall have the option to (i) if feasible, pay, on behalf of the Contractor, any and all such premiums, penalties, fees for expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market to procure such policy(ies) of insurance on behalf of Contractor as required by this Agreement at the then current market rate. Upon any of the above occurrences, JPA shall invoice the Contractor for reimbursement of such premiums, penalties, fees, or expenses advanced on the JPA's behalf plus an additional fifteen percent (15%) of such advanced amounts as remuneration for JPA's overhead. Such amounts advanced by JPA shall be paid by the Contractor within thirty (30) days after delivery of a statement for such expense.

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

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

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

### 3. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of the Contract such insurance in the forms and minimum amounts as specified in this Section and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

**B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of JPA."

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
<b>Worker's Comp.</b>			
	State	Statutory	
	Applicable Federal	Statutory	
<b>Employer's Liability</b>			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

Coverage	Min Amt	Notes
General	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Products and Completed Operations	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Personal and Advertising Injury	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

- (2) The required Commercial General Liability Insurance shall also include coverage for the following:
- Bodily injury and property damage.
  - Fire legal liability
  - Coverage for all premises and operations.
  - Personal and advertising injury.
  - Operations by independent contractors.
  - X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
  - Any fellow employee exclusions shall be deleted.
  - Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
  - Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
  - Liability coverage which shall include contractually assumed defense costs in addition to any policy limits.
  - Contractual liability coverage.
- (3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
  - Endorsement to provide the general aggregate per project endorsement.
  - Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
  - Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
  - Separation of insureds.
  - Additional insured endorsement in favor of and acceptable to the JPA.
- (4) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer). The definition of insured contract shall be amended to remove any exclusion or other limitation for any work done within fifty (50) feet of railroad property.

**D. Vehicle liability insurance coverage.**

The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

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

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

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor of and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.
- Endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

**E. Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

**F. Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$5,000,000 per occurrence, \$10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following endorsements:

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

No other endorsements restricting coverage may be added. The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in ANY RAILROAD'S Blanket Railroad Protective Liability Insurance Policy available to JPA and JPA Contractors.

**G. Special Provision.** At the JPA's option, the minimum insurance requirements specified above may be increased or decreased by special provision in a JPA contract.

**4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.**

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

**5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

**6. PROPERTY INSURANCE/ BUILDER'S RISK.**

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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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

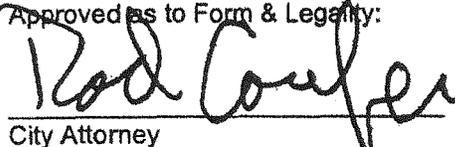
under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period 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

## 29 C.F.R. § 5.5

Code of Federal Regulations Currentness

## Title 29. Labor

## Subtitle A. Office of the Secretary of Labor

Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

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

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

(1) Minimum wages.

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

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

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

the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

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

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-014
(a)(1)(ii)(C)	1215-014
(a)(1)(iv)	1215-014
(a)(3)(i)	1215-0140, 1215-00:
(a)(3)(ii)(A)	1215-014
(c)	1215-0140, 1215-00:

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

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

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

#### NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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General Decision Number: NE120065 03/30/2012 NE65

Superseded General Decision Number: NE20100075

State: Nebraska

Construction Type: Building  
 BUILDING CONSTRUCTION INCLUDING WORK ON INDUSTRIAL SITES

County: Lancaster County in Nebraska.

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

Modification Number	Publication Date
0	01/06/2012
1	01/13/2012
2	01/20/2012
3	03/30/2012

\* CARP0444-002 01/01/2012

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 20.88	9.78

-----  
 ELEC0265-003 09/01/2011

	Rates	Fringes
ELECTRICIAN		
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

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 ELEV0028-001 01/01/2012

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 38.86	23.535+a+b

FOOTNOTE:

a. Vacation Pay: 8% for persons with 5 or more years of service, 6% for persons with less than 5 years of service.

b. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

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ENGI0571-004 10/01/2011

	Rates	Fringes
OPERATOR: Crane.....	\$ 26.31	9.59
OPERATOR: Forklift.....	\$ 21.04	9.59

-----  
IRON0021-002 06/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 25.95	11.62

-----  
LABO1140-003 01/01/2011

	Rates	Fringes
LABORER: Mason Tender (Brick & Hod).....	\$ 18.13	7.85

-----  
PLUM0464-007 06/01/2011

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 31.76	14.07

-----  
SHEE0003-002 07/01/2010

	Rates	Fringes
SHEET METAL WORKER (Excludes Installation of HVAC Duct).....	\$ 26.17	12.52

-----  
\* SUNE2011-032 10/27/2011

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

OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 21.72	2.10
OPERATOR: Loader.....	\$ 19.27	4.00
PAINTER: Brush, Roller and Spray.....	\$ 14.26	0.00
PLUMBER, Excludes HVAC Pipe Installation.....	\$ 22.89	6.04
ROOFER.....	\$ 13.57	0.77
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 21.89	6.30
TRUCK DRIVER, Includes Dump and Tandem Truck.....	\$ 14.09	2.49

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

=====

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

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

Union Identifiers

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

Union prevailing wage rates will be updated to reflect any

changes in the collective bargaining agreements governing the rate.

#### Non-Union Identifiers

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

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

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#### WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

=====

END OF GENERAL DECISION



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

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

3           That the attached Contract Agreement between the JPA and Judds Brothers Construction  
4 Company for the West Haymarket Railroad Track Removal Project No. 870908, pursuant to Bid  
5 No. 12-151, under the terms and conditions of said Contract Agreement, is hereby approved and  
6 the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby  
7 authorized to execute said Contract Agreement on behalf of the JPA.

8           The City Clerk is directed to return one fully executed copy of the Contract Agreement to  
9 Rick Peo for transmittal to Judds Brothers Construction Company.

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

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**BID NO.12-151**  
**(West Haymarket Railroad Track Removal Project No. 870908)**

**CONTRACT AGREEMENT**

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **JUDDS BROTHERS CONSTRUCTION COMPANY** hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

**RECITALS**

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 Notice to Bidders advertisement for each project for and in connection with said Work, to wit:

**West Haymarket Railroad Track Removal Project No. 870908 (the "Work")**

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

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 total sum named in the Contractor's Base Bid of \$146,026.00. Copies of the Bid Opportunity Detail, Notice to Bidders, Addendums 1-4, Supplier Response, the Contractor's Base Bid and Alternates Bid (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, Contractor understands and acknowledges that if a portion of the Work will be carried out on or within 50 feet of BNSF Property, 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 ("C&M Agreement") are applicable to the performance of the Work and Contractor must comply with the applicable provisions of the C&M Agreement concerning work on or within 50 feet of BNSF Property including, but not limited to the BNSF Insurance Requirements. The C&M Agreement is attached hereto as Exhibit C.

WHEREAS, Contractor understands and acknowledges that if a portion of the Work will be performed on or within 50 feet of BNSF railroad tracks used by the National Railroad Passenger Corporation ("Amtrak"), the Contractor must obtain two policies of Railroad

Protection Liability Insurance, one naming BNSF as the insured railroad, and the other naming Amtrak as the insured railroad.

WHEREAS, Contractor understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Work and therefore this Contract is subject to the Davis-Bacon Act; and that the Contractor is required to comply with the Contract clauses in 29 C.F.R. §5.5(a) which are made part of this Contract.

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Highway Construction General Wage Decision Number NE120034 dated 03/16/2012 ("NE34 Wage Decision") for the Wye Track (Base Bid) Work, and to pay the Davis-Bacon Act prevailing wages in accordance with NE34 Wage Decision and/or Heavy Construction General Wage Decision Number NE 120057 dated 01/06/2012 ("NE57 Wage Decision") for the BNSF "X" Yards Tracks (Alternate Bids).

WHEREAS, the applicable NE34 and NE57 Wage Decisions are hereinafter referred to as the "Effective Wage Decisions."

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

WHEREAS, the use of the term "Contracting Officer" in 29 C.F.R. parts 1, 3 and 5 shall be deemed to refer to the JPA.

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 Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein and incorporating all of the above Recitals into this Contract as if fully set forth herein, the Contractor and JPA have agreed and hereby agree as follows:

**PERFORMANCE OF WORK** - 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 as set forth in Exhibit A.

**CHANGE IN SCOPE OF SERVICES.** If an additive or subtractive change in scope is encountered on the site or requested by the JPA, a detailed Proposed Change Order request is to be provided by the Contractor. This must include a breakout of the estimated labor, materials, tools, and equipment required to complete the actual work. The maximum markup for all other items not associated with the work shall be ten percent (10%). This is to include all onsite and offsite overhead, all general conditions, profit, and any other costs not associated with the actual performance of the work.

**BNSF CONTRACT REQUIREMENTS.** Contractor agrees that the provisions in the C&M Agreement are made part of this Contract for any portion of the Work performed on or within 50 feet of BNSF Property.

**A. REQUIREMENTS FOR WORK WITHIN 50 FEET OF BNSF PROPERTY.**

Contractor agrees if portions of the Work will be performed within 50 feet of BNSF Property, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Contractor understands and agrees that prior to commencing such Work, the Contractor must:

1. Obtain all required insurance, evidenced by certificates of insurance as required by the JPA, City Legal, BNSF, and any other required insurance.
2. Submit the signed C-1A agreement and all required insurance certificates to [BNSF@certfocus.com](mailto:BNSF@certfocus.com) and to PC Sports.
3. Submit copies of signed C-1A agreement and all required insurance certificates to BNSF's Project Engineer Michael Schaefer (BNSF).
4. Receive the BNSF executed C-1A agreement from Michael Schaefer.

**B. ADDITIONAL REQUIREMENTS FOR WORK ON BNSF PROPERTY.**

Contractor further agrees that should it be necessary to enter upon the BNSF Property to perform any portion of the Work, Contractor must prior to such entry:

1. Complete the BNSF Contractor Safety Orientation at [www.contractororientation.com](http://www.contractororientation.com). All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.
2. Complete the e-RAILSAFE security orientation training program at [www.erailsafe.com](http://www.erailsafe.com). All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.
3. Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Michael Schaefer, along with a list of all personnel who

have taken both programs. This includes employees of subcontractors employed by the Contractor.

4. Assume and comply with the terms and conditions of any right-of-entry agreement, license and/or easement between BNSF and the JPA governing access to such BNSF Property.

**COMPENSATION** - 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 Contractor's Bid awarded by the JPA to the Contractor, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

**COMPLETION DATE** - 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 within the number of calendar days allowed and prior to the stated completion date.

**INDEMNIFICATION** - The following Indemnification provisions are in lieu of the Assumption of Liability and Indemnification provision in Article VI.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **INDEMNIFICATION OF JPA**. Contractor shall release, defend, indemnify and hold harmless the JPA to the same extent and under the same terms and conditions as required by the Indemnification of JPA in the Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (Approved by JPA Counsel March 2012) included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. **INDEMNIFICATION OF BNSF**. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, if any portion of the Work is performed on or within 50 feet of BNSF Property, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor's Right of Entry.

**INSURANCE** – The following insurance requirements are in lieu of the Insurance Requirements for all City Contracts found in Article X.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **JPA INSURANCE REQUIREMENTS**. Contractor shall at all times during the term of this Agreement purchase and maintain in place insurance coverage as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts (Approved by JPA Counsel March 2012) included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. **BNSF INSURANCE REQUIREMENTS**. Contractor shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Insurance requirements of BNSF found in the C&M Agreement (Exhibit C).

Contractor agrees to provide all types of insurance required by either the JPA or BNSF. Contractor will furnish coverages against any and all perils required by either the JPA or BNSF. In the event there is a difference between the JPA and BNSF coverage limits, Contractor will provide the larger amount satisfying both JPA and BNSF requirements.

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

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

Contractor further agrees to pay the applicable prevailing wages set forth in the Effective Wage Decisions. Said Effective Wage Decisions are included in the Other Attached Contract Documents (Exhibit D). Contractor agrees to attach the Effective Wage Decisions and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Contractor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decisions and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decisions.

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

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

1. Bid Documents (Exhibit A).
2. Exhibit B – Intentionally Omitted.
3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).

- 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 (approved March 2012).
  - e. Executive Order No 83319.
  - f. Modified BNSF Insurance Certification Process (10-21-2011).
  - g. 29 C.F.R. § 5.5(a) Contract Provisions.
  - h. Effective Wage Decisions.
  - i. Special Provisions West Haymarket Joint Public Agency (2012) Railroad Track Removal Project No. 870908 (includes Environmental Contingency Plan).
  - j. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
  - k. Plans/Drawings & Environmental Contingency Plan on FTP Site.
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 JPA Resolution No. WH00195.
  - b. Lincoln Standard Plans 2010.
  - c. Any executed Addenda or Change Orders.
  - d. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase).
    - i. Form of Nebraska Resale or Exempt Sales Certificate.
    - ii. Form of Purchasing Agent Appointment.
 

Note: Any portion of this project used for providing water service, such as pipe for water mains, are not tax exempt and are subject to sales and use tax.

Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use tax.
  - e. Requirements in 29 C.F.R. parts 1, 3 and 5.
  - f. Any non-attached document listed in the Bid Opportunity Detail or in this Contract.

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

The 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:**

**JUDD BROTHERS CONSTRUCTION  
COMPANY**

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

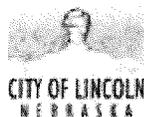
**JPA:**

**WEST HAYMARKET JOINT PUBLIC  
AGENCY**

By: \_\_\_\_\_  
Chris Beutler, Chairperson of the West  
Haymarket Joint Public Agency Board of  
Representatives

**EXHIBIT A**  
**Bid Documents**

*Approved by Law*  
6-7-2012



[Return to Login](#) • [Supplier Registration](#)

## Bid Opportunity Detail

**Bid Number** 12-151 Addendum 4 (West Haymarket Railroad Track Removal Project )  
**Close Date & Time** 6/6/2012 12:00:00 PM Central  
**Time Left** 4 hours 9 minutes 56 seconds

### Bid Information

**Bid Type** Bid (Sealed)  
**Issue Date & Time** 5/16/2012 2:10:55 PM Central  
**Close Date & Time** 6/6/2012 12:00:00 PM Central  
**Bid Status** Issued  
**Bid Notes**

### Contact Information

**Contact Name** Vince M. Mejer  
**Address** Purchasing\City & County  
 440 S. 8th St.  
 Lincoln, NE 68508 USA  
**Contact Phone** (402) 441-8314  
**Contact Fax** (402) 441-6513  
**Contact Email** vmejer@lincoln.ne.gov

### Event Activities

Activity Date	Title	Description
5/30/2012 1:30:00 PM CST	Pre Bid Meeting per Addendum 3	A pre-bid site meeting will be held on Wednesday May 30, 2012 at 1:30 p.m. to provide prospective bidders an opportunity to view the project area for the Base Bid work. Bidders interested in viewing the site should meet at the east end of the City of Lincoln's 901 Building on the aforementioned date and time
6/6/2012 12:00:00 PM CST	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.

#### Activity Participants

No Event Activities

6/6/2012 12:00:00 PM CST	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.
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#### Activity Participants

No Event Activities

### Bid Documents

Document	Format	Description
Invitation Document	Adobe (PDF)	PDF Invitation to Bid

### Bid Attachments

Header 12-151 adv.pdf (9KB)	Notice to Bidders
Header 12-151 Specifications.pdf (34KB)	Specifications
Header 12-151 FTP site.pdf (127KB)	Plans/Drawings & Environmental Contingency Plan on FTP Site
Header Instructions to Bidders, JPA - B 09-19-11.pdf (26KB)	Instructions to Bidders
Header JPA Insurance March 2012.pdf (236KB)	JPA Insurance Requirements
Header Ex D f ModBNFS InsCertProcess.pdf (299KB)	BNSF Insurance Process
Header Ex D h 1 Effective Wage Dec.pdf (176KB)	Davis Bacon Wage - Heavy, NE57
Header DBW Hwy March NE34.pdf (13KB)	Davis Bacon Wage - Highway, NE34
Header Ex D g -29CFR5 5 DavisBacon.pdf (959KB)	29 CFR
Header Ex D e EO 83319.pdf (657KB)	Employee Verification
Header Ex D a CommentaryToAccompanyConstrBonds.pdf (546KB)	Construction Bonds

**EXHIBIT A TO CONTRACT AGREEMENT**

Header Ex D j NebRevStat77-1323 CertStatement.pdf (79KB)	Tax Assessment Form
Header 12-151ad1.pdf (6KB)	Addendum 1
Header SAMPLE Bid No.12-151.pdf (76KB)	Sample Contract Per Addendum 1
Header Ex.C-C&MAgr.wpd.pdf (2.27MB)	C & M Agreement per Addendum 1
Header ADDENDUM NO 2 - Track Removal Project No 870908.pdf (249KB)	Addendum 2
Header Addendum No 2_Project 870908_combined_watermark.pdf (5.69MB)	Drawings/Plans per Addendum 2
Header ADDENDUM NO 3 - Track Removal Project 870908.pdf (229KB)	Addendum No. 3
Header 12-151ad4.pdf (1.08MB)	Addendum No. 4
Line 2 12-151 Bid Proposal.XLS (163KB)	Base Bid Pricing - Addendum 4
Line 3 12-151 Alternate 1 Bid Proposal.XLS (184KB)	ALTERNATE 1 BID PRICING
Line 4 12-151 Alternate 2 Bid Proposal.XLS (184KB)	ALTERNATE 2 BID PRICING

**Advertise 1 time  
Wednesday, May 16, 2012**

**Joint Public Agency (JPA)  
Purchasing Division  
NOTICE TO BIDDERS**

Sealed bids will be received by the Purchasing Agent of the Joint Public Agency (JPA) **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Wednesday, June 6, 2012** for providing the following:

**West Haymarket Joint Public Agency (JPA)  
Railroad Track Removal Project 870908  
Bid No. 12-151**

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](http://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](mailto:vmejer@lincoln.ne.gov)

**Addendum No. 1**  
**West Haymarket Railroad Track Removal Project**  
**12-151**

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:

1. Added Sample Contract to the Attachment Section of the Bid.
2. Removed BNSF Exhibit C and C1. Replaced with C&M Agreement.
3. Removed Exhibit D i Special Provisions for Demolition Contracts.

Dated this 22<sup>nd</sup> day of May 2012.

Vince M. Mejer  
Purchasing Agent

**ADDENDUM NO. 2**

**WEST HAYMARKET JOINT PUBLIC AGENCY  
RAILROAD TRACK REMOVAL  
PROJECT NO. 870908  
BID NO. 12-151**

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

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

**Please be advised of the following changes and clarifications to the City's specification and bidding documents:**

1. Refer to the Notice to Bidders and add the following:

“All questions regarding the project shall be submitted to the Purchasing Agent no later than 4:00 pm on Thursday, May 31, 2012. Questions submitted after this date and time will not receive responses prior to bids being received for this project.”

2. Refer to the Bid Form for the Base Bid and Plan Sheet 2. The following bid items have been updated for the Base Bid as follows:

The following bid items have been added to the Base Bid:

21.16001	Geotextile Filter Fabric	540 SY
32.02001	Synthetic Fabric Silt Fence Inst	500 LF
32.02002	Synthetic Fabric Silt Fence Maint	500 LF
32.02003	Synthetic Fabric Silt Fence Rem	500 LF
32.03001	Construction Entrance Surfacing	200 TON

3. Refer to the Special Provisions, page 2, Section 3.5:

Delete Section 3.5 and replace with the following:

3.5 All work associated with the base bid work shall be completed by August 3, 2012, including all final clean-up and restoration work.

4. Refer to the Special Provisions:

Add the following section to the Special Provisions:

**24. Storm Water Pollution Prevention Plan**

24.1 The Contractor shall understand the terms and conditions of the general National Pollutant Discharge Elimination System

(NPDES) permit that authorizes the stormwater discharges associated with the industrial activity from the construction site. For reference the general permit is posted on the City's web site, [www.lincoln.ne.gov](http://www.lincoln.ne.gov) ; keyword: NPDES.

24.2 Additionally, the Contractor, as evidenced by their signature on this proposal, agrees and understands that, if awarded the contract on this project, he/she:

24.2.1 Becomes a co-permittee, along with the owner(s), to the Nebraska Department of Environmental Quality NPDES General Permit for Stormwater Discharge from construction sites on this project; and

24.2.2 Is legally bound to comply with the Clean Water Act to ensure compliance with the terms and conditions of the stormwater pollution prevention plan as developed under the NPDES permit and the terms of the NPDES permit; and

24.2.3 Will hold owners harmless for damages and fines arising as a result of noncompliance with the terms of the stormwater permits and authorizations associated with the work on this project; and

24.2.4 Shall be responsible for the maintenance of the sediment control measures until permanent stabilization and cover crop is established; and

24.2.5 Shall complete permanent or temporary stabilization within seven (7) calendar days of soil disturbance to the surface of all perimeter controls, topsoil stockpiles, and any other disturbed or graded areas on the project site which are not being used for material storage, or on which actual earth moving activities are not being performed; and

24.2.6 Shall complete the approved inspection forms and inspect/maintain all sediment or erosion control practices required under this contract at least once every seven (7) calendar days and after any storm event of greater than 0.5 inches of precipitation, on the site, during any 24-hour period; any necessary repairs or cleanup to maintain the effectiveness of the best management practices shall be made by contractor immediately; and

24.2.7 Shall update the approved SWPPP plan immediately following any changes or additions to the plan, keep all inspection forms with the SWPPP plan, preferably on-site

in a mailbox, and provide copies of all inspection forms and modifications to the SWPPP plan to the JPA's Construction Project Manager, within 48 hours of inspection.

5. Refer to the plans:

Add the attached Plan Sheets 8 and 9 for the Sediment and Erosion Control to the project plans.

Dated this 22<sup>nd</sup> day of May 2012.

**ADDENDUM NO. 3**

**WEST HAYMARKET JOINT PUBLIC AGENCY  
RAILROAD TRACK REMOVAL  
PROJECT NO. 870908  
BID NO. 12-151**

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

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

**Please be advised of the following changes and clarifications to the City's specification and bidding documents:**

1. Refer to the Notice to Bidders and add the following:

"All questions regarding the project shall be submitted to the Purchasing Agent no later than 2:00 pm on Thursday, May 31, 2012. Questions submitted after this date and time will not receive responses prior to bids being received for this project."

2. Refer to the Sample Contract that is included with the Bid Documents:

Exhibit "D" of the Sample Contract includes information on the Davis Bacon Wage requirements for this project. The Davis Bacon Wage requirements shown for the "Heavy Construction Projects" shall be deleted from the sample contract and exhibits. **The Davis Bacon requirements for "Highway Construction Projects" shall apply to all work completed on this project.**

3. Refer to the Notice to Bidders and add the following:

"A pre-bid site meeting will be held on Wednesday May 30, 2012 at 1:30 p.m. to provide prospective bidders an opportunity to view the project area for the Base Bid work. Bidders interested in viewing the site should meet at the east end of the City of Lincoln's 901 Building on the aforementioned date and time."

Dated this 25<sup>th</sup> day of May 2012.

**ADDENDUM NO. 4**

**WEST HAYMARKET JOINT PUBLIC AGENCY  
RAILROAD TRACK REMOVAL  
PROJECT NO. 870908  
BID NO. 12-151**

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

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

**Please be advised of the following changes and clarifications to the City's specification and bidding documents:**

1. Refer to the Bid Form for the Base Bid and Sheet 3 of the plan set. The following bid items have been updated as follows:

The following items have been added to the Base Bid quantities:

50.00005	Remove Track (136 LB Rail)	551 LF
50.00005	Remove Ties and Other Track Material	298 LF

The following items have been revised for the Base Bid quantities to reflect the quantities shown below:

50.00005	Removal of Ballast Material	2,864 LF
50.00020	Cover Crop Seeding	5.5 AC

2. Refer to the Special Provisions, Section 12, Measurement and Payment and add the following items:

12.1.9 Remove Tack (136 LB Rail), linear foot for a single 136 LB Rail, ties and other track material.

12.1.10 Remove Ties and Other Track Material, linear foot (this pay item is for locations where the rail has been previously removed by others).

12.1.11 Unless otherwise noted above, the linear foot measurement for the Remove Track pay item shall be based upon the length as measured along the centerline of the track (for track in place with 2-rails, and along the centerline of the rail if only a single rail remains to be removed) and shall include removal of both rails, ties, and all other track material.

3. Refer to the Plans, Sheet 7:

Delete Sheet 7 and replace with the revised Sheet 7A that is included with this addendum. This revised plan sheet shows the additional work to be included with the Base Bid for removal of the 136 pound rail at the former west leg of the BNSF wye. A portion of the rail has been previously removed at this location and the remaining rail, ties and other track material shall be removed and disposed of by the Contractor in accordance with the requirements outlined in the Special Provisions as part of the Base Bid work. All salvaged material associated with this portion of the work shall become the property of the Contractor.

4. Pre-Bid Site Meeting Notes:

A pre-bid site meeting was held on Wednesday May 30, 2012 at 1:30 pm at the location of the base bid work. Those in attendance at the site meeting were as follows:

Tom Leikam – Olsson Associates  
Kent Rohren – Olsson Associates  
Kevin Steele – Atlas Company  
Bill Broekemeier – Kelly Hill Company  
Vince Mejer – City Purchasing Agent

A walk-through of the site for the base bid was performed. It was noted during the walk-through that additional removals would need to be incorporated into the bid documents to cover removal of the remaining track, ties, other track material and ballast at the former west leg wye track. This work is included as part of Addendum 4 to the project.

It was noted at the pre-bid meeting that recent discussions with BNSF indicate that the BNSF is still planning on removing the track and turnouts at the "X" Yard. The JPA still is requesting bids for Alternate No. 1 and Alternate No. 2 in the event the BNSF is unable to complete this work.

There were no questions asked by the individuals attending the meeting that required clarification or responses as part of an addendum.

Dated this 1<sup>st</sup> day of June 2012.

Date: 06/20/02  
 Drawn: JMW  
 Checked: TML  
 Approved: JAL  
 Project: 870608  
 Sheet: 7A  
 Date: 01/20/02  
 Drawn: JMW  
 Checked: TML  
 Approved: JAL

 LINCOLN <small>INDEPENDENCE • PROGRESS • PEACE</small>	 WEST HAYMARKET	PROJECT NO.	SHEET NO.
		870608	7A
Date: 01/20/02 Drawn: JMW Checked: TML Approved: JAL		Date: 06/20/02 Drawn: JMW Checked: TML Approved: JAL	

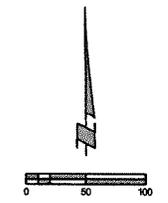
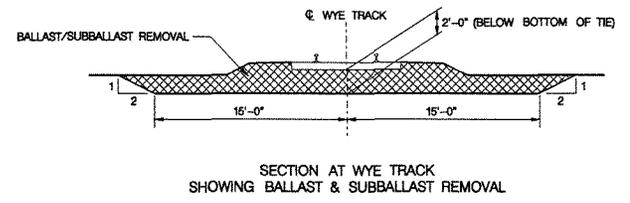
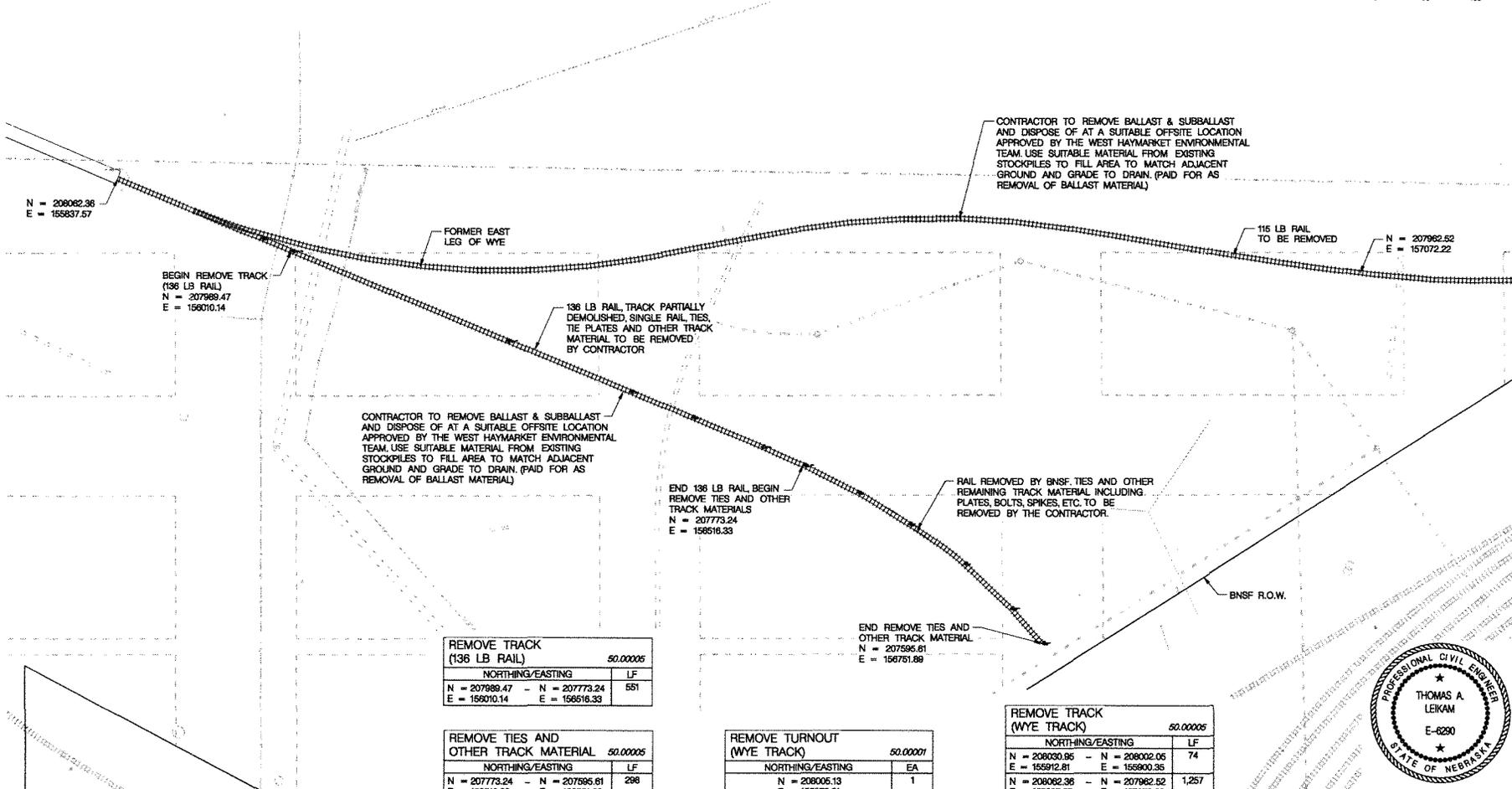


EXHIBIT A TO CONTRACT AGREEMENT

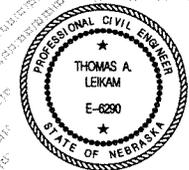


REMOVE TRACK (136 LB RAIL)		50.00005
NORTHING/EASTING	LF	
N = 207988.47 - N = 207773.24	551	
E = 156010.14 - E = 156016.33		

REMOVE TIES AND OTHER TRACK MATERIAL		50.00005
NORTHING/EASTING	LF	
N = 207773.24 - N = 207596.61	296	
E = 156016.33 - E = 156176.89		

REMOVE TURNOUT (WYE TRACK)		50.00001
NORTHING/EASTING	EA	
N = 200005.13	1	
E = 155976.21		

REMOVE TRACK (WYE TRACK)		50.00005
NORTHING/EASTING	LF	
N = 206030.95 - N = 206002.06	74	
E = 155912.61 - E = 155900.36		
N = 206062.36 - N = 207962.52	1,257	
E = 155937.57 - E = 157072.22		



**ADDENDUM NO. 4**  
**TRACK REMOVAL**

This document was originally issued and sealed by Thomas A. Leikam, E-6290, on 6-1-12. This media should not be considered a certified document.

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

Bid Information		Contact Information		Ship to Information
Bid Creator	Deb Winkler Systems Administrator	Address	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508	Address
Email	dwinkler@lincoln.ne.gov	Contact	Vince M. Mejer	Contact
Phone	1 (402) 441-7410			
Fax	1 (402) 441-6513			
Bid Number	12-151 Addendum 4	Department		Department
Title	West Haymarket Railroad Track Removal Project	Building		Building
Bid Type	Bid	Floor/Room		Floor/Room
Issue Date	05/16/2012	Telephone	(402) 441-8314	Telephone
Close Date	6/6/2012 12:00:00 PM CST	Fax	(402) 441-6513	Fax
Need by Date		Email	vmejer@lincoln.ne.gov	Email

## Supplier Information

Company Judds Brothers Construction Co.  
Address 3835 N 68th Street

Lincoln, NE 68505

Contact

Department

Building

Floor/Room

Telephone 1 (402) 467-4666

Fax 1 (402) 467-4782

Email

Submitted 6/6/2012 11:47:23 AM CST

Total \$500,381.00

Signature \_\_\_\_\_

Supplier Notes \_\_\_\_\_

Bid Notes \_\_\_\_\_

## Bid Activities

Date	Name	Description
5/30/2012 1:30:00 PM	Pre Bid Meeting per Addendum 3	A pre-bid site meeting will be held on Wednesday May 30, 2012 at 1:30 p.m. to provide prospective bidders an opportunity to view the project area for the Base Bid work. Bidders interested in viewing the site should meet at the east end of the City of Lincoln's 901 Building on the aforementioned date and time

6/6/2012 12:00:00 PM      General Contractors - Call      Suppliers who will bid as a general contractor on this bid.  
402-441-7410 or e-mail  
purchasing@lincoln.ne.gov to be  
added to this list.

6/6/2012 12:00:00 PM      Sub-Contractors - Call      Suppliers who will bid as a sub-contractor.  
402-441-7410 or e-mail  
purchasing@lincoln.ne.gov to be  
added to this list.

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**Bid Messages**

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Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at:  <a href="http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stnds-spec/index.htm">http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stnds-spec/index.htm</a>	Yes
2	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
3	Form of Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
4	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
5	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
6	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
7	Specifications	I acknowledge reading and understanding the Specifications.	Yes
8	Plan, Profile & Detail Sheets	I acknowledge reading and understanding the Plan, Profile & Detail Sheets included with this bid.	Yes
9	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
10	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 within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than August 10, 2012.	YES

11	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
12	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.	Yes
13	Electronic Signature	Please check here for your electronic signature.	Yes
14	Contact	Name of person submitting this bid:	Kevin Steele
15	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: See Bid Attachments section for Addendum information.	Yes
16	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
17	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
18	Agreement to Addendum No. 4	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

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## Line Items

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#	Qty	UOM	Description	Response
1	1	Lump Sum	Base Bid for track removal at the east leg of the former BNSF wye track in the West Haymarket area	\$146,026.00
			Item Notes:	
			Supplier Notes:	
2	1	Lump Sum	ALTERNATE BID 1 for track and turnouts removal and salvage at the east leg of the former BNSF wye track in the West Haymarket area	\$230,486.25
			Item Notes:	
			Supplier Notes:	
3	1	Lump Sum	ALTERNATE BID 2 for track and turnouts removal at the east leg of the former BNSF wye track in the West Haymarket area	\$123,868.75
			Item Notes:	
			Supplier Notes:	
Response Total:				\$500,381.00

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12-151

## JUDDS BROTHERS CONSTRUCTION COMPANY

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
01	01.00001	Mobilization	1.0000	LS	\$5,000.00	\$5,000.00	GENERAL	Base Bid
02	50.00001	Remove Turnout (Wye Track)	1.0000	EA	\$3,500.00	\$3,500.00	MISC	Base Bid
03	50.00005	Removal of Ballast Material	2,864.0000	LF	\$38.00	\$108,832.00	MISC	Base Bid
04	50.00005	Remove Track (Wye Track)	2,015.0000	LF	\$3.00	\$6,045.00	MISC	Base Bid
05	50.00020	Cover Crop Seeding	5.5000	AC	\$950.00	\$5,225.00	MISC	Base Bid
06	21.16001	Geotextile Filter Fabric	540.0000	SY	\$1.00	\$540.00	STORM DRAINAGE	Base Bid
07	32.02001	Synthetic Fabric Silt Fence Inst	500.0000	LF	\$3.00	\$1,500.00	EROSION CTRL	Base Bid
08	32.02002	Synthetic Fabric Silt Fence Maint	500.0000	LF	\$2.00	\$1,000.00	EROSION CTRL	Base Bid
09	32.02003	Synthetic Fabric Silt Fence Rem	500.0000	LF	\$1.00	\$500.00	EROSION CTRL	Base Bid
10	32.03001	Construction Entrance Surfacing	200.0000	TON	\$40.00	\$8,000.00	EROSION CTRL	Base Bid
11	50.00005	Remove Track (136 LB Rail)	551.0000	LF	\$5.00	\$2,755.00	MISC	Base Bid
12	50.00005	Remove Ties and Other Track Material	298.0000	LF	\$10.50	\$3,129.00	MISC	Base Bid
						<b>\$146,026.00</b>	<b>Total Amount</b>	

12-151 Alternate 1

JUDDS BROTHERS CONSTRUCTION COMPANY

Line No.	Standard Item No.	Description	Quantity	Unit	Unit Price	Amount
1	01.00001	Mobilization	1.00	LS	\$1,500.00	\$1,500.00
2	50.00001	Remove and Salvage Turnout (BNSF "X" Yard)	11.00	EA	\$6,450.00	\$70,950.00
3	50.00005	Remove and Salvage Track (BNSF "X" Yard)	17,085.00	LF	\$9.25	\$158,036.25

**\$230,486.25 Total Amount**

12-151 Alternate 2

JUDDS BROTHERS CONSTRUCTION COMPANY

Line No.	Timer	Description	Quantity	Unit	Unit Price	Amount
1	01.00001	Mobilization	1.00	LS	\$1,500.00	\$1,500.00
2	50.00001	Remove Turnout (BNSF "X" Yard)	11.00	EA	\$5,300.00	\$58,300.00
3	50.00005	Remove Track (BNSF "X" Yard)	17,085.00	LF	\$3.75	\$64,068.75

**\$123,868.75 Total Amount**

**EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT C**

**Construction and Maintenance Agreement  
Between BNSF and the City of Lincoln**

*Approved by Law  
6-7-2012*

## CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be effective the 18<sup>th</sup> 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 of 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.

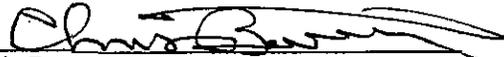
4.18 Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably 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**

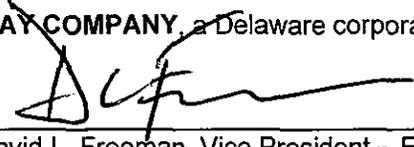
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

**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]



APPROXIMATE LIMITS OF PROJECT AREA. ADDITIONAL OFFSITE TRANSPORTATION IMPROVEMENT ARE ALSO REQUIRED

PARKING A

PARKING BOND ST. 100 W. W. 100 W. W. 100 W. W.

