AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD WEDNESDAY, March 12, 2014 AT 3:00 P.M.

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

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

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

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

3. Approval of the minutes from the JPA meeting held February 11, 2014 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. Approval of December 2013 and January 2014 Payment Registers (Steve Hubka)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the payment registers)

5. Review of December 2013 and January 2014 Expenditure Reports (Steve Hubka)
   - Public Comment

6. WH 14-13 Resolution to accept the financial audit and management letter from BKD CPAs & Advisors LLP for the period ending August 31, 2013. (Chris Lindner and Robyn Devore)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

7. WH 14-8 Resolution of intent to make a grant of funds to the Board of Regents of the University of Nebraska in an amount not to exceed $2 million from the West Haymarket Joint Public Agency Infrastructure Contingency Fund to reimburse the University for a portion of its costs to design and construct the Breslow Ice Center. (JPA Board)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

Pinnacle Bank Arena Event and West Haymarket JPA information may be found at:
www.pinnaclebankarena.com
www.lincoln.ne.gov

8. WH 14-9 Resolution approving the Second Amended and Restated Facilities Agreement between the West Haymarket Joint Public Agency and the City of Lincoln, Nebraska approving the Projects identified in Exhibit A to the Second Amended and Restated Facilities Agreement as an amendment and supplement to Exhibit B attached to Bond Resolution Nos. WH 00009, WH 00036, WH 00044, WH 00183, WH 00482 and WH 00589 and declaring that the plans and specifications for the Breslow Ice Center prepared by the University's selected architects are the plans and specifications prepared by the JPA's architects for the Breslow Ice Center for purposes of Section 504 of the above Bond Resolutions and Section 2 of the Second Amended and Restated Facilities Agreement. (Gilmore & Bell)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

9. WH 14-10 Resolution approving an amendment to Article I of the Rules of Governance West Haymarket Joint Public Agency to revise provisions pertaining to the construction, equipping, furnishing, and financing the Arena and other public facilities, and to adopt a new Exhibit A showing the current boundaries of the West Haymarket Redevelopment Area and listing approved Projects including the Breslow Ice Center. (Gilmore & Bell)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

10. WH 14-11 Resolution approving Change Order No. 21 revising the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson as part of the overall Contract Closeout to reduce the contract sum by $270,871.00. (Paula Portz)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

11. WH 14-12 Resolution approving a contract agreement with Land Construction Inc. for demolition of the former Alter buildings and structures located south of "N" Street for the sum of $97,600.00. (Paula Portz)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

12. WH 14-14 Resolution to approve Amendment No. 10 to the Agreement for Environmental Remediation Consulting Services with Alfred Benesch & Company. (Frank Uhlarik)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

13. Set Next Meeting Date: Thursday, April 10, 2014 at 3:00 p.m. in the County-City Building City Council Chambers Room 112

14. Motion to Adjourn

Pinnacle Bank Arena Event and West Haymarket JPA information may be found at:
www.pinnaclebankarena.com
www.lincoln.ne.gov

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
February 11, 2014

Meeting Began At: 3:00 P.M.

Meeting Ended At: 5:00 P.M.

Members Present: Chris Beutler, Tim Clare, Doug Emery

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

Chair Beutler opened the meeting with introduction of the Board members. He advised that the open meetings law posted at the back of the room is in effect. Pam Gadeken alerted attendees that parking coupons are available here for those parked in the north lot. That gate will be open after 5 p.m. Cars in front of the building must be moved prior to 4 p.m. to avoid being towed.

Item 2 -- Public Comment and Time Limit Notification

Public comment is welcome. Beutler stated that individuals from the audience are given a total of five minutes to speak on specific items listed on today's agenda. Especially with so many wanting to speak, people are asked to be mindful of the time limits. Pam will monitor the time and alert you to when that time limitation is approaching. Individuals are welcome to speak on any item at the time the chair invites comment on that item. Those testifying should identify themselves for the official record and sign in.

Item 3 -- Approval of the minutes from the JPA meeting held December 19, 2013

Beutler asked for corrections or changes to the minutes of the December 19, 2013 JPA meeting. Emery moved approval of the minutes as presented. Clare seconded the motion. Motion carried 3-0.

Item 4 -- WH 14-1 Resolution approving Change Order Nos. 1 and 2 to the Contract Agreement between the JPA and Hawkins Construction Company for construction of the West Haymarket Parking Lot, Festival Space and Pedestrian Bridge.

Caleb Swanson, PC Sports, explained that this item deals with two separate change orders to the festival space contract with Hawkins Construction. The first change order is for a deduct of $176,161.38 to the contract. It captures various credits and savings that the project team has been able to identify to this point. The second change order is an additive change for $124,164.81 to add decorative fencing around the north half of the space lot to match the existing south half fencing. This allows the entire space to be enclosed as one entity. This also allows SMG to have additional controls when events are occurring in the area without adding temporary enclosures. The net request for this item is a deduct to the contract of $51,996.57.

Jane Kinsey, Watchdogs of Lincoln Government, questioned where the savings came from specifically. Swanson responded that it was for various line items and adjustments to scopes of work. This captures items not used or later identified as not needed or only partially needed. One of the larger items was an amount in the contract to correct environmental problems during site preparation in case a large amount of bad soils or environmental problems were discovered. Minimal issues were encountered and, although he does not have the entire list with him, that is an example and a large piece of the savings.

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

Item 5 – WH 14-2 Resolution approving Change Order No. 28 to the Contract Agreement between the JPA and Hawkins Construction Company for Construction of the West Haymarket JPA Infrastructure Improvements Core Area Roadway and Utilities Project to add additional work and make actual quantities adjustments to the contract resulting in a contract deduction of $806,347.33.

Adam Hoebelheinrich, PC Sports, introduced this resolution stating that this item relative to core area roadways and utilities is a deductive change order for $748,287.67. Although that number is different from what is shown in the resolution and on the agenda, the documents do show this net deductive value. Onsite work is now complete and they are in the process of finalizing the final quantities and payments.

Hoebelheinrich also wanted to take this opportunity to thank the entire project team for their efforts on this project. It was a difficult project, involved teams working together, and ultimately was completed early. This team includes Hawkins, Tom Crockett, Troy Alexander and their team and subs: Bookstrom, Watts Electric, Land Construction, Trafcon, and Green Solutions. He cannot say enough good things about them. Considering all the personalities and general contractors working in the area, things flowed smoothly on the project. He also thanked the onsite management team of Kent Rohren and Brandon Koinzan from Olsson Associates, Brad Elting with Schemmer, and Tom Leikam and his design team at Olsson.

The project met every major milestone with several completed early, allowing the arena to open a month early. The project is also an award winner. It received an honor award from the American Council of Engineering Companies of Nebraska for Olsson's design on the project. He also stated that the project was rated the Best Urban Streets Project for 2013 by the Nebraska Concrete Paving Association.

Beutler thanked Adam stating that anytime this amount of money can be saved and returned to the coffers of the people it is certainly something to be recognized, and they want to say thanks. Emery echoed that sentiment, noting that contingency monies are necessary and people often talk about their use, but this is the reverse and sometimes this goes unnoticed by the public. This is proof that money was not lavishly spent and that the project was well managed.

Clare thanked everyone as well noting that a project of this magnitude done early is often unheard of today. A project done early with contingencies remaining is even rarer, and he appreciates it being treated as if the money was out of their own pockets. Responding to Clare, Kinsey commented that there is a big bill coming due so all the money available will be needed.

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

Item 6 -- WH 14-3 Resolution approving Change Order No. 20 revising the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson as part of the overall Contract Closeout to reduce the contract sum by $750,000.

Paula (Yancey) Portz, PC Sports and main project manager for the West Haymarket, presented this deductive change order to the Manager at Risk Contract with M.A. Mortenson for construction of the Pinnacle Bank Arena. Over the last several months, they have been closing out the different subcontractors, the last open remaining items, and the punch list items, etc. At this time, they are pleased to bring forward a deductive change order of $750,000 that reduces the Mortenson contract to $160,882,078. They will continue the process and hope to bring another deductive change order before the Board next month. Mortenson has worked very diligently, along with their team, to be sure they are doing their best to save money that can be refunded to the owner.

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

Item 7 -- WH 14-4 Resolution approving the Amended and Restated Parking Rights Agreement between the West Haymarket Joint Public Agency and the City of Lincoln regarding the City's use of the BNSF Parking Lot, West Depot Parking Lot and Construction Parking Lot as temporary replacement parking for the existing Lumberworks and Iron Horse Parking Lots.

Hoebelheinrich explained we were dealing with one specific area of the West Haymarket surface lots between "P" and "N" and between Canopy and Pinnacle Area Drive. This resolution is to amend the agreement with the JPA for the City of Lincoln's use of those lots. It keeps the dollar value the same, but the lot has expanded. So, within the agreement the JPA will still be able to use the lots for construction parking and for parking on Decks 2 and 3 during the day at no charge, but it can be opened up for events. In exchange for use by City Parking Services for events, they will handle all the maintenance on the lots. This is helpful to the JPA to have a knowledgeable resource and to have the lots on scheduled maintenance along with other City lots. This is a month-to-month lease for six months.

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

Item 8 -- WH 14-5 Resolution granting the Nebraska Sports Council permission to use the West Haymarket Festival Space and Pedestrian Bridge for the Big Red Challenge on Saturday April 26, 2014 from 8:00 a.m. to noon.

Dave Minarik, Executive Director of Nebraska Sports Council, introduced Scott Ash, Operations Director, and Scott Dwyer, Director of Events. On a side note, Minarik said they could do a lot with a couple of sheets of ice in Lincoln. More on point, he explained that last fall they got together with an organization called the Big Red Challenge to discuss a race by the same name. This would create funding for scholarships for wounded veterans and/or their descendants. The event is an obstacle race and they have put together a route. Their role in the event is to see that it is conducted safely and efficiently. They have a 30-year record using City streets and other areas such as parks including the Cornhusker State Games. They submitted a map with a plan

for that event for April 26, Saturday morning. Beutler thanked Minarik and suggested that watching the movie "Lone Survivor" is a good reminder of why he does what he does and our obligations to our soldiers who have been in war.

Clare moved approval of the resolution. Emery seconded the motion. Prior to voting, Emery disclosed that he sits on the Board of Directors for the Council for the Cornhusker State Games and asked for a legal opinion as to his voting. Rod Confer, City Attorney, recommended he abstain as he was probably disqualified under the Accountability and Disclosure Act. Motion carried 2-0 with Emery abstaining.

Item 9 -- WH 14-6 Resolution approving a Temporary Energy Service Agreement between the West Haymarket Joint Public Agency and TDP Phase Two LLC for a building located on the southwest corner of Canopy Drive and P Street.

Chris Connolly, City Law Department, explained that this was a temporary energy service agreement negotiated with TDP Phase Two for their buildings in the West Haymarket District. The permanent agreement is ready to go into effect once the building reaches substantial completion, but it is not there yet. Thus, they need a temporary agreement to provide energy mostly for heating until the permanent agreement takes over.

There are two components to this agreement. The commodity charge (electricity, gas, and sources needed to produce the energy for the building) and the demand charge other (administrative costs, insurance, etc.). There has never been disagreement on paying the commodity charges, but discussions dealt with the demand charge other costs because they were not using the heating on all the floors during construction. Therefore, this agreement has negotiated numbers in Section 5.02 based on what they expect to need for heat during construction until they reach substantial completion. Responding to Emery, Connolly confirmed this is a bridge until substantial completion.

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

Item 10 -- WH 14-7 Resolution authorizing the Chair to enter into an agreement with the City of Lincoln to have City staff negotiate and oversee any telecommunication company uses of Operating Space in the Equipment Room in the Pinnacle Bank Arena with revenues from such space agreement allocated to cover City staff involvement.

David Young, City Fiber and Infrastructure Manager, stated they have been approached by carriers in the Arena to place additional servers and equipment inside the equipment room. Currently that is not covered under any responsibility for SMG or the City.

Displaying a slide, Young explained that currently the Arena is being fed by fiber coming from Denver, Colorado, down "O" Street into the south portion of the building. This particular carrier is proposing to add a fiber connection to Denver over the pedestrian bridge via the north side. Currently the City does not have anyone obligated to manage these types of agreements. Law and Public Works infrastructure staff would perform that work for the JPA. We are looking for that approval.

Kinsey asked how much money is involved and how many years would the contract run. Young responded $6,000 and $9,000 per agreement annually. They would expect no more than three agreements. They will not enter into an agreement with a telecommunications company for this type of service unless it has a benefit to the Arena. Young said the years are to be determined, but they are looking at a five-year agreement with a five-year renewal.

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

Item 11 – WH 14-8 Resolution of intent to make a grant of funds to the Board of Regents of the University of Nebraska in an amount not to exceed $2 million from the West Haymarket Joint Public Agency Infrastructure Contingency Fund to reimburse the University for a portion of its costs to design and construct the Breslow Ice Center.

Beutler recognized there are many here feeling passionate about this topic. He asked that everyone respect each other's opinion and not display approval or disapproval in response to comments made during testimony. They will stay until everyone has a chance to testify, as they are very interested in what you have to say. It is helpful if people do not repeat themselves, and they want all new well-articulated information. He asked for a raising of hands for those in favor and those against the resolution. The testimony will not be in any particular order, but they have invited one speaker, Christine Jackson from UNL, since the JPA is one of the University partners on this matter. Essentially this is a result of a gift to the University from a great citizen of Lincoln, John Breslow. The City was asked and, in fact, contributed $1 million towards the project. A short time later, when the site was determined, the City put in another $200,000 into the project.

Christine Jackson, Vice Chancellor for Business and Finance at UNL, read a short statement from the University of Nebraska. The statement is attached as part of these minutes.

John Bodami, an architect with the DLR Group, who has been charged with the design of the Breslow Ice Center came forward. Cost is not the only driver of this project. Design goals were established early, and did not say to design one of the least expensive rinks in the Midwest. Regarding costs that seem to be higher, he explained that when looking at "comparable" facilities there are a number of fundamental questions to ask. What is the location? Is the ice year round or seasonal? What kind of ice plant do they have, or other amenities? Do you have backup systems in place in case of power failure? When was the building constructed? These are all cost factors.

What have they been asked to do and what makes this building unique from other ice facilities? This building is not being constructed in a cornfield. It must be a compatible neighbor architecturally to the surrounding buildings, such as the Haymarket Park baseball facility and the new Pinnacle Bank Arena. It is at the leading point of the new pedestrian bridge leading to the Arena so it must fit appropriately in its context. It is located in a prominent viewing corridor into the City of Lincoln and will need to meet the approval of the City Urban Design Committee. Aesthetics are important to both the City and the donor, John Breslow. It must meet the program requirements of the University to support UNL Club Hockey, student recreation, City ice hockey, figure skating clubs, and recreational skating. A business model has been developed by UNL Campus Recreation with basic amenities in the program to benchmark that revenues will keep pace with operational costs. If you remove the basic amenities, the business plan will be affected. The site provided is in the flood plain next to a levee. They need to meet the Corps of

Engineers' requirements and raise the grade elevation up to six feet to get the elevation one foot above flood. They also need to surcharge the site to compact the soil so it is adequate to support the building.

There are also challenges with building the rink in our climate. The Ice Box currently only has ice six months out of the year. In order to maintain year round ice in Breslow Ice Rink, the building envelope needs to be insulated properly, and HVAC systems need to be designed to keep the ice sheet temperature consistent and humidity controlled regardless of the outside temperature. This is a challenge in summer and during large fluctuations in temperature. A backup generator will be used in the event of a power outage to avoid a mess once power is restored that would affect the bottom line. Eco Chill ice plant is an environmentally safe and more efficient ice making system that will cycle the heat generated in making the ice and heat the building in the winter months, saving operational costs by as much as 20%. Adequate air exchange is important in areas off the ice as well, such as locker room areas. They need to be able to cycle the air exchanges to control humidity and odor. It will be designed to University of Nebraska facility design standards, as they will be the owner and manager of the building. They have value and quality standards that have proven to be sound, long-term investments that will last over the lifetime of the building and be efficient to maintain. The number they use for this project is total project cost – not just building cost. It includes design fees, construction fees, and furniture, fixture and equipment costs so that the facility is complete and ready to use. They have had three independent cost estimates by their estimating consultant, by one ice arena consultant, and by a respected local contracting firm. In their professional opinion they have done cost comparisons of recently completed facilities. The facility has always been designed with two sheets of ice in mind. One sheet would be year round and one sheet would be seasonal. They plan to design a one-sheet facility and an alternate design for a second sheet if money is available. Any monies given by the JPA would help towards this goal.

Nancy Myers, 23 year Lincoln resident representing the sport of curling, shared that she had curled since she was 13 and is actively curling now. She is an advisor for the UNL Student Curling Team, a member of the US Curling Association College Committee, and serves as a regional representative to the US Women's Curling Association. She supports the Breslow Ice Center, and she would like to see two sheets of ice. Interest in ice sports is growing and many have to travel all over the State to obtain ice time. She travels, as do the UNL Students, to Omaha every weekend to curl. There is no opportunity for additional play, practice, or ice instruction here in Lincoln. Curling is a sport for many generations and has broad appeal. Three generations of her family curl. They can start at five years of age and can go to 80 if able. There is also a strong wheelchair-curling program nationally. The key to good curling is ice preparation. Curlers cannot curl on skating or hockey ice because skate divots affect the trajectory and accuracy of the curling stone. Curlers need flat smooth ice that is pebbled to provide an appropriate surface. Most curling is played on dedicated ice used only for curling. Since Lincoln does not have a large curling population, it would not make sense to have an ice rink dedicated to only that sport. Therefore, as curlers, we would like to use the Breslow Ice Center. She would urge you to build the facility carefully to allow multi-purpose use of the ice, which she believes is key to ice sports success in Lincoln. This means the base and preparation of the ice is created to adapt to and meet changing ice needs and purpose. She invites everyone to come and learn to curl.

Clare asked if a second sheet was built as a multi-purpose sheet could hockey be played on the sheet when curling was not being played. Myers affirmed saying that was the current situation at

Tranquility Moylan Iceplex in Omaha and may be true for Fremont as well. Clare asked what sort of hours or time would be needed for the curling association in Lincoln. Currently the curlers are students, but about 30 were turned away. Neither they nor the Aksarben Curling Club absorb them. Ideally, they would like to be curling twice a week with more during tournament preparation -- at least eight to ten hours per week.

Kaylan Pielan is an 11 year old who is in her first year skating as a member of the Star City Figure Skating Club. She does two group lessons and two private lessons per week. Her goal is to compete in national competitions and possibly the Olympics one day. Her coaches recommend that she continue to skate throughout the summer, but that would require traveling to Omaha at least once a week to meet with her Lincoln coach. This requires additional time and money for her and her parents and is a difficult commitment since she also participates in a local track and field club during the summer. She is asking the JPA Board to remember the dreams of all the others for whom she is speaking today and to vote for a new ice skating rink in Lincoln.

Troy Kirk grew up in Michigan where hockey is a way of life. With four sons of his own, he is excited to have the opportunity to pass down his love of hockey to them. They are very involved in the ice hockey community and the life-long lessons learned are invaluable. Unfortunately, their current facility, the Ice Box, is falling into disrepair. It is aesthetically unpleasing and riddled with hazards for the young children using the facility. The restrooms do not have hot water and he questions the integrity of certain parts of the structure itself. The facility lacks certain amenities other regional facilities offer, such as large open areas with seating, a pro shop that is open and continuously staffed, two sheets of ice and a general warm and welcoming feel. Lincoln is extremely limited in hosting competitions and other events resulting in lost revenue, not only from our own citizens that must travel to other cities to participate, but the potential dollars generated from participants coming in from outside the City. Revenue generated from lodging, food sales, gasoline sales, and entertainment could be quite substantial. Lincoln desperately needs a new ice facility. Building the Breslow Ice Center in the Haymarket would be a great addition to help revitalize the downtown area. A new facility would allow for more ice time meaning the Lincoln Ice Hockey Association (LIHA) would not have to turn away new players because of limited space and time. Ice hockey is not the only sport that would benefit – curling, figure skating, broomball, UNL Hockey Club, and other UNL intramurals would be able to expand and grow. In 1996, the US Hockey League was interested in adding an expansion team in Lincoln. At that time, there were many naysayers and opponents of converting the State Fair Coliseum into a hockey arena. Opponents said Lincoln did not have a market for ice hockey, that money should not be spent, that the hockey team would not survive here. History has proven them very wrong. The Stars team has had the largest average attendance in the UHL during its inaugural season, several subsequent seasons, and for the past five consecutive seasons. This shows that Lincoln has a very large hockey fan base and many hockey families. Lincoln has spent millions of dollars on parks and recreation, sports facilities, and our bike trails. They are asking the Board to invest surplus funds in our youth and into our community. Those who oppose building Breslow will say we should pay off bonds early. However, the majority of Lincoln's population feels like we should finalize and fast track the project to enhance our City. Those who oppose building Breslow not only oppose the facility, but also are opponents of youth sports, creating new jobs, and generating revenue. So let us stop losing dollars to Omaha, Fremont, and Kearney by moving forward to build the Breslow Ice Center. Thanks from the Lincoln ice sports community for the opportunity to voice our needs, our opinions, our wishes, and our passion.

Frank Schmal has been involved in ice hockey and has been President of LIHA for the last four years. LIHA is a non-profit organization benefiting those from three years to 72 years old with a diverse range of backgrounds. They offer scholarships to allow any youth to learn to play regardless of their economic background. Currently they have 380 plus athletes in their program. They are at their maximum capacity and last year they had to start a waiting list for those interested in playing due to ice time limitations. This year they closed registrations due to the same limitations. LIHA is the largest purchaser of ice hours in the City. They purchase over 600 hours of ice during our season. The Stars organization controls the availability of ice and we are grateful for what is available. LIHA would purchase more if it were available allowing more kids to play. Because of sharing of ice per sport per season, there are times when there are two or three times too many athletes on the ice at the same time than what is optimal for athletic development. Some programs are forced to practice off ice in the hallways. They could easily double or triple the ice usage if it was available to purchase. Winter Olympics creates an interest that is a blessing and a curse since they have to turn children away. Lincoln does not have facilities to handle current demand, much less increased demand. LIHA feels strongly that two sheets of ice in Lincoln would be utilized and have a positive economic impact for the City. One sheet of ice will open practice times for all teams at all ages, but two sheets of ice will open the possibility for in State and regional tournaments bringing in teams and families from surrounding states, thereby having the greatest economic impact. LIHA house teams currently travel to other cities for games and travel teams always travel out of the State for three-day tournaments to places such as Minnesota, Kansas, Missouri, and Iowa. The infrastructure is in the Railyard for housing and feeding visitors, but they do not have the facility to accommodate these tournaments locally. A two-sheet facility is necessary for running tournaments and ice events. LIHA is in full support of the JPA approving the $2 million commitment to help fund this project. He had a very positive meeting with Stan Campbell, Director of the City Recreation at UNL, yesterday. If or when this facility is built, it is understood that UNL Recreation will operate the facility. He is excited to see how committed Mr. Campbell is to working with himself and the organization to make this a win-win for the City, UNL, all the ice sports associations, as well as rallying for a two-sheet facility. He is asking each of the Board members to do what they can to move this project forward to maximize the potential of this wonderful gift for the benefit of youth and economic development to the City of Lincoln. Take what was only a dream to many of the kids seven years ago and make it a reality.

Emery asked how many sheets were available in Fremont and Omaha and if either is hosting tournaments. Schmal replied that there is only one sheet in Fremont and two at Tranquility with up to five or six sheets overall in Omaha. Omaha is holding tournaments, actually hosting High School Nationals this year. Also, although Lincoln is hosting the Cornhusker Games, many of the ice events will be in Omaha. Emery wants to be sure we are not "robbing Peter to save Paul." He is also concerned that he has not seen a final plan for the sheets of ice, but they are considering contributing to the finances of that plan. He does not want to delay this project, but does want to make sure it is done right since there is only once chance to do it. Is there a plan that says if there are two sheets we will get more tournaments and what is the University's guarantee that that will happen? Schmal has not seen the business plan, but he understands that the business plan shows a 50/50 share between University use and public use. The need is certainly there for the hours of ice. He has no plans to leave the Ice Box, but needs additional ice time.

Clare inquired as to how much LIHA usage there is currently and, with more ice, would that expand to more of a year round usage. Schmal responded that they use the ice about 100 per

month – 600 hours over six months. That would expand as they send kids outside of Lincoln for practice and camps throughout the summer. Those camps could be held in town. Also, they may have 60 kids on the ice and there should only be 30 so the need is there. The demand for ice hours could immediately double if ice was available.

Bruce Hiller, Vice President and Coaching Director for LIHA, provided the handout attached hereto. It provides information on the financial impact to Lincoln if there were two sheets of ice to allow tournaments to be held locally. The handout covers multiple scenarios and identifies the conservative estimates of revenues generated by a LIHA tournament. These revenues are going out of town approximately three out of four weeks each month. An eight-team tournament would bring in roughly $56,000 to $60,000. He did not include the monies paid to be in the tournament, as often those funds go towards trophies or overhead costs to hold the tournament. For the last four seasons, Omaha has had a large Joust Tournament and this year there are 52 teams signed up to attend with another possible four coming. The revenues are shown at the bottom of the first page as an example of the financial impact of such a tournament.

Beutler asked if all the tournaments require two sheets of ice to make such draws and associated revenue, and if it would be practical to hold a tournament using two sheets at two different locations. Hiller responded that there is a minimum of ice time needed, such as 20 hours showing for the eight-team tournament. Normally they run all day on a Saturday and half the day on Sunday to allow families to get home safely. Sometimes they may have a Friday night game, but two sheets are usually booked all the way through Sunday's end to meet the needs. He would estimate that you might be able to hold a six-team tournament with one sheet of ice. Hiller thought you might be able to hold a tournament at two separate locations to get the two sheets, although that would be somewhat difficult for the families. One drawback to the Ice Box being the second sheet is parking. They have to compete with football games and other events. Families may have to show up at several different times to play games and paying $10 parking each time is a burden. Hiller went on to explain that the second sheet of his handout identifies the different teams they have and their travel out of town this season.

Jeff Maul, Executive Director of the Lincoln Conventions and Visitors Bureau, was present to represent both the Visitors Bureau and the Lincoln Chamber of Commerce. They have long been major supporters and players in the support of the West Haymarket and Pinnacle Bank Arena, as well as other sports venues. As an organization tasked with recruiting events to Lincoln, they view youth sports as Lincoln's market with a large potential for growth based on interest nationwide and in our community. Last year alone 83% of our hotel room night bookings for future events came in the sports market, with the majority from youth sports. It is a major player for Lincoln, and we need more facilities to compete for more youth sports tournaments. A new ice facility would allow them to do that. A new ice facility with related baseball field development in the West Haymarket vicinity would complete the sports triangle vision that was laid out from the beginning by the 2015 Vision Committee. There is not enough facility space for those interested today, so there is no way Lincoln could host a regional tournament, USA broomball event, or USA speed or figure skating event, Many of these have a sheet size requirement, seating requirement, as well as a requirement for more than one sheet of ice. If we could host the tournaments that families are traveling out of state to currently, we could enjoy the daily overall economic impact of national and regional travel at $375 per night per booked room for national and regional events, plus an increase in statewide tournaments at $350 per night per booked room. Those numbers are from a study that is about two and one half years old.

Assuming two sheets were available, Clare asked what type of tournaments would open for us in terms of size, what the frequency would be, and an estimate of associated revenues. Maul responded that the previous testimonies revealed what the possibilities were for bringing in tournaments and number of teams. They spend a great deal of time at trade shows nationwide and many people are talking about Lincoln, Nebraska. Our success with Special Olympics in 2010 and the anticipated success of the 2015 State Games of America (the National version of the Cornhusker State Games) are going to allow us to do more of these events. They have spent a lot of time with the USOC in Colorado Springs. He already mentioned USA broomball and USA speed and figure skating, and that is just the tip of the iceberg for what they want to do in Lincoln. They have all said that we need multiple sheets of ice, and the answer is not in multiple venues. It is within one campus. It is easier to park your car and stay and play. Jumping across the City interrupts the flow of the tournament. Broomball is an Olympic sport and everyone can play. Clare added that it is one of the fastest growing sports at UNL. Maul summarized that, although they support two sheets of ice, they would take whatever they can get to get us on the map for ice sports.

Lola Reid, a seven-year old hockey player, asked the Board to support building the new ice rink. Her team has to practice in the hallway and would like to practice on the ice. Right now people can only free skate or play hockey as there is not enough ice time. They have to travel to play their tournaments.

Cole Bockman spoke representing his Lincoln Southwest teammates some of whom were with him. They were asking for the Board's help in funding the Breslow Ice Center. Many of them have been skating since they were five years old and would like to see high school hockey grow in Lincoln. They generally have two high school teams that play against teams from Omaha, Kearney, and Fremont. If they had more ice time they could build the program and one day have an ice hockey team at every high school in Lincoln. This year they had only one hour of ice practice time per week and traveled out of town to play games. They have no ice after April, and Omaha or Fremont is the closest locations to practice off-season. This gives the competition a great advantage over them. They are asking for assistance for all youth hockey. LIHA is a great organization. Without the people involved in that organization they would not have made it to this level. Anything the Board can do to help to build another rink would be greatly appreciated. Clare asked if other high schools have a hockey team in Lincoln. The response was that kids from LPS schools came together to form one team.

Elijah Schmal, a 13-year old hockey player and seventh grader at Lux Middle School, started playing hockey when he was five years old. He plays for a travel team. He was excited that there would be a new rink when Breslow donated money six years ago. In the eight years he has played hockey there has never been a tournament in Lincoln. He would like to have a home tournament so his friends and grandparents could watch him play. They currently drive one to ten hours to play tournaments and have to stay in hotels. If they had another rink, he could practice more and maybe have his dream come true to play at Notre Dame. He does not have that many more years to play until he goes to college so he would like everyone to come to some sort of agreement so it could be built by next year. He is in favor of the $2 million contribution if that helps build the rink of his dreams.

Nancy Harris, representing the Star City Figure Skating Club of Lincoln, supports the $2 million contribution to support the Breslow Ice Center. They also agree with everything said by LIHA and others regarding the two sheets of ice needed. They want to thank the UNL Campus

Recreation leadership for having a good meeting yesterday with LIHA and figure skaters. She believes they would tell you there are several versions of the business plan – including one sheet, two sheets, one sheet used year round and a second one used seasonally. There are several ways they are projecting the cash flow and feasibility of the rink. Since opening, the Railyard rink has had over 12,000 skaters. That tells you the need and interest is here in Lincoln. They feel it is important to move forward with two sheets of ice to bid on regional and national events. Clare asked what sort of hours figure skating would bring to the ice. Harris responded that they are currently buying five and one half hours of ice per week from the Stars organization because that is all they can get. She thinks there would be benefit in offering group skating lessons at a time other than Saturday at 9 a.m. They would buy more ice time, but she could not project how much. They would love to have 10 hours a week year round. The question is whether they can afford the cost.

Chris Bockman, President of Bockman Inc. a local environmental construction company, serves on LIHA Board of Directors and director of high school ice hockey teams. She is a proud hockey mom as well. She explained that they generally have two high school teams. With the growth they are seeing in youth hockey, they are anticipating there will be several more teams at the high school level in the future. They currently only get one hour of ice per week which is not sufficient for what they need at their level. Today's testimony is overwhelming in favor of the JPA funding $2 million for the Breslow Ice Arena. She is asking that Board members do more than that by each of them being their advocates. Most people in the room do not understand everything that goes into getting a facility like this built, and they are leaving that up to the Board as their elected officials. For some of these kids their home life is less than desirable, but they obtain some very real positive moments in hockey. At the end of the day, everyone there is striving to improve the result of youth to adult to community members with the values, traditions and morals desired. As a businessperson in this community she has faith that the Board will make prudent, fiscal decisions to keep this ship sailing for them. LIHA is a sound organization and she asks that the Board please ask them for any help they may need. Ice hockey has been an enjoyable part of their life and she is glad her son gets to participate. She hopes many other families will have the same opportunity. She looks forward to the Board's guidance and for the Breslow Ice Rink to become an icon in the City of Lincoln.

Jane Kinsey, Watchdogs of Lincoln Government, began by clearing up that they are not against an ice rink or children's fun or adults' recreation. What they are concerned about is financing. Originally when Mr. Breslow pledged $7 million to the City, the City gave land, Campus Recreation was supposed to raise $1 million, and the UNL Foundation was to raise the rest. Where has that plan gone? UNL Foundation said they could not be involved in any more fund raising when they have over a billion dollars in money. They apparently backed out. The 2015 Vision group took away $2 million a few months ago that was to go to the JPA, and the JPA was not happy. That means the push is for the JPA to pick up the bill. The original vote stated that this money was to be used for the Haymarket arena and that you would support the Breslow Ice Center in the way as she stated previously. In addition, the arena profits were to pay for this development, but no one seems to know what those profits are at this time. She has asked Tom Lorenz and Steve Hubka and has yet to get an answer. In 2020 the principle starts coming due and she wants to know the plan to pay the principle on what is already constructed. Sales tax is down so apparently people are not coming and spending as much as thought. Mr. Emery said earlier that you did not want to rob Peter to pay Paul, but you may be doing that at this time. Although she was called out for talking about extraneous information at one time, the Board allowed people to talk about two versus one sheet and other information. She does not believe it

is up to the Board to decide. The resolution before the Board today is to give $2 million to UNL for the Breslow Ice Center so that is the issue being dealt with today. She would also like to remind the public that if the JPA cannot make its bills in the future, that the taxpayers will pay. No one knows what the future will bring. There are projections that may or may not come true. She does not want to be negative, but wants people to think about all the aspects because when the bills come due it may be the taxpayer that has to pick them up. She wondered if there was information that can be provided to her to show what will happen if $2 million is given to this effort. She wanted to know where the rest of the money for the Breslow Ice Center will come from and where the replacement, if needed, will come from. Beutler invited Kinsey to see one of them afterwards if she would like them to go over the information that has been public for quite some time with regard to these matters. Emery responded that the funds right now would come out of contingency money. This money was intended to go back and pay down the debt and still will. The amount just may vary. Kinsey stated it did not seem like there was a plan to replace the $2 million, but she would be interested if there is one. People are paying occupation tax and parking. Even if the Board gives $2 million today, it is not a done deal and there is more money to be raised. Beutler stated this is a University of Nebraska operation. The money was given to them -- not to the City and not to the JPA. They have been running a fund raising campaign. It is his understanding that they have the $7 million from Breslow, a couple of million from other donors, $1 million from the City, and at one point had a million from the University itself. They are the main actor and we would just be helping with these funds. Referring to the LIHA handout, Emery offered to give Kinsey a copy showing the revenues that could be generated and that would contribute to the ability to be able to make that first balloon payment when it is due in 2022. Whether the numbers are exact or not, we know any person coming into Lincoln who eats in a restaurant, rents a car, or spends a night in a hotel are helping to pay off the bonds. So the more people you can bring in town and using the facilities, the more money that can be generated. Kinsey again stated that the future is uncertain and she will email the Mayor asking the questions that the Watchdogs has. Beutler relayed that the Finance Officer will be back in town next week and, if she is asking financial questions that would be the best place to get answers.

Joe Horacek is a Lincoln resident who has played ice hockey since five years old. He has traveled all over the country playing high school and double A. He still plays and believes, “If you build it, they will come.” He has seen it happen. This would be huge for Lincoln, and not just for hockey. He runs a small print show called “Little Mountain Print Shop” which would love to be printing jerseys or t-shirts, especially for the little guys. This will bring in visitors from outside the community and Lincoln needs it.

Jake Candler, a hockey player with the adult league and a parent of a child who plays, is also a business owner opening a hockey shop here in town. The new ice rink brings many new opportunities to Lincoln. He wanted to address the concern about spending the money. Right now the families are taking money out of the community by having to travel elsewhere every weekend. Looking at Husker Saturdays tells you people like to come here to visit. He would like to see this approved and keep those dollars in Lincoln for our community’s benefit and prepare for the balloon payment.

Nick Dahlberg is a hockey player and father of four boys with two currently playing hockey and another wanting to play. In Des Moines, after two sheets of ice were placed, the adult league alone went from 70 participants to over 400 over ten years. Clare asked what the translated to in terms of ice time. Dahlberg responded that you increased the number of players and teams and

games/tournaments so you have to book more hours. Fifteen on a team and, if you play once a week, that equals 20 hours. Dahlberg explained they were leaving tomorrow for a four-day tournament in Colorado, along with several other families. They have had compliments on Lincoln and it would be nice to keep the families and the revenue here in town.

JoAnn Leibus, a hockey aunt, is here today to show support and represent the fans of hockey. It is a great atmosphere and she loves hockey and watching the talent of these players. She agrees, "If you build it, they will come." They will come as far away as Oslo, Norway to play for the Stars. She hopes you will vote in favor for funding.

Additional correspondence received by the Board is attached hereto.

Emery moved approval of the resolution. Clare seconded the motion.

Clare apologized to the hockey and all ice folks, as well as John Breslow, for the time that has passed on the project. Mr. Breslow made a generous gift to the UNL Foundation with the goal of affording young people, adults, and others to use the ice. He is the parent of five who did not play hockey, but were involved in extracurricular activities and youth sports. He believes sports play an extremely important role for young people in particular, as well as adults. It teaches teamwork and teaches work ethic and teaches playing by the rules. It is problematic when there is no place to play, when children are turned away from something they may enjoy and/or excel at, and when families have to drive every weekend to play. As a regent for the University, he has also heard about 2,700 students that have to travel to Fremont and LaVista on a regular basis. There are financial and safety issues with the traveling, as well as taking away from other things such as study time. He believes that a growing community like Lincoln with a robust university like UNL should make efforts to provide space for people to participate. From that standpoint he is very, very positive about the Breslow Ice Center and moving forward with it. He also has to look at the other side of the coin. They were put in this position to govern the West Haymarket JPA. They were afforded the responsibility to watch the projects, to build and complete those to the best of our ability from a governance standpoint. They have a fiduciary duty to watch over the funds and make sure they are spent appropriately. They are to manage or oversee the management of these funds as a prudent person would. They need to consider how a prudent person would look at the money spent in terms of both construction and operation. Regarding construction, they have been talking about facilities and seen articles written that are not comparing apples to apples. It is important to get a good grasp of what is needed and the costs. He has personally met with Mr. Bodami and has called with questions of the architects. They are getting close, but they are not there yet. Regarding operations, they have seen the figures from LIHA, talked about usage, and heard testimony today that there is 600 hours that could triple in usage. Figure skating said they could use up to ten hours per week. The adult leagues talked about 20 hours per week. They heard about curling and about the 2,700 UNL students participating in some sort of ice sport. However, they have not seen fine tuned data on the revenues from UNL and only hearing some of these figures for the first time today. They have seen numbers on expenses, which raise some questions for him as to operational expenses as well. While this tugs at the heartstrings of everyone, people have to realize the money is coming from Mr. Breslow, from 2015, from the City, from the University, and money from the JPA. So all of those people/entities are contributing money, and they have a fiduciary duty to make sure it is spent to the best use. He is not challenging or questioning the validity of any of today's testimony, but they have a responsibility within which they must operate. Therefore, the question of contributing $2 million without the answers in place makes it difficult. They need

good solid numbers to be able to determine whether it is a good move forward on behalf of all the taxpayers and determine if it is the best use of the monies. While he believes in the project and wants to make it go, he realizes that he has to evaluate the monies prudently. He wants to amend the motion to table it until they have more information that shows whether this will make it from a financial standpoint.

Emery understands what Clare is asking for is going to receive groans from today's room. They get it and the message is clear. He feels like we are close enough that we need to stop and be sure that it is done right. They only have one shot to get it right so they need to take the time to do that. One of the best things they hear about the arena is that it was done right. He has spent most of his lifetime dealing with amateur boxing and he understands. He understands what it does to take kids off the street and how important it is. Nevertheless, they are asking that you let them do it right.

Beutler stated that in some sense he is the same as his colleagues, but in another sense he is simply in a different place. In terms of his experience, he was once involved in fund raising for the Parks Department. He was involved in a couple of studies regarding ice. People involved are long suffering people. They have been wanting more ice for a long, long time. He had the advantage of hearing about ice, examining how rinks were run, and the results. Therefore, he is more comfortable with aspirations. He hears the message loud and clear and believes in what this group is doing. He believes advancing here is the reasonable thing to do. As this is a project mainly over on the University side, lots of information related to this matter has not been put before this Board as it was handled very privately. He does understand why his colleagues would like to take a little more time. It is important politically that they are all on the same page and have a common understanding and unified front moving forward. It is much more than this Board that must move forward. It is more important what the UNL Board of Regents decide and Regent Clare is their best connection to that Board. It is important that he be able to be persuasive with his colleagues and that he has taken the time to gather all the information possible as he enters that other arena. He will vote for the motion to delay it for one month, which will be before the Board of Regents next meeting. So, in fact, we will not be cascading delay. We are simply pausing to gather strength. The same enthusiasm and passion shown here today in explaining the needs, he hopes people will take to the Board of Regents.

Clare moved to table the resolution until the March JPA Board Meeting. Emery seconded the motion. Motion to table the resolution carried 3-0.

Item 12 -- Set Next Meeting Date

The next meeting date is Wednesday, March 12, 2014 at 3:00 p.m. in the County-City Building Room 303.

Item 13 -- Motion to Adjourn

The meeting adjourned at 5:00 p.m.

Prepared by: Pam Gadeken, Public Works & Utilities

West Haymarket JPA Meeting

Date 2/11/14

Page 1

Name (Please Print)	Address	Phone/E-Mail
Jane Kinsey Watchdogs		
Christine Jacobs	ONL	402-472-4455
Manley Myers	Lincoln, NE	402-489-3833
Anthony Troy Kirk	Lincoln	402-438-3850
BRUCE HILLER	ROCA	402-309-4715
Harris Bockmann	Lincoln, NE	402-610-2338
Nick Dahlberg	Lincoln, NE	402-416-9441

West Haymarket JPA Meeting

Date 2/11/14

Page 2

Name (Please Print)	Address	Phone/E-Mail
FRANK SCHMAL	5957 ARROWWOOD RD LINCOLN NE 68526	402-730-4188
Jeff Maul	1135 M St #300	402-434-5343
T. Candlen	6430 River	402-499-1509
Lola Reid		

University of Nebraska-Lincoln
February 11, 2014

Statement to the JPA Regarding the Breslow Ice Center

This is a unique opportunity for the University of Nebraska and the City of Lincoln to partner in support of a program that will provide much-needed recreational facilities for UNL students, Lincoln youth and the wider community. UNL is reinforcing its confidence in the project by contributing $1 million. The university appreciates the proposed financial support from the JPA, which would exhibit strong community backing for a facility that will prove to be wonderful addition to the West Haymarket."

8 team Tournament 1 Home team and 7 Inbound teams

Hotel Revenue	16 Families @ $100 each night	$ 22,400.00
Ice Revenue	20 Hours @ $265	$ 5,300.00
Restaurant Revenue	112 Families @ $50 for 4 meals	$ 22,400.00
Gas Revenue	100 Families @ $60	$ 6,000.00
	Total Revenue	$ 56,100.00

13 team Tournament 1 Home team and 12 Inbound teams

Hotel Revenue	16 Families @ $100 each night	$ 41,600.00
Ice Revenue	29 Hours @ $265	$ 7,560.00
Restaurant Revenue	192 Families @ $50 for 4 meals	$ 38,400.00
Gas Revenue	170 Families @ $60	$ 10,200.00
	Total Revenue	$ 97,760.00

16 team Tournament 1 Home team and 15 Inbound teams
(Midwest League Tournament 3 select and 3 Travel opportunities)

Hotel Revenue	16 Families @ $100 for each night	$ 48,000.00
Ice Revenue	32 Hours @ $265	$ 8,480.00
Restaurant Revenue	240 Families @ $50 for 4 meals	$ 48,000.00
Gas Revenue	220 Families @ $60	$ 13,200.00
	Total Revenue	$ 117,680.00

Omaha annual Joust Tournament Revenue
52 team Tournament 16 Home teams and 36 Inbound teams

Hotel Revenue	224 Families @ $100 each night	$ 44,800.00
Ice Revenue	104 Hours @ $265	$ 27,560.00
Restaurant Revenue	504 Families @ $50 each @ 4 meals	$ 100,800.00
Restaurant Revenue	224 Families @ $50 each @ 2 meals	$ 22,400.00
Gas Revenue	504 Families @ $60	$ 30,240.00
	Total Revenue	$ 225,800.00

For this tournament:
Many of these teams are local (16) - no overnight stay and only one local meal for each family
4 game guarantee, 6 teams will get a fifth game
Local teams that work the tournament get reduced or complimentary entry fees
Teams will be smaller than the usual 16 skaters, I used 14 skaters
This tournament is a fund raiser for the local hockey club (generally raises $10,000 - $12,000)

Listed are some dates this season that our teams were playing out of town at tournaments Most of these required two overnight stays at hotels, some in Fremont and Omaha were either one overnight stays or driving to and from each day.

Select "C" teams
Lincoln teams this past weekend were in these locations for their finals weekend:
They also had two seeding weekends prior to this.
Squirts (Ages 9/10) in Omaha with 12 teams
Peewees (Ages 11/12) are in Fremont with 10 teams
Bantams (Ages 13/14) are in Kansas City with 8 teams

Travel "A" teams participated in the Midwest Travel tournaments
These were scheduled during the January 18th weekend at these locations:
Squirts (Ages 9/10) were in Kansas City with 11 teams
Peewees (Ages 11/12) were in Fremont and Omaha with 13 teams
Bantams (Ages 13/14) were in Des Moines with 13 teams

Quantity of times these teams were out of town this season at tournaments:
Squirts teams will be out of town 11 times this season
Peewee teams will be out of town 10 times this season
Bantam teams will be out of town 10 times this season

Three teams traveling to nine tournaments would amount to a figure of $260,000 spent at other facilities and towns.

The younger teams (under 8 years old) will travel to some one day jamborees and will stay overnight for some of them during the season.

P.O. Box 22509 • Lincoln, NE 68542 • ~~(402) 434-6565~~

1.0

Dear Mr Chris Beutler, Jim Clare, + Doug Emery,

I am unable to attend the Feb 11th meeting due to work. My husband will be there. I just wanted to make sure my opions were heard.

Lincoln needs more ice period. We do not need fancy asthetics, just a nice building made for hockey & plenty of locker rooms and preferably two sheets of ice! Ice time is very hard to come by in Lincoln. Lincoln has hosted several jamboree or tournaments in the past each season. This year it was difficult to find ice time for the one we are hosting in March. Each time we host events like this it brings revenue to the city through hotels, resterauants, gas, etc! Why let this opportunity go to other cities? My family spends at least two weekends per month @ skating rinks in Fremont or Omaha for games. My daughter is part of an all girls team that only gets one 1/2 sheet practice per week. This means that these 4-9yr girls are sharing the ice with high schoolers -> not ideal. Their other practice per week is dryland, meaning no ice time.

My son (6yrs) has been playing hockey since he was three years old. He loves it! His group of boys excell et would love to put together a "select" team next year, but ice time is limited or not available. His team spent every other weekend in Omaha last summer to be able to keep playing,

as Lincoln has No ice in the summer. This same group will likely do the same this summer to be able to keep playing the sport they love year round.

Fremont's ice rink is linked to the YMCA. Omaha has a rink controlled by City Parks and rec. They offer summer day camps for kids (more revenue) through city parks rec.

I worry that if UNL has too much control of the rink, youth hockey will not benefit as much as I believe it was originally intended to. These kids don't need fancy. They just need a place to skate year round!

Sincerely

Shanon Roblyer
5930 S. 53rd St.
Lincoln, NE 68516

Jamie Phillips

From: Trish A. Owen
Sent: Thursday, February 06, 2014 11:22 AM
To: Jamie Phillips; 'Timothy F. Clare'; Doug Emery
Subject: FW: Invest in the Breslow Ice Arena

Trish Owen, MPA
Deputy Chief of Staff
Office of the Mayor
555 S. 10th Street, Suite 301
Lincoln, NE 68508

(402) 441-7511 (Main Office)
(402) 430-3390 (Cell)
(402) 441-7120 (Fax)

"If you get to thinking you're a person of some influence, try ordering somebody else's dog around." Will Rogers

CITY OF LINCOLN NEBRASKA

From: Lin Quenzer
Sent: Thursday, February 06, 2014 11:13 AM
To: Trish A. Owen
Subject: FW: Invest in the Breslow Ice Arena

From: Dan Sedor [mailto:Dan.Sedor@lrsuccess.com]
Sent: Thursday, February 06, 2014 9:49 AM
To: Mayor
Subject: Invest in the Breslow Ice Arena

Mayor,
We are building something special in Lincoln beyond the Pinnacle Bank Arena. A hockey rink among the Haymarket Park, Pinnacle Bank Arena, and the eventual sports complex to the west of these facilities will continue to make Lincoln a destination for tourneys of all sorts ... year-round.

You have my support for the Breslow Arena. Do the citizens of Lincoln have yours? □

Dan Sedor

Jamie Phillips

From: Trish A. Owen
Sent: Saturday, February 08, 2014 11:41 AM
To: Jamie Phillips
Subject: FW: Build Breslow

Trish Owen, MPA, Deputy Chief of Staff
City of Lincoln Mayor's Office
555 S. 10th Street, Suite 208
Lincoln, NE 68508
(402) 441-8280 Office
(402) 430-3390 Cellular

" If you get to thinking you are a person of some influence, try ordering somebody else's dog around." (Will Rogers)

From: Lin Quenzer
Sent: Friday, February 07, 2014 4:30 PM
To: Trish A. Owen
Subject: FW: Build Breslow

From: Joe Horacek [mailto:joe@littlemountainprint.com]
Sent: Thursday, February 06, 2014 4:41 PM
To: Mayor; tclare@nebraska.edu; Doug Emery
Subject: Build Breslow

What's up fellas,

My name is Joe Horacek. Born and raised in Lincoln, Nebraska. I've been playing hockey since the Ice Box opened in 1996. Hockey is a great sport and has made me who I am. Having a new rink here in Lincoln would mean the world to me and many others.

I run and operate a small design and screen printing shop here in town and would LOVE to have the ability to print jerseys for the little guys and clubs teams.

Thanks and I hope this becomes reality.

Sincerely,
Joe

--

Joe Horacek // Art Director & Screen Printer
Little Mountain Print Shoppe
1353 South 33rd Street
Lincoln, Nebraska, USA 68510
402.937.1236
www.LittleMountainPrint.com

Jamie Phillips

From: Trish A. Owen
Sent: Saturday, February 08, 2014 11:41 AM
To: Jamie Phillips; Timothy F. Clare; Doug Emery-Home
Subject: FW: Breslow Ice Center

Trish Owen, MPA, Deputy Chief of Staff
City of Lincoln Mayor's Office
555 S. 10th Street, Suite 208
Lincoln, NE 68508
(402) 441-8280 Office
(402) 430-3390 Cellular

" If you get to thinking you are a person of some influence, try ordering somebody else's dog around." (Will Rogers)

From: Lin Quenzer
Sent: Friday, February 07, 2014 4:30 PM
To: Trish A. Owen
Subject: FW: Breslow Ice Center

From: TStraatmeyer@ameritas.com [mailto:TStraatmeyer@ameritas.com]
Sent: Friday, February 07, 2014 4:22 PM
To: Mayor; tclare@nebraska.edu; Doug Emery
Subject: Breslow Ice Center

Mayor Beutler, Mr. Clare, and Mr. Emery,

I am writing to you today to ask that you invest in the Breslow Ice Center. There is a huge demand for ice time in Lincoln and this would be a great opportunity to keep more revenues in our town while creating more jobs.

This is the 2nd year that our 5 year-old son Mason has played hockey for the Junior Stars. Until last year, I had no idea that there was such a demand for ice time. The Ice Box is always booked, even as expensive and in as bad of shape as it is. The Lincoln Ice Hockey Association has had to turn away too many kids because we don't have the ice time for them to skate. There are kids practicing late into the evening and others not getting ice time until 11:00 PM, and often running until 3:00 AM. The UNL club hockey team travels to Fremont and so many other families go to Fremont or Omaha to find ice time. We, along with 15 other sets of parents, drove our children to Omaha over the summer to play ice hockey. That was just in our division of LIHA, the other divisions were doing the same thing. We are losing out on revenues.

There is a huge hockey following in this town. My husband and I are Stars season ticket holders, there's the Junior Stars with several age divisions, a high school team, and Men's and Women's UNL club hockey. We also have figure skating and broom ball groups fighting for ice time. Lincoln needs more than one sheet of ice.

Last year ice hockey was brought back to be a part of the Cornhusker State Games. All events were held in Lincoln, except ice hockey. Let's bring those revenues back to our town. Mr. Emery, think of the possibilities for other events in the Cornhusker State Games if we had multiple ice rinks in Lincoln year round! As I'm sure you're aware, the 2015 Games will be the State Games of America. What a wonderful revenue opportunity for the city to have a facility for the ice sports instead of sending them to Omaha.