PARKING BOND ST. 100 W. W. 100 W. W. 100 W. W.

100 W. W. 100 W. W. 100 W. W.

EXISTING LINCOLN STATION

PRELIMINARY PLAN

TRAIL CONNECTION TO LINCOLN CENTER STATION

LEGEND	
[Symbol]	ROADWAY/PARKING
[Symbol]	SIDWALK
[Symbol]	SURFACE PARKING
[Symbol]	NEW DEVELOPMENT
[Symbol]	ARENA
[Symbol]	RIGHT OF WAY
[Symbol]	PROPOSED TRACK
[Symbol]	FUTURE TRACK

DATE: 8/23/2010  
 DRAWN BY: JGO  
 PROJECT NO: 008-0645

PROJECT NO: 008-0645  
 DRAWN BY: JGO  
 DATE: 8/23/2010

WEST HAYMARKET REDEVELOPMENT AREA

**MOLSSON**  
 ASSOCIATES

1111 Lincoln Mall, Suite 111  
 P.O. Box 84608  
 Lincoln, NE 68501-4608  
 TEL: 402.474.6311  
 FAX: 402.474.5160

EXHIBIT  
 A

**EXHIBIT B**

**Form of BNSF Plan Approval**



Gerald Maczuga  
Project Engineer

BNSF Railway Company  
201 N 7<sup>th</sup> St  
Lincoln, NE 68508  
402-458-7537 (office)  
402-458-4376 (fax)  
[Gerald.Maczuga@BNSF.com](mailto: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](http://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](http://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](http://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 or 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](mailto: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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

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 or 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: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

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

**EXHIBIT D**

**Other Contract Documents**

## 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 practicable 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; and
  - 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 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 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 charges 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)

**INDEMNIFICATION AND INSURANCE REQUIREMENTS  
FOR ALL WEST HAYMARKET JOINT  
PUBLIC AGENCY CONTRACTS**

**1. INDEMNIFICATION**

**A. Indemnification of JPA**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
  - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

## 2. INSURANCE GENERAL PROVISIONS

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Certificates of insurance may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA, including by specific endorsement where necessary, as indicated in the following requirements.

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

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

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

Upon notification to JPA of cancellation, non-removal, substitution or material alteration of any such policy(ies), JPA shall have the option to (i) if feasible, pay, on behalf of the Contractor, any and all such premiums, penalties, fees for expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market to procure such policy(ies) of insurance on behalf of Contractor as required by this Agreement at the then current market rate. Upon any of the above occurrences, JPA shall invoice the Contractor for reimbursement of such premiums, penalties, fees, or expenses advanced on the JPA's behalf plus an additional fifteen percent (15%) of such advanced amounts as remuneration for JPA's overhead. Such amounts advanced by JPA shall be paid by the Contractor within thirty (30) days after delivery of a statement for such expense.

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

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

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

### 3. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of the Contract such insurance in the forms and minimum amounts as specified in this Section and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

**B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of JPA."

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
<b>Worker's Comp.</b>			
	State	Statutory	
	Applicable Federal	Statutory	
<b>Employer's Liability</b>			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

Coverage	Min Amt	Notes
General	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Products and Completed Operations	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Personal and Advertising Injury	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

- (2) The required Commercial General Liability Insurance shall also include coverage for the following:
- Bodily injury and property damage.
  - Fire legal liability
  - Coverage for all premises and operations.
  - Personal and advertising injury.
  - Operations by independent contractors.
  - X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
  - Any fellow employee exclusions shall be deleted.
  - Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
  - Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
  - Liability coverage which shall include contractually assumed defense costs in addition to any policy limits.
  - Contractual liability coverage.
- (3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
  - Endorsement to provide the general aggregate per project endorsement.
  - Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
  - Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
  - Separation of insureds.
  - Additional insured endorsement in favor of and acceptable to the JPA.
- (4) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer). The definition of insured contract shall be amended to remove any exclusion or other limitation for any work done within fifty (50) feet of railroad property.

**D. Vehicle liability insurance coverage.**

The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

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

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

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor of and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.
- Endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

**E. Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

**F. Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$5,000,000 per occurrence, \$10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following endorsements:

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

No other endorsements restricting coverage may be added. The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in ANY RAILROAD'S Blanket Railroad Protective Liability Insurance Policy available to JPA and JPA Contractors.

**G. Special Provision.** At the JPA's option, the minimum insurance requirements specified above may be increased or decreased by special provision in a JPA contract.

**4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.**

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

**5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

**6. PROPERTY INSURANCE/ BUILDER'S RISK.**

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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7-26-10/law/tb



CITY OF LINCOLN  
EXECUTIVE ORDER

NO. 083319

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

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

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

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

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

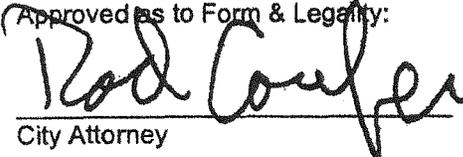
under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period 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



Jamie Stamper  
Manager-Risk Management

BNSF Railway Company  
P.O. Box 961073  
Fort Worth, Texas 76114-0073  
2500 Lou Menk Drive  
Fort Worth, Texas 76131-2828  
Telephone 817-352-3485  
Fax 817-352-7207  
Email Address  
Jamie.Stamper@bnsf.com

RECEIVED

OCT 31 2011

LAW DEPT.

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](mailto: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](mailto:BNSF@certfocus.com). Any insurance renewal prior to November 1, 2011 should be directed to [BNSF@Ebix.com](mailto: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](mailto:Jamie.Stamper@bnsf.com) or Vickie Barnett, Assistant Manager – Risk Management at (817) 352-2414 or [Vickie.Barnett@bnsf.com](mailto:Vickie.Barnett@bnsf.com)

Sincerely,

Jamie Stamper  
Vickie Barnett

## 29 C.F.R. § 5.5

Code of Federal Regulations Currentness

## Title 29. Labor

## Subtitle A. Office of the Secretary of Labor

Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

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

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

(1) Minimum wages.

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

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

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

the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

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

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-014
(a)(1)(ii)(C)	1215-014
(a)(1)(iv)	1215-014
(a)(3)(i)	1215-0140, 1215-00:
(a)(3)(ii)(A)	1215-014
(c)	1215-0140, 1215-00:

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

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

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

#### NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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General Decision Number: NE120034 03/16/2012 NE34

Superseded General Decision Number: NE20100044

State: Nebraska

Construction Type: Highway

Counties: Lancaster, Saunders and Seward Counties in Nebraska.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/06/2012
1	03/16/2012

ELEC0022-018 06/01/2011

Saunders County - East of Highway 109 and North of Alternate Highway 30)

	Rates	Fringes
ELECTRICIAN.....	\$ 30.80	13.40
-----		
ELEC0265-005	09/01/2011	

REMAINDER OF SAUNDERS COUNTY

	Rates	Fringes
Electricians:		
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 [Mileage from main Post Office in Lincoln]  
 Zone 1: 0 to 35 miles  
 Zone 2: 36 to 50 miles  
 Zone 3: 51 to 75 miles  
 Zone 4: 76 miles and over

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.

\* SUNE2011-023 08/29/2011

	Rates	Fringes
CARPENTER (Includes Form Work)...	\$ 18.51	
CEMENT MASON/CONCRETE FINISHER		
Lancaster County.....	\$ 18.48	5.86
Seward, Saunders Counties...	\$ 18.17	5.86

ELECTRICIAN, Includes Installation of Traffic Signals Lancaster, Seward Counties..\$	28.83	
HIGHWAY/PARKING LOT STRIPING:		
Laborer		
Lancaster County.....\$	11.82	
Saunders County.....\$	12.37	
Seward County.....\$	11.27	
IRONWORKER, REINFORCING.....\$	19.35	
LABORER (COMMON OR GENERAL)		
Lancaster County.....\$	12.58	
Saunders County.....\$	12.55	
Seward County.....\$	12.20	
LABORER: Concrete Saw (Hand Held/Walk Behind).....\$	16.07	6.55
LABORER: Mason Tender (Cement/Concrete).....\$	10.44	
LABORER: Traffic Control - Flagger and Cone/Barrel Setter		
Lancaster County.....\$	11.87	
Seward County.....\$	9.00	
Operating Engineers: (Skid Loader)		
Lancaster County.....\$	10.56	
Saunders County.....\$	12.51	
Seward County.....\$	14.85	
OPERATOR: Asphalt Spreader.....\$	18.74	
OPERATOR: Backhoe Loader Combo.....\$	15.94	
OPERATOR: Backhoe/Excavator		
Lancaster County.....\$	19.91	6.07
Saunders County.....\$	19.47	6.07
Seward County.....\$	16.15	
OPERATOR: Broom.....\$	11.43	
OPERATOR: Bulldozer		
Lancaster County.....\$	16.78	
Seward, Saunders Counties...\$	16.34	
OPERATOR: Compactor.....\$	13.36	
OPERATOR: Concrete Saw		
Lancaster, Seward Counties..\$	20.87	
OPERATOR: Crane.....\$	22.38	
OPERATOR: Hydrohammer.....\$	17.03	

OPERATOR: Loader  
 Lancaster County.....\$ 17.44  
 Saunders County.....\$ 17.19  
 Seward County.....\$ 16.04

OPERATOR: Mechanic.....\$ 19.58

OPERATOR: Milling Machine.....\$ 12.80

OPERATOR: Oiler.....\$ 16.21

OPERATOR: Paver  
 Lancaster County.....\$ 14.79  
 Seward, Saunders Counties...\$ 16.13

OPERATOR: Roller  
 Lancaster County.....\$ 13.00  
 Saunders County.....\$ 13.45  
 Seward County.....\$ 14.04

OPERATOR: Scraper  
 Lancaster County.....\$ 14.80  
 Seward, Saunders Counties...\$ 14.83

OPERATOR: Tractor  
 Lancaster County.....\$ 9.50  
 Seward, Saunders Counties...\$ 10.65

OPERATOR: Grader/Blade  
 Lancaster County.....\$ 16.09  
 Seward, Saunders Counties...\$ 16.04

TRUCK DRIVER, Includes Dump  
 and Tandem Truck  
 Lancaster County.....\$ 14.51  
 Saunders County.....\$ 14.47  
 Seward County.....\$ 14.16

TRUCK DRIVER: Lowboy Truck.....\$ 15.93

TRUCK DRIVER: Semi-Trailer  
 Truck  
 Lancaster County.....\$ 13.48  
 Seward, Saunders Counties...\$ 14.09

TRUCK DRIVER: Water Truck.....\$ 18.00                      6.40

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

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

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

#### Union Identifiers

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

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

#### Non-Union Identifiers

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

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

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#### WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION



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

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

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

#### Union Identifiers

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

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

#### Non-Union Identifiers

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

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

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WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION



**SPECIAL PROVISIONS  
WEST HAYMARKET JOINT PUBLIC AGENCY (2012)  
RAILROAD TRACK REMOVAL  
PROJECT NO. 870908**

**1. GENERAL NOTES**

- 1.1 The work as detailed on the plans shall be completed in accordance with the requirements of the 2011 City of Lincoln Standard Specifications for Municipal Construction as supplemented by these Special Provisions.
- 1.2 The Contractor shall not take advantage of any apparent error, discrepancy or omission in the plans or specifications.
  - 1.2.1 Upon discovery of such an error, discrepancy or omission, the Contractor shall notify the Engineer immediately.
  - 1.2.2 The Engineer will then make such corrections or interpretations as necessary to fulfill the intent of the plans and specifications.
  - 1.2.3 Correction of errors or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work.
- 1.3 Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.
- 1.4 Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction.
- 1.5 Any reference to the City, or OWNER, in the City of Lincoln Standard Specifications for Municipal Construction shall be considered reference to the West Haymarket Joint Public Agency (JPA), its employees, or representatives hired by the JPA as a consultant for Program Management (PC Sports), construction project management, observation or testing services.
  - 1.5.1 The JPA's address is 555 South 10th Street, Lincoln, Nebraska 68508.
- 1.6 JPA: JPA shall mean the West Haymarket Joint Public Agency, a joint administrative entity under the Interlocal Cooperation Act, comprised of the City of Lincoln and the University of Nebraska - Lincoln for the purpose of implementing and overseeing the operation of the West Haymarket arena and infrastructure improvement projects.
- 1.7 Contractor shall submit bid documents and all supporting material via e-bid.
- 1.8 All inquiries regarding these specifications shall be directed via e-mail or faxed request to Vince Mejer, Purchasing Agent ([vmejer@lincoln.ne.gov](mailto:vmejer@lincoln.ne.gov)) Or Fax: (402) 441-6513.
  - 1.8.1 These inquiries and/or responses shall be distributed to prospective Contractor electronically as an addendum.
  - 1.8.2 The Purchasing Office shall only reply to written inquiries received within five (5) calendar days of bid opening.
- 1.9 No direct contact is allowed between Vendor and other City Staff throughout the bid process.
  - 1.9.1 Failure to comply with this directive may result in Vendor bid being rejected.

**2. BASIS OF AWARD**

- 2.1 This project is set up for respective bidders to provide prices to complete the base bid project and to complete one of two alternate bid packages.

- 2.2 The alternate bid packages are described as follows:
  - 2.2.1 Alternate Bid 1: This shall include removal and salvaging of the railroad track and turnouts at the BNSF "X" Yard with BNSF retaining all salvaged material.
    - 2.2.1.1 Work on this alternate includes removal and salvaging all or a portion of the railroad tracks at the BNSF owned property identified on the plans as the "X" Yard in accordance with the requirements outlined in these Special Provisions.
  - 2.2.2 Alternate Bid 2: This shall include removal of the railroad track and turnouts at the BNSF "X" Yard with the Contractor retaining all salvaged material.
    - 2.2.2.1 Work on this alternate includes removal of all or a portion of the railroad tracks at the BNSF owned property identified on the plans as the "X" Yard in accordance with the requirements outlined in these Special Provisions, with the Contractor retaining the salvaged material
- 2.2 The JPA reserves the right to award the base bid on the basis of the lowest responsive bid received for the work identified in the proposal for the base bid.
- 2.3 Furthermore, the JPA reserves the right to award either Alternate Bid 1 or Alternate Bid 2 on the basis of the lowest responsive bid received for the respective alternate bid selected.
  - 2.3.1 Award of an Alternate Bid is not tied to the award of the base bid and the Bid Alternate, if selected, may be awarded to a Contractor other than the Contractor selected to perform the base bid work.
  - 2.3.2 All bids for the Alternate Bid Packages shall remain in place for a period of 120 days following the bid opening.

**3. LIMITS OF TRACK REMOVAL AND TIME OF COMPLETION**

- 3.1 The plans outline the limits of the railroad track removal work covered under this contract.
- 3.2 The east leg of the former BNSF wye track is owned by the JPA. Work associated with removal of this track composes the base bid.
- 3.3 The Contractor shall retain all salvaged material along this segment of the existing wye track and shall promptly remove the salvaged rail, turnouts and other track material from the site along with any other material resulting from the removal of this track.
- 3.4 The Contractor selected for the base bid work will receive a notice to proceed on or before June 29, 2012.
- 3.5 All work associated with the base bid work shall be completed by September 15, 2012, including all final site clean-up and restoration work.
- 3.6 The existing track shown in the "X" Yard area is owned by the BNSF and the BNSF has first right of refusal for salvaged material that results from the removal of this track.
- 3.7 The BNSF is currently planning on removing all of the rail segments within the "X" Yard and salvaging the material using their own forces.
- 3.8 In the event the BNSF determines that they will not be able to complete this work by July 31, 2012 than they shall notify the JPA and the JPA will make a determination on awarding either Bid Alternate 1 or Bid Alternate 2 dependent upon the BNSF's decision regarding whether or not they wish to retain the salvaged material.

- 3.8.1 The JPA is working with the BNSF to obtain a final decision regarding who will remove the "X" Yard track.
- 3.9 If the work at the "X" Yard is completed prior to September 12, 2012 it will be completed under a right-of-entry agreement between the JPA and BNSF and the Contractor will be required to complete all work in accordance with the requirements outlined in these Special Provisions for work on BNSF property.
- 3.10 It is anticipated that a portion of the BNSF tracks at the "X" Yard may be removed by the BNSF prior to the Contractor starting work.
  - 3.10.1 As such the contract time allowed for either Bid Alternate 1 or Bid Alternate 2 will be based upon the total length of track in-place that will need to be removed (length of track shall be measured through turnouts).
  - 3.10.2 The contract time for work associated with Alternate Bid 1 or Alternate Bid 2 shall be an established number of working days based upon the actual length of track to be removed.
    - 3.10.2.1 The number of days shall be calculated by assuming removal of 600 feet of track per working day with 5 working days allowed for final site clean-up and restoration.
  - 3.10.3 A working day shall be defined as any day, Monday through Friday with the exception of Holidays or days where adverse weather or adverse site conditions, as determined by the Engineer, would preclude the Contractor from working at the site.
  - 3.10.4 The Contractor shall mobilize and begin work at the site for Bid Alternate 1 or Bid Alternate within 14 calendar days following receipt of a Notice to Proceed.
    - 3.10.4.1 Working days shall begin when the Contractor starts work at the site or at the 15<sup>th</sup> Calendar day following issuance of the Notice to Proceed, whichever is earlier.

**4. EXTRA WORK**

- 4.1 Refer to Section III, "Scope of Work", Subsection "B", Extra Work, in the General Conditions of the City of Lincoln Standard Specification for Municipal Construction.
  - 4.1.1 In the second paragraph delete item number 4 for the approved methods for paying for the extra work and replace with the following:
- 4.2 The actual cost of labor, direct overhead, materials, supplies, equipment and other services required to complete the Extra Work so ordered.
  - 4.2.1 In addition, there may be added an amount, to be agreed upon but not to exceed ten percent of the actual cost of the Extra Work, to cover the cost of general overhead and profit.

**5. WORKER VISIBILITY**

- 5.1 Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:
  - 5.1.1 Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.
  - 5.1.2 High-visibility safety apparel is defined to mean personal protective safety clothing that:

- 5.1.2.1 Is intended to provide conspicuity during both daytime and nighttime usage
- 5.1.2.2 Meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standards for High-Visibility Safety Apparel and Headwear."
- 5.1.3 If the Contractor fails to comply with the worker visibility requirements and as a result, Federal and State authorities withhold Federal Funds, then JPA reserves the right to seek reimbursement from the Contractor for the loss of federal funds that are attributed to the Contractor's non-compliance.

**6. COORDINATION WITH OTHERS**

- 6.1 The Contractor will be required to coordinate their work with on-going work at the Amtrak Station building, the construction work on "N" Street between 7th Street and 9th Street, the construction work at the new development south of the arena, and the construction work at the new arena and potentially with early construction work associated with the JPA's "Core Area Roadway and Utilities Project".
- 6.2 The Contractor shall familiarize themselves with these projects, the location of the work and the areas affected by the construction of these projects.
- 6.3 The Contractor shall coordinate closely with these other projects to ensure that proper access is maintained to the project sites at all times.

**7. ENVIRONMENTAL CONTINGENCY PLAN**

- 7.1 During the execution of the work on this project it is anticipated that the Contractor may encounter contaminated soils, debris or groundwater (media).
  - 7.1.1 If contaminated media is encountered and it is determined by the West Haymarket Environmental Team that it cannot be used on-site (e.g. as backfill for the utility trenches), the Contractor shall be required to dispose of any contaminated media in accordance with all federal, state and local laws.
- 7.2 The Contractor shall also strictly adhere to the requirements and procedures set forth in the Environmental Contingency Plan.
  - 7.2.1 The Environmental Contingency Plan is attached and incorporated as if fully set forth herein.
- 7.3 In the event the Contractor or on-site construction management personnel suspect that contaminated media is encountered or will be during the performance of the work, they shall immediately notify the West Haymarket Environmental Team and follow the procedures outlined in the Environmental Contingency Plan for resolution on how to manage the contaminated media.
  - 7.3.1 Typical indications of potentially contaminated media include discoloration, odors associated with the media removed as part of boring, trenching or other excavation work.
    - 7.3.1.1 In addition, the Environmental Contingency Plan illustrates where environmental testing has been taken on-site.
  - 7.3.2 The Contractor shall familiarize themselves with these Figures to determine whether the project is located in the area of these environmental impacts.

8. **MANAGEMENT OF SOIL OR DEBRIS TO BE REMOVED FROM THE WORK SITE**

- 8.1 During the course of the project the Contractor shall not haul any excavated material off-site without the prior approval of the West Haymarket Environmental Team.
- 8.2 As such, the Contractor shall provide locations on-site to temporarily stockpile all excavated material that has not been approved by the West Haymarket Environmental Team for removal from the site.
- 8.3 All temporary stockpiles shall comply with the requirements set forth in the Construction Storm Water Pollution Prevention Plan (SWPPP).
- 8.4 The West Haymarket Environmental Team will determine the appropriate method for disposal of the excavated material and make a recommendation to the Contractor.
- 8.5 The Contractor shall base their bid on the basis that all excavated soils/ballast/subballast material from this project can be disposed of at a Contractor furnished non-residential development site that will be used solely for industrial or commercial purposes for perpetuity.
- 8.6 The site for disposal of the ballast/subballast material shall be subject to the approval of the West Haymarket Environmental Team.
- 8.7 The Contractor shall furnish information with their bid on the location of the disposal site including site location, current uses at the site and future uses at the property.
- 8.8 If the excavated material requires special handling due to contamination (petroleum or other chemicals) and the contamination is not the result of the Contractor's activities, then additional compensation for disposal of the contaminated material will be considered on an "Extra Work" basis.

9. **CONTAMINATED SOILS**

- 9.1 During the prosecution of the work on this project it is anticipated that the Contractor may encounter some contaminated soils.
  - 9.1.1 If contaminated soils are encountered and it is determined that they cannot be used as backfill for the utility trenches or other excavations, then the Contractor shall be required to dispose of the soils offsite in accordance with all Federal, State and Local regulations.
  - 9.1.2 No material shall be removed from the site without the approval of the West Haymarket Environmental Team.
- 9.2 The Contractor shall immediately report the discovery of any contaminated soils or potentially contaminated soils to the West Haymarket Environmental Team for resolution on how to manage the soil.
  - 9.2.1 Typical indications of potential contaminated soils would include discoloration of the soil or odors associated with soils removed as part of the excavation or trenching work.
  - 9.2.2 The Contractor shall temporarily stockpile potential contaminated soils on site as directed by the West Haymarket Environmental Team for further testing to determine the extent of potential contamination and the method for disposal.
  - 9.2.3 All excavated soils that may be contaminated shall be kept separated from clean soils encountered during the excavation or trenching work.
- 9.3 During the handling and managing of contaminated soils the Contractor shall comply with all OSHA regulations for worker safety as well as all other Federal, State or Local Health Department requirements.

- 9.4 Disposal of contaminated or hazardous material will be considered as "Extra Work" and compensation for the removal, handling and disposal of the material will be negotiated separately as a change order to the project.

**10. DUST CONTROL DURING CONSTRUCTION**

- 10.1 The Lincoln/Lancaster County Health Department has Air Pollution Regulations that provide requirements for dust control that need to be followed by contractors working on the project.
- 10.2 No dust that is generated by the construction activities shall be allowed to migrate off the site onto adjacent properties.
- 10.2.1 This will require the Contractor to provide some means for dust control at the site at all time during the work.
- 10.2.2 At this time there is not a permit required by this agency for a fugitive dust control permit.
- 10.3 The following is a portion of the regulations pertaining to dust control:

**SECTION 32. DUST -- DUTY TO PREVENT ESCAPE OF**

- (A) Handling, Transportation, Storing. No person may cause or permit the handling, transporting or storage of any material in a manner which may allow particulate matter to become airborne in such quantities and concentrations that it remains visible in the ambient air beyond the premises where it originates.
- (B) Construction, Use, Repair, Demolition. No person may cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures to prevent particulate matter from becoming airborne so that it remains visible beyond the premises where it originates. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to paving or frequent cleaning of roads, driveways and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.
- (C) Notwithstanding any other provisions of this section, the Department shall not regulate emissions from normal farming practices, farm crop drying and handling, or animal feeding activities, provided that reasonable and practical measures to limit particulate matter from such sources are utilized.

Ref: Title 129, Chapter 32, Nebraska Department of Environmental Quality

**11. RAILROAD TRACK REMOVAL GENERAL REQUIREMENTS**

- 11.1 The Work covered under this Special Provision includes providing all labor, materials, tools, permits and equipment necessary to remove, salvage, relocate, transport and dispose of existing track, turnouts and other track equipment located on the BNSF or JPA owned property.

- 11.1.1 The track may consist of existing jointed and continuous welded rail, crossties, turnouts, road crossing panels, track fastening materials, and other track materials.
- 11.1.2 All signal equipment to be salvaged shall be removed by BNSF prior to the start of the track removal work.
  - 11.1.2.1 All signal equipment and foundations remaining shall be considered as salvaged material to the Contractor and shall be promptly removed from the site.
- 11.2 This Work pertains to existing tracks within BNSF or JPA's right of way only, as indicated on the plans.
- 11.3 Removal of existing ballast, subballast, aggregate, soil and all other materials between and below the crossties at the locations as indicated on the plans.
  - 11.3.1 This work shall include placement of suitable materials from the on-site stockpiles to fill the area where the material is removed to match the adjacent grade and to provide proper drainage.

## **12. MEASUREMENT AND PAYMENT**

- 12.1 Measurement and payment shall be made in accordance with the following units for the respective bid items as shown in the proposal:
  - 12.1.1 Mobilization – Limited to a maximum of ten percent of the base bid or the total bid for the Alternate Bid package, lump sum.
  - 12.1.2 Remove Track (Wye Track), linear foot
  - 12.1.3 Removal of Ballast Material, linear foot
  - 12.1.4 Remove Turnout (Wye Track) each.
  - 12.1.5 Remove and Salvage Track (BNSF "X" Yard), linear foot.
  - 12.1.6 Remove Track (BNSF "X" Yard), linear foot
  - 12.1.7 Remove and Salvage Turnout (BNSF "X" Yard), each.
  - 12.1.8 Remove Turnout (BNSF "X" Yard), each
- 12.2 Rail to be removed and not designated to be salvaged shall become the property of the contractor and promptly removed from the site.
  - 12.2.1 All turnouts to be removed shall not be differentiated by size.
- 12.3 The price for removal of track and turnouts shall include furnishing all labor, equipment, materials and incidentals required to remove the track, turnouts, ties and other track materials.
  - 12.3.1 Ballast material and subballast material shall be removed and the area filled as designated on the plans.
  - 12.3.2 For items identified to be salvaged the price shall include the delivery of the salvaged items to a location to be determined by the BNSF within five miles of the project area as directed by the JPA.
  - 12.3.3 All removed items that are not designated for salvage shall become the property of the contractor and shall be promptly removed from the site.
  - 12.3.3 All ties shall be removed and delivered to a temporary stockpile location adjacent to the BNSF tracks within a two mile distance of the project site for future loading and disposal by the BNSF.
  - 12.3.4 The final location for ties shall be provided by the BNSF and all costs associated with removal, transport and stacking of the ties at the temporary location shall be considered part of the bid price for removal of the track and/or turnouts.

**13. SUBMITTALS**

- 13.1 Contractor shall submit detailed narratives as listed below for track removal within 5 days of signing of contract for approval by the JPA.
  - 13.1.1 Schedule for performing all Work under this Section.
  - 13.1.2 A list of equipment to be used.
  - 13.1.3 A track removal sequence plan.
  - 13.1.4 Traffic control plans (as required).

**14. GENERAL EXECUTION**

- 14.1 All required protection measures, protective and regulatory devices and flagmen shall be in place before demolition commences.
- 14.2 Contractor shall secure any necessary permits with municipalities and coordinate with JPA, BNSF and other entities, as appropriate, prior to commencement of work.
- 14.3 Where an abutting structure or a part of a structure (e.g., sidewalk) is to be left in place, clean, smooth, vertical cuts shall be made.
- 14.4 The Contractor shall not use the salvaged materials for use in temporary facilities or in the work unless approved in writing by the JPA for each specific case.
- 14.5 The Contractor performing the Work of track removal shall have at least five (5) years experience in railroad construction and demolition work and shall exercise care so as to not damage the materials to be salvaged.

**15. REPAIRS**

- 15.1 Items to remain that are damaged during demolition shall be repaired or replaced as directed by the JPA at the Contractor's expense.

**16. RUBBISH**

- 16.1 Except for salvageable railroad track and turnouts or unless otherwise stipulated, all rubbish, resulting from the removal of track and associated items indicated on the plans shall become the property of the Contractor at the place of origin and shall be removed from the property by the Contractor in conformance with all laws, regulations and rules legally imposed on such activities and items.

**17. RELEASE OF WORK AREAS**

- 17.1 Track and track structure shall not be dismantled until approval to do so is received in writing from the JPA.

**18. TRACK REMOVAL METHODS AND PROCEDURES**

- 18.1 The Contractor may use any method to dismantle the track and crossings provided that proper measures are taken to ensure the safety of all employees, the general public, the BNSF and all JPA and railroad property.
  - 18.1.1 Track removal and transportation methods shall cause no damage to track components to be salvaged or other tracks and structures that are indicated to remain in place.
  - 18.1.2 Methods of removal of existing tracks shall not cause damage to adjacent sidewalks, paved roadways and wayside railroad and signal facilities.
  - 18.1.3 Damage caused by the Contractor to facilities not destined for demolition or salvage shall be restored to the satisfaction of the JPA at the Contractor's expense.

- 18.2 The Contractor shall be responsible for cleaning, removing and properly disposing of any materials, except hazardous materials, generated during the removal and salvage of all track or any other material, covered herein.
  - 18.2.1 Removal and disposal of hazardous material that is encountered shall be coordinated with the West Haymarket Environmental Team.
  - 18.2.2 The Contractor shall contact the Environmental Team immediately upon discovery of any potentially contaminated or hazardous material to obtain direction on how to proceed.

**19. REMOVAL OF EXISTING TRACK AND SIGNAL EQUIPMENT**

- 19.1 All track components removed by the Contractor and temporarily stockpiled on site, shall be done in an organized, and safe fashion.
- 19.2 No stockpiled material shall be closer than 50 feet to the nearest rail of any in service track unless otherwise approved in advance by the BNSF.
  - 19.2.1 The BNSF and JPA right of ways/properties shall be left in a suitable and safe condition after close of each work day.
- 19.3 Contractor shall identify, prior to removal, which tracks and turnouts are designated for salvage to the BNSF and which tracks are owned by the JPA in which the salvage shall go to the contractor.
- 19.4 As part of the price to remove and salvage the rail and turnouts, the Contractor shall identify, remove and deliver the rail, other track material and turnouts to be salvaged to the BNSF to a designated storage area located within 5 miles of the Project site.
  - 19.4.1 Furthermore the Contractor shall remove and deliver all ties to a location adjacent to the existing BNSF tracks within two miles of the project site and properly stack the ties for future loading and removal by the BNSF.
  - 19.4.2 The final location shall be as designated by the JPA and the BNSF.
- 19.5 All personnel performing Work in any capacity under these Special Provisions on BNSF property shall be certified through the BNSF E-Rail Safe program and shall have the required BNSF Contractor Safety Orientation as outlined in the BNSF Special Provision that is attached to these contract documents.
- 19.6 The Contractor is responsible for locating and protecting any and all utilities that may be located within the limits of the work including all BNSF, public and private utilities.
  - 19.6.1 The Contractor shall be responsible for repair of any utilities damaged during the completion of the work.
- 19.7 Contractor shall at no time access or perform activities within 50 feet of any active track unless authorized by BNSF.
- 19.8 Contractor may use on or off track equipment, or a combination of methods, subject to the approval of the JPA and the BNSF, to dismantle the track provided that measures are taken to ensure the safety of employees, the general public, BNSF employees and the property.
  - 19.8.1 The removal methods shall cause no damage to track components to be salvaged or other tracks and structures which are to remain in place.
- 19.9 Methods of removal of existing tracks shall not cause damage to adjacent sidewalks, paved roadways, or other structures unless scheduled for reconstruction.
  - 19.9.1 Damage to those facilities caused by Contractor shall be repaired to the satisfaction of the JPA at Contractor's expense.

- 19.10 Track shall be carefully dismantled using proper tools and equipment designed for this type of Work.
- 19.11 Rails longer than forty (40) feet shall be handled with spreader bars.
- 19.12 Designated 115RE and heavier class 1 & 2 continuous welded rail (CWR) that are designated to be salvaged to the BNSF shall be removed and transported in eighty (80) foot nominal lengths to the designated BNSF storage areas.
- 19.13 Minimum rail length to be salvaged for BNSF shall be 25 feet.
- 19.14 Rails shall not be torch cut or broken.
- 19.15 Rail and road crossing materials shall not be removed or salvaged without the Contractor first securing a road closure and traffic control permits from the Local jurisdiction (no road crossings anticipated on this project).
- 19.16 Foundation for signal equipment shall be removed in their entirety unless otherwise specified in writing by the JPA.
  - 19.16.1 All signal equipment shall be removed by BNSF prior to the start of work.
- 19.17 Contractor shall remove all crossties, tie pieces and associated material. All ties shall be stockpiled at a location designated by the BNSF for disposal off site by the BNSF.
- 19.18 Contractor shall collect and remove from the BNSF and the JPA property all other track materials.
- 19.19 Contractor to rough grade track areas after track removal and cleanup efforts, as to render the area safe and accessible for vehicle access, BNSF personnel and public safety.
- 19.20 Track removal shall include all structures, such as unused culverts, poles, and miscellaneous supporting structures as indicated on the plans or as directed by the Engineer.

**20. OWNERSHIP OF MATERIALS**

- 20.1 All track materials removed, including but not limited to rail, other track materials, crossties, at grade crossing materials and foundations not designated to be salvaged to the BNSF shall become the property of the Contractor and shall be removed from the property in their entirety and disposed of properly.
- 20.2 The BNSF has the first right of salvage to the material removed at the BNSF "X" Yard tracks. The following track materials shall remain the property of the BNSF (if BNSF elects to retain salvage), be salvaged by the Contractor, and relocated to designated BNSF storage sites.
  - 20.2.1 Designated 110RE and 112RE rail at the BNSF "X" Yard.
  - 20.2.2 Designated turnouts and all associated components; including rail, switches, switch machines, frogs, guard rails, switch plates, relay switch ties, switch stands, and connecting rods assemblies at the BNSF "X" Yard.

**21. SALVAGED TRACK MATERIALS**

- 21.1 Salvaged materials that are to remain property of BNSF shall be carefully removed, loaded, transported and stored at BNSF's designated storage sites in the following manner:
  - 21.1.1 Compromise joints bars shall be neatly stacked on pallets and properly banded with two (2) inch wide metal strapping.
  - 21.1.2 Rail shall be handled using rail tongs.
  - 21.1.3 Contractor shall ensure that lifting, picking and transporting techniques will not damage or strain the rail or special track work.

- 21.1.4 Rail stacks shall be located in level areas safely accessible by transporting trucks, forklifts, and cranes.
- 21.1.5 Salvaged frogs shall be located in a level area safely accessible by transporting truck forklifts and cranes.
- 21.1.6 The bottom of each rail stack shall rest on two (2) suitable crossties spaced at no more than eight (8) feet and no less than three (3) feet from each end of the rail and located in a well drained area.
- 21.1.7 The bottom of each salvaged frog shall rest on a minimum of three (3) suitable crossties evenly spaced in a well drained area.
- 21.1.8 Salvaged rail shall be segregated and stacked by rail section, class (1 & 2) and length.
- 21.1.9 Rail shall be stacked with the heads up and with the rail ends square and even.
- 21.1.10 Each layer of rail shall be separated by four (4) inch wide wood strips placed upon the ball of the rail and directly above each crosstie.
- 21.1.11 All relay rail within each stack shall be positioned in a manner where the markings face the same direction.
- 21.1.12 Rail shall be pyramided in stacks not greater than five (5) feet high and seven (7) feet wide, or as otherwise directed by BNSF.
- 21.1.13 Salvaged turnouts, including all pertinent hardware, shall be individually banded, palletized/boxed and identified with paint prior to transporting to the storage site.
- 21.1.14 Weight of any container or pallet shall not exceed 1500 pounds.
- 21.2 The Contractor shall provide a detailed inventory of all salvaged track materials to the BNSF upon completion.

**22 WAGE RATES**

- 22.1 The Contractor acknowledges to following all requirements stipulated for compensation to workers on this project and acknowledges reading and understanding the Davis Bacon Requirements as outlined in 29 CFR 5.5.
- 22.1.1 The Davis Bacon Requirements are a part of this contract.

**23. BNSF RAILWAY SPECIAL PROVISIONS**

- 23.1 The attached Exhibit "X" provides the Contractor Requirements for work that will be completed on existing BNSF Railway property or within 50 feet of the BNSF property as part of this project.
- 23.1.1 This would include the work associated with Bid Alternates 1 and 2.
- 23.2 The Contractor shall strictly adhere to all requirements as outlined and shall coordinate their work with the BNSF's Project Engineer, Mike Schaefer or other designated representative at all times during completion of work on the BNSF property.
- 23.3. All Contractor employees that will be involved with work within the BNSF right-of-way will need to be certified through the BNSF E-Rail Safe program and shall have the required BNSF Contractor Safety Orientation as outlined in the BNSF Special Provisions.
- 23.3.1 Refer to the BNSF Special Provision for the requirements for the Contractor Safety Orientation.
- 23.3.2 Refer to <https://www.e-railsafe.com/ev/servlet/hr.utilities.HRInfo> E-Rail Safe certification requirements.

- 23.4 In addition the Contractor will be required to execute the attached agreement Exhibit C-1A and provide certification of the required insurance coverages outlined in the agreement to the BNSF Railway prior to start of any work on railroad property (this would apply to work associated with either Bid Alternate 1 or Bid Alternate 2).
- 23.5 Flagging will be required when work is required on BNSF property within 25 feet of the existing tracks and as outlined in the BNSF Special Provision.
  - 23.5.1 Flagging services shall be performed by BNSF employees as outlined in the following Contractor's Requirements for work on BNSF Railway property.
  - 23.5.2 The cost of the flagging up to a maximum amount of \$60,000 shall be borne by the JPA.
    - 23.5.2.1 The \$60,000 amount of flagging is based upon 60 flagging days using a standard 10-hour work day and the BNSF requiring a single flagger for this work.
    - 23.5.2.2 If the BNSF requires additional flaggers than the maximum amount is subject to change as determined by the Engineer.
  - 23.5.3 All flagging costs in excess of the \$60,000 amount shall be deducted from the retainage held on the project prior to final payment.



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

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

3           That the Chairperson of the Board of Representatives is hereby authorized to execute on  
4 behalf of the West Haymarket Joint Public Agency, Amendment No. 1 to the Sublease  
5 Agreement between National Railroad Passenger Corporation (Amtrak) and the West Haymarket  
6 Joint Public Agency substantially in the form attached hereto with such revised attachments and  
7 other minor changes to the Sublease as shall be approved by the Chairperson and Legal Counsel  
8 for the West Haymarket Joint Public Agency. This Amendment No. 1 to the Sublease  
9 Agreement between Amtrak and the West Haymarket Joint Public Agency amends the Sublease  
10 by amending Exhibit C, Final Plans, for the New Station to reflect the redesign of the New  
11 Station to add an Amtrak crew base and to provide for Amtrak to pay \$25,000 toward the  
12 redesign of the New Station, and amends Exhibit D, the Station Lease, to provide that Amtrak  
13 pay additional rent in the amount of \$420.00 per month due to the additional space being  
14 occupied by the crew base and to restrict access from the New Station to the Platform except  
15 during the period of time that Amtrak trains have arrived at the New Station and are parked  
16 along the Platform for boarding and deboarding of passengers.

17           BE IT FURTHER RESOLVED that the Chairperson is hereby authorized, on the date  
18 provided for in Section 7 of the Sublease, to execute on behalf of the West Haymarket Joint  
19 Public Agency the Station Lease attached to Amendment No. 1 to the Sublease as Attachment 2  
20 subject to the Joint Public Agency's completion of various exhibits and subject to Amtrak's  
21 approval of such exhibits.

1

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

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

**AMENDMENT NO. 1  
TO SUBLEASE AGREEMENT**

**THIS AMENDMENT NO. 1** (“Amendment No. 1”) to the **Sublease Agreement between Amtrak and West Haymarket Joint Public Agency** dated January 28, 2011 (“Sublease”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **National Railroad Passenger Corporation** (“Amtrak”), and the **West Haymarket Joint Public Agency** (“Subtenant”).

**RECITALS:**

**WHEREAS**, Amtrak and Subtenant previously entered into the Sublease in connection with the construction and maintenance of a new depot, platform and canopy to be constructed by Subtenant; and

**WHEREAS**, pursuant to the Sublease, Amtrak agreed, subject to certain conditions precedent, to execute the Station Lease attached as Exhibit D to the Sublease for the new depot; and

**WHEREAS**, subsequently Amtrak requested Subtenant to redesign the new depot to include additional space for an Amtrak crew base; and

**WHEREAS**, Subtenant agreed and has redesigned the new depot to add the requested crew base upon Amtrak’s agreement to pay for the cost of said redesign in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000); and

**WHEREAS**, in preparing the revised final design for the new depot to include the Amtrak crew base, no modifications were made to the passenger platform and canopy design previously found to be acceptable as to form, fit and function by Amtrak; and

**WHEREAS**, a copy of the approved final design plans for the New Depot (“Final Plans”) as redesigned to include the Amtrak crew base are attached as Attachment 1 to this Amendment No. 1; and

**WHEREAS**, Amtrak and Subtenant desire to substitute the Final Plans for the current plans attached to the Sublease as **Exhibit C**; and

**WHEREAS**, Amtrak and Subtenant also desire to include the Final Plans as Exhibit E to the Station Lease; and

**WHEREAS**, BNSF has requested and Amtrak has agreed that the Station Lease (Exhibit D) for the new depot include provisions requiring Amtrak to keep the door and any other access to the passenger platform secured (provided that JPA provides access doors that can only be unlocked and opened by AMTRAK) from entry by its passengers except during the period of time that Amtrak passenger trains have arrived at the new depot and are parked abutting the platform for boarding and deboarding of passengers; and

**WHEREAS**, Amtrak and Subtenant have mutually agreed to modify the monthly rent for lease of the new depot, to designate free parking spaces for Amtrak employees, and to provide for the possibility of Amtrak allowing the Subtenant, at Subtenant's own cost and expense, to temporarily shuttle Amtrak passengers to and from the existing Lincoln Station Building and the new platform in the event the New Depot is not ready for use on the date (anticipated to be June 15, 2012) that Passenger Main Line Track No. 2 (MT2) is terminated and Main Line Track No. 4(MT4) is completed and with Amtrak ready to commence operations on such MT4; and

**WHEREAS**, Amtrak and Subtenant desire to incorporate the Final Plans and the aforementioned agreements into the Sublease and Station Lease.

**NOW, THEREFORE**, Amtrak and Subtenant agree that the foregoing recitals are incorporated into this Amendment No. 1 by this reference and the parties further agree as follows:

1. Capitalized terms used herein shall have the meaning ascribed to them in the Sublease, unless otherwise indicated herein.

2. Section 5 of the Sublease be amended to read as follows:

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 and approved the final design plans for the New Depot ("Final Plans"), a copy of which are attached hereto as **Exhibit C**, and found them to include all facilities needed to relocate Amtrak's operations. Amtrak's approval of the Station Track Design, 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 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.

3. The Final Plans for the New Depot attached hereto marked as Attachment 1 shall be attached as Exhibit E to the Station Lease and are hereby substituted for **Exhibit C** attached to the Sublease.

4. The Station Lease attached hereto, marked as Attachment 2, is hereby substituted for the Station Lease attached as **Exhibit D** to the Sublease.

5. The following Section shall be added to the Sublease as Section "32":

**“32. Temporary Shuttle Service.** It is anticipated that the use of Passenger Main Line Track No. 2 (MT2) will be terminated and that the New Platform and Passenger Main Line Track No. 4 (MT4) will be completed with Amtrak ready to commence operations on such Main Line Track on or about June 15, 2012 ("MT4 Operation Date"). If the New Station is not completed by the MT4 Operation Date, Amtrak will at Subtenant's request agree to temporarily continue to operate out of Amtrak's existing depot facilities in the Lincoln Station Building and utilize the New Platform for Amtrak MT4 train arrivals subject to the following conditions:

(a) Subtenant shall at its own cost and expense use a motor carrier to shuttle Amtrak passengers between the Lincoln Station Building and the New Platform. The vehicle used for the shuttle service shall arrive at the Lincoln Station Building at least one hour prior to the scheduled arrival of the earliest Amtrak train and remain in service until after the last scheduled departure. Subtenant shall also have standby service available in the event Amtrak trains run behind schedule. The parties agree that currently an Amtrak westbound train is scheduled to arrive in Lincoln, Nebraska at 12:08 a.m. and depart at 12:14 a.m.; that an Amtrak eastbound train is scheduled to arrive at 3:20 a.m. and depart at 3:26 a.m., and that the two trains run seven days a week on this schedule.

(b) The shuttle service shall only be used for a temporary period of time and any use in excess of three weeks shall be subject to a liquidated damages penalty to Amtrak in the amount of \$\_\_\_\_\_ per day.

(c) The Subtenant shall and hereby agrees to assume all risk and liability involved with the transportation of Amtrak passengers, crew and baggage to and from the Lincoln Station Building and the New Platform.

(d) Subtenant shall be responsible for all costs associated with any unscheduled delay of an Amtrak passenger train to meet customer service and contract obligations for missed passenger connections, or other associated costs resulting from Subtenant's failure to provide the agreed upon shuttle service.

(e) Subtenant shall require its shuttle operator to procure and maintain insurance coverage required under the Insurance Requirements for All City Contracts attached hereto as Exhibit G and by this reference made a part hereof. Subtenant shall further require Amtrak to be named as an additional insured.

(f) Amtrak shall not pay rent, under this Sublease or under the Station Lease during the period of time the temporary shuttle service is utilized for Amtrak operations.

6. All other provisions of the Sublease shall remain in full force and effect.

7. Amtrak agrees to pay the Subtenant Twenty-five Thousand and 00/100 Dollars (\$25,000.00) as reimbursement to the Subtenant for its extra cost to redesign the new depot to include an Amtrak crew base. Said payment shall be paid to Subtenant within thirty (30) days following the execution of this Amendment No. 1.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 as of the day and year first above written.

**NATIONAL RAILROAD PASSENGER  
CORPORATION (“Amtrak”):**

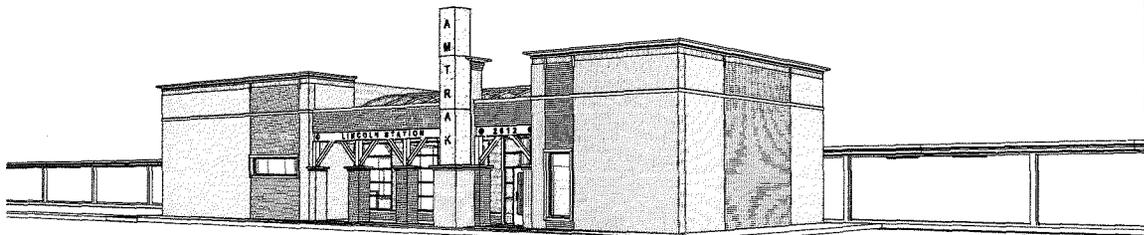
By: \_\_\_\_\_  
Bruce Looloian  
Assistant Vice President,  
Real Estate Development

**WEST HAYMARKET JOINT PUBLIC  
AGENCY (“Subtenant”):**

By: \_\_\_\_\_  
Chris Beutler  
Chair of the West Haymarket Joint Public  
Agency Board of Representatives

# WEST HAYMARKET JPA No. 870906, WH-14 AMTRAK STATION

## Cover Sheet - Building and Canopy



### Code Review

INTERNATIONAL BUILDING CODE REVIEW WORKSHEET  
SINCLAR HILLE & ASSOCIATES

IBC 2009 PROJECT NUMBER	Lincoln Amtrak Station 11032		
PROJECT ARCHITECT	Davis Osborn		
REVIEW DATE OF UPDATED CALCULATIONS	April 21, 2011		
DATE OF UPDATED CALCULATIONS	May 31, 2011		
<b>A. USE AND OCCUPANCY CLASSIFICATION - Chapter 3</b>			
1) CLASSIFICATION (Section 303 to 312)	Use Classification: A-3		
2) TRANSPORTATION TERMINAL	Transportation Terminal		
<b>B. REQUIREMENTS BASED ON USE AND OCCUPANCY - Chapter 4</b>			
1) SPECIAL OCCUPANCY REQUIREMENTS (Sections 401-403)	Classifications: NA		
<b>C. GENERAL BUILDING HEIGHTS AND AREAS - Chapter 5</b>			
1) ALLOWABLE FLOOR AREA (Table 503)	4.3		
2) OCCUPANCY CLASSIFICATION (Section 303 to 312)	2,832		
3) ACTUAL BUILDING AREA (S.F.)	9,500		
4) ASSUMED CONSTRUCTION TYPE	Type III B		
5) TABULAR ALLOWABLE AREA - AT (Table 503)	9,500		
6) FRONTAGE INCREASE - FT (30K.2)	159		
7) FRONTAGE INCREASE PERCENTAGE - %	245		
8) MINIMUM WEDGE OF OPEN SPACE - W	30		
9) FRONTAGE INCREASE PERCENTAGE BY EQUATION 5-2	28.50%		
10) AUTO SPRINKLER INCREASE (506.2)	300%		
11) MULTISTORY FACTOR	41.750		
12) ALLOWABLE AREA PER FLOOR - EQUATION 5-1 (DEC. 506.1)	0.07		
13) ACTUAL TO ALLOWABLE RATIO MUST BE <= OR TO 1	0.3		
<b>D. BUILDING HEIGHT - Table 503</b>			
1) CONSTRUCTION TYPE	Type III B		
2) ALLOWABLE HEIGHT IN FEET	55		
3) FIRE SPRINKLER INCREASE (504.2)	20		
4) MAXIMUM HEIGHT IN FEET	75		
5) ACTUAL HEIGHT	24		
6) ALLOWABLE STORIES	2		
7) FIRE SPRINKLER INCREASE (504.2)	1		
8) TOTAL ALLOWABLE STORIES	3		
9) ACTUAL STORIES	1		
<b>E. MIXED USE AND OCCUPANCY</b>			
1) Incidental Uses (Table 508.2)	None Applicable		
2) Separation of Occupancies (Table 506.3.3)	None Applicable		
3) Separation of Occupancies (Table 506.3.3)	Occupancies: NA		
4) Separation of Occupancies (Table 506.3.3)	Required Separation: NA		
<b>F. REQUIREMENTS BASED ON TYPES OF CONSTRUCTION - Chapter 6</b>			
1) TYPE OF CONSTRUCTION	Type III B		
2) FIRE RESISTIVE REQUIREMENTS	0		
3) STRUCTURAL FRAME	0		
4) EXTERIOR BEARING WALLS	0 to 1 (Tables 601 & 602. See below)		
5) INTERIOR BEARING WALLS	0		
6) EXTERIOR NON-BEARING WALLS	0 to 1 (Table 601 & 602. See below)		
7) INTERIOR NON-BEARING WALLS	0		
8) FLOOR CONSTRUCTION	0		
9) ROOF CONSTRUCTION	0		
<b>G. FIRE RESISTANCE EXTERIOR WALLS - Table 602</b>			
1) Separation	Type of Construction	Req. Fire Resist.	Requires
2) Outer Portion of West Wall	10' x 4' - 30' IB	A	0
3) Inner Portion of West Wall	5' x 4' - 10' IB	A	0
4) Inner Portion of North Wall	11' x 3' - 30' IB	A	0
5) West Portion of North Wall	10' x 4' - 30' IB	A	0
6) Outer Exterior Wall Portion	> 30' IB	A	0
<b>H. SPECIAL CONSTRUCTION TYPE REQUIREMENTS - Chapter 9</b>			
1) Building Elevation	Special Requirements (per Chapter 26)		
2) Light Transmitting Plastic	Special Requirements (per Chapter 26)		

E. FIRE-RESISTANCE-RATED CONSTRUCTION - Chapter 7			
1) EXTERIOR WALL OPENINGS (Table 704.8)			
Separation	Max Distance	Unprotected	Protected
Outer Portion of West Wall	8' x 10'	100%	0%
Inner Portion of West Wall	15' x 4' - 20'	25%	75%
Inner Portion of South Wall	18' x 4' - 20'	25%	75%
West Portion of North Wall	15' x 4' - 20'	25%	75%
Other Exterior Wall Portion	> 10'	No Limit	0%
Applicable Wall Area	Actual Unprotected Openings	Actual Protected Openings	
1025 SF	5%	0%	
Outer Portion of West Wall: Table 704.8 Footnote 1: Not applicable due to required 1 hour rating (Table 704.8 Footnote 8). Buildings whose exterior bearing wall, exterior nonbearing wall and exterior structural frame are not required to be fire-resistance rated by Table 601 or 602 shall be permitted to have unprotected openings.			
2) FIRE MALLS (Table 705.4)			
No Applicable Building Sweetens			
3) HORIZONTAL ASSEMBLIES (Section 711)			
No Applicable Rated Horizontal Assemblies			
4) OPENINGS IN RATED WALLS (Tables 715.5.4 & 715.5.3)			
No Applicable Protected Openings			
F. INTERIOR FINISHES - Chapter 8			
1) FINISH REQUIREMENTS (Table 803.5)			
Interior Wall & Ceiling Finish Requirements	Class B, U, G	Exit Enclosure	Rooms & Passageways
Occupancy Area (Openings)	Class C	Enclosed Spaces	Class C
2) (Table 803.5 Footnote 1): In exit enclosures of buildings less than three stories in height of other than Group I-3, Class C interior finish for sprinklered buildings shall be permitted.			
(Table 803.5 Footnote 2): Lobby areas in Group A-1, A-2 and A-3 occupancies shall not be less than Class B materials.			
3) Interior Floor Finish Requirements: NFPA 253 Class I or II			
G. FIRE PROTECTION SYSTEMS - Chapter 9			
1) AUTOMATIC SPRINKLER SYSTEM (Table 903.3)			
An automatic sprinkler system will be provided.			
H. REQUIREMENTS BASED ON MEANS OF EGRESS - Chapter 10			
1) OCCUPANT LOADS (Section 1004)			
ACTIVITY USES	FUNCTION	SQ. FT.	OCCUPANT OF
Assembly	Assembly	221	300
Office	Office	111	152
Business	Business	305	100
Baggage Handling	Baggage Handling	243	300
TOTAL OCCUPANTS = 244			
Occupant SF by Terminals is 15 and no further use is currently planned. However 7 SF is used to allow for future potential Assembly use of Hall & Colonnade.			
2) EGRESS WIDTH (Section 1006)			
NUMBER OF OCCUPANTS	LOAD	HORIZ. EXIT	REQ'D
157	0.15	23.55 (2' Clear Minimum)	
3) SPECIAL EXITING REQUIREMENTS BASED ON OCCUPANCY (Sections 1014-1026)			
1015: Occupant load of 150 requires 2 exits adequately distributed from each other.			
1016.1: Maximum Exit access travel distance for A occupancies to be 200'			
L. Other Requirements			
1) LIGHT-TRANSMITTING PLASTIC ROOF PANELS (IBC Section 2070; IECC Chapters 7 & 8; Table 2070.4-Exception 2): Great Hall meets requirements of this exception and subsequently not subject to area limitation.			
2) INTERNATIONAL PLUMBING CODE & CITY OF LINCOLN (UNIFORM PLUMBING CODE TABLE 4-1)			
Table reflects more stringent than requirement between these codes:			
Use	Transpiration Terminal <= 15 SF/Inch <sup>2</sup> Occupant	Male	Female
Occupant	12	17	17
1/2"	37	54	54
(Required)	1/1	1	1
TOTAL (provided)	1/2	2	2

Table 4-1 Footnote 5: Up to 1/2 of required male water closets may be replaced by additional urinals  
Table 4-1 Footnote 12: Offices or public buildings for use by more than 50 (B) persons shall have one (1) drinking fountain for the first one hundred fifty (150) persons.

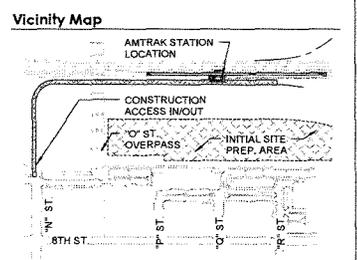
### INDEX OF DRAWINGS

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C008	Sanitary Sewer Plan-Profile
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P501	Plumbing Schedules and Details
MECHANICAL	Mechanical Floor Plan
M101	Mechanical Schedules Details
ELECTRICAL	Electrical Lighting Plan
E101	Electrical Power Plan
E102	Electrical Platform Plan
E103	Electrical Site Plan
E104	Electrical Lighting & Misc. System Details
E502	Electrical Power & Misc. System Details
E601	Electrical Schedules & Legend

PROJECT NO.	SHEET NO.
870906	Cover
DESIGN ARCH: DAV	ISSUED
PROJ ARCH: DEO	Rev: 2, 2011
DRAWN BY: DEL	

### PROJECT CONTACTS

ARCHITECT/COORDINATING PROFESSIONAL SINCLAR HILLE ARCHITECTS 700 G STREET LINCOLN, NE 68508 DAVID DUJADE 402-476-7331	LINCOLN ELECTRIC SYSTEM 2820 FAIRFIELD ST. P.O. BOX 80689 LINCOLN, NE 68501 DANA DANIEL 402-487-7634
STRUCTURAL ENGINEER DAVIS DESIGN 211 North 14th St LINCOLN, NE 68508 LINCOLN, NE 68508 DARREN SPERLING 402-476-9700	RAILWAY - PROJECT ENGINEER 201 N. 7TH ST. LINCOLN, NE 68508 GERALD MACZUGA 402-466-7537
MECHANICAL ENGINEER DAVIS DESIGN 211 North 14th St LINCOLN, NE 68508 BRANDON BIRE 402-476-9700	LINCOLN WATER SYSTEM 2021 N. 27TH ST. LINCOLN, NE 68503 STEVE OWEN 402-445-6525
ELECTRICAL ENGINEER DAVIS DESIGN 211 North 14th St LINCOLN, NE 68508 JON DALTON 402-476-9700	BLACK HILLS ENERGY 1600 WINDHOLM DR. P.O. BOX 83008 LINCOLN, NE 68501 RANDY KREFFELS 402-437-1715
CIVIL ENGINEER BENESCH 825 J Street LINCOLN, NE 68508 FRANK DOLAND 402-479-2200	WINOSTREAM 401 S. 21ST ST. P.O. BOX 81509 LINCOLN, NE 68510 KEN ADAMS 402-466-6794



### Professional Seals

<b>CIVIL ENGINEER</b> The document originally issued and sealed by: Nathan L. Harcourt Registered Professional Engineer E-12425 On 11.2.11 This media should not be considered a certified document.	<b>STRUCTURAL ENGINEER</b> The document originally issued and sealed by: Darren D. Sperling Registered Professional Engineer E-5884 On 11.2.11 This media should not be considered a certified document.
<b>MECHANICAL ENGINEER</b> The document originally issued and sealed by: Brandon M. Bire Registered Professional Engineer E-1494 On 11.2.11 This media should not be considered a certified document.	<b>ELECTRICAL ENGINEER</b> The document originally issued and sealed by: Jon P. Dalton Registered Professional Engineer E-1194 On 11.2.11 This media should not be considered a certified document.
<b>ARCHITECT COORDINATING PROFESSIONAL</b> The document originally issued and sealed by: David E. Osborn Registered Professional Architect A-3465 On 11.2.11 This media should not be considered a certified document.	

## BID DOCUMENTS

FOR BIDDING PURPOSES ONLY

### Cover Sheet - Building and Canopy

Cover

**LEGEND - SURVEY (UTILITIES)**

- ELECTRIC MANHOLE
- ELECTRIC METER
- ELECTRICAL RISER
- GAS BLOW OFF
- GAS METER
- GAS VALVE
- GUY POI F
- GUY ANCHOR
- LIGHT POLE
- MONITORING WELL
- ORNAMENTAL LIGHT
- PULL BOX
- SPRINKLER CONTROL BOX
- SPRINKLER HEAD
- STORM DRAINAGE FLARED END SECTION
- STORM DRAINAGE GRATE INLET
- STORM DRAINAGE CURB INLET
- STORM DRAINAGE MANHOLE
- TELEPHONE BOX
- TELEPHONE PULL BOX
- TELEVISION/CABLE RISER BOX
- TRAFFIC SIGNAL
- TRAFFIC CONTROL BOX
- UTILITY POLE
- WASTE WATER MANHOLE
- WATER HYDRANT
- WATER BLOW OFF
- WATER MANHOLE
- WATER PRIVATE WELL
- WATER STOP BOX
- WATER VALVE
- WATER YARD HYDRANT
- STORM DRAINAGE
- WASTE WATER
- WATER

**LEGEND - SURVEY (NON SURVEYED UTILITIES)**

- GAS LINE
- ELECTRICAL SERVICE
- ELECTRICAL SERVICE OVERHEAD
- WASTE WATER
- STORM DRAINAGE
- WATER
- TELEPHONE LINE
- TELEPHONE LINE OVERHEAD
- FIBER OPTIC TELE. LINE
- TELEVISION/CABLE TV LINE
- TELEVISION/CABLE TV LINE OVERHEAD
- TRAFFIC SIGNAL

**LEGEND - SURVEY (MISC.)**

- BENCH MARK
- BORING
- FENCE - R.O.W. OR WIRE
- FENCE - CHAIN LINK
- FENCE - PICKET, PRIVACY OR SPLIT RAIL
- FLOWLINE
- GUARDRAIL
- HEAD STONE
- MAILBOX
- RAILROAD CROSSING SIGNAL
- RAILROAD SWITCH
- RAILROAD TRACKS
- RETAINING WALL
- SIGN
- WATER EDGE

**LEGEND - EROSION & SEDIMENT CONTROL**

- SYNTHETIC FABRIC SILT FENCE
- SEEDING, TYPE 'C'
- COVER CROP SEEDING
- SODDING
- EROSION CONTROL MAT - STRAW
- EROSION CONTROL MAT - SYNTHETIC
- EROSION CONTROL MAT - BLEND

**LEGEND - SURVEY (LANDSCAPE)**

- BUSH - CONIFEROUS
- BUSH - DECIDUOUS
- BUSH - CONIFEROUS BUSH ROW
- BUSH - DECIDUOUS BUSH ROW
- STUMP - < 12"
- STUMP - 12" TO 23"
- STUMP - 24" TO 35"
- STUMP - > 36"
- TREE - CONIFEROUS MASS PERIMETER
- TREE - CONIFEROUS < 12"
- TREE - CONIFEROUS 12" TO 23"
- TREE - CONIFEROUS 24" TO 35"
- TREE - CONIFEROUS > 36"
- TREE - CONIFEROUS TREE LINE
- TREE - DECIDUOUS MASS PERIMETER
- TREE - DECIDUOUS < 12"
- TREE - DECIDUOUS 12" TO 23"
- TREE - DECIDUOUS 24" TO 35"
- TREE - DECIDUOUS > 36"
- TREE - DECIDUOUS TREE LINE
- TREE REMOVAL

**LEGEND - RIGHT-OF-WAY**

- LOI CORNER
- RIGHT-OF-WAY
- EXISTING CONTROL ACCESS
- EXISTING PERMANENT EASEMENT
- EXISTING ROW
- PROPERTY LINE
- PROPOSED PERMANENT EASEMENT
- PROPOSED ROW
- PROPOSED TEMPORARY EASEMENT
- EXISTING PERMANENT EASEMENT
- PERMANENT EASEMENT
- R.O.W. TAKING
- TEMPORARY EASEMENT

**LEGEND - PROPOSED (MISC.)**

- PROPOSED LOC - CUT
- PROPOSED LOC - FILL
- PROPOSED RETAINING WALL
- ASPHALT SURFACE
- CONCRETE BIKEWAY
- CONCRETE DRIVEWAY
- CONCRETE PAVEMENT
- CONCRETE SIDEWALK
- CRUSHED ROCK SURFACING
- EARTH
- RIP RAP
- TACK ON MEDIAN

**GENERAL NOTES:**

ALL SURVEY WAS DONE BY ELECTRONIC INSTRUMENT. ALL ELEVATIONS SHOWN ARE U.S.C.&G.S.

THE CURRENT CITY OF LINCOLN STANDARD PLANS AND STANDARD SPECIFICATIONS FOR MUNICIPAL CONSTRUCTION SHALL BE USED FOR THIS PROJECT.

THE CONTRACTOR SHALL COORDINATE THE CONSTRUCTION OF UTILITIES BY OTHERS, SUCH AS GAS MAINS, WATER MAINS AND ANY OTHER UTILITY.

THE APPROXIMATE LOCATION OF KNOWN CABLES AND UTILITIES ARE INDICATED ON THE PLANS. ALL CABLES AND UTILITIES MAY NOT BE SHOWN. PRIOR TO BEGINNING ANY WORK ALL CONTRACTORS SHALL HAVE CONTACTED ONE CALL TELEPHONE, GAS, WATER, SEWER, COMMUNICATION, LIGHTING LINES AND OTHER CABLES/UTILITIES WITHIN THE CONSTRUCTION SITE.

EXISTING PAVEMENT, TURF, ROADS, CABLES, UTILITIES, AND INCIDENTALS THAT ARE DAMAGED BY THE CONTRACTOR SHALL BE REPAIRED BY THE CONTRACTOR AT NO COST TO THE CITY OF LINCOLN.

THE CONTRACTOR SHALL PRESERVE ALL SURVEY CONTROL. THE CONTRACTOR IS RESPONSIBLE FOR ALL STAKING ON THIS PROJECT.

PRIOR TO MOVING OFF THE JOB THE CONTRACTOR SHALL NOTIFY THE WEST HAYMARKET JOINT PUBLIC AUTHORITY TO PERFORM A FINAL WALK-THROUGH INSPECTION.

SEE AMTRAK BUILDING GEOTECHNICAL REPORT FOR COMPACTION REQUIREMENTS FOR GRADING AT THE AMTRAK BUILDING SITE AND AMTRAK PLATFORM.

FIELD VERIFY EXACT UTILITY LINE LOCATIONS AT THE IN AND CROSSING LOCATIONS AND COORDINATE WITH THE ENGINEER IF MODIFICATIONS ARE REQUIRED PER MEASURED FIELD CONDITIONS.

THE CONSTRUCTION NOTES WITHIN THIS PLAN SET ARE INTENDED TO IDENTIFY THE MAJOR WORK ITEMS. ALL ITEMS NOT SPECIFICALLY MENTIONED SHALL BE CONSIDERED SUBSIDIARY TO ITEMS TO WHICH THEY ARE RELATED.

EXCAVATIONS THAT WILL BE OCCUPIED BY PERSONNEL SHALL BE MADE IN ACCORDANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) CONSTRUCTION STANDARDS - 29 CFR PART 1926 SUBPART P - EXCAVATIONS AS PUBLISHED IN THE FEDERAL REGISTER, VOL. 54, 209.

**GENERAL NOTES**

SCALE: NO SCALE

AMTRAK BUILDING

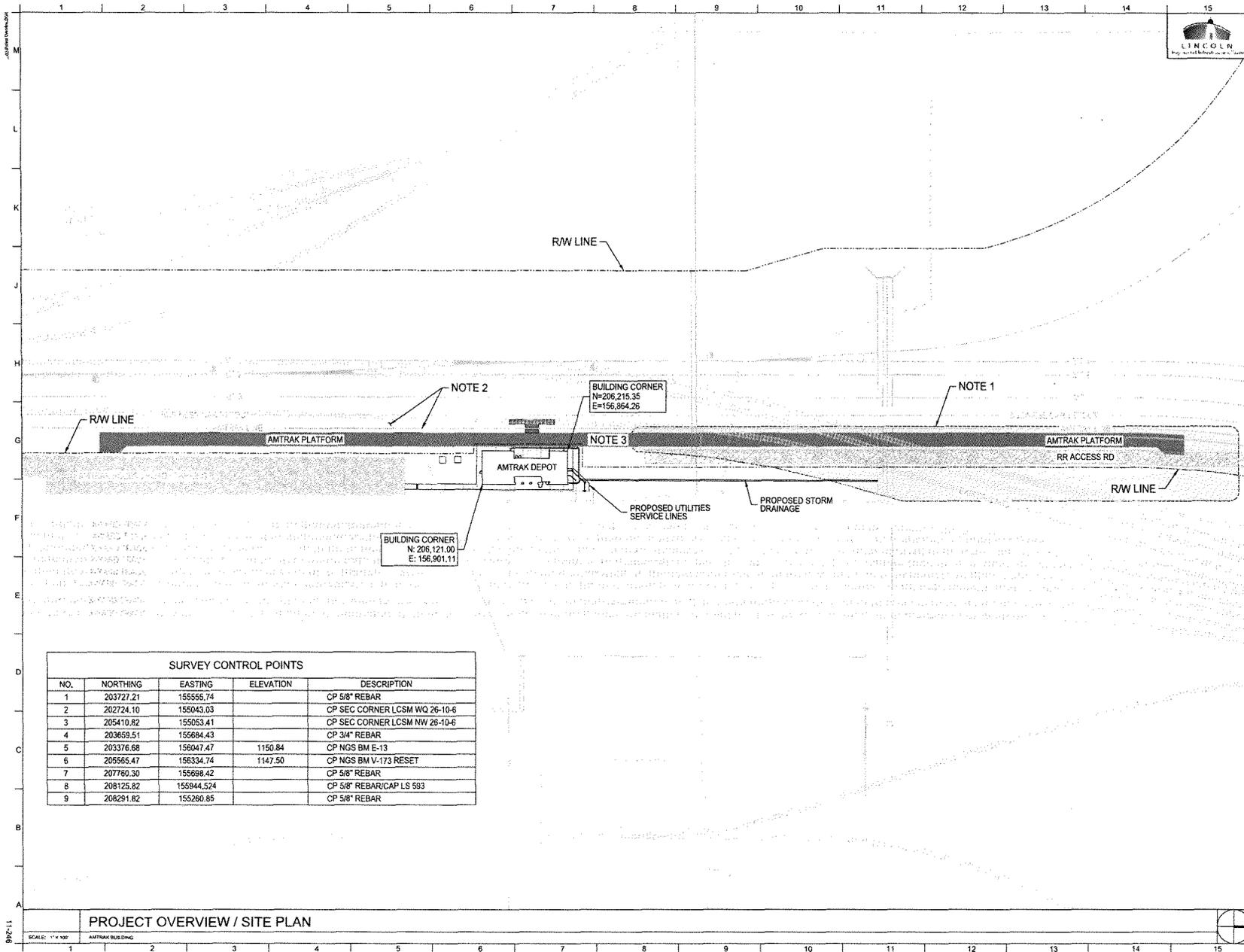
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 Nathan L. Hengstler  
 Professional Civil Engineer  
 E-12425  
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General Notes

C001

11-246

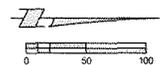
Attachment 1



SURVEY CONTROL POINTS				
NO.	NORTHING	EASTING	ELEVATION	DESCRIPTION
1	203727.21	155555.74		CP 5/8" REBAR
2	202724.10	156043.03		CP SEC CORNER LCSM WQ 26-10-6
3	205410.62	155053.41		CP SEC CORNER LCSM NW 26-10-6
4	203659.51	156684.43		CP 3/4" REBAR
5	203376.68	156047.47	1150.84	CP NGS BM E-13
6	205565.47	156334.74	1147.50	CP NGS BM V-173 RESET
7	207760.30	155698.42		CP 5/8" REBAR
8	208125.82	155944.524		CP 5/8" REBAR/CAP LS 593
9	208291.82	155260.85		CP 5/8" REBAR



PROJECT NO.	11096	SHEET NO.	C002
DESIGN ARCH:	AB	ISSUED:	Nov 2, 2011
PROJ. ARCH:	AB	DRAWN BY:	AB



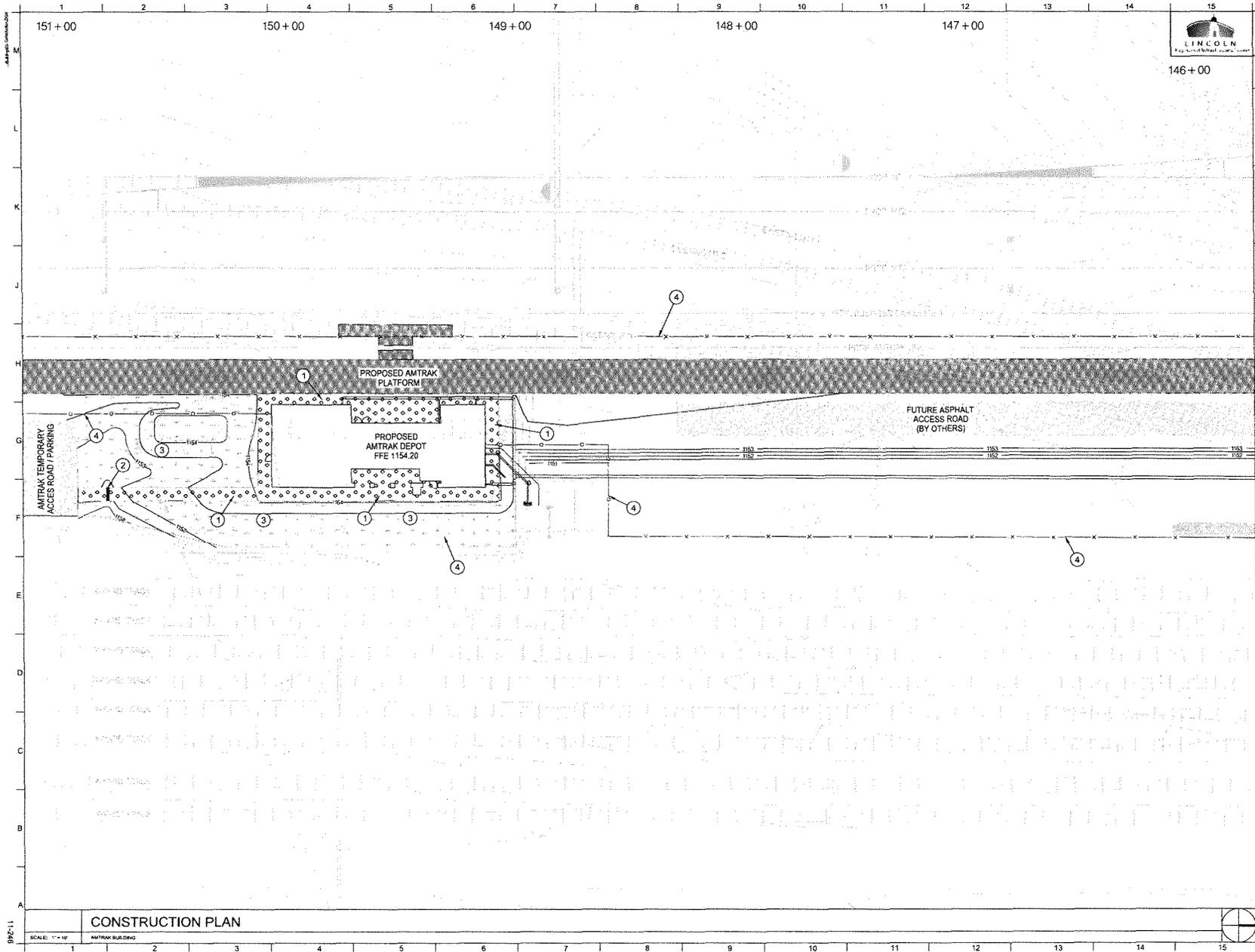
**NOTE 1**  
CONSTRUCTION CAN NOT OCCUR IN THIS AREA UNTIL BNSF HAS REMOVED MAIN TRACKS 1, 2, & 3.

**NOTE 2**  
TRACK GRADING AND CONSTRUCTION WILL BE OCCURRING ALONG THE ENTIRE WEST EDGE OF THE AMTRAK PLATFORM CONCURRENTLY THE WORK FOR THIS PROJECT. THE CONTRACTOR SHALL COORDINATE AND COOPERATE WITH BNSF AND BNSF'S CONTRACTOR(S) AT ALL TIMES.

**NOTE 3**  
WORK FOR THE AMTRAK PLATFORM CONSTRUCTION WILL BE PERFORMED CONCURRENTLY THE WORK FOR THIS PROJECT. THE CONTRACTOR SHALL COORDINATE WITH THE PLATFORM CONTRACTOR AT ALL TIMES.