I have heard from several people that open skating at the Ice Box is always busy and they wish they had more opportunities to skate than 2 days a week for a short amount of time. With another sheet of ice, we can allow more kids ice time. We could have more public staking and more kids could have the opportunity to play hockey or try figure skating

or other ice sports. Plus we could keep our UNL students in the town they came to for school.

Mr. Clare, you've said you want to strengthen the university and keep graduates in this state, A nice facility with 2 sheets of ice would allow UNL the opportunity to play more ice sports and draw more students to Lincoln, whether it's club sports or adding university level teams. As of now, there are over 2,700 UNL students involved in ice sports. With just under 25,000 registered students, that's over 10% which is not a small following.

As JPA members, the three of you were able to save money on the bonds for the Pinnacle Bank Arena to keep costs down. I fully trust that you will be able to do so with the Breslow Ice Center. And with 2 sheets of ice under one roof we can save more money on building costs, ice equipment, staffing, land, etc. than it would cost to keep multiple rinks running.

Mr. Breslow is giving us a wonderful opportunity to bring more money to Lincoln. And thanks to his generous donation, it will come with a relatively low price tag. He's donating this money because this is something he feels very strongly about and wants to see happen. As the owner of an NHL team, I think Mr. Breslow would be disappointed to see Lincoln lose their hockey team because we don't have a facility where they can play. The kids that play in the USHL are excited when they get to come to Lincoln to play. They know Lincoln has the best attendance in the league. Please don't allow Lincoln to lose it's hockey.

Mayor Beutler, let's keep Lincoln growing. Let's create more jobs and revenues for our town!

It's time we stop dragging our feet on this and make it happen!

Thank you,

Tracy Straatmeyer
(402) 429-5639
****
This message may contain confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not the addressee, or the person responsible for delivering it to the addressee, you are hereby notified that reading, disseminating, distributing or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify us by replying to the message and delete the original message immediately thereafter. Thank you.
****

Jamie Phillips

From: Trish A. Owen
Sent: Monday, February 10, 2014 3:26 PM
To: 'Timothy F. Clare'; Doug Emery; Jamie Phillips
Subject: FW: Breslow ice project

Trish Owen, MPA
Deputy Chief of Staff
Office of the Mayor
555 S. 10th Street, Suite 301
Lincoln, NE 68508

(402) 441-7511 (Main Office)
(402) 430-3390 (Cell)
(402) 441-7120 (Fax)

"If you get to thinking you're a person of some influence, try ordering somebody else's dog around." Will Rogers

CITY OF LINCOLN NEBRASKA

From: Lin Quenzer
Sent: Monday, February 10, 2014 3:01 PM
To: Trish A. Owen
Subject: FW: Breslow ice project

From: Joseph Hornung-Scherr [mailto:joseph.hornung-scherr@nsdtitans.org]
Sent: Monday, February 10, 2014 1:33 PM
To: Mayor
Subject: Breslow ice project

Mayor Beutler:

I wrote the following response to Nancy Hicks this morning after reading her article about the Breslow ice project in this morning's LJS. She suggested that I forward it to you. I hope to attend the meeting tomorrow, but haven't found a substitute to cover my last class at Norris tomorrow. Thanks for considering to forward the JPA money to the Breslow project. It's the perfect time to do this project in Lincoln.

Joe Hornung-Scherr

Ms. Hicks,

Thanks for a level-headed and reality-based view of youth hockey in Lincoln. My family is at the Ice Box or an out-of-town rink nearly every day during hockey season, which runs early October to mid-March. I have two boys who play: Sawyer is 13 and plays on the bantam level travel team; Seneca is 12 and plays on the house and select teams. (I help coach Seneca's teams.)

Both boys' teams travel around the Midwest, so we have a chance to see lots of different rinks over the course of a season. There are a few that are terrific (Wichita), some that are pretty nice (Omaha, Shawnee Mission), and some that are pretty bad (Austin, MN). The Ice Box would be in the "pretty bad" category. After a recent game against an Omaha team, the coach said to me- instead of saying "good game"- "When are you going to tear this barn down?" I'm not sure what I said, but I understand his frustration about playing in the Ice Box. It's not a pleasant place to play. It's cold, disgustingly dirty, and has cramped locker rooms. But it's all we have.

The biggest difference maker in the Breslow project, in my perspective, will be having two sheets of ice. It's very difficult to have a decent-sized tournament with one sheet. Also, the local program would be able to be able to grow in a way that's just not logistically possible now.

Having been around hockey (and LIHA) now for four years, I have a great deal of respect for Frank Schmal and Bruce Hiller. They and the rest of the LIHA board lead LIHA admirably with limited resources.

I realize that a project of this nature is cost-intensive, but if it's ever going to get done, now is the time since there is $7 million dollars of free money on the table.

Thanks again, and have a great day,

Joe Hornung-Scherr
Norris High School English Department

Jamie Phillips

From: Les Franklin <lfranklin@kaplan.edu>
Sent: Monday, February 10, 2014 1:14 PM
To: Mayor; Doug Emery; tclare@nebraska.edu
Subject: Breslow Ice Arena

Gentlemen,

I wanted to send an email out to each of you to show my support for the Breslow Ice Arena.
While my daughter currently is very active with the Jr. Stars Mites team I have been afforded the pleasure to become a member of our local LIHA organization. Over the past two seasons I have witnessed the lack of ice time afforded to our youth who currently skate. I think it is only sensible to make people aware that this sport is growing tremendously for both boys and girls right here in Lincoln and the need for the new arena is very obvious.

Thank you for your time and support of this project !!

Sincerely Les Franklin II

Jamie Phillips

From: Candice Maruska <cmaruska0804@gmail.com>
Sent: Monday, February 10, 2014 1:09 PM
To: Mayor; tclare@nebraska.edu; deery@lincoln.ne.gov
Subject: Is Breslow Worth It?

I wanted to take a moment to share a story with the three of you over my lunch hour. This weekend my 9 year old son played in his first Midwest Select Squirt Finals weekend tournament in Omaha. I have watched that little boy go from holding on to a folding chair to keep his balance on the ice and learn how to skate, to a very hard working and passionate hockey player. I always knew that he loved hockey as he would ask me to go to the nearby frozen pond whenever possible to play, or to come out onto the driveway with him to hit a puck around, but this weekend I saw so much more than that. I watched the entire team of boys play their hearts out this weekend.

I watched the first nerve racking game as the boys worked through their own nerves and make mistakes on the ice against Sioux City. The second game was a whole new level of nerves to this hockey mom. After 36 minutes of regulation, these boys were tied with Des Moines, a team that saw them as no challenge in a seeding weekend game earlier in the season in Wichita, KS and our boys tied them then. Today was very different, the team pushed through weary eyes as it was a 6:45am game that they were up at 5:00am to play and held it tied after 5 minutes of overtime too. Next came the shootout. Parents, players, and coaches watched one skater vs. goalie match up after the next, and finally after nine intense rounds, our very own Lincoln Jr. Stars Squirt Select team won that game!! You would of thought it was Christmas and those boys got every last thing they asked for. They piled on top of each other on the ice jumping around and celebrating and the parents complained of chest pains in the stands.

Finally, came the finals. The boys were matched up against a KC team that not only had they never played before, but also one that had not played yet that day leave it alone at 6:45 in the morning. The game went through what seemed to be the longest 36 minutes anyone could endure and it was tied. A 5 minute overtime ensued and long behold KC got the game winning goal about halfway into overtime. I felt horrible for our team, but I had no clue how bad they felt until I went down on that ice to take pictures of them with their second place trophy and saw the biggest tears falling from some of their eyes. Those boys wanted to win that in the worse way.

I knew before this weekend that I was willing to put up a fight to be sure that Breslow was built for the sake of kids just like these all across Lincoln, and surrounding communities, but after this weekend it became a whole lot more to me. LIHA board members drove to Omaha to watch that championship game, other teammates and families that were not on the Select team drove to Omaha to watch the game, Fremont families stayed to watch the game, and being the parent to one of those players out there on that ice and turning around and seeing those stands filled with familiar and unfamiliar faces rooting for those boys made me proud. Proud not only of those boys, but of the type of hockey community we have and just how far it stretches.

I could get into the dollar figures of how much I've spent on hockey and how much money it could make and all of that, but it really is about a whole lot more than just that. This is just one story of many and probably more than a few that each one of you have heard, but this is a lifestyle for many of us in our community and one that we adore. Please give Breslow your commitment both as a voice and financially!! These boys could be a whole lot more with a little help from our community and people like each one of you.

Thank you so much for your time!!

Candice Maruska

Jamie Phillips

From: Trish A. Owen
Sent: Monday, February 10, 2014 3:27 PM
To: Doug Emery; Jamie Phillips
Subject: FW: Breslow Ice Center

Trish Owen, MPA
Deputy Chief of Staff
Office of the Mayor
555 S. 10th Street, Suite 301
Lincoln, NE 68508

(402) 441-7511 (Main Office)
(402) 430-3390 (Cell)
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"If you get to thinking you're a person of some influence, try ordering somebody else's dog around." Will Rogers

CITY OF LINCOLN NEBRASKA

From: Lin Quenzer
Sent: Monday, February 10, 2014 3:19 PM
To: Trish A. Owen
Subject: FW: Breslow Ice Center

From: Tim Clare [mailto:tclare@nebraska.edu]
Sent: Saturday, February 08, 2014 9:22 PM
To: TStraatmeyer@ameritas.com
Cc: Mayor; Doug Emery
Subject: Re: Breslow Ice Center

Tracy: Thank you for your comments regarding the Breslow Ice Center. This is an important project for the University, the City of Lincoln, and Nebraska with lots of important issues to consider. So, again, thank you for your input and we will do our best to make the best decision for all involved. Thanks again! Tim

Timothy F. Clare
tclare@nebraska.edu
NU Board of Regents
1201 Lincoln Mall, Suite 102

Lincoln, NE 68508
(402) 475-5100

On Feb 7, 2014, at 4:21 PM, "TStraatmeyer@ameritas.com" <TStraatmeyer@ameritas.com> wrote:

Mayor Beutler, Mr. Clare, and Mr. Emery,

I am writing to you today to ask that you invest in the Breslow Ice Center. There is a huge demand for ice time in Lincoln and this would be a great opportunity to keep more revenues in our town while creating more jobs.

This is the 2nd year that our 5 year-old son Mason has played hockey for the Junior Stars. Until last year, I had no idea that there was such a demand for ice time. The Ice Box is always booked, even as expensive and in as bad of shape as it is. The Lincoln Ice Hockey Association has had to turn away too many kids because we don't have the ice time for them to skate. There are kids practicing late into the evening and others not getting ice time until 11:00 PM, and often running until 3:00 AM. The UNL club hockey team travels to Fremont and so many other families go to Fremont or Omaha to find ice time. We, along with 15 other sets of parents, drove our children to Omaha over the summer to play ice hockey. That was just in our division of LIHA, the other divisions were doing the same thing. We are losing out on revenues.

There is a huge hockey following in this town. My husband and I are Stars season ticket holders, there's the Junior Stars with several age divisions, a high school team, and Men's and Women's UNL club hockey. We also have figure skating and broom ball groups fighting for ice time. Lincoln needs more than one sheet of ice.

Last year ice hockey was brought back to be a part of the Cornhusker State Games. All events were held in Lincoln, except ice hockey. Let's bring those revenues back to our town. Mr. Emery, think of the possibilities for other events in the Cornhusker State Games if we had multiple ice rinks in Lincoln year round! As I'm sure you're aware, the 2015 Games will be the State Games of America. What a wonderful revenue opportunity for the city to have a facility for the ice sports instead of sending them to Omaha.

I have heard from several people that open skating at the Ice Box is always busy and they wish they had more opportunities to skate than 2 days a week for a short amount of time. With another sheet of ice, we can allow more kids ice time. We could have more public staking and more kids could have the opportunity to play hockey or try figure skating or other ice sports. Plus we could keep our UNL students in the town they came to for school.

Mr. Clare, you've said you want to strengthen the university and keep graduates in this state, A nice facility with 2 sheets of ice would allow UNL the opportunity to play more ice sports and draw more students to Lincoln, whether it's club sports or adding university level teams. As of now, there are over 2,700 UNL students involved in ice sports. With just under 25,000 registered students, that's over 10% which is not a small following.

As JPA members, the three of you were able to save money on the bonds for the Pinnacle Bank Arena to keep costs down. I fully trust that you will be able to do so with the Breslow Ice Center. And with 2 sheets of ice under one roof we can save more money on building costs, ice equipment, staffing, land, etc. than it would cost to keep multiple rinks running.

Mr. Breslow is giving us a wonderful opportunity to bring more money to Lincoln. And thanks to his generous donation, it will come with a relatively low price tag. He's donating this money because this is something he feels very strongly about and wants to see happen. As the owner of an NHL team, I think Mr. Breslow would be disappointed to see Lincoln lose their hockey team because we don't have a facility where they can play. The kids that play in the USHL are excited when they get to come to Lincoln to play. They know Lincoln has the best attendance in the league. Please don't allow Lincoln to lose it's hockey.

Mayor Beutler, let's keep Lincoln growing. Let's create more jobs and revenues for our town!

It's time we stop dragging our feet on this and make it happen!

Thank you,

Tracy Straatmeyer
(402) 429-5639

****
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****

Jamie Phillips

From: Trish A. Owen
Sent: Tuesday, February 04, 2014 5:51 PM
To: Timothy F. Clare; Jamie Phillips; Doug Emery
Subject: FW: Letter Posted on Facebook

Gentlemen: Below is a link to a Facebook open letter to the three of you. I know Mayor does not have a Facebook account so I have done a cut/paste of the letter as well. Thanks-Trish

Leslie Lorchick LipertBuild Breslow

2 hours ago near Lincoln, NE ·

- **Good afternoon Mr.Mayor, Tim Clare and Doug Emery,**
  I am writing to share my insight and support towards the Breslow Ice arena. I have had a young student athlete playing for the Lincoln Ice Hockey association for currently 5 years. We, as a team, pay $268.50/hour for ice time. The Icebox is booked with the Lincoln Stars team, figure skating, club skate, public skate and the LIHA organization, so we currently struggle to find ice time. Not to mention that we are not alone in paying this ice fee. The teams alone generate revenue and that is without introducing tournament fees and concession stand fees that we are missing out on due to not having the ability to hold tournaments.

  In the 5 years that we have been a part of the LIHA organization we have traveled to most of the surrounding Midwest states for tournaments, as well as quite often traveling to Omaha & the small town of Fremont. When we travel to these tournaments, the majority of the time we:
  ***stay in hotels to save ourselves fuel from driving back and forth to/from Lincoln,**
  ***are spending time in between games at the local malls, restaurants, movie theatres, grocery stores, gas stations, etc, which in turn means that we are spending money in the local community!!**
  ***are also at the mercy of the local hockey stores for skate sharpening, tape, equipment, etc due to the fact that we do not have an open hockey shop/store at the ice box to provide these services.**

  Hockey players and their families travel in masses! One player can easily have a support group of 4-6 family members and friends that travel with them to watch the games. What that means for Lincoln is all of these families are eating, drinking, looking for temporary entertainment, shopping, and needing fuel. If we had the Breslow Ice Arena, we would be able to hold hockey tournaments and benefit from the athlete and family spending. We would be able to hold figure skating events and reap the monetary rewards from those families visiting our city. The Breslow arena would bring tourism to our fair town, which equals dollars. It would also allow Lincoln as a community, to introduce ourselves to future college students and their parents.

  I am a proud parent of a LIHA athlete & honor roll student, a business person and a registered voter. I would appreciate your open mindedness and support for the Breslow Ice Arena.

  Respectfully,
  Leslie Lipert

  Like · Comment

  - Tezra Schmidt-Greder, Audra Williams Schawang and Brian Reid like this.
  -

Leslie Lorchick Lipert Kate Ellingson can you please forward this to the appropriate person or persons at the Lincoln chamber of commerce? ☐

1 · about an hour ago

Trish Owen, MPA, Deputy Chief of Staff
City of Lincoln Mayor's Office
555 S. 10th Street, Suite 208
Lincoln, NE 68508
(402) 441-8280 Office
(402) 430-3390 Cellular

" If you get to thinking you are a person of some influence, try ordering somebody else's dog around." (Will Rogers)

From: rebeldad@gmail.com [rebeldad@gmail.com] on behalf of Brian Reid [breid@nasw.org]
Sent: Tuesday, February 04, 2014 3:52 PM
To: Trish A. Owen
Subject: Letter Posted on Facebook

I'm hoping this is a cc: of something that was emailed to the JPA, but if you could pass it along anyway, that would be great:

https://www.facebook.com/permalink.php?story_fbid=641881565849554&id=640606779310366

Jamie Phillips

From: Trish A. Owen
Sent: Wednesday, February 05, 2014 12:17 PM
To: 'Timothy F. Clare'; 'shanebug@aol.com'; Jamie Phillips
Subject: Breslow Ice Center Donation Support

The Chamber of Commerce have indicated they will be appearing and testifying in support of the donation from the JPA to the Breslow project.

Trish Owen, MPA
Deputy Chief of Staff
Office of the Mayor
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Lincoln, NE 68508

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(402) 430-3390 (Cell)
(402) 441-7120 (Fax)

"If you get to thinking you're a person of some influence, try ordering somebody else's dog around." Will Rogers

CITY OF LINCOLN NEBRASKA

Jamie Phillips

From: Lin Quenzer
Sent: Wednesday, February 05, 2014 5:52 PM
To: Trish A. Owen
Cc: Jamie Phillips
Subject: FW: Breslow Ice Arena + events= Tourism $$ and potential future UNL students

---

From: Leslie Lipert [mailto:leslie@generalfiresafety.com]
Sent: Tuesday, February 04, 2014 3:05 PM
To: Mayor
Subject: Breslow Ice Arena + events= Tourism $$ and potential future UNL students

Good afternoon Mr.Mayor,
I am writing to share my insight and support towards the Breslow Ice arena. I have had a young student athlete playing for the Lincoln Ice Hockey association for currently 5 years. We, as a team, pay $268.50/hour for ice time. The Icebox is booked with the Lincoln Stars team, figure skating, club skate, public skate and the LIHA organization, so we currently struggle to find ice time. Not to mention that we are not alone in paying this ice fee. The teams alone generate revenue and that is without introducing tournament fees and concession stand fees that we are missing out on.

In the 5 years that we have been a part of the LIHA organization we have traveled to most of the surrounding Midwest states for tournaments, as well as quite often traveling to Omaha & the small town of Fremont. When we travel to these tournaments, the majority of the time we:
*stay in hotels to save ourselves fuel from driving back and forth to/from Lincoln,
*are spending time in between games at the local malls, restaurants, movie theatres, grocery stores, gas stations, etc, which in turn means that we are spending money in the local community!!
*are also at the mercy of the local hockey stores for skate sharpening, tape, equipment, etc due to the fact that we do not have an open hockey shop/store at the ice box to provide these services.

Hockey players and their families travel in masses! One player can easily have a support group of 4-6 family members and friends that travel with them to watch the games. What that means for Lincoln is all of these families are eating, drinking, looking for temporary entertainment, shopping, and needing fuel. If we had the Breslow Ice Arena, we would be able to hold hockey tournaments and benefit from the athlete and family spending. We would be able to hold figure skating events and reap the monetary rewards from those families visiting our city. ***The Breslow arena would bring tourism to our fair town, which equals dollars. It would also allow Lincoln as a community, to introduce ourselves to future college students and their parents.***

I am a proud parent of a LIHA athlete & honor roll student, a business person and a registered voter. I would appreciate your open mindedness and support for the Breslow Ice Arena.

Respectfully,
Leslie Lipert
Safety Consultant/Staff Nurse
General Fire & Safety Equipment Company
2431 Fairfield St, Suite A
Lincoln, NE 68521

Jamie Phillips

From: Trish A. Owen
Sent: Tuesday, February 04, 2014 10:18 AM
To: Jamie Phillips
Subject: FW: Breslow Ice Center

Trish Owen, MPA
Deputy Chief of Staff
Office of the Mayor
555 S. 10th Street, Suite 301
Lincoln, NE 68508

(402) 441-7511 (Main Office)
(402) 430-3390 (Cell)
(402) 441-7120 (Fax)

"If you get to thinking you're a person of some influence, try ordering somebody else's dog around." Will Rogers

CITY OF LINCOLN NEBRASKA

From: Lin Quenzer
Sent: Tuesday, February 04, 2014 10:15 AM
To: Trish A. Owen
Subject: FW: Breslow Ice Center

From: Dawn Nicoll [mailto:krzyd76@aol.com]
Sent: Tuesday, February 04, 2014 9:58 AM
To: Mayor; tclare@nebraska.edu; Doug Emery
Subject: Breslow Ice Center

Mayor Beutler, Tim Clare & Doug Emery-
I am writing as a citizen of Lincoln and a parent of two boys that love to play hockey. It would be a great addition to our wonderful city to have a year round ice center available for all of our budding athletes. While the Ice Box is home to us we would love to see a center available that is as nice as some of the centers that are available in smaller towns in Nebraska. I definitely think a city of our size would embrace and support the addition of a new ice center. This would not only help our current skaters of all types but would most likely encourage new skaters of all abilities to try it out.

Our city has made great strides in the past few years and this would definitely be a step in the right direction. Not only would it help our local skaters, but it would also help our city by being able to bring events and tournaments to Lincoln that would bring visitors with them. Our city deserves to have this addition and I sincerely hope that this is taken into serious consideration and approved.

Respectfully,
Dawn Nicoll

Jamie Phillips

From: Trish A. Owen
Sent: Monday, February 03, 2014 3:28 PM
To: Jamie Phillips
Subject: FW: Breslow Ice Center

Trish Owen, MPA
Deputy Chief of Staff
Office of the Mayor
555 S. 10th Street, Suite 301
Lincoln, NE 68508

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"If you get to thinking you're a person of some influence, try ordering somebody else's dog around." Will Rogers

-----Original Message-----
From: Lin Quenzer
Sent: Monday, February 03, 2014 3:08 PM
To: Trish A. Owen
Subject: FW: Breslow Ice Center

-----Original Message-----
From: sherry simons [mailto:sherryvarty@yahoo.ca]
Sent: Monday, February 03, 2014 2:55 PM
To: Mayor
Subject: Breslow Ice Center

Dearest Chris,

I am writing you to request that you seriously invest in the Breslow Ice Center. I think not only would it drastically add to the community but that it would be an investment for the city of Lincoln that would substantially draw more visitors now that the Pinaccle arena has made a similar impact on this city. Thank you for your time.

SHERRY SIMONS | Owner/Photographer
STORIES of GLORY PHOTOGRAPHY. Lincoln, NE 68505
Direct: 402.310.6302 Email: ss@storiesofgloryphotography.com Website:www.storiesofgloryphotography.com
Portraits | Weddings/Engagements | Business/Commercial | Documentary | Sports | Event Photography BEHIND the GLORY, there's always a story. Allow ME to Capture YOURS.

Jamie Phillips

From: Jim and Susan Randall <jsrandall@windstream.net>
Sent: Monday, February 10, 2014 2:20 PM
To: Mayor
Subject: Breslow Ice Center

You will be discussing giving the Breslow Ice Center 2 million dollars for construction soon. I suggest that the JPA NOT the Arena's contingency funds for the Ice Center project.

Used the funds either to pay down the principal on the bond debt, or perhaps to leave the funds alone for a time when the Arena potentially has some financial problems.

The Ice Center should be non-tax supported and operate as any commercial entertainment business; pay its own way. It will compete with taxpaying businesses like roller rinks, miniature golf courses, movies theatres etc. Do not give the Ice the idea that the taxpayers are a safety net for this operation.

We all ready have the Ice Box and the Rail Yard and Pershing Auditorium has made ice in the past. Upgrade Pershing to be the new public ice center.

The University of Nebraska should not operate the facility. University will want tax dollars to operate and maintain the Ice Center if it cannot pay its way. Let the UNL hockey club use the Ice Box. Hockey is not a big fan based sport like Husker football.

Jim Randall
6140 South 94th St
Lincoln, NE 68526

West Haymarket Joint Public Agency
Payment Register
12/1/2013 through 12/31/2013

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
324566	Union Bank & Trust Company	West Haymarket Series 2010A	195011	JPA 2010A Debt Service	PV	1499041	2,325,755.00	12/04/13	506188
324566	Union Bank & Trust Company	West Haymarket Series 2010B	195021	JPA 2010B/C Debt Service	PV	1499042	1,855,980.00	12/04/13	506188
324566	Union Bank & Trust Company	West Haymarket Series 2010C	195021	JPA 2010B/C Debt Service	PV	1499044	1,081,181.25	12/04/13	506188
324566	Union Bank & Trust Company	West Haymarket Series 2011	195031	JPA 2011 Debt Service	PV	1499045	2,295,843.75	12/04/13	506188
595125	Chapman and Cutler LLP	West Haymarket/US Bank	870976	WH Line of Credit	PV	1499032	15,000.00	12/04/13	506189
53356	Lincoln Electric System	605 N 8th St,Pk Lot Lgh	06095	W Haymarket Surplus/ O & M	PV	1499022	60.72	12/05/13	66668
77921	County/City Property Management	CITY CONTROLLER-JPA	06095	W Haymarket Surplus/ O & M	PV	1499028	126.97	12/05/13	66681
98079	Black Hills Energy	277 Pinnacle Arena Drive	06095	W Haymarket Surplus/ O & M	PV	1499030	132.97	12/05/13	66698
74405	City of Lincoln - Building & Safety	Team Store Bldg Permit	870100	WH Arena	PV	1500370	1,266.56	12/11/13	506557
76881	Windstream	Billing Number 402-477-6387	06095	W Haymarket Surplus/ O & M	PV	1500746	95.23	12/11/13	506558
215600	Nebraska Nursery & Color Gardens LLC	Landscape plantings,Nov,13	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1500889	86,012.59	12/11/13	506559
604782	Hayneedle		870100	WH Arena	PV	1500366	3,695.76	12/11/13	506560
29989	National Everything Wholesale		870100	WH Arena	PV	1500364	7,510.30	12/12/13	66776
53356	Lincoln Electric System	200 N 7th, 10/23-11/8/13	870305	WH Core Area Roadway & Utility	PV	1500376	250.40	12/12/13	66806
53356	Lincoln Electric System	277 Pinnacle Arena Dr	06095	W Haymarket Surplus/ O & M	PV	1500745	317.04	12/12/13	66806
102154	Public Building Commission	Space Rental 12/13	06095	W Haymarket Surplus/ O & M	PV	1500747	52.24	12/12/13	66847
102154	Public Building Commission	Space Rental 12/13	06095	W Haymarket Surplus/ O & M	PV	1500747	204.62	12/12/13	66847
249308	DLR Group Inc	Amd 4,Smoke model work	870100	WH Arena	OV	1500890	189.44	12/12/13	66874
249308	DLR Group Inc	Amd 10,IPTV design	870100	WH Arena	OV	1500891	17,485.00	12/12/13	66874
320143	Hawkins Construction	#870305,9/29-11/16/13 work	870305	WH Core Area Roadway & Utility	OV	1500611	191,310.50	12/12/13	66881
324304	BNSF Railway Company	Cust#1006236, August,2013	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1500372	26,653.97	12/12/13	66885
324304	BNSF Railway Company	Cust#1006236, Sept,2013	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1500373	24,591.35	12/12/13	66885
324304	BNSF Railway Company	Cust#1006236, October, 2013	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1500375	4,307.21	12/12/13	66885
406174	BKD LLP	Client #0081643 WHJPA Audit	06095	W Haymarket Surplus/ O & M	PV	1500748	9,500.00	12/12/13	66894
593485	Agent W-9	Monthly Website Mgmt 11/2013	06095	W Haymarket Surplus/ O & M	PV	1500749	2,000.00	12/12/13	66917
596877	Olsson Associates	Services 10/6-11/2/13	870305	WH Core Area Roadway & Utility	OV	1500615	42,052.15	12/12/13	66925
596877	Olsson Associates	Services 10/6-11/2/13	870951	WH ITS & Dynamic Message Signs	OV	1500615	1,577.88	12/12/13	66925
596877	Olsson Associates	Services 10/6-11/2/13	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1500615	52,979.58	12/12/13	66925
596877	Olsson Associates	Services 10/6-11/2/13	870307	WH Streetscape	OV	1500615	19,535.27	12/12/13	66925
596877	Olsson Associates	Services 10/6-11/2/13	870205	WH Parking Garage #2 P2	OV	1500615	70,610.23	12/12/13	66925
596877	Olsson Associates	Services 10/6-11/2/13	870000	WH General Coordination	OV	1500615	5,871.67	12/12/13	66925
596877	Olsson Associates	Girder failure,10/6-11/2/13	870000	WH General Coordination	OV	1500617	5,535.00	12/12/13	66925
602342	Dimensional Innovations	Ped Bridge design,Nov'13	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1500888	338,775.87	12/12/13	66931
603301	Five Nines Technology Group LLC	Wireless Network,10/1-11/30	870100	WH Arena	OV	1500887	267,216.93	12/12/13	66933
82368	State of Nebraska	Oct,2013 on Monitoring #0637	870602	WH Voluntary Clean-up Program	PV	1501743	5,203.77	12/18/13	507006
98642	Information Services	11/13 Data Processing	06095	W Haymarket Surplus/ O & M	PV	1502746	162.85	12/18/13	507007
605096	Bella Giulietta Inc	Occ tax overpayments 1/12-6/12	06094	W Haymarket Revenue	PV	1502769	172.73	12/18/13	507008
605097	Deena Winter	Red 1 MU BB Parking Refund	06096	W Haymarket Parking Revenue	PV	1502689	5.00	12/18/13	507009
604131	New England Fire & Safety Equipment		870100	WH Arena	PV	1504255	1,417.44	12/19/13	25315
604131	New England Fire & Safety Equipment		870100	WH Arena	PV	1504255	31,385.92	12/19/13	25315
604131	New England Fire & Safety Equipment		870100	WH Arena	PV	1504255	1,907.20	12/19/13	25315
588846	District Energy Corp	Customer WHymktJPA 12/2013	06095	W Haymarket Surplus/ O & M	PV	1502747	131,338.27	12/19/13	67092
598263	PC Sports LLC		870000	WH General Coordination	OV	1501736	26,000.00	12/19/13	67117
598263	PC Sports LLC		870001	WH General Coordination P2	OV	1501736	10,000.00	12/19/13	67117
598263	PC Sports LLC		870100	WH Arena	OV	1501736	15,000.00	12/19/13	67117
66982	Settell's Inc	WHJPA GO Bonds Final OS	870981	WH Series 5 JPA Debt P2	PV	1505352	601.34	12/25/13	507491
74683	Downtown Lincoln Association	West Haymarket maint Dec 13	06095	W Haymarket Surplus/ O & M	PV	1505346	6,800.00	12/25/13	507492
97885	Copy Services	Customer 595381	06095	W Haymarket Surplus/ O & M	PV	1505347	14.11	12/25/13	507493
98415	Lincoln Water System	277 Pinnacle Arena Dr	06095	W Haymarket Surplus/ O & M	PV	1505349	92.21	12/25/13	507494
108417	Citizen Information Center	WHJPA Video 11/14/13	06095	W Haymarket Surplus/ O & M	PV	1505350	50.00	12/25/13	507495
127319	Urban Development	C.Thomas time,Sep-Nov,2013	870903	WH Jaylynn Site Purchase	PV	1504579	122.79	12/25/13	507496
131481	Public Works Business Office	City Staff	06095	W Haymarket Surplus/ O & M	PV	1505351	506.10	12/25/13	507497
174588	B & H Photo-Video		870100	WH Arena	PV	1504521	460.80	12/25/13	507498

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
174588	B & H Photo-Video		870100	WH Arena	PV	1504521	364.00	12/25/13	507498
324566	Union Bank & Trust Company	Account acceptance and setup	870981	WH Series 5 JPA Debt P2	PV	1505353	500.00	12/25/13	507499
397124	Grant Street Group	WHJPA Series 2013 GO bonds	870981	WH Series 5 JPA Debt P2	PV	1505356	3,000.00	12/25/13	507500
604227	Radiant Systems Inc	Support, 9/20/13	870100	WH Arena	OV	1504632	1,438.06	12/25/13	507501
604227	Radiant Systems Inc	Support, 11/12/13	870100	WH Arena	OV	1504633	926.34	12/25/13	507501
604227	Radiant Systems Inc	Support,9/16/13	870100	WH Arena	OV	1504634	661.33	12/25/13	507501
604227	Radiant Systems Inc	Support, 9/14/13	870100	WH Arena	OV	1504635	1,383.48	12/25/13	507501
604227	Radiant Systems Inc	Support,9/13/13	870100	WH Arena	OV	1504636	1,053.78	12/25/13	507501
604227	Radiant Systems Inc	Support,11/11/13	870100	WH Arena	OV	1504637	1,642.19	12/25/13	507501
604227	Radiant Systems Inc	Support,9/14/13	870100	WH Arena	OV	1504638	1,811.30	12/25/13	507501
604227	Radiant Systems Inc	Support,9/14/13	870100	WH Arena	OV	1504639	1,487.67	12/25/13	507501
604774	Pinnacle Bank Arena	Sapp Bros. inv#733021,733517	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1504580	366.68	12/25/13	507502
605123	Kristie Eastman	ASU Mens BB Parking Refund	06096	W Haymarket Parking Revenue	PV	1504425	5.00	12/25/13	507503
36863	General Excavating	Remediation,N St.North	870602	WH Voluntary Clean-up Program	OV	1504655	46,710.46	12/26/13	67188
36863	General Excavating	Remediation,N St.North	870607	WH JayLynn/Watson/Alter N	OV	1504655	200,000.00	12/26/13	67188
37233	Olsson Associates	Parking Deck 2 inspects	870205	WH Parking Garage #2 P2	OV	1504584	1,177.00	12/26/13	67189
37233	Olsson Associates	Parking Deck 3 inspects	870206	WH Parking Garage #3 P2	OV	1504588	2,368.25	12/26/13	67189
37233	Olsson Associates		870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1504593	860.00	12/26/13	67189
37233	Olsson Associates	W Haymkt wetland monitoring	06095	W Haymarket Surplus/ O & M	PV	1505344	380.64	12/26/13	67189
39781	Davis Design	Parking Deck#3 work	870206	WH Parking Garage #3 P2	OV	1504640	23,001.18	12/26/13	67197
41507	Sampson Construction	Infrastructure Impr,Nov'13	870307	WH Streetscape	OV	1504612	82,404.00	12/26/13	67201
48021	NMC Exchange LLC	3840570 tax exempt	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1504581	1,866.85	12/26/13	67207
53356	Lincoln Electric System	525 N St, 10/29-12/2/13	870305	WH Core Area Roadway & Utility	PV	1504577	288.80	12/26/13	67208
53356	Lincoln Electric System	601 N St,2, 10/29-12/2/13	870305	WH Core Area Roadway & Utility	PV	1504578	58.40	12/26/13	67208
249308	DLR Group Inc	Donor Wall Design work	870100	WH Arena	OV	1504641	2,500.00	12/26/13	67282
249308	DLR Group Inc	Nov,2013 Fixed Reimb Exp	870100	WH Arena	OV	1504642	10,000.00	12/26/13	67282
596608	M A Mortenson Company	GMP Arena work,Nov,2013	870100	WH Arena	OV	1504661	1,781,580.00	12/26/13	67317
596877	Olsson Associates	Arena design, Nov,2013	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1504669	39,605.79	12/26/13	67318
596877	Olsson Associates	Arena design,Nov,2013	870307	WH Streetscape	OV	1504669	6,394.35	12/26/13	67318
596877	Olsson Associates	Arena design,Nov,2013	870205	WH Parking Garage #2 P2	OV	1504669	66,351.16	12/26/13	67318
596877	Olsson Associates	Arena design,Nov,2013	870000	WH General Coordination	OV	1504669	9,256.08	12/26/13	67318
596877	Olsson Associates	Arena design,Nov,2013	870951	WH ITS & Dynamic Message Signs	OV	1504669	568.04	12/26/13	67318
596877	Olsson Associates	Arena design,Nov,2013	870305	WH Core Area Roadway & Utility	OV	1504669	33,780.49	12/26/13	67318
602078	Hausmann-Dunn, a Joint Venture	Deck 2 work, Nov,2013	870205	WH Parking Garage #2 P2	OV	1504654	364,768.00	12/26/13	67325
602078	Hausmann-Dunn, a Joint Venture	Deck 3 work,Nov,2013	870206	WH Parking Garage #3 P2	OV	1504654	1,104,709.00	12/26/13	67325
366993	Gilmore & Bell PC	Matter 601933.010	870981	WH Series 5 JPA Debt P2	PV	1506229	50,000.00	12/30/13	25354
Grand total							12,828,186.30		

West Haymarket Joint Public Agency
Payment Register
1/1/2014 through 1/31/2014

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 11/13	06095	W Haymarket Surplus/ O & M	PV	1506131	11,990.16	01/01/14	507736
53356	Lincoln Electric System	605 N 8th St, Pk Lot Lgh	06095	W Haymarket Surplus/ O & M	PV	1506100	61.92	01/02/14	67354
77921	County/City Property Management	November 2013 Amtrak Station	06095	W Haymarket Surplus/ O & M	PV	1506101	400.77	01/02/14	67364
98079	Black Hills Energy	277 Pinnacle Arena Dr	06095	W Haymarket Surplus/ O & M	PV	1506102	431.51	01/02/14	67379
597350	Mr Yards and More LLC	Snow removal Amtrak Station	06095	W Haymarket Surplus/ O & M	PV	1506103	360.00	01/02/14	67414
76881	Windstream	Billing Number 402-477-6387	06095	W Haymarket Surplus/ O & M	PV	1506998	96.46	01/08/14	507940
90958	Moody's Investors Service	Customer No. 300100242	870981	WH Series 5 JPA Debt P2	PV	1507001	24,000.00	01/08/14	507941
111472	Nebraska Printing Center Inc	Customer No 0000589	06095	W Haymarket Surplus/ O & M	PV	1507003	30.25	01/08/14	507942
133428	LeGrande Excavating Inc	Job #1013H Amtrak Station	06095	W Haymarket Surplus/ O & M	PV	1507006	177.00	01/08/14	507943
422799	Ameritas Investment Corp	Fiscal Fee WHJPA Series 2013	870981	WH Series 5 JPA Debt P2	PV	1507011	32,381.25	01/08/14	507944
77921	County/City Property Management	CITY CONTROLLER-JPA	06095	W Haymarket Surplus/ O & M	PV	1506999	95.33	01/09/14	67468
222586	Don Herz	Services for July-Dec 2013	06095	W Haymarket Surplus/ O & M	PV	1507008	3,616.25	01/09/14	67504
593485	Agent W-9	Monthly Website Mgmt 12/2013	06095	W Haymarket Surplus/ O & M	PV	1507012	2,000.00	01/09/14	67539
98415	Lincoln Water System	865 N 10th,8/7-10/7/13	870307	WH Streetscape	PV	1508670	4,053.05	01/15/14	508491
98642	Information Services	12/13 Data Processing	06095	W Haymarket Surplus/ O & M	PV	1509037	147.85	01/15/14	508492
131481	Public Works Business Office	City Staff	06095	W Haymarket Surplus/ O & M	PV	1509039	148.85	01/15/14	508493
324304	BNSF Railway Company	Cust#1006236, Train delay exp	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1508694	50,450.40	01/15/14	508494
604227	Radiant Systems Inc	11/9/13 service	870100	WH Arena	OV	1508800	3,496.00	01/15/14	508495
604774	Pinnacle Bank Arena	Arena Pouring Rights	06095	W Haymarket Surplus/ O & M	PV	1509045	285,000.00	01/15/14	508496
604774	Pinnacle Bank Arena	Reimb 2013/14 Property Ins	06095	W Haymarket Surplus/ O & M	PV	1509047	96,000.00	01/15/14	508496
605226	Custom Blinds & Design	Blinds for Arena	870100	WH Arena	PV	1508729	6,970.00	01/15/14	508497
40310	Commonwealth Electric Co of the Midwe	Haymarket fiber,Nov,2013	870951	WH ITS & Dynamic Message Signs	OV	1508229	7,200.00	01/16/14	67606
40310	Commonwealth Electric Co of the Midwe	Cust 280,Dec,2013 fiber wrk	870951	WH ITS & Dynamic Message Signs	OV	1508806	7,783.15	01/16/14	67606
53356	Lincoln Electric System	200 N 7th,11/22-12/20/13	870305	WH Core Area Roadway & Utility	PV	1508721	298.40	01/16/14	67615
53356	Lincoln Electric System	525 N St, 12/3-1/2/14	870305	WH Core Area Roadway & Utility	PV	1508722	388.50	01/16/14	67615
53356	Lincoln Electric System	601 N St,2, 12/3-1/2/14	870305	WH Core Area Roadway & Utility	PV	1508723	59.10	01/16/14	67615
53356	Lincoln Electric System	277 Pinnacle Arena Dr	06095	W Haymarket Surplus/ O & M	PV	1509035	361.39	01/16/14	67615
102154	Public Building Commission	Space Rental 01/14	06095	W Haymarket Surplus/ O & M	PV	1509038	204.62	01/16/14	67674
102154	Public Building Commission	Space Rental 01/14	06095	W Haymarket Surplus/ O & M	PV	1509038	52.24	01/16/14	67674
148582	Aon Risk Services Central Inc	Policy 023462767	870000	WH General Coordination	PV	1509040	10,300.00	01/16/14	67681
148582	Aon Risk Services Central Inc	Policy 006761896	870000	WH General Coordination	PV	1509041	10,300.00	01/16/14	67681
148582	Aon Risk Services Central Inc	Policy EXCLA119196-1	870000	WH General Coordination	PV	1509042	4,900.00	01/16/14	67681
320143	Hawkins Construction	#870305,Work 11/17-1/10/14	870305	WH Core Area Roadway & Utility	OV	1509557	441,835.36	01/16/14	67705
406174	BKD LLP	Client 0060387 JPA 2013 Bonds	870981	WH Series 5 JPA Debt P2	PV	1509043	2,750.00	01/16/14	67722
588846	District Energy Corp	Customer WHymkJPA 01/2014	06095	W Haymarket Surplus/ O & M	PV	1509044	168,080.02	01/16/14	67737
594773	Alfred Benesch & Company	Environmental,Oct,2013	870604	WH Other/Miscellaneous	OV	1508231	2,737.78	01/16/14	67750
594773	Alfred Benesch & Company	Environmental,Oct,2013	870602	WH Voluntary Clean-up Program	OV	1508231	22,520.18	01/16/14	67750
594773	Alfred Benesch & Company	Environmental,Oct,2013	870603	WH Environmental Contngy Pln	OV	1508231	1,180.50	01/16/14	67750
594773	Alfred Benesch & Company	Environmental,Oct,2013	870601	WH NDEQ T-200	OV	1508232	8,503.45	01/16/14	67750
594773	Alfred Benesch & Company	Environmental,Nov,2013	870604	WH Other/Miscellaneous	OV	1508233	1,170.00	01/16/14	67750
594773	Alfred Benesch & Company	Environmental,Nov,2013	870602	WH Voluntary Clean-up Program	OV	1508233	8,708.00	01/16/14	67750
594773	Alfred Benesch & Company	Environmental,Nov,2013	870603	WH Environmental Contngy Pln	OV	1508233	1,262.50	01/16/14	67750
594773	Alfred Benesch & Company	ENvironmental,Nov,2013	870601	WH NDEQ T-200	OV	1508234	1,039.00	01/16/14	67750
596579	SMG	Cust 889, Reimburse exps	870100	WH Arena	PV	1508666	376.21	01/16/14	67751
596579	SMG	Cust 889, Jan,2013 exp reimb	870100	WH Arena	PV	1508668	1,278.06	01/16/14	67751
596579	SMG	Jan,2013 Mgmt fee	870100	WH Arena	OV	1508798	5,000.00	01/16/14	67751
602078	Hausmann-Dunn, a Joint Venture	#12022300015,Deck 1 work	870202	WH Parking Garage #1	OV	1508230	81,930.00	01/16/14	67763
602078	Hausmann-Dunn, a Joint Venture	#12022300,release retainage	870202	WH Parking Garage #1	OV	1509730	25,716.00	01/16/14	67763
602342	Dimensional Innovations	Ped Bridge design	870201	WH HymktPkLot,FestSp&PedGrdStr	OV	1508852	316,797.72	01/16/14	67764
82368	State of Nebraska	Nov,2013 monitoring #0637	870602	WH Voluntary Clean-up Program	PV	1510202	1,846.89	01/22/14	508860
97885	Copy Services	Customer 595381	06095	W Haymarket Surplus/ O & M	PV	1510859	8.48	01/22/14	508861
98415	Lincoln Water System	541 N St, 10/24-12/26/13	870902	WH Alter Site Purchase	PV	1510223	42.11	01/22/14	508862
324566	Union Bank & Trust Company	WHJPA Series 2010B	195021	JPA 2010B/C Debt Service	PV	1510864	524.00	01/22/14	508863

West Haymarket Joint Public Agency
Payment Register
1/1/2014 through 1/31/2014

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
324566	Union Bank & Trust Company	WHJPA Series 2010C	195021	JPA 2010B/C Debt Service	PV	1510865	524.00	01/22/14	508863
431100	City of Lincoln - Parking	JPA Parking Garage Mgmt 12/13	06095	W Haymarket Surplus/ O & M	PV	1510867	68,357.89	01/22/14	508864
604227	Radiant Systems Inc	POS license/software	870100	WH Arena	OV	1510301	10,000.00	01/22/14	508865
604475	BearCom Wireless Worldwide	CUST # 1133223	870100	WH Arena	PD	1510304	1,023.36-	01/22/14	508866
604475	BearCom Wireless Worldwide	CUST # 1133223	870100	WH Arena	OV	1510305	18,600.00	01/22/14	508866
41507	Sampson Construction	Dec,2013 Infrastrct Improv	870307	WH Streetscape	OV	1510300	126,930.00	01/23/14	67810
48021	NMC Exchange LLC	Rent 12/6-1/3/14 less salestax	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1510236	1,816.85	01/23/14	67813
324304	BNSF Railway Company	Cont#BF00019824	870201	WH HymktPkLot,FestSp&PedGrdStr	PV	1510218	3,553.36	01/23/14	67882
583920	Cash-Wa Distributing		870100	WH Arena	PV	1510438	422.00	01/23/14	67900
583920	Cash-Wa Distributing		870100	WH Arena	PV	1510439	14,611.44	01/23/14	67900
594773	Alfred Benesch & Company	#2 garage,consult 6/18-8/31/13	870204	WH Parking Garage #2	PV	1510229	181.77	01/23/14	67915
596608	M A Mortenson Company	Dec,2013 Arena work	870100	WH Arena	OV	1510294	548,433.00	01/23/14	67920
598263	PC Sports LLC	Dec,2013 Program Mgmt	870000	WH General Coordination	OV	1510303	25,000.00	01/23/14	67923
598263	PC Sports LLC	Dec,2013 Addendum#2	870001	WH General Coordination P2	OV	1510303	10,000.00	01/23/14	67923
598263	PC Sports LLC	Dec,2013 Arena Mgmt	870100	WH Arena	OV	1510303	11,725.00	01/23/14	67923
74683	Downtown Lincoln Association	West Haymarket maint Jan 14	06095	W Haymarket Surplus/ O & M	PV	1512575	6,800.00	01/29/14	509294
125330	NECO Inc	Jan-Mar 14 Alarm Services	06095	W Haymarket Surplus/ O & M	PV	1512580	102.60	01/29/14	509295
133428	LeGrande Excavating Inc	Snow removal Amtrak 1/1/14	06095	W Haymarket Surplus/ O & M	PV	1512581	44.25	01/29/14	509296
133428	LeGrande Excavating Inc	Snow removal Amtrak 1/8/14	06095	W Haymarket Surplus/ O & M	PV	1512582	59.00	01/29/14	509296
267741	US Bank	Customer #24-7378537820	06095	W Haymarket Surplus/ O & M	PV	1512583	4,333.33	01/29/14	509297
605312	Heather Koch	Purdue Women BB Parking Refund	06096	W Haymarket Parking Revenue	PV	1511311	5.00	01/29/14	509298
77921	County/City Property Management	December Amtrak Station	06095	W Haymarket Surplus/ O & M	PV	1512577	349.71	01/30/14	67997
98079	Black Hills Energy	277 Pinnacle Arena Dr	06095	W Haymarket Surplus/ O & M	PV	1512579	489.09	01/30/14	68022
597350	Mr Yards and More LLC	Amtrak snow removal 12/31-1/1	06095	W Haymarket Surplus/ O & M	PV	1512584	90.00	01/30/14	68089
597350	Mr Yards and More LLC	Snow removal Amtrak 1/8/14	06095	W Haymarket Surplus/ O & M	PV	1512585	90.00	01/30/14	68089
Grand total							2,508,555.64		

City of Lincoln, NE
West Haymarket Joint Public Agency
Job Cost Report
As of December 31, 2013

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70090 West Haymarket Park						
870000 WH General Coordination	6,624,522	6,506,934	25,000	92,588		92,588
70090 West Haymarket Park	6,624,522	6,506,934	25,000	92,588		92,588
70091 Arena						
870100 WH Arena	183,360,003	182,209,974	1,880,788	730,759-		730,759-
870101 WH Arena Contingency	2,442,000			2,442,000		2,442,000
870203 WH Arena Parking Garage	726,438	725,794		644		644
70091 Arena	186,528,441	182,935,768	1,880,788	1,711,885		1,711,885
70092 Parking						
870201 WH HymktPkLot,FestSp&PedGrdStr	15,562,299	13,881,936	1,408,366	271,997		271,997
870202 WH Parking Garage #1	14,064,727	13,459,047	599,509	6,171		6,171
870204 WH Parking Garage #2	207,036	203,219	3,817			
70092 Parking	29,834,062	27,544,202	2,011,692	278,168		278,168
70093 Roads						
870301 WH Charleston Bridge/Roadway	252,015	252,015				
870302 WH "M"&"N" St,7th to 10th St	3,437,329	3,436,497	962	130-		130-
870303 WH USPS Parking Lot Reconstctn	696,054	696,054				
870304 WH 10th & Salt Creek Road Impr	3,436,721	3,436,721				
870305 WH Core Area Roadway & Utility	15,441,227	13,640,069	1,513,431	287,727		287,727
870306 WH Traffic Analysis	72,650	72,352		298		298
870307 WH Streetscape	2,286,116	1,887,017	355,202	43,897		43,897
870308 WH Sun Valley Blvd & West "O"	29,370	23,682	5,689	1-		1-
70093 Roads	25,651,482	23,444,407	1,875,284	331,791		331,791
70094 Pedestrian Ways						
870401 WH Plaza						
870402 WH Canopy Phase II	1,356,269	1,356,269				
70094 Pedestrian Ways	1,356,269	1,356,269				

As of December 31, 2013

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70095 Utilities						
870501 WH Sanitary Sewer Relocation	1,492,905	1,492,905				
870502 WH Fiber Optic Comm & Other	506,035	506,035				
70095 Utilities	1,998,940	1,998,940				
70096 Environmental						
870601 WH NDEQ T-200	2,140,219	1,604,633	21,378	514,208		514,208
870602 WH Voluntary Clean-up Program	2,032,590	1,408,358	325,045	299,187		299,187
870603 WH Environmental Contngy Pln	2,176,524	1,318,872	18,280	839,372		839,372
870604 WH Other/Miscellaneous	863,716	692,327	7,090	164,299		164,299
870605 WH Canopy Phase I-Lead Abatemt						
870606 WH Alter Brownfield Site						
870607 WH JayLynn/Watson/Alter N		200,000		200,000-		200,000-
70096 Environmental	7,213,049	5,224,190	371,793	1,617,066		1,617,066
70097 Dirt Moving						
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF						
870703 WH Initial Haymarket Site Prep	6,095,931	6,087,617	8,314			
870704 WH Other Stormwater Mitigation						
70097 Dirt Moving	6,095,931	6,087,617	8,314			
70099 Site Purchase						
870901 WH BNSF Land Acquisition	1,060,420	1,060,419		1		1
870902 WH Alter Site Purchase	4,846,135	4,545,057		301,078		301,078
870903 WH Jaylynn Site Purchase	1,700,218	1,702,838		2,620-		2,620-
870904 WH UP Site Purchase	1,326,248	1,326,248				
870905 WH BNSF Const, Rehab, Reloc	47,671,699	47,671,699				
870906 WH Amtrak Station	2,369,425	2,369,425				
870907 WH UP Track Mod West of Bridge	1,225,232	1,225,232				
870908 WH Other Private Prop Acqstns	2,264,512	2,214,387		50,125		50,125
70099 Site Purchase	62,463,889	62,115,305		348,584		348,584
70100 Other Costs						