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 Professional Civil Engineer  
 C-12425  
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Project Overview /  
 Site Plan

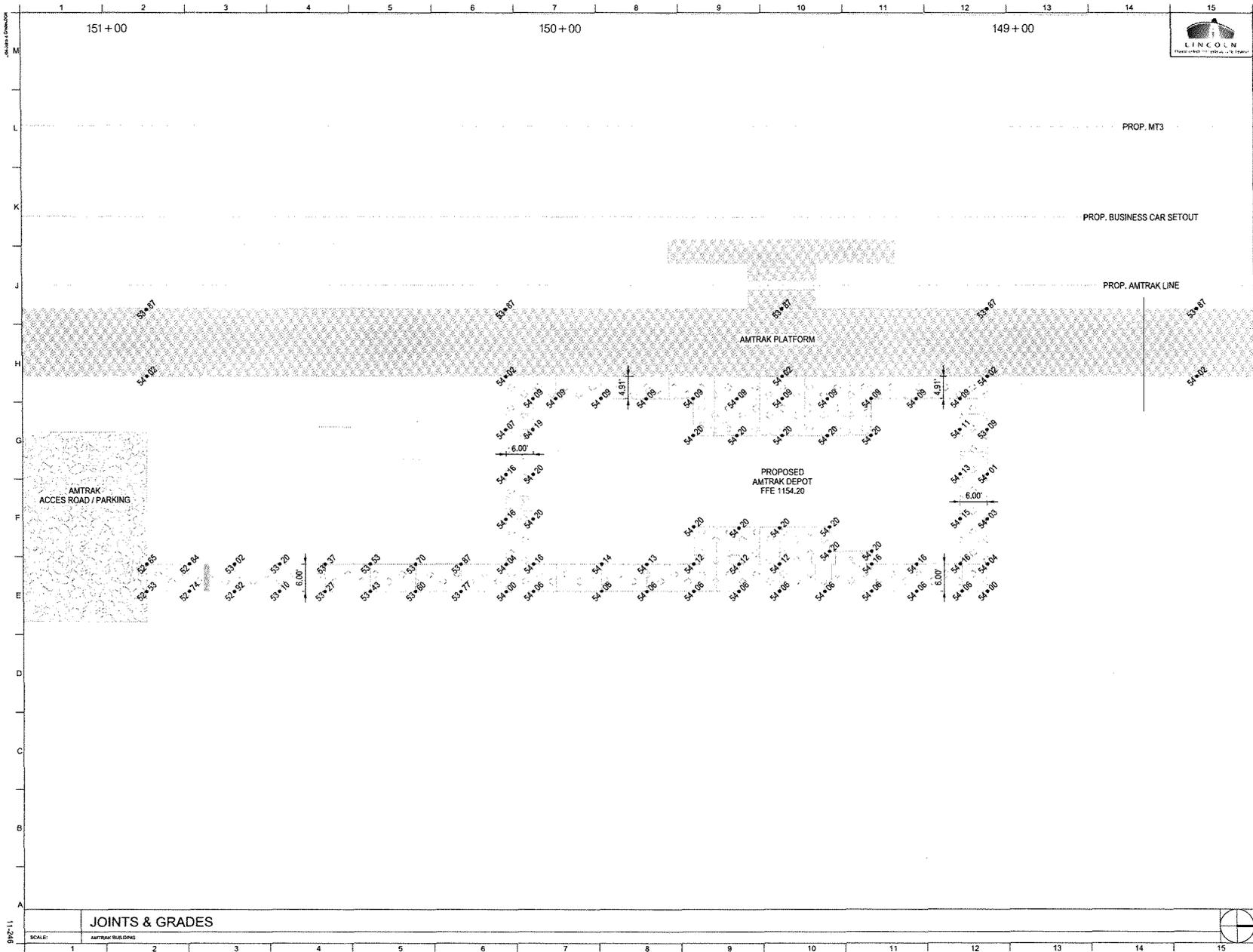


	PROJECT NO.	SHEET NO.
	87998	C003
	DESIGN ARCH: AB	ISSUED: Nov 2, 2011
	PROJ. ARCH: AB	DRAWN BY: AB

- KEYNOTE LEGEND**
- 
- ① CONSTRUCT 2,646 SF OF 5" P.C.C. SIDEWALK
  - ② CONSTRUCT SIDEWALK CHASE. SEE DETAIL ON SHEET C003.
  - ③ PLACE TOPSOIL (175 CY) AND SEED 0.3 ACRES WITH CITY OF LINCOLN TYPE C SEEDING.
  - ④ PROPOSED CHAINLINK FENCE (BY OTHERS)
  - ⑤ THE SITE WAS PREVIOUSLY ROUGH GRADED BY OTHERS. THE CONTRACTOR SHALL FINAL GRADE SITE TO THE CONTOURS SHOWN.

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Construction Plan



PROJECT NO. 87096		SHEET NO. C004	
DESIGN ARCH: AB		ISSUED: Nov 2, 2011	
PROJ. ARCH: AB		DRAWN BY: AB	

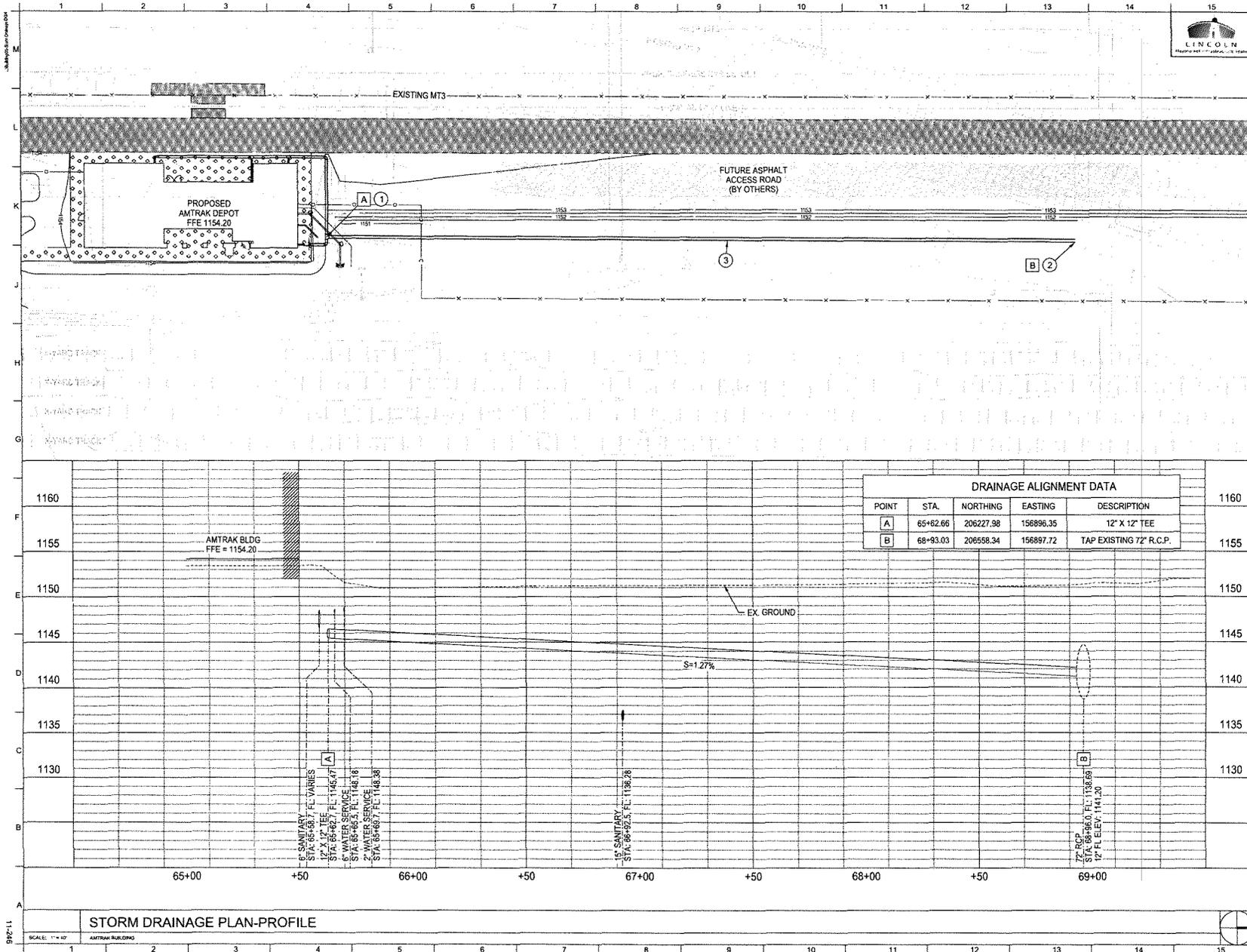
**KEYNOTE LEGEND**

0 10 20

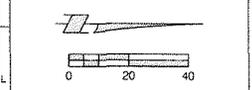
53+11 TOP OF SIDEWALK ELEVATION (ADD 1100 TO ALL SPOT ELEVATIONS)

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 Neilson L. Hengstenberg  
 Professional Civil Engineer  
 013425  
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JOINTS & GRADES



PROJECT NO. C005  
 SHEET NO. 11-246  
 DESIGN ARCH. AB  
 PROJ. ARCH. AB  
 DRAWN BY: AB  
 ISSUED: Nov 2, 2011

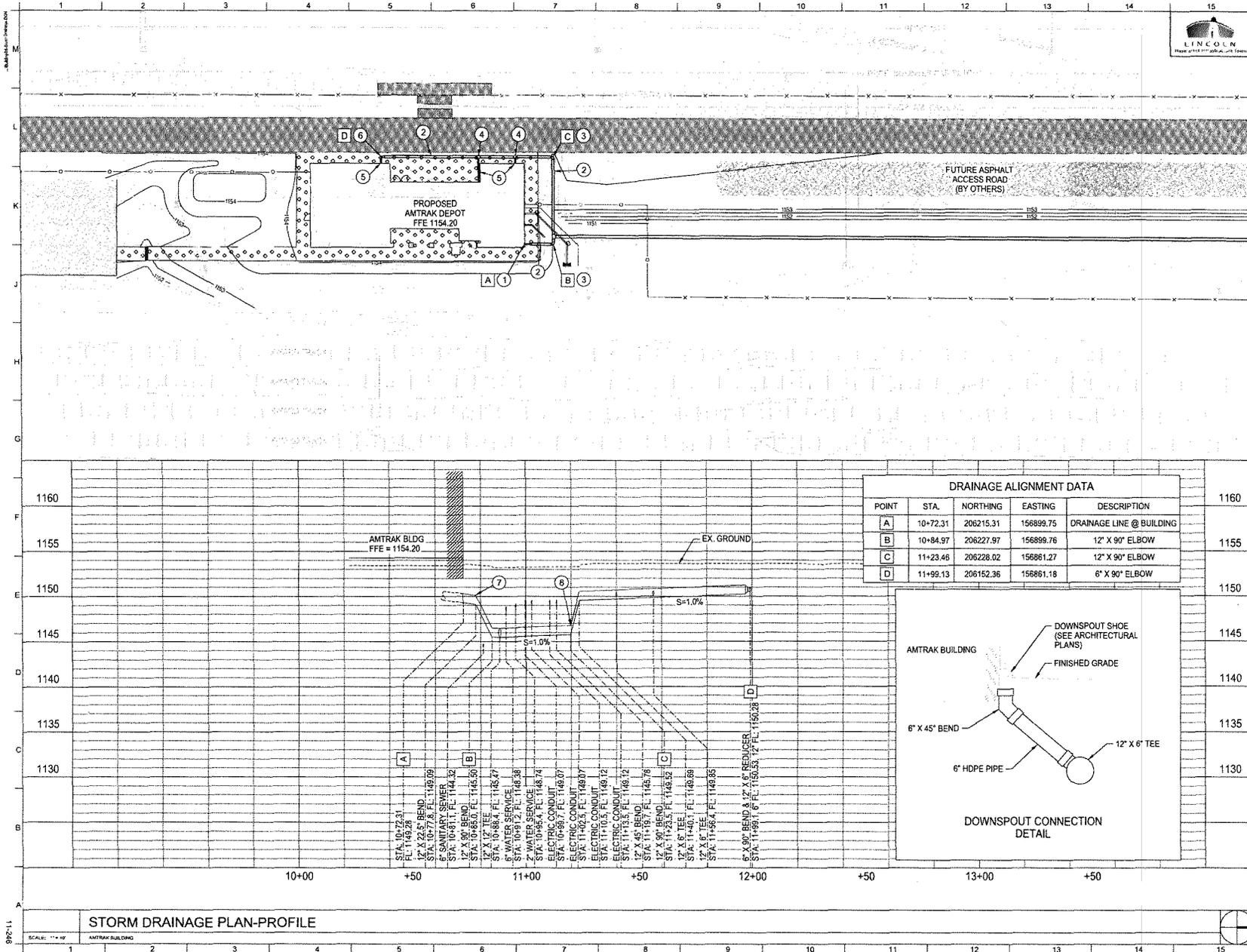


- 1 CONSTRUCT 12" X 12" TEE
- 2 TAP 12" H.D.P.E. INTO EXISTING 72" R.C.P. STORM DRAINAGE PIPE. SEE DETAIL ON SHEET C009.
- 3 CONSTRUCT 330 LF OF 12" H.D.P.E. STORM DRAINAGE PIPE AT 1.27% SLOPE (ADVANCED DRAINAGE SYSTEMS N-12 WT OR APPROVED EQUAL)
- 4 TRENCHES SHALL BE BACKFILLED AND COMPACTED AS PER THE AMTRAK GEOTECHNICAL REPORT.

DRAINAGE ALIGNMENT DATA				
POINT	STA.	NORTHING	EASTING	DESCRIPTION
A	65+62.66	206227.98	156896.35	12" X 12" TEE
B	68+93.03	206558.34	156897.72	TAP EXISTING 72" R.C.P.

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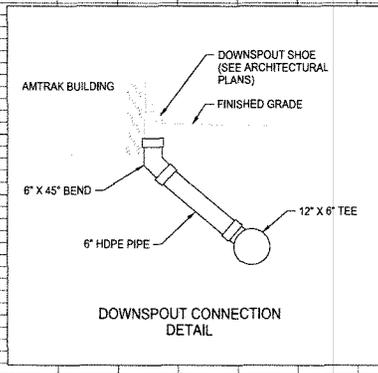
Storm Drainage Plan-Profile  
 C005



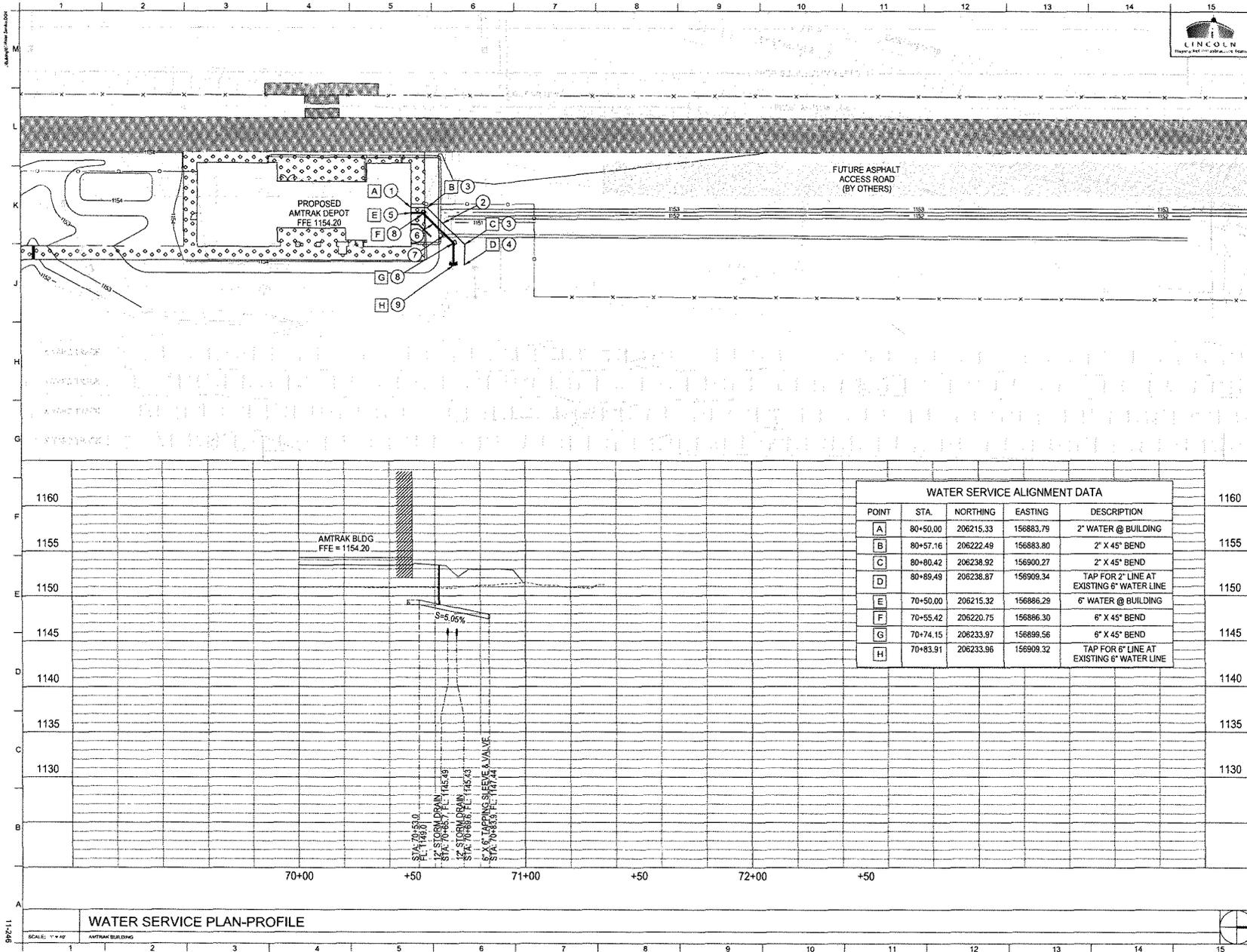
PROJECT NO.	21096	SHEET NO.	C006
DESIGN ARCH:	AB	ISSUED:	
PROJ. ARCH:	AB	DATE:	Nov 2, 2011
DRAWN BY:	AB		

- 1 CONNECT TO INTERNAL ROOF DRAIN FROM BUILDING
- 2 CONSTRUCT 130 L.F. OF 12" HDPE STORM DRAIN PIPE (ADVANCED DRAINAGE SYSTEMS N-12 WT OR APPROVED EQUAL)
- 3 CONSTRUCT 12" X 90" ELBOW (2 EA)
- 4 CONSTRUCT 12" X 6" TEE (2 EA)
- 5 CONSTRUCT ROOF DRAIN CONNECTION. SEE DETAIL ON THIS SHEET. (3 EA)
- 6 CONSTRUCT 12" X 6" REDUCER (1 EA) & 6" 90° BEND (1 EA)
- 7 CONSTRUCT 12" X 22.5" ELBOW
- 8 CONSTRUCT 12" X 45° ELBOW
- 9 TRENCHES SHALL BE BACKFILLED AND COMPACTED AS PER THE AMTRAK GEOTECHNICAL REPORT.

POINT	STA.	NORTHING	EASTING	DESCRIPTION
A	10+72.31	206215.31	156899.75	DRAINAGE LINE @ BUILDING
B	10+84.97	206227.97	156899.76	12" X 90° ELBOW
C	11+23.46	206228.02	156861.27	12" X 90° ELBOW
D	11+99.13	206152.36	156861.18	6" X 90° ELBOW

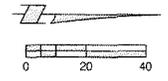


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 Nathan L. Hargrett  
 Professional Civil Engineer  
 C-10025  
 On 11/01/11  
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WATER SERVICE ALIGNMENT DATA				
POINT	STA.	NORTHING	EASTING	DESCRIPTION
A	80+50.00	206215.33	156883.79	2" WATER @ BUILDING
B	80+57.16	206222.48	156883.80	2" X 45° BEND
C	80+80.42	206238.92	156900.27	2" X 45° BEND
D	80+89.49	206238.87	156909.34	TAP FOR 2" LINE AT EXISTING 6" WATER LINE
E	70+50.00	206215.32	156886.29	6" WATER @ BUILDING
F	70+55.42	206220.75	156886.30	6" X 45° BEND
G	70+74.15	206233.97	156889.56	6" X 45° BEND
H	70+83.91	206233.96	156909.32	TAP FOR 6" LINE AT EXISTING 6" WATER LINE

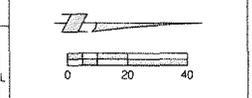
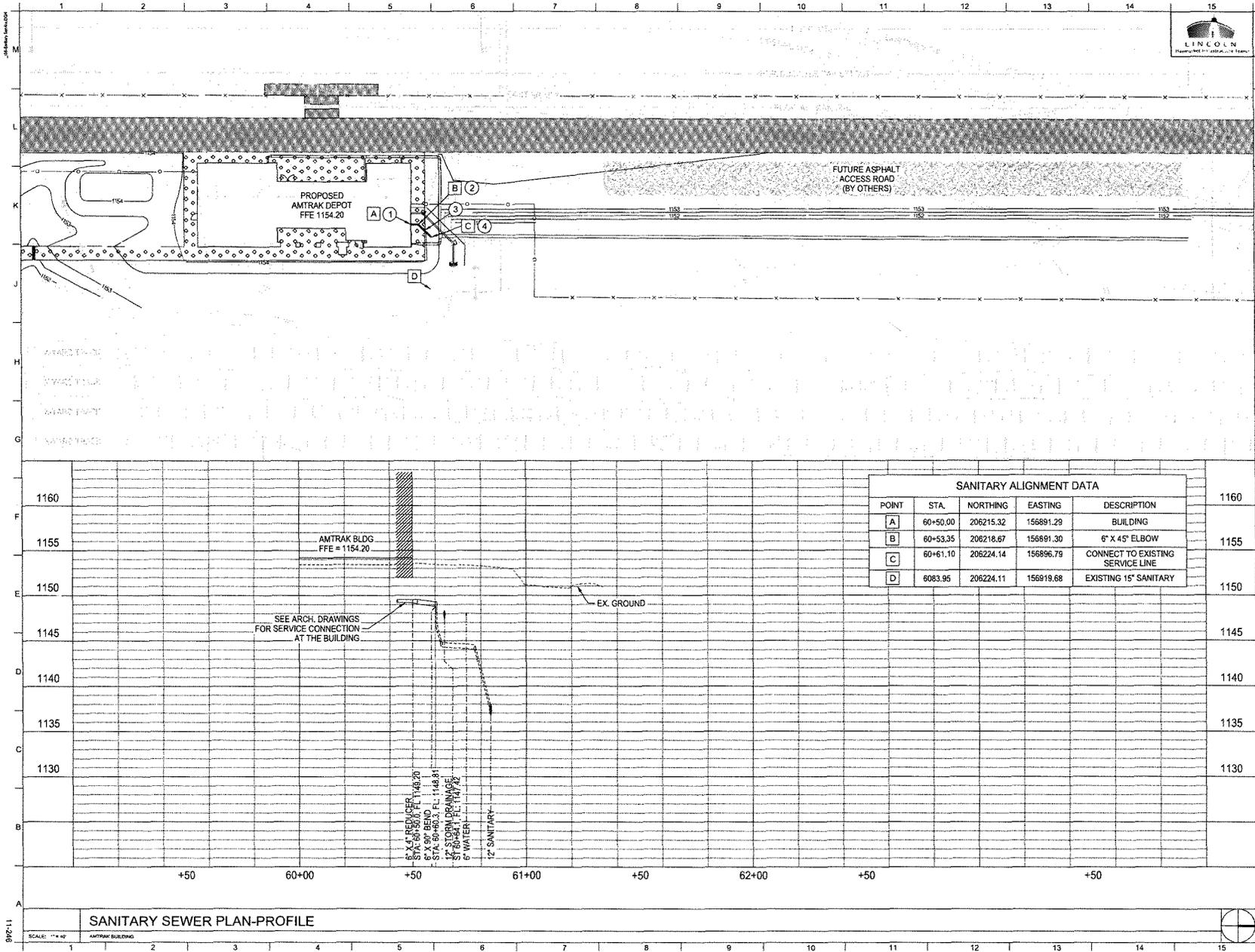
PROJECT NO. 270296 SHEET NO. C087  
 DESIGN ARCH. AB ISSUED: Nov 2, 2011  
 PROJ. ARCH. AB  
 DRAWN BY: AB



- 1 CONNECT 2" WATER TO BUILDING (SEE ARCHITECTURAL PLANS)
- 2 CONSTRUCT 40 LF OF 2" COPPER DOMESTIC WATER SERVICE LINE
- 3 CONSTRUCT 2" X 45° ELBOW (2 EA)
- 4 CONNECT 2" WATER SERVICE LINE TO 6" MAIN BY MEANS OF CORPORATION STOP IN CONFORMANCE WITH LINCOLN PLUMBING CODE.
- 5 CONNECT 6" FIRE LINE TO BUILDING. SEE ARCHITECTURAL PLANS.
- 6 CONSTRUCT POST INDICATOR VALVE.
- 7 CONSTRUCTION 34 LF OF 6" C900 PVC FIRE SERVICE LINE
- 8 CONSTRUCT 6" X 90° ELBOW WITH THRUST BLOCK (2 EA)
- 9 CONNECT TO EXISTING 6" WATER MAIN WITH 6" X 6" TAPPING SLEEVE AND VALVE
- 10 TRENCHES SHALL BE BACKFILLED AND COMPACTED AS PER THE AMTRAK GEOTECHNICAL REPORT.

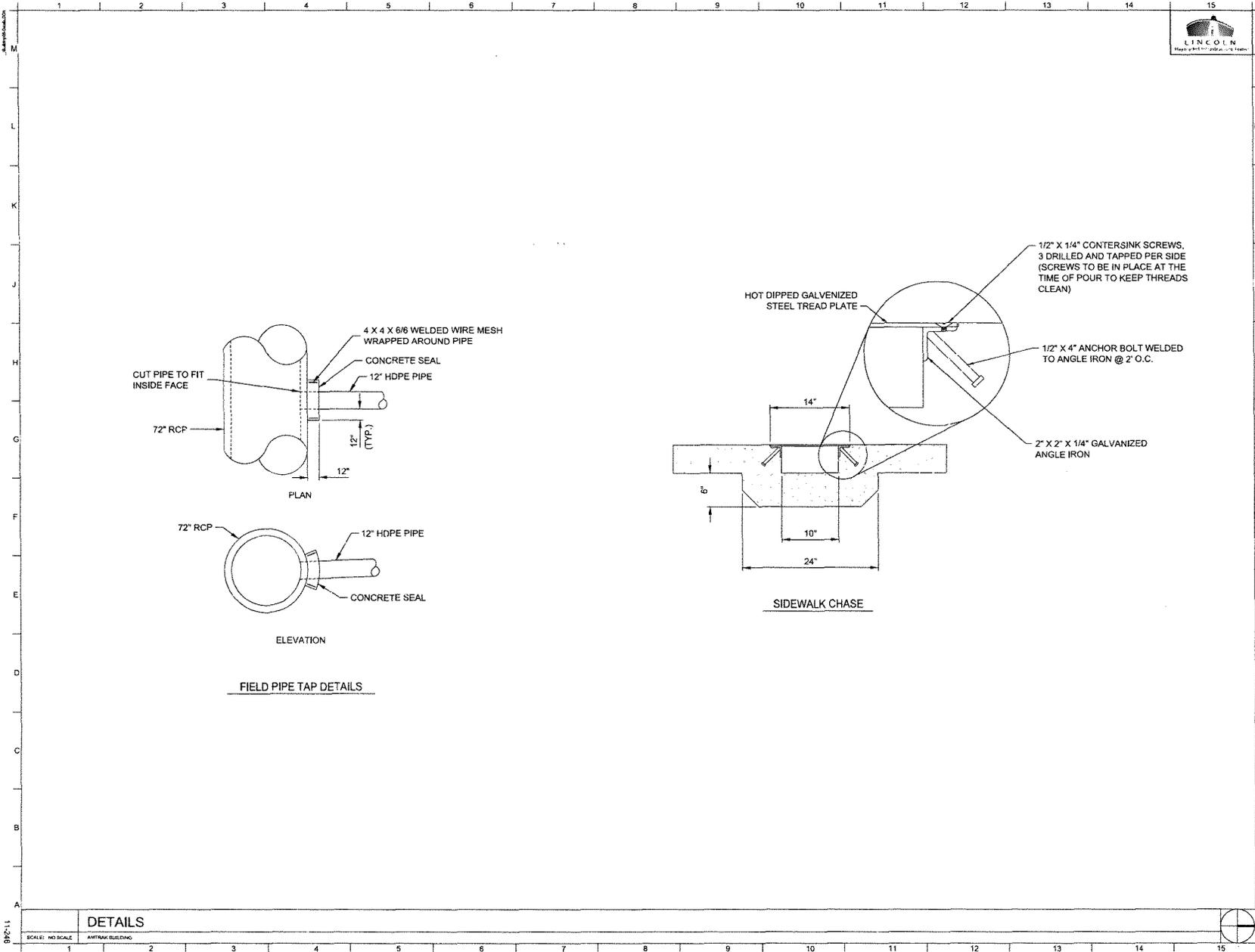
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 Professional Civil Engineer  
 E-12425  
 On: 11/2/11  
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Water Service Plan-Profile  
 C087



- 1 CONNECT TO SANITARY SEWER SERVICE LINE FROM BUILDING WITH A 4" X 6" REDUCER
- 2 CONSTRUCT 6"X45" ELBOW (1 EA)
- 3 CONSTRUCT 13 LF OF 6" C900 PVC SANITARY SEWER SERVICE PIPE
- 4 CONNECT TO EXISTING 6" SANITARY SEWER SERVICE LINE WITH 6" X 90" BEND
- 5 TRENCHES SHALL BE BACKFILLED AND COMPACTED AS PER THE AMTRAK GEOTECHNICAL REPORT.

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 01-24205  
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	PROJECT NO.	SHEET NO.
	47096	C009
	DESIGN ARCH: AB	ISSUED:
	PRCL ARCH: AB	Nov 2, 2011
	DRAWN BY: AB	

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 Michael L. Hengstler  
 Professional Civil Engineer  
 E-13425  
 On: 11.2.11  
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Details

C009 11-246

Attachment 1

**WEST HAYMARKET**  
 PROJECT NO. 2200000000  
 DESIGNER: DAD  
 ARCHITECT: DAD  
 DRAWN BY: DEL  
 SHEET NO. 11-286

**KEYNOTE LEGEND**

1 UNFACED GLASS FIBER REINFORCED PLASTER - F18  
 2 1/2" THICK POLYURETHANE INSULATION - F19  
 3 1/2" THICK POLYURETHANE INSULATION - F19  
 4 1/2" THICK POLYURETHANE INSULATION - F19  
 5 1/2" THICK POLYURETHANE INSULATION - F19  
 6 1/2" THICK POLYURETHANE INSULATION - F19  
 7 1/2" THICK POLYURETHANE INSULATION - F19

**GENERAL NOTES**

1. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.

2. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.

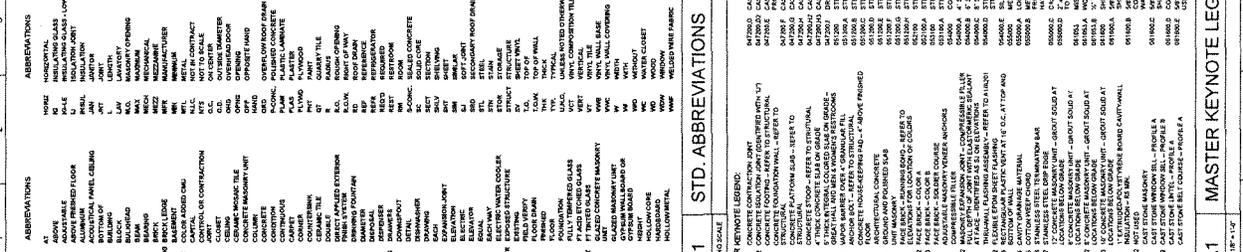
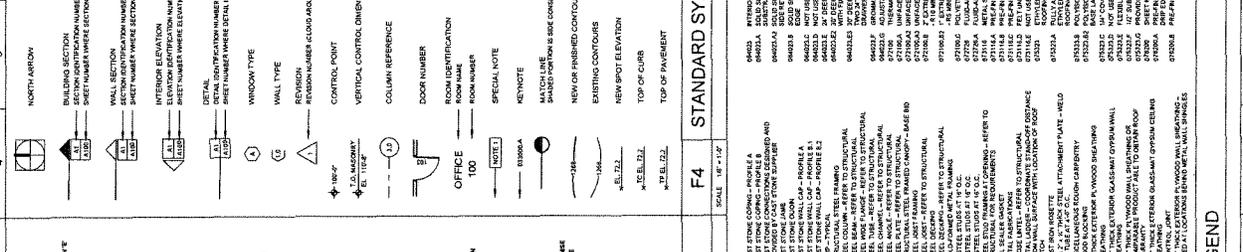
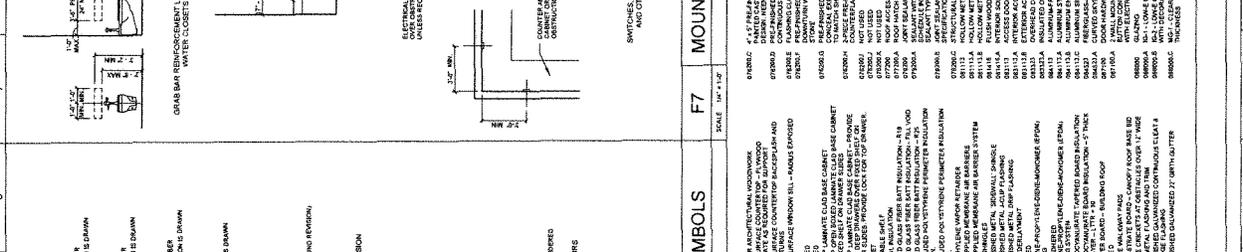
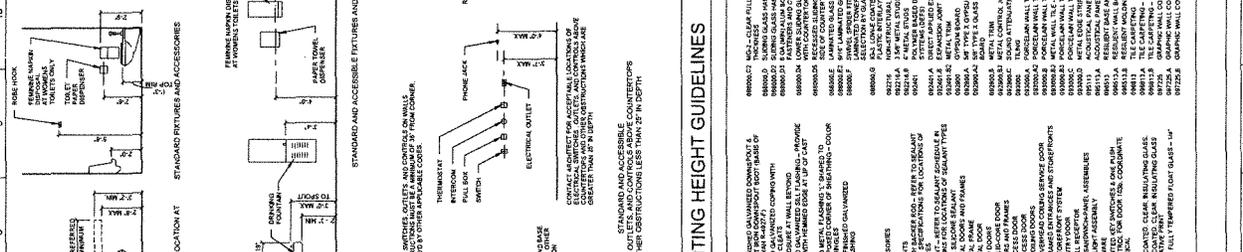
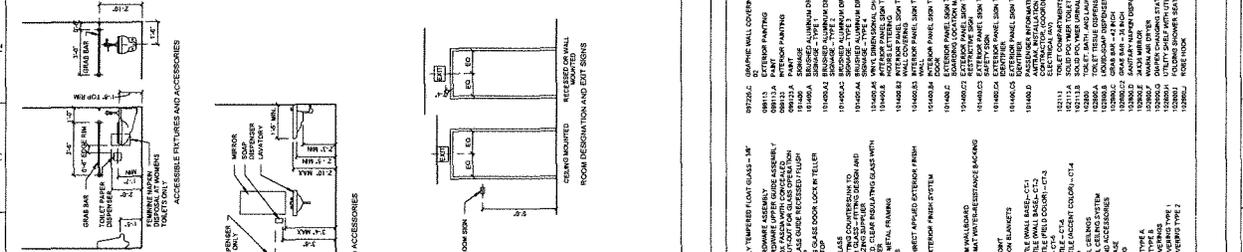
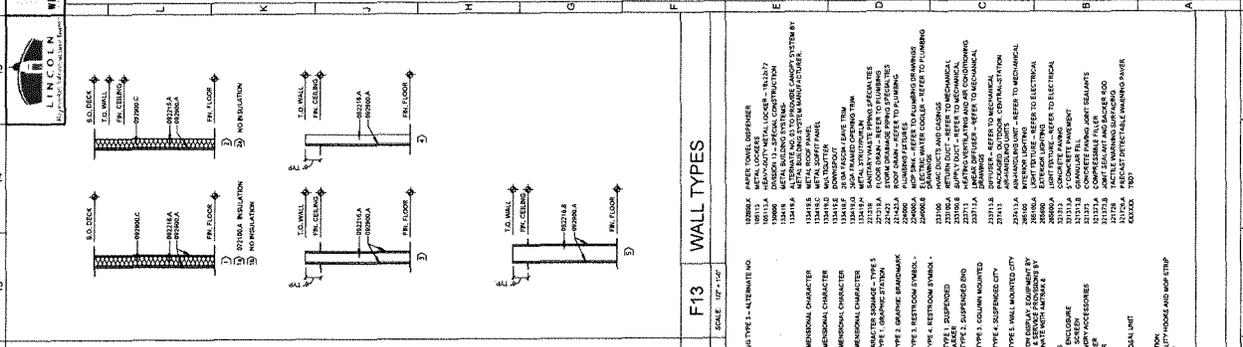
3. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.

4. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.

5. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.

6. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.

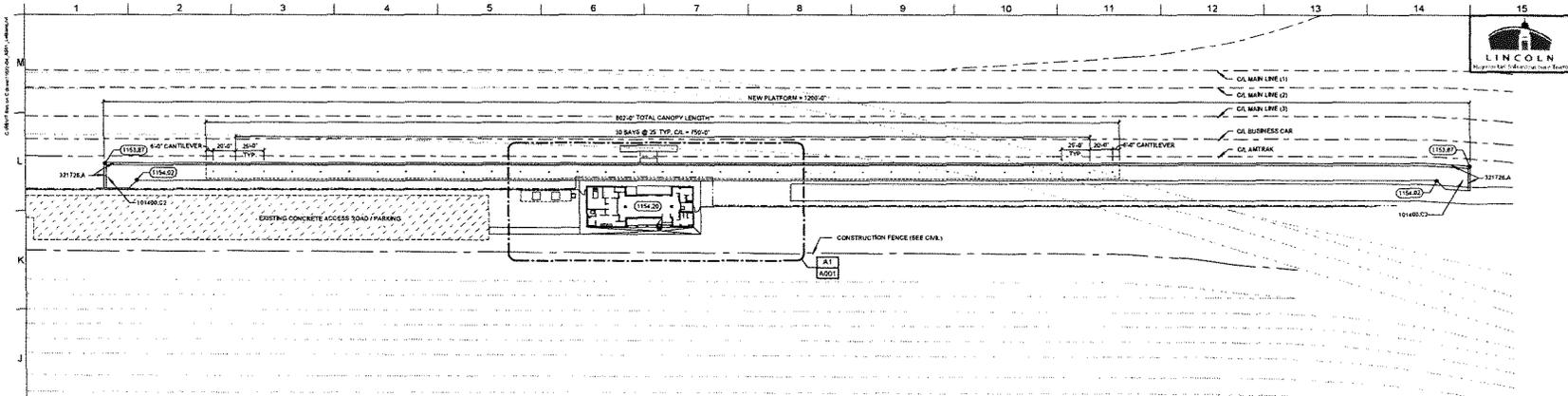
7. ALL WALLS SHALL BE FINISHED WITH UNFACED GLASS FIBER REINFORCED PLASTER (F18) UNLESS OTHERWISE NOTED.



F1	STANDARD SYMBOLS	F7	MOUNTING HEIGHT GUIDELINES	F13	WALL TYPES
SCALE: 1/8" = 1'-0"	SCALE: 1/8" = 1'-0"	SCALE: 1/8" = 1'-0"			

A1	MASTER KEYNOTE LEGEND
1	UNFACED GLASS FIBER REINFORCED PLASTER - F18
2	1/2" THICK POLYURETHANE INSULATION - F19
3	1/2" THICK POLYURETHANE INSULATION - F19
4	1/2" THICK POLYURETHANE INSULATION - F19
5	1/2" THICK POLYURETHANE INSULATION - F19
6	1/2" THICK POLYURETHANE INSULATION - F19
7	1/2" THICK POLYURETHANE INSULATION - F19

**General Notes, Wall Types, Master Keynote Legend**  
 G100



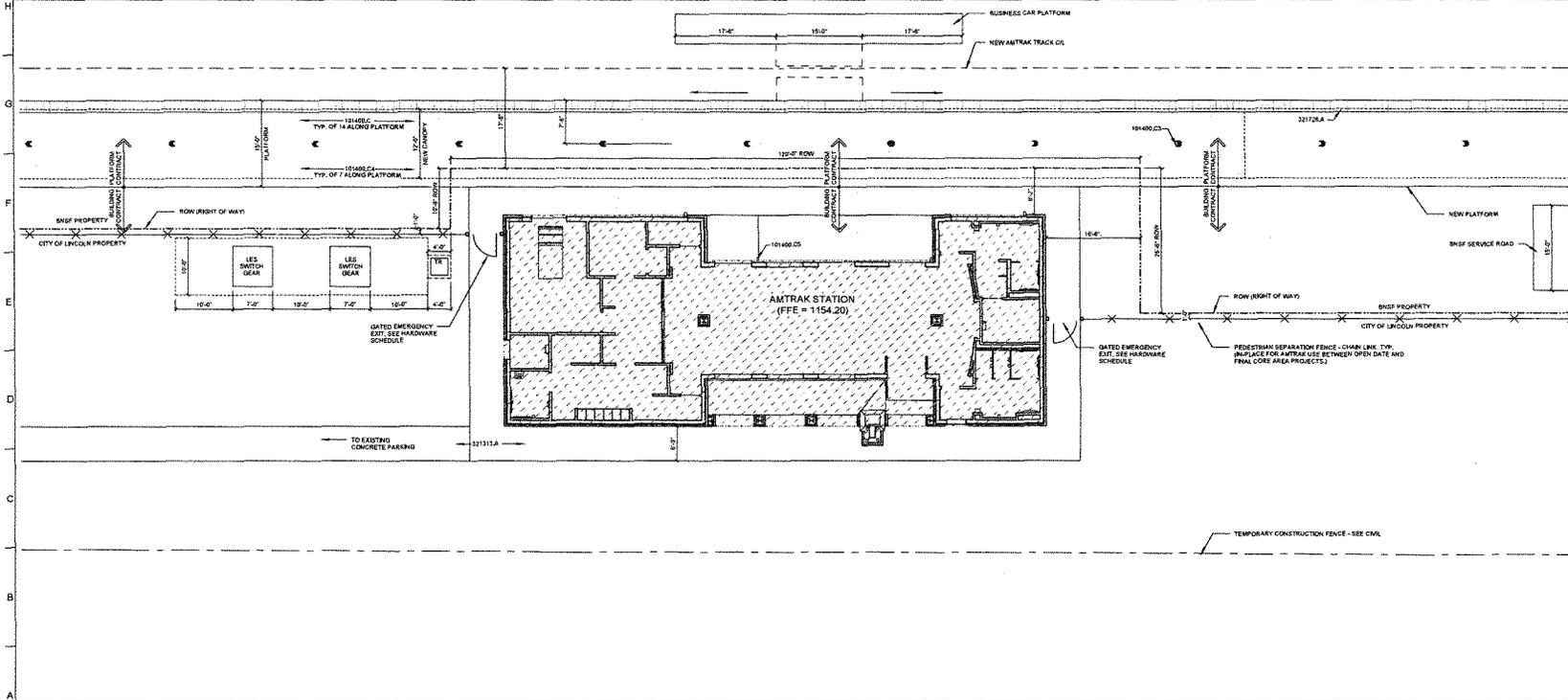
PROJECT NO.	87028P	SHEET NO.	A001
DESIGN ARCHT	DJO	ISSUED	Nov. 2, 2011
PROJ ARCH	DEO	DRAWN BY	DEL

**KEYNOTE LEGEND**

101490.C	EXTERIOR PANEL SIGN TYPE 1. SUSPENDED BOARDING LOCATION MARKER
101490.C1	EXTERIOR PANEL SIGN TYPE 2. SUSPENDED END REFLECTIVE SIGN
101490.C2	EXTERIOR PANEL SIGN TYPE 3. COLUMN MOUNTED SAFETY SIGN
101490.C3	EXTERIOR PANEL SIGN TYPE 4. SUSPENDED CITY IDENTIFIER
101490.C4	EXTERIOR PANEL SIGN TYPE 5. WALL MOUNTED CITY IDENTIFIER
321728.A	CONCRETE PAVEMENT
321728.A	PRECAST DETECTABLE WARNING PAVER

**H1 SITE PLAN**

SCALE 1" = 50'-0" GENERAL SITE PLAN, SHOWING CONTEXT OF PROJECT SURROUNDINGS AND COMPLETE PLATFORM AND CANOPY LENGTH



**A1 SITE PLAN**

SCALE 1" = 10'-0" IMMEDIATE PROJECT SITE SHOWING SITE CONDITIONS AND DIRECTION OF PLATFORM SIGNAGE

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 David E. Casale  
 Registered Professional Architect A-3466  
 On: 11.11.11  
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Site Plan - Layout

A001

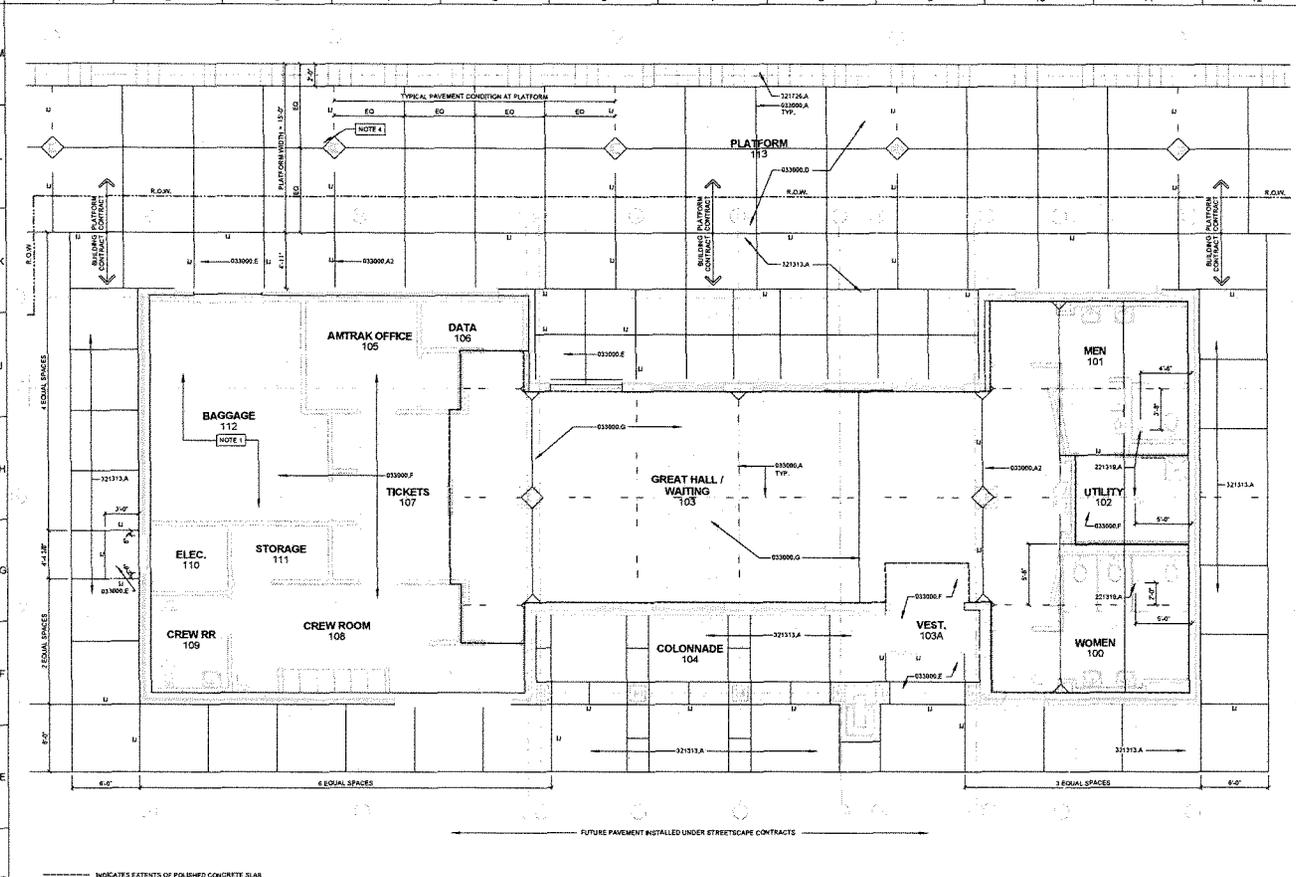
Attachment 1

11-246

11-246



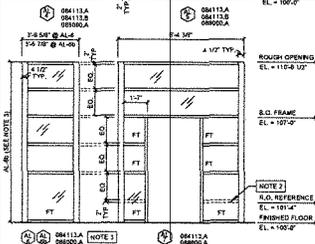
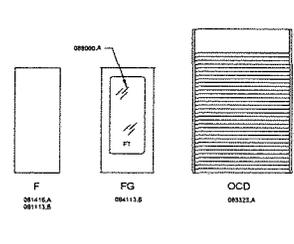
Attachment 1



**D1 JOINT PATTERN PLAN**  
SCALE: 3/8" = 1'-0"  
CONCRETE SLAB CONTROL JOINT & FLOOR DRAIN LOCATIONS

No.	Name	Floor Finish	Base	North Wall				East Wall				South Wall				Ceiling	NOTES	No.
				Material	Finish	Material	Finish	Material	Finish	Material	Finish	Material	Finish	Material	Finish			
108	INCHEN	FLOOR	C12	C12.31	GNB	PN12	C12.31	GNB	PN12	C12.31	GNB	PN12	C12.31	GNB	PN12	EXP. STN.	108	
109	MEN	FLOOR	C12	C12.31	GNB	PN12	C12.31	GNB	PN12	C12.31	GNB	PN12	C12.31	GNB	PN12	EXP. STN.	109	
110	UTILITY	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	110	
111	STREET HALL (AMTRAK)	FLOOR	C11	BB.21	GNB	PN12	GNB	PN12	BB.21	GNB	PN12	GNB	PN12	BB.21	GNB	EXP. STN.	111	
112	COLONNADE	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	112	
113	AMTRAK OFFICE	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	113	
114	DATA	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	114	
115	STREET HALL (AMTRAK)	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	115	
116	CREW ROOM	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	116	
117	CREW RR	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	117	
118	ELEC.	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	118	
119	STORAGE	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	119	
120	BAGGAGE	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	120	
121	TICKETS	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	121	
122	VEST. 103A	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	122	
123	PLATFORM	FLOOR	VB1	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	GNB	PN12	EXP. STN.	123	

No.	Door Size	P.R.	DOOR				FRAME				Hgw.	NOTES
			Matl	Fin.	Typ	Matl	Fin.	Set				
108	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
109	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
110	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
111	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
112	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
113	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
114	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
115	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
116	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
117	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
118	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
119	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
120	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
121	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
122	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		
123	2'-0" x 7'-0"	F	W	STN	STN	HM	STN	HM	STN	11		



**A1 ROOM FINISH SCHEDULE**  
SCALE: NO SCALE  
ROOM FINISH SCHEDULE - SCHEDULE NOTES IN LEGEND

**A7 DOOR SCHEDULE**  
SCALE: NO SCALE  
DOOR SCHEDULE - SCHEDULE NOTES IN LEGEND

**A10 DOOR TYPES**  
SCALE: NO SCALE

**A13 FRAME TYPES**  
SCALE: 1/4" = 1'-0"  
ALUMINUM JALY FRAME TYPES

PROJECT NO. 030000  
DESIGN ARCH. D/G 158400  
PRGJ. ARCH. DEO Nov. 2, 2011  
DRAWN BY DEL

**WEST HAYMARKET**

**LINCOLN**  
UNIVERSITY

SHEET NO. A101

**KEYNOTE LEGEND**

- 03000A CONCRETE CONTRACTION JOINT
- 03000B CONCRETE ISOLATION JOINT (SHOWN WITH 'U')
- 03000C CONCRETE PLATFORM SLAB - REFER TO STRUCTURAL
- 03000D CONCRETE STOPOFF - REFER TO STRUCTURAL
- 03000E 4" THICK CONCRETE SLAB ON GRADE
- 03000F 5" THICK INTEGRAL COLORED SLAB ON GRADE - GREAT HALL AND MEN & WOMEN RESTROOMS
- 08111A HOLLOW METAL FRAME
- 08111B HOLLOW METAL DOOR
- 08111C INTERIOR SOLID-CORE DOOR
- 08111D INSULATED OVERHEAD DOOR SERVICE DOOR
- 08111E ALUMINUM STOREFRONT SYSTEM
- 08800A R3-1 LOW-E COATED CLEAR INSULATING GLASS
- 08800B R3-1 LOW-E COATED CLEAR INSULATING GLASS WITH DECORATING FINISH
- 08800C R3-1 LOW-E COATED CLEAR INSULATING GLASS WITH PLASTIC INTERLAYER
- 22191A FLOOR DRAIN - REFER TO PLUMBING
- 22191B 2" CONCRETE PAVEMENT
- 22191C PRECAST DETECTABLE WARNING PAVEMENT

**SHEET A101 SHEET SPECIFIC NOTES**

NOTE 1 CONCRETE JOINT PATTERN ONLY SHOWN IN AREAS WHERE PATTERN IS CONSIDERED PART OF THE DESIGN AND THE CONTRACTOR SHALL PROVIDE JOINTS AT STANDARDS

NOTE 2 REFERENCE ELEVATION FROM 1st FLOOR - ACTUAL HEIGHT NOT SHOWN

NOTE 3 REFER TO SHEET A100 FOR UNDERGROUND PIPING REQUIREMENTS ASSOCIATED WITH STORM DRAINAGE CONNECTORS TO CANOPY DOWNSPUTS

**ROOM FINISH SCHEDULE NOTES**

- REFER TO INTERIOR ELEVATIONS FOR EXTENTS OF FINISHES & WALL APPLIED GRAPHICS
- COORDINATE WITH LOCATION IN RM 107 WITH ARCHITECT PRIOR TO WORK
- COORDINATE WITH LOCATION WITH ARCHITECT & OMC DOOR SWR
- INSULATED DOOR - SEE SPECIFICATIONS

**DOOR SCHEDULE NOTES**

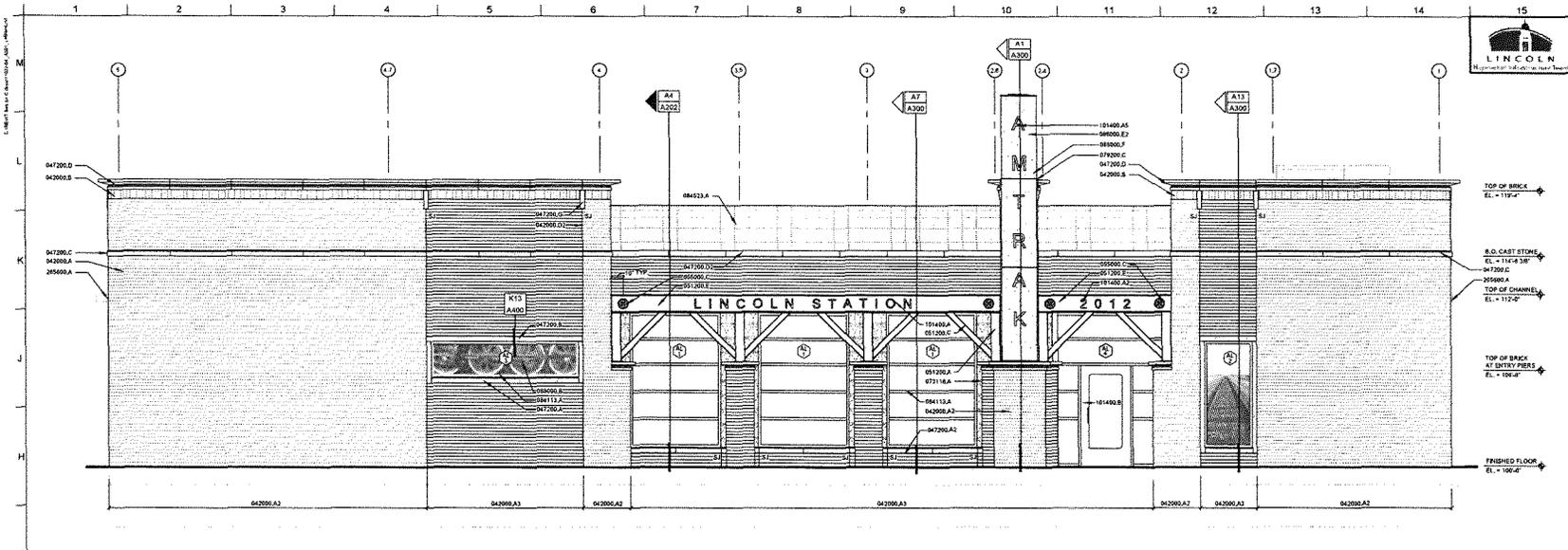
- E.C. COORDINATE ELEC. WORK WITH HARDWARE INSTALLER FOR COMPLETE & OPERABLE INSTALLATION
- COORDINATE WITH LOCATION IN RM 107 WITH ARCHITECT PRIOR TO WORK
- COORDINATE WITH LOCATION WITH ARCHITECT & OMC DOOR SWR
- INSULATED DOOR - SEE SPECIFICATIONS

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PROJECT NO.	ST096	SHEET NO.	A200
DESIGN ARCH.	DA3	ISSUED	Nov. 2, 2011
PROJ. ARCH.	DEL		
DRAWN BY	DEL		

**KEYNOTE LEGEND**

04200.A	FACE BRICK - RUNNING BOND - REFER TO ELEVATIONS FOR LOCATION OF COLORS
04200.A2	FACE BRICK - COLOR A
04200.A3	FACE BRICK - COLOR B
04200.B	FACE BRICK - SOLIDER COURSE
04200.DD	MASONRY EXPANSION JOINT - COMPRESSIBLE FILLER FULL DEPTH OF JOINT WITH ELASTOMERIC SEALANT AT FACE - IDENTIFIED AS SJ ON ELEVATIONS
04720.A	CAST STONE WINDOW SILL - PROFILE A
04720.A2	CAST STONE WINDOW SILL - PROFILE B
04720.B	CAST STONE LINTEL - PROFILE A
04720.C	CAST STONE BELT COURSE - PROFILE A
04720.D	CAST STONE COPING - PROFILE A
04720.D2	CAST STONE COPING - PROFILE B
04720.G	CAST STONE QUOIN
05120.A	STEEL COLUMN - REFER TO STRUCTURAL
05120.B	STEEL WIDE FLANGE - REFER TO STRUCTURAL
05120.C	STEEL CHANNEL - REFER TO STRUCTURAL
05500.C	CAST IRON ROSETTE
07116.A	PREFINISHED METAL SIDING WALL SHINGLE
07200.B	PREFINISHED GALVANIZED 2" GIRTH GUTTER
07200.C	4" x 6" PIP FINISHED GALVANIZED DOWNSPOUT & PAINTED CAST IRON DOWNSPOUT FOOT (BASE OF DESIGN NUMBER R407.A)
07200.C	STRUCTURAL SILICON SEALANT
08111.A	ALUMINUM STOREFRONT SYSTEM
08521.A	CURVED SKYLIGHT ASSEMBLY
08600.B	INSULATED OVERHEAD CEILING SERVICE DOOR
08600.C	INSULATED OVERHEAD CEILING SERVICE DOOR WITH DECORATIVE PAINT
08800.E2	INSULATED GLASS
08800.F	SPINEL SPIGER FITTING COUNTERSUNK TO LAMINATED TOWERS GLASS - FIT TWO DESIGN AND SELECTION BY GLAZING SUPPLIER
10140.A	BRUSHED ALUMINUM DIMENSIONAL CHARACTER SHRINKAGE - TYPE 1
10140.A2	BRUSHED ALUMINUM DIMENSIONAL CHARACTER SHRINKAGE - TYPE 2
10140.A3	VENTIL DIMENSIONAL CHARACTER SHRINKAGE - TYPE 3
10140.B	INTERIOR PANEL SIGN TYPE 1 GRAPHIC STATION HOURS LETTERING
23741.A	AIR-HANDLING UNIT - REFER TO MECHANICAL
26600.A	LIGHT FIXTURE - REFER TO ELECTRICAL

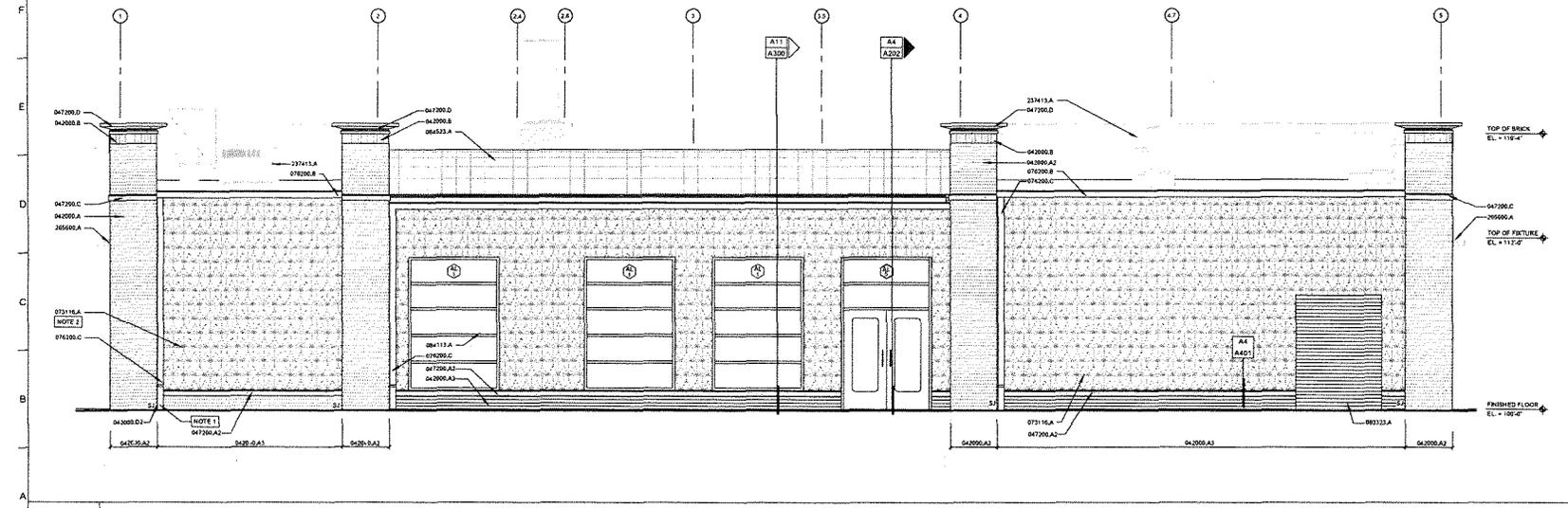
**SHEET A200 SHEET SPECIFIC NOTES**

NOTE 1: PROVIDE DOWNSPOUT CONNECTION ROOF AT TRANSITION BETWEEN DOWNSPOUT AND UNDERGROUND STORM DRAINAGE - TYPICAL PATTERN TO BE SHOWN AT TOP OF CAST STONE WINDOW FOOT CAP WITH FULL SHINGLE

NOTE 2:

**G1 EXTERIOR ELEVATION**

SCALE: 1/4" = 1'-0"  
EAST ELEVATION



**A1 EXTERIOR ELEVATION**

SCALE: 1/4" = 1'-0"  
WEST ELEVATION



**Exterior Elevations**

**A200**

Attachment 1

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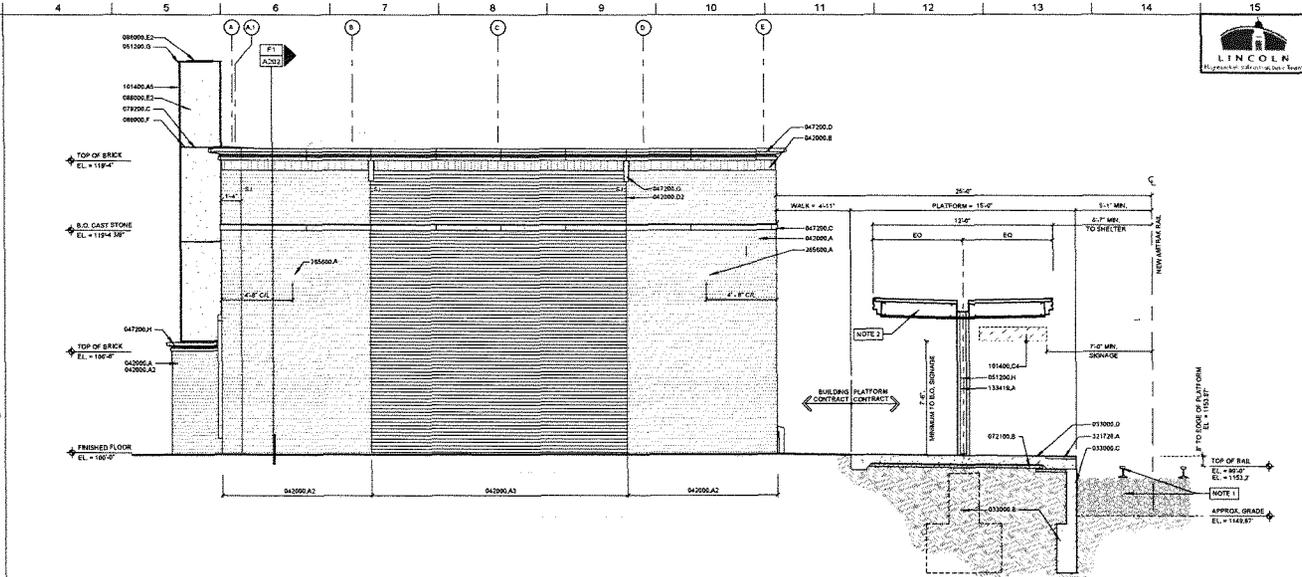
PROJECT NO. WEST HAYMARKET  
 SHEET NO. A201  
 DESIGN ARCH: DMO  
 PROJ. ARCH: DEO  
 DRAWN BY: DEL  
 Nov. 2, 2011

KEYNOTE LEGEND

- 033000.B CONCRETE FOOTING - REFER TO STRUCTURAL
- 033000.C CONCRETE FOUNDATION WALL - REFER TO STRUCTURAL
- 033000.D CONCRETE PLATFORM SLAB - REFER TO STRUCTURAL
- 042000.A FACE BRICK - FINISH BOND - REFER TO ELEVATIONS FOR LOCATION OF COLORS
- 042000.A2 FACE BRICK - COLOR A
- 042000.B FACE BRICK - COLOR B
- 042000.C FACE BRICK - SOLID COURSE
- 042000.D2 MASONRY EXPANSION JOINT - COMPRESSIBLE FILLER
- 042000.D3 FILL JOINTS OF JOINT WITH ELASTOMERIC SEALANT AT FACE - IDENTIFIED AS BY ON ELEVATIONS
- 047000.C CAST STONE BELT COURSE - PROFILE A
- 047000.D CAST STONE COURSE
- 047000.E CAST STONE COPING - PROFILE A
- 047000.F CAST STONE WALL CAP - PROFILE A
- 051200.0 STEEL PLATE - REFER TO STRUCTURAL
- 051200.1 STRUCTURAL STEEL FRAMED CANOPY - BASE BID
- 072100.0 2" EXTRUDED POLYSTYRENE PERIMETER INSULATION - 800 MM
- 073000.C STRUCTURAL SILICONE SEALANT
- 08113.0 HOLLOW METAL FRAME
- 08113.1 6" LAMINATED GLASS
- 08000.F SWIREL SPIDER FITTING COUNTERSLAB TO LAMINATED GLASS GLAZING SYSTEM DESIGN AND SELECTION BY GLAZING SUPPLIER
- 10400.02 VINYL UNIDIRECTIONAL CHARACTER SIGNAGE - TYPE 5
- 10400.04 EXTERIOR PANEL SIGN TYPE 4 SUSPENDED CITY SIGNIFIER
- 133419.A ALTERNATE NO. 03 TO PROVIDE CANOPY SYSTEM BY METAL BUILDING SYSTEM MANUFACTURER
- J5500.A LIGHT FIXTURE - REFER TO ELECTRICAL
- 22131.A 1" CONCRETE PAVEMENT
- 22170.A PRECAST SETTABLE MARKING RAVER

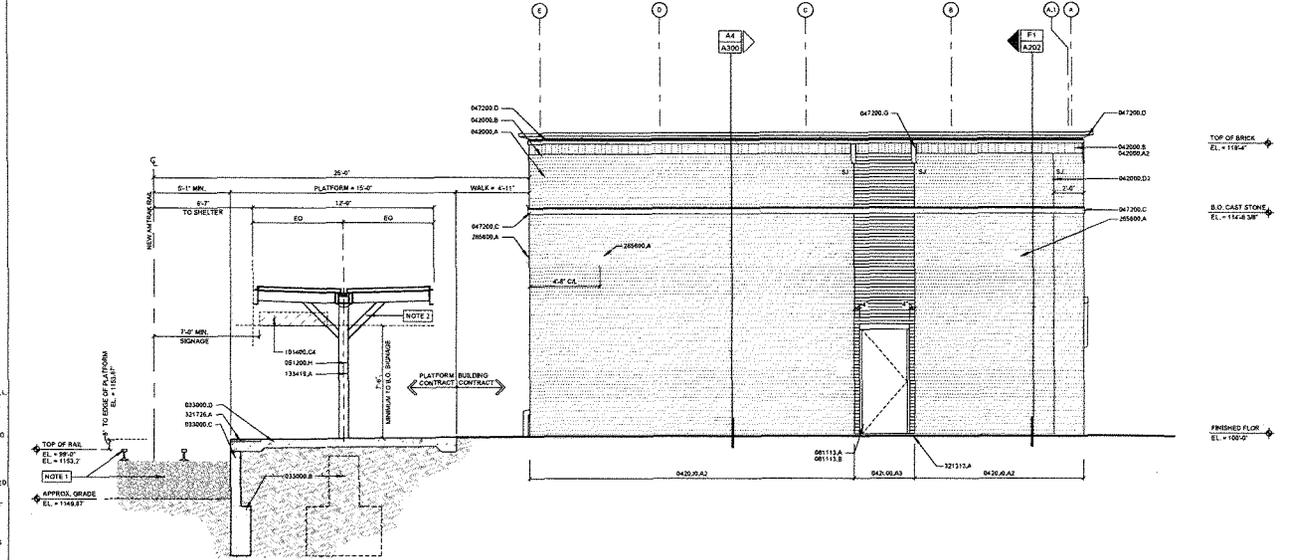
SHEET A201 SHEET SPECIFIC NOTES

- NOTE 1: TRIM BALL BALLAST AND SUB-BALLAST BY OTHERS. ALL - COORDINATE WITH BASE CONTRACTOR FOR SCHEDULING PLATFORM CONSTRUCTION WITH TRACK INSTALLATION. PLATFORM CONTRACTOR WILL NEED TO HAVE PLATFORM INSTALLED PRIOR TO INSTALLATION OF NEW BALLAST AND RAILS.
- NOTE 2: CANOPY STRUCTURE WITH EXCEPTION OF FOOTINGS IS RESPONSIBILITY OF THE BUILDING AND CANOPY CONTRACTOR. CANOPY FOOTINGS ARE THE RESPONSIBILITY OF THE PLATFORM AND GLAZING CONTRACTOR.



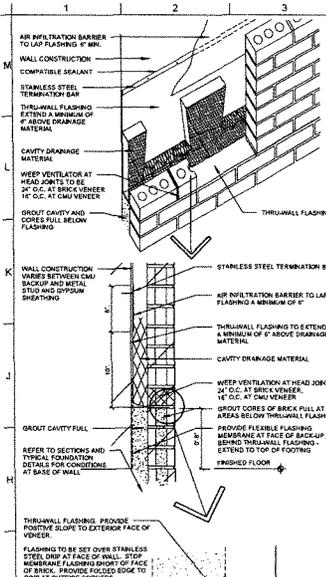
F4 EXTERIOR ELEVATION

SCALE: 1/4" = 1'-0" NORTH ELEVATION



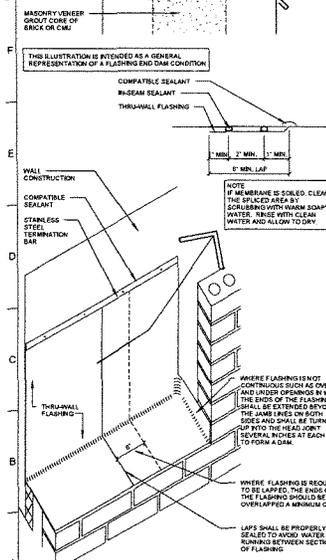
A4 EXTERIOR ELEVATION

SCALE: 1/4" = 1'-0" SOUTH ELEVATION



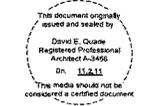
A1 TYP. MASONRY FLASHING DETAILS

SCALE: 1/2" = 1'-0" TYPICAL MASONRY FLASHING DETAILS



A1 TYP. MASONRY FLASHING DETAILS

SCALE: 1/2" = 1'-0" TYPICAL MASONRY FLASHING DETAILS



Exterior Elevations

A201



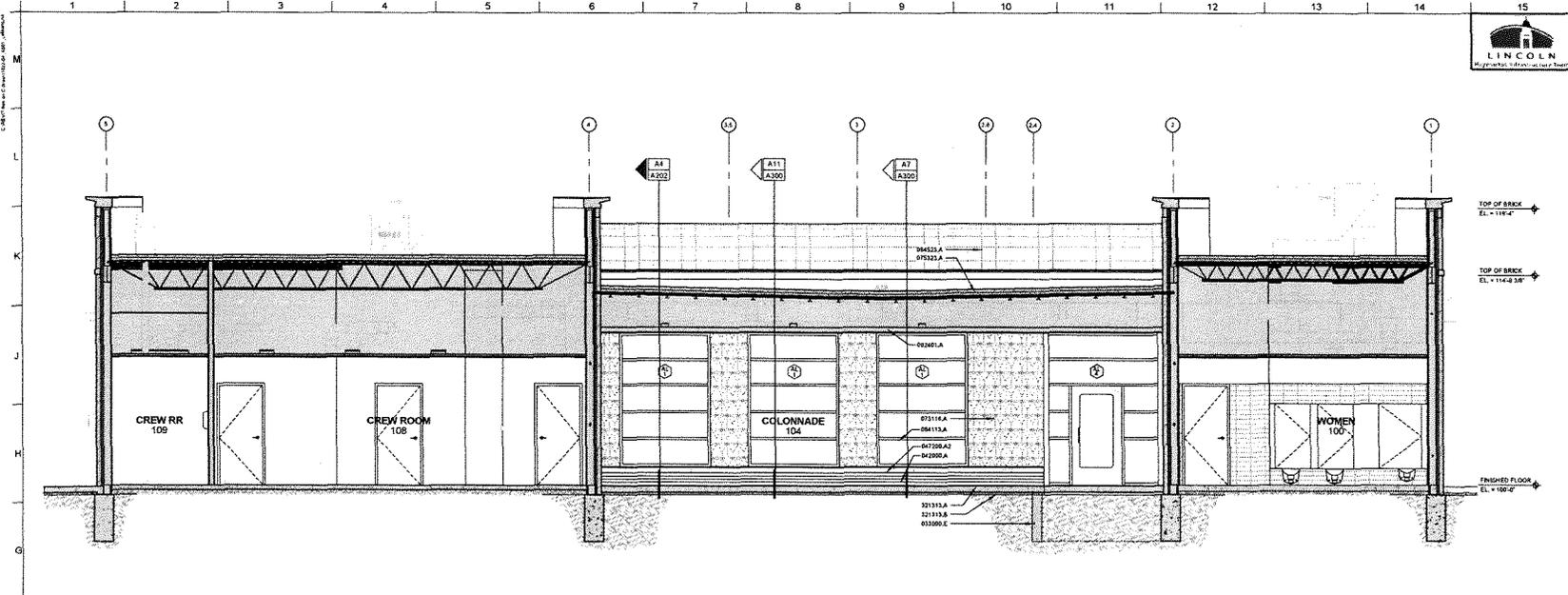
**WEST HAYMARKET**  
 PROJECT NO. SHEET NO.  
 87898 A202  
 DESIGN ARCH/ D/C DESIGNED  
 PROJ. ARCH/ DEG Nov. 2, 2011  
 DRAWN BY DEL

**KEYNOTE LEGEND**

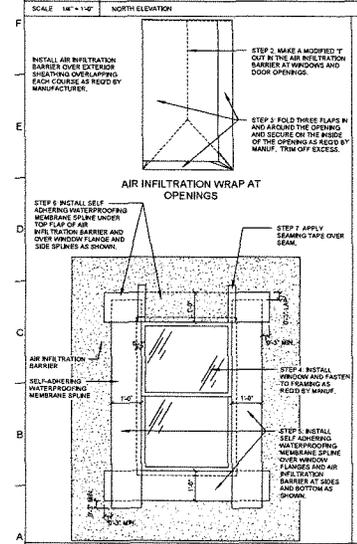
- 033000.B CONCRETE FOOTING - REFER TO STRUCTURAL
- 033000.C CONCRETE FOUNDATION WALL - REFER TO STRUCTURAL
- 033000.D CONCRETE PLATFORM SLAB - REFER TO STRUCTURAL
- 033000.E CONCRETE STOP - REFER TO STRUCTURAL
- 033000.F 5" THICK INTERPOL COLORED SLAB ON GRADE - GREAT HALL AND MEN & WOMEN'S RESTROOMS
- 033000.H VAPOR BARRIER OVER 1/2" GRANULAR FILL
- 033000.A GROUND AND FINISHED SLAB
- 043880.A FACE BRICK - FINISHING BRICK - REFER TO ELEVATIONS FOR LOCATION OF COLORS
- 042000.A2 FACE BRICK - COLOR A
- 042000.B FACE BRICK - SOLIDER COURSE
- 042000.C CAST STONE WINDOW SILL - PROFILE B
- 042000.D CAST STONE SILL COURSE - PROFILE A
- 042000.E CAST STONE COPING - PROFILE A
- 042000.F CAST STONE COPING - PROFILE B
- 042000.G CAST STONE WALL CAP - PROFILE A
- 051200.C STEEL WIDE FLANGE - REFER TO STRUCTURAL
- 051200.D 3/8" THICK EXTERIOR GLASS-WAT COFFER CEILING SHEATHING
- 072100.B 2" EXTRUDED POLYETHYLENE FIBERGLASS INSULATION - R10 MIN.
- 071114.A PRE-FINISHED METAL SIDING - 24" SHINGLE
- 075221.A FULLY ADHERED ETHYLENE-PROPYLENE-DIENE MONOMER (EPDM) ROOFING SYSTEM
- 076300.B PRE-FINISHED GALVANIZED 22" GIRTH GUTTER
- 076300.C PRE-FINISHED GALVANIZED COPING WITH CONTINUOUS CLEAR
- 084113.A ALUMINUM STOREFRONT SYSTEM
- 084221.A CURVED GLAZING ASSEMBLY
- 084911.A DIRECT MTR EXTERIOR FINISH SYSTEM
- 091400.A BRUSHED ALUMINUM DIMENSIONAL CHARACTER SIGNAGE - TYPE 2
- 091400.D PASSENGER INFORMATION DISPLAY EQUIPMENT BY ORIGINAL INSTALLATION & SERVICE PROVIDER BY CONTRACTOR (COORDINATE WITH AMTRAK & ELECTRICIAN)
- 221313.A 3" CONCRETE PAVEMENT
- 321313.B GRANULAR FILL
- 321700.A PRECAST DETECTABLE WARNING PAVEMENT

**SHEET A202 SHEET SPECIFIC NOTES**

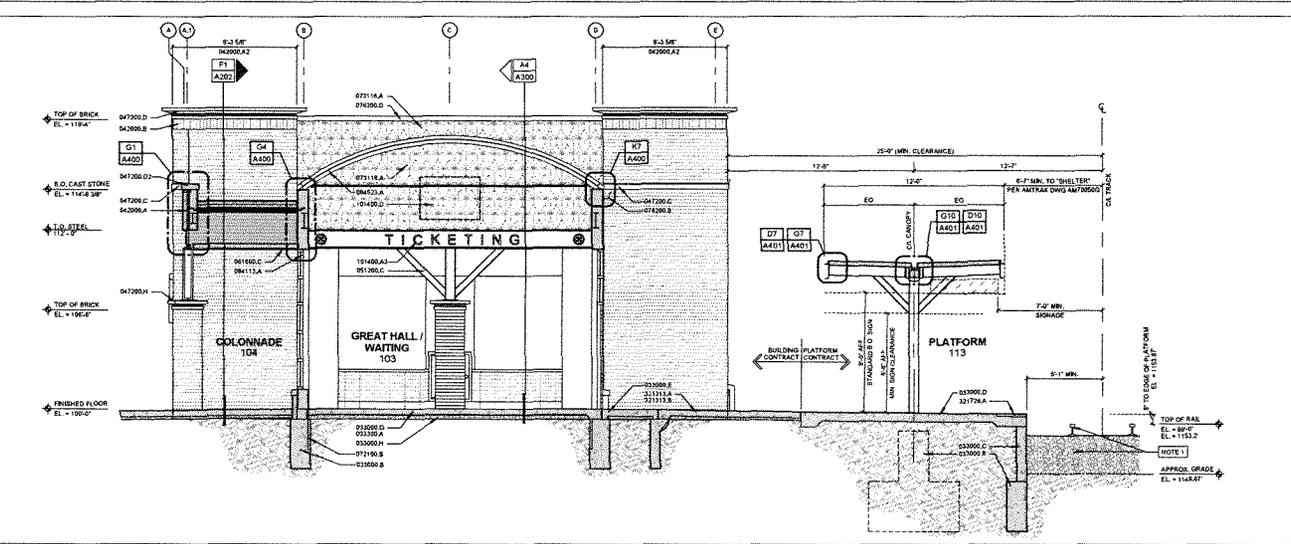
- NOTE 1: TRAIN RAIL BALLAST AND SUB-BALLAST BY OTHERS - FIELD - COORDINATE WITH BRP CONTRACTOR FOR SCHEDULING PLATFORM CONSTRUCTION WITH TRACK INSTALLATION. PLATFORM CONTRACTOR WILL NEED TO HAVE PLATFORM INSTALLED PRIOR TO INSTALLATION OF NEW BALLAST AND RAILS.