As of December 31, 2013

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
	870951 WH ITS & Dynamic Message Signs	1,235,960	1,109,424	24,583	101,953		101,953
	870952 WH Community Space & Civic Art	1,500,000	370,115	13,670	1,116,215		1,116,215
70100	Other Costs	2,735,960	1,479,539	38,253	1,218,168		1,218,168
70105	Bond Related Costs						
	870975 WH Miscellaneous	528,317			528,317		528,317
	870976 WH Line of Credit	53,227	78,227		25,000-		25,000-
	870977 WH Series 1 JPA Debt	1,535,168	1,535,168				
	870978 WH Series 2 JPA Debt	1,221,802	1,221,802				
	870979 WH Series 3 JPA Debt	577,661	577,661				
	870980 WH Series 4 JPA Debt	1,243,825	1,243,825				
70105	Bond Related Costs	5,160,000	4,656,683		503,317		503,317
00951	West Haymarket Capital Proj	335,662,545	323,349,854	6,211,124	6,101,567		6,101,567

As of December 31, 2013

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70090 West Haymarket Park						
870001 WH General Coordination P2	360,000	110,000	250,000			
70090 West Haymarket Park	360,000	110,000	250,000			
70092 Parking						
870205 WH Parking Garage #2 P2	12,365,000	1,586,863	9,871,080	907,057		907,057
870206 WH Parking Garage #3 P2	14,570,000	4,169,090	9,988,911	411,999		411,999
70092 Parking	26,935,000	5,755,953	19,859,991	1,319,056		1,319,056
70105 Bond Related Costs						
870981 WH Series 5 JPA Debt P2	422,598	335,851		86,747		86,747
70105 Bond Related Costs	422,598	335,851		86,747		86,747
00951 West Haymarket Capital Proj	27,717,598	6,201,804	20,109,991	1,405,803		1,405,803

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of December 31, 2013

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06094 W Haymarket Revenue					
16 Transfer Out					
9220 Cash Transfers Out	453,266		453,266		453,266
16 Transfer Out	453,266		453,266		453,266
06094 W Haymarket Revenue	453,266		453,266		453,266
06095 W Haymarket Surplus/					
11 Materials & Supplies					
5221 Office Supplies	250		250		250
5261 Postage	1,200		1,200	334	866
5323 Bldg Maint Supplies	500		500		500
11 Materials & Supplies	1,950		1,950	334	1,616
12 Other Services & Charges					
5621 Misc Contractual Services	735,125		735,125	7,750	727,375
5624 Auditing Service	18,000		18,000	13,610	4,390
5631 Data Processing Service	2,015		2,015	489	1,526
5633 Software	1,200		1,200	999	201
5643 Management Services	498,095		498,095	12,405	485,690
5643.61 Deck 1 Mgmt Servic	565,000		565,000	91,880	473,120
5643.63 Deck 3 Mgmt Servic	95,000		95,000		95,000
5683.04 Snow Removal	2,500		2,500	360	2,140
5683.05 Fire Alarm Monitor	500		500	103	397
5762 Photocopying	500		500	40	460
5763 Printing	500		500	121	379
5783 General Liability	57,000		57,000		57,000
5786 Property	65,400		65,400		65,400
5794 Public Officials	31,700		31,700	30,121	1,579
5821 Electricity - Bldg & Grnds	5,840		5,840	1,414	4,426
5825 Natural Gas	3,000		3,000	632	2,368
5829 Telephone	1,200		1,200	385	815
5830 Water	4,000		4,000	194	3,806
5835 Thermal Heating & Cooling	1,552,010		1,552,010	509,913	1,042,097
5856 City Share Linc Center Main	34,000		34,000	34,000	
5862 Grounds Maintenance	3,000		3,000	860	2,140
5870 Other Bldg Maintenance	11,000		11,000	1,964	9,036
5928 Rent of Co/City Bldg Space	2,456		2,456	818	1,638
5931 Parking Rent Bldg Comm	627		627	209	418
5952 Advertising/Media Serv	2,850		2,850	91	2,759
5969 Arena Sales Commissions	1,307,000		1,307,000		1,307,000
12 Other Services & Charges	4,999,518		4,999,518	708,358	4,291,160
06095 W Haymarket Surplus/	5,001,468		5,001,468	708,692	4,292,776

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of December 31, 2013

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
195011 JPA 2010A Debt Servic					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524		524	524	
6235 Bd Trustee Pmt-Interest	4,651,510		4,651,510	2,325,755	2,325,755
15 Debt Service	4,652,034		4,652,034	2,326,279	2,325,755
195011 JPA 2010A Debt Servic	4,652,034		4,652,034	2,326,279	2,325,755
195021 JPA 2010B/C Debt Serv					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	1,048		1,048		1,048
6235 Bd Trustee Pmt-Interest	5,874,322		5,874,322	2,937,161	2,937,161
15 Debt Service	5,875,370		5,875,370	2,937,161	2,938,209
195021 JPA 2010B/C Debt Serv	5,875,370		5,875,370	2,937,161	2,938,209
195031 JPA 2011 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	424		424		424
6235 Bd Trustee Pmt-Interest	4,591,688		4,591,688	2,295,844	2,295,844
15 Debt Service	4,592,112		4,592,112	2,295,844	2,296,268
195031 JPA 2011 Debt Service	4,592,112		4,592,112	2,295,844	2,296,268
195041 JPA 2013 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	424		424		424
6235 Bd Trustee Pmt-Interest	580,000		580,000		580,000
15 Debt Service	580,424		580,424		580,424
195041 JPA 2013 Debt Service	580,424		580,424		580,424
00950 West Haymarket Revenue	21,154,674		21,154,674	8,267,976	12,886,698

As of January 31, 2014

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70090 West Haymarket Park						
870000 WH General Coordination	6,624,522	6,562,680		61,842		61,842
70090 West Haymarket Park	6,624,522	6,562,680		61,842		61,842
70091 Arena						
870100 WH Arena	183,360,003	182,760,350	1,579,181	979,528-		979,528-
870101 WH Arena Contingency	2,442,000			2,442,000		2,442,000
870203 WH Arena Parking Garage	726,438	725,794		644		644
70091 Arena	186,528,441	183,486,144	1,579,181	1,463,116		1,463,116
70092 Parking						
870201 WH HymktPkLot,FestSp&PedGrdStr	15,562,299	14,545,088	762,790	254,421		254,421
870202 WH Parking Garage #1	14,064,727	13,553,835	504,721	6,171		6,171
870204 WH Parking Garage #2	207,036	203,400		3,636		3,636
70092 Parking	29,834,062	28,302,323	1,267,511	264,228		264,228
70093 Roads						
870301 WH Charleston Bridge/Roadway	252,015	252,015				
870302 WH "M"&"N" St,7th to 10th St	3,437,329	3,436,497		832		832
870303 WH USPS Parking Lot Reconstctn	696,054	696,054				
870304 WH 10th & Salt Creek Road Impr	3,436,721	3,436,721				
870305 WH Core Area Roadway & Utility	15,441,227	14,117,359	1,046,564	277,304		277,304
870306 WH Traffic Analysis	72,650	72,352		298		298
870307 WH Streetscape	2,286,116	2,027,525	247,386	11,205		11,205
870308 WH Sun Valley Blvd & West "O"	29,370	23,682		5,688		5,688
70093 Roads	25,651,482	24,062,205	1,293,950	295,327		295,327
70094 Pedestrian Ways						
870401 WH Plaza						
870402 WH Canopy Phase II	1,356,269	1,356,269				
70094 Pedestrian Ways	1,356,269	1,356,269				

City of Lincoln, NE
West Haymarket Joint Public Agency
Job Cost Report
As of January 31, 2014

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70095 Utilities						
870501 WH Sanitary Sewer Relocation	1,492,905	1,492,905				
870502 WH Fiber Optic Comm & Other	506,035	506,035				
70095 Utilities	1,998,940	1,998,940				
70096 Environmental						
870601 WH NDEQ T-200	2,140,219	1,614,175	11,835	514,209		514,209
870602 WH Voluntary Clean-up Program	2,032,590	1,509,848	225,233	297,509		297,509
870603 WH Environmental Contngy Pln	2,176,524	1,321,315	15,837	839,372		839,372
870604 WH Other/Miscellaneous	863,716	696,235	3,183	164,298		164,298
870605 WH Canopy Phase I-Lead Abatemt						
870606 WH Alter Brownfield Site						
870607 WH JayLynn/Watson/Alter N		200,000		200,000-		200,000-
70096 Environmental	7,213,049	5,341,573	256,088	1,615,388		1,615,388
70097 Dirt Moving						
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF						
870703 WH Initial Haymarket Site Prep	6,095,931	6,087,617		8,314		8,314
870704 WH Other Stormwater Mitigation						
70097 Dirt Moving	6,095,931	6,087,617		8,314		8,314
70099 Site Purchase						
870901 WH BNSF Land Acquisition	1,060,420	1,060,419		1		1
870902 WH Alter Site Purchase	4,846,135	4,545,099		301,036		301,036
870903 WH Jaylynn Site Purchase	1,700,218	1,702,838		2,620-		2,620-
870904 WH UP Site Purchase	1,326,248	1,326,248				
870905 WH BNSF Const, Rehab, Reloc	47,671,699	47,671,699				
870906 WH Amtrak Station	2,369,425	2,369,425				
870907 WH UP Track Mod West of Bridge	1,225,232	1,225,232				
870908 WH Other Private Prop Acqstns	2,264,512	2,214,387		50,125		50,125
70099 Site Purchase	62,463,889	62,115,347		348,542		348,542
70100 Other Costs						

As of January 31, 2014

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
	870951 WH ITS & Dynamic Message Signs	1,235,960	1,126,090	22,527	87,343		87,343
	870952 WH Community Space & Civic Art	1,500,000	370,115		1,129,885		1,129,885
70100	Other Costs	2,735,960	1,496,205	22,527	1,217,228		1,217,228
70105	Bond Related Costs						
	870975 WH Miscellaneous	528,317			528,317		528,317
	870976 WH Line of Credit	53,227	78,227		25,000-		25,000-
	870977 WH Series 1 JPA Debt	1,535,168	1,535,168				
	870978 WH Series 2 JPA Debt	1,221,802	1,221,802				
	870979 WH Series 3 JPA Debt	577,661	577,661				
	870980 WH Series 4 JPA Debt	1,243,825	1,243,825				
70105	Bond Related Costs	5,160,000	4,656,683		503,317		503,317
00951 West Haymarket Capital Proj		335,662,545	325,465,986	4,419,257	5,777,302		5,777,302

As of January 31, 2014

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
00951 West Haymarket Capital Proj						
70090 West Haymarket Park						
870001 WH General Coordination P2	360,000	120,000	240,000			
70090 West Haymarket Park	360,000	120,000	240,000			
70092 Parking						
870205 WH Parking Garage #2 P2	12,365,000	2,089,206	9,368,736	907,058		907,058
870206 WH Parking Garage #3 P2	14,570,000	6,582,915	7,575,086	411,999		411,999
70092 Parking	26,935,000	8,672,121	16,943,822	1,319,057		1,319,057
70105 Bond Related Costs						
870981 WH Series 5 JPA Debt P2	422,598	394,982		27,616		27,616
70105 Bond Related Costs	422,598	394,982		27,616		27,616
00951 West Haymarket Capital Proj	27,717,598	9,187,103	17,183,822	1,346,673		1,346,673

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of January 31, 2014

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
06094 W Haymarket Revenue					
16 Transfer Out					
9220 Cash Transfers Out	453,266		453,266		453,266
16 Transfer Out	453,266		453,266		453,266
06094 W Haymarket Revenue	453,266		453,266		453,266
06095 W Haymarket Surplus/					
11 Materials & Supplies					
5221 Office Supplies	250		250		250
5261 Postage	1,200		1,200	705	495
5323 Bldg Maint Supplies	500		500		500
11 Materials & Supplies	1,950		1,950	705	1,245
12 Other Services & Charges					
5621 Misc Contractual Services	735,125		735,125	13,962	721,163
5624 Auditing Service	18,000		18,000	13,610	4,390
5631 Data Processing Service	2,015		2,015	636	1,379
5633 Software	1,200		1,200	999	201
5643 Management Services	498,095		498,095	297,405	200,690
5643.61 Deck 1 Mgmt Servic	565,000		565,000	160,238	404,762
5643.63 Deck 3 Mgmt Servic	95,000		95,000		95,000
5683.04 Snow Removal	2,500		2,500	820	1,680
5683.05 Fire Alarm Monitor	500		500	205	295
5762 Photocopying	500		500	48	452
5763 Printing	500		500	151	349
5783 General Liability	57,000		57,000		57,000
5786 Property	65,400		65,400	96,000	30,600-
5794 Public Officials	31,700		31,700	30,121	1,579
5821 Electricity - Bldg & Grnds	5,840		5,840	1,847	3,993
5825 Natural Gas	3,000		3,000	1,121	1,879
5829 Telephone	1,200		1,200	577	623
5830 Water	4,000		4,000	194	3,806
5835 Thermal Heating & Cooling	1,552,010		1,552,010	677,993	874,017
5856 City Share Linc Center Main	34,000		34,000	40,800	6,800-
5862 Grounds Maintenance	3,000		3,000	860	2,140
5870 Other Bldg Maintenance	11,000		11,000	2,314	8,686
5928 Rent of Co/City Bldg Space	2,456		2,456	1,023	1,433
5931 Parking Rent Bldg Comm	627		627	261	366
5952 Advertising/Media Serv	2,850		2,850	91	2,759
5969 Arena Sales Commissions	1,307,000		1,307,000		1,307,000
5996 Credit Card/Bank Fees				4,333	4,333-
12 Other Services & Charges	4,999,518		4,999,518	1,345,609	3,653,909
06095 W Haymarket Surplus/	5,001,468		5,001,468	1,346,314	3,655,154

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of January 31, 2014

	ORIGINAL BUDGET	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue					
195011 JPA 2010A Debt Servic					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	524		524	524	
6235 Bd Trustee Pmt-Interest	4,651,510		4,651,510	2,325,755	2,325,755
15 Debt Service	4,652,034		4,652,034	2,326,279	2,325,755
195011 JPA 2010A Debt Servic	4,652,034		4,652,034	2,326,279	2,325,755
195021 JPA 2010B/C Debt Serv					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	1,048		1,048	1,048	
6235 Bd Trustee Pmt-Interest	5,874,322		5,874,322	2,937,161	2,937,161
15 Debt Service	5,875,370		5,875,370	2,938,209	2,937,161
195021 JPA 2010B/C Debt Serv	5,875,370		5,875,370	2,938,209	2,937,161
195031 JPA 2011 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	424		424		424
6235 Bd Trustee Pmt-Interest	4,591,688		4,591,688	2,295,844	2,295,844
15 Debt Service	4,592,112		4,592,112	2,295,844	2,296,268
195031 JPA 2011 Debt Service	4,592,112		4,592,112	2,295,844	2,296,268
195041 JPA 2013 Debt Service					
15 Debt Service					
6233 Bd Trustee Pmt-Serv Chg	424		424		424
6235 Bd Trustee Pmt-Interest	580,000		580,000		580,000
15 Debt Service	580,424		580,424		580,424
195041 JPA 2013 Debt Service	580,424		580,424		580,424
00950 West Haymarket Revenue	21,154,674		21,154,674	8,906,646	12,248,028

WH 14-13 Introduce: 3-12-14

RESOLUTION NO. WH- _____

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

That the Financial Audit and Management Letter from BKD CPAs & Advisors LLP for the period ending August 31, 2013 is hereby accepted.

The City Clerk is directed to return a fully executed copy of this Resolution to Steve Hubka, Finance Director.

Adopted this _____ day of March, 2014.

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

_____
Doug Emery

West Haymarket Joint Public Agency

(A Component Unit of the City of Lincoln, Nebraska)
Independent Auditor's Report and Financial Statements

August 31, 2013

BKD LLP
CPAs & Advisors

West Haymarket Joint Public Agency

(A Component Unit of the City of Lincoln, Nebraska)

August 31, 2013

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BKD LLP
CPAs & Advisors

1248 "O" Street, Suite 1040
Lincoln, NE 68508-1461
402.473.7600 Fax 402.473.7698 www.bkd.com

Independent Auditor's Report

Board of Representatives
West Haymarket Joint Public Agency
Lincoln, Nebraska

Report on the Financial Statements

We have audited the accompanying basic financial statements of the governmental activities and the major fund of the West Haymarket Joint Public Agency (the Agency) (a component unit of the City of Lincoln, Nebraska), as of and for the year ended August 31, 2013, and the related notes to the financial statements, which collectively comprise the Agency's basic financial statements listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the West Haymarket Joint Public Agency as of August 31, 2013, and the respective changes in financial position thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of Matter

As discussed in Note 1 to the financial statements, in 2013 the West Haymarket Joint Public Agency implemented the provisions of GASB Statement No. 65, which changed its method of accounting for bond issuance costs through retroactive application to prior year's financial statements. Our opinion is not modified with respect to this matter.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis listed in the table of contents be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated February 25, 2014, on our consideration of the Agency's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Agency's internal control over financial reporting and compliance.

BKD, LLP

Lincoln, Nebraska
February 25, 2014

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Management's Discussion and Analysis
August 31, 2013

As management of the West Haymarket Joint Public Agency (the Agency), we offer readers of the Agency's basic financial statements this narrative and analysis of the financial activities of the Agency as of and for the year ended August 31, 2013. We encourage readers to consider the information presented here in conjunction with additional information provided in the basic financial statements.

The West Haymarket Joint Public Agency was organized as a joint public agency on April 2, 2010, created by a Joint Public Agency Agreement entered into between the City of Lincoln, Nebraska and the Board of Regents of the University of Nebraska. The Agency is a component unit of the City of Lincoln, Nebraska.

Overview of Basic Financial Statements

This discussion and analysis is intended to serve as an introduction to the Agency's basic financial statements. These basic financial statements are comprised of three components: 1) government-wide financial statements, 2) fund financial statements and 3) notes to the financial statements.

Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the Agency's finances in a manner similar to a private-sector business.

The statement of net position presents information on all of the Agency's assets and deferred outflows and liabilities and deferred inflows, with the difference between the two reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the Agency is improving or deteriorating.

The statement of activities presents information showing how the Agency's net position changed during the year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in cash flow changes only in future fiscal periods.

Fund Financial Statements

A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Agency, like other local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. The Agency maintains one governmental fund - the Project Fund.

Fund Financial Statements - Continued

The Agency is not required by the Nebraska State Budget Act to adopt an annual budget, therefore, a budgetary comparison has not been provided in the basic financial statements. The significant expenditures to be made by the Agency will be for capital purposes, which are not appropriated on an annual basis.

Notes to Basic Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the basic financial statements.

Government-Wide Financial Analysis

As noted earlier, net position may serve over time as a useful indicator of the Agency's financial position. In the case of the West Haymarket Joint Public Agency, as of August 31, 2013, net position was $7,989,379. The Agency's condensed financial information as of August 31, 2013 and 2012 is found below.

Condensed Statement of Net Position

	2013	2012
Assets		
Equity in pooled cash and investments	$ 58,689,631	$ 38,277,666
Investments	1,275,000	126,448,862
Capital assets, net of accumulated depreciation	284,712,130	167,809,904
Other (as restated - See Note 1)	2,773,378	3,557,895
Total assets	347,450,139	336,094,327
Liabilities		
Other liabilities	32,325,252	23,349,202
Long-term liabilities	307,135,508	304,669,860
Total liabilities	339,460,760	328,019,062
Net Position		
Net investment in capital assets	(2,043,743)	6,712,581
Restricted for improvements	83,333	1,000,000
Restricted by enabling legislation (as restated - See Note 1)	1,311,004	362,684
Unrestricted	8,638,785	-
Total net position	$ 7,989,379	$ 8,075,265

Government-Wide Financial Analysis - Continued

Condensed Statement of Activities

	2013	2012
Revenues		
Occupation taxes	$ 13,350,311	$ 12,913,394
Intergovernmental	4,623,425	3,900,278
Investment income (loss)	(256,643)	573,396
Loss on sale of capital assets	(1,260,556)	-
Miscellaneous	285,771	14,225
Total revenues	16,742,308	17,401,293
Expenses		
General government	3,115,478	757,446
Streets and highways	329,061	-
Culture and recreation	319,664	-
Debt service	15,119,300	15,119,886
Total expenses	18,883,503	15,877,332
Capital Contributions	2,055,309	6,307,428
Change in Net Position	(85,886)	7,831,389
Net Position		
Beginning of period, before restatement	8,075,265	4,822,332
Adjustment for implementation of GASB 65	-	(4,578,456)
End of period, as restated	$ 7,989,379	$ 8,075,265

Capital Assets

The Agency's investment in capital assets as of August 31, 2013 amounts to $284,712,130.

Major capital asset expenditures during the fiscal year included the following:

- Arena design and construction of approximately $108,100,000
- Parking facility design and construction of approximately $24,600,000
- Road and utility work of approximately $9,900,000

Additional information on the Agency's capital assets can be found in the notes to the financial statements.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Management's Discussion and Analysis
August 31, 2013

Debt Administration

At August 31, 2013, the Agency had total bonded debt outstanding of $300,000,000 being used to fund a portion of the Agency's construction costs. Additional information on the Agency's debt can be found in the notes to the financial statements.

Occupation Taxes

Beginning January 1, 2011, occupation taxes were imposed within the City of Lincoln at a rate of 2% on bar and restaurant revenues and a rate of 4% on car rental and hotel revenues. This tax revenue is generated to finance the activities of the Agency and is pledged to repayment of any outstanding Agency bonds.

Financial Analysis of the Agency's Funds

The Agency has one governmental fund, the Project Fund. The Project Fund is considered a major fund and is used to account for the Agency's general operations, construction, and debt activities. Activity during the year ended August 31, 2013, resulted in a fund deficit of $114,383,015, resulting in a total fund balance at August 31, 2013 of $32,808,438. The fund balance is a result of the issuance of bonds in prior years, occupation tax and donation revenue, less the Agency's expenditures for construction, debt service and general operations.

Subsequent Events

In November 2013, the Agency entered into a Direct Purchase Agreement with U.S. Bank National Association for General Obligation Promissory Notes, to provide funds for the West Haymarket Development Project, in the event funding was needed prior to the issuance of the Agency's Series 2013 bonds. As of the date of the Independent Auditor's Report, the Agency has not obtained any funding under this agreement.

In December 2013, the Agency issued $28,175,000 of General Obligation Facility Bonds, Series 2013, to provide funds for certain projects under Phase 2 of the West Haymarket Development project, primarily consisting of the construction of two additional parking decks.

Request for Information

This financial report is designed to provide a general overview of the Agency's finances for all those with an interest in the Agency. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the City of Lincoln Finance Department, 555 South 10th Street, Lincoln, NE 68508.

West Haymarket Joint Public Agency

(A Component Unit of the City of Lincoln, Nebraska)

Governmental Fund Balance Sheet/Statement of Net Position

August 31, 2013

	Project Fund	Adjustments (Note 1)	Statement of Net Position
Assets			
Cash	$ 19,016	$ -	$ 19,016
Equity in pooled cash and investments	58,689,631	-	58,689,631
Investments	1,275,000	-	1,275,000
Occupation taxes receivable	1,311,004	-	1,311,004
Accounts receivable	101,222	-	101,222
Interest receivable	88,760	-	88,760
Due from other City funds	499,322	-	499,322
Due from other governments	754,054	-	754,054
Capital assets, net of accumulated depreciation of $393,342	-	284,712,130	284,712,130
Total assets	62,738,009	284,712,130	347,450,139
Liabilities			
Accounts payable	11,956,279	-	11,956,279
Retainages payable	6,998,817	-	6,998,817
Interest payable	-	3,149,735	3,149,735
Due to other City funds	15,508	-	15,508
Due to other governments	295,000	-	295,000
Security deposits	183,000	-	183,000
Unearned revenue	9,726,913	-	9,726,913
Long-term liabilities	-	307,135,508	307,135,508
Total liabilities	29,175,517	310,285,243	339,460,760
Deferred Inflows of Resources			
Deferred revenue	754,054	(754,054)	-
Fund Balance/Net Position			
Fund balance			
Restricted for capital projects	17,997,320	(17,997,320)	-
Restricted by enabling legislation	4,673,929	(4,673,929)	-
Assigned for debt service	10,137,189	(10,137,189)	-
Total fund balance	32,808,438	(32,808,438)	-
Total liabilities, deferred inflows of resources and fund balance	$ 62,738,009		
Net Position			
Net investment in capital assets		(2,043,743)	(2,043,743)
Restricted for improvements		83,333	83,333
Restricted by enabling legislation		1,311,004	1,311,004
Unrestricted		8,638,785	8,638,785
Total net position		$ 7,989,379	$ 7,989,379

West Haymarket Joint Public Agency

(A Component Unit of the City of Lincoln, Nebraska)

Statement of Governmental Fund Revenues, Expenditures and Changes in Fund Balance/Statement of Activities

Year Ended August 31, 2013

	Project Fund	Adjustments (Note 1)	Statement of Activities
Expenditures/Expenses			
General government	$ 570,347	$ 2,545,131	$ 3,115,478
Streets and highways	-	329,061	329,061
Culture and recreation	-	319,664	319,664
Debt service	15,119,300	-	15,119,300
Capital outlay	147,097,654	(147,097,654)	-
Total expenditures/expenses	162,787,301	(143,903,798)	18,883,503
Program Revenues			
Capital contributions	2,055,309	-	2,055,309
General Revenues			
Occupation taxes	13,350,311	-	13,350,311
Intergovernmental	4,762,874	(139,449)	4,623,425
Investment loss	(256,643)	-	(256,643)
Sale of capital assets	28,206,664	(29,467,220)	(1,260,556)
Miscellaneous	285,771	-	285,771
Total general revenues	46,348,977	(29,606,669)	16,742,308
Expenditures in excess of revenues and capital contributions	(114,383,015)	114,383,015	-
Change in Net Position	-	(85,886)	(85,886)
Fund Balance/Net Position			
Beginning of Year (As Restated - See Note 1)	147,191,453	(139,116,188)	8,075,265
End of Year	$ 32,808,438	$ (24,819,059)	$ 7,989,379

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2013

Note 1: Nature of Operations and Summary of Significant Accounting Policies

Nature of Operations

The West Haymarket Joint Public Agency (the Agency) was organized as a joint public agency under the Nebraska Joint Public Agency Act on April 2, 2010, to facilitate land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing of public facilities including, but not limited to, a sports/entertainment arena, roads, streets, sidewalks, a pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively considered the West Haymarket Development Project or Project) for the benefit of residents of the City of Lincoln, Nebraska (the City). The Agency was created pursuant to a Joint Public Agency Agreement entered into between the City and the Board of Regents of the University of Nebraska.

Reporting Entity

As required by accounting principles generally accepted in the United States of America, these basic financial statements present the financial activities of the Agency. The Agency follows the Governmental Accounting Standards Board (GASB) accounting pronouncements, which provide guidance for determining the governmental activities, organizations, and functions that should be included within the financial reporting entity. GASB pronouncements set forth the financial accountability of a governmental organization's governing body as the basic criterion for including a possible component governmental organization in a primary government's legal entity. Financial accountability includes, but is not limited to, appointment of a voting majority of the organization's governing body, ability to impose its will on the organization, a potential for the organization to provide specific financial benefits or burdens and fiscal dependency.

The Agency is not financially accountable for any other organization. Under current GASB pronouncements, the Agency has been determined to be a component unit of the City of Lincoln, Nebraska – the primary government. As such, the Agency's financial results are included in the City of Lincoln, Nebraska's Comprehensive Annual Financial Report.

Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements (*i.e.*, the statement of net position and the statement of activities) report information on all of the Agency's financial activities. Governmental activities are normally supported by taxes and intergovernmental revenue which are reported as general revenues.

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Measurement Focus, Basis of Accounting, and Financial Statement Presentation - Continued

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. The government-wide financial statements are presented using the total economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recognized when a liability is incurred, regardless of the timing of the related cash flows.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. With this measurement focus, the operating statement presents increases and decreases in current assets, net and unreserved fund balance is a measure of available spendable resources. This means that only current liabilities are generally included on the governmental fund balance sheet.

The statement of net position does not equal the governmental funds balance sheet at August 31, 2013, due to commissions payable, net capital assets, deferred revenue and bond principal and interest that are not payable from available spendable resources in the statement of net position.

Under the modified accrual basis of accounting, revenues are recognized as soon as they are both measurable and available. Measurable means the amount of the transaction can be determined; available means collectible within the current period, or soon enough thereafter, to pay liabilities of the current period. Revenues are considered to be available if collected within 60 days after year end. Expenditures are recorded when the related fund liability is incurred and is expected to be paid from available spendable resources.

Occupation taxes and intergovernmental revenues are considered to be susceptible to accrual and are recorded as revenue in the period to which they relate.

Fund Accounting

The accounts of the Agency are organized on the basis of funds. The operations of the Project Fund are accounted for with a set of self-balancing accounts that comprise its assets, liabilities, deferred inflows and outflows of resources, fund equity, revenues and expenditures. Resources are allocated to and accounted for in the Project Fund based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

The major fund presented in the accompanying basic financial statements is the Project Fund. The Project Fund is the Agency's only fund and is used to account for general government operational activities.

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities and deferred inflows and outflows of resources and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues, expenses and other changes in net position during the reporting period. Actual results could differ from those estimates.

Deposits and Investments

The Agency participates in a cash management pool managed by the City. The pool consists of bank deposits and investments. Cash balances in excess of current requirements are invested along with cash from other City funds and interest earned on these investments is allocated monthly to the various funds by the City Treasurer on a pro rata basis of using aggregate quarterly balances. The Agency's interest in the pool is shown as equity in pooled cash and investments in the statement of net position. Fair value of the equity in the pool is the same as the value of the pool shares determined using the fair value of the pool's underlying investment portfolio.

The Agency may invest in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made.

Investment income includes interest income and the net change for the year in the fair value of investments carried at fair value.

Occupation Taxes

Beginning January 1, 2011, occupation taxes were imposed within the City of Lincoln at a rate of 2% on bar and restaurant revenues and a rate of 4% on car rental and hotel revenues. As stated in the related ordinance, occupation taxes, less any administrative expenses, shall be used to fund expenditures of the Agency.

Capital Assets

Arena and infrastructure planning, design and construction costs are capitalized on the government-wide financial statements. At August 31, 2013, certain arena and infrastructure assets were in-service, and are being depreciated on a straight-line basis over their estimated useful lives of 25-50 years.

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Unearned Revenue

Unearned revenue is primarily comprised of advance payments received for various arena suites, loge boxes and club seats and the arena naming rights. Revenue for these agreements will be recognized when the term of the related agreements commences on September 1, 2013.

Fund Balance Classification

Fund balances are shown only in the governmental fund financial statements. In accordance with Government Accounting Standards Board (GASB) Statement No. 54, *Fund Balance Reporting and Governmental Fund-Type Definitions*, fund balance is required to be classified into four components – nonspendable, restricted, committed and/or assigned. These classifications are defined as follows:

Nonspendable **-** includes fund balance amounts that cannot be spent either because it is not in spendable form or because of legal or contractual restraints.

Restricted **-** includes fund balance amounts that are constrained for specific purposes as stipulated by constitution; external resource providers, such as donors or creditors; or through enabling legislation.

Committed **-** includes fund balance amounts that can be used only for the specific purposes determined by a formal action of the Agency's highest level of decision-making authority.

Assigned **-** includes fund balance amounts that are not classified as either nonspendable, restricted, or committed.

When expenditures are incurred for purposes for which amounts in more than one category of fund balance are available for use, it is the Agency's policy to use the restricted amounts first, followed by the committed and assigned amounts.

Net Position Classification

Net position is required to be classified into three components - net investment in capital assets; restricted; and unrestricted. These classifications are defined as follows:

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Net Position Classification - Continued

Net investment in capital assets - consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets. Deferred outflows of resources and deferred inflows of resources that are attributable to the acquisition, construction, or improvement of those assets, if any, or related debt also should be included in this component of net position. If there are significant unspent related debt proceeds at year-end, the portion of the debt attributable to the unspent proceeds is not included in the calculation of net investment in capital assets.

Restricted - consists of restricted assets, reduced by liabilities related to those assets, with constraints placed on their use either by a) external groups such as creditors (such as through debt covenants), contributors, or laws or regulations of other governments or b) law through constitutional provisions or enabling legislation.

Unrestricted - consists of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the net investment in capital assets or restricted components of net position.

When both restricted and unrestricted resources are available for use, it is Agency's policy to use restricted resources first, then unrestricted as they are needed.

Adjustments Column

The adjustments column on the governmental fund balance sheet/statement of net position represents the recording of certain assets and liabilities as required by GASB Statement No. 34.

The adjustments column on the governmental fund balance sheet/statement of net position is comprised of the following as of August 31, 2013:

Amounts reported for the Project Fund are different from the statement of net position because of:	
Capital assets, net of accumulated depreciation	$ 284,712,130
Interest payable	(3,149,735)
Deferred revenue	754,054
Long-term liabilities	(307,135,508)
Total adjustment amount	$ (24,819,059)

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Adjustments Column - Continued

The adjustments column on the statement of governmental fund revenues, expenditures and changes in fund balance/statement of activities is comprised of the following for the year ended August 31, 2013:

Amounts reported for the Project Fund are different from the statement of activities because of:	
Capital outlay	$ 147,097,654
Sale of capital assets	(29,467,220)
Depreciation expense	(728,208)
Long-term commission expense	(2,465,648)
Change in deferred revenue	(139,449)
Total adjustment amount	$ 114,297,129

Implementation of New Accounting Principles

In 2013, the Agency implemented the provisions of the following accounting principles:

GASB Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. This standard was created to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in pre-November 30, 1989 FASB and AICPA pronouncements, which do not conflict with or contradict GASB pronouncements.

GASB Statement No. 63, *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position*. This statement amends the net asset reporting requirements in GASB Statement No. 34 and other pronouncements by incorporating deferred outflows of resources and deferred inflows of resources into the definitions of the required components of the residual measure and by renaming that measure as net position, rather than net assets.

The implementation of these standards did not have a significant impact on the Agency's financial statements.

In 2013, the Agency also implemented the provision of GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*, which established accounting and financial reporting standards that reclassify, as deferred outflows of resources or deferred inflows of resources, certain items that were previously reported as assets and liabilities and recognizes, as outflows of resources or inflows of resources, certain items that were previously reported as assets and liabilities.

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Implementation of New Accounting Principles - Continued

The implementation of GASB Statement No. 65 changed how the Agency reports various debt issuance costs, and resulted in a reduction in beginning net position in the amount of $4,578,456, which was comprised of bond issuance costs previously reported as an asset in the government-wide financial statements. The implementation of GASB Statement No. 65 did not impact prior years' change in net position.

Note 2: Deposits, Investments and Investment Return

Deposits

State statutes require banks either to provide a bond or to pledge government securities to the City Treasurer in the amount of the City's deposits. The Agency has been allocated a portion of the City's pooled cash and investments. The City's cash deposits, including certificates of deposit, are insured up to $250,000 by the Federal Deposit Insurance Corporation (FDIC). Any cash deposits or certificates of deposit in excess of FDIC limits are covered by collateral held in a Federal Reserve pledge account or by an agent for the City and thus no custodial credit risk exists. No legal opinion has been obtained regarding the enforceability of any of the collateral arrangements.

Investments

The Agency generally follows the investment policy adopted by the City Council and utilized by the City Treasurer. The Agency may legally invest in U.S. government securities and agencies, U.S. government sponsored agencies, and in bank repurchase agreements. It may also invest to a limited extent in corporate bonds, bankers' acceptances and investment agreements.

At August 31, 2013, the Agency had the following investments, maturities and credit ratings:

Type	Fair Value	Maturities (in Years) More than 10	Credit Ratings Moody's/ S&P
Tax Increment Financing Investments	$ 1,275,000	$ 1,275,000	Not rated

Custodial Credit Risk

For an investment, custodial credit risk is the risk that, in the event of the failure of the counterparty, the Agency will not be able to recover the value of its investment securities that are in the possession of an outside party.

Note 2: Deposits, Investments and Investment Return - Continued

Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair values of a government's financial instruments or a government's cash flows. As a means of limiting its exposure to fair value losses arising from rising interest rates, the City's investment policy limits current operating funds to be invested with maturities of no longer than twenty-four months. Fixed income investments held in construction funds, operating funds, and other nonoperating funds are limited to ten-year maturities. Tax Increment Financing investments are allowed to exceed 10 years as the interest rates are guaranteed by the fund and the investment is made within the City's funds.

Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The City's investment policy establishes requirements for certain investment securities to be rated at certain rates or higher without having collateral pledged to the City. The following investment types must be rated at the minimum rates noted below:

	S & P	Moody's
Money Markets	AA	Aa
Corporate Notes	AA-	Aa3
Investment Agreements	AA-	Aa3

Concentration of Credit Risk

Concentration of credit risk is the risk associated with the amount of investments the Agency has with any one issuer that exceeds 5% or more of its total investments. Investments issued or explicitly guaranteed by the U.S. Government are excluded from this requirement. At August 31, 2013, the Agency had no investment concentrations exceeding 5%.

Summary of Carrying Values

The carrying values of deposits and investments are as follows:

Cash	$ 19,016
Investments	1,275,000
Equity in pooled cash and investments	58,689,631
	$ 59,983,647

Note 2: Deposits, Investments and Investment Return - Continued

Investment Loss

Investment loss, consisting of interest income and the net unrealized loss on investments, was $256,643 for the year ended August 31, 2013.

Note 3: Capital Assets

As of August 31, 2013, the Agency's capital assets consisted of the following:

Depreciable assets	
Infrastructure	$ 193,938,866
Total depreciable assets	193,938,866
Nondepreciable assets	
Land	68,866,803
Construction in progress	21,906,461
Total nondepreciable assets	90,773,264
Total capital assets	$ 284,712,130

Capital asset activity for 2013 was:

	Beginning Balance	Additions	Retirements	Transfers	Ending Balance
Infrastructure	$ 11,765,822	$ 259,754	$ (24,993,514)	$ 207,300,146	$ 194,332,208
Land	70,755,404	745,705	(3,898,232)	1,263,926	68,866,803
Construction in progress	85,422,822	146,092,195	(1,044,484)	(208,564,072)	21,906,461
Total capital assets	167,944,048	147,097,654	(29,936,230)	-	285,105,472
Less accumulated depreciation	(134,144)	(728,208)	469,010	-	(393,342)
Capital assets, net	$ 167,809,904	$ 146,369,446	$ (29,467,220)	$ -	$ 284,712,130

Note 4: Long-term Liabilities

	Beginning Balance September 1, 2012	Additions	Reductions	Ending Balance August 31, 2013	Due Within One Year
Bonds payable	$ 300,000,000	$ -	$ -	$ 300,000,000	$ -
Unamortized bond premium	4,669,860			4,669,860	
Net bonds payable	304,669,860	-	-	304,669,860	-
Commissions Payable	-	2,465,648	-	2,465,648	106,370
	$ 304,669,860	$ 2,465,648	$ -	$ 307,135,508	$ 106,370

In September 2010, the Agency issued $100,000,000 in General Obligation Facility Bonds, Taxable Series 2010A. Semi-annual interest payments began in December 2010. Annual principal payments begin in December 2020 at amounts that range from $2,440,000 to $5,855,000 with the final maturity in December 2045. The bonds are Build America Bonds and, as such, the Agency has elected to receive a federal subsidy of 35 percent from the United States Department of the Treasury (Treasury) for a portion of the interest payable on the bonds. The interest rates on the bonds range from 3.50 to 5.00 percent prior to the federal subsidy. The federal subsidy reduces the true interest cost to 3.20 percent.

In December 2010, the Agency issued $67,965,000 in General Obligation Facility Bonds, Taxable Series 2010B. Semi-annual interest payments began in June 2011. Annual principal payments begin in December 2020 at amounts that range from $2,440,000 to $4,650,000 with the final maturity in December 2039. The bonds are direct pay Build America Bonds, with a federal subsidy of 35 percent from the Treasury for a portion of the interest payable on the bonds. The interest rates on the bonds range from 4.00 to 6.00 percent prior to the federal subsidy. The federal subsidy reduces the true interest cost to 3.73 percent.

In December 2010, the Agency issued $32,035,000 in General Obligation Recovery Zone Economic Development Bonds, Taxable Series 2010C. Semi-annual interest payments began in June 2011. Annual principal payments begin in December 2040 at amounts that range from $4,865,000 to $5,855,000 with the final maturity in December 2045. The bonds are direct pay General Obligation Recovery Zone Economic Development Bonds, with a federal subsidy of 45 percent from the Treasury for a portion of the interest payable on the bonds. The interest rate on the bonds is 6.75 percent prior to the federal subsidy. The federal subsidy reduces the true interest cost to 3.79 percent.

In August 2011, the Agency issued $100,000,000 in General Obligation Facility Bonds, Series 2011. Semi-annual interest payments began in December 2011. Annual principal payments begin in December 2021 at amounts that range from $3,115,000 to $6,660,000 with the final maturity in December 2042. The interest rates on the bonds range from 3.50 to 5.00 percent.

Note 4: Long-term Liabilities - Continued

The Series 2010A, 2010B and 2010C bonds are callable at the option of the Agency in whole or in part at any time. The Series 2011 bonds are callable at the option of the Agency in whole or in part at any time on or after December 15, 2021.

All bonds were issued to provide a portion of the funds necessary to pay the costs of constructing, equipping, furnishing, and financing the development of the West Haymarket facilities. The full faith and credit and the taxing powers of the City are pledged for the payment of the principal of and interest on the bonds.

Annual requirements to pay principal and interest to maturity on outstanding debt is as follow:

Years Ending August 31	Principal	Interest	Interest Subsidy	Net Interest	Total Debt Service
2014	$ -	$ 15,117,521	$ (3,619,458)	$ 11,498,063	$ 11,498,063
2015	-	15,117,521	(3,900,278)	11,217,243	11,217,243
2016	-	15,117,521	(3,900,278)	11,217,243	11,217,243
2017	-	15,117,521	(3,900,278)	11,217,243	11,217,243
2018	-	15,117,521	(3,900,278)	11,217,243	11,217,243
2019-2023	21,375,000	74,417,717	(19,201,610)	55,216,107	76,591,107
2024-2028	45,815,000	65,903,458	(17,396,233)	48,507,225	94,322,225
2029-2033	54,350,000	54,474,525	(14,787,343)	39,687,182	94,037,182
2034-2038	65,385,000	40,089,850	(11,401,625)	28,688,225	94,073,225
2039-2043	79,245,000	21,176,838	(6,954,621)	14,222,217	93,467,217
2044-2046	33,830,000	3,031,794	(1,235,295)	1,796,499	35,626,499
	$ 300,000,000	$ 334,681,787	$ (90,197,297)	$ 244,484,490	$ 544,484,490

The Series 2010A, 2010B and 2010C bonds were issued as direct pay Build America Bonds and General Obligation Recovery Zone Economic Development Bonds, respectively, in accordance with the American Recovery and Reinvestment Act of 2009, which allows the Agency to receive a U.S. Treasury subsidy equal to 35% and 45%, respectively, of the amount of interest payable on those bonds. Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, refund payments to certain state and local government filers claiming refundable credits under section 6341 of the Internal Revenue Code applicable to certain qualified bonds are subject to sequestration. The refund payments processed on or after October 1, 2013 and on or before September 30, 2014 will be reduced by the fiscal year 2014 sequestration rate of 7.2%.

The interest subsidy is reflected in the table above as the Agency expects to receive these payments throughout the term of the related Bonds. Future subsidy payments are contingent on federal regulations and are subject to change. The subsidy is reflected as intergovernmental revenue in the Statement of Activities.

Note 5: Lease Agreements

West Haymarket Station Lease

In 2012, the Agency entered into a lease agreement with AMTRAK for the lease and use of West Haymarket Station ("Station"). The lease provides for a thirty-five year term, with the Agency receiving monthly payments of $2,845, adjusted annually for inflation using the Consumer Price Index. Income from the lease totaled approximately $34,000 during 2013 and is included in miscellaneous revenue on the statement of activities.

Arena Lease and Operating Agreement

The Agency has entered into a Lease and Operating Agreement with the Board of Regents of the University of Nebraska ("UNL") as of October 2011. The agreement is for the lease of the basketball space and other defined leased improvements within the sports/entertainment arena, for a term of 30 years commencing on September 1, 2013, with the option to extend the term for three additional periods of five years each. Under the terms of the agreement, UNL is to pay an annual lease payment to the Agency, which is initially $750,000 and is adjusted for inflation on an annual basis beginning September 1, 2014. The agreement also provides for credits against this lease payment for the annual amount of turnback sales tax receipts the City receives from the sale of UNL basketball tickets, and a provision for lost concession revenue in an amount equal to $300,000, which is adjusted for inflation on an annual basis beginning September 1, 2014.

Note 6: Contractual Arrangements

Naming Rights and Premium Seating

The Agency has entered into a Title Sponsorship Agreement with Pinnacle Bank for the exclusive naming rights for the sports/entertainment arena through August 2038. The agreement called for Pinnacle Bank to make annual payments of $280,000 through fiscal year 2023, when the payments increased to $563,333 annually. The agreement also provided Pinnacle Bank with the opportunity to pay a discounted amount by making a prepayment to the Agency. Pinnacle Bank has exercised this option and has made prepayments to the Agency totaling approximately $6,700,000 as of August 31, 2013. This amount is included in unearned revenue on the balance sheet at August 31, 2013 and will be recognized as revenue on a pro-rata basis over the remaining term of the agreement.

Note 6: Contractual Arrangements - Continued

Naming Rights and Premium Seating - Continued

The Agency has entered into agreements with individuals and businesses for various premium seating arrangements. The agreements require an initial security deposit and annual installments from the individuals and businesses, with the option of prepayment, and have terms ranging between five and ten years. As of August 31, 2013, amounts collected by the Agency for premium seating arrangements for future years totaled approximately $2,970,000. This amount is included in unearned revenue on the balance sheet and will be recognized as revenue in the fiscal year to which the payment relates.

The Agency's future collections under the premium seating agreements are as follows:

Annual Contract Period Beginning September 1,	
2014	$ 2,420,000
2015	2,441,002
2016	2,466,096
2017	2,492,161
2018	1,911,033
Thereafter	7,358,567
	$ 19,088,859

Naming Rights and Premium Seating Marketing Agreement

The Agency has entered into a consulting agreement with Legends Sales & Marketing, LLC ("Legends") in connection with the naming rights and premium seating for the sports/entertainment arena. The agreement continues through October 31, 2013, and gives Legends the option to extend the term for an additional two years.

Under the terms of the agreement, the Agency is to be reimburse Legends for actual marketing expenses incurred on a monthly basis in accordance with the Marketing Budget, which is a contracted not to exceed maximum total of $808,017. Amounts paid to Legends by the Agency, from the inception of the agreement through August 31, 2013, totaled $565,044.

Note 6: Contractual Arrangements - Continued

Naming Rights and Premium Seating Marketing Agreement - Continued

Additionally, Legends is to be paid a commission based upon the gross annual amounts the Agency is contracted to receive under the naming rights and premium seating agreements. The agreement provides for Legends to receive a commission of 5% on the first $20 million of gross revenues, 7% on the next $10 million in gross revenues, 12% on the additional gross revenues up to $40 million, and 14% on any gross revenues above $40 million. Based on the contracted gross revenues, the Agency has calculated a total commission amount of $2,581,148, of which the Agency has made payments totaling $115,500 through August 31, 2013. The remaining amount of $2,465,648 is recorded as commissions payable as of August 31, 2013.

Advertising and Sponsorship Agreement

The Agency has entered into an agreement with IMG College, LLC ("IMG") which grants IMG the exclusive advertising and sponsorship rights at the sports/entertainment arena, for the period of September 1, 2013 through June 30, 2021. The agreement requires IMG to make a guaranteed annual payment to the Agency, and 50% of any gross collected cash revenue in excess of the revenue sharing threshold, as outlined in the agreement. The contracted schedule of guaranteed annual payments and the revenue sharing threshold is shown below:

Annual Contract Period Beginning September 1,	Guaranteed Rights Fee	Revenue Sharing Threshold
2014	$ 750,000	$ 1,300,000
2015	1,020,000	1,800,000
2016	1,040,400	1,840,000
2017	1,061,208	1,880,800
2018	1,082,432	1,922,416
2019	1,104,081	1,964,864
2020	1,126,162	2,008,162
2021	1,148,686	2,052,325
	$ 8,332,969	$ 14,768,567

Note 7: Risk Management

The Agency is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; injuries to employees; and natural disasters. The Agency carries commercial insurance for risks of loss, including liability, property, errors and omissions, and workers' compensation. Specifically related to the construction of the Arena, the Agency also carries pollution and builders risk insurance. The Agency has had no claims or judgments exceeding the policy limits.

Note 8: Related Party Transactions

The City provides certain administrative services to the Agency for which the Agency pays fees to the City. These fees amounted to approximately $374,000 for the year ended August 31, 2013. These charges are recorded as general government expenses in the statement of governmental fund revenues, expenditures and changes in fund balance and statement of activities.

During 2013, the Agency entered into an Amended and Restated Facilities Agreement with the City, which clarified the responsibilities for operation of maintenance of certain infrastructure assets within the West Haymarket Development Project. With the exception of the certain infrastructure assets, the agreement details that ownership of arena project assets, including the related parking facilities, will remain with the Agency until such time as no associated bonds are outstanding, at which time these assets will be conveyed to the City for the sum of one dollar and other good and valuable consideration. Under the terms of the agreement, the Agency conveyed ownership of certain infrastructure assets to the City in consideration of the City's transfer of the net proceeds of its Limited Tax General Obligation Bonds, Series 2013. The net proceeds received from the City in the amount of $24,605,341, are recorded as revenue in the project fund statement of governmental fund revenues, expenditures and changes in fund balance at August 31, 2013, and are offset by the net book value of infrastructure assets conveyed to the City in the amount of $25,865,896 in the government-wide statement of activities.

As discussed in Note 1, the Agency is invested in the City of Lincoln, Nebraska's pooled cash and investment management system.

Note 9: Commitments

Construction

The Agency has commitments under major construction contracts in progress of approximately $32,500,000 at August 31, 2013.

Environmental Matters

In connection with the West Haymarket Development Project, the Agency is involved with the clean-up and remediation of several development sites relating to soil and groundwater contamination. This clean-up and remediation is performed as sites are developed, as the Agency has not been designated as a potentially responsible party (PRP or equivalent status) by any regulatory agency requiring the immediate clean-up of impacted areas. Although future costs may be incurred, it is not possible at this time to reasonably estimate the amount of any obligation for remediation activities because of uncertainties with respect to assessing the extent of the contamination or the applicable regulatory requirements. No liability has been recorded for potential future remediation activities as of August 31, 2013.

Litigation

The Agency is involved in lawsuits arising in the normal course of operations. Management is currently of the opinion that ultimate settlement of such lawsuits and claims will not have a materially adverse effect on the Agency's financial statements.

Note 10: Subsequent Events

In November 2013, the Agency entered into a Direct Purchase Agreement with U.S. Bank National Association for General Obligation Promissory Notes, Series 2013, to provide funds for the West Haymarket Development Project, in the event funding was needed prior to the issuance of the Agency's Series 2013 bonds. Under the agreement, funding can be obtained as needed, up to $10,000,000. The initial series of the Notes shall be in the principal amount of not less than $1,000,000, with additional amounts being in required increments of at least $100,000. The Notes bear interest at 0.50% plus the one-month LIBOR rate, and mature on November 14, 2014. The agreement provides for an unused commitment fee of 0.20% per annum on the average daily unused portion of the maximum commitment and shall be paid quarterly. As of the date of the Independent Auditor's Report, the Agency has not obtained any funding under this agreement.

In December 2013, the Agency issued $28,175,000 of General Obligation Facility Bonds, Series 2013, to provide funds for certain projects under Phase 2 of the West Haymarket Development Project, primarily consisting of two additional parking decks in the downtown Haymarket area. Interest rates range from 2.0% to 5.0%. Debt service principal payments are scheduled annually at amounts that range from $540,000 to $1,285,000, with $7,325,000 of term bonds due in 2044.

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Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of the Financial Statements Performed in Accordance with *Government Auditing Standards*

Board of Representatives
West Haymarket Joint Public Agency
Lincoln, Nebraska

We have audited in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the basic financial statements of the governmental activities and the major fund of the West Haymarket Joint Public Agency (the Agency) (a component unit of the City of Lincoln, Nebraska), and the related notes to the financial statements, which collectively comprise the Agency's basic financial statements listed in the table of contents, and have issued our report thereon dated February 25, 2014, which contained an "Emphasis of Matter" paragraph regarding a change in accounting principle.

Internal Control Over Financial Reporting

Management of the West Haymarket Joint Public Agency is responsible for establishing and maintaining effective internal control over financial reporting (internal control). In planning and performing our audit, we considered the Agency's internal control to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Agency's internal control. Accordingly, we do not express an opinion on the effectiveness of the Agency's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Agency's financial statements will not be prevented or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses as defined above. However, material weaknesses may exist that have not been identified.

Compliance

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Other Matters

We also noted a certain matter that we reported to the Agency's management in a separate letter dated February 25, 2014.