**F1 BUILDING SECTION**  
 SCALE: 1/4" = 1'-0"  
 NORTH ELEVATION



**A1 TYPICAL DETAIL**  
 SCALE: 1/2" = 1'-0"  
 TYPICAL WINDOW FLASHING DETAIL



**A4 BUILDING SECTION**  
 SCALE: 1/4" = 1'-0"  
 SOUTH ELEVATION

This document originally issued and sealed by David E. Cade Registered Professional Architect A-34661 On: 11-11-11 This modification should not be considered a certified document

**Building Sections**

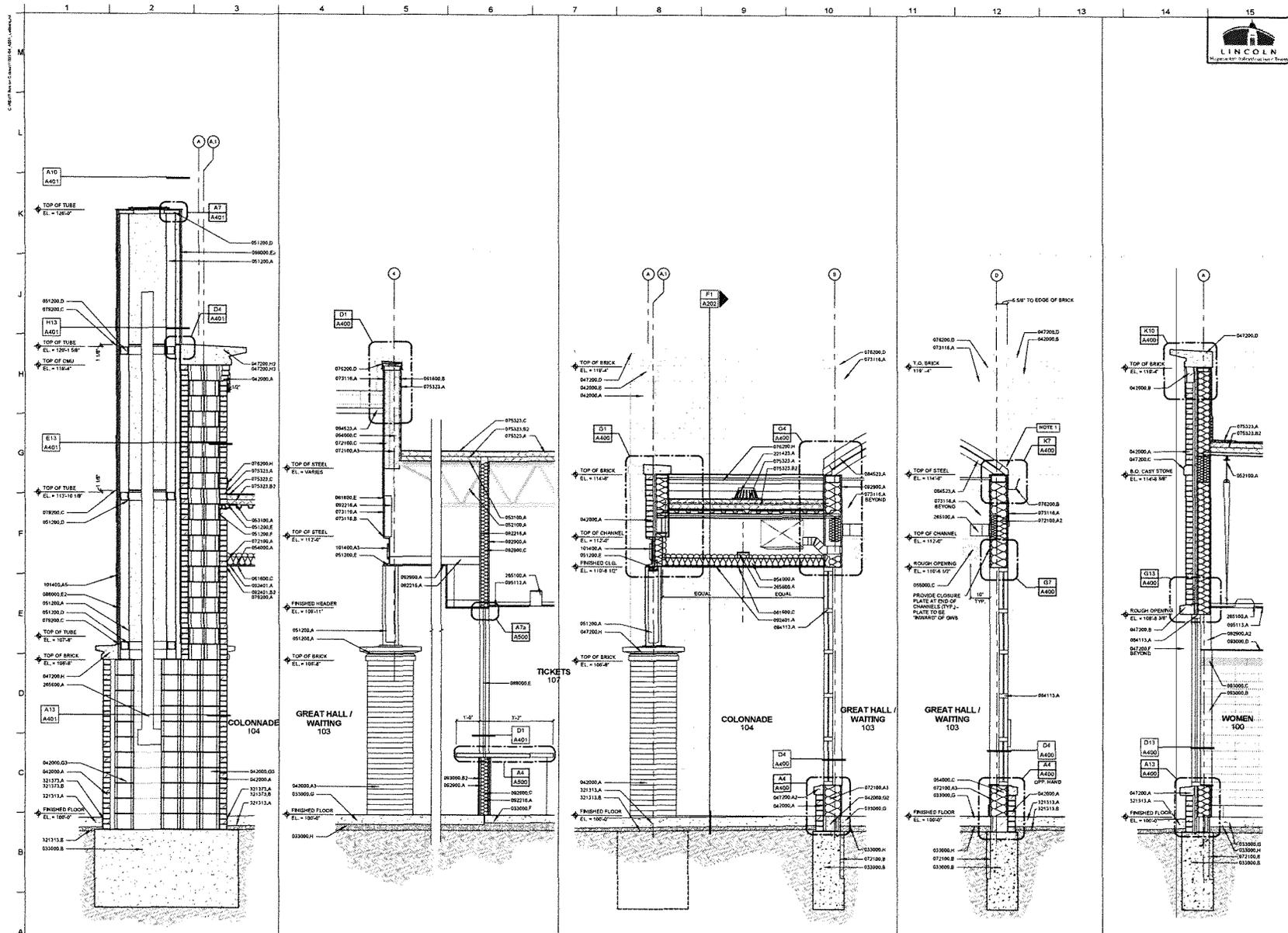
**A202**

Attachment 1

11-246

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11-246



PROJECT NO.	87906	SHEET NO.	A300
DESIGN ARCH	DJD	ISSUED	
PROJ ARCH	DEO	Nov 2, 2011	
DRAWN BY	DEL		

KEYNOTE LEGEND	
03300.8	CONCRETE FOOTING - REFER TO STRUCTURAL
03300.F	4" THICK CONCRETE SLAB ON GRADE
03300.G	5" THICK INTERIOR COLOURED SLAB ON GRADE - GREAT HALL AND MEN & WOMEN RESTROOMS
03300.H	VAPOR BARRIER OVER 4" GRANULAR FILL
04200.A	FACE BRICK - RUNNING BOND - REFER TO ELEVATIONS FOR LOCATION OF COLORS
04200.A3	FACE BRICK - COLOR B
04200.B	FACE BRICK - SOLID COURSE
04200.C2	8" CONCRETE MASONRY UNIT - GROUT SOLID AT LOCATIONS BELOW GRADE
04200.C3	16" CONCRETE MASONRY UNIT - GROUT SOLID AT LOCATIONS BELOW GRADE
04720.A	CAST STONE WINDOW SILL - PROFILE A
04720.B	CAST STONE WINDOW SILL - PROFILE B
04720.C	CAST STONE LINTEL - PROFILE A
04720.D	CAST STONE BELT COURSE - PROFILE A
04720.E	CAST STONE CORNICE - PROFILE A
04720.F	CAST STONE JAMB
04720.H	CAST STONE WALL CAP - PROFILE A
04720.I	CAST STONE WALL CAP - PROFILE B
05100.A	STEEL COLUMN - REFER TO STRUCTURAL
05100.Z	STEEL TUBE - REFER TO STRUCTURAL
05100.2	STEEL CHANNEL - REFER TO STRUCTURAL
05100.3	STEEL ANGLE - REFER TO STRUCTURAL
05100.4	STEEL JOIST - REFER TO STRUCTURAL
05100.5	STEEL DECKING - REFER TO STRUCTURAL
05400.A	4" STEEL STUDS AT 16" O.C.
05400.C	8" STEEL STUDS AT 16" O.C.
05500.C	CAST IRON ROSETTE
06100.2	5/8" THICK PLYWOOD WALL SHEATHING OR 5/8" THICK EXTERIOR GLASS-MAT GYPSUM BOARD VAPOR BARRIER
06140.C	5/8" THICK EXTERIOR PLYWOOD WALL SHEATHING - USED AT LOCATIONS BEHIND METAL WALL SHINGLES
06140.E	5/8" THICK EXTERIOR PLYWOOD WALL SHEATHING - USED AT LOCATIONS BEHIND METAL WALL SHINGLES
07100.A	UNFACED GLASS FIBER BATT INSULATION - F13
07100.A2	UNFACED GLASS FIBER BATT INSULATION - FILL VOID
07100.B	UNFACED GLASS FIBER BATT INSULATION - R32
07100.E	EXTRUDED POLYSTYRENE PERIMETER INSULATION - F13 BULK
07200.C	POLYETHYLENE VAPOUR RETARDER
07310.A	PRE-FINISHED METAL SIDING SHINGLE
07310.B	PRE-FINISHED METAL JCLIP FINISHING
07320.A	FULLY ADHERED ETHYLENE-PROPYLENE-DIENE-MONOMER (EPDM) ROOFING SYSTEM
07320.B	POLYISOCYANURATE BOARD INSULATION - 2" THICK R48 LAYER - TTR = 32
07320.C	1/4" COVER BOARD - BUILDING CODE
07320.D	PRE-FINISHED GALVANIZED ZF GIRTH CUTTER
07320.E	PRE-FINISHED GALVANIZED CORNING WITH CONTINUOUS CLEATS
07320.H	LARGE PRE-FINISHED GALVANIZED COMPOSITE FLASHING
07320.I	SEALANT WITH BACKER ROD - REFER TO SEALANT SCHEDULE FOR TYPE AND APPLICATION LOCATIONS OF SEALANT TYPES
07320.J	STRUCTURAL POLYURETHANE SEALANT
08110.A	ALUMINUM STOREFRONT SYSTEM
08200.A	GLASS UNIT WITH GASKET ASSEMBLY
08200.C	LAMINATED GLASS
08200.E	9/16" LAMINATED GLASS
08200.F	3/8" METAL STUDS
08240.A	DIRECT APPLIED EXTERIOR FINISH SYSTEM
08250.A	50" TYPE 3 GYPSUM WALLBOARD
08250.B	50" TYPE 3 GYPSUM WATER-RESISTIVE BACKING BOARD
08300.C	SOON ATTENUATION BLANKETS
08300.D	PORCELAIN WALL TILE (FIELD COLOR) - CT-1
08300.E	PORCELAIN WALL TILE (ACCENT COLOR) - CT-4
08300.F	METAL EDGE STRIP
08610.A	ACQUAQUA PANEL CEILING SYSTEM
08620.A	BRUSHED ALUMINUM DIMENSIONAL CHARACTER SHIMMER - TYPE 1
10400.A3	BRUSHED ALUMINUM DIMENSIONAL CHARACTER SHIMMER - TYPE 1
13400.A	VERY DIMENSIONAL CHARACTER SHIMMER - TYPE 1
13400.B	ROOF GRADE - REFER TO LUMING
13500.A	LIGHT FIXTURE - REFER TO ELECTRICAL
13500.B	LIGHT FIXTURE - REFER TO ELECTRICAL
13131.A	5" CONCRETE PAVEMENT
03300.H	ORGANIC FILL
12131.B	COMPRESSIBLE FILLER
12131.C	JOINT SEALANT AND BACKER ROD
12131.D	SHEET AND SHEET SPECIFIC NOTES

NOTE 1: PROVIDE SLOPED FLASHING SURFACE AT BASE OF SKYLIGHT AS IT TERMINATES AT END WALLS. FINISHED FACE OF SKYLIGHT TO BE FINISHED BACK FROM FINISHED FACE OF BRICK VENEER

This document originally issued and sealed by  
 David E. Cusack  
 Registered Professional Architect A-3466  
 ON 11.11.11  
 THIS PRINTED SHEET IS TO BE CONSIDERED A CERTIFIED DOCUMENT

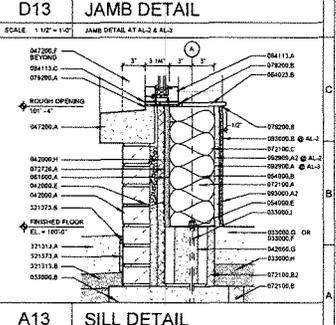
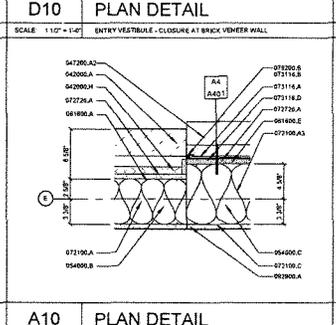
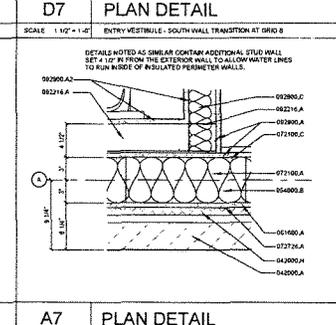
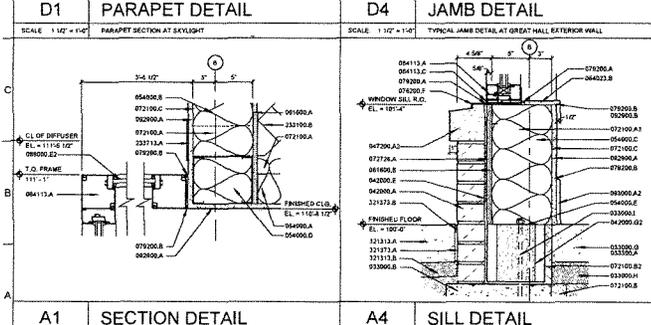
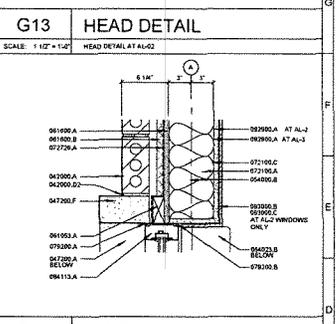
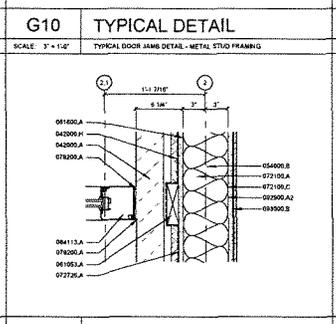
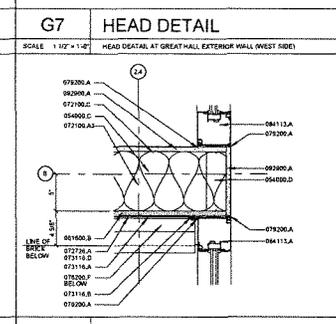
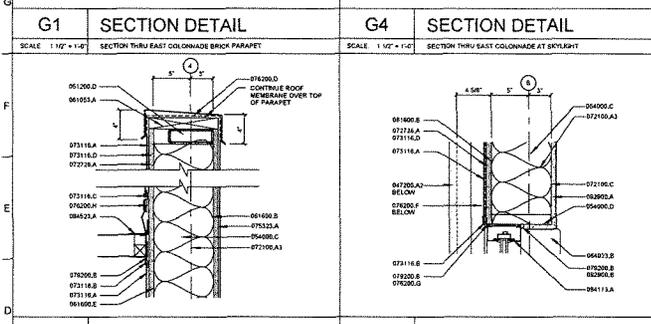
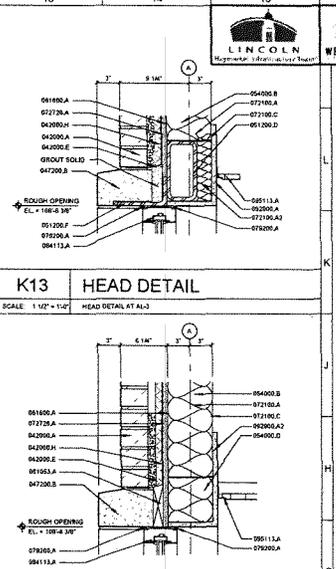
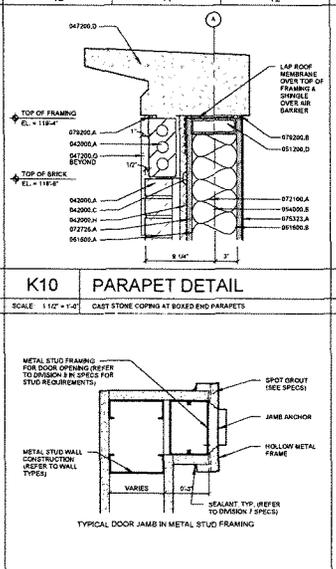
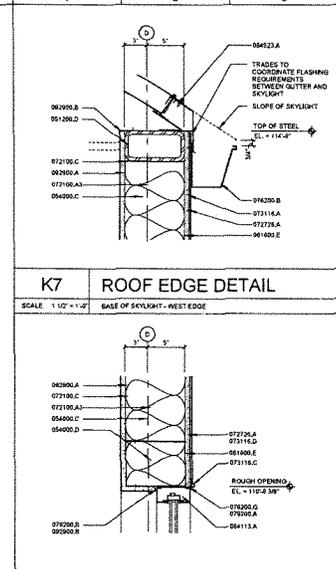
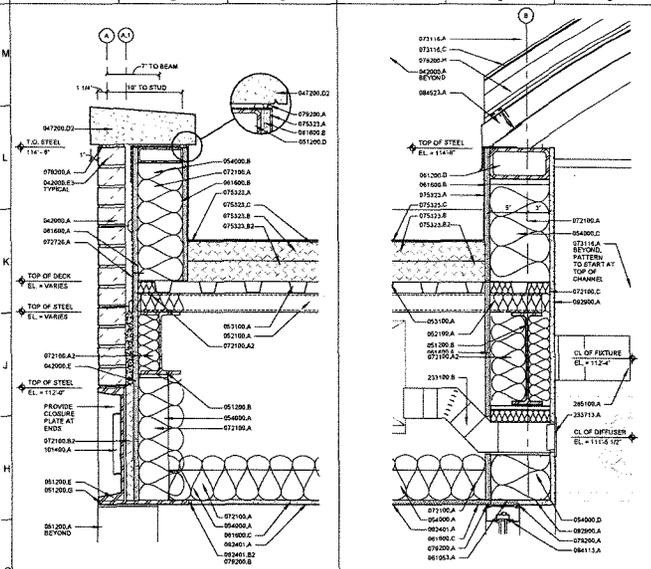
Wall Sections  
**A300**

Attachment 1

11-246

11-246

11-246



PROJECT NO.	DWG	DATE	SHEET NO.
15000	D33	NOV. 2, 2011	11-246
DESIGN ARCH	DEO		
PROJ. ARCH	DEL		
DRAWN BY	DEL		

KEYNOTE	LEGEND
03300.E	CONCRETE FOOTING - REFER TO STRUCTURAL
03300.F	4" THICK CONCRETE SLAB ON GRADE
03300.G	4" THICK INTERIOR CONCRETE SLAB ON GRADE - GREAT HALL AND MEN W/ROOMS RESTROOMS
03300.H	MASSIVE BRICK OVER 4" GRANULAR FILL
03300.I	ANCHOR BOLT - REFER TO STRUCTURAL
03300.J	GROUND AND FINISHED SLAB
04300.A	FACE BRICK - FINISHING BOND - REFER TO ELEVATIONS FOR LOCATION OF COLORS
04300.C	ADJUSTABLE MASONRY VENEER ANCHORS
04300.D	MASONRY EXPANSION JOINT - COMPRESSIBLE FILLER FULL DEPTH OF JOINT WITH ELASTOMERIC SEALANT AT FACE IDENTIFIED AS SLIP JOINT
04300.E	THRU-WALL FLASHING ASSEMBLY - REFER TO A-1001 RECTANGULAR FLASHING UNIT AT 1" O.C. AT TOP AND BOTTOM OF WALL
04300.F	IF CONCRETE MASONRY UNIT - GROUT SOLID AT LOCATIONS BELOW GRADE
04300.G	1" EXTRUDED POLYSTYRENE INSULATION - 95% MIN. CAST STONE WINDOW SILL - PROFILE B
04300.H	CAST STONE WINDOW SILL - PROFILE A
04300.I	CAST STONE UNIT - PROFILE A
04300.J	CAST STONE CORNER - PROFILE A
04300.K	CAST STONE JAMB - PROFILE B
04300.L	CAST STONE CHASE
04300.M	CAST STONE DORN
04300.N	STEEL COLUMN - REFER TO STRUCTURAL
04300.O	STEEL BEAM - REFER TO STRUCTURAL
04300.P	STEEL TRUSS - REFER TO STRUCTURAL
04300.Q	STEEL CHANNEL - REFER TO STRUCTURAL
04300.R	STEEL ANGLE - REFER TO STRUCTURAL
04300.S	STEEL JOIST - REFER TO STRUCTURAL
04300.T	STEEL DECKING - REFER TO STRUCTURAL
04300.U	4" STEEL STUDS AT 16" O.C.
04300.V	8" STEEL STUDS AT 16" O.C.
04300.W	8" STEEL STUDS AT 16" O.C.
04300.X	STRUCTURAL FOR REQUIREMENTS
04300.Y	WOOD BLOCKING
04300.Z	5/8" THICK EXTERIOR GLASS-MAT GYPSUM WALL SHEATHING
04300.AA	5/8" THICK EXTERIOR GLASS-MAT GYPSUM CEILING SHEATHING
04300.AB	5/8" THICK EXTERIOR PLWOOD WALL SHEATHING - USED AT LOCATIONS BEHIND METAL WALL SHEATHING
04300.AC	2" EXTRUDED POLYSTYRENE INSULATION - 95% MIN. UNFACED GLASS FIBER BATT INSULATION - R-19
04300.AD	UNFACED GLASS FIBER BATT INSULATION - R-19
04300.AE	2" EXTRUDED POLYSTYRENE INSULATION - 95% MIN.
04300.AF	12" EXTRUDED POLYSTYRENE INSULATION - 95% MIN.
04300.AG	POLYURETHANE VAPOR RETARDER
04300.AH	FLUOROPOLYMER AIR BARRIER SYSTEM
04300.AI	PRE-FINISHED INTERIOR SIDEWALL BRICK
04300.AJ	PRE-FINISHED METAL JAMB FLASHING
04300.AK	PRE-FINISHED METAL DRIP FLASHING
04300.AL	2" EXTRUDED POLYSTYRENE INSULATION - 95% MIN. FULLY ADHESIVE EXTRUDED POLYSTYRENE-ANCHOR (EPDM) ROOFING SYSTEM
04300.AM	POLYISOCYANURATE TAPERED BOARD INSULATION - USED AT LOCATIONS BEHIND METAL WALL SHEATHING
04300.AN	1/4" COVER BOARD - BUILDING ROOF
04300.AO	PRE-FINISHED GALVANIZED ZN GYPSUM WALL SHEATHING
04300.AP	PRE-FINISHED GALVANIZED COPING WITH CONTINUOUS SLEETS
04300.AQ	FLASHING CLOSURE AT WALL BEYOND
04300.AR	PRE-FINISHED GALVANIZED COPING FLASHING - INCREASE DOWNTURN WITH HEMMED EDGE AT LAP OF CAST STONE
04300.AS	PRE-FINISHED METAL FLASHING 1" SHARPOFF TO CONCEAL EXPOSED CORNER OF SHEATHING - COLOR TO MATCH COPING
04300.AT	3/8" PRE-FINISHED GALVANIZED COUNTER FLASHING
04300.AU	3/8" PRE-FINISHED GALVANIZED COPING FLASHING - INCREASE DOWNTURN WITH HEMMED EDGE AT LAP OF CAST STONE
04300.AV	JOINT SEALANT - REFER TO SEALANT SCHEDULE BY SPECIFICATIONS FOR LOCATIONS OF SEALANT TYPES
04300.AW	ALUMINUM STOREFRONT SYSTEM
04300.AX	ALUMINUM SILL RECEPTOR
04300.AY	CURVED SKYLIGHT ASSEMBLY
04300.AZ	5/8" LAMINATED GLASS
04300.BA	1/2" METAL STUDS
04300.BB	DIRECT APPLIED EXTERIOR FINISH SYSTEM
04300.BC	METAL TRIM
04300.BD	5/8" TYPE A GYPSUM WALLBOARD
04300.BE	5/8" TYPE B GLASS-MAT WATER-RESISTANCE BACKING BOARD
04300.BF	METAL TRIM
04300.BG	SOUND ATTENUATION BLANKETS
04300.BH	PORCELAIN WALL TILE (WALL BASE) - CT-3
04300.BI	PORCELAIN WALL TILE (FLOOR) - CT-3
04300.BJ	PORCELAIN WALL TILE (ACCENT COLUMN) - CT-4
04300.BK	ACCOUSTIC PANEL CEILING - CT-1
04300.BL	PRE-FINISHED ALUMINUM DIMENSIONAL CHARACTER COPING - CT-1
04300.BM	23310.B SUPPLY VENT - REFER TO MECHANICAL
04300.BN	23311.A DIMENSIONAL CHARACTER COPING - REFER TO MECHANICAL DRAWINGS
04300.BO	23311.B LIGHT FIXTURE - REFER TO ELECTRICAL
04300.BP	23311.C GRANULAR FILL
04300.BQ	23311.D CURVED ALUMINUM FILLER
04300.BR	JOINT SEALANT - REFER TO MECHANICAL DRAWINGS

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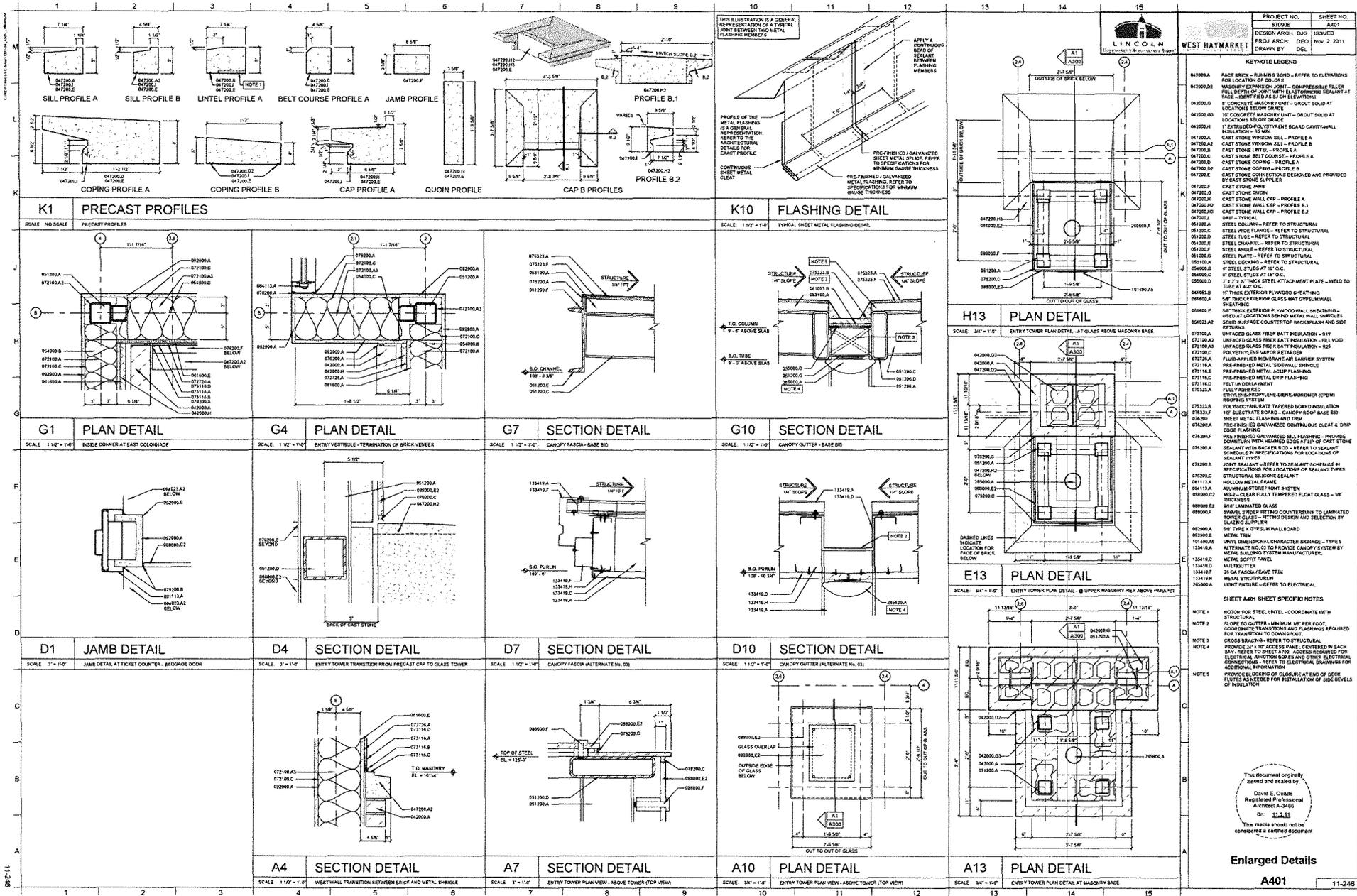
**Enlarged Details**  
**A400**

Attachment 1

11-246

11-246

11-246

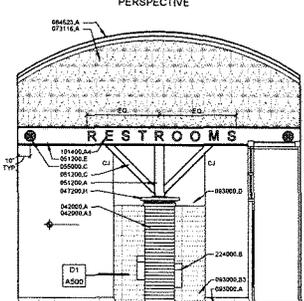
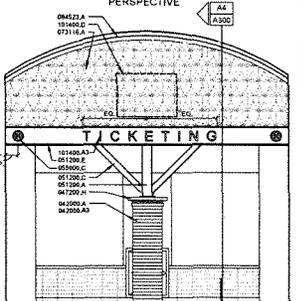
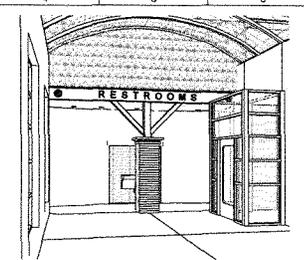
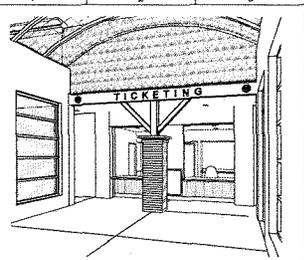


Attachment 1

Enlarged Details  
A401

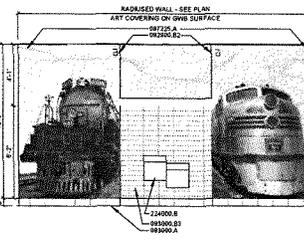
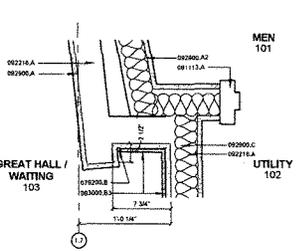
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Registered Professional Architect A-3496  
D.E. GLAVIN  
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11-246