The purpose of this communication is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or compliance. This communication is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Agency's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

BKD, LLP

Lincoln, Nebraska
February 25, 2014

BKD LLP
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Board of Representatives and Management
West Haymarket Joint Public Agency
Lincoln, Nebraska

As part of our audit of the financial statements of the West Haymarket Joint Public Agency (herein referred to as the "Agency") as of and for the year ended August 31, 2013, we wish to communicate the following to you.

AUDIT SCOPE AND RESULTS

Auditor's Responsibility Under Auditing Standards Generally Accepted in the United States of America and the Standards Applicable to Financial Audits Contained in *Government Auditing Standards* Issued by the Comptroller General of the United States

An audit performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States is designed to obtain reasonable, rather than absolute, assurance about the financial statements. In performing auditing procedures, we establish scopes of audit tests in relation to the financial statements taken as a whole. Our engagement does not include a detailed audit of every transaction. Our engagement letter more specifically describes our responsibilities.

These standards require communication of significant matters related to the financial statement audit that are relevant to the responsibilities of those charged with governance in overseeing the financial reporting process. Such matters are communicated in the remainder of this letter or have previously been communicated during other phases of the audit. The standards do not require the auditor to design procedures for the purpose of identifying other matters to be communicated with those charged with governance.

An audit of the financial statements does not relieve management or those charged with governance of their responsibilities. Our engagement letter more specifically describes your responsibilities.

Qualitative Aspects of Significant Accounting Policies and Practices

Significant Accounting Policies

The Agency's significant accounting policies are described in Note 1 of the audited financial statements. The following accounting policies and practices are of significant importance to the Agency's financial statements:

- *Fund accounting and the reconciliation of the governmental fund and government-wide financial statements*
- *Revenue recognition, fund and Agency level*

Alternative Accounting Treatments

No matters are reportable.

Management Judgments and Accounting Estimates

Accounting estimates are an integral part of financial statement presentation by management, based on its judgments. The following areas involve significant areas of such estimates for which we are prepared to discuss management's estimation process and our procedures for testing the reasonableness of those estimates:

- Commissions payable
- Federal interest subsidy receivable

Financial Statement Disclosures

The following areas involve particularly sensitive financial statement disclosures for which we are prepared to discuss the issues involved and related judgments made in formulating those disclosures:

- *Contractual arrangements*
- *Related party transactions*
- *Commitments*
- *Subsequent events*

Audit Adjustments

During the course of any audit, an auditor may propose adjustments to financial statement amounts. Management evaluates our proposals and records those adjustments which, in its judgment, are required to prevent the financial statements from being materially misstated.

Areas in which adjustments were proposed and recorded include:

- *Unearned revenue, including the related revenues*
- *Commissions payable, including the related expenses*

Auditor's Judgments About the Quality of the Entity's Accounting Principles

During the course of the audit, we made the following observations regarding the Agency's application of accounting principles. The Agency implemented the following Governmental Accounting Standards Board (GASB) Statements for its fiscal year ended August 31, 2013:

- GASB Statement No. 62 – *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*
- GASB Statement No. 63 – *Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources and Net Position*
- GASB Statement No. 65 – *Items Previously Reported as Assets and Liabilities*

Significant Issues Discussed with Management

Prior to the beginning of the audit process, the following issue was discussed or was the subject of correspondence with management:

- *Accounting treatment for the conveyance of infrastructure assets to the City*

Difficulties Encountered in Performing the Audit

No matters are reportable.

Other Material Written Communications

Listed below are other material written communications between management and us related to the audit:

- *Management representation letter (attached)*

INTERNAL CONTROL OVER FINANCIAL REPORTING

In planning and performing our audit of the financial statements of the West Haymarket Joint Public Agency as of and for the year ended August 31, 2013, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, we considered the Agency's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Agency's internal control. Accordingly, we do not express an opinion on the effectiveness of the Agency's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and, therefore, there can be no assurance that all deficiencies, significant deficiencies or material weaknesses have been identified.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements of the Agency's financial statements on a timely basis. A deficiency in design exists when a control necessary to meet a control objective is missing or an existing control is not properly designed so that, even if the control operates as designed, a control objective would not be met. A deficiency in operation exists when a properly designed control does not operate as designed or when the person performing the control does not possess the necessary authority or competence to perform the control effectively.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Agency's financial statements will not be prevented or detected and corrected on a timely basis.

A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

We observed the following matter that we consider to be a deficiency.

Deficiency

Audit Adjustments

Audit adjustments were proposed and recorded for certain financial statement areas, as noted above. We recommend management closely review year-end financial statement balances and also schedules supporting financial statement amounts to ensure the accuracy of the Agency's year-end financial statements.

* * * * *

This communication is intended solely for the information and use of management, Board of Representatives and others within the Agency and is not intended to be and should not be used by anyone other than these specified parties.

BKD, LLP

February 25, 2014

West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, Nebraska 68508

February 25, 2014

BKD, LLP
Certified Public Accountants
1248 'O' Street, Suite 1040
Lincoln, Nebraska 68508

We are providing this letter in connection with your audit of our financial statements as of and for the year ended August 31, 2013. We confirm that we are responsible for the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control over financial reporting, operations and compliance, and preventing and detecting fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, the following:

1. We have fulfilled our responsibilities, as set out in the terms of our engagement letter dated September 9, 2013, for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America.

2. We acknowledge our responsibility for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

3. We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

4. We have reviewed and approved a draft of the financial statements and related notes referred to above, which you prepared in connection with your audit of our financial statements. We acknowledge that we are responsible for the fair presentation of the financial statements and related notes.

5. We have provided you with:

   (a) Access to all information of which we are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters.

   (b) Additional information that you have requested from us for the purpose of the audit.

   (c) Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.

   (d) All minutes of meetings of the governing body held through the date of this letter.

   (e) All significant contracts and grants.

6. All transactions have been recorded in the accounting records and are reflected in the financial statements.

7. We have informed you of all current risks of a material amount that are not adequately prevented or detected by entity procedures with respect to:

   (a) Misappropriation of assets.

   (b) Misrepresented or misstated assets, liabilities or net position.

8. We have no knowledge of any known or suspected:

   (a) Fraudulent financial reporting or misappropriation of assets involving management or employees who have significant roles in internal control.

   (b) Fraudulent financial reporting or misappropriation of assets involving others that could have a material effect on the financial statements.

9. We have no knowledge of any allegations of fraud or suspected fraud affecting the Agency received in communications from employees, customers, regulators, suppliers or others.

10. We have disclosed to you the identity of the Agency's related parties and all the related party relationships and transactions of which we are aware. Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America. We understand that the term related party refers to an affiliate; management, and members of their immediate families, component units; and any other party with which the entity may deal if it can significantly influence, or be influenced by, the management or operating policies of the other. The term affiliate refers to a party that directly or indirectly controls, or is controlled by, or is under common control with us.

11. Except as reflected in the financial statements, there are no:

    (a) Plans or intentions that may materially affect carrying values or classifications of assets and liabilities.

    (b) Material transactions omitted or improperly recorded in the financial statements.

    (c) Material gain/loss contingencies requiring accrual or disclosure, including those arising from environmental remediation obligations.

    (d) Events occurring subsequent to the balance sheet date through the date of this letter requiring adjustment or disclosure in the financial statements.

    (e) Agreements to purchase assets previously sold.

    (f) Restrictions on cash balances or compensating balance agreements.

    (g) Guarantees, whether written or oral, under which the Agency is contingently liable.

12. We have disclosed to you all known instances of noncompliance or suspected noncompliance with laws and regulations whose effects should be considered when preparing financial statements.

13. We have disclosed to you all known actual or possible litigation and claims whose effects should be considered when preparing the financial statements. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with accounting principles generally accepted in the United States of America.

14. Adequate provisions and allowances have been accrued for any material losses from:

    (a) Uncollectible receivables.

    (b) Sales commitments, including those unable to be fulfilled.

(c) Purchase commitments in excess of normal requirements or above prevailing market prices.

15. Except as disclosed in the financial statements, we have:

(a) Satisfactory title to all recorded assets, and they are not subject to any liens, pledges or other encumbrances.

(b) Complied with all aspects of contractual and grant agreements, for which noncompliance would materially affect the financial statements.

16. We have not been designated as a potentially responsible party (PRP or equivalent status) by the Environmental Protection Agency (EPA) or other cognizant regulatory agency with authority to enforce environmental laws and regulations.

17. With regard to deposit and investment activities:

(a) All deposit, repurchase and reverse repurchase agreements and investment transactions have been made in accordance with legal and contractual requirements.

(b) Disclosures of deposit and investment balances and risks in the financial statements are consistent with our understanding of the applicable laws regarding enforceability of any pledges of collateral.

(c) We understand that your audit does not represent an opinion regarding the enforceability of any collateral pledges.

18. With respect to any nonattest services you have provided us during the year, including preparing a draft of the financial statements and related notes.

(a) We have designated a qualified management-level individual to be responsible and accountable for overseeing the nonattest services.

(b) We have established and monitored the performance of the nonattest services to ensure that they meet our objectives.

(c) We have made any and all decisions involving management functions with respect to the nonattest services and accept full responsibility for such decisions.

(d) We have evaluated the adequacy of the services performed and any findings that resulted.

19. We acknowledge that we are responsible for compliance with applicable laws, regulations and provisions of contracts and grant agreements.

20. We have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that have a direct and material effect on the determination of amounts in our financial statements or other financial data significant to the audit objectives.

21. We have identified and disclosed to you any violations or possible violations of laws, regulations and provisions of contracts and grant agreements whose effects should be considered for recognition and/or disclosure in the financial statements or for your reporting on noncompliance.

22. We have taken or will take timely and appropriate steps to remedy any fraud, abuse, illegal acts or violations of provisions of contracts or grant agreements that you or other auditors report.

23. We have a process to track the status of audit findings and recommendations.

24. We have identified to you any previous financial audits, attestation engagements, performance audits or other studies related to the objectives of your audit and the corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements or other studies.

25. The financial statements disclose all significant estimates and material concentrations known to us. Significant estimates are estimates at the balance sheet date which could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets for which events could occur which would significantly disrupt normal finances within the next year. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.

26. The supplementary information required by the Governmental Accounting Standards Board, consisting of management's discussion and analysis, has been prepared and is measured and presented in conformity with the applicable GASB pronouncements, and we acknowledge our responsibility for the information. The information contained therein is based on all facts, decisions and conditions currently known to us and is measured using the same methods and assumptions as were used in the preparation of the financial statements. We believe the significant assumptions underlying the measurement and/or presentation of the information are reasonable and appropriate. There has been no change from the preceding period in the methods of measurement and presentation.

27. In relation to environmental remediation, although future costs may be incurred, it is not possible at this time to reasonably estimate the amount of any obligation for remediation activities because of uncertainties with respect to assessing the extent of contamination or the applicable regulatory requirements.

Steve Hubka, City of Lincoln Interim
Finance Director and West Haymarket
Joint Public Agency Treasurer

Mark Leikam, Assistant City Controller and
West Haymarket Joint Public Agency
Accountant

WH 14-8 Introduce: 2-11-14

RESOLUTION NO. WH- _____

RESOLUTION OF INTENT to make a grant of funds to the Board of Regents of the University of Nebraska ("University") in an amount not to exceed $2 million from the West Haymarket Joint Public Agency Infrastructure Contingency Fund to reimburse the University for a portion of its costs to design and construct the Breslow Ice Center.

WHEREAS, the West Haymarket Joint Public Agency ("JPA") has been created and established by the University and the City of Lincoln, Nebraska ("City") to function as a coordinating entity to finance and provide for the construction design and construction of certain public facilities in the West Haymarket area of the City including, among others, an ice rink ("Breslow Ice Center"); and

WHEREAS, the JPA is charged with the duty to make the most efficient use of the taxing authority and other powers of the University and City and to arrange, coordinate and facilitate their cooperation with each other and other governmental units on the basis of mutual advantage and to thereby provide services and facilities in the manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of both the University and the City; and

WHEREAS, the JPA has reviewed the Program Statement and Budget for the Breslow Ice Center submitted to the University for approval and finds that it is necessary, desirable, advisable and in the best interest of the JPA, the University and the City that the JPA assist the University in financing its costs of designing and constructing the Breslow Ice Center.

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

The JPA does hereby express its intent to make a grant of funds to the Board of Regents in an amount not to exceed $2 million from the West Haymarket Joint Public Agency Infrastructure

Contingency Fund to reimburse the University for its costs to design and construct the Breslow Ice Center subject to the following conditions:

1. The University approve the Program Statement and Budget for the Breslow Ice Center.

2. The City and JPA approve an amendment to the Amended and Restated Facilities Agreement to provide that (i) JPA may financially assist the University for its costs to design and construct the Breslow Ice Center; and (ii) the Breslow Ice Center will be designated as an Infrastructure Project to be constructed, equipped, furnished and owned by the University.

3. The City and University enter into a Real Estate Property Agreement and Operating Agreement for the Breslow Ice Center.

4. The JPA amend the JPA Rules of Governance to provide that (i) JPA may financially assist the University for its costs to design and construct the Breslow Ice Center; and (ii) the Breslow Ice Center will be designated as an Infrastructure Project to be constructed, equipped, furnished and owned by the University.

Adopted this _____ day of March, 2014.

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

_____
Tim Clare

_____
Doug Emery

WH 14-9 Introduce: 3-12-14

RESOLUTION NO. WH - _____

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

That the attached Second Amended and Restated Facilities Agreement between the City of Lincoln, Nebraska and the West Haymarket Joint Public Agency is hereby approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Facilities Agreement on behalf of the West Haymarket Joint Public Agency.

BE IT FURTHER RESOLVED that the Exhibit B (Description of Projects), attached to Bond Resolution Nos. WH 00009, WH 00039, WH 00044, WH 00183, WH 00482 and WH 00589 previously adopted by the Board of Representatives, be and the same is hereby amended and supplemented as shown on Exhibit A attached to the Second Amended and Restated Facilities Agreement.

BE IT FURTHER RESOLVED that, for the purposes of Section 504 Application of Money in the Construction Account of each of the above referenced Bond Resolutions and for the purposes of Section 2 to the Second Amended and Restated Facilities Agreement, the plans and specifications for the Breslow Ice Center prepared by the architects selected by the University are hereby declared to be and shall constitute the plans and specifications for the Breslow Ice Center prepared by the JPA's architects approved by the JPA and City and on file in the office of the Secretary.

Adopted this ___ day of March, 2014.

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

_____
Doug Emery

SECOND AMENDED AND RESTATED FACILITIES AGREEMENT

This **SECOND AMENDED AND RESTATED FACILITIES AGREEMENT,** dated as of _____, ~~2013~~2014 (the **"Facilities Agreement"**), is made by and between the **WEST HAYMARKET JOINT PUBLIC AGENCY** (the **"Agency"**), and **THE CITY OF LINCOLN, NEBRASKA** (the **"City"**).

RECITALS

1. The Agency is a joint public agency created pursuant to the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated in the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 10, 2011, (the **"JPA Agreement"**) executed and delivered by the Participants specified therein (the **"Participants"**) in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended, the **"Act"**).

2. The City is a city of the primary class, duly created and existing pursuant to the provisions of Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its Charter adopted by the electors of the City in accordance with the provisions of Article XI, Section 2 of the Nebraska Constitution.

3. The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the **"Arena"**), (2) roads, streets and sidewalks, (3) a pedestrian overpass, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control facilities, (10) parking garages and (11) surface parking lots (collectively, the **"Facilities"**), and (b) (1) acquiring land and relocating existing businesses, and (2) undertaking environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on **Exhibit A** hereto, as the same may be amended from time to time, the **"Projects,"** and, individually, a **"Project"**), (c) issuing bonds to finance the same (the **"Bonds"**), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

4. The Agency and the City have determined that it is necessary, desirable, advisable, and in the best interests of the Agency and the City that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes.

~~5~~5. The Agency and the City have further determined that it is necessary, desirable, advisable, and in the best interest of the Agency and the City that the Agency participate in the University's cost of constructing the an ice center project for (the **"Breslow Ice Center Project"**), a public facility in the West Haymarket Redevelopment Area of the City, and that the Agency pay a portion of the cost of such facility to be owned by the Board of Regents of the University of Nebraska (the **"University"**) and expected to be operated, maintained and managed by the University pursuant to an Operating Agreement between the University and the City.

6. The Agency and the City have further determined that it is necessary, desirable, advisable and in the best interests of the Agency and the City that (a) the Arena Project be operated, maintained and managed by the City, and (b) that the Arena Project and each parking ~~garages~~garage ("Parking Garages") and the Amtrak Depot Station constructed as Infrastructure ~~Projects ("Parking Garages")~~Project be owned by the Agency for so long as any Bonds are outstanding, and title to the other Infrastructure Projects transferred to the City as such other Infrastructure Projects are completed.

~~6~~7. The Agency and the City have agreed upon the terms pursuant to which the Agency will construct, equip, finance, and furnish the Projects to advance the public health, safety and welfare of the City and its residents, and the City will operate, maintain and manage the Arena Project and Parking Garages and that such agreement should be reduced to writing. The following words and phrases used in this Facilities Agreement shall have the following meanings, unless the context or use indicates another or different meaning or intent:

"Agency" means the West Haymarket Joint Public Agency, a joint public agency duly organized and validly existing under the laws of the State, and its successors and assigns.

"**Arena"** has the meaning assigned in the Recitals.

"Arena Improvements" has the meaning assigned in **Section 6(b).**

"Arena Manager" means any entity with which the City contracts to manage the Arena.

"Arena Project" means, collectively, those Projects described on **Exhibit A** which collectively constitute the Arena and the related parking improvements consisting of the surface parking lot northwest of the BNSF tracks, the parking garage adjacent to the Arena and the surface parking lot on the Arena site.

"Arena Sources of Funds" means state aid, developer contributions, occupation taxes, the turn back tax, Arena rent, concessions, premium seating, naming rights, signage, tickets, interest, tax increment revenues, parking revenues, state and federal environmental funds and private donations.

"Available Revenues" means all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund.

"Bond Counsel" means Gilmore & Bell, P.C., or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Agency.

"Bonds" means any indebtedness issued by the Agency the proceeds of which are used to pay any of the costs of acquiring, constructing, equipping or furnishing any of the Projects, authorized to be issued by a Resolution of the Agency and any indebtedness of the Agency issued to refund, directly or indirectly, any Bonds.

"Breslow Ice Center Project" shall have the meaning assigned in the Recitals.

"**City**" means The City of Lincoln, Nebraska.

"**Clerk**" means the Clerk of the City.

"**Compliance Procedure**" means the Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds attached hereto as **Exhibit B**, as it may be amended from time to time.

"Construction Fund" means any of the funds designated as such by a Resolution of the Agency and any accounts or subaccounts created therein into which the net proceeds from the sale of a series of Bonds issued by the Agency shall be deposited.

"Consultant's Report" means a written report of an individual consultant or accountant or firm of consultants or accountants, selected by the Agency and acceptable to the City and the Agency, having the skill and experience necessary to render the particular report, certification or service required by this Facilities Agreement and having a favorable reputation for such skill and experience, which individual or firm shall have no interest in the Agency or the City, and, in the case of an individual, shall not be a member, officer or employee of the Agency or any Participant, and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a member, officer or employee of the Agency or any Participant.

"Costs of Construction" means, with respect to each Project:

(a) Obligations incurred for labor and material and to contractors, builders and materialmen in connection with such Project or any part thereof;

(b) The cost of acquiring rights, rights-of-way, easements or other interests in land as may be deemed necessary or convenient for the construction and operation of such Project;

(c) Taxes or other municipal or governmental charges lawfully levied or assessed against such Project or against any property acquired therefor, or payments required in lieu thereof, in each case during the period of construction, and premiums on insurance;

(d) Costs of installing utility services or connections thereto or relocation thereof;

(e) Costs of fidelity and indemnity bonds;

(f) Costs of fixed and moveable equipment;

(g) Expenses incurred in enforcing any remedy against a contractor or subcontractor in respect of default;

(h) Costs of site acquisition, preparation and landscaping;

(i) Fees and expenses of architects, engineers, consultants, surveyors, and inspectors and costs of issuance of the Bonds; and

(j) Any other costs, directly incurred in the acquisition, purchase, construction, equipping, furnishing and completion of such Project.

"Debt Service Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

"Depreciation and Replacement Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

"Depreciation Fund Requirement" means an amount equal to 2% of the original construction cost of the Arena Project, as determined by the Finance Director of the City.

"Facilities Agreement" means this Facilities Agreement and all amendments and supplements thereto.

"Infrastructure Project" means ~~all~~one of the Infrastructure Projects~~ excluding the Arena Project~~.

"Infrastructure Projects" means collectively all of the Projects excluding the Arena Project and the Breslow Ice Center Project.

"JPA Agreement" means the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 20, 2011, between the Participants specified therein, as the same may be amended from time to time.

"Non-Qualified User" means any person or entity other than a Qualified User.

"Operation and Maintenance Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

"Operational Increment" means, for any fiscal year, the amount negotiated between the City and the Arena Manager and budgeted to pay operation and maintenance expenses of the Arena to the extent revenues received by the Arena Manager are insufficient for such purposes.

"Project" and **"Projects"** have the meaning assigned in the Recitals as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

"Resolution" means any resolution or other authorizing document of the Agency pursuant to which a series of Bonds is issued to finance or refinance any portion of the costs of any Project.

"Revenue Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof and in which there is established a General Account and a Private Account.

"Revenues" has the meaning set forth in **Exhibit B** attached hereto.

"Site" means the real estate indicated on **Exhibit A** attached hereto, as amended and supplemented from time to time, to be acquired by the Agency.

"Surplus Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof, and in which there is established an Arena Account and an Infrastructure Account.

"West Haymarket Facilities" has the meaning as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

NOW THEREFORE, the City and the Agency, in consideration of the mutual covenants and agreements contained herein, and contained in the JPA Agreement, do hereby covenant and agree as follows:

Section 1. Agency to Provide Projects. The Agency hereby agrees that it will acquire title to the Site and acquire, construct, equip and furnish ~~all of the~~the Arena Project and Infrastructure Projects for the City on the Site and in accordance with final plans and specifications to be approved by the City, and shall finance a portion of the Breslow Ice Center Project in such amount as determined by the Board of the Agency.

The Agency shall, upon completion of the plans and specifications and approval thereof by the City, proceed to take bids and award contracts in compliance with bidding procedures of the County Purchasing Act to the extent required to complete ~~each~~the Arena Project~~.~~ and each of the Infrastructure

Projects. Contracts for the acquisition, construction, equipping and furnishing of ~~each Project~~such Projects shall be entered into in the name of the Agency.

The City hereby acknowledges that the costs of constructing, equipping and furnishing ~~any Project~~the Arena Project and/or any of the Infrastructure Projects may exceed the amount of money to be deposited in the Construction Fund, which fund contains and will contain money only from the proceeds of sale of the Bonds issued by the Agency. ~~The~~In such event, the City currently anticipates that it will have on hand funds sufficient to make up any difference between the cost for completing the acquisition, construction, equipping and furnishing of such ~~Project~~Projects and the money in the Construction Fund. The City agrees that it shall pay from its own funds any amounts necessary to make up any difference between the total amount of such estimated cost and the money in the Construction Fund.

The Agency agrees that any contractor which provides work on ~~any~~the Arena Project or any Infrastructure Project shall provide performance and payment bonds and builders' risk insurance, all as specified in **Section 7** hereof.

The City agrees that the Agency shall not be obligated to pay for any work, whether by change order or otherwise, in excess of the amount of funds in the Construction Fund.

The ownership of, in and to the Arena Project acquired pursuant to this Agreement, including any and all improvements and other property, shall vest in the Agency for so long as any Bonds remain outstanding. The Agency shall not transfer, encumber or sell the Arena Project or any portion thereof without the approval of the City. At such time as no Bonds remain outstanding, the Agency shall convey the Arena Project to the City for the sum of $1.00 and other good and valuable consideration.

The ownership of, in and to the tangible portions of ~~the~~each Infrastructure Project shall vest in the City as provided in **Section 5**.

Upon completion of the acquisition, construction, equipping and furnishing of ~~each~~the Arena Project and each Infrastructure Project, the Agency shall furnish to the City a complete description of all property, both real and personal, covered by this Agreement.

Section 2. Payment of Costs of Construction.

(a) Arena Project and Infrastructure Projects. The City and the Agency agree that all Costs of Construction for the Arena Project and the Infrastructure Projects shall be paid out of the Construction Fund or other available funds of the City. Disbursement requisitions to any contractor or vendor to be paid from the appropriate accounts and/or subaccounts in the Construction Fund for Costs of Construction of each such Project or to any provider of equipment and furnishings, including the final requisition, shall be approved by the ~~City and the~~ Agency, and such requisitions and evidence of approval thereof shall be submitted to the City Treasurer for payment as provided herein, and shall be accompanied by the Agency's Program Manager's or architect's certificate if the requisition is for a payment due to any contractor. Requisition approvals by the Agency shall be evidenced by the Chair of the Agency and the Agency Treasurer pursuant to Section 13-2527(1), Reissue Revised Statutes of Nebraska, as amended.

Money in any Account in the Construction Fund shall be used by the Agency solely for the purpose of paying the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's engineers or architects and on file in the office of the Clerk, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's engineers or architects.

The City Treasurer shall make a withdrawal from an account or subaccount in the Construction Fund only upon a duly authorized and executed order of the ~~City~~Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Facilities Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

Money in a costs of issuance account shall be disbursed upon a duly authorized and executed order of the ~~City~~Agency solely to pay the costs of issuance of the series of Bonds for which such costs of issuance account has been established. Nothing contained herein or in any Resolution shall prevent the payment out of any costs of issuance account of all costs and expenses incident to the issuance of a related series of Bonds without a certificate from the Agency's architects.

Section 3. Certificate of Acceptance. Upon completion of the Arena Project and any Infrastructure Project and acceptance thereof by the Agency, the fact of such completion and acceptance shall be evidenced by a Certificate of Completion signed by the Chairperson of the Agency. Upon completion and acceptance of such the Arena Project together with all other Infrastructure Projects, the costs of which are to be paid from such account in the Construction Fund, any amount remaining in such account in the Construction Fund after payment of all costs of completion of ~~such~~the Arena Project~~ and~~, all other Infrastructure Projects and such portion of the Breslow Ice Center Project determined appropriate by the Board of the Agency the costs of which are to be paid from such account in the Construction Fund, shall be transferred to the Debt Service Fund and applied to the payment of debt service on the applicable Bonds.

Section 4. Dispute Resolution. Any dispute with any contractor concerning the construction of ~~any~~the Arena Project or any Infrastructure Project or interpretation of any contract shall not be adjusted and settled by the Agency in an amount in excess of the money in the Construction Fund without the City's approval, and in such event, the City shall be liable and make payment to such contractor and all other persons for any judgment, claim or liability in connection with such Project in excess of the money in the Construction Fund.

Section 5. Ownership and Management of Parking Garages; Transfer or Dedication of Infrastructure Project to the City.

(a) Parking Garages/Amtrak Depot Station.

(1) Ownership. The ownership of and in the premises for the Parking Garages and the parking garage improvements constructed thereon and the Amtrak Depot Station pursuant to this Agreement shall vest in the Agency for so long as any of the Bonds remain outstanding. At such time as no Bonds remain outstanding, the Agency shall convey the Parking Garages the Amtrak Depot Station to the City for the sum of One Dollar ($1.00) and other good and valuable consideration.

(2) Management of Parking Garages. The City shall contract with the Agency for the City to undertake the maintenance, operation, and management of the Parking Garages on behalf of the Agency in the same manner as the City undertakes to maintain, operate and repair the City's downtown parking garages.

(3) Management of the Amtrak Depot Station. The City shall contract with the Agency for the City to undertake the maintenance, operation, and management of the Amtrak Depot Station on behalf of the Agency.

(b) Infrastructure Projects.

(1) Design and Construction. The Agency or City shall provide all necessary personnel to design, engineer, construct and complete each Infrastructure Project in the same manner as comparable City facilities. The Director of Public Works of the City is hereby designated as the chief official responsible for any design, engineering, construction and completion of the Infrastructure Project by the City. All City personnel assisting with the designing, engineering, construction or completion of the Infrastructure ~~Project~~Projects shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(2) Transfer or Dedication. The Agency, except as provided in (a) above, will in consideration of the City's transfer of all the net proceeds from the City's issuance of its general obligation bonds after payment of costs of issuance thereof, in an aggregate original stated principal amount not to exceed $25,000,000 pursuant to Ordinance No. 19843 adopted on March 4, 2013 by the City Council for the City of Lincoln, Nebraska, transfer or dedicate such portion of each Infrastructure Project which is of the type customarily publicly dedicated to the City. The Agency agrees that said proceeds shall be used by the Agency solely for the purpose of paying for the cost to acquire, construct, improve, or equip the Arena Project as an eligible facility under the Convention Center Facilities Financing Act (Neb. Rev. Stat. §§ 13-2601 to 13-2613 (Reissue 2012)). ~~The~~ Except as provided in Section 5(a) above, the transfer or dedication of ~~such portion of the~~ each Infrastructure Project or portion thereof shall be made as and when completed to be maintained, operated and managed as City facilities and the Agency shall execute and deliver to the City any and all documents as may be requested by the City for such purpose. Prior to the ~~City's~~City's acceptance of such transfer or dedication of any ~~portion of any~~ Infrastructure Project or portion thereof to the City, the Director of Public Works and Utilities of the City shall review and approve the design and construction of such Infrastructure Project or portion thereof as having been designed and constructed in substantially the same manner as comparable City facilities.

Section 6. City to Maintain, Operate and Manage the Arena Project. The City ~~undertakes~~undertakes to maintain, operate and manage the Arena Project. In such connection the following terms shall apply:

(a) The City shall provide or contract for all necessary personnel, materials and supplies to maintain, operate, and manage the Arena Project as an entertainment/sports arena and related facilities. Except for Qualified Use Agreements (as defined in **Exhibit B** hereto), the City will not enter into any lease or contract with respect to the use, operation or management of the Arena without first obtaining a Special Tax Opinion (as defined in **Exhibit B** hereto). All City personnel assisting with the operation of the Arena Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(b) Any improvements to the Arena Project may be made from time to time as determined by the City to be necessary, desirable or advisable (the **"Arena Improvements"**). The Agency shall contract for work on such Arena Improvements with contracts to be awarded and entered into pursuant to the County Purchasing Act, Section 23-3111, Reissue Revised Statutes of Nebraska, as amended. All costs of such Arena Improvements shall be paid by the Agency from Agency funds available for such purposes, including, without limitation, the Arena Account in the Surplus Fund established hereunder.

(c) The City shall establish rates, fees and charges which are to apply to the use of the Arena Project and shall adjust such rates, fees and charges from time to time as it deems appropriate, just and equitable. The City shall annually, or at such other intervals as the City deems appropriate, submit a report to the Agency detailing the proposed rates, projected revenues based on the same and the proposed expenses.

(d) The Agency shall pay to the City the fees and charges, based upon actual costs and budgeted annually, as the same shall be amended from time to time.

(e) In exercising its authority and carrying out its duties and functions the City shall not discriminate against any employee, applicant for employment, contractor, potential contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

Section 7. Insurance. The City or Agency shall maintain, or cause to be maintained, insurance upon the Arena Project and the operation thereof as follows:

(a) insurance against fire, theft and extended coverage risks (including vandalism and malicious mischief) in an amount not less than the full insurable value of the Arena Project;

(b) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Projects with limits of not less than one million dollars for any person for any number of claims arising out of a single occurrence, five million dollars for all claims arising from a single occurrence, and any greater limits of liability which may be established by Section

13-926, Reissue Revised Statutes of Nebraska, as amended, or any other applicable provision of the Nebraska Political Subdivision Tort Claims Act (the **"Act"**), and excess insurance with limits of not less than two million dollars for any liability which may not be limited by the Act. Such general public liability insurance may be subject to a deductible amount not in excess of $500,000.00.

(c) workers' compensation insurance coverage as required by the laws of the State of Nebraska;

(d) performance bond coverage and labor and materials payment bond coverage for the construction of the Improvements in the full amount of the contract or contracts for construction of the Improvements.

All such insurance shall show the City and the Agency as insureds as their respective interests may appear. Insurance required in (a) and (d) above shall be payable to the Agency. The cost of any and all such insurance shall be treated as a cost of operation and maintenance of the Projects.

Section 8. Utilities and Other Impositions. The City shall provide for the payment of all utility charges, taxes (if any) and other impositions which are obligations of the Agency or are related to the Arena Project and the Infrastructure Projects or the operation thereof and all such charges or impositions shall be treated as a cost of operation and maintenance of the Arena Project and be paid from the Operation and Maintenance Fund established hereunder, or if the balance thereof is insufficient for such purposes, by the City. Because the Arena Project and Infrastructure Projects will be used for governmental purposes and not for financial gain or profit, under present law ~~the~~said Projects will not be subject to real estate or personal property taxes. It is understood and agreed, however, that the City agrees to pay any taxes and assessments, general and special, and all other impositions, ordinary and extraordinary, of every kind and nature which might be levied or assessed on the Arena Project or Infrastructure Projects and any improvements hereafter constructed.

Section 9. Use of Projects. As long as any Bonds remain outstanding, the proceeds of which were used to acquire, construct, equip, or furnish any of the Projects, the City and Agency shall not use any of ~~the~~such Projects, or allow the use thereof, in any manner inconsistent with use for the general municipal purposes of the Agency or the City.

Section 10. Issuance of Bonds; Debt Service. To pay the Costs of Construction of ~~one or more Projects~~the Arena Project and each Infrastructure Project and the costs of issuance thereof, the Agency agrees to issue Bonds pursuant to one or more Resolutions and to deposit the proceeds thereof as provided in the Resolution authorizing such series of Bonds.

The City and the Agency covenant and agree that all payments of the principal or redemption price of and interest on the Bonds shall be made from Revenues, together with the proceeds of the tax levied by the Agency by authority granted to the Agency pursuant to the JPA Agreement and any other available funds of the Agency.

Section 11. Establishment of Funds. The City and the Agency hereby create and establish the following separate funds to be held by the City Treasurer as agent for the Agency to be known respectively as the:

(a) the West Haymarket Joint Public Agency Revenue Fund (the **"Revenue Fund"**) in which there is established (1) a General Account and (2) and Private Account.

(b) the West Haymarket Joint Public Agency Debt Service Fund (the **"Debt Service Fund"**) in which there shall be established an account for each series of Bonds.

(c) the West Haymarket Joint Public Agency Operation and Maintenance Fund (the **"Operation and Maintenance Fund"**).

(d) the West Haymarket Joint Public Agency Depreciation and Replacement Fund (the **"Depreciation and Replacement Fund"**).

(e) the West Haymarket Joint Public Agency Surplus Fund (the **"Surplus Fund"**) in which there is established (1) an Arena Account and (2) an Infrastructure Account.

The funds referred to in paragraphs (a) through (e) above shall be maintained and administered by the Agency and the City solely for the purposes and in the manner as provided in this Facilities Agreement so long as any Bonds remain outstanding within the meaning of the Resolution pursuant to which such Bonds were issued.

In addition, to the extent that proceeds of the Bonds authorized by a Resolution will be used to pay the Costs of Construction of any portion of ~~any~~the Arena Project or any Infrastructure Project, such Resolution shall establish a Construction Fund and any necessary or desirable accounts and subaccount therein in accordance with the provisions of this Facilities Agreement.

Section 12. Collection and Application of Revenues.

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds, and continuing as long as any Bonds remain outstanding under the Resolution pursuant to which they were issued, all of the Revenues shall as and when received be paid and deposited into the Revenue Fund. The City and the Agency shall deposit Revenues into the General Account and the Private Account in accordance with **Exhibit B** attached hereto, as the same may be amended and supplemented from time to time. The Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Agency and the City and shall not be commingled with any other moneys, revenues, funds and accounts of the Agency or the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Facilities Agreement.

(b) The City's occupation tax revenues generated under Ordinance Nos. 19407, 19408, and 19409 (the "Occupation Tax Revenues") have been and shall be expended by the City through the JPA in part to acquire, construct, improve, and equip the Arena as a sports arena facility (as defined in Section

13-2603). Any state assistance provided under the Convention Center Facility Financing Assistance Act (the "Turn Back Tax") in excess of the amounts necessary for a period of thirteen months from the date of receipt to pay principal of and interest on the City's $25,000,000 in principal amount of general obligation bonds issued pursuant to Ordinance No. 19843 adopted on March 4, 2013, by the City Council for the City, and proceeds of any bonds issued to refund such bonds, (the "Turn Back Tax Bonds") shall be used to pay the City back amounts for capital expenditures on the Arena so expended from the City's Occupation Tax Revenues through the JPA. To the extent Turn Back Tax receipts held by the City are insufficient to pay amounts next falling due on the City's Turn Back Tax Bonds, the JPA shall provide funds in an amount necessary for the City to make such debt service payment on the Turn Back Tax Bonds.

Section 13. Application of Money in Funds.

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds and continuing so long as any Bonds shall remain outstanding under the Resolution pursuant to which such Bonds were issued, it will on the first day of each month administer and allocate all of the money then held in the General Account in the Revenue Fund as follows:

(1) ***Debt Service Fund***. There shall first be paid and credited monthly to each account established pursuant to a Resolution in the Debt Service Fund, all Revenues collected in the preceding month until the balance in each such account is equal to all principal and interest payments becoming due through the following December 15 on all Bonds then outstanding under such Resolution payable from such account.

(2) ***Operation and Maintenance Fund***. There shall next be paid and credited to the Operation and Maintenance Fund an amount equal to the Operational Increment for the current fiscal year of the Agency. All amounts paid and credited to the Operation and Maintenance Fund shall be expended and used by the City, as agent for the Agency, solely for the purpose of paying the operating expenses of the Arena Project to the extent revenues received by the Arena Manager are insufficient for such purposes.

(3) ***Depreciation and Replacement Fund***. After all payments and credits required at the time to be made under the provisions of paragraphs (1) and (2) of this **Section 13(a)** have been made, there shall next be paid and credited to the Depreciation and Replacement Fund all amounts remaining in the General Account in the Revenue Fund until such Fund aggregates the Depreciation Fund Requirement so long as any of the Bonds remain Outstanding.

Money in the Depreciation and Replacement Fund shall be expended and used by the Agency and the City, if no other funds are available therefor, (A) for the purpose of making emergency replacements and repairs in and to the Arena Project as may be necessary to keep the Arena Project in good repair and working order and to assure the continued effective and efficient operation thereof and (B) to pay the Operational Increment, to the extent that Revenues are insufficient for such purpose. After the Depreciation and Replacement Fund aggregates the Depreciation Fund Requirement, no further payments into said Fund shall be required, but if the

Agency or the City is ever required to expend a part of the money in the Depreciation and Replacement Fund for its authorized purposes and such expenditure reduces the amount of such Fund below the Depreciation Fund Requirement, then monthly payments into the Depreciation and Replacement Funds shall resume and continue until said Fund again aggregates the Depreciation Fund Requirement

(4) ***Surplus Fund***. After all payments and credits required at the time to be made under the provisions of paragraphs (1), (2) and (3) of this **Section 13(a)** have been made, all moneys remaining in the General Account in the Revenue Fund shall be paid and credited to either the Arena Account or the Infrastructure Account in the Surplus Fund, as determined by the City and the Agency. Money in the Arena Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects which constitute the Arena Project in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's architects and approved by the City and the Agency.

The Treasurer shall make a withdrawal from the Arena Account in the Surplus Fund for such purpose only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

(B) Paying the cost of the operation, maintenance and repair of the Arena Project to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;

(C) Paying the cost of extending, enlarging or improving the Arena Project;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any; or

(E) Any other lawful purpose in connection with the operation of the Arena Project and benefiting the Arena Project.

Money in the Infrastructure Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's architects and approved by the City and the Agency.

The Treasurer shall make a withdrawal from the Infrastructure Account in the Surplus Fund for such purpose only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

(B) Paying the cost of the operation, maintenance and repair of any of the Projects to the extent that may be necessary~~ after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;~~;

(C) Paying the cost of extending, enlarging or improving any of the Projects;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any;

(E) Any other lawful purpose in connection with the operation of any of the Projects and benefiting any of the Projects.

(b) In the event that 30 days prior to the payment date of any principal or interest on Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest at a rate equal to the rate received by the City on its investment pool (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon as provided herein, shall be repaid to the City (a) first, from the first receipts of Revenues, and (b) second, from taxes levied and collected by the Agency pursuant to the provisions of **Section 15**.

Section 14. Transfer of Funds to Paying Agent. The Treasurer of the Agency is hereby authorized and directed to withdraw from the Debt Service Fund sums sufficient to pay the principal of and interest on the Bonds as and when the same become due on any principal or interest payment date, and to forward such sums to the respective paying agents for each series of Bonds in a manner which ensures such paying agent will have available funds in such amounts on or before the business day immediately preceding each such payment date. All money deposited with any paying agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Facilities Agreement and the applicable Resolution.

Section 15. Annual Budget; Levy of Taxes. Prior to the commencement of each fiscal year, the Agency will cause to be prepared and filed with its Secretary and the Clerk a budget setting forth the estimated receipts and expenditures for each month in the next succeeding fiscal year. Such annual budget shall be prepared in accordance with the requirements of the laws of Nebraska and shall contain all information that is required by such laws.

The Treasurer shall, not later than the last day of each month, prepare, file with the Secretary and the City Clerk, and forward to each member of the governing body, a financial report which includes the financial statements for the preceding month and the results for the fiscal year through the end of the preceding month. If, at the end of any fiscal quarter, such financial statements show that the budgeted Available Revenues would exceed the projected actual Available Revenues at the end of the fiscal year by more than $500,000, the Agency covenants and agrees that within 60 days of such determination it will deliver a Consultant's Report to the Participants setting forth recommendations for increasing the Available Revenues to the budgeted levels; provided, however, that in the event that such Consultant's Report shall state that federal, state or other applicable governmental laws or regulations (or interpretations thereof) placing restrictions and limitations on the rates, fees and charges to be fixed, charged and collected for the use of or the services furnished by the Arena Project do not permit or by their application make it impracticable for the Agency to produce the required Available Revenues, then the budgeted Available Revenues shall be reduced to the highest practicable level permitted, as set forth in such Consultant's Report, by such laws and regulations then in effect. The Agency agrees that it will, to the extent feasible, follow the recommendations of the Consultant's Report.

The Agency covenants and agrees that for so long as any Bonds are outstanding under the Resolution pursuant to which such Bonds were issued, it will deliver to the Participants a Consultant's Report regarding the operation, maintenance and financial performance of the Arena Project for the fiscal years ending August 31, 2017, and every fifth fiscal year thereafter.

In the event that the budgeted Available Revenues for the fiscal year exceeds the projected actual Available Revenues for such fiscal year by $1,000,000 or more, the Agency covenants and agrees that it shall in it next annual budget prepared pursuant to this **Section 15**, include an amount to be levied upon all of the taxable property within the City and for deposit to the Debt Service Fund of Section 13(a) sufficient in rate and amount to produce the amounts necessary to make up such deficiency in the actual Available Revenues, together with any anticipated additional deficiency in the actual Available Revenues through the end of the next fiscal year.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Agency or the City are levied and collected. The proceeds derived from such taxes shall be used to repay any and all amounts advanced by the City pursuant to the provisions of **Section 13(b)**, shall be kept separate and apart from all other funds of the Agency and shall be used solely for the payment of amounts advanced by the City and for deposit to the Debt Service Fund of Section 13(a).

Section 16. Annual Financial Audit. Annually, promptly after the end of the fiscal year, the Agency will cause a financial audit to be made of the Arena Project for the preceding fiscal year by a nationally recognized independent certified public accountant or firm of nationally recognized independent certified public accountants to be employed for that purpose and paid from the Revenues.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Secretary, and a duplicate copy of the audit shall be mailed to the City Clerk. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, the registered owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or registered owner.

As soon as possible after the completion of the annual audit, the governing body of the Agency shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Facilities Agreement or any Resolution, the Agency will promptly cure such deficiency and the City and the Agency will promptly proceed to take such action as may be necessary to adequately provide for such requirements.

Section 17. Term of Agreement. This Facilities Agreement shall not terminate so long as Bonds remain outstanding under the terms of any Resolution. Either the City or the Agency may terminate this Agreement at any time after no Bonds are outstanding under the terms of any Resolution.

Section 18. Governing Law. This Facilities Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

Section 19. Severability. If for any reason any provision hereof shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof.

Section 20. Assigns. The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 21. Counterparts. This Facilities Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 23. Section Headings. The headings or titles of the several sections hereof shall be solely for the convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Agreement.

Section ~~23~~24. Amendment. This Facilities Agreement may be amended in writing upon the approval of both parties.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the City and the Agency have caused this Facilities Agreement to be executed on their behalf by their respective officers thereunto duly authorized.

WEST HAYMARKET JOINT PUBLIC AGENCY

By:_____

Chair

THE CITY OF LINCOLN, NEBRASKA

By:_____

Mayor

EXHIBIT A

MAP OF SITE

See Attachment 1

PROJECTS

West Haymarket Facilities (consisting of the following Projects)

(1) a sports/entertainment arena (the "**Arena**")

(2) roads, streets and sidewalks

(3) a pedestrian overpass

(4) public plaza space

(5) sanitary sewer mains

(6) water mains

(7) electric transmission lines

(8) drainage systems

(9) flood control

(10) parking garages

(11) surface parking lots

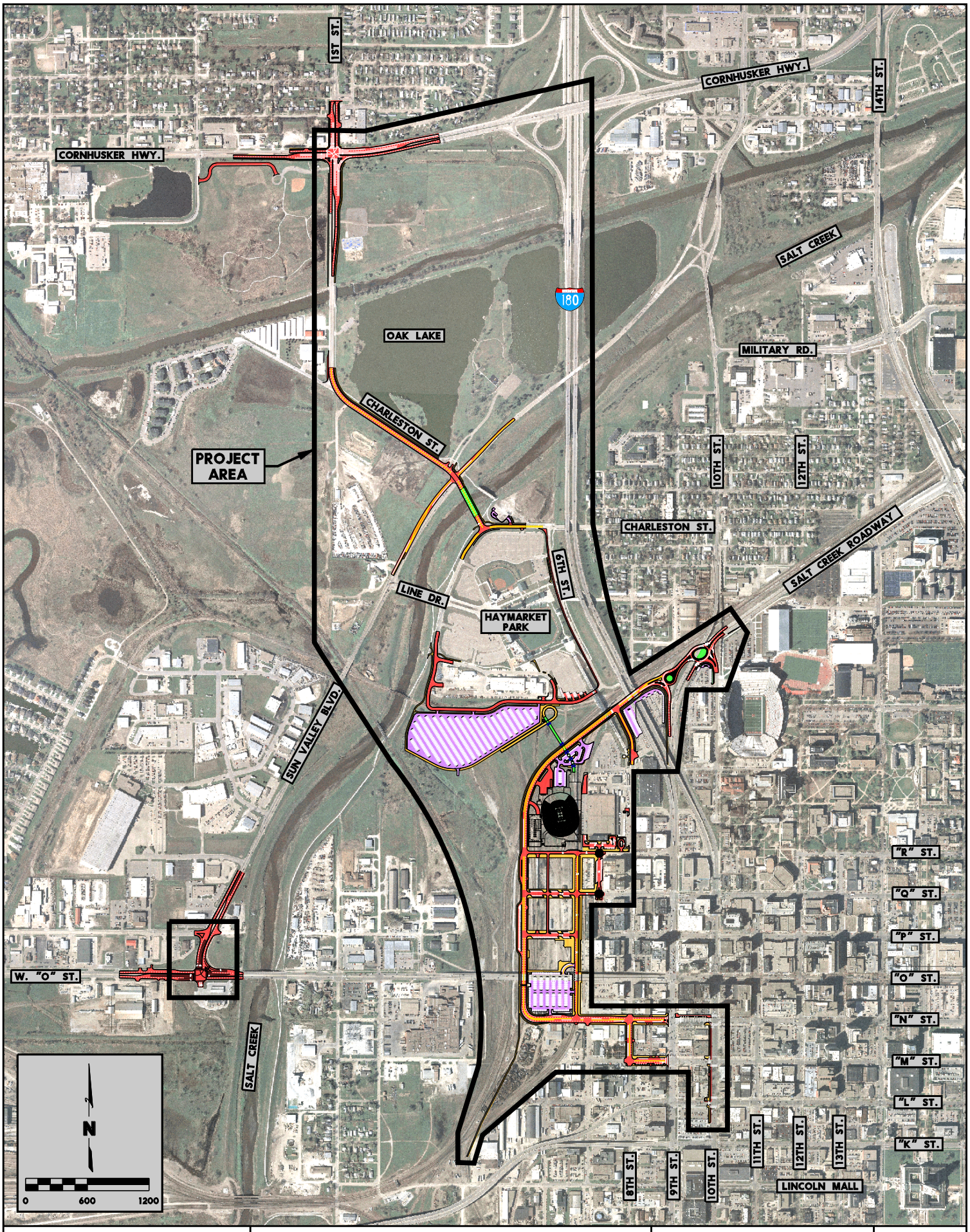
(12) Breslow Ice Center

(13) Amtrak Depot Station

Related Projects (consisting of the following Projects)

(1) acquisition of land and relocation of existing businesses

(2) environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities



PROJECT NO: 010-2431	WEST HAYMARKET JPA PROJECT AREA	OLSSON ASSOCIATES
DRAWN BY: JJW		EXHIBIT
DATE: 11/8/2010		

DATE: 11/8/2010
DGN: F:\PROJECTS\010-2431\Design\Exhibits\JPA Project Area_8.5x11.dgn

Attachment 1 to Exhibit A

EXHIBIT B

COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS

SECOND AMENDED AND RESTATED
FACILITIES AGREEMENT

This **SECOND AMENDED AND RESTATED FACILITIES AGREEMENT,** dated as of _____, 2014 (the **"Facilities Agreement"**), is made by and between the **WEST HAYMARKET JOINT PUBLIC AGENCY** (the **"Agency"**), and **THE CITY OF LINCOLN, NEBRASKA** (the **"City"**).

RECITALS

1. The Agency is a joint public agency created pursuant to the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated in the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 10, 2011, (the **"JPA Agreement"**) executed and delivered by the Participants specified therein (the **"Participants"**) in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended, the **"Act"**).

2. The City is a city of the primary class, duly created and existing pursuant to the provisions of Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its Charter adopted by the electors of the City in accordance with the provisions of Article XI, Section 2 of the Nebraska Constitution.

3. The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the **"Arena"**), (2) roads, streets and sidewalks, (3) a pedestrian overpass, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control facilities, (10) parking garages and (11) surface parking lots (collectively, the **"Facilities"**), and (b) (1) acquiring land and relocating existing businesses, and (2) undertaking environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on **Exhibit A** hereto, as the same may be amended from time to time, the **"Projects,"** and, individually, a **"Project"**), (c) issuing bonds to finance the same (the **"Bonds"**), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

4. The Agency and the City have determined that it is necessary, desirable, advisable, and in the best interests of the Agency and the City that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes.

5. The Agency and the City have further determined that it is necessary, desirable, advisable, and in the best interest of the Agency and the City that the Agency participate in the University's cost of constructing the an ice center project for (the **"Breslow Ice Center Project"**), a public facility in the West Haymarket Redevelopment Area of the City, and that the Agency pay a portion of the cost of such facility to be owned by the Board of Regents of the University of Nebraska (the **"University"**) and expected to be operated, maintained and managed by the University pursuant to an Operating Agreement between the University and the City.

6. The Agency and the City have further determined that it is necessary, desirable, advisable and in the best interests of the Agency and the City that (a) the Arena Project be operated, maintained and managed by the City, and (b) that the Arena Project and each parking garage ("Parking Garages") and the Amtrak Depot Station constructed as Infrastructure Project be owned by the Agency for so long as any Bonds are outstanding, and title to the other Infrastructure Projects transferred to the City as such other Infrastructure Projects are completed.

7. The Agency and the City have agreed upon the terms pursuant to which the Agency will construct, equip, finance, and furnish the Projects to advance the public health, safety and welfare of the City and its residents, and the City will operate, maintain and manage the Arena Project and Parking Garages and that such agreement should be reduced to writing. The following words and phrases used in this Facilities Agreement shall have the following meanings, unless the context or use indicates another or different meaning or intent:

"Agency" means the West Haymarket Joint Public Agency, a joint public agency duly organized and validly existing under the laws of the State, and its successors and assigns.

"**Arena"** has the meaning assigned in the Recitals.

"Arena Improvements" has the meaning assigned in **Section 6(b).**

"Arena Manager" means any entity with which the City contracts to manage the Arena.

"Arena Project" means, collectively, those Projects described on **Exhibit A** which collectively constitute the Arena and the related parking improvements consisting of the surface parking lot northwest of the BNSF tracks, the parking garage adjacent to the Arena and the surface parking lot on the Arena site.

"Arena Sources of Funds" means state aid, developer contributions, occupation taxes, the turn back tax, Arena rent, concessions, premium seating, naming rights, signage, tickets, interest, tax increment revenues, parking revenues, state and federal environmental funds and private donations.

"Available Revenues" means all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund.