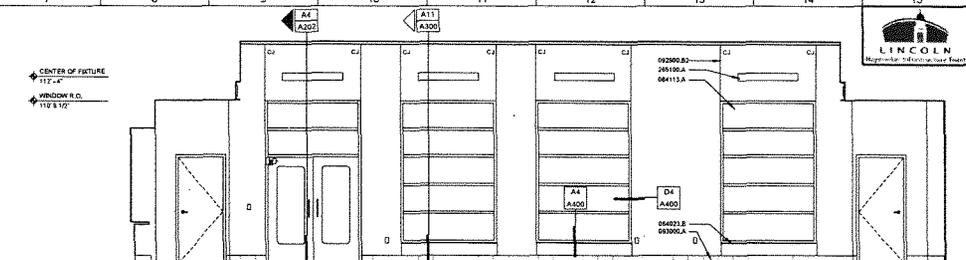
G1 INTERIOR ELEVATION

G4 INTERIOR ELEVATION

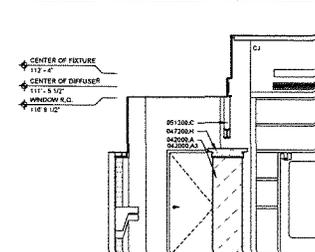


D1 PLAN DETAIL

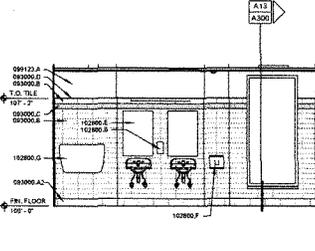
D4 SECTION DETAIL



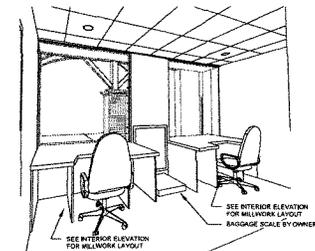
K7 INTERIOR ELEVATION



G7 INTERIOR ELEVATION

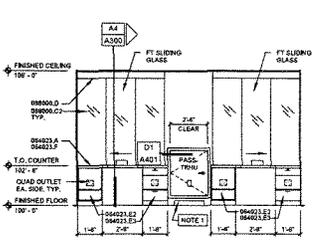


D7 INTERIOR ELEVATION



D10 PERSPECTIVE

A7 IE Crew Room - Sink



D13 INTERIOR ELEVATION

A13 INTERIOR ELEVATION

PROJECT NO.	87208	SHEET NO.	A500
DESIGN ARCH.	DKS	ISSUED	
PROJ. ARCH.	DED	Nov. 2, 2011	
DRAWN BY	DEL		

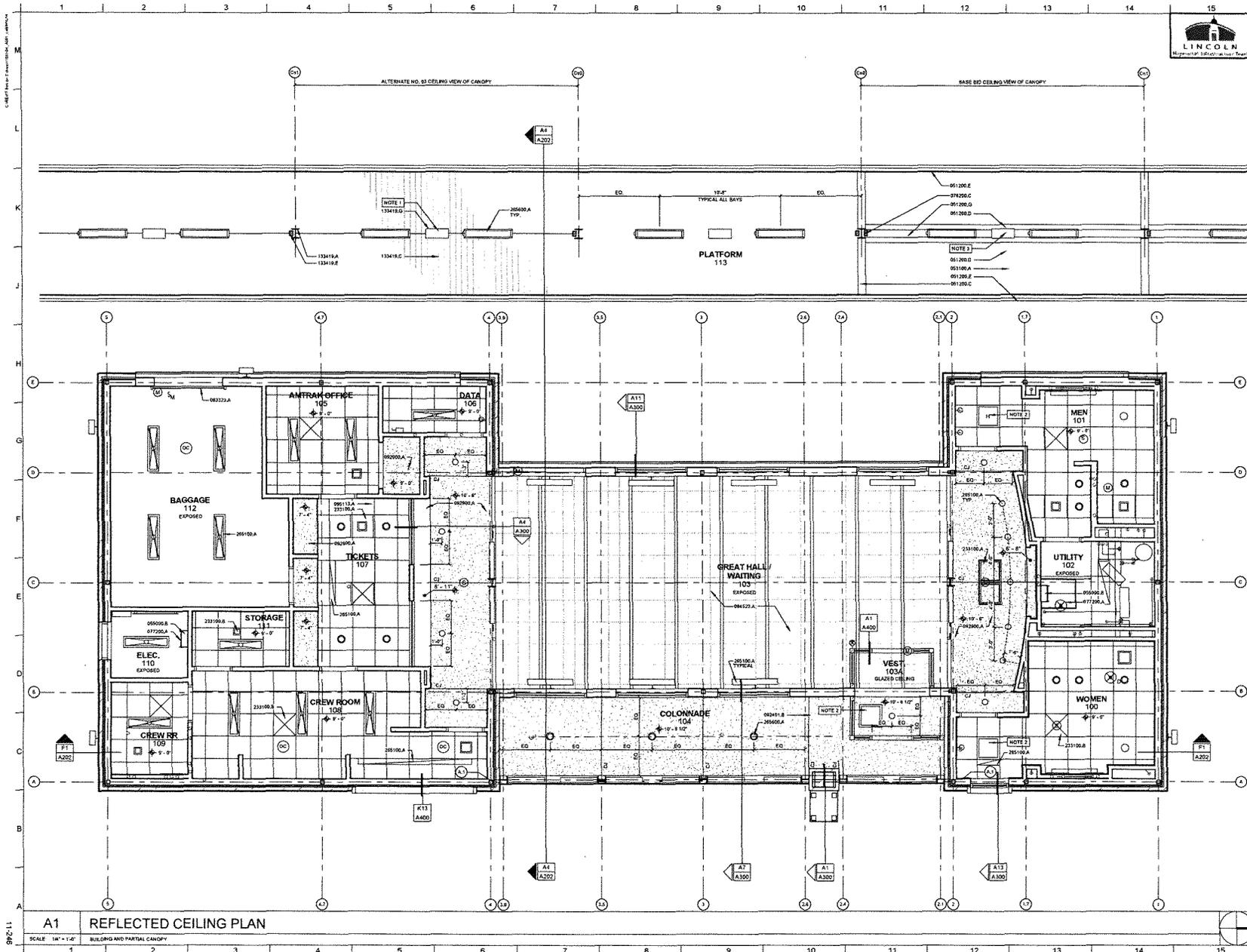
- KEYNOTE LEGEND**
- 042000.A FACE BRICK - RUNNING BOND - REFER TO ELEVATIONS FOR LOCATION OF COLOR
  - 042000.B FACE BRICK - COLOR B
  - 042000.C CAST STONE WALL CAP - PROFILE A
  - 011000.A STEEL COLUMN - REFER TO STRUCTURAL
  - 011000.B STEEL WIDE FLANGE - REFER TO STRUCTURAL
  - 011000.C STEEL CHANNEL - REFER TO STRUCTURAL
  - 050000.C CAST IRON ROSETTE
  - 010100.A WOOD ELICORIN
  - 064203.A SOLID SURFACE COUNTERTOP - PL WOOD SUBSTRATE AS REQUIRED FOR SUPPORT
  - 064203.A2 SOLID SURFACE COUNTERTOP BACKSPLASH AND SIDE RETURN
  - 064203.B SOLID SURFACE WINDOW SILL - RADIUS EXPOSED EDGE
  - 064203.C 2" DEEP LAMINATE CLAD BASE CABINET
  - 064203.D 3" DEEP OPEN BOXED LAMINATE CLAD BASE CABINET WITH REAR SHEET METAL JAMMER SIDING
  - 064203.E 2" DEEP LAMINATE CLAD BASE CABINET - PROVIDE TWO 1/2" DEEP SHARPEY COVER FRID SHIELD ON DRAWER SLIDES. PROVIDE LOCK FOR TOP DRAWER
  - 064203.F DRUMMET
  - 064203.G ADJUSTABLE SHELF
  - 072110.A PREFINISHED METAL SIDEWALL SHINGLE
  - 072000.B JOINT SEALANT - REFER TO MANUFACTURER'S SPECIFICATIONS FOR LOCATIONS OF SEALANT TYPES INCLUDING FRAME
  - 081110.A HOLLOW METAL DOOR
  - 081110.B ALUMINUM STORAGE SYSTEM
  - 084203.A CURVED SPYVOID ASSEMBLY
  - 080000.C MESH - CLEAR FULLY TEMPERED FLOAT GLASS - 1/4" THICKNESS
  - 080000.C2 MESH - CLEAR FULLY TEMPERED FLOAT GLASS - 3/4" THICKNESS
  - 080000.D SLIDING GLASS HARDWARE ASSEMBLY
  - 080000.E2 SLIDING GLASS HARDWARE UPPER GUIDE OPERATION
  - 080000.F 8 GA ONLY ALUM BOX FASCIA WITH CONCEALED FASTENERS AND ACCESS CUT FOR GLASS OPERATION
  - 080000.G4 LOWER SLIDING GLASS GUIDE RECESSED / FLUSH WITH COUNTERTOP
  - 080000.H RECESSED SLIDING GLASS DOOR LOCK IN TELLER SIDE OF COUNTERTOP
  - 092210.A 2" METAL STUDS
  - 020000.A 5/8" TYPE 1 OPTIMUM WALLBOARD
  - 020000.A2 5/8" TYPE 1 GLASS MAT WATER RESISTIVE BACKING BOARD
  - 020000.B METAL TRIM
  - 020000.C METAL CONTROL JOINT
  - 020000.D SOUND ATTENUATION BLANKETS
  - 030000.A PORCELAIN WALL TILE (WALL BASE)-CT-1
  - 030000.A2 PORCELAIN WALL TILE (WALL BASE)-CT-2
  - 030000.B PORCELAIN WALL TILE (FIELD COLOR)-CT-1
  - 030000.C2 METAL WALL TILE -CT-1
  - 030000.C PORCELAIN WALL TILE (ACCENT COLOR)-CT-4
  - 030000.D METAL EDGE STRIP
  - 081110.A2 ACCESSORY PANEL CEILING SYSTEM
  - 091510.A REESENT WALL BASE
  - 091510.B GRAPHIC WALL COVERING TYPE 1
  - 091510.C GRAPHIC WALL COVERING TYPE 2
  - 091510.D PAINT
  - 091510.A2 ENLARGED ALUMINUM DIMENSIONAL CHARACTER
  - 091510.B2 ENLARGED ALUMINUM DIMENSIONAL CHARACTER
  - 091510.C2 ENLARGED ALUMINUM DIMENSIONAL CHARACTER
  - 101400.02 SIGNAGE - TYPE 1
  - 101400.01 INTERIOR PANEL SIGN TYPE 2, GRAPHIC BRANDBOX WALL COVERING
  - 101400.D PRESURIZED INFORMATION DISPLAY EQUIPMENT BY APUTA, REGULATED FOR USE AND PROTECTION BY CONTRACTOR. COORDINATE WITH ARCHITECT
  - 120000.02 LIQUID-SOAP DISPENSER
  - 120000.01 JADE MIRROR
  - 120000.03 MIRROR AIR CARTER
  - 120000.04 DAMPER CHANGING STATION
  - 140110.A HANGING METAL LOCKER - 1402X72
  - 140000.01 ELECTRIC WATER COOLER - REFER TO PLUMBING DRAWING
  - 130710.A LINEAR DIFFUSER - REFER TO MECHANICAL DRAWINGS LIGHT FIXTURE - REFER TO ELECTRICAL

Interior Elevations A500

Attachment 1

11-246

11-246



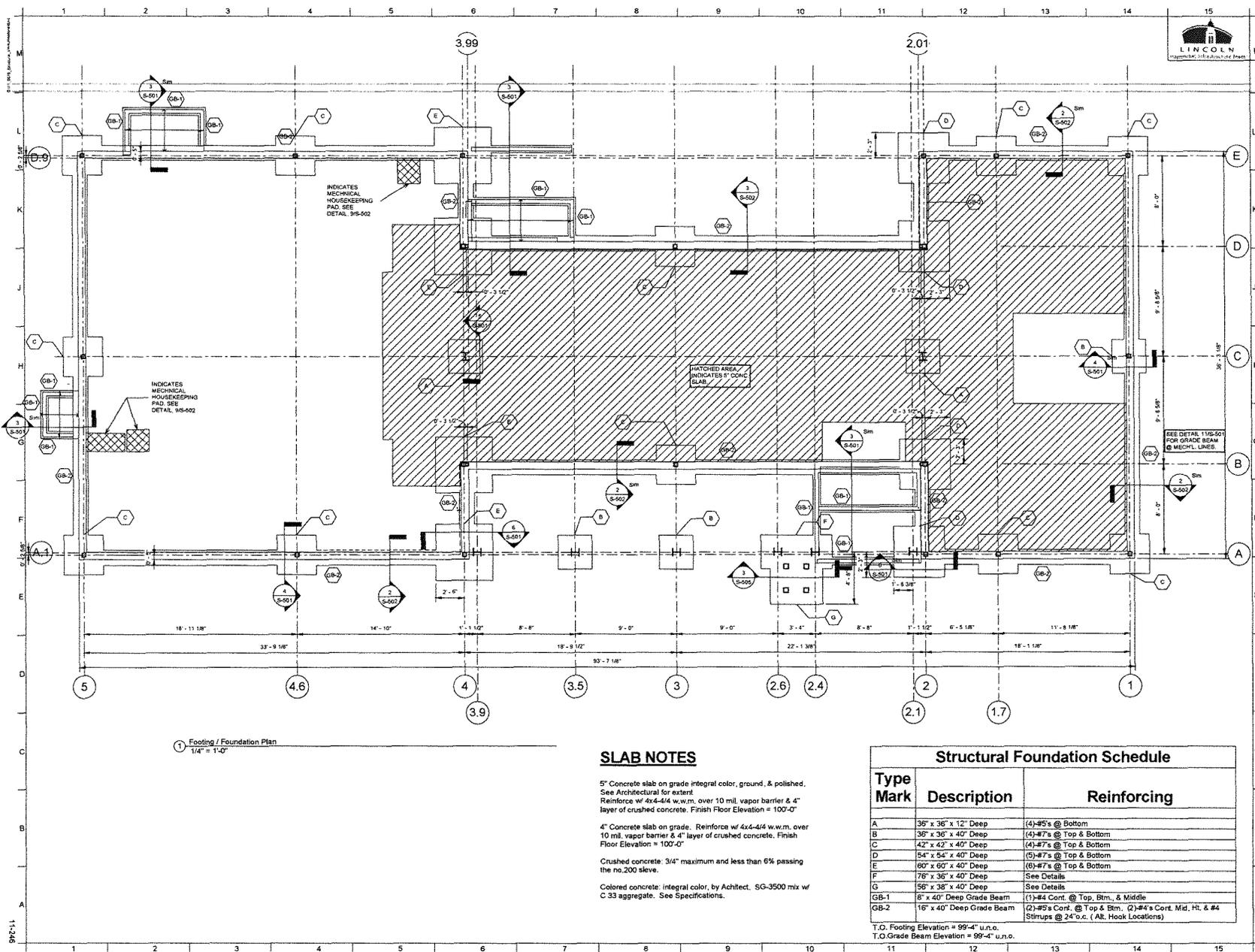
PROJECT NO.	ST2926	SHEET NO.	A700
DESIGN ARCH	DAO	ISSUED	
PRCJ ARCH	DEG	Nov. 2, 2011	
DRAWN BY	DEL		

- KEYNOTE LEGEND**
- 051200.C STEEL WIDE FLANGE - REFER TO STRUCTURAL
  - 051200.D STEEL TUBE - REFER TO STRUCTURAL
  - 05200.E STEEL CHANNEL - REFER TO STRUCTURAL
  - 051200.D STEEL PLATE - REFER TO STRUCTURAL
  - 05100.A STEEL JOISTS - REFER TO STRUCTURAL
  - 05000.B METAL LADDER - COORDINATE STAND-OFF DISTANCE
  - 05000.C STOW WALL SURFACE WITH LOCATION OF ROOF MATCH
  - 07200.C 4" x 4" FIRE-RATED GALVANIZED DOWNPOST & PAINTED CAST IRON DOWNPOST BOOT (BASE OF DESIGN, MEAN R4-27-F1)
  - ROOF HATCH
  - 07300.A INSULATED OVERHEAD COLLING SERVICE DOOR
  - 08322.A CURVED SKYLIGHT ASSEMBLY
  - 08201.B EXPANSION JOINT
  - 08200.A SW TYPE A GYPSUM WALLBOARD
  - 08613.A ACoustICAL PANEL CEILING SYSTEM
  - 133418.A ALTERNATE NO. 03 TO PROVIDE CANOPY SYSTEM BY METAL BUILDING SYSTEM MANUFACTURER.
  - 133418.C METAL SOFFIT PANEL
  - 133418.E DOWNPOST
  - 133418.D JGIM FRAMED OPENING TRIM
  - 233100.A RETURN DUCT - REFER TO MECHANICAL
  - 233100.B SUPPLY DUCT - REFER TO MECHANICAL
  - 205100.A LIGHT FIXTURE - REFER TO ELECTRICAL
  - 20500.A LIGHT FIXTURE - REFER TO ELECTRICAL
- SHEET A700 SHEET SPECIFIC NOTES**
- NOTE 1 ACCESS PANEL CENTERED ON EACH BAY FOR CONDUIT ADDRESS TYPICAL ALL BAYS
- NOTE 2 ELECTRIC HEATER REFER TO MECHANICAL
- NOTE 3 REFER TO STRUCTURAL DRAWINGS FOR DETAILS ASSOCIATE WITH ACCESS PANEL IN STEEL PLATE FOR BASE BID CANOPY CONSTRUCTION



**Reflected Ceiling Plan**  
A700





1 Footing / Foundation Plan  
 1/4" = 1'-0"

**SLAB NOTES**

- 5" Concrete slab on grade integral color, ground, & polished. See Architectural for extent. Reinforce w/ 4x4-4/4 w.w.m. over 10 mil. vapor barrier & 4" layer of crushed concrete. Finish Floor Elevation = 100'-0"
- 4" Concrete slab on grade. Reinforce w/ 4x4-4/4 w.w.m. over 10 mil. vapor barrier & 4" layer of crushed concrete. Finish Floor Elevation = 100'-0"
- Crushed concrete: 3/4" maximum and less than 6% passing the no.200 sieve.
- Colored concrete: integral color, by Architect. SG-3500 mix w/ C 33 aggregate. See Specifications.

Structural Foundation Schedule		
Type Mark	Description	Reinforcing
A	36" x 36" x 12" Deep	(4)-#5's @ Bottom
B	36" x 36" x 40" Deep	(4)-#7's @ Top & Bottom
C	42" x 42" x 40" Deep	(4)-#7's @ Top & Bottom
D	54" x 54" x 40" Deep	(5)-#7's @ Top & Bottom
E	60" x 60" x 40" Deep	(6)-#7's @ Top & Bottom
F	76" x 36" x 40" Deep	See Details
G	56" x 38" x 40" Deep	See Details
GB-1	8" x 40" Deep Grade Beam	(1)-#4 Cont. @ Top, Btm., & Middle
GB-2	16" x 40" Deep Grade Beam	(2)-#5's Cont. @ Top & Btm. (2)-#4's Cont. Mid, Ht. & #4 Strups @ 24" o.c. (Alt. Hook Locations)

T.O. Footing Elevation = 99'-4" u.n.o.  
 T.O. Grade Beam Elevation = 99'-4" u.n.o.



Footing and Foundation Plan

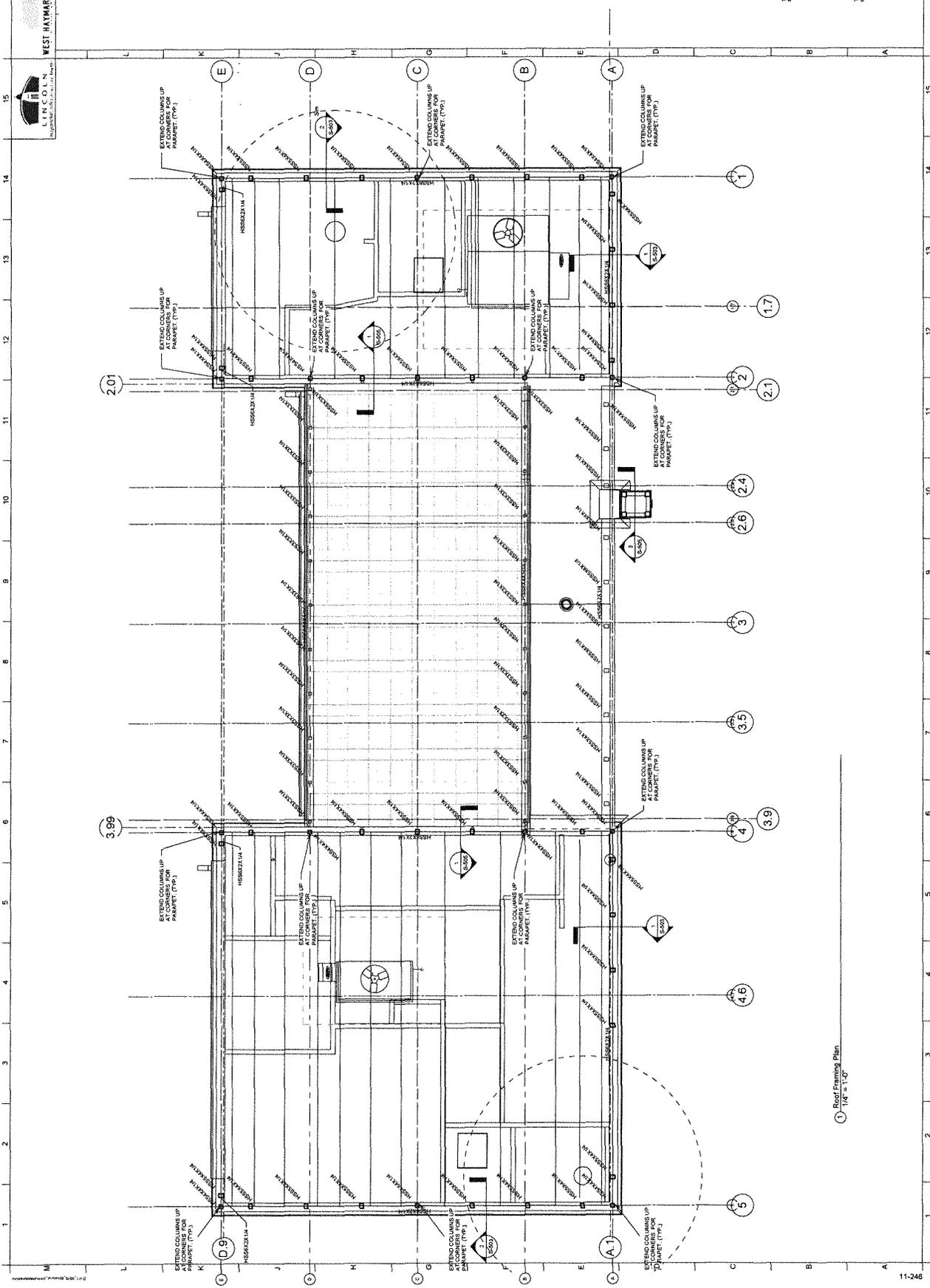
Attachment 1



PROJECT NO. E2006	SHEET NO. S-103
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WEST HAYMARKET	

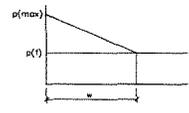
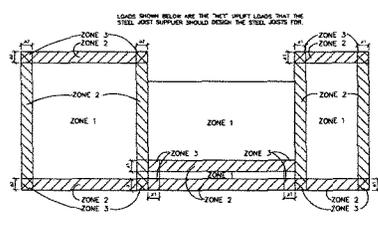


Roof Framing  
S-103

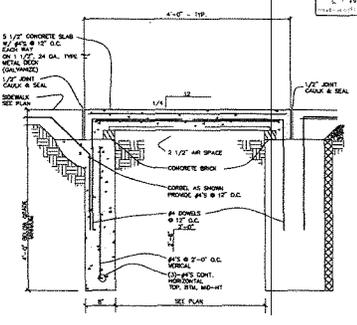
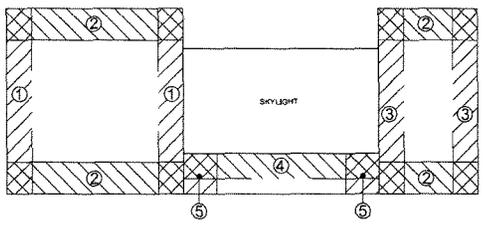


1 Roof Framing Plan  
1/4" = 1'-0"





NO.	ACT. (KIP)	IMPACT	W. (FOOT)
1	21	27	48
2	21	27	30
3	21	23	44
4	21	23	44
5	21	30	51

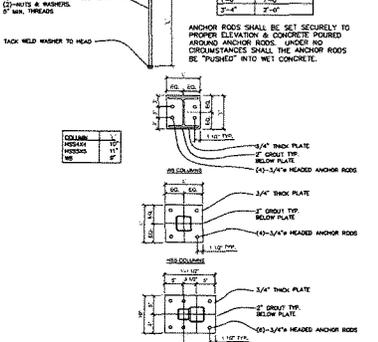
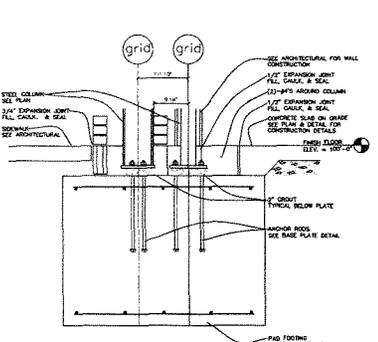
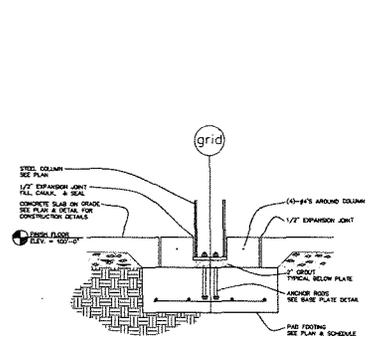
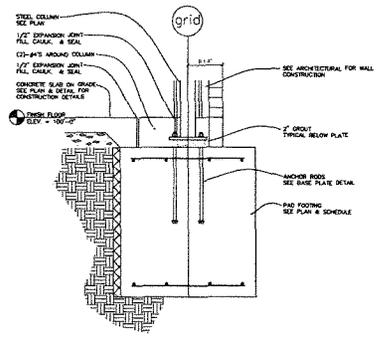


ZONE	NET UPLIFT (PSF)	NOTES
1	10	WINDLIFT ZONE
2	14	END ZONE
3	38	CORNER ZONE

1 Deck Uplift Detail  
Scale: No Scale

2 Roof Snow Drift Schematic  
Scale: No Scale

3 Frost Slab Detail  
Scale: No Scale

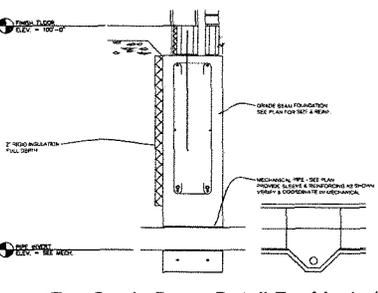
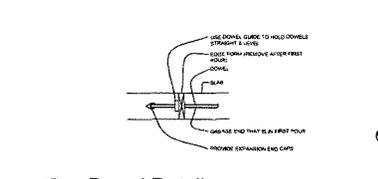
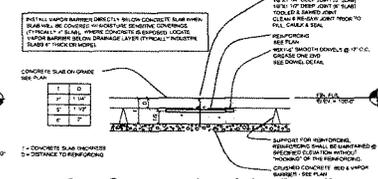
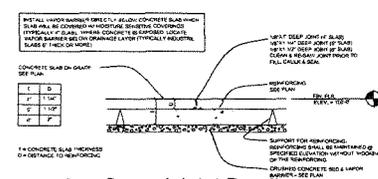


4 Pad Footing Detail  
Scale: No Scale

5 Interior Pad Footing Detail  
Scale: No Scale

6 Pad Footing Detail  
Scale: No Scale

7 Base Plate Details For Building  
Scale: No Scale



8 Control Joint Detail  
Scale: No Scale

9 Construction Joint Detail  
Scale: No Scale

10 Dowel Detail  
Scale: No Scale

11 Grade Beam Detail For Mech. Line  
Scale: No Scale

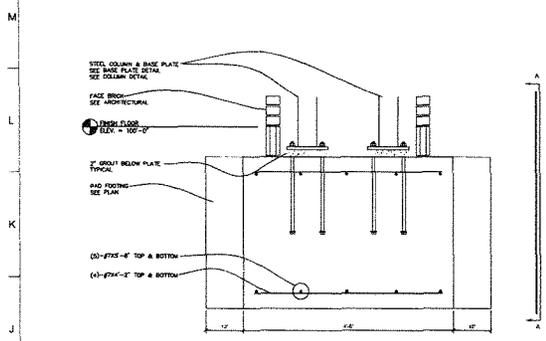


Details

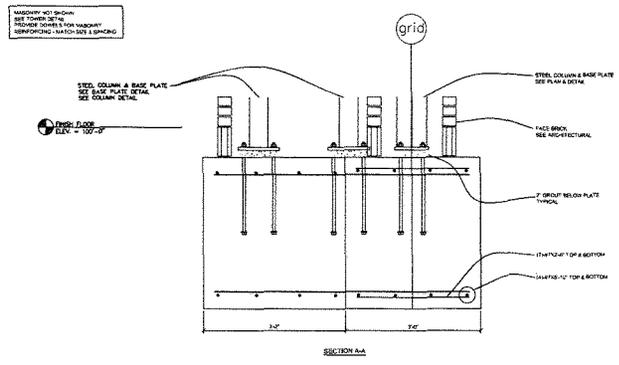
Attachment 1



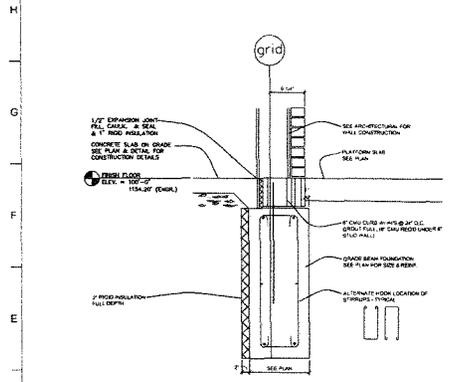
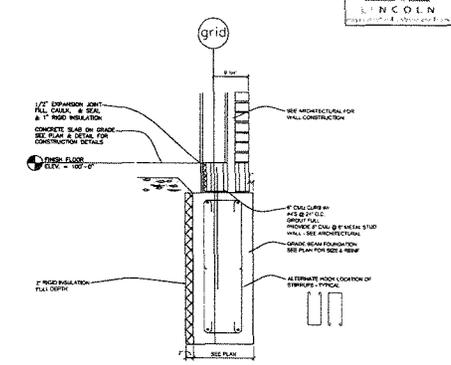
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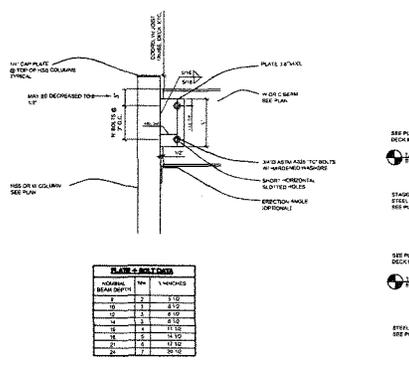
1 Pad Footing Detail @ Sign Tower  
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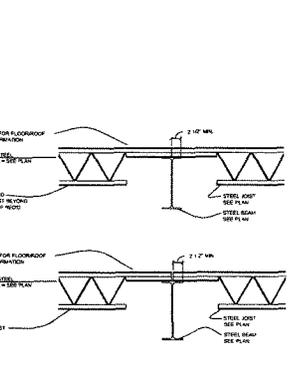
2 Grade Beam Detail  
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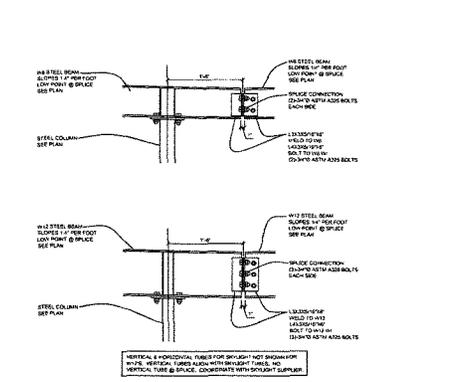
3 Grade Beam Detail  
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4 Column/Beam Connection Detail  
 Scale: No Scale

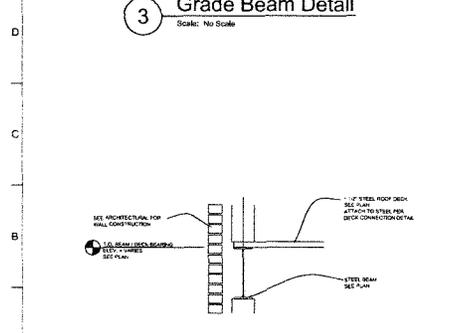


5 Joist Bearing Detail  
 Scale: No Scale

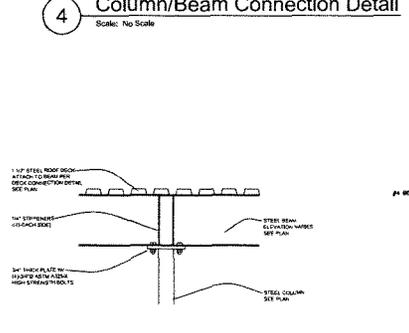


6 Beam Splice Detail  
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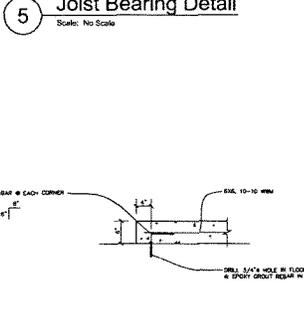
NO.	SIZE	QTY	REMARKS
1	1/2\"/>		



7 Deck Bearing Detail  
 Scale: No Scale



8 Cont. Beam Detail  
 Scale: No Scale



9 Housekeeping Pad Detail  
 Scale: No Scale

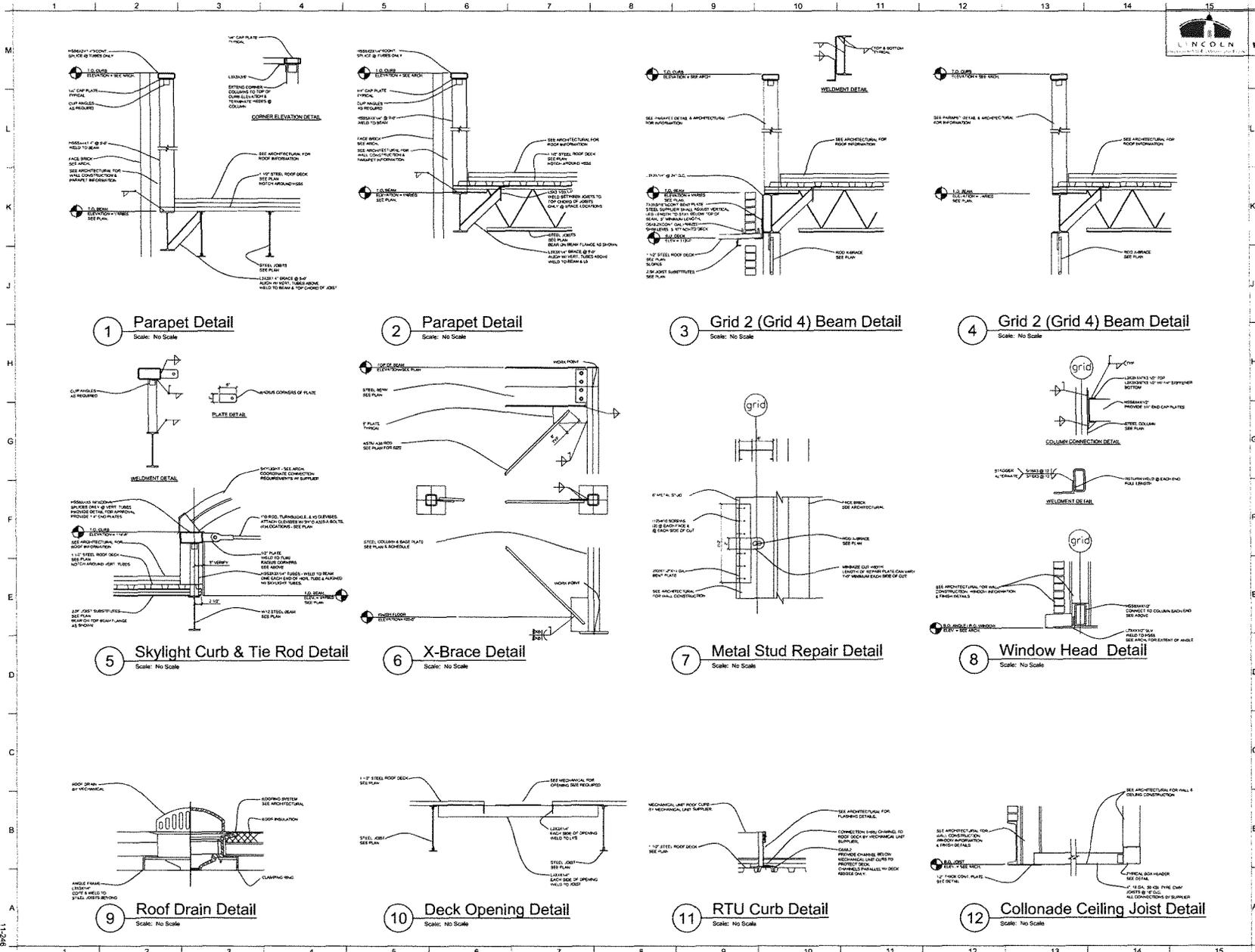


Details

Attachment 1

11-245

11-245

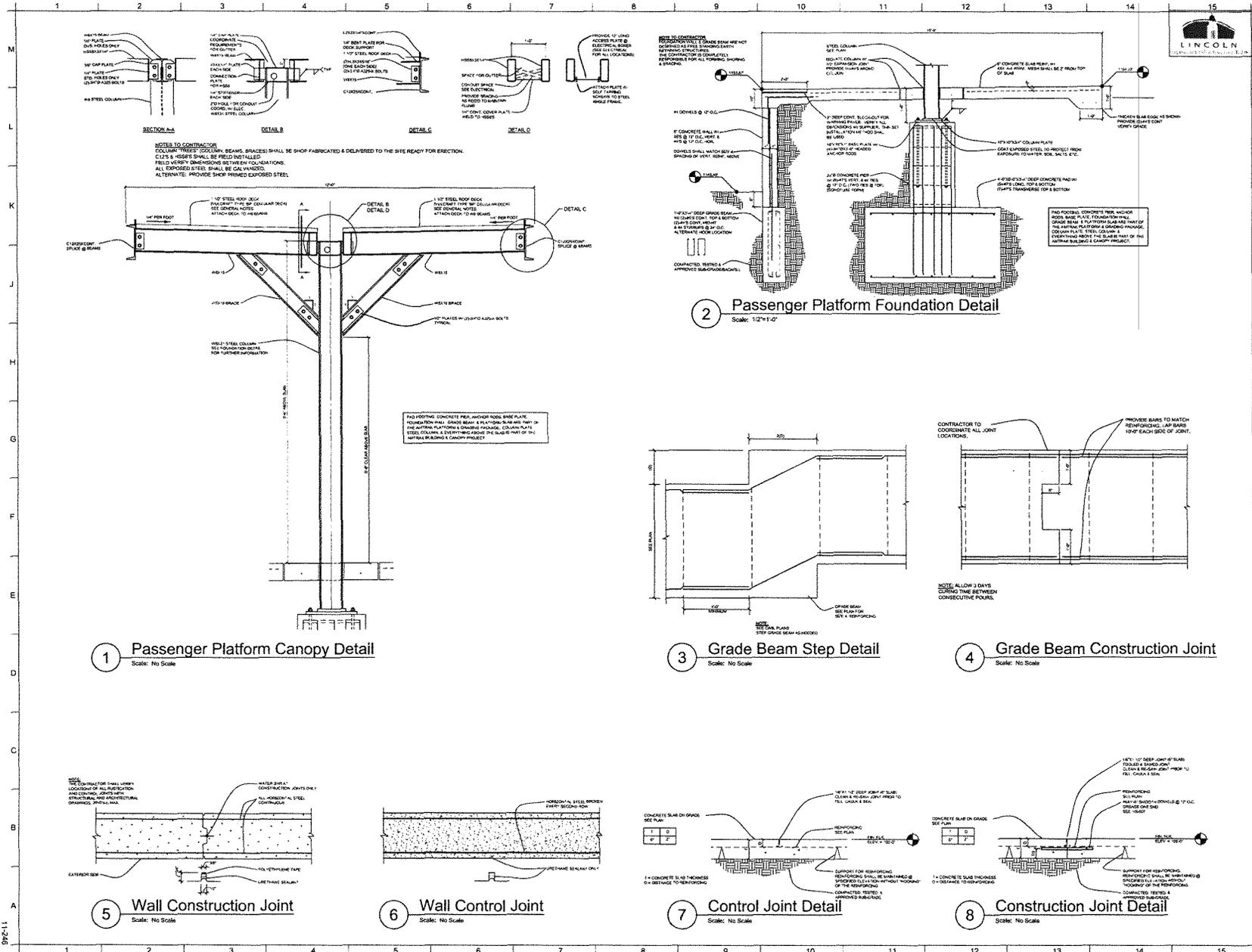


Details

Attachment 1







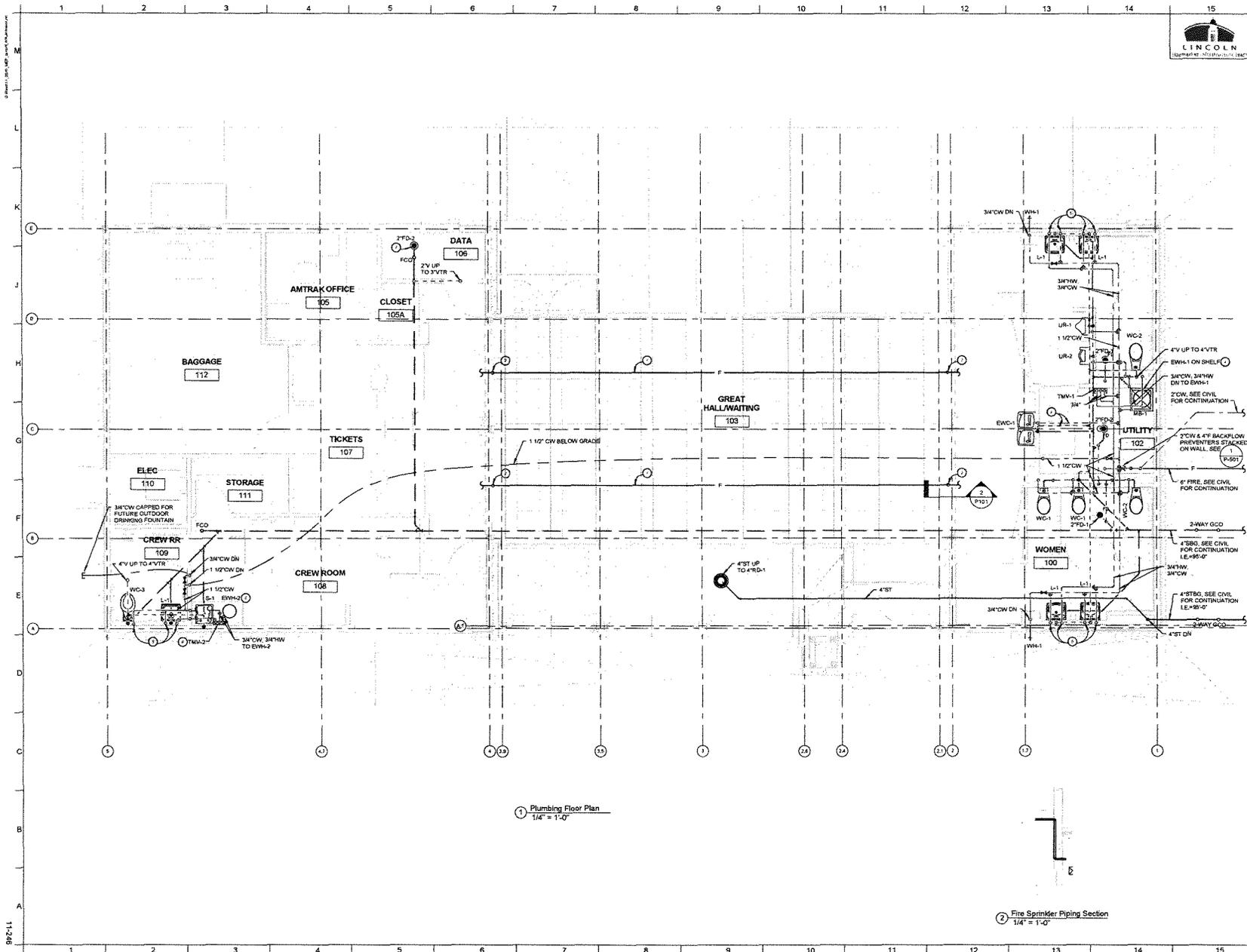
		PROJECT NO. 87996 SHEET NO. S-608 DESIGNER: dms ISSUED: 10/28/2011 PROJ. ENGR: dms DRAWN BY: dms
<p>DETAILS</p> <p>S-506 11-246</p>		

This document was originally signed by:

DARIN D. SPERLING  
 PROFESSIONAL CIVIL ENGINEER  
 STATE OF VIRGINIA  
 No. 35384  
 Exp. 10/27/2011

This firm shall not be considered a certified document.