"Bond Counsel" means Gilmore & Bell, P.C., or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Agency.

"Bonds" means any indebtedness issued by the Agency the proceeds of which are used to pay any of the costs of acquiring, constructing, equipping or furnishing any of the Projects, authorized to be issued by a Resolution of the Agency and any indebtedness of the Agency issued to refund, directly or indirectly, any Bonds.

"Breslow Ice Center Project" shall have the meaning assigned in the Recitals.

"**City**" means The City of Lincoln, Nebraska.

"**Clerk**" means the Clerk of the City.

"**Compliance Procedure**" means the Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds attached hereto as **Exhibit B**, as it may be amended from time to time.

"Construction Fund" means any of the funds designated as such by a Resolution of the Agency and any accounts or subaccounts created therein into which the net proceeds from the sale of a series of Bonds issued by the Agency shall be deposited.

"Consultant's Report" means a written report of an individual consultant or accountant or firm of consultants or accountants, selected by the Agency and acceptable to the City and the Agency, having the skill and experience necessary to render the particular report, certification or service required by this Facilities Agreement and having a favorable reputation for such skill and experience, which individual or firm shall have no interest in the Agency or the City, and, in the case of an individual, shall not be a member, officer or employee of the Agency or any Participant, and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a member, officer or employee of the Agency or any Participant.

"Costs of Construction" means, with respect to each Project:

(a) Obligations incurred for labor and material and to contractors, builders and materialmen in connection with such Project or any part thereof;

(b) The cost of acquiring rights, rights-of-way, easements or other interests in land as may be deemed necessary or convenient for the construction and operation of such Project;

(c) Taxes or other municipal or governmental charges lawfully levied or assessed against such Project or against any property acquired therefor, or payments required in lieu thereof, in each case during the period of construction, and premiums on insurance;

(d) Costs of installing utility services or connections thereto or relocation thereof;

(e) Costs of fidelity and indemnity bonds;

(f) Costs of fixed and moveable equipment;

(g) Expenses incurred in enforcing any remedy against a contractor or subcontractor in respect of default;

(h) Costs of site acquisition, preparation and landscaping;

(i) Fees and expenses of architects, engineers, consultants, surveyors, and inspectors and costs of issuance of the Bonds; and

(j) Any other costs, directly incurred in the acquisition, purchase, construction, equipping, furnishing and completion of such Project.

"Debt Service Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

"Depreciation and Replacement Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

"Depreciation Fund Requirement" means an amount equal to 2% of the original construction cost of the Arena Project, as determined by the Finance Director of the City.

"Facilities Agreement" means this Facilities Agreement and all amendments and supplements thereto.

"Infrastructure Project" means one of the Infrastructure Projects.

"Infrastructure Projects" means collectively all of the Projects excluding the Arena Project and the Breslow Ice Center Project.

"JPA Agreement" means the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 20, 2011, between the Participants specified therein, as the same may be amended from time to time.

"Non-Qualified User" means any person or entity other than a Qualified User.

"Operation and Maintenance Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

"Operational Increment" means, for any fiscal year, the amount negotiated between the City and the Arena Manager and budgeted to pay operation and maintenance expenses of the Arena to the extent revenues received by the Arena Manager are insufficient for such purposes.

"Project" and **"Projects"** have the meaning assigned in the Recitals as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

"Resolution" means any resolution or other authorizing document of the Agency pursuant to which a series of Bonds is issued to finance or refinance any portion of the costs of any Project.

"Revenue Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof and in which there is established a General Account and a Private Account.

"Revenues" has the meaning set forth in **Exhibit B** attached hereto.

"Site" means the real estate indicated on **Exhibit A** attached hereto, as amended and supplemented from time to time, to be acquired by the Agency.

"Surplus Fund" means the fund created hereunder and designated as such pursuant to **Section 11** hereof, and in which there is established an Arena Account and an Infrastructure Account.

"West Haymarket Facilities" has the meaning as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

NOW THEREFORE, the City and the Agency, in consideration of the mutual covenants and agreements contained herein, and contained in the JPA Agreement, do hereby covenant and agree as follows:

Section 1. Agency to Provide Projects. The Agency hereby agrees that it will acquire title to the Site and acquire, construct, equip and furnish the Arena Project and Infrastructure Projects for the City on the Site and in accordance with final plans and specifications to be approved by the City, and shall finance a portion of the Breslow Ice Center Project in such amount as determined by the Board of the Agency.

The Agency shall, upon completion of the plans and specifications and approval thereof by the City, proceed to take bids and award contracts in compliance with bidding procedures of the County Purchasing Act to the extent required to complete the Arena Project and each of the Infrastructure

Projects. Contracts for the acquisition, construction, equipping and furnishing of such Projects shall be entered into in the name of the Agency.

The City hereby acknowledges that the costs of constructing, equipping and furnishing the Arena Project and/or any of the Infrastructure Projects may exceed the amount of money to be deposited in the Construction Fund, which fund contains and will contain money only from the proceeds of sale of the Bonds issued by the Agency. In such event, the City currently anticipates that it will have on hand funds sufficient to make up any difference between the cost for completing the acquisition, construction, equipping and furnishing of such Projects and the money in the Construction Fund. The City agrees that it shall pay from its own funds any amounts necessary to make up any difference between the total amount of such estimated cost and the money in the Construction Fund.

The Agency agrees that any contractor which provides work on the Arena Project or any Infrastructure Project shall provide performance and payment bonds and builders' risk insurance, all as specified in **Section 7** hereof.

The City agrees that the Agency shall not be obligated to pay for any work, whether by change order or otherwise, in excess of the amount of funds in the Construction Fund.

The ownership of, in and to the Arena Project acquired pursuant to this Agreement, including any and all improvements and other property, shall vest in the Agency for so long as any Bonds remain outstanding. The Agency shall not transfer, encumber or sell the Arena Project or any portion thereof without the approval of the City. At such time as no Bonds remain outstanding, the Agency shall convey the Arena Project to the City for the sum of $1.00 and other good and valuable consideration.

The ownership of, in and to the tangible portions of each Infrastructure Project shall vest in the City as provided in **Section 5**.

Upon completion of the acquisition, construction, equipping and furnishing of the Arena Project and each Infrastructure Project, the Agency shall furnish to the City a complete description of all property, both real and personal, covered by this Agreement.

Section 2. Payment of Costs of Construction.

(a) Arena Project and Infrastructure Projects. The City and the Agency agree that all Costs of Construction for the Arena Project and the Infrastructure Projects shall be paid out of the Construction Fund or other available funds of the City. Disbursement requisitions to any contractor or vendor to be paid from the appropriate accounts and/or subaccounts in the Construction Fund for Costs of Construction of each such Project or to any provider of equipment and furnishings, including the final requisition, shall be approved by the Agency, and such requisitions and evidence of approval thereof shall be submitted to the City Treasurer for payment as provided herein, and shall be accompanied by the Agency's Program Manager's or architect's certificate if the requisition is for a payment due to any contractor. Requisition approvals by the Agency shall be evidenced by the Chair of the Agency and the Agency Treasurer pursuant to Section 13-2527(1), Reissue Revised Statutes of Nebraska, as amended.

Money in any Account in the Construction Fund shall be used by the Agency solely for the purpose of paying the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's engineers or architects and on file in the office of the Clerk, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's engineers or architects.

The City Treasurer shall make a withdrawal from an account or subaccount in the Construction Fund only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Facilities Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

Money in a costs of issuance account shall be disbursed upon a duly authorized and executed order of the Agency solely to pay the costs of issuance of the series of Bonds for which such costs of issuance account has been established. Nothing contained herein or in any Resolution shall prevent the payment out of any costs of issuance account of all costs and expenses incident to the issuance of a related series of Bonds without a certificate from the Agency's architects.

Section 3. Certificate of Acceptance. Upon completion of the Arena Project and any Infrastructure Project and acceptance thereof by the Agency, the fact of such completion and acceptance shall be evidenced by a Certificate of Completion signed by the Chairperson of the Agency. Upon completion and acceptance of such the Arena Project together with all other Infrastructure Projects, the costs of which are to be paid from such account in the Construction Fund, any amount remaining in such account in the Construction Fund after payment of all costs of completion of the Arena Project, all other Infrastructure Projects and such portion of the Breslow Ice Center Project determined appropriate by the Board of the Agency the costs of which are to be paid from such account in the Construction Fund, shall be transferred to the Debt Service Fund and applied to the payment of debt service on the applicable Bonds.

Section 4. Dispute Resolution. Any dispute with any contractor concerning the construction of the Arena Project or any Infrastructure Project or interpretation of any contract shall not be adjusted and settled by the Agency in an amount in excess of the money in the Construction Fund without the City's approval, and in such event, the City shall be liable and make payment to such contractor and all other persons for any judgment, claim or liability in connection with such Project in excess of the money in the Construction Fund.

Section 5. Ownership and Management of Parking Garages; Transfer or Dedication of Infrastructure Project to the City.

(a) Parking Garages/Amtrak Depot Station.

(1) Ownership. The ownership of and in the premises for the Parking Garages and the parking garage improvements constructed thereon and the Amtrak Depot Station pursuant to this Agreement shall vest in the Agency for so long as any of the Bonds remain outstanding. At such time as no Bonds remain outstanding, the Agency shall convey the Parking Garages the Amtrak Depot Station to the City for the sum of One Dollar ($1.00) and other good and valuable consideration.

(2) Management of Parking Garages. The City shall contract with the Agency for the City to undertake the maintenance, operation, and management of the Parking Garages on behalf of the Agency in the same manner as the City undertakes to maintain, operate and repair the City's downtown parking garages.

(3) Management of the Amtrak Depot Station. The City shall contract with the Agency for the City to undertake the maintenance, operation, and management of the Amtrak Depot Station on behalf of the Agency.

(b) Infrastructure Projects.

(1) Design and Construction. The Agency or City shall provide all necessary personnel to design, engineer, construct and complete each Infrastructure Project in the same manner as comparable City facilities. The Director of Public Works of the City is hereby designated as the chief official responsible for any design, engineering, construction and completion of the Infrastructure Project by the City. All City personnel assisting with the designing, engineering, construction or completion of the Infrastructure Projects shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(2) Transfer or Dedication. The Agency, except as provided in (a) above, will in consideration of the City's transfer of all the net proceeds from the City's issuance of its general obligation bonds after payment of costs of issuance thereof, in an aggregate original stated principal amount not to exceed $25,000,000 pursuant to Ordinance No. 19843 adopted on March 4, 2013 by the City Council for the City of Lincoln, Nebraska, transfer or dedicate such portion of each Infrastructure Project which is of the type customarily publicly dedicated to the City. The Agency agrees that said proceeds shall be used by the Agency solely for the purpose of paying for the cost to acquire, construct, improve, or equip the Arena Project as an eligible facility under the Convention Center Facilities Financing Act (Neb. Rev. Stat. §§ 13-2601 to 13-2613 (Reissue 2012)). Except as provided in Section 5(a) above, the transfer or dedication of each Infrastructure Project or portion thereof shall be made as and when completed to be maintained, operated and managed as City facilities and the Agency shall execute and deliver to the City any and all documents as may be requested by the City for such purpose. Prior to the City's acceptance of such transfer or dedication of any Infrastructure Project or portion thereof to the

City, the Director of Public Works and Utilities of the City shall review and approve the design and construction of such Infrastructure Project or portion thereof as having been designed and constructed in substantially the same manner as comparable City facilities.

Section 6. City to Maintain, Operate and Manage the Arena Project. The City undertakes to maintain, operate and manage the Arena Project. In such connection the following terms shall apply:

(a) The City shall provide or contract for all necessary personnel, materials and supplies to maintain, operate, and manage the Arena Project as an entertainment/sports arena and related facilities. Except for Qualified Use Agreements (as defined in **Exhibit B** hereto), the City will not enter into any lease or contract with respect to the use, operation or management of the Arena without first obtaining a Special Tax Opinion (as defined in **Exhibit B** hereto). All City personnel assisting with the operation of the Arena Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(b) Any improvements to the Arena Project may be made from time to time as determined by the City to be necessary, desirable or advisable (the **"Arena Improvements"**). The Agency shall contract for work on such Arena Improvements with contracts to be awarded and entered into pursuant to the County Purchasing Act, Section 23-3111, Reissue Revised Statutes of Nebraska, as amended. All costs of such Arena Improvements shall be paid by the Agency from Agency funds available for such purposes, including, without limitation, the Arena Account in the Surplus Fund established hereunder.

(c) The City shall establish rates, fees and charges which are to apply to the use of the Arena Project and shall adjust such rates, fees and charges from time to time as it deems appropriate, just and equitable. The City shall annually, or at such other intervals as the City deems appropriate, submit a report to the Agency detailing the proposed rates, projected revenues based on the same and the proposed expenses.

(d) The Agency shall pay to the City the fees and charges, based upon actual costs and budgeted annually, as the same shall be amended from time to time.

(e) In exercising its authority and carrying out its duties and functions the City shall not discriminate against any employee, applicant for employment, contractor, potential contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

Section 7. Insurance. The City or Agency shall maintain, or cause to be maintained, insurance upon the Arena Project and the operation thereof as follows:

(a) insurance against fire, theft and extended coverage risks (including vandalism and malicious mischief) in an amount not less than the full insurable value of the Arena Project;

(b) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Projects with limits of not less than one million dollars for any person for any number of claims arising out of a single occurrence, five million dollars for all claims arising from a single occurrence, and any greater limits of liability which may be established by Section 13-926, Reissue Revised Statutes of Nebraska, as amended, or any other applicable provision of the Nebraska Political Subdivision Tort Claims Act (the **"Act"**), and excess insurance with limits of not less than two million dollars for any liability which may not be limited by the Act. Such general public liability insurance may be subject to a deductible amount not in excess of $500,000.00.

(c) workers' compensation insurance coverage as required by the laws of the State of Nebraska;

(d) performance bond coverage and labor and materials payment bond coverage for the construction of the Improvements in the full amount of the contract or contracts for construction of the Improvements.

All such insurance shall show the City and the Agency as insureds as their respective interests may appear. Insurance required in (a) and (d) above shall be payable to the Agency. The cost of any and all such insurance shall be treated as a cost of operation and maintenance of the Projects.

Section 8. Utilities and Other Impositions. The City shall provide for the payment of all utility charges, taxes (if any) and other impositions which are obligations of the Agency or are related to the Arena Project and the Infrastructure Projects or the operation thereof and all such charges or impositions shall be treated as a cost of operation and maintenance of the Arena Project and be paid from the Operation and Maintenance Fund established hereunder, or if the balance thereof is insufficient for such purposes, by the City. Because the Arena Project and Infrastructure Projects will be used for governmental purposes and not for financial gain or profit, under present law said Projects will not be subject to real estate or personal property taxes. It is understood and agreed, however, that the City agrees to pay any taxes and assessments, general and special, and all other impositions, ordinary and extraordinary, of every kind and nature which might be levied or assessed on the Arena Project or Infrastructure Projects and any improvements hereafter constructed.

Section 9. Use of Projects. As long as any Bonds remain outstanding, the proceeds of which were used to acquire, construct, equip, or furnish any of the Projects, the City and Agency shall not use any of such Projects, or allow the use thereof, in any manner inconsistent with use for the general municipal purposes of the Agency or the City.

Section 10. Issuance of Bonds; Debt Service. To pay the Costs of Construction of the Arena Project and each Infrastructure Project and the costs of issuance thereof, the Agency agrees to issue Bonds pursuant to one or more Resolutions and to deposit the proceeds thereof as provided in the Resolution authorizing such series of Bonds.

The City and the Agency covenant and agree that all payments of the principal or redemption price of and interest on the Bonds shall be made from Revenues, together with the proceeds of the tax

levied by the Agency by authority granted to the Agency pursuant to the JPA Agreement and any other available funds of the Agency.

Section 11. Establishment of Funds. The City and the Agency hereby create and establish the following separate funds to be held by the City Treasurer as agent for the Agency to be known respectively as the:

(a) the West Haymarket Joint Public Agency Revenue Fund (the **"Revenue Fund"**) in which there is established (1) a General Account and (2) and Private Account.

(b) the West Haymarket Joint Public Agency Debt Service Fund (the **"Debt Service Fund"**) in which there shall be established an account for each series of Bonds.

(c) the West Haymarket Joint Public Agency Operation and Maintenance Fund (the **"Operation and Maintenance Fund"**).

(d) the West Haymarket Joint Public Agency Depreciation and Replacement Fund (the **"Depreciation and Replacement Fund"**).

(e) the West Haymarket Joint Public Agency Surplus Fund (the **"Surplus Fund"**) in which there is established (1) an Arena Account and (2) an Infrastructure Account.

The funds referred to in paragraphs (a) through (e) above shall be maintained and administered by the Agency and the City solely for the purposes and in the manner as provided in this Facilities Agreement so long as any Bonds remain outstanding within the meaning of the Resolution pursuant to which such Bonds were issued.

In addition, to the extent that proceeds of the Bonds authorized by a Resolution will be used to pay the Costs of Construction of any portion of the Arena Project or any Infrastructure Project, such Resolution shall establish a Construction Fund and any necessary or desirable accounts and subaccount therein in accordance with the provisions of this Facilities Agreement.

Section 12. Collection and Application of Revenues.

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds, and continuing as long as any Bonds remain outstanding under the Resolution pursuant to which they were issued, all of the Revenues shall as and when received be paid and deposited into the Revenue Fund. The City and the Agency shall deposit Revenues into the General Account and the Private Account in accordance with **Exhibit B** attached hereto, as the same may be amended and supplemented from time to time. The Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Agency and the City and shall not be commingled with any other moneys, revenues, funds and accounts of the Agency or the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Facilities Agreement.

(b) The City's occupation tax revenues generated under Ordinance Nos. 19407, 19408, and 19409 (the "Occupation Tax Revenues") have been and shall be expended by the City through the JPA in part to acquire, construct, improve, and equip the Arena as a sports arena facility (as defined in Section 13-2603). Any state assistance provided under the Convention Center Facility Financing Assistance Act (the "Turn Back Tax") in excess of the amounts necessary for a period of thirteen months from the date of receipt to pay principal of and interest on the City's $25,000,000 in principal amount of general obligation bonds issued pursuant to Ordinance No. 19843 adopted on March 4, 2013, by the City Council for the City, and proceeds of any bonds issued to refund such bonds, (the "Turn Back Tax Bonds") shall be used to pay the City back amounts for capital expenditures on the Arena so expended from the City's Occupation Tax Revenues through the JPA. To the extent Turn Back Tax receipts held by the City are insufficient to pay amounts next falling due on the City's Turn Back Tax Bonds, the JPA shall provide funds in an amount necessary for the City to make such debt service payment on the Turn Back Tax Bonds.

Section 13. Application of Money in Funds.

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds and continuing so long as any Bonds shall remain outstanding under the Resolution pursuant to which such Bonds were issued, it will on the first day of each month administer and allocate all of the money then held in the General Account in the Revenue Fund as follows:

(1) ***Debt Service Fund***. There shall first be paid and credited monthly to each account established pursuant to a Resolution in the Debt Service Fund, all Revenues collected in the preceding month until the balance in each such account is equal to all principal and interest payments becoming due through the following December 15 on all Bonds then outstanding under such Resolution payable from such account.

(2) ***Operation and Maintenance Fund***. There shall next be paid and credited to the Operation and Maintenance Fund an amount equal to the Operational Increment for the current fiscal year of the Agency. All amounts paid and credited to the Operation and Maintenance Fund shall be expended and used by the City, as agent for the Agency, solely for the purpose of paying the operating expenses of the Arena Project to the extent revenues received by the Arena Manager are insufficient for such purposes.

(3) ***Depreciation and Replacement Fund***. After all payments and credits required at the time to be made under the provisions of paragraphs (1) and (2) of this **Section 13(a)** have been made, there shall next be paid and credited to the Depreciation and Replacement Fund all amounts remaining in the General Account in the Revenue Fund until such Fund aggregates the Depreciation Fund Requirement so long as any of the Bonds remain Outstanding.

Money in the Depreciation and Replacement Fund shall be expended and used by the Agency and the City, if no other funds are available therefor, (A) for the purpose of making emergency replacements and repairs in and to the Arena Project as may be necessary to keep the Arena Project in good repair and working order and to assure the continued effective and efficient

operation thereof and (B) to pay the Operational Increment, to the extent that Revenues are insufficient for such purpose. After the Depreciation and Replacement Fund aggregates the Depreciation Fund Requirement, no further payments into said Fund shall be required, but if the Agency or the City is ever required to expend a part of the money in the Depreciation and Replacement Fund for its authorized purposes and such expenditure reduces the amount of such Fund below the Depreciation Fund Requirement, then monthly payments into the Depreciation and Replacement Funds shall resume and continue until said Fund again aggregates the Depreciation Fund Requirement

(4) ***Surplus Fund***. After all payments and credits required at the time to be made under the provisions of paragraphs (1), (2) and (3) of this **Section 13(a)** have been made, all moneys remaining in the General Account in the Revenue Fund shall be paid and credited to either the Arena Account or the Infrastructure Account in the Surplus Fund, as determined by the City and the Agency. Money in the Arena Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects which constitute the Arena Project in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's architects and approved by the City and the Agency.

The Treasurer shall make a withdrawal from the Arena Account in the Surplus Fund for such purpose only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

(B) Paying the cost of the operation, maintenance and repair of the Arena Project to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;

(C) Paying the cost of extending, enlarging or improving the Arena Project;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any; or

(E) Any other lawful purpose in connection with the operation of the Arena Project and benefiting the Arena Project.

Money in the Infrastructure Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's architects and approved by the City and the Agency.

The Treasurer shall make a withdrawal from the Infrastructure Account in the Surplus Fund for such purpose only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

(B) Paying the cost of the operation, maintenance and repair of any of the Projects to the extent that may be necessary;

(C) Paying the cost of extending, enlarging or improving any of the Projects;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any;

(E) Any other lawful purpose in connection with the operation of any of the Projects and benefiting any of the Projects.

(b) In the event that 30 days prior to the payment date of any principal or interest on Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest at a rate equal to the rate received by the City on its investment pool (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon as provided herein, shall be repaid to the City (a) first, from the first receipts of Revenues, and (b) second, from taxes levied and collected by the Agency pursuant to the provisions of **Section 15**.

Section 14. Transfer of Funds to Paying Agent. The Treasurer of the Agency is hereby authorized and directed to withdraw from the Debt Service Fund sums sufficient to pay the principal of and interest on the Bonds as and when the same become due on any principal or interest payment date, and to forward such sums to the respective paying agents for each series of Bonds in a manner which ensures such paying agent will have available funds in such amounts on or before the business day immediately preceding each such payment date. All money deposited with any paying agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Facilities Agreement and the applicable Resolution.

Section 15. Annual Budget; Levy of Taxes. Prior to the commencement of each fiscal year, the Agency will cause to be prepared and filed with its Secretary and the Clerk a budget setting forth the estimated receipts and expenditures for each month in the next succeeding fiscal year. Such annual budget shall be prepared in accordance with the requirements of the laws of Nebraska and shall contain all information that is required by such laws.

The Treasurer shall, not later than the last day of each month, prepare, file with the Secretary and the City Clerk, and forward to each member of the governing body, a financial report which includes the financial statements for the preceding month and the results for the fiscal year through the end of the preceding month. If, at the end of any fiscal quarter, such financial statements show that the budgeted Available Revenues would exceed the projected actual Available Revenues at the end of the fiscal year by more than $500,000, the Agency covenants and agrees that within 60 days of such determination it will deliver a Consultant's Report to the Participants setting forth recommendations for increasing the Available Revenues to the budgeted levels; provided, however, that in the event that such Consultant's Report shall state that federal, state or other applicable governmental laws or regulations (or interpretations thereof) placing restrictions and limitations on the rates, fees and charges to be fixed, charged and collected for the use of or the services furnished by the Arena Project do not permit or by their application make it impracticable for the Agency to produce the required Available Revenues, then the budgeted Available Revenues shall be reduced to the highest practicable level permitted, as set forth in such Consultant's Report, by such laws and regulations then in effect. The Agency agrees that it will, to the extent feasible, follow the recommendations of the Consultant's Report.

The Agency covenants and agrees that for so long as any Bonds are outstanding under the Resolution pursuant to which such Bonds were issued, it will deliver to the Participants a Consultant's Report regarding the operation, maintenance and financial performance of the Arena Project for the fiscal years ending August 31, 2017, and every fifth fiscal year thereafter.

In the event that the budgeted Available Revenues for the fiscal year exceeds the projected actual Available Revenues for such fiscal year by $1,000,000 or more, the Agency covenants and agrees that it shall in it next annual budget prepared pursuant to this **Section 15**, include an amount to be levied upon all of the taxable property within the City and for deposit to the Debt Service Fund of Section 13(a) sufficient in rate and amount to produce the amounts necessary to make up such deficiency in the actual Available Revenues, together with any anticipated additional deficiency in the actual Available Revenues through the end of the next fiscal year.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Agency or the City are levied and collected. The proceeds derived from such taxes shall be used to repay any and all amounts advanced by the City pursuant to the provisions of **Section 13(b)**, shall be kept separate and apart from all other funds of the Agency and shall be used solely for the payment of amounts advanced by the City and for deposit to the Debt Service Fund of Section 13(a).

Section 16. Annual Financial Audit. Annually, promptly after the end of the fiscal year, the Agency will cause a financial audit to be made of the Arena Project for the preceding fiscal year by a nationally recognized independent certified public accountant or firm of nationally recognized independent certified public accountants to be employed for that purpose and paid from the Revenues.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Secretary, and a duplicate copy of the audit shall be mailed to the City Clerk. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, the registered owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or registered owner.

As soon as possible after the completion of the annual audit, the governing body of the Agency shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Facilities Agreement or any Resolution, the Agency will promptly cure such deficiency and the City and the Agency will promptly proceed to take such action as may be necessary to adequately provide for such requirements.

Section 17. Term of Agreement. This Facilities Agreement shall not terminate so long as Bonds remain outstanding under the terms of any Resolution. Either the City or the Agency may terminate this Agreement at any time after no Bonds are outstanding under the terms of any Resolution.

Section 18. Governing Law. This Facilities Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

Section 19. Severability. If for any reason any provision hereof shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof.

Section 20. Assigns. The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 21. Counterparts. This Facilities Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 23. Section Headings. The headings or titles of the several sections hereof shall be solely for the convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Agreement.

Section 24. Amendment. This Facilities Agreement may be amended in writing upon the approval of both parties.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the City and the Agency have caused this Facilities Agreement to be executed on their behalf by their respective officers thereunto duly authorized.

WEST HAYMARKET JOINT PUBLIC AGENCY

By:_____

Chair

THE CITY OF LINCOLN, NEBRASKA

By:_____

Mayor

EXHIBIT A

MAP OF SITE

See Attachment 1

PROJECTS

West Haymarket Facilities (consisting of the following Projects)

(1) a sports/entertainment arena (the "**Arena**")

(2) roads, streets and sidewalks

(3) a pedestrian overpass

(4) public plaza space

(5) sanitary sewer mains

(6) water mains

(7) electric transmission lines

(8) drainage systems

(9) flood control

(10) parking garages

(11) surface parking lots

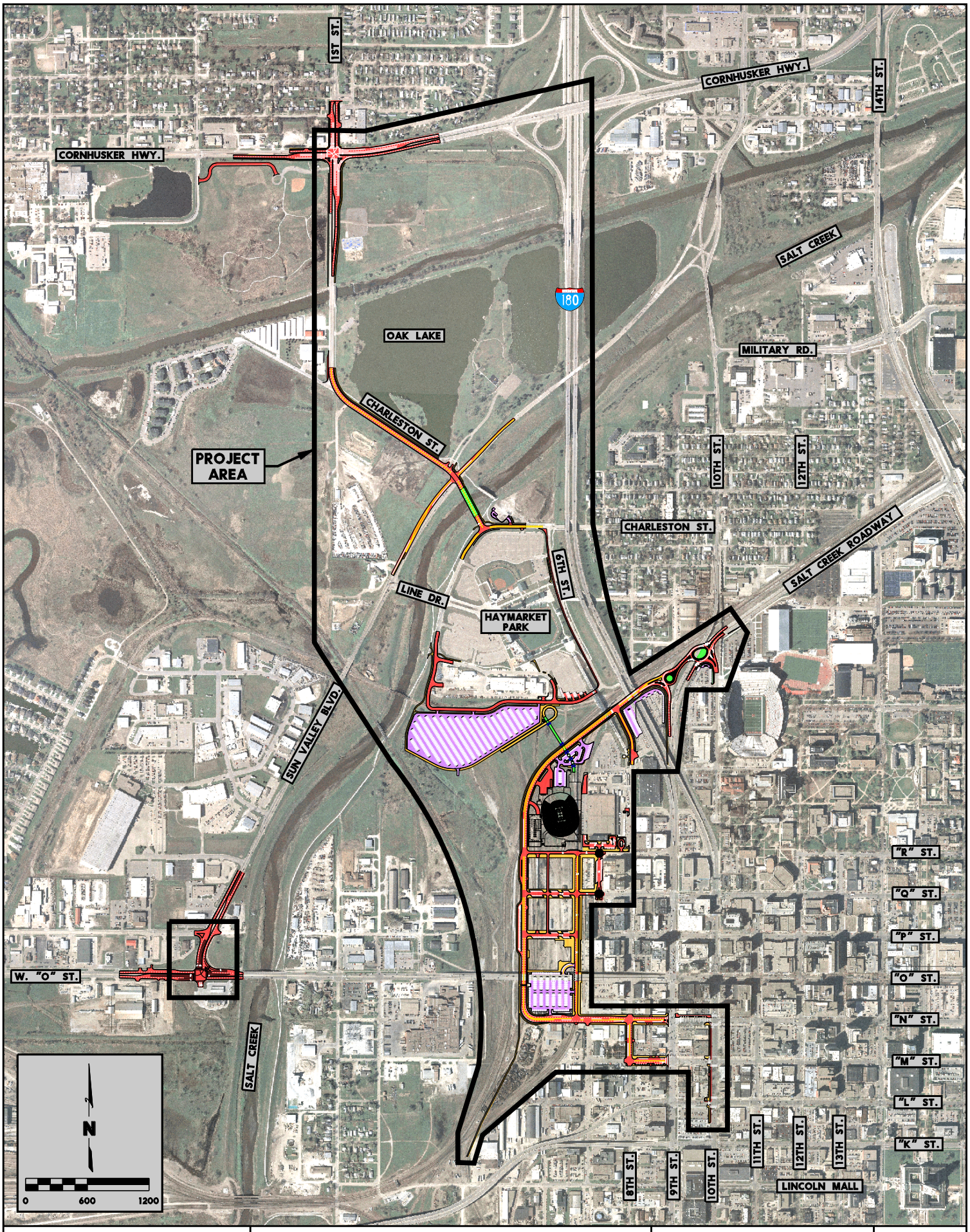
(12) Breslow Ice Center

(13) Amtrak Depot Station

Related Projects (consisting of the following Projects)

(1) acquisition of land and relocation of existing businesses

(2) environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities



PROJECT NO: 010-2431	WEST HAYMARKET JPA PROJECT AREA	OLSSON ASSOCIATES
DRAWN BY: JJW		EXHIBIT
DATE: 11/8/2010		

DATE: 11/8/2010
DGN: F:\PROJECTS\010-2431\Design\Exhibits\JPA Project Area_8.5x11.dgn

Attachment 1 to Exhibit A

EXHIBIT B

COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS

COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS

September 8, 2010

EXHIBIT B

CITY OF LINCOLN, NEBRASKA
COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS

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September 8, 2010

EXHIBIT B

CITY OF LINCOLN, NEBRASKA
COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS

This **COMPLIANCE PLAN AND PROCEDURE FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY TAX ADVANTAGED BONDS** (the "**Compliance Procedure**") has been prepared in connection with the execution and delivery of the Facilities Agreement, dated September 8, 2010 (the "**Facilities Agreement**") between The City of Lincoln Nebraska (the "**City**") and the West Haymarket Joint Public Agency (the "**Agency**"). This Compliance Procedure is applicable to all Tax Advantaged Bonds (as defined below) that are issued by the Agency after the date hereof to finance costs of the Projects (as defined below).

The Agency plans to finance the cost of the Projects by issuing one or more series of bond secured as provided in the Facilities Agreement. In order to reduce interest expense, the Agency wishes to maximize the use of Tax Advantaged Bonds. Tax Advantaged Bonds must satisfy certain restrictions imposed by the Internal Revenue Code of 1986 (the "**Code**") and United States Treasury Regulations ("**Regulations**") related to use of financing proceeds, use of assets financed by the debt and investment of financing proceeds and related funds.

The Facilities Agreement provides that the City is responsible for the construction and operation of the public facilities and infrastructure improvements in the West Haymarket area of the City. The City intends to use and invest proceeds of the Tax Advantaged Bonds and related funds to pay costs of acquisition, construction and improvement, and has agreed to operate the Projects in compliance with the requirements of the Code and Regulations applicable to Tax Advantaged Bonds.

This Compliance Procedure:

(1) Provides guidance regarding procedures to capture and retain data relating to all costs of the Projects;

(2) Describes the documentation procedure to be followed to identify what portions of the West Haymarket Project will be treated as financed by Tax Advantaged Bonds;

(3) Describes procedures to track investments of proceeds of Tax Advantaged Bonds and related funds in order to meet investment restrictions contained in the Code and Regulations;

(4) Establishes a general document retention procedure for each issue of Tax Advantaged Bonds to substantiate compliance with the Code and Regulations; and

(5) Identifies the City officer responsible for monitoring compliance with the provisions of the Code and Regulations related to Tax Advantaged Bonds.

EXHIBIT B

I. Definitions

1.1 *Definitions.* Capitalized words and terms used in this Compliance Procedure, unless otherwise defined below, have the meaning set out in the Facilities Agreement. Other terms have the meaning set forth below:

"**Accounting Department**" means the Finance Department of the City and any other entity assigned by state law or City ordinance or agreement to account for the custody, investment, administration or expenditures of any proceeds of Tax Advantaged Bonds.

"**Agency**" means the West Haymarket Joint Public Agency, a joint public agency created pursuant to a Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010 executed and delivered by the City and The Board of Regents of the University of Nebraska in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended).

"**Ancillary Costs**" means Costs related to the construction, acquisition or equipping of a Development Facility that are not External Costs, such as a percentage of costs of salary for City personnel and City expenses determined to be attributable to activities related to the construction, acquisition or equipping of the Development Facility.

"**Annual Tax Compliance Questionnaire**" means one or more questionnaires in the form attached as **Exhibit E** that may be completed annually for certain Development Facilities following the date they are Placed in Service.

"Arena" has the meaning assigned in the recitals of the Facilities Agreement.

"**Available Equity Sources**" means Revenues available to pay for the costs of the Projects. Available Equity Sources do not include any earnings derived from the investment of Tax Advantaged Bonds or Revenues used to pay debt service on Tax Advantaged Bonds or costs of operating or maintaining the Projects.

"**Bond Compliance Officer**" means the Finance Director of the City or, if the position of Finance Director is vacant, the person appointed to perform the duties of the Finance Director on an interim basis by the Mayor. The Bond Compliance Officer is expected to employ members of the City staff and independent contractors to assist in the performance of the obligations assigned in this Compliance Procedure.

"**Bond Compliance Plan**" means the written plan prepared by the Bond Compliance Officer in consultation with Bond Counsel prior to the issue date of each issue of Tax Advantaged Bonds. A form of Compliance Plan is attached as **Exhibit D**.

"**Bond Counsel**" means a firm of nationally recognized bond counsel selected by the City to issue a legal opinion regarding the validity and enforceability of Tax Advantaged Bonds and the tax treatment of interest on Tax Advantaged Bonds.

"**Bond Proceeds**" means proceeds received from the sale of Tax Advantaged Bonds and any money received from the investment of those sale proceeds.

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"**Bond Restricted Funds**" means Bond Proceeds together with any other funds, accounts, investments, cash or portions of funds, accounts or investments that are subject to arbitrage rebate and/or yield restriction rules under the Code and Regulations.

"**City**" means The City of Lincoln, Nebraska.

"Code" means the Internal Revenue Code of 1986, as amended.

"**Compliance Period**" means with respect to each Development Facility the period that begins on the date on which the Development Facility is Placed in Service and which ends on the date all Tax Advantaged Bonds that were allocated to Costs of the Development Facility pursuant to the Final Allocation of Bond Proceeds have been retired.

"**Compliance Procedure**" means this Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds.

"**Cost**" means all expenses or charges of any kind related to the Projects and, in relation to each Development Facility, all External Costs and Ancillary Costs incurred in connection with the acquisition, construction, reconstruction, improvement and equipping of the asset, including but not limited to costs of real property acquisition and site work, engineering, architectural costs and related soft costs of the physical asset.

"**Development Budget**" means the budget for the Projects dated September 8, 2010, attached as **Exhibit A** as amended and supplemented from time to time.

"**Development Facility**" means real or tangible personal property that is separately identified in an Interim Financing Sources Allocation or the Final Financing Sources Allocation as part of the Projects. Each Development Facility includes only physical assets, that are (1) functionally related or integrated in use, (2) located on the same physical site or proximate sites, and (3) expected to be Placed in Service at approximately the same time (within a one-year period).

"**External Costs**" means all Costs of the Projects (including but not limited to interest expense prior to the Placed in Service date for a specific Development Facility) paid to independent contractors that are not Related to the City, the Regents or the Agency that will be capitalized by the City on its financial records or that could be capitalized for federal income tax purposes if the City were required to pay federal income taxes.

"**Final Financing Sources Allocation**" means the written allocation of Bond Proceeds prepared by the Bond Compliance Officer that reflects, as of the date the relevant Development Facility is Placed in Service, the allocation of all funding sources (Tax Advantaged Bonds and Available Equity Sources) to all Costs of the Development Facilities, all Financing Costs and all Start-up Costs for the Projects.

"**Final Private Use Allocation**" means the spreadsheet prepared in conjunction with the Final Financing Sources Allocation that shows the estimated percentage of the Cost of each Development Facility expected to be used in a Private Business Use.

"**Financed Assets**" means any Development Facility or part of a Development Facility financed by Bond Proceeds as reflected in a Final Financing Sources Allocation.

"**Financing Costs**" means all expenses of issuing the Tax Advantaged Bonds.

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"Guaranteed Investment Contract" is any investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

"**Interim Financing Sources Allocation**" means an allocation of all estimated funding sources (Tax Advantaged Bonds and Available Equity Sources) to all Costs of Development Facilities, all Financing Costs and all Start-up Costs prepared by the City in consultation with the Program Manager and Bond Counsel. Each Interim Financing Sources Allocation must, in the opinion of Bond Counsel, result in all Tax Advantaged Bonds meeting the use of proceeds and Financed Assets requirements set out in the Tax Compliance Agreement for the respective financing. The initial Interim Financing Sources Allocation is attached as **Exhibit B**. Each subsequent Interim Financing Sources Allocation will be consecutively designated as **Exhibit B-1, B-2, B-3**, etc., and attached to this Compliance Procedure.

"**Interim Private Use Allocation**" means the spreadsheet showing the estimated percentage of the Cost of each Development Facility that is expected to be used in a Private Business Use. The initial Interim Financing Sources Allocation is attached as **Exhibit C**. Each subsequent Interim Financing Sources Allocation will be consecutively designated as **Exhibit C-1, C-2, C-3**, etc., and attached to this Compliance Procedure.

"Investment" means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Bond Proceeds or Bond Restricted Funds..

"**Naming Right Agreement**" means the long-term right to name the Arena facility and accompanying privilege to have the name used in connection with the operation of the Arena.

"**Non-Qualified Users**" means any person or entity that is not a Qualified User and uses a Development Facility in connection with a trade or business.

"**Permitted Private Use**" means any use that otherwise would constitute Private Business Use that is specifically authorized in a Tax Compliance Agreement or which is the subject of a Special Tax Opinion.

"**Placed in Service**" means that date (as determined by the Bond Compliance Officer) when a Development Facility is completed, has commenced operation and is operating at its intended capacity.

"**Pre-Issuance Costs**" means External Costs or Ancillary Costs of a Development Facility paid by the City from other sources of funds prior to the issue date of an issue of Tax Advantaged Bonds for which the City is seeking reimbursement from the proceeds of an issue of Tax-Advantaged Bonds.

"**Private Business Use**" means use of Financed Assets during the Compliance Period in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether the Financed Assets are "used" in a trade or business. The ownership of a Financed Asset by a Non-Qualified User is Private Business Use. Any other special legal right to possession of the Financed Asset or to control the operation of a Financed Asset that is granted to a Non-Qualified User is Private Business Use unless the legal arrangement is a Qualified Use Agreement or an arrangement approved in a Special Tax Opinion. Generally Private Business Use includes use of Financed Assets by a Non-Qualified User pursuant to a Naming Right Agreement, a lease, a management agreement, an operation agreement, or other similar legal arrangement. Private Business Use can result from any legal agreement entered into by the Agency, the City, the Regents or any other Qualified User.

"**Program Manager**" means The Benham Companies, L.L.C or such other firm of engineers or architects assigned by the City to monitor the acquisition, construction and equipping of Development Facilities.

"Projects" means land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing of public facilities, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots and any other capital improvements or other projects pertaining to the redevelopment of an area in the City generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and "M" Street on the south, as amended from time to time. A general description of the assets expected to constitute the Projects, the anticipated cost and financing source is included on the Development Budget attached as **Exhibit A** to this Tax Agreement.

"Qualified Use Agreement" means any of the following:

(1) A lease or other short-term use by members of the general public who occupy a Development Facility on a short-term basis as members of the general public in the ordinary course of the operation of the Development Facility.

(2) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of a Development Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Non-Qualified User using all or any portion of a Development Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) a Development Facility was not constructed for a principal purpose of providing the property for use by that Non-Qualified User. Any Non-Qualified User using all or any portion of a Development Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Development Facility was not constructed for a principal purpose of providing the property for use by that person.

"**Qualified User**" means the City, the Regents, the Agency or the State of Nebraska, any other political subdivision of the State or Nebraska, or any agency or instrumentality of the foregoing.

"**Rebate Analyst**" means the firm selected by the Bond Compliance Officer to calculate arbitrage rebate.

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"**Regents**" means The Board of Regents of the University of Nebraska.

"**Reimbursement Resolution**" means Resolution No. WH00011 adopted by the Agency on August 13, 2010, pursuant to which the Agency evidenced its "official intent" (within the meaning of Regulations § 1.150-2) to issue up to $340,000,000 of debt obligations from time to time to finance the Projects and reimburse expenditures previously made from other sources with proceeds of the financing.

"**Related**" means, with respect to the City, the Regents or the Agency, any relationship involving a related party within the meaning of Regulations Section 1.150-1(b).

"Revenues" means any revenues, receipts and incomereceived by the Agency from any source, including, without limitation, property taxes and private donations.

"**Special Tax Opinion**" means a written opinion of Bond Counsel addressed to the City and the Agency that concludes that a particular action or failure to act, contractual agreement or other arrangement will not result in Private Business Use or result in a Tax Advantaged Bond being an arbitrage bond or otherwise result in a Tax Advantaged Bond no longer qualifying as such.

"**Start-up Costs**" means Costs of supplies and other start-up operation expenses for any Development Facility.

"**Substantiation Documents**" means the documents and records listed on **Exhibit D** that will be maintained for each issue of Tax Advantaged Bonds. Substantiation Documents may be stored on a digital electronic medium (e.g., a PDF file) so long as the Bond Compliance Officer determines that the information can be retrieved, reviewed and printed as a paper document if needed.

"**Tax Advantaged Bond(s)**" means any bond, note, lease, certificate or other instrument that is a debt obligation for federal income tax purposes issued by the Agency or issued by another political subdivision, agency or public corporation and loaned or made available to the City for purposes of funding any portion of the Projects. The term Tax Advantaged Bonds includes bonds or notes issued by the City as well as obligations issued by the Agency if the proceeds of that debt are loaned or made available to the City. In either case (1) the interest on the obligation must be excluded from gross income for federal income tax purposes, (2) the holder of the obligation must be entitled to claim a federal income tax credit on account of its ownership of the obligation or (3) the Agency must be entitled to receive payments from the United States measured as a percentage of the interest paid on the obligation.

"**Tax Advantaged Bond File**" means all Substantiation Documents for a single issue of Tax Advantaged Bonds.

"**Tax Compliance Agreement**" means a written agreement between the Agency and the City executed as of the issue date of each issue of Tax Advantaged Bonds which amends this Compliance Procedure to include a new Interim Financing Sources Allocation and includes any specific instructions regarding the investment of Bond Restricted Funds, the use of proceeds of the issue of Tax Advantaged Bonds, or the use of Financed Assets necessary in the opinion of Bond Counsel.

II. General Matters

2.1 ***Bond Compliance Officer Duties.*** The Bond Compliance Officer is responsible for implementing this Compliance Procedure. The Bond Compliance Officer will work with other officials,

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departments and administrators that use a Development Facility to carry out the obligations imposed by this Compliance Procedure. The Bond Compliance Officer will consult with Bond Counsel, legal counsel, the Rebate Analyst and other outside experts as necessary to carry out the overall goals of this Compliance Procedure.

2.2 ***Amending Compliance Procedure.*** This Compliance Procedure may be amended from time-to-time by the Bond Compliance Officer. Copies of any amendment to this Compliance Procedure will be provided to the Agency and shall be accompanied by a Special Tax Opinion. No such amendment will become effective until the Agency receives the Special Tax Opinion.

2.3 ***Conflicts between Compliance Procedure and Bond Counsel's Instructions.*** If the requirements of this Compliance Procedure conflict with any Tax Compliance Agreement or with any specific written instructions of Bond Counsel that relate to a Tax Advantaged Bond, the Tax Compliance Agreement or specific written instructions of Bond Counsel shall supersede and govern that issue of Tax Advantaged Bonds. Any exceptions to this Compliance Procedure mandated by Bond Counsel instructions will be noted in the Tax Compliance Agreement for the issue of Tax Advantaged Bonds.

2.4 ***Training and Education.*** The Bond Compliance Officer may arrange for periodic training of officers and staff regarding the requirements imposed by the federal income tax rules and regulations applicable to the City's Tax Advantaged Bonds and this Compliance Procedure.

2.5 ***Costs and Fees.*** The Bond Compliance Officer annually will request an amount of Revenues necessary to pay costs related to the implementation and administration of this Compliance Procedure.

2.6 ***Authority of Bond Compliance Officer.*** The Bond Compliance Officer shall retain control over the administration, investment and expenditure of all proceeds of Tax Advantaged Bonds and the use and operation of all Financed Assets to the extent the Bond Compliance Officer believes is necessary to account for the funds and to ensure compliance with the terms of this Compliance Procedure and any Tax Compliance Agreement.

III. Compliance Procedure for Tax Advantaged Bond Issues Prior to Date Development Facilities Are Placed in Service

3.1 ***Application of Compliance Procedure.*** This Compliance Procedure applies generally to the accounting for the use and investment of proceeds of Tax Advantaged Bonds and Available Equity Sources to Costs of the Projects and specifically to the ownership and operation of all Development Facilities financed in whole or in part with proceeds of Tax Advantaged Bonds(as reflected in the Final Financing Sources Allocation).

3.2 ***Description of General Plan for Tax Compliance with Restrictions on Private Business Use.***

a. The City and the Agency expect to issue the following categories of Tax Advantaged Bonds:

Tax Exempt Governmental Bonds (TEBS)
Build America Bonds (BABS)
Recovery Zone Economic Development Bonds (RZEDBS)

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The estimated amount of each category of Tax Advantaged Bonds is contained in the Interim Financing Sources Allocation (the initial form of which is attached as **Exhibit B**). The City anticipates that Available Equity Sources will pay the remaining cost of the Projects.

b. The Interim Financing Sources Allocation attached as **Exhibit B** lists the expected Cost of each Development Facility and the expected Financing Costs and Start-up Costs.

c. The City and the Agency expect that portions of the Projects will be used by Non-Qualified Users in a private use as follows:

Arena
- Naming Rights Agreement
- Long-Term Premium Seating and Suites
- Concession Area

Arena Parking Facilities
- Long-Term Premium Suite Parking

The City expects that the Arena and certain other Development Facilities may be managed and/or operated by Non-Qualified Users pursuant to written agreements. These agreements are not expected to result in Private Business Use in an amount greater than Permitted Private Use, because the City intends to structure the arrangements in a manner so that a Special Tax Opinion can be obtained. The expected percentage of use that would otherwise constitute Private Business Use (absent the allocation discussed in subsection 3.1(d) below) with respect to each Development Facility is shown on **Exhibit C**.

d. As of the date the Facilities Agreement is executed, based on the calculations of expected Private Business Use in **Exhibit C**, and as reflected by the allocation of expected funding sources (Tax Advantaged Bonds and Available Equity Sources) to Costs contained in **Exhibit B**, the City expects to be able to allocate the entire Cost of Development Facilities expected to be used in a Private Business Use and all Start-up Costs to Available Equity Sources. Based on the foregoing, as of the date the Facilities Agreement is executed the City does not expect that any Financed Assets will be used in a Private Business Use.

e. The City expects to update **Exhibit B** and **Exhibit C** in connection with each issue of Tax Advantaged Bonds to account for changes in estimated funding sources, estimated Costs of Development Facilities, and any changes in the amount or nature of Private Business Use. Each Interim Financing Sources Allocation and Interim Private Use Calculation must (1) show that no Financed Assets will be used in a Private Business Use or (2) otherwise be approved by a Special Tax Opinion.

f. Not later than 18 months following the date a Development Facility is Placed in Service (and in no event later than 60 days after the fifth anniversary of the issue date of the Tax Advantaged Bonds that financed said Development Facility), the Bond Compliance Officer will make a Final Financing Sources Allocation in consultation with Bond Counsel and the Program Manager. The Final Financing Sources Allocation will be accompanied by a Special Tax Opinion and will be the final allocation of the proceeds of the relevant issue of Tax Advantaged Bonds for purposes of determining and quantifying Private Business Use of that Development Facility.

3.3 ***Preparation for Issuance of Tax Advantaged Bonds***

a. The Bond Compliance Officer will work with Bond Counsel and other City officials and employees to ensure that the representations of the City contained in each Tax Compliance Agreement are

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accurate. The Bond Compliance Officer will confer with Bond Counsel and City's counsel regarding the meaning and scope of the covenants contained in the Tax Compliance Agreement. The Bond Compliance Officer will review the Tax Compliance Agreement prior to execution by the City.

b. In consultation and with the advice of Bond Counsel and the Program Manager, the Bond Compliance Officer will update and to the extent necessary revise the Interim Finance Sources Allocation to account for changes to the Development Facilities, their Costs or expected use or changes to the expected amount of Tax Advantaged Bonds or Available Equity Sources allocated to the Costs of the Development Facilities.

c. Prior to each issue of Tax Advantaged Bonds the Bond Compliance Officer will consult with Bond Counsel regarding the applicability of special rules with respect to the investment of proceeds and other funds not otherwise described in Sections 3.4 and 3.5

3.4 ***Accounting for Costs of the Development Facilities; Investment and Arbitrage.***

a. The Accounting Department will follow the directions of the Bond Compliance Officer regarding the administration, investment, accounting and expenditure of Bond Proceeds, Available Equity Sources, and any other Bond Restricted Funds.

b. For each Cost paid, the accounting system shall record: (1) identity of person or business paid, (2) date of payment, (3) amount paid, (4) if determined, the specific Development Facility to which the cost relates, and (5) invoice number or other identifying reference. Each expenditure should further be identified as (1) a hard cost of acquisition or construction, (2) a soft cost (e.g. architects, engineering or consultants) or (3) a "financing cost" (e.g. interest and related remarketing charges, credit facility charges, the cost of bond insurance and other costs of issuing the Tax Advantaged Bonds).

c. Accounting, investment and expenditure records that are to be included as Substantiation Documents with respect to each issue of Tax Advantaged Bonds (which represent the Tax Advantaged Bond File for such issue) are listed on **Exhibit D**.

d. Unless otherwise directed in a Tax Compliance Agreement the Bond Compliance Officer will not segregate proceeds of Tax Advantaged Bonds and other Available Equity Sources either for purposes of investment or expenditure.

e. Unless otherwise directed in a Tax Compliance Agreement, for purposes of accounting for the investment and expenditure of Bond Proceeds and other Bond Restricted Funds in connection with the arbitrage and rebate rules described in each Tax Compliance Agreement, Bond Proceeds will be treated as spent first, and if more than one issue of outstanding Tax Advantaged Bonds has unspent Bond Proceeds at a given time, then all expenditures will be allocated to the earliest issued Tax Advantaged Bonds. All allocations of Tax Advantaged Bond proceeds described in this subsection 3.4(e) apply solely for purposes of arbitrage and rebate compliance. Any allocation of Tax Advantaged Bond Proceeds to Development Facilities shall be done in accordance with Section 3.2.

f. At the time the Final Financing Sources Allocation is completed, the Bond Compliance Officer will determine whether it is possible to complete a final arbitrage rebate computation for the Tax Advantaged Bonds in the event all Bond Proceeds thereof have been spent or whether such a computation is advisable. The Bond Compliance Officer will also schedule any upcoming arbitrage rebate computations required for the Tax Advantaged Bonds as part of the annual ongoing compliance procedures.

3.5 ***Fair Market Value.***

a. No Investment may be acquired for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

b. Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

c. The purchase price of a certificate of deposit (a "**CD**") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

d. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. A bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all "material" terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City, the Agency, or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the City, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are "commercially reasonable." A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the City's reasonably expected deposit and draw-down schedule for the amounts to be invested.

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(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least three "reasonably competitive providers" are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a "material financial interest" in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The City and the Agency retain the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the City or the Agency, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

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e. ***Other Investments***. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.,* as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

IV. Operational Policies and Procedures for All Tax Advantaged Bonds

4.1 ***Annual Tax Advantaged Bond Compliance Review***. Annually the Bond Compliance Officer will complete an Annual Tax Advantaged Bond Review Form (**Exhibit F**) for each outstanding issue of Tax Advantaged Bonds. In the event the Bond Compliance Officer determines that additional information is needed from the individuals actually supervising the use of a Financed Asset, the Bond Compliance Officer will cause an Annual Tax Compliance Questionnaire to be prepared to gather information regarding the use of the Financed Asset. If necessary, the Bond Compliance Officer will consult with Bond Counsel regarding any changes in the use or status of any Financed Asset.

4.2. ***Private Business Use***. Subject to the special requirements, conditions or procedures set out in any Tax Compliance Agreement, the Bond Compliance Officer will not permit any Private Business Use of any Financed Asset without obtaining a Special Tax Opinion. If the Bond Compliance Officer has reason to believe that there exists Private Business Use of any Financed Asset, then the Bond Compliance Officer will consult with and heed the advice of Bond Counsel, which could result in the Agency taking "remedial action" in accordance with Regulations Section 1.141-12 (which may involve the redemption or defeasance of some or all of the Tax Advantaged Bonds) as necessary to maintain the status of the Tax Advantaged Bonds as such.

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Exhibit A
Development Budget

September 8, 2010

EXHIBIT B

West Haymarket Joint Public Agency
Adopted Project Budget

Item	Description	Construction Cost Estimate	20% Engr./Design	Total Const. Cost Estimate	Inflation plus Contingency	Total
USE OF FUNDS:						
Arena	Construction costs	$139,913,000	$27,982,600	$167,895,600		$167,895,600
	Preoccupancy expense	1,000,000	-	1,000,000		1,000,000
	Total Arena	140,913,000	27,982,600	168,895,600		168,895,600
Parking	Surface - Northwest of Tracks	3,806,400	761,280	4,567,680	1,116,679	5,684,359
	Surface -South of Ice Rink	1,362,200	272,440	1,634,640	399,627	2,034,267
	Surface - Train Station	1,000,000	-	1,000,000	131,340	1,131,340
	Garages - South of Arena	11,900,000	1,190,000	13,090,000	2,254,582	15,344,582
	Garage - Arena	9,411,000	941,100	10,352,100	965,805	11,317,905
	Total Parking	27,479,600	3,164,820	30,644,420	4,868,033	35,512,453
Roads	Sun Valley - Charleston and Bridge	3,850,600	770,120	4,620,720	1,129,646	5,750,366
	Sun Valley - ROW	614,500	122,900	737,400	180,275	917,675
	Arena Drive	4,945,300	989,060	5,934,360	1,450,797	7,385,157
	P, Q & R Streets	2,298,900	459,780	2,758,680	674,426	3,433,106
	M & N Streets	1,708,400	341,680	2,050,080	501,191	2,551,271
	Canopy Street & Ice Drop Off	1,733,700	346,740	2,080,440	508,613	2,589,053
	Total Roads	15,151,400	3,030,280	18,181,680	4,444,948	22,626,628
Pedestrian Ways	Trails and sidewalks	500,000	100,000	600,000	138,804	738,804
	Pedestrian Crossings over BNSF	6,934,788	1,386,958	8,321,746	1,925,153	10,246,898
	Plaza	1,000,000	200,000	1,200,000	277,608	1,477,608
	Total Pedestrian Ways	8,434,788	1,686,958	10,121,746	2,341,565	12,463,310
Utilities	Water	816,800	163,360	980,160	177,742	1,157,902
	Wastewater	1,892,400	378,480	2,270,880	411,801	2,682,681
	LES	385,000	77,000	462,000	83,779	545,779
	Trunk storm sewer to Haymarket area	1,240,300	248,060	1,488,360	269,899	1,758,259
	Communication and Other	542,400	108,480	650,880	118,031	768,911
	Total Utilities	4,876,900	975,380	5,852,280	1,061,252	6,913,532
Environmental	North Area - R to Tracks (arena area)	815,000	163,000	978,000	226,251	1,204,251

EXHIBIT B

Item	Description	Construction Cost Estimate	20% Engr./Design	Total Const. Cost Estimate	Inflation plus Contingency	Total
	South Area - R to O	1,750,000	350,000	2,100,000	485,814	2,585,814
	South Area - O on South	2,000,000	400,000	2,400,000	555,216	2,955,216
	West Area - Roundhouse	300,000	60,000	360,000	83,282	443,282
	Wetlands, Seeding and Removals	138,000	27,600	165,600	38,310	203,910
	Total Environmental	5,003,000	1,000,600	6,003,600	1,388,873	7,392,473
Dirt Moving	Pad site development - fill	1,931,100	386,220	2,317,320	420,223	2,737,543
	Stormwater/Floodplain mitigation	5,588,200	1,117,640	6,705,840	1,216,037	7,921,877
	Total Dirt Movement	7,519,300	1,503,860	9,023,160	1,636,260	10,659,420
TIF Improvements	Public Use of TIF Proceeds	5,515,693	-	5,515,693		5,515,693
Site Purchase	BNSF Land Acquisition	1,000,000		1,000,000		1,000,000
	BNSF Construction, Rehab, & Relloc.	44,000,000	-	44,000,000		44,000,000
	Canopy Rehabilitation	177,000	35,400	212,400	49,137	261,537
	Amtrak Building	1,200,000	240,000	1,440,000		1,440,000
	UP Land Acquisition	1,000,000		1,000,000	131,340	1,131,340
	UP Wetland Enhancement	1,000,000	200,000	1,200,000	277,608	1,477,608
	UP Track Modifications W of Bridge	1,030,000	206,000	1,236,000	285,936	1,521,936
	Subtotal Railroad Site Purchase	49,407,000	681,400	50,088,400	744,021	50,832,421
	Other Land Acquisition	7,585,000	200,000	7,785,000	1,172,482	8,957,482
	Total Site Purchase	56,992,000	881,400	57,873,400	1,916,503	59,789,903
Other Costs	Dynamic Message Signage	2,250,000	450,000	2,700,000	624,618	3,324,618
	Public Art	1,500,000		1,500,000		1,500,000
	Total Other	3,750,000	450,000	4,200,000	624,618	4,824,618
	SUBTOTAL	275,635,681	40,675,898	316,311,579	18,282,052	334,593,630
Miscellaneous Costs	PLUS: Additional Contingencies	-		-		-
	PLUS: Cost of Bond Issuance, 1.50%	5,160,000		5,160,000		5,160,000
		5,160,000	-	5,160,000		5,160,000
	TOTAL ARENA COSTS	$280,795,681	$40,675,898	$321,471,579	$18,282,052	$339,753,630

SOURCE OF FUNDS:

Bonded Debt	$316,953,630
Private Donations	22,000,000
Federal Grants	800,000
	$339,753,630

EXHIBIT B

Exhibit B
Interim Financing Sources Allocation

September 8, 2010

EXHIBIT B

Exhibit B

Development Facility	Ref #	Est Sq Feet	Total cost	Tax Advantaged Bonds: Tax Exempt	BAB	BAB issue 2	RZEDB	RZFB	Total	Available Equity Sources: Taxes	Private Donations	Taxable Bonds	Total	Grand Total	
Arena									-				-		
Land Acquisition		202,500	2,778,722	401 363	1 605 453	2,298 666	513,745		4,819,228	258,962	694,239		953,202	5,772,430	
Construction			139,913 000	10,302,414	41 209,657	43,319,797	13,187 090		108 013,959	13,039,168	15,560,796	-	28,599,964	136,618,923	
Architecture/Engineering			20 986,950	1,545,718	6,182,874	6 500,574	1,978,520		16,207,685	1,955,875	2,334,817	-	4,290,692	20,498,377	
Site Work			503,358	72,706	290 824	416 397	93 064		872,990	46,910	125,760	-	172,670	1,045,660	
Environmental			348,866	50,391	201,563	288,596	64,500		605,050	32,513	87,161	-	119,674	724,724	
Inflation/Contingency			7 995,650	588,348	2 353,392	2,472,633	753,085		6,167,459	745,153	888,460	-	1,633,614	7,801,072	
Financing Costs			2,705,282	203,232	812,930	867,073	260,138		2,143,373	252,118	308,766	-	560,884	2,704,257	
Subtotal Arena			175,231,828	13,164,173	52,656,693	56,163,735	16,850,142	-	138,834,743	16,330,700	20,000,000	-	36,330,699 75	175,165,443	66,384 68
Garage South of Arena															
Land Acquisition		60,000	823,325	60,583	242,333	199 398	77,546		579 860	246,831			246,831	826,691	
Construction			11 900,000	875 644	3 502,575	2,882,014	1,120,824		8,381,057	3 567 596			3,567,596	11 948,653	
Architecture/Engineering			1 190,000	87,564	350 258	288,201	112,082		838 106	356,760			356,760	1,194,865	
Site Work			149 143	10,974	43,898	36,120	14,047		105,040	44,713			44,713	149,753	
Environmental			103,368	7,606	30 425	25,034	9,736		72,801	30,989			30,989	103,790	
Inflation/Contingency			2,254 582	165,900	663 600	546,028	212,352		1,587 881	675,919			675,919	2,263,800	
Financing Costs			257,478	18,946	75,785	62,358	24,251		181,340	77,192			77,192	258,531	
Subtotal Garages South of Arena			16,677,896	1,227,218	4,908,873	4,039,154	1,570,839	-	11,746,084	5,000,000	-		5,000,000 00	16,746,084	(68,187 79)
Garage Arena													-	-	
Land Acquisition		22,500	308 747	22 719	90,875	36 293	29,080		178,967	129,670			129,670	308,636	
Construction			9,411 000	692 494	2,769 978	1,106,270	886,393		5,455,135	3 952,495			3,952,495	9,407,630	
Architecture/Engineering			941 100	69 249	276,998	110 627	88,639		545,514	395,249			395,249	940,763	
Site Work			55,929	4,115	16 462	6,574	5,268		32,419	23 489			23,489	55,909	
Environmental			38 763	2 852	11,409	4 557	3,651		22,469	16,280			16,280	38,749	
Inflation/Contingency			965 805	71,067	284,269	113 531	90,966		559,834	405 625			405,625	965,459	
Financing Costs			183 795	13,524	54 097	21,605	17,311		106,538	77,192			77,192	183,729	
Subtotal - Garages Arena			11,905,139	876,022	3,504,088	1,399,458	1,121,308		6,900,876	5,000,000	-		5,000,000.00	11,900,876	4,262.93
Lincoln Traction Development Blocks															
Land Acquisition		195 000	2 675 806		-		-			2,675,806			2,675 806	2,675,806	
Construction			96,822							96,822			96,822	96,822	
Architecture/Engineering			19 364						-	19,364			19,364	19,364	
Site Work			484,715			-				484,715			484,715	484,715	
Environmental			335 945						-	335,945			335,945	335,945	
Inflation/Contingency			-						-				-	-	
Financing Costs			56 648						-	56 648			56,648	56,648	
Subtotal - Utilities Communication and Other			3,669,300		-			-	-	3,669,300			3,669,300	3,669,300	-
Surface Parking Northwest of Tracks									-						
Land Acquisition		740,520	10 161 476	747 717	2,990 868	5,466 002	957,078		10,161,665					10,161,665	
Construction			3,806 400	280 088	1,120,353	2 047,516	358,513		3 806,471					3 806,471	
Architecture/Engineering			761,280	56,018	224,071	409,503	71,703		761,294				-	761,294	
Site Work			1 840 725	135 447	541 788	990 152	173 372		1 840,759					1 840,759	
Environmental			1 275 765	93,875	375,501	686,252	120,160		1,275,789					1,275,789	
Inflation/Contingency			1 116 679	82 169	328 677	600,677	105 177		1 116,700					1 116 700	
Financing Costs			297,336	21 879	87,516	159,941	28 005		297 342					297,342	
Subtotal - Surface Parking Northwest of Tracks			19,259,662	1 417,194	5,668,774	10,360,044	1,814,008	-	19,260,020		-			19 260,020	(358 19)
														19,260,020	-
Surface Parking South of Ice Rink															
Land Acquisition		157 500	2 161 228	159,031	636 123	1,162 555	203,559		2,161,268				-	2,161,268	
Construction			1 362 200	100 235	400 942	732,747	128 301		1,362,225				-	1,362,225	
Architecture/Engineering			272 440	20 047	80 183	146,549	25 660		272 445				-	272,445	
Site Work			391 501	28 808	115,232	210,594	36,874		391,508				-	391,508	
Environmental			271,340	19 966	79,865	145 958	25 557		271,345				-	271,345	
Inflation/Contingency			399,627	29,406	117,624	214,965	37,640		399,634				-	399,634	
Financing Costs			76 381	5 606	22 423	40 979	7,175		76,182				-	76,182	
Subtotal Surface Parking South of Ice Rink			4,934,517	363,099	1,452 396	2,654,346	464,767		4,934,608	-		-		4,934,608	(91.77)
														4 934,608	
Surface Parking - Train Station															
Land Acquisition		11 000	150,943	11 107	44,428	81,194	14,217		150,946					150,946	
Construction			1,000,000	73 584	294,334	537 914	94,187		1 000,019				-	1,000,019	
Architecture/Engineering			-				-						-	-	
Site Work			27 343	2 012	8 048	14,708	2 575		27,343				-	27,343	
Environmental			18 951	1 394	5 578	10 194	1,785		18,951				-	18,951	
Inflation/Contingency			131,340	9 664	38 658	70,650	12,371		131,342				-	131,342	
Financing Costs			20 833	1,533	6,132	11,206	1,962		20,833				-	20,833	
Subtotal - Surface Parking Train Station			1,349,409	99,294	397,177	725,866	127,097		1,349,434		-	-	-	1,349 434	25.10
														1,349,434	-
Garages South of Arena													-	-	
Pedestrian Ways Trails and Sidewalks													-		
Land Acquisition					-	-	-		-					-	
Construction			500,000	36,792	147,167	268,957	47 093		500,009				-	500,009	
Architecture/Engineering			100 000	7,358	29 433	53,791	9,419		100 002					100,002	
Site Work				-	-	-			-				-	-	
Environmental			-	-		-	-		-				-	-	
Inflation/Contingency			138 804	10 214	40,855	74 665	13,074		138,807				-	138,807	
Financing Costs			11,585	852	3,410	6,232	1,091		11,585				-	11,585	
Subtotal Pedestrian Ways Trails and Sidewalks			750,389	55,216	220,865	403,645	70,677		750,403	-	-		-	750,403	13 96
														750,403	-
Pedestrian Ways - Pedestrian Crossings of BNSF									-				-	-	
Land Acquisition		-			-	-							-		
Construction			6 934,788	510 286	2,041,144	3,730,321	653,166		6,934,917				-	6,934,917	
Architecture/Engineering			1 386 958	102,057	408,229	746 064	130,633		1 386,984				-	1,386,984	
Site Work				-	-		-		-				-	-	
Environmental				-	-	-	-		-					-	
Inflation/Contingency			1 925,153	141,660	566,638	1,035,567	181,324		1 925,189				-	1,925,189	
Financing Costs				-	-	-	-		-				-	-	
Subtotal Pedestrian Ways - Pedestrian Crossings of B			10,246,899	754,003	3,016,011	5,511,952	965,124	-	10,247,090	-	-		-	10,247,090	(190 57)
													-	-	-
Pedestrian Ways - Plaza									-						
Land Acquisition		-	-			-			-				-		
Construction			1,000,000	73 584	294,334	537,914	94 187		1 000,019				-		
Architecture/Engineering			200,000	14,717	58,867	107,583	18,837		200,004				-		
Site Work			-										-		
Environmental				-		-	-		-				-		
Inflation/Contingency			277 608	20,427	81,709	149,329	26,147		277,613				-		
Financing Costs			23 169	1 705	6,820	12 463	2,182		23,170				-		
Subtotal - Pedestrian Ways Plaza			1,500,777	110,432	441,730	807,289	141,354	-	1,500,805	-	-		-	1,500,805	(27 91)
Utilities Water													-		
Land Acquisition				-	-	-							-		
Construction			816,800	60 103	240,432	439,368	76,932		816 815				-		
Architecture/Engineering			163 360	12 021	48 052	87,874	15,386		163,363				-		
Site Work				-	-	-	-						-		
Environmental					-		-		-				-		
Inflation/Contingency			177 742	13 079	52,316	95 610	16,741		177,745				-		
Financing Costs			18,156	1 336	5,344	9 767	1,710		18,157				-		
Subtotal Utilities Water			1,176,058	86,539	346,154	632,618	110,769	-	1,176,080			-	-	1,176,080	(21.87)
Utilities - Wastewater									-				-		
Land Acquisition			-		-	-							-		
Construction			1,892,400	139,249	556,998	1,017 949	178,239		1,892,435				-		
Architecture/Engineering			378 480	27,850	111,400	203 590	35,648		378,487				-		
Site Work			-				-		-				-		
Environmental			-		-				-				-		
Inflation/Contingency			411,801	30,302	121 207	221,514	38,786		411,809				-		
Financing Costs			42,065	3,095	12,381	22,628	3,962		42,066				-		
Subtotal - Utilities Wastewater			2,724,746	200,496	801,986	1,465,680	256,635	-	2,724,797	-	-		-	2,724,797	(50.67)
Utilities LES													-		
Land Acquisition		-			-	-	-						-		
Construction			385,000	28,330	113,319	207 097	36,262		385,007				-		
Architecture/Engineering			77,000	5,666	22,664	41,419	7,252		77,001				-		
Site Work				-		-	-		-				-		

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Development Facility							Land area (sq ft)	total cost				
Arena: Land Acquisition	204,468	817,872	859,312	261,719	########		202,500	2,778,721 69				
Arena: Construction	10,295,290	41,181,159	43,267,735	13,177,971	########			139,913,000.00				
Arena: Architecture/Engineering	1,544,293	6,177,174	6,490,157	1,976,696	########			20,986,950 00				
Arena: Site Work	37,039	148,155	155,662	47,410	359,741			503,358 10				
Arena: Environmental	25,671	102,683	107,886	32,859	249,328			348,866.22				
Arena: Inflation/Contingency	588,348	2,353,392	2,472,633	753,085	########			7,995 650.00				
Arena: Financing Costs	199,064	796,257	836,601	254,802	########			2,705,281 86				
Subtotal Arena					#######	#######		175 231,827.86	172,104 239 96	172 526,546 01		
Garage South of Arena: Land Acquisition							60,000	823,324 94				
Garage South of Arena: Construction								11,900,000 00				
Garage South of Arena: Architecture/Engineering								1,190,000 00				
Garage South of Arena: Site Work								149,143.14				
Garage South of Arena: Environmental								103,367 77				
Garage South of Arena: Inflation/Contingency								2,254,582 00				
Garage South of Arena: Financing Costs								257,478 40				
Subtotal Garages South of Arena					#######	#######		-	(926,692 71)	16,420,417 85		
Garage Arena	401,363 31	1,605,453 23	2,298 666 07	513,745 03								
Garage Arena: Land Acquisition	10,302,414 35	41,209,657 39	43 319,797 03	13 187,090 36			22,500	308,746 85				
Garage Arena: Construction	1,545,718 38	6,182,873 50	6,500,573 64	1,978,519 52				9,411,000 00				
Garage Arena: Architecture/Engineering	72,705 90	290,823.61	416,397 29	93,063.56				941,100 00				
Garage Arena: Site Work	50,390.83	201,563.33	288,595 63	64,500.27				55,928 68				
Garage Arena: Environmental	588,348.01	2,353,392 02	2,472,633 05	753,085.45				38 762 91				
Garage Arena: Inflation/Contingency	203 232.48	812,929 92	867,072 70	260,137 58				965,805 00				
Garage Arena: Financing Costs	-							183,795.12				
Subtotal - Garages Arena					#######	4,262 93		11,721,343 45	11,373,833 68	11,721 343 45		
Lincoln Traction Development Blocks	196,895 21	787,580 83	1 439 353 93	252,025 87							1240300	248060
Lincoln Traction: Land Acquisition	7,124 48	28,497 90	52,081 73	9,119 33			195,000	2,675,806 07				
Lincoln Traction: Construction	1,424.90	5,699 58	10,416 35	1 823 87				96,821 63				
Lincoln Traction: Architecture/Engineering	35,667 05	142,668 19	260,735 17	45,653 82				19,364 33				
Lincoln Traction: Site Work	24,720 03	98,880 12	180,709 70	31,641 64				484,715 21				
Lincoln Traction: Environmental	-	-		-				335 945 25				
Lincoln Traction: Inflation/Contingency	4,168 34	16,673 37	30,471 63	5,335 48								
Lincoln Traction: Financing Costs								56,647 76				
Subtotal - Utilities Communication and Other					#######	-						
Surface Parking Northwest of Tracks: Land Acquisition							740,520	10,161,476 47				
Surface Parking Northwest of Tracks: Construction								3,806,400 00				
Surface Parking Northwest of Tracks: Architecture/Engineering								761,280 00				
Surface Parking Northwest of Tracks: Site Work								1 840,724 64				
Surface Parking Northwest of Tracks: Environmental								1,275,765 00				
Surface Parking Northwest of Tracks: Inflation/Contingency								1,116 679 00				
Surface Parking Northwest of Tracks: Financing Costs								297 336 47				
Subtotal - Surface Parking Northwest of Tracks					#######	(358 19)		19,259,661 58	7,822 420 11	18 961,325 11		
Surface Parking South of Ice Rink: Land Acquisition							157,500	2,161,227 98				
Surface Parking South of Ice Rink: Construction								1,362,200 00				
Surface Parking South of Ice Rink: Architecture/Engineering								272,440 00				
Surface Parking South of Ice Rink: Site Work								391,500 74				
Surface Parking South of Ice Rink: Environmental								271,340 39				
Surface Parking South of Ice Rink: Inflation/Contingency								399,627 00				
Surface Parking South of Ice Rink: Financing Costs								76 180 56				
Subtotal Surface Parking South of Ice Rink					#######	(91 77)		4 858,336 12	2 425 767 74	4 858 336 12		
Surface Parking - Train Station: Land Acquisition							11 000	150,942 91				
Surface Parking - Train Station: Construction								1,000,000 00				
Surface Parking - Train Station: Site Work								27,342.91				
Surface Parking - Train Station: Environmental								18 950 76				
Surface Parking - Train Station: Inflation/Contingency								131,340 00				
Surface Parking - Train Station: Financing Costs								20 832 59				
Subtotal - Surface Parking Train Station					#######	(25 10)		1,328,576 57	1,158,682 91	1,328,576 57		
Trails and Sidewalks: Construction								500,000.00				
Trails and Sidewalks: Architecture/Engineering								100,000.00				
Trails and Sidewalks: Inflation/Contingency								138,804 00				
Trails and Sidewalks: Financing Costs								11,584 73				
Subtotal Pedestrian Ways Trails and Sidewalks					#######	(13 96)		738,804 00	738,804 00	738,804 00		
Crossings of BNSF: Land Acquisition								-				
Crossings of BNSF: Construction								6 934 788 00				
Crossings of BNSF: Architecture/Engineering								1,386 958 00				
Crossings of BNSF: Site Work								-				
Crossings of BNSF: Environmental								-				
Crossings of BNSF: Inflation/Contingency								1,925,153 00				
Subtotal Pedestrian Ways - Pedestrian Crossings of B					#######	(190 57)		10,246,899 00	10 246,899 00	10,246 899 00		
Plaza: Construction								1,000,000 00				
Plaza: Architecture/Engineering								200,000 00				
Plaza: Environmental								-				
Plaza: Inflation/Contingency								277 608 00				
Plaza: Financing Costs								23,169 46				
Subtotal - Pedestrian Ways Plaza					#######	(27 91)		1,477,608 00	1,477,608 00	1,477,608 00		
Utilities Water: Construction								816,800 00				
Utilities Water: Architecture/Engineering								163,360 00				
Utilities Water: Site Work								-				
Utilities Water: Inflation/Contingency								177,742 00				
Utilities Water: Financing Costs								18,156 34				
Subtotal Utilities Water					#######	(21 87)		1,157 902 00	1,157,902 00	1 157,902 00		
Utilities - Wastewater: Construction								1,892,400 00				
Utilities - Wastewater: Architecture/Engineering								378,480 00				
Utilities - Wastewater: Site Work								-				
Utilities - Wastewater: Environmental								-				
Utilities - Wastewater: Inflation/Contingency								411,801 00				
Utilities - Wastewater: Financing Costs								42,065.46				
Subtotal - Utilities Wastewater					#######	(50 67)		2,682,681 00	2,682,681 00	2,682,681 00		
Utilities LES: Land Acquisition								-				
Utilities LES: Construction								385,000 00				
Utilities LES: Architecture/Engineering								77,000 00				
Utilities LES: Site Work								-				

EXHIBIT B

Environmental				-	-	-						-								
Inflation/Contingency		83,779	6,165	24,659	45 066	7,891		83,781				-						83,779 00		
Financing Costs		8 558	630	2 519	4 603	806		8 558				-						8 558 02		
Subtotal Utilities LES		554,337	40,790	163,160	298,186	52,211	-	554,347			-	-	554,347	(10 31)	#######	(10 31)		545,779 00	545,779 00	545,779 00
Greenspace (and stormwater mitigation)																				
Land Acquisition	1 732,380	23,771 861	1 749,217	6 996 868	12,787,220	2 238,998		23 772 303									1,732 380	23,771 861 13		
Construction		860 163	63 294	253 175	462 694	81 016		860,179				-						860,163 38		
Architecture/Engineering		172 033	12 659	50 635	92,539	16 203		172 036										172 032 68		
Site Work		4 306,210	316,866	1,267 464	2,316,371	405,539		4,306,290										4,306 209 90		
Environmental		2 984,538	219 613	878 451	1 605,425	281,104		2,984,593				-						2,984 537 58		
Inflation/Contingency		-	-		-							-								
Financing Costs		503 259	37,032	148,126	270,710	47,400		503,268				-						503,258 74		
Subtotal Utilities Trunk Storm Sewer to Haymarket		32,598,063	2,398,680	9,594,720	17,534,959	3,070,310		32,598,670	-	-			32,598,670	(606 25)	#######	(606 25)		32,094,804 67	5,338,405 95	32,094 804 67
Breslow Ice Center (NU Foundation / Parks and Rec)																				
Land Acquisition	135 000	1 852 481	136 312	545 248	996 476	174 479		1 852,516									135 000	1,852 481 13		
Construction		67 030	4 932	19 729	36,057	6,313		67,032										67,030 36		
Architecture/Engineering		13,406	986	3,946	7,211	1 263		13 406										13,406 07		
Site Work		335,572	24,693	98,770	180 509	31,606		335 578										335 572 07		
Environmental		232,577	17,114	68,455	125 107	21,906		232 582										232,577 46		
Inflation/Contingency				-				-												
Financing Costs		39 218	2,886	11,543	21 096	3,694		39,218										39,217 68		
Subtotal Utilities Communication and Other		2,540,285	186,923	747,692	1,366,455	239,262	-	2 540,332					2,540,332	(47 14)	#######	(47 14)				
Alter Scrap location																				
Land Acquisition	435 600	5,977 339	439,834	1,759 334	3,215,295	562,987		5 977,450									435,600	5,977,339 10		
Construction		216 285	15 915	63,660	116 343	20,371		216,289										216 284 63		
Architecture/Engineering		43 257	3,183	12 732	23,269	4,074		43,258										43,256 93		
Site Work		1,082,779	79,675	318 699	582 442	101 984		1 082 799										1,082,779 20		
Environmental		750 450	55 221	220 883	403 678	70 683		750,464										750,450 00		
Inflation/Contingency								-												
Financing Costs		126 542	9,311	37,246	68,069	11,919		126,545					126 545	(1 35)				126 542 39		
Subtotal - Utilities Communication and Other		8,196,652	603,138	2,412,554	4,409,095	772,017	-	8,196,805							#######	(152 44)				
Utilities Communication and Other																				
Land Acquisition				-				-										-		
Construction		542,400	39 912	159 647	291 765	51,087		542,410										542,400 00		
Architecture/Engineering		108,480	7 982	31 929	58,353	10,217		108,482										108 480 00		
Site Work			-	-	-			-				-								
Environmental					-															
Inflation/Contingency		118,031	8,655	34,741	63,491	11 117		118,033										118,031 00		
Financing Costs		12 057	887	3,549	6 486	1 136		12,057				-						12 056 82		
Subtotal - Utilities - Communication and Other		780 968	57,466	229,865	420,094	73 557	-	780,982				-	780,982	(14 52)	#######	(14 52)		768,911 00	768,911 00	768,911 00
Public use of Tax Increment Finance (TIF)		5 515,693	405 864	1,623 456	2 966 969	519,506		5,515,796										5,515 693 00	5,515 693 00	
Financing Costs		163,109	12,002	48,009	87 739	15 363		163 112												
Total Public use of TIF		5,678,802	417,866	1,671,465	3,054,708	534,869		5,678,908					5 678 908	(105 61)	#######	(105 61)				
Roads - Sun Valley - Charleston and Bridge												-								
Land Acquisition												-								
Construction		3,850,600	283 341	1,133,363	2,071,292	362,676		3,850,672				-						3,850,600 00		
Architecture/Engineering		770 120	56 668	226 673	414,258	72,535		770,134				-						770,120 00		
Site Work						-						-								
Environmental						-		-				-								
Inflation/Contingency		1,129 646	83 123	332,493	607 653	106,398		1,129,667				-						1,129 646 00		
Financing Costs		90 168	6,635	26,539	48 503	8,493		90,170				-						90,167 93		
Subtotal - Roads Sun Valley Charleston and Bridge		5,840,534	429,767	1,719,068	3,141,706	550,102	-	5,840,643	-				5,840 643	(108 61)	#######	(108 61)		5 750 366 00	5 750 366 00	5 750 366 00
Roads Sun Valley ROW												-								
Land Acquisition	-	614 500	45,217	180 868	330 548	57,878		614 511				-						614,500 00		
Construction				-																
Architecture/Engineering		122,900	9 043	36,174	66,110	11,576		122,902										122,900 00		
Site Work			-	-	-	-						-								
Environmental			-	-		-														
Inflation/Contingency		180 275	13 265	53,061	96,972	16,980		180,278				-						180 275 00		
Financing Costs		14 389	1,059	4 235	7,740	1 355		14,390				-						14,389.49		
Subtotal Roads - Sun Valley ROW		932,064	68,585	274 338	501,371	87,788		932,082	-	-	-	-	932,082	(17 33)	#######	(17 33)		917,675 00	303 175 00	917,675 00
Roads Arena Drive								-				-								
Land Acquisition	360 000	4,939 950	363,499	1,453,995	2,657,269	465,279		4,940,042				-					360,000	4,939,949 67		
Construction		4 945 300	363,893	1,455 570	2 660 147	465 782		4,945,392				-						4,945 300 00		
Architecture/Engineering		989,060	72,779	291,114	532,029	93,156		989,078										989,060 00		
Site Work		894,859	65 847	263 387	481 357	84 284		894 875										894,858 84		
Environmental		620,207	45,637	182 548	333,618	58,415		620,218				-						620,206.61		
Inflation/Contingency		1 450,797	106 755	427 019	780,404	136,646		1 450,824				-						1 450 797 00		
Financing Costs		217 019	15 969	63,876	116 738	20,440		217 023				-						217,019 16		
Subtotal - Roads Arena Drive		14,057,191	1,034,377	4,137,510	7,561,562	1,324,003		14,057,453	-		-	-	14,057,453	(261 43)	#######	(261 43)		13,840,172 11	8,280,015 84	13,840 172 12
Roads - P, Q & R Streets												-								
Land Acquisition	135 000	1 852 481	136 312	545,248	996,476	174,479		1 852 516									135 000	1,852,481 13		
Construction		2 298 900	169 161	676,645	1,236,611	216 526		2,298,943				-						2,298,900 00		
Architecture/Engineering		459,780	33 832	135,329	247 322	43 305		459,789				-						459 780 00		
Site Work		335,572	24 693	98 770	180,509	31,606		335 578				-						335,572 07		
Environmental		232,577	17 114	68 455	125,107	21,906		232,582				-						232,577 48		
Inflation/Contingency		674 426	49 627	198,507	362 783	63 522		674 439										674,426 00		
Financing Costs		91 789	6,754	27,017	49 375	8,645		91,791				-						91,786 82		
Subtotal - Roads P, Q & R Streets		5,945,525	437,493	1,749,971	3,198,182	559,991		5,945,636		-	-	-	5 945,636	(110 57)	#######	(110 57)		5,853,736 67	3,768,678 07	5 853,736 67
Roads - M & N Streets												-								
Land Acquisition	45 000	617,494	45 437	181 749	332,159	58,160		617 505				-					45 000	617,493 71		
Construction		1,708,400	125 710	502 840	918,973	160,909		1,708 432				-						1,708,400 00		
Architecture/Engineering		341,680	25,142	100 568	183,795	32,182		341 686				-						341,680 00		
Site Work		111 857	8 231	32 923	60 170	10 535		111 859				-						111 857 36		
Environmental		77,526	5 705	22,818	41,702	7 302		77,527				-						77,525 83		
Inflation/Contingency		501 191	36 879	147,518	269 598	47 206		501,200										501 191 00		
Financing Costs		52,657	3 875	15,499	28,325	4,960		52,658				-						52 657 04		
Subtotal - Roads - M & N Streets		3,410,805	250,979	1,003,916	1,834,720	321,253		3,410,868	-		-	-	3,410,868	(63.43)	#######	(63 43)		3 358 147 89	1,663 128 36	3 358 147 89
Roads Canopy Street & Ice Drop Off								-				-								
Land Acquisition	124 000	1 701 538	125 205	500,821	915 281	160 263		1 701,570				-					124 000	1,701,538 22		
Construction		1 733 700	127,572	510 287	932 582	163 292		1,733 732										1 733,700 00		
Architecture/Engineering		346 740	25,514	102 057	186 516	32 658		346,746										346 740 00		
Site Work		308 229	22,681	90,722	165 801	29 031		308,235										308 229 16		
Environmental		213 627	15 719	62 878	114,913	20 121		213 631				-						213 626 72		
Inflation/Contingency		508 613	37,426	149,702	273,590	47,905		508,622										508,613 00		
Financing Costs		75 461	5,553	22 211	40 592	7,107		75 462										75 461 00		
Subtotal - Roads Canopy Street & Ice Drop Off		4,887,908	359 669	1,438,678	2 629,275	460 377	-	4,887,999		-			4,887,990	(90 90)	#######	(90 90)		4,812,447 10	2,897,282 16	4 812 447 10
Other Costs Dynamic Message Signage												-								
Land Acquisition																				
Construction		3,750 000	275 938	1,103 753	2 017,178	353 201		3 750,070				-						3 750 000 00		
Architecture/Engineering		450 000	33 113	132 450	242 061	42 384		450,008										450 000 00		
Site Work								-												
Environmental		-				-		-												
Inflation/Contingency		624 618	45,962	183 846	335,991	58 831		624,630										624,618 00		
Financing Costs		75 652	5 567	22 267	40 694	7 125		75,653				-						75 651 85		
Subtotal Other Costs Dynamic Message Signage		4 900,270	360,579	1,442,316	2 635,924	461,541		4,900,361	-				4,900,361	(91 13)	#######	(91 13)		4,824,618 00	4 824,618 00	4 824,618 00
										20 000 000										
Total		339 750,026	25,000,000	100,000,000	132,750,026	32,000,000		289,750,026	30,000,000	20,000,000					########	(0.04)	4,356,000	641,057,213 71	320,528,606 85	314,888,096 56
																	43 560			5,515,693 00
														228 146667	########		100			5,160 000 00
															0.04		-			339,749 343.00
																				14 185 553 44
																			5160000	
															########		59,773,391 total acres		(5,160,000 00)	
																	13.722 cost per acre — land			

Allocation of Land • Alter stormwater

Stormwater	########	0 693512	360163 4	172032 7
Construction	195 000	0 078063	96821 63	19364 33
Ice Center	135 000	0 054044	67030 36	13406 07
Alter	435 600	0 174381	216284 6	43256 93
	#######		1240300	########
			0	0

18 186 967 00
4,443,759 60
296 645 679 03

Notes
1 Land area allocation Total land area equals 100 acres Allocation is estimated on a per square foot basis
2 1 acre equals 43,560 sq feet
3 Total cost of all parcels estimated at $60 003 250
4 "Site work" is allocated on a per square foot basis by using the estimated 10,827 792 in pad site development and stormwater floodplain mitigation estimated by TEUP
5 Enviromental costs use the 7 504,500 TEUP estimate allocated ona per square foot basis At more data becomes available it may be possible to

EXHIBIT B

better allocate the actual cost of environmental remediation on a parcel by parcel basis

Bab 2 to complete Arena	54,189,667
Bab 2 to complete Arena Garage	1,399,658
Bab 2 to complete Garage	4,039,154
Bab 2 to compelete all else	73,121,447
Total City of Lincoln GO bond	25,000,000
Total IPB Issued BAB Debt	100,000,000
Total Recover Zone bond	32,000,000
Total tax revenue	30,000 000
Total Areal Contributions	20,000,000
Total	339,750 026
	135,935,163

Proiect value less arena and two garages

7,504 500	Total environmental
4,504,500	North of O Street
3,000,000	South of O Street
1 723	environmental cleanup per sq foot
229,839	

	=VALUE!
Land Acquisition	49 573,517 85
Construction	139 200,051 35
Architecture/Engineering	29,277,260 68
Site Work	3 868 796 85
Environmental	6,245 764 36
	1 357,715 64

EXHIBIT B

Exhibit C

Development Facilities Used in Non-Qualified Use	Physical Space: Square Footage	Physical Space: Cost per Square Foot	Physical Space: Allocation Cost	Time: Total Time Available	Time: Time in Non-Qualified Use	Time: % Private Use	Revenues: Non-Qualified Use Revenues	Non-Qualified Use %	Total Development Facility Cost	Total Non-Qualified Use Facility Cost
Arena										
Concession Area	10,000	389	3,894,282				N/A			
Private Luxury Boxes	24,100	389	9,385,219				N/A			
Naming Rights	N/A	N/A	N/A	N/A	N/A	N/A				
Long-Term Seating Contracts	N/A	N/A	N/A	N/A	N/A	N/A				
Long-Term Advertising	N/A	N/A	N/A	N/A	N/A	N/A				
Arena Total										
Parking Garage -- Arena										
Suite Parking	200	22,049	4,409,757				N/A			
Parking Garage -- Arena Total										
Parking Garages-- South of Arena										
Hotel Parking	200	18,686	3,737,236				N/A			
Parking Garages -- South of Arena Total										

EXHIBIT B

Exhibit D
Substantiation Documents

Item Number	Description	Required for All Tax Advantaged Bonds	Required for Tax Advantaged Bonds Issued After ____ _, 20__
1	Reimbursement Resolution	X – Only if Pre-Issuance Costs are reimbursed	
2	Transcript of proceedings	X	
3	Records of expenditure of Tax Advantaged Bond Proceeds	X – Expenditure records should at least show date of payment, person paid, amount paid and general purpose. Copies of journal entries, invoices and/or requisitions may satisfy this requirement	
4	All rebate calculations and all investment records provided to Rebate Analyst to prepare calculations	X – For any Tax Advantaged Bond issue exempt from rebate, only records of investment are required	
5	Forms 8038-T together with proof of filing and payment of rebate	X	
6	Investment agreement bid documents including: I. Bid solicitation II. Bids III. Certificate of broker IV. Written summary of reasons for deviations from the terms of the solicitation that are incorporated into the investment agreement V. Copies of the investment agreement and any amendments	X	
7	Any item listed in Tax Compliance Agreement (Specify)	X	
8	Final Financing Sources Allocation		X – Also complete for Tax Advantaged Bonds issued prior to above date if Development Facility not Placed in Service
9	Financed Assets List	X	

Item Number	Description	Required for All Tax Advantaged Bonds	Required for Tax Advantaged Bonds Issued After _____ _, 20__
10	Completed Annual Tax Advantaged Bond Review Form and Annual Tax Compliance Questionnaire	X	
11	Opinions of bond counsel or legal counsel regarding tax compliance, together with copy of agreement on which advice was sought, if applicable	X	
12	Amendments, modifications or substitute agreements to any agreement contained in the Transcript of Proceedings	X	
13	Any correspondence with the IRS relating to the Tax Advantaged Bonds	X	

Exhibit E
Annual Tax Compliance Questionnaire

Part I *(Complete Prior to Giving to Reporting Party)*

Development Facility description ("Asset"):	
Aggregate cost of Asset:	
Name of Tax Advantaged Bonds ("Bonds") financing Asset:	
Percentage of Asset financed by Bonds (Financed Asset):	
Issue date of Bonds:	
Placed in service date of Asset:	
End of measurement period:	
Name of person completing checklist:	
Title:	
Email address:	
Telephone number:	
Period covered by request (Annual Period):	

You have been identified as the person who is primarily responsible for the management and day-to-day operation of the Asset identified above. We have determined that all or a portion of the Asset was financed with Tax Advantaged Bonds. Because the Asset was financed with Tax Advantaged Bonds there are a number of rules restricting how the Asset can be used. Generally, these rules limit the use of the Asset by entities other than a State or local government. We need your cooperation to accurately report on the bond issue(s) described above. Please return your completed questionnaire as soon as possible, but in all events no later than , 20 .

If you have any questions please contact at .

Part II *(Completed by Reporting Party)*

Item	Question	Response
1 Ownership	Was the Asset owned by the Agency during the entire Annual Period?	☐ Yes ☐ No
	If No: Was the Asset (or any portion of the Asset) sold or otherwise disposed of solely because it was determined that the property was inadequate, obsolete or worn out?	☐ Yes ☐ No
	If No: What is the legal name of the new owner?	
	Date new owner acquired the Asset:	
	Is the new owner a state or local government or controlled by a state or local government (a "Qualified User")?	☐ Yes ☐ No ☐ Unsure
	Did the new owner agree in writing to comply with the Tax Advantaged Bond Compliance Procedure and the Compliance Plan?	☐ Yes ☐ No ☐ Unsure

2 Leases	During the Annual Period was any part of the Asset leased at any time pursuant to an agreement for *more than 50 days* by another nonaffiliated corporation, association, firm, or other entity? (*Do Not Include Qualified Use Agreements – See Item 3.*)	☐ Yes ☐ No
	If Yes: What is the legal name of the Tenant?	
	Is the Tenant a Qualified User?	☐ Yes ☐ No ☐ Unsure
	Attach a copy of the lease if not previously provided in a prior report.	
	List approximate percentage of Asset leased by Tenant (e.g., 30% of the square feet in the building).	

3 Qualified Use Agreements	Is any part of the Asset leased or reserved for use by individuals or businesses pursuant to a "rate scale" use agreement (e.g., quarterly parking permits in a garage)?	☐ Yes ☐ No
	If Yes: Attach the form(s) of the agreement(s) and the current applicable published rates that apply.	

4 Management or Service Agreements	During the Annual Period has the management of all or any part of the operations of the Asset been assumed by or transferred to another entity?	☐ Yes ☐ No
	If Yes: Attach a copy of the agreement(s).	

5 Other	Was any other agreement entered into with an individual or entity (other than a Qualified User) that grants special legal rights to the Asset?	☐ Yes ☐ No
	If Yes: Attach a copy of the agreement(s).	

Signature, Name and Title of Person Completing Questionnaire:

_____

Printed Name:
Title:
Date Completed:

Exhibit F
Annual Tax Advantaged Bond Review Form

1. Bond Issue Name

2. Intent Resolution Date (include Resolution of Intent in Substantiation Documents)

3. Bond Issue Date

4. All Financed Assets used in manner provided in Compliance Plan? ☐ Yes ☐ No
(If no, describe steps taken determine change in use does not create tax issue. Attach opinion of Bond Counsel, if applicable.)

5. Date of last scheduled rebate calculation/payment or date opinion received from Bond Counsel or Rebate Analyst that no further calculations are required.

6. Verify no events have occurred requiring Bond Counsel review/opinion or reference any opinion received, if "Yes".

A) Transfer of ownership of any Financed Asset to any person prior to the end of the Financed Asset's useful life. ☐ Yes ☐ No
B) Leases of any Financed Asset to another State or local government (a "Qualified User") with a term in excess of one year. ☐ Yes ☐ No
C) Leases or use agreements with any person or entity other than a Qualified User (including the United States or its agencies) for a term greater than 50 days (including options to renew). ☐ Yes ☐ No

WH 14-10 Introduce: 3-12-14

RESOLUTION NO. WH- _____

WHEREAS, the West Haymarket Joint Public Agency has previously adopted Rules of Governance, West Haymarket Joint Public Agency, and amendments to Article III thereto, filed of record with the City Clerk for the City of Lincoln, Nebraska and placed on file in the Office of the City Clerk as Document Nos. WH 00005 and WH 00578, respectively; and

WHEREAS, an amendment to Article I of the Rules of Governance is necessary to revise provisions pertaining to the construction, equipping, furnishing and financing of the Arena and other public facilities; and

WHEREAS, a new Exhibit A to replace the Exhibit A attached to the Rules of Governance is necessary to incorporate a new map showing the expanded boundary of the West Haymarket Redevelopment Area previously approved by the JPA and to designate Facilities including the Breslow Ice Center and the Amtrak Depot Station as Projects.

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

1. That Article I of the Rules of Governance West Haymarket Joint Public Agency and Exhibit A attached thereto be and the same is hereby amended as shown on Attachment "A" which is attached hereto and incorporated herein by reference.

2. That Exhibit A attached hereto as Attachment B be substituted for and replace Exhibit A attached to the Rules of Governance.

Adopted this _____ day of March, 2014.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

ATTACHMENT "A"

RULES OF GOVERNANCE
WEST HAYMARKET ARENA
JOINT PUBLIC AGENCY

ARTICLE I

NAME, AUTHORITY, AND OBJECT

1. Name: The name of the Joint Public Agency is the West Haymarket Joint Public Agency (hereinafter referred to as the **"JPA"**). The JPA has the authority or jurisdiction provided by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq*. (Reissue 2007) (the **"Act"**) within an area known as the West Haymarket Redevelopment Area, (hereinafter referred to as the "Area"),and generally indicated on the map attached hereto as Exhibit A, and incorporated by reference.

2. Authority: The JPA has been created and established by and between the Board of Regents of the University of Nebraska (the **"University"**) and the City of Lincoln, Nebraska (the **"City"**) (together, the **"Public Agencies"**), pursuant to, the Act by entering into the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency as amended by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency (collectively the **"Agreement"**), and a certificate of creation of the JPA has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

3. Purposes:

A. For purposes of these Rules the terms **Project**, or **Projects** refer to the Facilities or Projects shown on Exhibit A, as the same may be amended from time to time, and the terms **Facility** or **Facilities** refer to the individual parts or components of those Projects.

B. The purposes of the JPA are as follows:

i. To make the most efficient use of the taxing authority and other powers of the Public Agencies and arrange, coordinate and facilitate their cooperation with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of both Public Agencies;

ii. To exercise any power, privilege or authority to facilitate (a) constructing, equipping, furnishing and financing a sports/entertainment arena (the **"Arena"**) and other public facilities in the West Haymarket Redevelopment Area of the City (collectively, the **"Facilities"**), and (b) (1) acquiring land and relocating existing businesses, and (2) undertaking environmental remediation and site preparation as necessary and appropriate for the construction,

equipping, furnishing and financing of the Facilities (collectively, as itemized on **Exhibit A** hereto, as the same may be amended from time to time, the **"Projects,"** and, individually, a **"Project"**) the capital improvements and other projects pertaining to the redevelopment of the Area as shall be determined by the JPA to be necessary, desirable, advisable or in the best interests of the Public Agencies in the manner and as provided for by the Act;

iii. To issue bonds to finance the Facilities, and levy a tax as provided by the Act and the Agreement to pay the principal or redemption price of and interest on such bonds, when and as the same shall become due, to own the Arena, Amtrak Station and Parking Garages for so long as any JPA Bonds (hereinafter defined) are outstanding, to enter into a facilities agreement with the City regarding the operation, management and ownership of the Arena, Amtrak Station and Parking Garages for so long as any JPA Bonds are outstanding and to convey the Arena, Amtrak Station and Parking Garages to the City at such time as no JPA Bonds are outstanding;

Provided, however, the JPA shall not issue any bonds or other form of indebtedness without the question of whether the JPA should issue such bonds or indebtedness being first presented to, and approved by, the Mayor and Council of the City; and

iv. To sell, lease or otherwise dispose of excess land not needed for the Facilities to the Public Agencies or private entities for redevelopment of the West Haymarket Redevelopment Area and, in particular, a proposed mixed use redevelopment project consisting of a hotel and residential, office and retail space consistent with the Nebraska Community Development Law and respecting the fiduciary and bond obligations of the JPA.

ATTACHMENT "A"

RULES OF GOVERNANCE
WEST HAYMARKET ARENA
JOINT PUBLIC AGENCY

ARTICLE I

NAME, AUTHORITY, AND OBJECT

1. Name: The name of the Joint Public Agency is the West Haymarket Joint Public Agency (hereinafter referred to as the **"JPA"**). The JPA has the authority or jurisdiction provided by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 *et seq*. (Reissue 2007) (the **"Act"**); within an area known as the West Haymarket Redevelopment Area, (hereinafter referred to as the **"Area"**"Area"),-and generally indicated on the map attached hereto as Exhibit 1A, and incorporated by reference.

2. Authority: The JPA has been created and established by and between Tthe Board of Regents of the University of Nebraska (the **"University"**) and Tthe City of Lincoln, Nebraska (the **"City"**) (together, the **"Public Agencies"**), pursuant to, the Act by entering into the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency (the **"JPA Agreement"**as amended by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency (collectively the **"Agreement"**), and a certificate of creation of the JPA has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

3. Charge: The JPA will function as a coordinating entity to finance and provide for the contracted design and construction of the Arena as well as necessary land acquisitions/remediation and supporting infrastructure and facilities for the larger scope of the West Haymarket Facilities as further delineated below. The JPA has a fiduciary duty to track and account for costs and revenues at the Arena at the same time allowing for the broader West Haymarket Facilities to benefit from pour-over revenue allocations when available. The other West Haymarket Facilities may also derive the benefits of being included under the general financing authority or jurisdiction of the JPA but are intended to be stand alone and separate from the debt service and revenue allocations related to the Arena. The JPA shall:

a. Construct, equip, furnish and finance public facilities in the West Haymarket area of the City including but not limited to a sports/entertainment arena (the **"Arena"**), ice rink, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (the **"West Haymarket Facilities"**), acquire land and relocate existing businesses, undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (together, the **"Project"**);

b. MakePurposes:

A. For purposes of these Rules the terms **Project**, or **Projects** refer to the Facilities or Projects shown on Exhibit A, as the same may be amended from time to time, and the terms **Facility** or **Facilities** refer to the individual parts or components of those Projects.

B. The purposes of the JPA are as follows:

i. To make the most efficient use of the taxing authority and other powers of the Public Agencies and arrange, coordinate and facilitate their cooperation with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of both Public Agencies;

e ii. ETo exercise any power, privilege or authority to facilitate (a) constructing, equipping, furnishing and financing a sports/entertainment arena (the **"Arena"**) and other public facilities in the West Haymarket Redevelopment Area of the City (collectively, the **"Facilities"**), and (b) (1) acquiring land and relocating existing businesses, and (2) undertaking environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on **Exhibit A** hereto, as the same may be amended from time to time, the **"Projects,"** and, individually, a **"Project"**) the capital improvements and other projects pertaining to the redevelopment of the Area as shall be determined by the JPA to be necessary, desirable, advisable or in the best interests of the Public Agencies in the manner and as provided for by the Act;

d iii. ITo issue bonds to finance the West Haymarket Facilities, and levy a tax as provided by the Act and the Agreement to pay the principal or redemption price of and interest on such bonds, when and as the same shall become due, to own the Arena, Ice RinkAmtrak Station and pParking gGarages for so long as any JPA Bonds (hereinafter defined) are outstanding, to enter into ana facilities agreement with the City to operate the Arena, ice rinkregarding the operation, management and ownership of the Arena, Amtrak Station and Parking Garages for so long as any JPA Bonds are outstanding and to convey those facilitiesArena, Amtrak Station and Parking Garages to the appropriate partiesCity at such time as no JPA Bonds are outstanding; p

Provided, however, the JPA shall not issue any bonds or other form of indebtedness without the question of whether the JPA should issue such bonds or indebtedness being first presented to, and approved by, the Mayor and Council of the City; and

e iv. STo sell, lease or otherwise dispose of excess land not needed for the West Haymarket Facilities to the Public Agencies or private entities for redevelopment of the West Haymarket Redevelopment Area and, in particular, a proposed mixed use redevelopment project consisting of a hotel and residential, office and retail space consistent with the Nebraska Community Development Law and respecting the fiduciary and bond obligations of the JPA.