1 Plumbing Floor Plan  
1/4" = 1'-0"

2 Fire Sprinkler Piping Section  
1/4" = 1'-0"



PROJECT NO.	87996	SHEET NO.	P101
DESIGNER	BMS	ISSUED	
PROJ. ENGR	BMS		
DRAWN BY	EMA	NOV 2 2011	

**WEST HAYMARKET**

PLUMBING GENERAL NOTES

- UPON COMPLETION OF THE PROJECT ALL AREAS OF CONSTRUCTION SHALL HAVE SPRINKLER PROTECTION PER NFPA, LOCAL CODES AND STATE REQUIREMENTS.
- SEE ARCHITECTURAL PLANS TO COORDINATE EXACT FLOOR DRAIN LOCATIONS.

PLUMBING KEYED NOTES

- 1 FIRE SPRINKLER PIPING SERVING GREAT HALL AND SOUTH PORTION OF BUILDING SHALL BE ROUTED AS HIGH AS POSSIBLE THROUGH GREAT HALL. PIPING SHALL RUN PARALLEL BELOW AND BE SUPPORTED FROM SPLIT RIGTH FRAMING WITH UPRIGHT HEADS. SPRINKLER PIPING EXPOSED IN GREAT HALL SHALL BE PAINTED. REFERENCE PAINTING SPECIFICATIONS.
- 2 COORDINATE FIRE SPRINKLER RISERS WITHIN WALL CAVITY AND INSIDE BUILDING ENVELOPE INSULATION.
- 3 COORDINATE PIPING WITH #00P ACCESS HATCH. MAINTAIN FULL CLEARANCE.
- 4 BOTTOM OF SHELF SHALL BE AT 8" AFF MINIMUM.
- 5 WATER PIPING SHALL BE WITHIN FURRED OUT WALL CAVITY INSIDE THE BUILDING ENVELOPE INSULATION.
- 6 EWH-2 AND TMV-2 HUNG ON WALL ABOVE CEILING. PIPE RELIEF DRAIN TO DRIP PAN AND PIPE DRIP PAN TO SINK TAIL PICE. CONCEAL DRAIN LINE WITHIN WALL.
- 7 FLOOR DRAIN FOR CONDENSATE DISCHARGE OF DSS-1 SYSTEM.

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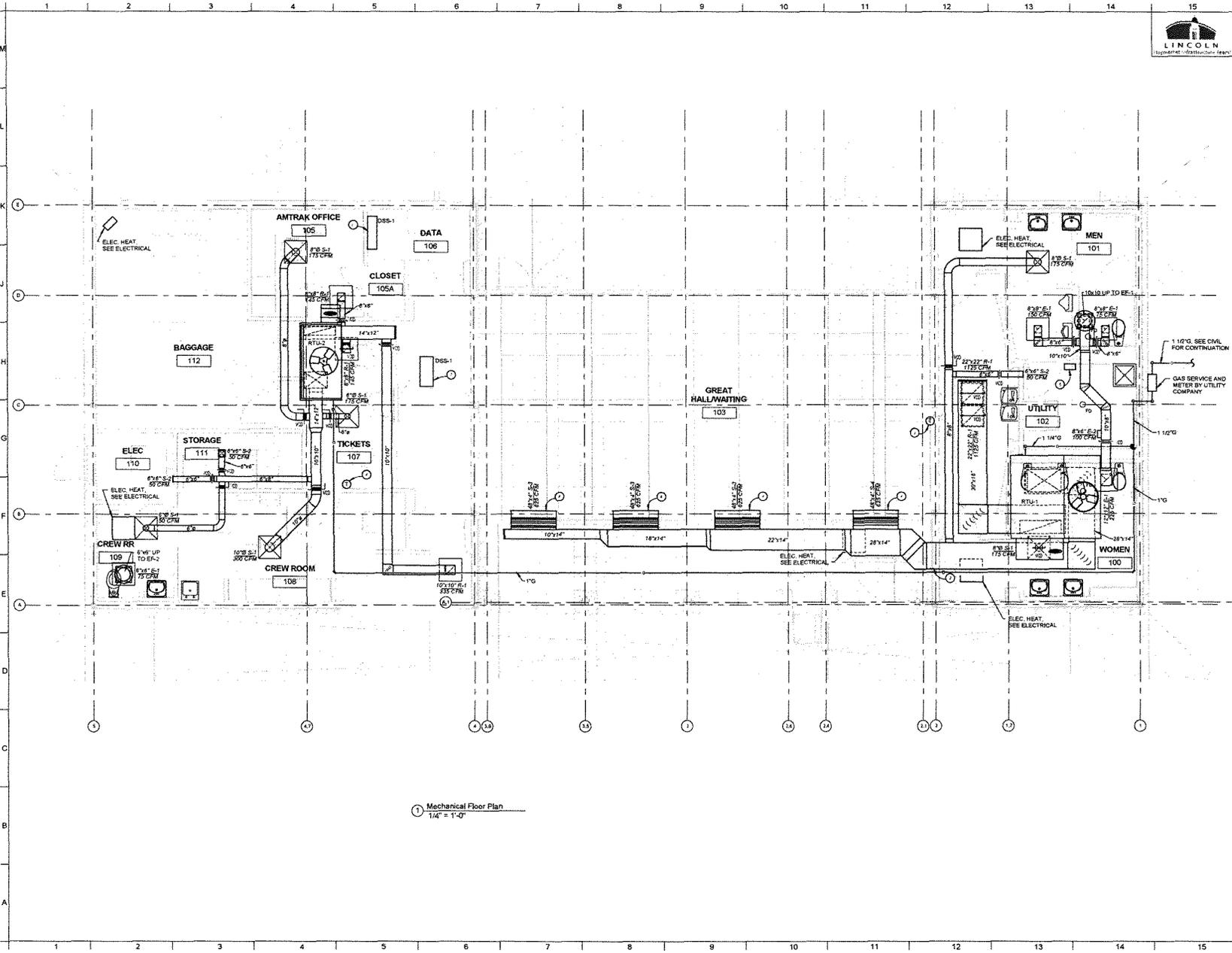
BRANDON M. SMITH  
Registered Professional Engineer E-11494  
DN 11.2.11

**Plumbing Floor Plan**



11-246

11-246



1 Mechanical Floor Plan  
1/4" = 1'-0"



**WEST HAYMARKE**  
Landscape Architecture

PROJECT NO.	87808	SHEET NO.	M101
DESIGNER	BMS	ISSUED	
PROJ. ENGR	BMS	DRAWN BY	EMA
			NOV 2 2017

- MECHANICAL GENERAL NOTES**
- COORDINATE ALL EQUIPMENT HOUSEKEEPING PADS WITH GENERAL CONTRACTOR. REFERENCE STRUCTURAL PLANS.
  - ALL ROOF MOUNTED EQUIPMENT SHALL BE MINIMUM 10' FROM OPEN WEST END OF ROOF.
  - DISCHARGE RTU CONDENSATE TO ROOF.

- MECHANICAL KEYED NOTES**
- SUPPLY GRILLES IN GREAT HALL SHALL BE CENTERED ABOVE WINDOW AND DOOR OPENING WITH CENTER OF GRILLE AT 1'-4 1/2". COORDINATE WITH GENERAL CONTRACTOR.
  - COORDINATE DUCT INSTALLATION WITH STRUCTURAL CROSS BRACING AT THIS LOCATION.
  - LOCATION OF RTU-1 THERMOSTAT/HUMIDISTAT. AS PART OF ALTERNATE NO. 06 THIS SHALL BE A REMOTE TEMPERATURE AND HUMIDITY SENSOR.
  - LOCATION OF RTU-2 THERMOSTAT/HUMIDISTAT. AS PART OF ALTERNATE NO. 06 THIS SHALL BE A REMOTE TEMPERATURE AND HUMIDITY SENSOR.
  - LOCATION OF RTU-1 AND RTU-2 CONTROLLER IF ALTERNATE NO. 06 IS ACCEPTED.
  - INSTALL DSS-1 INDOOR UNIT ABOVE DOOR. COORDINATE WITH ELECTRICAL CONTRACTOR. DISCHARGE CONDENSATE TO FLOOR DRAIN.
  - INSTALL DSS-1 OUTDOOR UNIT ON ROOF. ROUTE REFRIGERANT PIPING AND INTERCONNECTING CONTROL WIRING TO INDOOR UNIT. REFRIGERANT PIPING SHALL BE AIR COVER WITH BRAZED JOINTS AND BE INSULATED WITH FLEXIBLE ELASTOMERIC INSULATION. OUTDOOR INSULATION SHALL BE UV RESISTANT.

The document originally issued and sealed by  
 Brandon M. Sire  
 Registered Professional Engineer E-11494  
 On 12.11  
 This media should not be considered a certified document

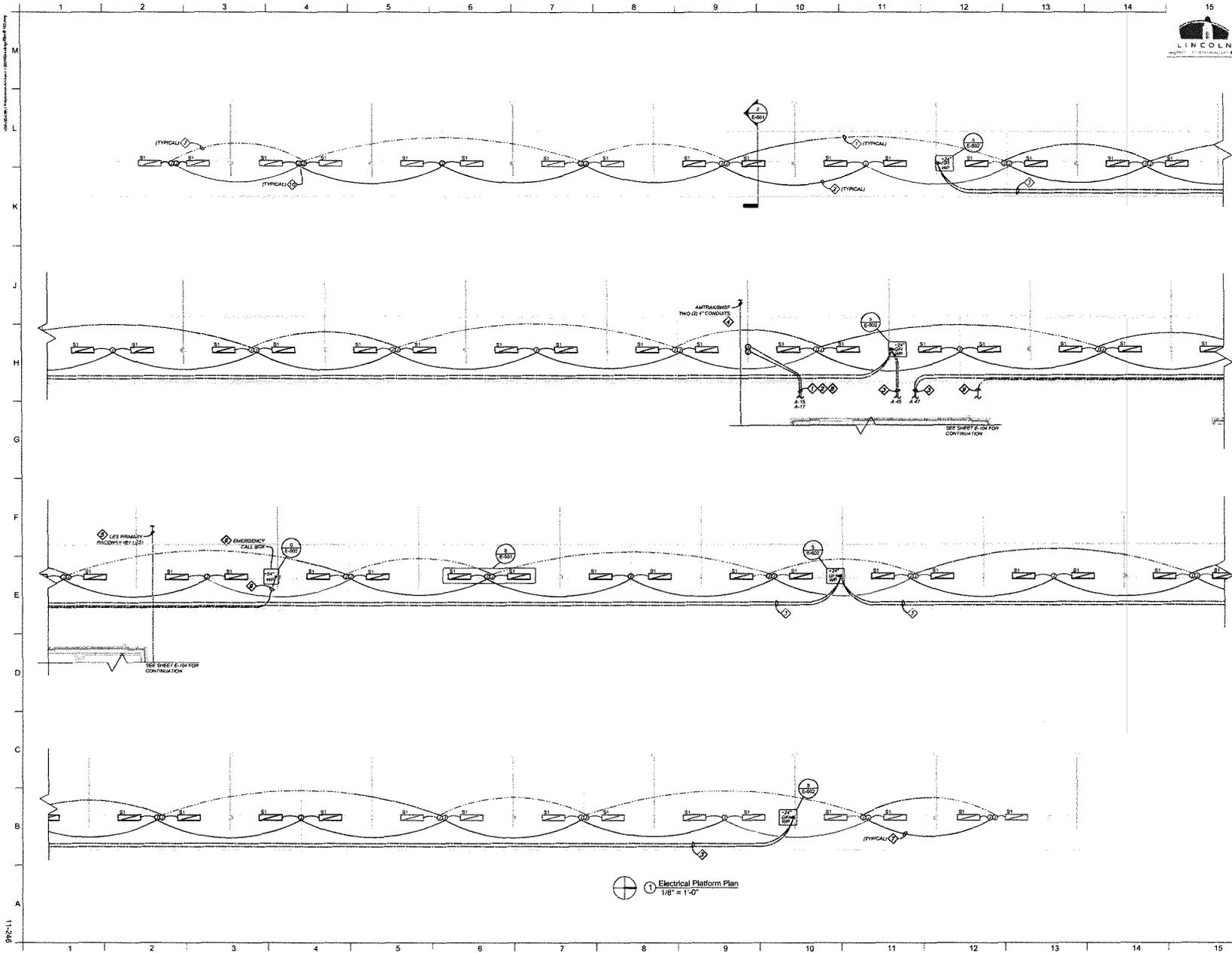
**Mechanical Floor Plan**

Attachment 1









1 Electrical Platform Plan  
1/8" = 1'-0"



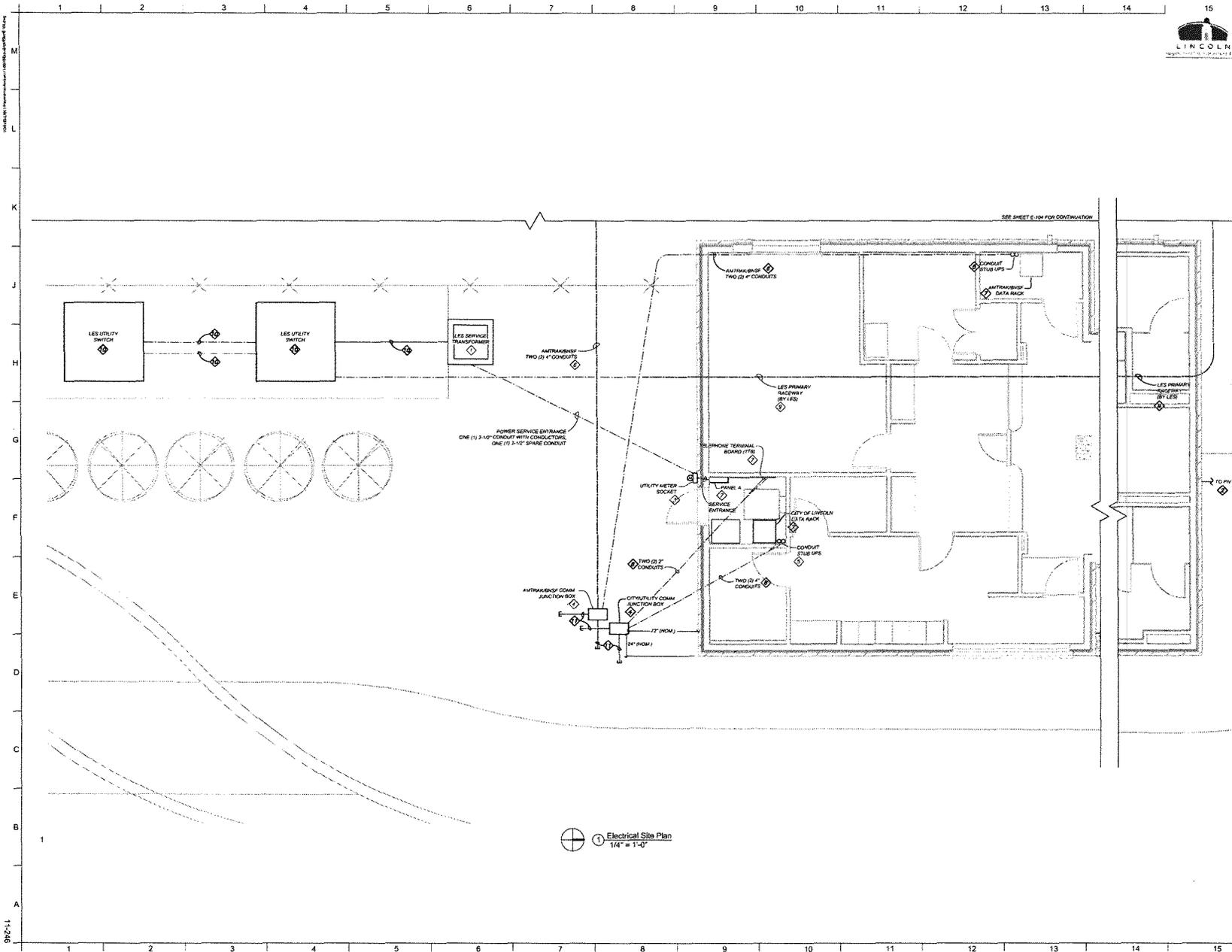
PROJECT NO.	87008	SHEET NO.	E103
DESIGNER	JPD	ISSUED	
PRJ. ENGR.	BLM	Nov. 2, 2011	
DRAWN BY:	JDW		

- ELECTRICAL GENERAL NOTES**
- COORDINATE ALL SITE UTILITY, ATRAK, AND BNSF WORK WITH OTHER TRADES AND THE RESPECTIVE ENTITIES.
  - PROVIDE ALL WORK SHOWN ON THE DRAWINGS AND AS NECESSARY TO FACILITATE UTILITY, ATRAK, AND BNSF CONNECTIVITY INTO THE BUILDING, AND TO ESTABLISH ADDITIONAL REQUIRED UNDERGROUND AND ABOVE-GROUND INFRASTRUCTURE FOR THOSE ENTITIES AS THEY BUILD THROUGH THE PROJECT SITE.
  - PERFORM ALL WORK PER THE NEC AND APPLICABLE STATE AND LOCAL CODES.
  - COORDINATE INSTALLATION WITH OTHER TRADES. OBTAIN LOCATES PRIOR TO DIGGING. CONSULT ADJACENT CIVIL PROJECT DRAWINGS AS NECESSARY FOR ADDITIONAL INFORMATION ON THE LOCATION OF EXISTING OBSTACLES. RELOCATE CONDUIT AND EQUIPMENT AS NECESSARY TO AVOID CONFLICTS WITH PILING AND OTHER STRUCTURES.
  - ALL UNDERGROUND CONDUIT SHALL BE SCHEDULE 40 PVC, UNLESS OTHERWISE SPECIFIED. ROUTE CONDUIT AS SHOWN AS MUCH AS PRACTICABLE. ADJUST AS REQUIRED TO MAINTAIN SEPARATION OF CONDUITS SHOWING A MINIMUM WITH OTHER PIPING. PROVIDE PULL STRINGS IN ALL CONDUITS.
  - INSTALL ALL CONDUITS A MINIMUM OF 18" BELOW FINISHED GRADE. ADHERE TO ALL SPECIFIC CONDUIT INSTALLATION REQUIREMENTS REQUIRED BY UTILITIES, ATRAK, AND BNSF.
  - ROUTING OF CONDUITS UNDER BUILDING FOUNDATION AND THROUGH FOUNDATIONS IS SHOWN WITH THE BUILDING. SHALL BE FULLY COORDINATED WITH OTHER TRADES.
  - ALL REQUIRED ELECTRICAL WIRING AND SERVICES TO THE STRUCTURAL PLATFORM CANOPY SHALL BE FULLY COORDINATED WITH STRUCTURAL. SEE DETAILS E-1 AND E-101 SHOWN AS INDICATED ON THIS SHEET FOR TYPICAL CANOPY SECTION AND ELEVATION DETAILS.

- ELECTRICAL KEYED NOTES**
- ROUTE PLATFORM EMERGENCY LIGHTING CIRCUITS BACK TO LIGHTING CONTROL PANEL IN ROOM ELEC. 108. SEE LIGHTING CONTROL SCHEMATIC, DETAIL E-108 FOR FORM FOR INSTALLATION. SEE KEYED NOTE E-108 FOR PROJECTED CONDUIT ROUTING INTO BUILDING.
  - ROUTE PLATFORM NORMAL LIGHTING CIRCUITS BACK TO LIGHTING CONTROL PANEL IN ROOM ELEC. 108. SEE LIGHTING CONTROL SCHEMATIC, DETAIL E-109 FOR MORE INFORMATION. SEE KEYED NOTE E-109 FOR PROJECTED CONDUIT ROUTING INTO BUILDING.
  - ROUTE TWO (2) 1" CONDUITS FROM PANEL A TO GENERAL RECEIPT RACKS ON PLATFORM. ONE CONDUIT SHALL BE A SPARE. PROVIDE A PULLSTRING AND ONE ENDING OF SINGLE CONDUIT ONE CONDUIT WILL INCLUDE AN AMBIBRANCH CIRCUITING FOR TOP CONDUIT. CONDUIT ABOVE SLAB SHALL BE RIGID. COORDINATE INSTALLATION OF CONDUIT BELOW SLAB WITH PLATFORM CONSTRUCTION. AS PART OF A DIFFERENT CONTRACT. COORDINATE WITH PLATFORM CONSTRUCTION. PROVIDE AS SHOWN ON PLATFORM SLAB AND BELOW BUILDING SLAB INTO COMMUNICATIONS ROOM AS SHOWN ON PLATFORM SLAB.
  - CONDUITS FOR ATRAK 6000 USE. CONTRACTOR SHALL DIRECTLY INSTALL THESE CONDUITS UNDER NEW RAIL TRACKS WHERE INSTALLING THESE CONDUITS FROM TRACKS SHALL BE COORDINATED WITH ATRAK 6000 BNSF SHEET E-104 FOR CONTINUATION OF THIS WORK.
  - COORDINATE WITH LES TO DIRECTIONAL BORE LES PRIMARY SECTION BELOW THE NEW RAIL TRACKS TO THE STATION SHEET E-104 FOR CONTINUATION OF THIS WORK.
  - PROVIDE ADA COMPLIANT EMERGENCY CALLBOX AT PLATFORM WHERE SHOWN. CALLBOX SHALL BE POWERED FROM DEDICATED PHONE LINE, CAPABLE OF DIALING MULTIPLE EMERGENCY PHONE NUMBERS. AUTOMATICALLY ARMED ACTIVATED, WITH ALL MEMORY STORED IN INTEGRAL, NON-VOLATILE EPROM MEMORY. PROVIDE IN ROOM WITH WEATHERPROOF ENCLOSURE.
  - CONTRACTOR TO DETERMINE APPROXIMATE CIRCUIT LENGTHS AND ADJUST CONDUIT SIZE ACCORDINGLY TO COMPLY WITH NEC REQUIREMENTS FOR LISTING CONDITIONS FOR VOLTAGE DROP. IT IS ANTICIPATED THAT AT A MINIMUM NO. 4 CONDUCTORS IN 1" CONDUIT WILL BE REQUIRED ALONG THE PLATFORM.
  - TWO CONDUITS ROUTED DOWN COLUMN AND BELOW PLATFORM SLAB. USE RIGID PVC FOR EXPOSED CONDUIT AND MINIMUM 12" RADIUS BENDS. COORDINATE INSTALLATION OF CONDUIT WITH PLATFORM CONSTRUCTION. AS PART OF A DIFFERENT CONTRACT. COORDINATE WITH PLATFORM CONSTRUCTION. PROVIDE AS SHOWN ON PLATFORM SLAB AND BELOW BUILDING SLAB INTO COMMUNICATIONS ROOM AS SHOWN ON PLATFORM SLAB.
  - ROUTE 1" CONDUIT FOR COMMUNICATIONS WIRING TO PLATFORM EMERGENCY CALL BOX. USE RIGID CONDUIT WHERE EXPOSED AND UTILITY MINIMUM 12" RADIUS BENDS. COORDINATE INSTALLATION OF CONDUIT WITH PLATFORM CONSTRUCTION. AS PART OF A DIFFERENT CONTRACT. COORDINATE WITH PLATFORM CONSTRUCTION. PROVIDE AS SHOWN ON PLATFORM SLAB AND BELOW BUILDING SLAB INTO COMMUNICATIONS ROOM AS SHOWN ON PLATFORM SLAB.
  - JUNCTION BOXES SHALL BE PROVIDED FOR ROUTING AND FUTURE SUPPORT OF CANOPY LIGHTING CIRCUITS. BOXES SHALL BE PROVIDED AT EVERY RAY. SEE SHEET E-101 FOR CANOPY LIGHTING DETAILS AND MORE SPECIFIC INFORMATION ON CONDUITS ROUTED BETWEEN JUNCTION BOXES AND BETWEEN JUNCTION BOXES TO LIGHT FIXTURES.

The document originally issued and sealed by:  
 Jon P. Dalton  
 Registered Professional Engineer E-9114  
 On: 11.2.11  
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Electrical Platform Plan



1 Electrical Site Plan  
1/4" = 1'-0"

PROJECT NO.	87096	SHEET NO.	E104
DESIGNER	WFO ISSUED		
PROJ. ENGR.	BLM Nov. 2, 2011		
DRAWN BY:	JOW		

**ELECTRICAL GENERAL NOTES**

- COORDINATE ALL SITE UTILITY, AMTRAK, AND BSF WORK WITH OTHER TRADES AND THE RESPECTIVE ENTITIES.
- PROVIDE ALL WORK AS SHOWN ON THE DRAWINGS AND AS NECESSARY TO FACILITATE UTILITY, AMTRAK, AND BSF CONNECTIONS INTO THE BUILDING AND TO ESTABLISH ADDITIONAL REQUIRED UNDERGROUND INFRASTRUCTURE FOR THOSE ENTITIES AS THEY BUILD THROUGH THE PROJECT SITE.
- PERFORM ALL WORK PER THE NEC AND APPLICABLE STATE AND LOCAL CODES.
- COORDINATE INSTALLATION WITH OTHER TRADES OR HAND LOCATES PRIOR TO DIGGING. CONSULT ADJACENT CIVIL PROJECT DRAWINGS AS REQUIRED FOR ADDITIONAL INFORMATION ON THE LOCATION OF EXISTING OBSTACLES. RELOCATE CONDUIT AND EQUIPMENT AS NECESSARY TO AVOID CONFLICTS WITH PILING AND OTHER STRUCTURES.
- ALL UNDERGROUND CONDUIT SHALL BE GENERAL 40 PVC. USE OF GRS ROUTE CONDUIT AS SHOWN AS MUCH AS PRACTICAL. ADJUST AS REQUIRED. MAINTAIN SEPARATION OF CONDUITS SHARING A TRENCH WITH OTHER PIPING. PROVIDE FULL STRINGS IN ALL CONDUITS.
- INSTALL ALL CONDUITS A MINIMUM OF 18" BELOW FINISHED GRADE. ADHERE TO ALL SPECIFIC CONDUIT INSTALLATION REQUIREMENTS REQUIRED BY UTILITIES, AMTRAK, AND BSF.
- ADJUST OR CONDUITS UNDER BUILDING FOUNDATION AND THROUGH FOUNDATION. ALL TRENCHES WITH THE BUILDING SHALL BE FULLY COORDINATED WITH OTHER TRADES PRIOR TO WORK.

**ELECTRICAL KEYED NOTES**

- PAD MOUNT SERVICE TRANSFORMER BY LINCOLN ELECTRIC 5000 LB. CLASS. COORDINATE ALL SERVICE WORK WITH LES ELECTRICAL CONTRACTOR TO PROVIDE TRANSFORMER PAD PER DETAIL 6 ON SHEET E-103.
- PROVIDE CONDUIT WITH CONDUITORS AS REQUIRED FROM THE BUILDING FIRE ALARM DIALER TO THE POST INDICATOR VALVE (PIV) OUTSIDE THE BUILDING. LOCATION OF PIV NOT SHOWN AND SHALL BE VERIFIED PRIOR TO WORK. PIV SHALL PROCEED DIALER WHEN ACTIVATED.
- UTILITY METER SOCKET. METER SOCKET BY CONTRACTOR. METER BY UTILITY. PROVIDE FOR 1/2" IN A 1/2" SERVICE SOCKET WITH LEVER BYPASS AND NEAR AN ENCLOSURE. METER SHALL BE 1/2" IN FROM FACE.
- LOCATE COMMUNICATION JUNCTION BOX OUTSIDE BUILDING. SIDEWALK FOOTPRINT. INSTALL 4" FISH WITH 2" GAGE IN FINISHED CONCRETE. COORDINATE FINAL LOCATION WITH ARCHITECT. SEE DETAIL 3, SHEET E-501 FOR INSTALLATION REQUIREMENTS.
- STUB ALL CONDUITS TO 36" ABOVE FINISHED FLOOR. TRANSITION FROM PVC TO EMT WITHIN 2' OF FINISHED GRADE.
- CONDUITS FOR ALARM BELLERS. SEE CONTRACTOR SHALL ORIENTALLY BELLERS UNDER NEW RAIL TRACKS TO COMMUNICATION RACKS SHOWN ON THIS SHEET WHEN INSTALLING THESE COMMUNICATION RACKWAYS. COORDINATE ALL WORK WITH AMTRAK & BSF. PROVIDE CONDUIT IN TRENCH FROM THE COMMUNICATION JUNCTION BOX INTO THE BUILDING.
- SEE SHEET E-103 FOR DETAILS ON THIS EQUIPMENT. IT IS SHOWN HERE FOR GENERAL REFERENCE ONLY.
- (2) 4" CONDUITS FOR CITY OF LINCOLN COMMUNICATIONS AND (2) 2" CONDUITS FOR TELEPHONE & TELEVISION SERVICE. ROUTE CITY CONDUITS ADJACENT TO DATA RACK AND ROUTE TELEPHONE CONDUITS TO THE AS SHOWN.
- COORDINATE WITH LES TO DIRECTIONAL ROSE. LES PRIMARY RACKWAY FROM THE NORTHWEST OF THE BUILDING, SOUTH RISES IN THE BUILDING FOUNDATION, AND TO THE LES UTILITY SWITCHES SHOWN.
- WORK PROVIDED BY OTHERS. COORDINATE WITH OTHERS AS REQUIRED TO ALLOW THEM TO COMPLETE THEIR WORK IN CONNECTION WITH PROJECT CONSTRUCTION.
- PROVIDE SPARE CONDUITS (STUBBED OUT) FOR EXISTING COMMUNICATION JUNCTION BOXES FOR FUTURE USE. IN PROVIDE (2) 4" CONDUITS FROM THE AMTRAK/BSF BOX BOTH TO THE SOUTH & EAST OF BOX, AND PROVIDE (2) 4" CONDUITS & (2) 2" CONDUITS FROM THE TELEPHONE BOX BOTH TO THE SOUTH & EAST OF BOX. TAPE ALL CONDUIT ENDS.

The document on this sheet  
issued and sealed by:  
Jan P. Dalton  
Registered Professional  
Engineer E-9114  
On: 11-2-11  
This media should not be  
considered a certified document

**Electrical Site Plan**







**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

**LEASE AGREEMENT**  
**(West Haymarket Station)**

This Lease Agreement (“Lease”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012, 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 30<sup>th</sup> Street Station, 5<sup>th</sup> 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”), said property and building being more particularly described and shown on Exhibit “A” and Exhibit “B” attached hereto, respectively, and made a part hereof;

WHEREAS, AMTRAK leased space for a passenger train station in the City of Lincoln, Nebraska (“Old Station”);

WHEREAS the parties hereto desire AMTRAK to relocate from the Old Station to the Station.

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. As of the “Commencement Date” (as hereinafter defined), JPA hereby leases to AMTRAK and AMTRAK leases from JPA for the “Term” (as hereinafter defined) upon all the conditions set forth herein, that portion of the Station south of the area commonly known as the “Great Hall/Waiting Area” (“Premises”) together with the nonexclusive right to use the Great Hall/Waiting Area as delineated on the floor plan attached hereto and incorporated herein as Exhibit C (“Floor Plan”). The JPA reserves the right to lease all or part of the Great Hall/Waiting Area to other tenants provided such leasing does not interfere with AMTRAK’s “Use” (as hereinafter defined) during AMTRAK’s normal hours of operation. For the purpose of this subsection 1.a., AMTRAK’s normal hours of operation shall be two hours before and two

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

hours after passenger trains are scheduled to arrive at the Station. On the Commencement Date, AMTRAK shall provide 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.

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, Great Hall/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) ("New Track") is constructed and Amtrak has commenced operations on such track and new passenger platforms adjacent to such track have been completed in accordance with the Sublease Agreement between AMTRAK and the JPA dated January 8, 2011 ("New Platform"). 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

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**agreement regarding revisions to the Platform Lease**

Exhibit D

(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

As of the Commencement Date, AMTRAK shall pay rent in the amount of Two Thousand Eight Hundred Forty-Five and 00/100ths Dollars (\$2,845.00) per month (“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, crew base facilities, IT 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. In addition, the JPA will provide at no cost to Amtrak four (4) parking spaces designated for Amtrak employee parking.

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

6. HOURS OF OPERATION

AMTRAK shall have the right to keep the Premises open at all such times as it desires, provided that AMTRAK agrees that AMTRAK will keep the door and any other access to the platform secured (provided that JPA provides access doors that can only be unlocked and opened by AMTRAK) from entry by its passengers except during the period of time that AMTRAK passenger trains have arrived at the Station and are parked abutting the platform for boarding and deboarding of passengers.

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 final plans and specifications attached hereto and incorporated herein as Exhibit E ("Final Plans"). 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.

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.

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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;

(v) 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;

(vi) Provide hot and cold water sufficient for drinking, lavatory, toilet and ordinary cleaning purposes to be drawn from approved fixtures in the Common Areas;

(vii) Replace lighting tubes, lamp ballasts, starters and bulbs in the Common Areas;

(viii) 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;

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(vix) 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;

(x) 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.

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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.

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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

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- 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. INDEMNIFICATION.

(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

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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,

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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.

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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.

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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(1), AMTRAK is exempt from all state and local taxes, surcharges, or fees.

24. COMPLIANCE WITH 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.

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.

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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:

City Attorney  
City of Lincoln, Nebraska  
555 South 10th Street  
Lincoln, NE 68508

AMTRAK:

AMTRAK  
30th Street Station, 5<sup>th</sup> 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.

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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 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.

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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. Nothing in this Lease shall be construed to limit the rights, obligations, authority, or responsibilities of AMTRAK's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

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.

40. TEMPORARY SHUTTLE SERVICE

It is anticipated that the use of Passenger Main Line Track No. 2 (MT2) will be terminated and that the New Platform and Passenger Main Line Track No. 4 (MT4) will be completed with Amtrak ready to commence operations on such Main Line Track on or about June 15, 2012 ("MT4 Operation Date"). If the New Station is not completed by the MT4 Operation Date, Amtrak will at Subtenant's request agree to temporarily continue to operate out of Amtrak's existing depot facilities in the Lincoln Station Building and utilize the New Platform for Amtrak MT4 train arrivals subject to the following conditions:

a. Subtenant shall at its own cost and expense use a motor carrier to shuttle Amtrak passengers between the Lincoln Station Building and the New Platform. The vehicle used for the shuttle service shall arrive at the Lincoln Station Building at least one hour prior to the scheduled arrival of the earliest Amtrak train and remain in service until after the last scheduled departure. Subtenant shall also have standby service available in the event Amtrak trains run behind schedule. The parties agree that currently an Amtrak westbound train is scheduled to arrive in Lincoln, Nebraska at 12:08 a.m. and depart at 12:14 a.m.; that an Amtrak

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eastbound train is scheduled to arrive at 3:20 a.m. and depart at 3:26 a.m., and that the two trains run seven days a week on this schedule.

b. The shuttle service shall only be used for a temporary period of time and any use in excess of three weeks shall be subject to a liquidated damages penalty to Amtrak in the amount of \$ \_\_\_\_\_ per day.

c. The Subtenant shall and hereby agrees to assume all risk and liability involved with the transportation of Amtrak passengers, crew and baggage to and from the Lincoln Station Building and the New Platform.

d. Subtenant shall be responsible for all costs associated with any unscheduled delay of an Amtrak passenger train to meet customer service and contract obligations for missed passenger connections, or other associated costs resulting from Subtenant's failure to provide the agreed upon shuttle service.

e. Subtenant shall require its shuttle operator to procure and maintain insurance coverage required under the Insurance Requirements for All City Contracts attached hereto as Exhibit "F" and by this reference made a part hereof. Subtenant shall further require Amtrak to be named as an additional insured.

f. AMTRAK shall not pay Rent during the period of time the temporary shuttle service is utilized for Amtrak operations.

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

By \_\_\_\_\_  
Bruce Looloian  
Assistant Vice President  
Real Estate Development

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

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

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

Exhibit A to Station Lease

(Legal Description of the Property – The Property currently has a temporary construction address of 510 N Street, Lincoln, Nebraska)

DRAFT

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

Exhibit B to Station Lease

(Exterior Drawing of the Station)

DRAFT

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

Exhibit C to Station Lease

(Floor Plan of the Station)

DRAFT

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

Exhibit D to Station Lease

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

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

JPA:  
WEST HAYMARKET JOINT  
PUBLIC AGENCY

By: \_\_\_\_\_  
Chris Beutler  
Chairperson of the West Haymarket  
Joint Public Agency Board of  
Representatives

DRAFT

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

Exhibit E to Station Lease

(Final Plans)

DRAFT

**FOR DISCUSSION PURPOSES ONLY**  
**Subject to further review and revision by Amtrak**  
**and conditioned upon BNSF and Amtrak reaching**  
**agreement regarding revisions to the Platform Lease**

Exhibit D

Exhibit F to Station Lease

(Amtrak Temporary Trailer Examples)

DRAFT