ATTACHMENT "B"

EXHIBIT A

MAP OF SITE
See Attachment 1

PROJECTS

West Haymarket Facilities (consisting of the following Projects)

(1) a sports/entertainment arena (the "**Arena**")

(2) roads, streets and sidewalks

(3) a pedestrian overpass

(4) public plaza space

(5) sanitary sewer mains

(6) water mains

(7) electric transmission lines

(8) drainage systems

(9) flood control

(10) parking garages

(11) surface parking lots

(12) Breslow Ice Center*

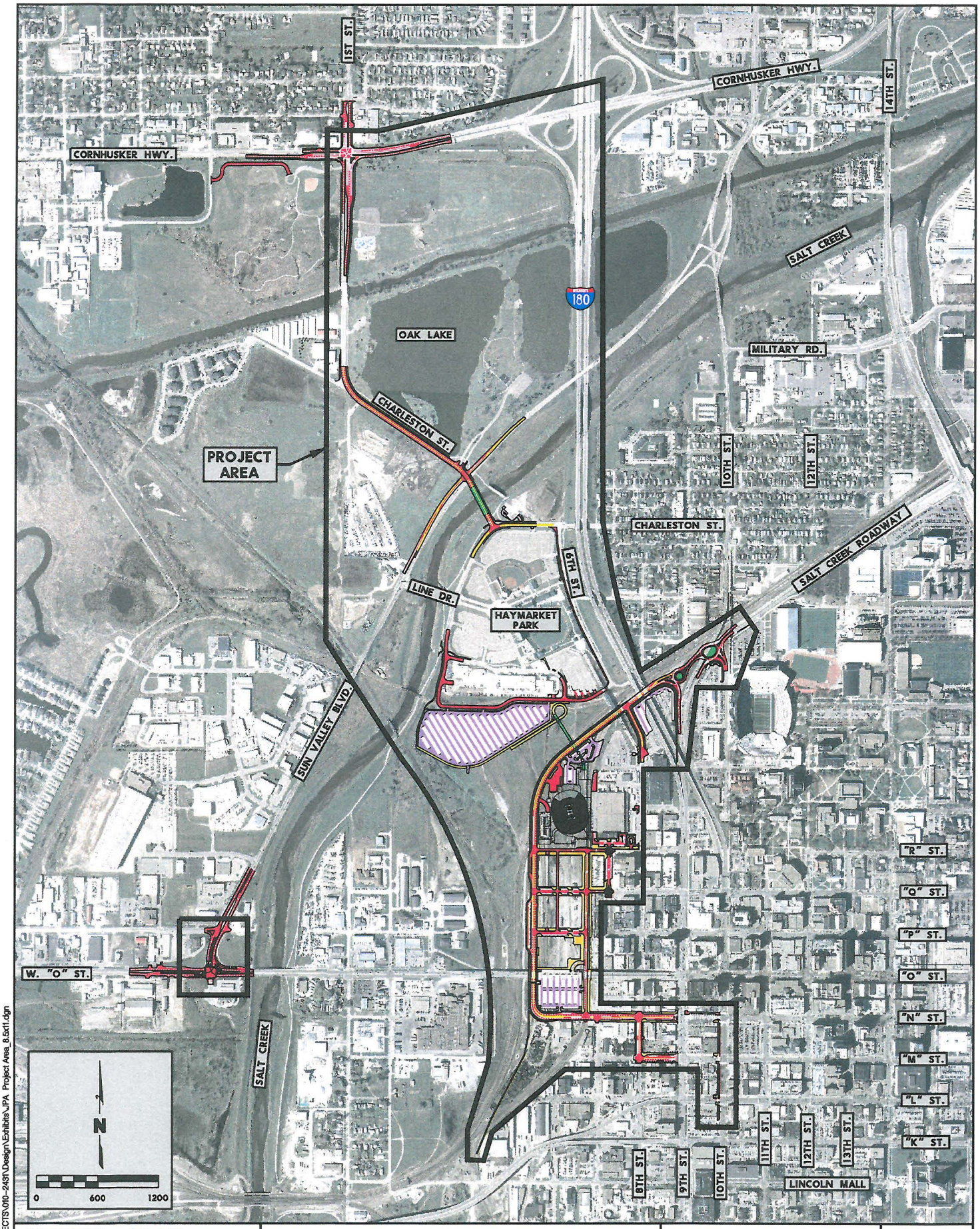
(13) Amtrak Depot Station

Related Projects (consisting of the following Projects)

(1) acquisition of land and relocation of existing businesses

(2) environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities

* The Breslow Ice Center Project is limited to the JPA participating in the University's cost of constructing the Breslow Ice Center as a public facility within the West Haymarket Redevelopment Area by paying a portion of the costs of such facility as determined by the JPA Board of Representatives to be owned by the University and expected to be operated, maintained and managed by the University in accordance with an Operating Agreement between the University and the City.



PROJECT NO: 010-2431	WEST HAYMARKET JPA PROJECT AREA	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JJW			
DATE: 11/8/2010			

DATE: 11/8/2010
DGN: F:\PROJECTS\010-2431\Design\Exhibits\JPA Project Area_8.5x11.dgn

Attachment 1 to Exhibit A

WH 14-11 Introduce: 3-12-14

RESOLUTION NO. WH- _____

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

That the attached Change Order No. 21 revising the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson as part of the overall contract closeout to reduce the contract sum by $270,871.00 and to establish $160,611,207.00 as the new contract sum, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Change Order No. 21 on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return one fully executed copy of Change Order No. 21 and a copy of this Resolution to Rick Peo, Chief Assistant City Attorney, for transmittal to M.A. Mortenson Company.

Adopted this _____ day of _____, 2014.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

February 13, 2014

MAYOR BEUTLER OR JOINT PUBLIC AGENCY

CHANGE ORDER
No. 021
(MAM #37)

440 NORTH 8TH STREET
SUITE 110
LINCOLN NE 68001

Title: Change Order 21 (MAM #037)
Project: WHJPA-Lincoln West Haymarket Arena
To: **M. A. Mortenson Company**
National Projects Group Operations
440 NORTH 8th STREET
SUITE 110
Lincoln NE 68508

Date: 13-FEB-14
Project No: 10150002
Contract No:
Phone:

DESCRIPTION OF CHANGE
This change order includes all costs associated with the specified design changes below.

COLLECTED CHANGES

PCO	Issue	Description	Amount
385.0	90089	Final Contingency Reconciliation	(270,871.00)

Total of collected changes $ (270,871.00)

The original Contract Sum was	$	156,270,167.00
Net change by previously authorized Change Orders	$	4,611,911.00
The Contract Sum prior to this Change Order was	$	160,882,078.00
The Contract Sum will be modified in the amount of	$	(270,871.00)
The new Contract Sum including this Change Order will be	$	160,611,207.00

MAYOR BEUTLER OR JOINT PUBLIC AGENCY

CHANGE ORDER
No. 021
(MAM #37)

440 NORTH 8TH STREET
SUITE 110
LINCOLN NE 68001

Title:	Change Order 21 (MAM #037)	**Date:**	13-FEB-14
Project:	WHJPA-Lincoln West Haymarket Arena	**Project No:**	10150002
To:	**M. A. Mortenson Company**	**Contract No:**	

PCO	Issue	Description	Amount

ACCEPTED:
M A Mortenson Company

BY (Signature)

ZACK PETERSON
(Printed Name)

2/13/2014
DATE

ACCEPTED:
MAYOR BEUTLER OR JOINT PUBLIC AGENCY

BY (Signature)

(Printed Name)

DATE

ACCEPTED:
PC Sports, Inc.

Paula Portz
BY (Signature)

Paula Portz
(Printed Name)

2/17/14
DATE

ACCEPTED:
DLR Group, Inc.

BY (Signature)

James Jaros
(Printed Name)

2-13-14
DATE

WH 14-12 Introduce: 3-12-14

RESOLUTION NO. WH- _____

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

That the attached Contract Agreement between the City of Lincoln and Land Construction, Inc. for demolition of the former Alter buildings and structures located south of N Street, upon the terms and conditions as set forth in said Contract Agreement, is hereby approved and the Chair is authorized to execute the same and any associated amendments or renewals on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a fully executed copy of this Resolution to Rick Peo, City Law Department, for transmittal to Land Construction, Inc.

Adopted this _____ day of March, 2014.

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

_____
Doug Emery

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
BID NO. 14-039

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

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into this _____ day of _____, 2014, by and between **LAND CONSTRUCTION, INC.,** a Nebraska corporation, 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:

Demolition of Former Alter Structure South of N Street (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 sum of $97,600.00. Copies of the Bid Opportunity Detail, Notice to Bidders, Instructions to Bidders, Addendums 1, 2 and 3, Special Provisions and Attachments A, B and C and the Supplier Response (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 Heavy Construction General Wage Decision Number NE130050 dated 1/03/2014 ("NE50 Wage Decision") for the Work.

WHEREAS, the applicable NE50 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 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 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.

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 August 2013) 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 August 2013) included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

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. Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved August 2013).
   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. 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 other Bid Documents and/or Bid Attachments listed in the Bid Opportunity Detail not attached as part of Exhibit A or listed in the above list of other Non-Attached Contract Documents

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: **LAND CONSTRUCTION, INC.,**
a Nebraska corporation

By: _____
President

JPA: **WEST HAYMARKET JOINT PUBLIC AGENCY**

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

EXHIBIT A

Bid Documents

Return to Listing • Return to Login • Supplier Registration

Bid Opportunity Detail

Bid Number 14-039 Addendum 3 (Demolition of Former Alter Structure South of N Street)
Close Date & Time 2/12/2014 12:00:00 PM Central
Bid Duration 14 days 1 hour 26 minutes 8 seconds

Bid Information

Bid Type	Bid
Issue Date & Time	1/29/2014 10:33:51 AM Central
Close Date & Time	2/12/2014 12:00:00 PM Central
Bid Status	Unsealed
Bid Notes	There will be a prebid at the site, Old Alter Scrap Metal Office, 525 "N" St., Lincoln, NE on Thursday February 6 at 1:00 p.m.

Contact Information

No Contact Information

Bid Documents

Document	Format	Description
Bid Document	Acrobat (PDF)	PDF Invitation to Bid
Bid Tabulation by Supplier Spreadsheet	Excel 2007 (XLS)	Bid Tabulation by Supplier Spreadsheet
Bid Tabulation by Line Item Spreadsheet	Excel 2007 (XLS)	Bid Tabulation by Line Item Spreadsheet

Bid Attachments

Location	File Name	Description
Header	14-039 adv.pdf (10KB)	Notice to Bidders
Header	Instructions to Bidders, JPA - B 09-19-11.pdf (26KB)	Instructions to Bidders
Header	14-039 spec.pdf (22KB)	Special Provisions
Header	14-039 att A.pdf (641KB)	Attachment A - Site Map
Header	14-039 att B.pdf (6.49MB)	Attachment B - ACM Survey Reports
Header	14-039 att C.pdf (733KB)	Attachment C - Property Location Description
Header	14-039ad1.pdf (6KB)	Addendum No. 1
Header	14-039 ftp.pdf (1KB)	Sample Contract (per Addendum No. 1)
Header	14-039ad2.pdf (6KB)	Addendum No. 2
Header	14-039ad3.pdf (55KB)	Addendum No. 3

Event Activities

Activity Date	Title	Description
2/6/2014 1:00:00 PM CT	Prebid Meeting	Prebid Meeting - On Thursday, February 6, 2014 at 1:00 p.m., at 525 "N" St., Lincoln, NE. Former Alter Scrap Metal Office. All interested vendors are stronly encouraged to attend.

EXHIBIT A TO CONTRACT AGREEMENT

Advertise 1 times
Wednesday, January 29, 2014

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, February 12, 2014** for providing the following:

Demolition of Former Alter Structure South of "N" St.
West Haymarket Project 870902
Bid No. 14-039

A Pre-bid meeting will be held Tuesday, February 4, 2014 at 1:00 p.m., at 525 "N" St., Lincoln, NE (Old Alter Scrap Metal Office). All interested Vendors are strongly encouraged to attend.

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

Questions concerning this bid process may be directed to City/County Purchasing at (402) 441-7417 or (402) 441-7416 or *purchasing@lincoln.ne.gov*

EXHIBIT A TO CONTRACT AGREEMENT

INSTRUCTIONS TO BIDDERS
WEST HAYMARKET JOINT PUBLIC AGENCY

E-Bid

1. BIDDING PROCEDURE

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

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

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

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

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

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

1.7 If bidding on a construction contract, the City's Standard Specifications for Municipal Construction 2011 shall apply.

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

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

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

2. BID SECURITY

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

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

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

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

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

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

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

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

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

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

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

2.5.3 All bids have been rejected.

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

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

3. BIDDER'S REPRESENTATION

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

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

4. CLARIFICATION OF BIDDING DOCUMENTS

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

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

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

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

5. ADDENDA

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

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

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

6. INDEPENDENT PRICE DETERMINATION

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

7. ANTI-LOBBYING PROVISION

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

8. BRAND NAMES

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

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

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

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

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

9. DEMONSTRATIONS/SAMPLES

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

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

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

10. DELIVERY (Non-Construction)

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

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

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

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

11. WARRANTIES, GUARANTEES AND MAINTENANCE

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

11.1.1 Manufacturer's warranties and/or guarantees.

11.1.2 Bidder's maintenance policies and associated costs.

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

12. ACCEPTANCE OF MATERIAL

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

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

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

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

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

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

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

13. BID EVALUATION AND AWARD

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

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

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

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

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

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

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

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

14. INDEMNIFICATION

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

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

15. TERMS OF PAYMENT

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

16. LAWS

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

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

17. EQUIPMENT TAX ASSESSMENT

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

18. AFFIRMATIVE ACTION

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

19. LIVING WAGE

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

20. INSURANCE

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

21. EXECUTION OF AGREEMENT

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

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

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

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

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

22. TAXES AND TAX EXEMPTION CERTIFICATE

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

23. AUDIT ADVISORY BOARD

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

24. E-VERIFY

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

Addendum #1
for
Demolition of Former Alter Structure South of "N" St.
West Haymarket Project 870902
Bid No. 14-039

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. A sample contract has been added in the attachment section.

All other terms and conditions shall remain unchanged.

Dated this 31st day of January, 2014.

Vince Mejer
Purchasing Agent

Addendum #2
for
Demolition of Former Alter Structure South of "N" St.
West Haymarket Project 870902
Bid No. 14-039

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:

Change the completion date to April 11, 2014.

Change the pre-bid to Thursday, February 6, 2014 at 1 p.m. at the site.

All other terms and conditions shall remain unchanged.

Dated this 31st day of January, 2014.

Vince Mejer

Addendum #3
Demolition of Former Alter Structure South of "N" Street
West Haymarket Project 870902
Bid No. 14-039

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. Revise Section 1.7 of the Special Provisions to read as follows:

   1.7 Contractor will be responsible for protecting existing sidewalks, curbs, and existing utilities that are not specified for removal.

   1.7.1 Included in the scope of this project is the relocation of a certain quantity of drains, lights, wood planking, and other miscellaneous items identified during the pre-bid walk that are currently stored in the large metal shed.

   1.7.2 Contractor will be held responsible for any damage or lost items during this process.

   1.7.3 The storage unit is located at Strong Box Storage, 2701 W O Street, Lincoln, NE 68528.

   1.7.4 The storage unit's dimensions are 40' deep by 10' wide. If necessary, additional storage units can be procured to store the materials if it is determined that one unit will not be sufficient. Additional storage unit sizes may vary, but will be no wider than 10'. Reasonable efforts should be made by the contractor to place and store items in a safe and efficient manner inside the storage unit(s). If additional storage units are required, the contractor is to notify the Owner as soon as reasonably possible to allow for procurement.

   1.7.5 Moving of the items to the storage facility may be done either by the contractor's own forces, or by a moving company hired by the contractor.

2. Previously the completion date for the project was identified as April 11, 2014, in Addendum 2. This Addendum 3 changes the project completion date to April 25, 2014. All other dates remain unchanged.

3. Utility location drawings will be forthcoming in a future addendum. However, it is anticipated that the utilities that will need to be disconnected and/or abandoned include water and sanitary sewer services to the office building, and power to both the office building and the large metal shed.

4. Revise Section 17.3 of the Special Provisions to read as follows:

   17.3 All holes and footings are to be leveled to match adjacent grade and provide for site drainage.

   17.3.1 There should be enough soil existing on site to fulfill this requirement. It is anticipated that the contractor will be able to use the large amounts of soil under the concrete slabs of the buildings to be torn out to fill in holes and footings.

   17.3.2 If additional soil is needed, it is anticipated that the contractor will be able to utilize the stockpile of soil on the north end of the site. This soil is only to be used if other existing soils underneath slabs, etc, prove to be insufficient to fill all holes as required.

   17.3.3 Please also provide a CY price for additional import, placement, and compaction of soil to fill these areas in the event that off-site soils are required. Please include this CY price in the supplier notes section of the bid.

5. Alternate 1 – Please provide an alternate price for providing all work and services described in the Special Provisions, excluding the moving of the previously identified items to the storage facility on West O Street. If this alternate were accepted, the Owner would procure separate services from another firm to move the specified materials in lieu of having them moved as part of this project's scope.

6. Areas given of concrete slabs to be removed are approximations only. Significant differences in approximate and actual quantities may result in appropriate additions/subtractions to the contract sum, depending on the difference.

All other terms and conditions shall remain unchanged.

Dated this 6th day of February, 2014.

Vince Mejer
Assistant Purchasing Agent

Special Provisions
For
Demolition of Former Alter Structure South of "N" St.
West Haymarket Project 870902
Purchasing Division
City of Lincoln, Nebraska

1. SCOPE OF WORK

1.1 Demolish buildings and structures South of "N" Street and between 7th and 5th streets in Lincoln, Nebraska (Old Alter Scrap Yard buildings) as indicated in this Special Provision.

1.1.1 See site map and additional information in Bid "Attachment A: Alter Scrap Yard Structure Demolition Map" in the Attachments section of ebid.

1.1.2 Due to its close proximity to railroad tracks contractor must keep all operations at least 25' from West Property line or 50' from center line of the nearest rail track.

1.1.2.1 If work needs to be completed in an area shorter than these distances the Project Manager must approve the work prior to it commencing.

1.2 Legal description of property: Please see Attachment "C" - Property Location Description.

1.3 Total clearing of Buildings, including abandonment of all existing utilities that are not presently abandoned, including but not limited to gas, water, sewer, electric, telephone and Cablevision.

1.3.1 All soil excavated during these operations must be placed back in the holes they came from.

1.3.1.1 Water and Sanitary service lines are to be abandoned at the main in accordance with the City of Lincoln and the utility provider's requirements prior to the start of demolition.

1.4 Buildings and parking areas, including pavement, as indicated in Attachment "A" will be demolished and removed, foundations and footings will be removed including any concrete steps, poles supplying power to the buildings, and parking lot lights.

1.4.1 Care needs to be taken to limit soil being disturbed and taken offsite during these operations.

1.5 Debris will be kept in a wet condition to prevent visible emissions to the air.

1.5.1 A fire main is located near the property.

1.5.2 Contractor will be responsible for all water and meter costs.

1.6 Remove concrete and asphalt driveways/parking surfaces, and slabs and dispose of debris at an appropriate landfill or disposal site.

1.6.1 Care needs to be taken to limit soil being taken offsite during these operations.

1.7 Contractor will be responsible for protecting existing sidewalks, curbs and existing utilities that are not specified for removal.

1.7.1 Part of this scope shall include the relocation of some PVC storm sewer piping, drains, lights, wood planking, and some other miscellaneous items that are now stored in the buildings to be demoed to a storage facility located in the City of Lincoln within 10 miles.

1.7.2 Contractor will be held responsible for any damage or lost items during this process.

1.7.3 Location of storage facility is TBD, but within 10 miles of this location.

1.8 Contractor is responsible for the removal of all wires running to and on said

property(s), cap or plug all sewer and gas lines, etc. serving the property(s) to the satisfaction of the agency involved and as directed by the Project Manager.

1.9 Contractor will follow all items that pertain to traffic control as outlined in City of Lincoln, Department of Public Works and Utilities "Guidelines for Street Construction, Maintenance and Utility Operations".

1.9.1 This information is available from Public Works Department, Traffic Engineering Operations.

1.9.2 Sidewalk closure, if required, is the Contractors responsibility, including signs indicating "Sidewalk Closed".

1.9.3 Contractor is responsible for getting approval for street lane closure, if needed, to exit demolition site or provide flagman to warn traffic of trucks entering "N" Street.

1.9.4 Payment for Traffic Control shall be subsidiary to the bid item "General Site Demolition."

1.10 The site is currently partially fenced, but as needed, a 4' orange safety fence, or other barricade as approved by the Project Manager, shall be erected along "N" street to prevent demolition debris from entering the street and keeping pedestrians out of the demolition site.

1.10.1 Payment for the fence shall be subsidiary to the bid item "General Site Demolition."

1.10.2 After removal of the fence, or approved barricade, any holes on the remaining pavement shall be filled properly.

1.11 Contractor will be required to coordinate with all utilities, local businesses, and other construction projects in the area during demolition operations.

1.12 Contractor shall immediately stop work if hazardous material that was not included in the asbestos inspection reports is encountered and contact the Project Manager.

1.12.1 A number of Phase I and Phase II Environmental Site Assessments (ESAs) have been completed on the property.

1.12.1.1 A listing of those investigations and copies of reports can be obtained from the City of Lincoln's Environmental Compliance Administrator at 402-441-7588.

1.12.2 While additional soil and groundwater investigation will be completed in February and March of 2014, the following summary information is provided as a general precautionary measure:

1.12.2.1 "Low to moderate levels of Polychlorinated Biphynels (PCBs), lead, cadmium, arsenic and polynuclear aromatic hydrocarbons (PAHs) have been detected in soil samples from areas near the project site.

1.12.2.2 Structural components to be removed from the project site are not suspected to contain regulated levels of these constituents and can be managed as normal non-hazardous debris for purposes of recycling or disposal.

1.12.2.3 Removal of structural components (including foundations) should be conducted in a manner which ensures only de-minimus amounts of soil are disturbed.

1.12.2.4 Any soil temporarily displaced for purposes of removal of foundations, utilities, etc. must be placed directly in the excavation where removed.

1.12.2.5 All site work will be overseen by the City/JPA's Qualified Environmental Consultant (QEC) to ensure adherence to this procedure.

1.12.2.6 The QEC will be able to answer questions/concerns related to handling of soils or other suspect debris.

1.13 Contractor shall immediately stop work if underground tanks are encountered.

1.13.1 It is not expected that other underground tanks will be encountered.

1.14 Final grading of the site and infill of the footings shall be done to provide natural water runoff and a smooth surface to drain off site.

1.14.1 Include silt fence etc. as required to prevent sediment run off.

1.14.2 This work should be minor in nature as all existing soil is to remain on site and the goal is to limit disturbance of soils as much as possible.

1.14.3 All compaction requirements shall follow the City of Lincoln's Standard Specification Section 20.03D.

1.14.4 Finished slopes shall not exceed 3:1.

1.15 Bidder shall submit bid documents and all supporting material via e-bid.

1.16 All inquiries regarding these specifications shall be directed via e-mail or faxed request to Vince Mejer, Purchasing Agent (vmejer@lincoln.ne.gov) Or Fax: (402) 441-6513.

1.16.1 These inquiries and/or responses shall be distributed to all prospective bidders electronically as addenda.

1.16.2 The City of Lincoln/Lancaster County shall only reply to written inquiries received within five (5) calendar days of bid opening.

2. PROJECT MANAGER

2.1 The Project Manager shall be PC Sports.

3. SITE VISITATION AND PRE-BID CONFERENCE

3.1 Bidders shall review and undertake full responsibility of the conditions under which the work is to be performed.

3.2 A Pre-bid Meeting will be held at the demolition site on **Tuesday, February 4th, 2014** at 1:00 p.m., 525 "N" Street, Lincoln, NE 68508 (Old Alter Scrap Metal Office).

3.2.1 Part of this meeting will be to go over the items located onsite that will need to be relocated as part of this project's scope.

3.3 All interested bidders are strongly encouraged to attend.

4. ESCALATOR CLAUSE

4.1 An escalator clause or any qualification of price conditions which makes it possible to bill at a price higher than price quoted will disqualify the bid, unless such maximum billing price or percentage of increase is definitely shown on the Proposal, in which case such higher price will be used for comparison of bids.

5. HEALTH AND SAFETY REGULATIONS

5.1 The Contractor and his subcontractors shall in all respects comply with the terms and provisions of Sections 48-425 through 48-435, Nebraska Reissue Revised statutes of 1943, generally pertaining but not limited to scaffolding and flooring, and shall perform fully on behalf of the City such requirements as said sections may impose upon the City.

5.1.1 The Contractor and his subcontractors shall likewise comply and perform with respect to any and all other applicable health and safety regulations.

5.1.2 A site specific safety plan and job hazard analysis for demo work will be provided by the contractor to be reviewed and approved by the Project Manager prior to commencement of work.

6. LINCOLN MUNICIPAL CODE AND RELATED REGULATIONS, FEES, AND PERMITS INCLUDING, BUT NOT LIMITED TO:

6.1 Demolition shall be performed in accordance with the following provisions of the Lincoln Municipal Code (LMC) and related regulations.

6.1.1 LMC Chapter 20.10, Lincoln Building Code, pertaining to excavations and fills, protection of pedestrians during demolition, and demolition of buildings.

6.1.2 LMC Chapter 14.29, pertaining to use of public streets for construction purposes.

6.1.3 LMC Section 17.10.120, pertaining to abandonment of utilities.

6.1.4 LMC Chapter 8.02, pertaining to public health and safety.

6.1.5 LMC Chapter 8.32, pertaining to disposal of demolition debris.

6.2 Contractors shall secure and pay for all permits, licenses and certificates of inspections that may be required by the City of Lincoln and any other authorities having jurisdiction as needed.

7. NOTICE TO PROCEED AND COMPLETION DATE

7.1 The Contractor shall not begin demolition until receiving written "Notice to Proceed" from the Project Manager this date is preliminarily scheduled to be Friday March 14th, 2014.

7.2 Work shall begin as soon after the "Notice to Proceed" as is necessary for the contractor to complete the work prior to **March 16, 2014**.

7.2.1 Once work is started by the Contractor it shall continue without interruption until completed.

8. PRE-DEMOLITION CONFERENCES AND PROGRESS SCHEDULE

8.1 Prior to starting any work, the Contractor shall meet with the Project Manager, or Project Manager's designee, for clarification of procedures and work to be accomplished.

8.2 The Contractor, immediately after being awarded the contract, shall prepare and submit for the Project Manager's approval an estimated progress schedule for the work.

8.3 The progress schedule shall be related to the entire project to the extent required by the Contract Documents.

8.4 This schedule shall indicate the dates for the starting and completion of the various states of demolition and shall be revised as required by the conditions of the work, subject to the Project Manager's approval.

9. INSPECTIONS

9.1 Inspections in general will be conducted by Project Manager or Project Manager's designee.

9.2 The Contractor shall be responsible for contacting City Building, Safety Department, State Environmental, and Environmental testing agency, for inspections required by City Codes for this type of public improvement and these Special Provisions.

9.3 The West Haymarket JPA's Environmental team will also be on site monitoring the operations to ensure proper disposal of materials and to limit the potential of any environmentally questionable material from leaving the site.

10. ACCESS AND PARKING

10.1 The Contractor shall park all equipment on the demolition site during demolition, not

on City right-of-way or City streets.

11. TEMPORARY UTILITIES

11.1 The Contractor shall be responsible for securing and setting up temporary utilities required for job completion.

12. CLEAN UP

12.1 The Contractor shall be responsible for keeping the premises free of waste materials or rubbish resulting from operations or the operations of subcontractors.

12.2 The Contractor shall remove equipment, scaffolding, waste, and surplus materials from the premises when the need for keeping them on the job no longer exists.

12.3 The Contractor shall make every effort to recycle any and all material being demolished when it is economical to do so.

12.4 All salvageable materials shall become the property of the Contractor upon completion of the project.

12.5 The Contractor shall make every effort to limit any material from blowing or exiting the project site without proper disposal.

13. DELAYS

13.1 With written permission of the Project Manager, the completion date may be extended if unsuitable weather or force majeure should halt progress during the demolition period.

14. LIQUIDATED DAMAGES

14.1 If the Contractor fails to complete the Contract prior to the completion date, considering approved extension of time, liquidated damages will be charged for each calendar day that the work remains incomplete.

14.2 The amount of liquidated damages will be deducted from the money due the Contractor prior to final payment or in the case where the remaining amount due the Contractor is less than the total amount of liquidated damages, the West Haymarket JPA shall have the right to recover the difference from the Contractor or his Surety.

14.3 Unless specifically amended or modified by the special provisions, the schedule below shall establish the daily amount of the liquidated damages:

BID AMOUNT:	UP TO AND	LIQUIDATED DAMAGES
	MORE THAN INCLUDING	PER CALENDAR DAY
$0	$100,000	$250
$100,000	$500,000	$500
$500,000	$1,000,000	$750
$1,000,000	AND UP	$1000

14.4 The amounts set forth in the above schedule are not to be considered punitive, but rather predetermined and reasonable amounts to compensate for the detriment to the public and to defray expenses incurred by the WHJPA due to the delay in the completion of the project.

15. ASBESTOS

15.1 Asbestos has been discovered on the site.

15.2 Asbestos removal and disposal will be completed prior to the commencement of this project.

15.2.1 The Project Manager will provide written certification of this as requested.

15.3 The ACM reports conducted by Benesch for these buildings are listed as "Attachment B" for reference.

16. GUARANTEE

16.1 As a minimum requirement of the City, the Contractor shall guarantee all materials and workmanship for a period of one (1) year following completion of the project.

17. PAYMENT TERMS

17.1 Payment for demolition of buildings shall be paid on a lump sum basis.

17.1.1 Such lump sum price includes all required demolition.

17.2 Contractor shall present a statement of values for the following which is included in the lump sum:

17.2.1 General site demolition

17.2.2 Payment for utility taps

17.2.3 All work necessary to complete the item, including any pavement or sidewalk replacement and/or relocation of power.

17.2.4 Payment for sediment and erosion control. Such paymentrice shall include full payment for all work necessary to complete the item, including silt fence, gutter buddies, cover crop seeding or any other sediment or erosion control item necessary to complete the task.

17.2.5 Full compensation to complete the required work and shall include all labor, materials, equipment, and tools necessary.

17.3 All holes and footings are to be leveled to match adjacent grade.

17.3.1There should be enough soil on the site to fulfill this requirement

17.3.2 please provide a cy price to import deliver and place soil to fill these areas.

17.3.2.1 Place this pricing in the supplier notes.

18. ERRORS AND OMISSIONS

18.1 If any errors or omissions are found in the drawings or specifications or other documents during demolition, the Contractor shall notify the Project Manager of such error or omission, and request clarification before proceeding with the work.

Attachment "A" - Alter South Structure Demolition Plan 1-8-2014

EXHIBIT A TO CONTRACT AGREEMENT

benesch
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Alfred Benesch & Company
825 J Street
Lincoln, NE 68508
www.benesch.com
P 402-479-2200
F 402-479-2276

Attachment "B" Alter Building ACM Survey Reports

August 3, 2012

Adam Hoebelheinrich
PC Sports
311 North 8th St., Suite 102
Lincoln, NE 68508

REFERENCE: Alter Metal, Buildings 1,2,3

Dear Mr. Hoebelheinrich:

Please find enclosed the results of the Asbestos survey preformed the above referenced buildings (see attached photo). The survey was performed on July 31, 2012 by Ron J. Prochaska of Alfred Benesch & Company (Benesch). Buildings 2 and 3 are scheduled for demolition. Building 1 will be used for storage and demolished at a later date. During the survey of the buildings the following suspect asbestos containing materials (ACM) were discovered:

Building No. 1:

1. Insulation sprayed on the inside of the exterior walls
2. Drywall with taping compounds in small office in SW corner of building
3. Textured ceiling surface in small office in SW corner of the building

Building No. 2:

1. Insulation sprayed on walls and ceiling
2. Drywall with taping compounds
3. White floor tile and mastic
4. Textured ceilings

No suspect ACM were found in building No. 3.

Bulk samples of each of these materials were collected. The samples were submitted to SanAir Technologies Laboratory for analysis for asbestos. Please find attached, a Tally Sheet and the laboratory reports pertaining to these materials.

According to the Nebraska Asbestos Control Program and EPA NESHAPS regulations, an ACM is a material found to contain more than 1% asbestos. None of the suspect ACM were found to contain more than 1% asbestos. **Please note that sample No. AM-B2-TC-11G (textured ceiling surface) was found to contain 2% asbestos in the initial PCM analysis. The sample was then submitted for a point count analysis. The result of the point count analysis was 0.25%. The point count analysis takes precedence over the initial analysis. Thus this material in not ACM.**

All three buildings have metal siding and roofs. No thermal system insulation was found in the buildings.

If you have any questions regarding this report please call me at 402-479-2296 or cell 402-580-6409.

Sincerely,
ALFRED BENESCH & COMPANY

Ron J. Prochaska
Senior Environmental Technician / Asbestos Inspector, Nebraska Certificate 850

EXHIBIT A TO CONTRACT AGREEMENT

benesch
engineers · scientists · planners

ASBESTOS BULK MATERIAL TALLY SHEET AND RESULTS

PROJECT NUMBER: 00110058.00.00006

PROJECT: West Haymarket

INSPECTOR(S): Ron J.Prochaska

PROPERTY: Alter Metal, Building No. 1

INSP.	SAMPLE NUMBER	DATE	MATERIAL DESCRIPTION	SAMPLE LOCATION DESCRIPTION	LAB RESULTS	QUANTITY
R.J.P.	AM-B1-IN-01A	7/31/12	sprayed on wall insulation	east exterior wall	ND	NA
R.J.P.	AM-B1-IN-02A	7/31/12	sprayed on wall insulation	south exterior wall	ND	NA
R.J.P.	AM-B1-IN-03A	7/31/12	sprayed on wall insulation	west exterior wall	ND	NA
R.J.P.	AM-B1-DW-04B	7/31/12	drywall with taping compounds	small office in SW corner of building	ND	NA
R.J.P.	AM-B1-TC-05C	7/31/12	textured ceiling surface	small office in SW corner of building	ND	NA

ND= No Asbestos Detected

NA= Not Asbestos

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory

Analysis Report

prepared for

Alfred Benesch & Co.

Report Date: 8/1/2012
Project Name: Alter/Building No. 1
Project #: 00110058.00.0006
SanAir ID#: 12015055

NVLAP LAB CODE 200870-0

AIHA LAP, LLC ACCREDITED LABORATORY ENVIRONMENTAL MICROBIOLOGY

Virginia SBE Certification # 652931

Texas Licensed Mold Analysis Laboratory License # LAB0166

SanAir Technologies Laboratory

804.897.1177 www.sanair.com

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

Alfred Benesch & Co.
825 J Street
Lincoln, NE 68508

August 1, 2012

SanAir ID # 12015055
Project Name: Alter/Building No. 1
Project Number: 00110058.00.0006

Dear Ron Prochaska,

We at SanAir would like to thank you for the work you recently submitted. The 5 sample(s) were received on Wednesday, August 01, 2012 via FedEx. The final report(s) is enclosed for the following sample(s): AM-B1-IN-01A, AM-B1-IN-02A, AM-B1-IN-03A, AM-B1-DW-04B, AM-B1-TC-05C.

These results only pertain to this job and should not be used in the interpretation of any other job. This report is only complete in its entirety. Refer to the listing below of the pages included in a complete final report.

Sincerely,

Sandra Sobrino

Sandra Sobrino
Asbestos & Materials Laboratory Manager
SanAir Technologies Laboratory

Final Report Includes:
- Cover Letter
- Analysis Pages
- Disclaimers and Additional Information

sample conditions:
5 sample(s) in Good condition

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12015055
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: Alter/Building No. 1

Collected Date: 7/31/2012
Received Date: 8/1/2012 9:40:00 AM
Report Date: 8/1/2012 3:19:31 PM
Analyst: Vaughan, Nathaniel

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B1-IN-01A / 12015055-001 Insulation Sprayed On Exterior Walls/East Wall	Brown Fibrous Heterogeneous	85% Cellulose	15% Other	None Detected
AM-B1-IN-02A / 12015055-002 Insulation Sprayed On Exterior Walls/South Wall	Brown Fibrous Heterogeneous	85% Cellulose	15% Other	None Detected
AM-B1-IN-03A / 12015055-003 Insulation Sprayed On Exterior Walls/West Wall	Brown Fibrous Heterogeneous	85% Cellulose	15% Other	None Detected
AM-B1-DW-04B / 12015055-004 Drywall With Taping Compounds / Office In SW Corner	White Non-Fibrous Heterogeneous	10% Cellulose	90% Other	None Detected
AM-B1-TC-05C / 12015055-005 Textured Ceiling Surface/Office In SW Corner	White Non-Fibrous Heterogeneous		100% Other	None Detected

Certification

Signature: Nathan Vaughn
Date: 8/1/2012

Reviewed: Sandra Sabino
Date: 8/1/2012

EXHIBIT A TO CONTRACT AGREEMENT

Disclaimer

The final report cannot be reproduced, except in full, without written authorization from SanAir. Fibers smaller than 5 microns cannot be seen with this method due to scope limitations. The accuracy of the results is dependent upon the client's sampling procedure and information provided to the laboratory by the client. SanAir assumes no responsibility for the sampling procedure and will provide evaluation reports based solely on the sample and information provided by the client. This report may not be used by the client to claim product endorsement by NVLAP, AIHA or any other agency of the U.S. government; *and may not be certified by every local, state and federal regulatory agencies.*

EXHIBIT A TO CONTRACT AGREEMENT

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1551 Oakbridge Drive Suite B
Powhatan, VA 23139
804-897-1177 / 888-895-1177
Fax 804-897-0070
www.sanair.com

Asbestos Chain of Custody

SanAir ID Number: 1201505S

Company: Alfred Benesch & Co.		Project #: 00110058.00.0006	Collected by:
Address: 825 J Street		Project Name: Alter / Building No. 1	Phone #: 402-479-2296
City, St., Zip: Lincoln, NE 68508		Date Collected: July 31, 2012	Fax #: 402-479-2276
State of Collection: NE	Account#: 2077	P.O. Number:	Email: rprochaska@benesch.com

Bulk

ABB	PLM EPA 600/R-93/116	☑
	Positive Stop ☐	
ABEPA	PLM EPA 400 Point Count	☐
ABB1K	PLM EPA 1000 Point Count	☐
ABBEN	PLM EPA NOB	☐
ABBCH	TEM Chatfield	☐
ABBTM	TEM EPA NOB	☐

Water

ABHE	EPA 100.2	☐

Air

ABA	PCM NIOSH 7400	☐
ABA-2	OSHA w/ TWA*	☐
ABTEM	TEM AHERA	☐
ABATN	TEM NIOSH 7402	☐
ABT2	TEM Level II	☐

New York ELAP

PLM NY	PLM EPA 600/M4-82-020	☐
ABEPA2	NY ELAP 198.1	☐
ABENY	NY ELAP 198 6 PLM NOB	☐
ABBNY	NY ELAP 198.4 TEM NOB	☐

Soil/Vermiculite

ABSE	PLM EPA 600/R-93/116 (Qual.)	☐
ABSP	PLM CARB 435 (LOD <1%)	☐
ABSP1	PLM CARB 435 (LOD 0.25%)	☐
ABSP2	PLM CARB 435 (LOD 0.1%)	☐

Dust

ABWA	TEM Wipe ASTM D-6480	☐
ABDMV	TEM Microvac ASTM D-5755	☐

Other

Matrix		
		☐

Turn Around Times				
	3 HR (4 HR TEM) ☐	6 HR (8HR TEM) ☐	12 HR ☐	24 HR ■
	2 Days ☐	3 Days ☐	4 Days ☐	5 Days ☐

Special Instructions Please do composite analysis on sample DW-04B.

Sample #	Sample Identification/Location	Volume or Area	Sample Type	Flow Rate*	Time* Start	Stop
AM-B1-IN-01A	insulation sprayed on exterior walls / east wall					
AM-B1-IN-02A	insulation sprayed on exterior walls / south wall					
AM-B1-IN-03A	insulation sprayed on exterior walls / west wall					
AM-B1-DW-04B	drywall with taping compounds / office in SW corner					
AM-B1-TC-05C	textured ceiling surface / office in SW corner					

Relinquished by	Date	Time	Received by	Date	Time
[illegible]	7-31-12	1600 HRS	[illegible]	AUG 01 2012	[illegible]

Unless scheduled, the turn around time for all samples received after 3 pm EST Friday will begin at 8 am Monday morning. Weekend or Holiday work must be scheduled ahead of time and is charged for rush turn around time. Work with standard turn around time sent Priority Overnight and Billed to Recipient will be charged a $10 shipping fee.

EXHIBIT A TO CONTRACT AGREEMENT

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ASBESTOS BULK MATERIAL TALLY SHEET AND RESULTS

PROJECT NUMBER: 00110058.00.00006 **PROJECT: West Haymarket**

INSPECTOR(S): Ron J.Prochaska **PROPERTY: Alter Metal, Building No. 2**

INSP.	SAMPLE NUMBER	DATE	MATERIAL DESCRIPTION	SAMPLE LOCATION DESCRIPTION	LAB RESULTS	QUANTITY
R.J.P.	AM-B2-IN-01A	7/31/12	sprayed on wall and ceiling insulation	south exterior wall / west bay	ND	NA
R.J.P.	AM-B2-IN-02A	7/31/12	sprayed on wall and ceiling insulation	west exterior wall / west bay	ND	NA
R.J.P.	AM-B2-IN-03A	7/31/12	sprayed on wall and ceiling insulation	east exterior wall / west bay	ND	NA
R.J.P.	AM-B2-DW-04B	7/31/12	drywall with taping compounds	east bay / west wall	ND	NA
R.J.P.	AM-B2-DW-05B	7/31/12	drywall with taping compounds	east bay / SE corner	ND	NA
R.J.P.	AM-B2-DW-06B	7/31/12	drywall with taping compounds	east bay / SW corner	ND	NA
R.J.P.	AM-B2-DW-07C	7/31/12	drywall with taping compounds	SE office / west bay	ND	NA
R.J.P.	AM-B2-DW-08D	7/31/12	drywall with taping compounds	NE office / west bay	ND	NA
R.J.P.	AM-B2-FT-09E	7/31/12	white 12x12 floor tile and mastic	SE office / west bay	ND	NA
R.J.P.	AM-B2-TC-10F	7/31/12	textured ceiling surface	NE office / west bay	ND	NA
R.J.P.	AM-B2-TC-11G	7/37/12	textured ceiling surface	SE office / west bay	0.25%	NA

ND= No Asbestos Detected

NA= Not Asbestos

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory

Analysis Report

prepared for

Alfred Benesch & Co.

Report Date: 8/2/2012
Project Name: Alter / Building No. 2
Project #: 00110058.00.0006
SanAir ID#: 12015056

NVLAP LAB CODE 200870-0

AIHA LAP, LLC ACCREDITED LABORATORY ENVIRONMENTAL MICROBIOLOGY ISO/IEC 17025:2005 www.aihaaccreditedlabs.org LAB # 62052

Virginia SBE Certification # 652931

Texas Licensed Mold Analysis Laboratory License # LAB0166

SanAir Technologies Laboratory

804.897.1177 www.sanair.com

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Web: http://www.sanair.com E-mail: iaq@sanair.com

Alfred Benesch & Co.
825 J Street
Lincoln, NE 68508

August 2, 2012

SanAir ID # 12015056
Project Name: Alter / Building No. 2
Project Number: 00110058.00.0006

Dear Ron Prochaska,

We at SanAir would like to thank you for the work you recently submitted. The 11 sample(s) were received on Wednesday, August 01, 2012 via FedEx. The final report(s) is enclosed for the following sample(s): AM-B2-IN-01A, AM-B2-IN-02A, AM-B2-IN-03A, AM-B2-DW-04B, AM-B2-DW-05B, AM-B2-DW-06B, AM-B2-DW-07C, AM-B2-DW-08D, AM-B2-FT-09E, AM-B2-TC-10F, AM-B2-TC-11G.

These results only pertain to this job and should not be used in the interpretation of any other job. This report is only complete in its entirety. Refer to the listing below of the pages included in a complete final report.

Sincerely,

Sandra Sobrino

Sandra Sobrino
Asbestos & Materials Laboratory Manager
SanAir Technologies Laboratory

Final Report Includes:
- Cover Letter
- Analysis Pages
- Disclaimers and Additional Information

sample conditions:
11 sample(s) in Good condition

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12015056
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: Alter / Building No. 2

Collected Date: 7/31/2012
Received Date: 8/1/2012 9:40:00 AM
Report Date: 8/2/2012 8:39:08 AM
Analyst: Pisula, Nicholas

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B2-IN-01A / 12015056-001 Insulation Sprayed On Exterior Walls Of West Bay/South Wall	Brown Fibrous Homogeneous	95% Cellulose	5% Other	None Detected
AM-B2-IN-02A / 12015056-002 Insulation Sprayed On Exterior Walls Of West Bay/West Wall	Brown Fibrous Homogeneous	95% Cellulose	5% Other	None Detected
AM-B2-IN-03A / 12015056-003 Insulation Sprayed On Exterior Walls Of West Bay/East Wall	Brown Fibrous Homogeneous	95% Cellulose	5% Other	None Detected
AM-B2-DW-04B / 12015056-004 Drywall With Taping Compounds / East Bay, West Wall	White Non-Fibrous Heterogeneous	5% Cellulose	95% Other	None Detected
AM-B2-DW-05B / 12015056-005 Drywall With Taping Compounds / East Bay, SE Corner	White Non-Fibrous Heterogeneous	5% Cellulose	95% Other	None Detected
AM-B2-DW-06B / 12015056-006 Drywall With Taping Compounds / East Bay, SW Corner	White Non-Fibrous Heterogeneous	5% Cellulose	95% Other	None Detected
AM-B2-DW-07C / 12015056-007 Drywall With Taping Compounds / SE Office In West Bay	White Non-Fibrous Heterogeneous	5% Cellulose	95% Other	None Detected

Certification

Signature: Date: 8/1/2012

Reviewed: Date: 8/2/2012

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Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12015056
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: Alter / Building No. 2

Collected Date: 7/31/2012
Received Date: 8/1/2012 9:40:00 AM
Report Date: 8/2/2012 8:39:08 AM
Analyst: Pisula, Nicholas

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B2-DW-08D / 12015056-008 Drywall With Taping Compounds / NE Office In West Bay	White Non-Fibrous Heterogeneous	5% Cellulose	95% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B2-FT-09E / 12015056-009 Floor Tile And Mastic / SE Office In West Bay, Floor Tile	White Non-Fibrous Homogeneous		100% Other	None Detected
AM-B2-FT-09E / 12015056-009 Floor Tile And Mastic / SE Office In West Bay, Mastic	Tan Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B2-TC-10F / 12015056-010 Textured Ceiling Surface/NE Office In West Bay	White Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B2-TC-11G / 12015056-011 Textured Ceiling Surface/SE Office In West Bay	White Non-Fibrous Homogeneous		98% Other	2% Chrysotile

Certification

Signature: Date: 8/1/2012

Reviewed: Date: 8/2/2012

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1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

Alfred Benesch & Co.
825 J Street
Lincoln, NE 68508

August 3, 2012

SanAir ID # 12015119
Project Name: Alter / Building No. 2
Project Number: 00110058.00.0006

Dear Ron Prochaska,

We at SanAir would like to thank you for the work you recently submitted. The 1 sample(s) were received on Thursday, August 02, 2012 via Fax or Email request. The final report(s) is enclosed for the following sample(s): AM-B2-TC-11G.

These results only pertain to this job and should not be used in the interpretation of any other job. This report is only complete in its entirety. Refer to the listing below of the pages included in a complete final report.

Sincerely,

Sandra Sobrino

Sandra Sobrino
Asbestos & Materials Laboratory Manager
SanAir Technologies Laboratory

Final Report Includes:
- Cover Letter
- Analysis Pages
- Disclaimers and Additional Information

sample conditions:
1 sample(s) in Good condition

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12015119
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: Alter / Building No. 2

Collected Date: 7/31/2012
Received Date: 8/2/2012 10:50:00 AM
Report Date: 8/3/2012 10:42:18 AM
Analyst: Pisula, Nicholas

Asbestos Bulk EPA PLM 400 Point Count

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AM-B2-TC-11G / 12015119-001 Textured Ceiling Surface / SE Office In West Bay	White Non-Fibrous Homogeneous		99.75% Other	0.25% Chrysotile

Certification

Signature: [signature]
Date: 8/3/2012

Reviewed: Sandra Sobrino
Date: 8/3/2012

EXHIBIT A TO CONTRACT AGREEMENT

Disclaimer

The final report cannot be reproduced, except in full, without written authorization from SanAir. Fibers smaller than 5 microns cannot be seen with this method due to scope limitations. The accuracy of the results is dependent upon the client's sampling procedure and information provided to the laboratory by the client. SanAir assumes no responsibility for the sampling procedure and will provide evaluation reports based solely on the sample and information provided by the client. This report may not be used by the client to claim product endorsement by NVLAP, AIHA or any other agency of the U.S. government; *and may not be certified by every local, state and federal regulatory agencies.*

SanAir Technologies Laboratory
1551 Oakbridge Drive Suite B
Powhatan, VA 23139
804-897-1177 / 888-895-1177
Fax 804-897-0070
www.sanair.com

Asbestos Chain of Custody

SanAir ID Number: 12015056

Company: Alfred Benesch & Co.		Project #: 00110058.00.0006	Collected by:
Address: 825 J Street		Project Name: Alter / Building No. 2	Phone #: 402-479-2296
City, St., Zip: Lincoln, NE 68508		Date Collected: July 31, 2012	Fax #: 402-479-2276
State of Collection: NE	Account#: 2077	P.O. Number:	Email: rprochaska@benesch.com

Bulk

ABB	PLM EPA 600/R-93/116	☑
	Positive Stop	☐
ABEPA	PLM EPA 400 Point Count	☐
ABB1K	PLM EPA 1000 Point Count	☐
ABBEN	PLM EPA NOB	☐
ABBCH	TEM Chatfield	☐
ABBTM	TEM EPA NOB	☐

Water

ABHE	EPA 100.2	☐

Air

ABA	PCM NIOSH 7400	☐
ABA-2	OSHA w/ TWA*	☐
ABTEM	TEM AHERA	☐
ABATN	TEM NIOSH 7402	☐
ABT2	TEM Level II	☐

New York ELAP

PLM NY	PLM EPA 600/M4-82-020	☐
ABEPA2	NY ELAP 198.1	☐
ABENY	NY ELAP 198.6 PLM NOB	☐
ABBNY	NY ELAP 198.4 TEM NOB	☐

Soil/Vermiculite

ABSE	PLM EPA 600/R-93/116 (Qual.)	☐
ABSP	PLM CARB 435 (LOD <1%)	☐
ABSP1	PLM CARB 435 (LOD 0.25%)	☐
ABSP2	PLM CARB 435 (LOD 0.1%)	☐

Dust

ABWA	TEM Wipe ASTM D-6480	☐
ABDMV	TEM Microvac ASTM D-5755	☐

Other

Matrix		
		☐

Turn Around Times				
	3 HR (4 HR TEM) ☐	6 HR (8HR TEM) ☐	12 HR ☐	24 HR ■
	2 Days ☐	3 Days ☐	4 Days ☐	5 Days ☐

Special Instructions Please do composite analysis on all "drywall with taping compounds samples "

Sample #	Sample Identification/Location	Volume or Area	Sample Type	Flow Rate*	Time* Start	Time* Stop
AM-B2-IN-01A	insulation sprayed on exterior walls of west bay / south wall					
AM-B2-IN-02A	insulation sprayed on exterior walls of west bay / west wall					
AM-B2-IN-03A	insulation sprayed on exterior walls of west bay / east wall					
AM-B2-DW-04B	drywall with taping compounds / east bay, west wall					
AM-B2-DW-05B	drywall with taping compounds / east bay, SE corner					
AM-B2-DW-06B	drywall with taping compounds / east bay, SW corner					
AM-B2-DW-07C	drywall with taping compounds / SE office in west bay					
AM-B2-DW-08D	drywall with taping compounds / NE office in west bay					
AM-B2-FT-09E	white floor tile and mastic / SE office in west bay					
AM-B2-TC-10F	textured ceiling surface / NE office in west bay					
AM-B2-TC-11G	textured ceiling surface / SE office in west bay					

Relinquished by	Date	Time	Received by	Date	Time
[illegible]	7-31-12	1600 HRS	[illegible]	AUG 01 2012	9:40A

Unless scheduled, the turn around time for all samples received after 3 pm EST Friday will begin at 8 am Monday morning. Weekend or Holiday work must be scheduled ahead of time and is charged for rush turn around time. Work with standard turn around time sent Priority Overnight and Billed to Recipient will be charged a $10 shipping fee.

EXHIBIT A TO CONTRACT AGREEMENT

Rebekah L. Parker

From:	Amber Powers
Sent:	Thursday, August 02, 2012 10:50 AM
To:	Rebekah L. Parker
Cc:	IAQ Forward
Subject:	FW: Analysis Report for Job 12015056 is complete
Follow Up Flag:	Follow up
Flag Status:	Completed

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Thank you for your continued business, SanAir

The information in this message may contain confidential information intended for use by the addressee only. If this information was received in error, please reply to the [illegible] and delete it.

EXHIBIT A TO CONTRACT AGREEMENT

benesch
engineers · scientists · planners

Alfred Benesch & Company
825 J Street
Lincoln, NE 68508
www.benesch.com
P 402-479-2200
F 402-479-2276

November 6, 2012

Adam Hoebelheinrich
PC Sports
311 North 8th St., Suite 102
Lincoln, NE 68508

REFERENCE: Alter Metal, Building No. 7

Dear Mr. Hoebelheinrich:

Please find enclosed the results of the asbestos survey preformed on the above referenced building (see attached photo). The survey was performed on October 31, 2012 by Ron J. Prochaska of Alfred Benesch & Company (Benesch). The Building is scheduled for demolition as part of the West Haymarket Redevelopment Plan. During the survey of the building the following suspect asbestos containing materials (ACM) were discovered:

1. Mudded pipe fitting insulation on roof drains
2. Drywall with taping compounds
2. Built-up roofing tars and felts
4. Roof flashing tars and felts

Bulk samples of each of these materials were collected. The samples were submitted to SanAir Technologies Laboratory for analysis for asbestos. Please find attached, a Tally Sheet and the laboratory reports pertaining to these materials.

According to the Nebraska Asbestos Control Program and EPA NESHAPS regulations, an ACM is a material found to contain more than 1% asbestos. The following suspect material was found to contain more than 1% asbestos and is considered ACM.

1. Mudded pipe fitting insulation on roof drains, 8 mudded fittings as wells as debris from mudded fitting on the roof of the room in the northwest part of the building.

According to the Nebraska Asbestos Control regulations, these materials will have to be removed prior to the demolition of the building.

If you have any questions regarding this report please call me at 402-479-2296 or cell 402-580-6409.

Sincerely,
ALFRED BENESCH & COMPANY

Ron J. Prochaska
Senior Environmental Technician / Asbestos Inspector, Nebraska Certificate 850

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory

Analysis Report

prepared for

Alfred Benesch & Co.

Report Date: 11/2/2012
Project Name: West Haymarket/Alter Building No. 7
Project #: 00110058.00.0006
SanAir ID#: 12021893

NVLAP LAB CODE 200870-0

AIHA LAP, LLC ACCREDITED LABORATORY ENVIRONMENTAL MICROBIOLOGY

Virginia SBE Certification # 652931

Texas Licensed Mold Analysis Laboratory License # LAB0166

SanAir Technologies Laboratory

804.897.1177 www.sanair.com

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

Alfred Benesch & Co.
825 J Street
Lincoln, NE 68508

November 2, 2012

SanAir ID # 12021893
Project Name: West Haymarket/Alter Building No. 7
Project Number: 00110058.00.0006

Dear Ron Prochaska,

We at SanAir would like to thank you for the work you recently submitted. The 9 sample(s) were received on Thursday, November 01, 2012 via FedEx. The final report(s) is enclosed for the following sample(s): AL-B7-MF-01A, AL-B7-DW-02B, AL-B7-RF-03C, AL-B7-RF-04C, AL-B7-RF-05C, AL-B7-FL-05D, AL-B7-FL-07D, AL-B7-FL-08D, AL-B7-FL-09E.

These results only pertain to this job and should not be used in the interpretation of any other job. This report is only complete in its entirety. Refer to the listing below of the pages included in a complete final report.

Sincerely,

Sandra Sobrino

Sandra Sobrino
Asbestos & Materials Laboratory Manager
SanAir Technologies Laboratory

Final Report Includes:
- Cover Letter
- Analysis Pages
- Disclaimers and Additional Information

sample conditions:
9 sample(s) in Good condition

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.

1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12021893
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: West Haymarket/Alter Building No. 7

Collected Date: 10/31/2012
Received Date: 11/1/2012 9:30:00 AM
Report Date: 11/2/2012 4:14:08 PM
Analyst: Tallert, Jonathan G.

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-MF-01A / 12021893-001 Mudded Pipe Fitting Insulation/Roof Drains	Grey Non-Fibrous Homogeneous		90% Other	10% Chrysotile

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-DW-02B / 12021893-002 Drywall With Taping Compounds/North Room Ceiling, Drywall	White Non-Fibrous Homogeneous	10% Cellulose	90% Other	None Detected
AL-B7-DW-02B / 12021893-002 Drywall With Taping Compounds/North Room Ceiling, Joint Compound	White Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-RF-03C / 12021893-003 Built-Up Roofing/Northeast Roof Area	Black Non-Fibrous Heterogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-RF-04C / 12021893-004 Built-Up Roofing/Center Roof Area	Black Non-Fibrous Heterogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-RF-05C / 12021893-005 Built-Up Roofing/Southwest Roof Area	Black Non-Fibrous Heterogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-FL-05D / 12021893-006 Roof Flashing/North Roof Edge	Black Non-Fibrous Heterogeneous		100% Other	< 1% Chrysotile

Certification

Signature: [signature]
Date: 11/2/2012

Reviewed: Sandra Sobrino
Date: 11/2/2012

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
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Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12021893
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: West Haymarket/Alter Building No. 7

Collected Date: 10/31/2012
Received Date: 11/1/2012 9:30:00 AM
Report Date: 11/2/2012 4:14:08 PM
Analyst: Tallert, Jonathan G.

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-FL-07D / 12021893-007 Roof Flashing/West Roof Edge	Black Non-Fibrous Heterogeneous		100% Other	< 1% Chrysotile

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-FL-08D / 12021893-008 Roof Flashing/East Roof Edge	Black Non-Fibrous Heterogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B7-FL-09E / 12021893-009 Roof Flashing/Center Sky-Light	Black Non-Fibrous Heterogeneous		100% Other	None Detected

Certification

Signature: [signature]
Date: 11/2/2012

Reviewed: Sandra Sobrino
Date: 11/2/2012

EXHIBIT A TO CONTRACT AGREEMENT

Disclaimer

The final report cannot be reproduced, except in full, without written authorization from SanAir. Fibers smaller than 5 microns cannot be seen with this method due to scope limitations. The accuracy of the results is dependent upon the client's sampling procedure and information provided to the laboratory by the client. SanAir assumes no responsibility for the sampling procedure and will provide evaluation reports based solely on the sample and information provided by the client. This report may not be used by the client to claim product endorsement by NVLAP, AIHA or any other agency of the U.S. government*; and may not be certified by every local, state and federal regulatory agencies.*

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory
1551 Oakbridge Drive Suite B
Powhatan, VA 23139
804-897-1177 / 888-895-1177
Fax 804-897-0070
www.sanair.com

Asbestos Chain of Custody

SanAir ID Number: 12021893

Company: Alfred Benesch & Co.		Project #: 00110058.00.0006	Collected by: Ron J. Prochaska
Address: 825 J Street		Project Name: West Haymarket / Alter Building No. 7	Phone #: 402-479-2296
City, St., Zip: Lincoln, NE 68508		Date Collected: October 31, 2012	Fax #: 402-479-2276
State of Collection: NE	Account#: 2077	P.O. Number:	Email: rprochaska@benesch.com

Bulk

ABB	PLM EPA 600/R-93/116	☑
	Positive Stop ☑	
ABEPA	PLM EPA 400 Point Count	☐
ABB1K	PLM EPA 1000 Point Count	☐
ABBEN	PLM EPA NOB	☐
ABBCH	TEM Chatfield	☐
ABBTM	TEM EPA NOB	☐

Water

ABHE	EPA 100.2	☐

Air

ABA	PCM NIOSH 7400	☐
ABA-2	OSHA w/ TWA*	☐
ABTEM	TEM AHERA	☐
ABATN	TEM NIOSH 7402	☐
ABT2	TEM Level II	☐

New York ELAP

PLM NY	PLM EPA 600/M4-82-020	☐
ABEPA2	NY ELAP 198.1	☐
ABENY	NY ELAP 198.6 PLM NOB	☐
ABBNY	NY ELAP 198.4 TEM NOB	☐

Soil/Vermiculite

ABSE	PLM EPA 600/R-93/116 (Qual.)	☐
ABSP	PLM CARB 435 (LOD <1%)	☐
ABSP1	PLM CARB 435 (LOD 0.25%)	☐
ABSP2	PLM CARB 435 (LOD 0.1%)	☐

Dust

ABWA	TEM Wipe ASTM D-6480	☐
ABDMV	TEM Microvac ASTM D-5755	☐

Other

Matrix		
		☐

Turn Around Times				
	3 HR (4 HR TEM) ☐	6 HR (8HR TEM) ☐	12 HR ☐	24 HR ■
	2 Days ☐	3 Days ☐	4 Days ☐	5 Days ☐

Special Instructions Please do composite analysis on sample AL-B7-DW-02B.

Sample #	Sample Identification/Location	Volume or Area	Sample Type	Flow Rate*	Time* Start	Time* Stop
AL-B7-MF-01A	mudded pipe fitting insulation / roof drains					
AL-B7-DW-02B	drywall with taping compounds / north room ceiling					
AL-B7-RF-03C	built-up roofing / northeast roof area					
AL-B7-RF-04C	built-up roofing / center roof area					
AL-B7-RF-05C	built-up roofing / southwest roof area					
AL-B7-FL-05D	roof flashing / north roof edge					
AL-B7-FL-07D	roof flashing / west roof edge					
AL-B7-FL-08D	roof flashing / east roof edge					
AL-B7-FL-09E	roof flashing / center sky-light					

Relinquished by	Date	Time	Received by	Date	Time
[illegible]	10-31-12/1630		[illegible]	NOV 01 2012	9:30A

Unless scheduled, the turn around time for all samples received after 3 pm EST Friday will begin at 8 am Monday morning. Weekend or Holiday work must be scheduled ahead of time and is charged for rush turn around time. Work with standard turn around time sent Priority Overnight and Billed to Recipient will be charged a $10 shipping fee.

EXHIBIT A TO CONTRACT AGREEMENT

benesch
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Alfred Benesch & Company
825 J Street
Lincoln, NE 68508
www.benesch.com
P 402-479-2200
F 402-479-2276

November 6, 2012

Adam Hoebelheinrich
PC Sports
311 North 8th St., Suite 102
Lincoln, NE 68508

REFERENCE: Alter Metal, Building No. 8

Dear Mr. Hoebelheinrich:

Please find enclosed the results of the asbestos survey preformed on the above referenced building (see attached photo). The survey was performed on October 31, 2012 by Ron J. Prochaska of Alfred Benesch & Company (Benesch).

The Building is scheduled for demolition as part of the West Haymarket Redevelopment Plan. However, Benesch understands that this building will be used as office space for the next several months. Thus, the roof was not sampled, as that sampling will require making holes in the roof. The roof should be sampled after the building is no longer in use. The interior ceiling was not demolished at this time. The area above the ceiling should also be inspected for suspect ACM after the building is no longer in use.

During this survey of the building the following suspect asbestos containing materials (ACM) were discovered:

1. 9x9 floor tile and mastic
2. 12x12 floor tile and mastic
3. 1x1 ceiling tile
4. Ceiling tile mastic
5. Textured ceiling surface
6. Mudded pipe fitting insulation
7. Drywall with taping compounds
8. Transite board soffit
9. Cove base adhesive

Bulk samples of each of these materials were collected. The samples were submitted to SanAir Technologies Laboratory for analysis for asbestos. Please find attached, a Tally Sheet and the laboratory reports pertaining to these materials. According to the Nebraska Asbestos Control Program and EPA NESHAPS regulations, an ACM is a material found to contain more than 1% asbestos. The following suspect materials were found to contain more than 1% asbestos and are considered ACM. Please see Figure 1 for locations of ACM.

1. Tan 9x9 floor tile and mastic
   - > 450 SF exposed
   - > 100 SF under non-ACM floor tile
   - > 96 SF under carpet
2. Floor tile mastic under non-ACM floor tile (35 SF)
3. Mudded pipe fitting insulation (31 mudded fittings or 40 LF)
4. Transite board exterior soffit on north and east sides of building (203 SF)

According to the Nebraska Asbestos Control regulations, these materials will have to be removed prior to the demolition of the building.

If you have any questions regarding this report please call me at 402-479-2296 or cell 402-580-6409.

Sincerely,
ALFRED BENESCH & COMPANY

Ron J. Prochaska
Senior Environmental Technician / Asbestos Inspector, Nebraska Certificate 850

EXHIBIT A TO CONTRACT AGREEMENT

benesch
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ASBESTOS BULK MATERIAL TALLY SHEET AND RESULTS

PROJECT NUMBER: 00110058.00.00006

PROJECT: West Haymarket

INSPECTOR(S): Ron J.Prochaska

PROPERTY: Alter Metal, Building No. 8

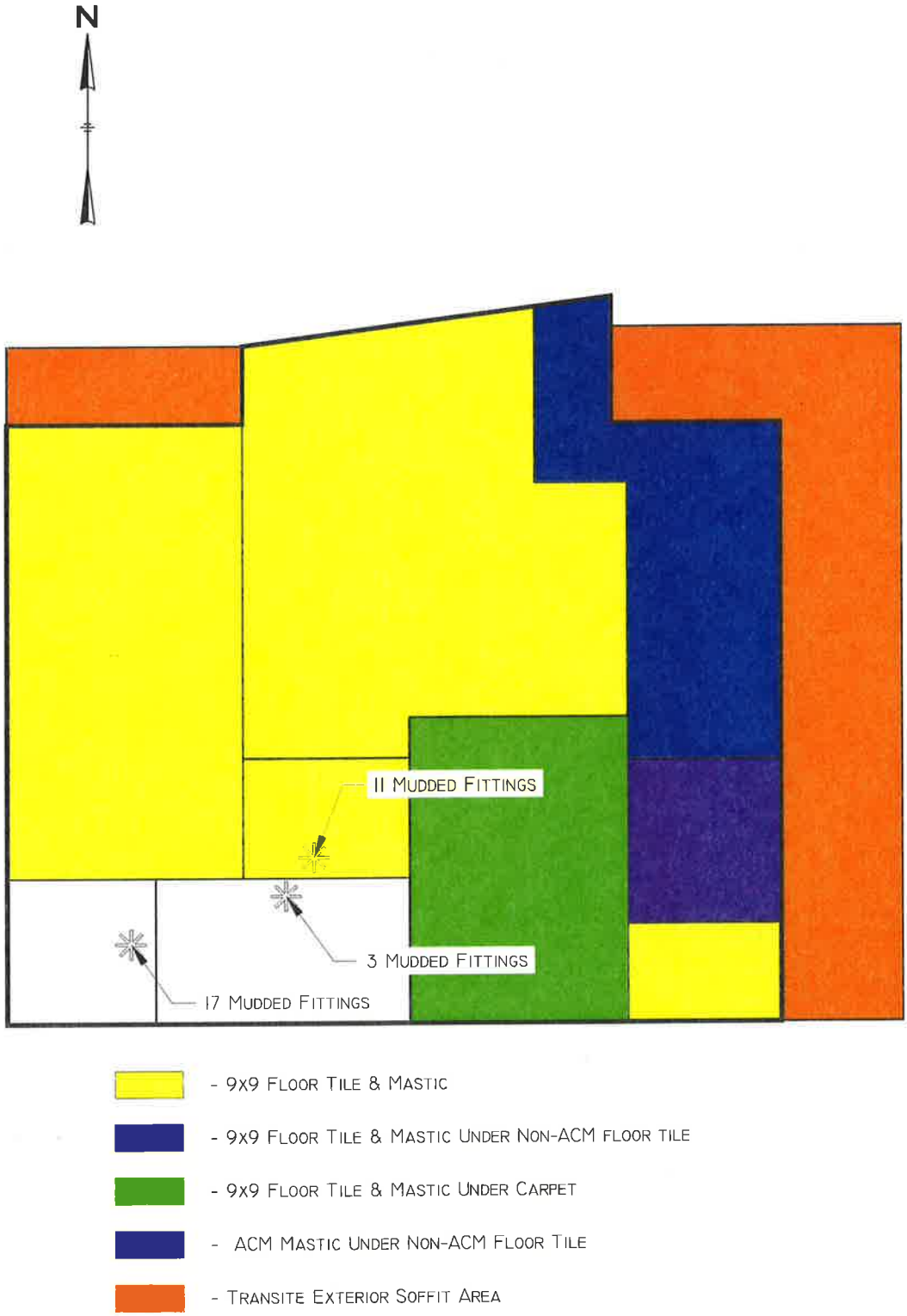
INSP.	SAMPLE NUMBER	DATE	MATERIAL DESCRIPTION	SAMPLE LOCATION DESCRIPTION	LAB RESULTS	QUANTITY
R.J.P.	AL-B8-FT-01A	10/31/12	tan 9x9 floor tile and mastic	north side of scale room	tile = 5%, mastic = 5%	681 SF
R.J.P.	AL-B8-FT-02B	10/31/12	tan 12x12 floor tile and mastic	southeast area of scale room	ND	NA
R.J.P.	AL-B8-CT-03C	10/31/12	1x1 ceiling tile	scale room	ND	NA
R.J.P.	AL-B8-CT-04C	10/31/12	1x1 ceiling tile	southeast hallway	ND	NA
R.J.P.	AL-B8-CT-05C	10/31/12	1x1 ceiling tile	west office	ND	NA
R.J.P.	AL-B8-CTA-06D	10/31/12	ceiling tile adhesive	scale room	ND	NA
R.J.P.	AL-B8-CTA-07D	10/31/12	ceiling tile adhesive	southeast hallway	ND	NA
R.J.P.	AL-B8-CTA-08D	10/31/12	ceiling tile adhesive	west office	ND	NA
R.J.P.	AL-B8-TC-09E	10/31/12	textured ceiling surface	south center office	ND	NA
R.J.P.	AL-B8-MF-10F	10/31/12	mudded pipe fitting insulation	office bathroom	50%	11
R.J.P.	AL-B8-MF-11F	10/31/12	mudded pipe fitting insulation	utility room / shop restroom - shower	40%	20
R.J.P.	AL-B8-DW-12G	10/31/12	drywall with taping compounds	southwest corner of south office	ND	NA
R.J.P.	AL-B8-TR-13H	10/31/12	transite panels	exterior soffit area	20%	203 SF
R.J.P.	AL-B8-CBA-14I	10/31/12	cove base adhesive	scale room	ND	NA

ND= No Asbestos Detected

NA= Not Asbestos

EXHIBIT A TO CONTRACT AGREEMENT

W:\GIS_Projects\West Haymarket Arena\CAD Figures\Alter Scrap - Bldg 8\Figure 1.dwg



DATE	SHEET NO.		
Nov. 2012	1/1	benesch engineers · scientists · planners Alfred Benesch & Company 825 J Street Lincoln, Nebraska 68508 402-479-2200 Job No. -	**Alter Metal - Building No. 8** **Asbestos Containing Materials Locations**	**Figure 1**
JOB NO. -				

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory

Analysis Report

prepared for

Alfred Benesch & Co.

Report Date: 11/2/2012
Project Name: West Haymarket/Alter Building No. 8
Project #: 00110058.00.0006
SanAir ID#: 12021896

NVLAP LAB CODE 200870-0

AIHA LAP, LLC ACCREDITED LABORATORY ENVIRONMENTAL MICROBIOLOGY

Virginia SBE Certification # 652931

Texas Licensed Mold Analysis Laboratory License # LAB0166

SanAir Technologies Laboratory

804.897.1177 www.sanair.com

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

Alfred Benesch & Co.
825 J Street
Lincoln, NE 68508

November 2, 2012

SanAir ID # 12021896
Project Name: West Haymarket/Alter Building No. 8
Project Number: 00110058.00.0006

Dear Ron Prochaska,

We at SanAir would like to thank you for the work you recently submitted. The 14 sample(s) were received on Thursday, November 01, 2012 via FedEx. The final report(s) is enclosed for the following sample(s): AL-B8-FT-01A, AL-B8-FT-02B, AL-B8-CT-03C, AL-B8-CT-04C, AL-B8-CT-05C, AL-B8-CTA-06D, AL-B8-CTA-07D, AL-B8-CTA-08D, AL-B8-TC-09E, AL-B8-MF-10F, AL-B8-MF-11F, AL-B8-DW-12G, AL-B8-TR-13H, AL-B8-CBA-14I.

These results only pertain to this job and should not be used in the interpretation of any other job. This report is only complete in its entirety. Refer to the listing below of the pages included in a complete final report.

Sincerely,

Sandra Sobrino

Sandra Sobrino
Asbestos & Materials Laboratory Manager
SanAir Technologies Laboratory

Final Report Includes:
- Cover Letter
- Analysis Pages
- Disclaimers and Additional Information

sample conditions:
14 sample(s) in Good condition

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.

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SanAir ID Number
12021896
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: West Haymarket/Alter Building No. 8

Collected Date: 10/31/2012
Received Date: 11/1/2012 9:30:00 AM
Report Date: 11/2/2012 10:25:05 AM
Analyst: Sobrino, Sandra

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-FT-01A / 12021896-001 9x9 Floor Tile And Mastic/Scale Room, Floor Tile	Tan Non-Fibrous Homogeneous		95% Other	5% Chrysotile
AL-B8-FT-01A / 12021896-001 9x9 Floor Tile And Mastic/Scale Room, Mastic	Black Non-Fibrous Homogeneous		95% Other	5% Chrysotile

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-FT-02B / 12021896-002 12x12 Floor Tile /Scale Room (Southeast), Floor Tile	Tan Non-Fibrous Homogeneous		100% Other	None Detected
AL-B8-FT-02B / 12021896-002 12x12 Floor Tile /Scale Room (Southeast), Mastic	Yellow Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-CT-03C / 12021896-003 1x1 Ceiling Tile/Scale Room	White Fibrous Homogeneous	75% Min. Wool 20% Glass	5% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-CT-04C / 12021896-004 1x1 Ceiling Tile/Southeast Hallway	Tan Fibrous Homogeneous	75% Min. Wool 20% Glass	5% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-CT-05C / 12021896-005 1x1 Ceiling Tile/West Office	White Fibrous Homogeneous	75% Min. Wool 20% Glass	5% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-CTA-06D / 12021896-006 Ceiling Tile Adhesive/Scale Room	Brown Non-Fibrous Homogeneous		100% Other	None Detected

Certification

Signature: Sandra Sobrino
Date: 11/2/2012

Reviewed:
Date: 11/2/2012

EXHIBIT A TO CONTRACT AGREEMENT

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SanAir ID Number
12021896
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: West Haymarket/Alter Building No. 8

Collected Date: 10/31/2012
Received Date: 11/1/2012 9:30:00 AM
Report Date: 11/2/2012 10:25:05 AM
Analyst: Sobrino, Sandra

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-CTA-07D / 12021896-007 Ceiling Tile Adhesive/Southeast Office	Brown Non-Fibrous Homogeneous		100% Other	None Detected
AL-B8-CTA-08D / 12021896-008 Ceiling Tile Adhesive/West Office	Brown Non-Fibrous Homogeneous		100% Other	None Detected
AL-B8-TC-09E / 12021896-009 Textured Ceiling Surface/South Office	White Non-Fibrous Homogeneous		100% Other	None Detected
AL-B8-MF-10F / 12021896-010 Mudded Pipe Fitting Insulation/North Bathroom	White Fibrous Homogeneous	20% Min. Wool	30% Other	50% Chrysotile
AL-B8-MF-11F / 12021896-011 Mudded Pipe Fitting Insulation/Utility Room	White Fibrous Homogeneous	15% Min. Wool	45% Other	40% Chrysotile
AL-B8-DW-12G / 12021896-012 SW Corner Of South Office	White Non-Fibrous Homogeneous	5% Cellulose	95% Other	None Detected
AL-B8-TR-13H / 12021896-013 Transite Board/Exterior Soffit Area	Grey Non-Fibrous Homogeneous		80% Other	20% Chrysotile

Certification

Signature: Sandra Sobrino
Date: 11/2/2012

Reviewed:
Date: 11/2/2012

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.
1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
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Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number
12021896
FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.0006
P.O. Number:
Project Name: West Haymarket/Alter Building No. 8

Collected Date: 10/31/2012
Received Date: 11/1/2012 9:30:00 AM
Report Date: 11/2/2012 10:25:05 AM
Analyst: Sobrino, Sandra

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-CBA-14I / 12021896-014 Cove-Base Adhesive/Scale Room, Cove Base	Grey Non-Fibrous Homogeneous		100% Other	None Detected
AL-B8-CBA-14I / 12021896-014 Cove-Base Adhesive/Scale Room, Adhesive	Yellow Non-Fibrous Homogeneous		100% Other	None Detected

Certification

Signature: Sandra Sobrino
Date: 11/2/2012

Reviewed:
Date: 11/2/2012

EXHIBIT A TO CONTRACT AGREEMENT

Disclaimer

The final report cannot be reproduced, except in full, without written authorization from SanAir. Fibers smaller than 5 microns cannot be seen with this method due to scope limitations. The accuracy of the results is dependent upon the client's sampling procedure and information provided to the laboratory by the client. SanAir assumes no responsibility for the sampling procedure and will provide evaluation reports based solely on the sample and information provided by the client. This report may not be used by the client to claim product endorsement by NVLAP, AIHA or any other agency of the U.S. government*; and may not be certified by every local, state and federal regulatory agencies.*

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory
1551 Oakbridge Drive Suite B
Powhatan, VA 23139
804-897-1177 / 888-895-1177
Fax 804-897-0070
www.sanair.com

Asbestos Chain of Custody

SanAir ID Number: 12021896

Company: Alfred Benesch & Co.		Project #: 00110058.00.0006	Collected by: Ron J. Prochaska
Address: 825 J Street		Project Name: West Haymarket / Alter Building No. 8	Phone #: 402-479-2296
City, St., Zip: Lincoln, NE 68508		Date Collected: October 31, 2012	Fax #: 402-479-2276
State of Collection: NE	Account#: 2077	P.O. Number:	Email: rprochaska@benesch.com

Bulk

ABB	PLM EPA 600/R-93/116	☑
	Positive Stop	☑
ABEPA	PLM EPA 400 Point Count	☐
ABB1K	PLM EPA 1000 Point Count	☐
ABBEN	PLM EPA NOB	☐
ABBCH	TEM Chatfield	☐
ABBTM	TEM EPA NOB	☐

Water

ABHE	EPA 100.2	☐

Air

ABA	PCM NIOSH 7400	☐
ABA-2	OSHA w/ TWA*	☐
ABTEM	TEM AHERA	☐
ABATN	TEM NIOSH 7402	☐
ABT2	TEM Level II	☐

New York ELAP

PLM NY	PLM EPA 600/M4-82-020	☐
ABEPA2	NY ELAP 198.1	☐
ABENY	NY ELAP 198.6 PLM NOB	☐
ABBNY	NY ELAP 198.4 TEM NOB	☐

Soil/Vermiculite

ABSE	PLM EPA 600/R-93/116 (Qual.)	☐
ABSP	PLM CARB 435 (LOD <1%)	☐
ABSP1	PLM CARB 435 (LOD 0.25%)	☐
ABSP2	PLM CARB 435 (LOD 0.1%)	☐

Dust

ABWA	TEM Wipe ASTM D-6480	☐
ABDMV	TEM Microvac ASTM D-5755	☐

Other

Matrix		
		☐

Turn Around Times				
	3 HR (4 HR TEM) ☐	6 HR (8HR TEM) ☐	12 HR ☐	24 HR ■
	2 Days ☐	3 Days ☐	4 Days ☐	5 Days ☐

Special Instructions Please do composite analysis on sample AL-B8-DW-12G.

Sample #	Sample Identification/Location	Volume or Area	Sample Type	Flow Rate*	Time* Start	Time* Stop
AL-B8-FT-01A	tan 9x9 floor tile and mastic / scale room					
AL-B8-FT-02B	tan 12x12 floor tile and mastic / scale room (southeast)					
AL-B8-CT-03C	1x1 ceiling tile / scale room					
AL-B8-CT-04C	1x1 ceiling tile / southeast hallway					
AL-B8-CT-05C	1x1 ceiling tile / west office					
AL-B8-CTA-06D	ceiling tile adhesive / scale room					
AL-B8-CTA-07D	ceiling tile adhesive / southeast office					
AL-B8-CTA-08D	ceiling tile adhesive / west office					
AL-B8-TC-09E	textured ceiling surface / south office					
AL-B8-MF-10F	mudded pipe fitting insulation / north bathroom					
AL-B8-MF-11F	mudded pipe fitting insulation / utility room					
AL-B8-DW-12G	drywall with taping compounds / SW corner of south office					

Relinquished by	Date	Time	Received by	Date	Time
[illegible]	10-31-12	1630	[illegible]	NOV [illegible]	9:30A

Unless scheduled, the turn around time for all samples received after 3 pm EST Friday will begin at 8 am Monday morning. Weekend or Holiday work must be scheduled ahead of time and is charged for rush turn around time. Work with standard turn around time sent Priority Overnight and Billed to Recipient will be charged a $10 shipping fee.

EXHIBIT A TO CONTRACT AGREEMENT

12021896

Sample #	Sample Identification/Location	Sample Type	Flow Rate*	Time* Start – Stop	
AL-B8-TR-13H	transite board / exterior soffit area				
AL-B8-CBA-14I	cove-base adhesive / scale room				

Special Instructions	

Relinquished by	Date	Time	Received by	Date	Time
	10/31/12	1630		NOV 01 2012	9:30A

Unless scheduled, the turn around time for all samples received after 3 pm Friday will begin at 8 am Monday morning.
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EXHIBIT A TO CONTRACT AGREEMENT

Prochaska, Ron

From: Adam Hoebelheinrich [adam@projectcontrol.com]
Sent: Monday, July 23, 2012 2:44 PM
To: Uhlarik, Frank; Sarah Schlichtholz
Cc: Prochaska, Ron; Lim, Chin; Bill Imig (bimig@olssonassociates.com); Paula Yancey
Subject: RE: ACM Surveys

Frank,

The priority numbering is below and numbers 1-3 are the most pressing.

Let me know if you can't see the drawing or if you have any questions.

Thanks,

Adam Hoebelheinrich
PC Sports

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory

Analysis Report

prepared for

Alfred Benesch & Co.

Report Date: 1/21/2014
Project Name: West Haymarket/
Alter Building No. 8
Project #: 00110058.00.00006
SanAir ID#: 14001338

NVLAP LAB CODE 200870-0

Virginia SBE
Certification # 652931

Texas Licensed Mold Analysis Laboratory
License # LAB0166

804.897.1177 www.sanair.com

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.

1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

Alfred Benesch & Co.
825 J Street
Lincoln, NE 68508

January 21, 2014

SanAir ID # 14001338
Project Name: West Haymarket/ Alter Building No. 8
Project Number: 00110058.00.00006

Dear Ron Prochaska,

We at SanAir would like to thank you for the work you recently submitted. The 4 sample(s) were received on Monday, January 20, 2014 via FedEx. The final report(s) is enclosed for the following sample(s): AL-B8-RF-15J, AL-B8-RF-16J, AL-B8-FL-17K, AL-B8-FL-18K.

These results only pertain to this job and should not be used in the interpretation of any other job. This report is only complete in its entirety. Refer to the listing below of the pages included in a complete final report.

Sincerely,

Sandra Sobrino

Sandra Sobrino
Asbestos & Materials Laboratory Manager
SanAir Technologies Laboratory

Final Report Includes:
- Cover Letter
- Analysis Pages
- Disclaimers and Additional Information

sample conditions:
4 sample(s) in Good condition

EXHIBIT A TO CONTRACT AGREEMENT

SanAir Technologies Laboratory, Inc.

1551 Oakbridge Drive, Suite B, Powhatan, VA 23139
804.897.1177 Toll Free: 888.895.1177 Fax: 804.897.0070
Web: http://www.sanair.com E-mail: iaq@sanair.com

SanAir ID Number

14001338

FINAL REPORT

Name: Alfred Benesch & Co.
Address: 825 J Street
Lincoln, NE 68508

Project Number: 00110058.00.00006
P.O. Number:
Project Name: West Haymarket/ Alter Building No. 8

Collected Date: 1/17/2014
Received Date: 1/20/2014 9:15:00 AM
Report Date: 1/21/2014 9:30:07 AM
Analyst: Pisula, Nicholas

Asbestos Bulk PLM EPA 600/R-93/116

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-RF-15J / 14001338-001 Built-Up Roofing/ North Center Roof	Black Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-RF-16J / 14001338-002 Built-Up Roofing/ Southeast Center	Black Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-FL-17K / 14001338-003 Roof Flashing/ West Center Edge	Black Non-Fibrous Homogeneous		100% Other	None Detected

SanAir ID / Description	Stereoscopic Appearance	Components % Fibrous	Components % Non-Fibrous	Asbestos Fibers
AL-B8-FL-18K / 14001338-004 Roof Flashing/ North Center Edge	Black Non-Fibrous Homogeneous		100% Other	None Detected

Certification

Signature: Date: 1/21/2014

Reviewed: Date: 1/21/2014

EXHIBIT A TO CONTRACT AGREEMENT

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For NY state samples, method EPA 600/M4-82-020 is performed.

Polarized- light microscopy is not consistently reliable in detecting asbestos in floor covering and similar non-friable organically bound materials. Quantitative transmission electron microscopy is currently the only method that can be used to determine if this material can be considered or treated as non-asbestos containing.

NY ELAP lab ID 11983

SanAir Technologies Laboratory
1551 Oakbridge Drive Suite B
Powhatan, VA 23139
804-897-1177 / 888-895-1177
Fax 804-897-0070
www.sanair.com

Asbestos Chain of Custody

SanAir ID Number: 14001338

Company:	Alfred Benesch & Co.	Project #:	00110058.00.00006	Collected by:	R. Prochaska
Address:	825 J Street	Project Name:	West Haymarket / Alter Building No. 8	Phone #:	402-479-2296
City, St., Zip:	Lincoln, NE 68508	Date Collected:	January 17, 2014	Fax #:	402-479-2276
State of Collection:	NE Account#: 2077	P.O. Number:		Email:	rprochaska@benesch.com

Bulk

ABB	PLM EPA 600/R-93/116	☑
	Positive Stop ☐	
ABEPA	PLM EPA 400 Point Count	☐
ABB1K	PLM EPA 1000 Point Count	☐
ABBEN	PLM EPA NOB	☐
ABBCH	TEM Chatfield	☐
ABBTM	TEM EPA NOB	☐

Water

ABHE	EPA 100.2	☐

Air

ABA	PCM NIOSH 7400	☐
ABA-2	OSHA w/ TWA*	☐
ABTEM	TEM AHERA	☐
ABATN	TEM NIOSH 7402	☐
ABT2	TEM Level II	☐

New York ELAP

PLM NY	PLM EPA 600/M4-82-020	☐
ABEPA2	NY ELAP 198.1	☐
ABENY	NY ELAP 198.6 PLM NOB	☐
ABBNY	NY ELAP 198.4 TEM NOB	☐

Soil/Vermiculite

ABSE	PLM EPA 600/R-93/116 (Qual.)	☐
ABSP	PLM CARB 435 (LOD <1%)	☐
ABSP1	PLM CARB 435 (LOD 0.25%)	☐
ABSP2	PLM CARB 435 (LOD 0.1%)	☐

Dust

ABWA	TEM Wipe ASTM D-6480	☐
ABDMV	TEM Microvac ASTM D-5755	☐

Other

Matrix		
		☐

Turn Around Times				
	3 HR (4 HR TEM) ☐	6 HR (8HR TEM) ☐	12 HR ☐	24 HR ■
	2 Days ☐	3 Days ☐	4 Days ☐	5 Days ☐

Special Instructions

Sample #	Sample Identification/Location	Volume or Area	Sample Type	Flow Rate*	Time* Start	Time* Stop
AL-B8-RF-15J	built-up roofing / north center roof					
AL-B8-RF-16J	built up roofing / southeast center					
AL-B8-FL-17K	roof flashing / west center edge					
AL-B8-FL-18K	roof flashing / north center edge					

Relinquished by	Date	Time	Received by	Date	Time
[signature]	1-17-14		[signature]	JAN 20 2014	9:15AM

Unless scheduled, the turn around time for all samples received after 3 pm EST Friday will begin at 8 am Monday morning. Weekend or Holiday work must be scheduled ahead of time and is charged for rush turn around time.
Work with standard turn around time sent Priority Overnight and Billed to Recipient will be charged a $10 shipping fee.

EXHIBIT A TO CONTRACT AGREEMENT

Attachment "C"

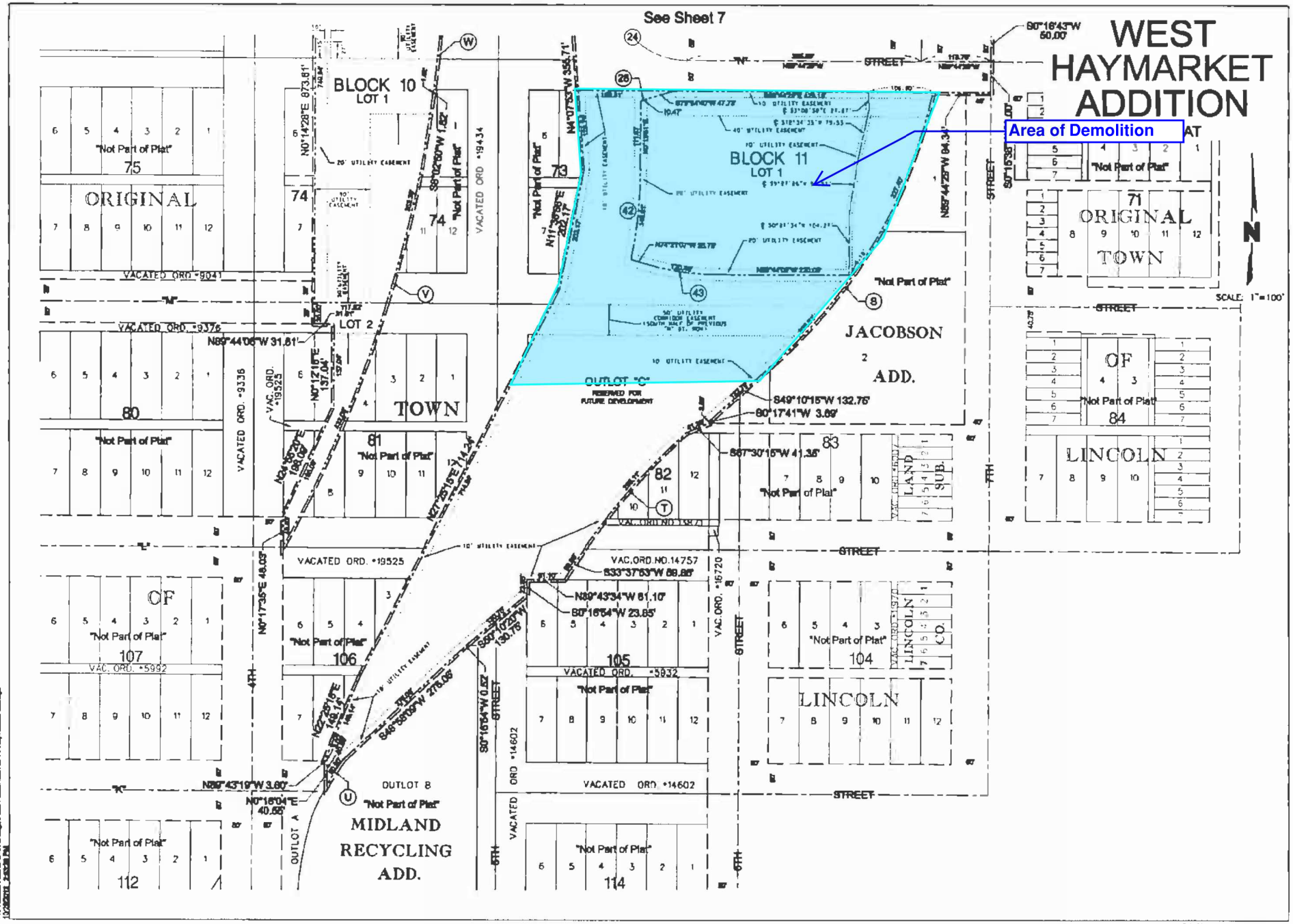


EXHIBIT A TO CONTRACT AGREEMENT

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

Bid Information		Contact Information	Ship to Information
Bid Creator	Vince Mejer Purchasing Agent	Address	Address
Email	vmejer@lincoln.ne.gov		
Phone	1 (402) 441-8314	Contact	Contact
Fax	1 (402) 441-6513		
		Department	Department
Bid Number	14-039 Addendum 3	Building	Building
Title	Demolition of Former Alter Structure South of N Street	Floor/Room	Floor/Room
Bid Type	Bid	Telephone	Telephone
Issue Date	01/29/2014	Fax	Fax
Close Date	2/12/2014 12:00:00 PM CT	Email	Email
Need by Date			

Supplier Information

Company	Land Construction, Inc.
Address	P.O. Box 22405 Lincoln, NE 68542
Contact	Gary Varley
Department	
Building	
Floor/Room	
Telephone	1 (402) 477-5263
Fax	1 (402) 477-8193
Email	gary@landconstruction.com
Submitted	2/12/2014 11:46:25 AM CT
Total	$97,600.00

Signature _____

Supplier Notes

Bid Notes

There will be a prebid at the site, Old Alter Scrap Metal Office, 525 "N" St., Lincoln, NE on Thursday February 6 at 1:00 p.m.

Bid Activities

Date	Name	Description
2/6/2014 1:00:00 PM	Prebid Meeting	Prebid Meeting - On Thursday, February 6, 2014 at 1:00 p.m., at 525 "N" St., Lincoln, NE. Former Alter Scrap Metal Office. All interested vendors are stronly encouraged to attend.

Bid Messages

EXHIBIT A TO CONTRACT AGREEMENT

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: http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspec/index.htm	Yes
2	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
3	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
4	Specifications	I acknowledge reading and understanding the specifications.	Yes
5	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 faxed my bid bond.
6	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
7	Performance/Payment Bond	I acknowledge that the Performance Bond and Payment Bond in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
8	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
9	Project Dates	The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be April 25, 2014.	YES
10	Electronic Signature	Please check here for your electronic signature.	Yes
11	Contact	Name of person submitting this bid:	Gary T. Varley
12	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
13	Davis Bacon Rates	I acknowledge reading and understanding the Davis Bacon Rates.	Yes

EXHIBIT A TO CONTRACT AGREEMENT

14	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
15	Agreement to Addendum No. 3	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	Yes

Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	Complete Demolition per the Special Provisions - LUMP Sum	$49,600.00
	Item Notes:			
	Supplier Notes:			
2	1	Lump Sum	Alternate price for providing all work and services described in the Special Provisions, excluding the moving of the previously identified items to the storage facility - LUMP Sum (per Addendum No. 3)	$48,000.00
	Item Notes:			
	Supplier Notes:			
			Response Total:	$97,600.00

EXHIBIT A TO CONTRACT AGREEMENT

EXHIBIT B

Intentionally Omitted

EXHIBIT C

Construction and Maintenance Agreement
Between BNSF and the City of Lincoln

Approved by Law
2-13-14

A- 86070

CONSTRUCTION AND MAINTENANCE AGREEMENT

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

RECITALS

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

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

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

AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Construction and Contractor Requirements.

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

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

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

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

3.3.4 Safety/Security.

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

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

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

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

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

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

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

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

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

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

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

3.4 Environmental Compliance and Notification.

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

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

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

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

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

3.5 Timing.

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

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

3.6 Indemnifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8 Insurance Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8.1.5 Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV – MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[*Signature page follows*]

Signature Page - C&M Agreement

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

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: _____

Signature Page - C&M Agreement

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

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

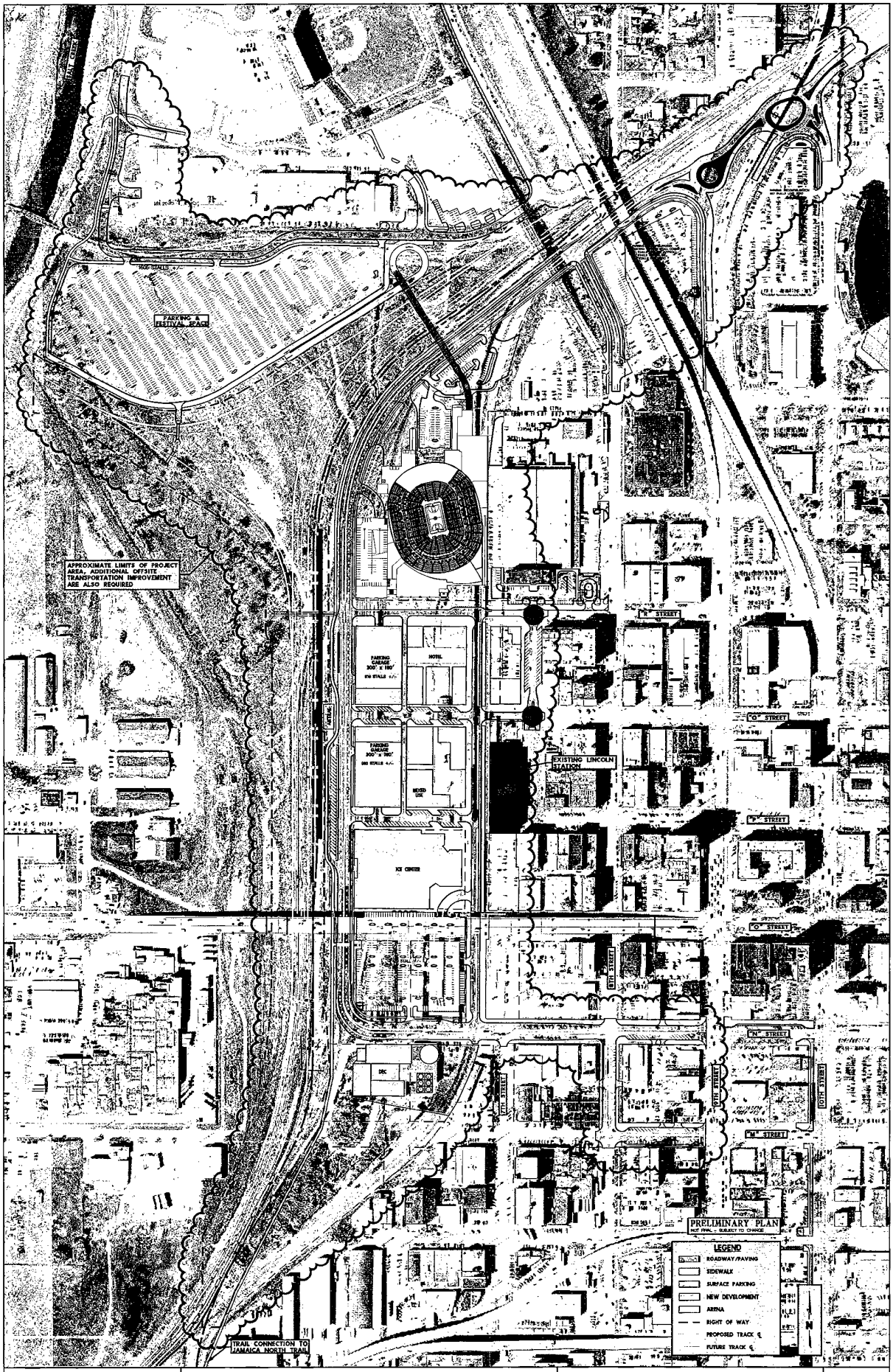
By: _____
David L. Freeman, Vice President – Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]



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

DATE: 8/23/2010
DGN: f:\projects\008-0645_mra\base\archive\railroad agreement\exhibits\SHSF Exhibits\DISPLAYS\BASE Exhibit A Display.dgn

EXHIBIT C TO CONTRACT AGREEMENT

EXHIBIT B

Form of BNSF Plan Approval

Gerald Maczuga
Project Engineer

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

Date: _____

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

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

Dear Mr. Peo:

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

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

1.01 General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.05 Railway Flagger Services:

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

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

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

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

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

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

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

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

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

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

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

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

1.06 Contractor General Safety Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.07 Excavation

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

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

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

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

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

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

1.08 Hazardous Waste, Substances and Material Reporting

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

1.09 Personal Injury Reporting

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

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

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

5. Social Security #

6. Name (last, first, mi)

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

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

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

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

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

13. Dr. Name _____ 30. Date: _____

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

15. Hospital Name:

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

17. Diagnosis:

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

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

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

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

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

[Signature page follows]

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

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

EXHIBIT C-1(B)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

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

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000.00 per occurrence, and $4,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
    - Bodily Injury and Property Damage
    - Personal Injury and Advertising Injury
    - Fire legal liability
    - Products and completed operations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

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

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

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

[Signature page follows]

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

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

EXHIBIT D

Final Clearances

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

EXHIBIT E

Soil Management Plan

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

Proper Management of Impacted Media

1. Access

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

2. Management Practices

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

2.1 Impacted Soil and Debris Management

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

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

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

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

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

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

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

2.2 Grading/Excavation

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

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

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

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

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

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

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

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

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

2.3 Utility Work

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

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

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

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

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

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

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

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

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

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

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

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:

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

Agencies/Railroad Authorities:

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

After Hours, Weekends and Holidays:

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

ALL OTHER INCIDENTS

Fire and Police: **Dial 911**

LIST OF ACRONYMS

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

EXHIBIT D

Other Contract Documents

Approved by Law
2-13-14

COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

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

Construction Performance Bond
Construction Payment Bond

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

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

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

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

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

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

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

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

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

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

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

CONSTRUCTION PERFORMANCE BOND

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

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

CONSTRUCTION CONTRACT
Date:
Amount:

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

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp.Seal)

Signature:_____
Name and Title: Name and Title:

Signature:_____

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

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practiceable after the amount is determined tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; an d

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a satutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

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

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

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

CONSTRUCTION CONTRACT
Date:
Amount:

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

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

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

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:

   2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:

   4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.

   4.2 Claimants who do not have a direct contract with the Contractor:

   1.Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and

   2.Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

   3.Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

   6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

   6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

    15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

    15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

    15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 *Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.*

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on City Project/Bid No. ____ , except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in _____ County, Nebraska.

DATED this ____ day of _____, 2011.

By: _____

Title:_____

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

On _____, 2011, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

_____
Notary Public

(S E A L)

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):

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

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) IN, ON, OR ABOUT THE WORK AREA;

(iii) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS CONTRACT; OR

(iv) 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.

Such indemnification shall include and extend to any expenses incurred, including additional investigations, testing, inspections, and compensation for outside engineers, architects and other consultant services needed in order to correct work rejected by the JPA or failing to conform to the requirements of the Contract Documents.

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. This indemnification obligation shall apply until the claim is established by final judgment to have been caused by the sole negligence, willful misconduct, or gross negligence of the JPA.

E. 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 is 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
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	$500,000	each accident
	Bodily Injury by disease	$500,000	each employee
	Bodily Injury	$500,000	policy limit

C. **Commercial General Liability Insurance.**

(1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing 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 or 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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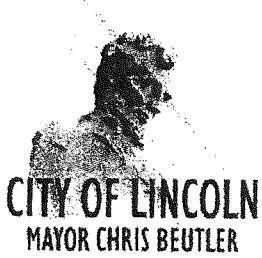

CITY OF LINCOLN
EXECUTIVE ORDER

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

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

EXHIBIT D TO CONTRACT AGREEMENT

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)	1215-01
(a)(1)(ii)(C)	1215-01
(a)(1)(iv)	1215-01
(a)(3)(i)	1215-0140, 1215-00
(a)(3)(ii)(A)	1215-01
(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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EXHIBIT D TO CONTRACT AGREEMENT

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General Decision Number: NE140050 01/03/2014 NE50

Superseded General Decision Number: NE20130050

State: Nebraska

Construction Type: Heavy

County: Lancaster County in Nebraska.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/03/2014

* ELEC0265-006 09/01/2013

	Rates	Fringes
Electricians:		
Zone 1	$ 25.97	10.22
Zone 2	$ 26.27	10.22
Zone 3	$ 26.57	10.22
Zone 4	$ 26.97	10.22

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.

SUNE2011-017 08/31/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 16.72	0.00
FORM WORKER	$ 17.48	5.74
LABORER: Common or General	$ 13.11	3.23
LABORER: Pipelayer	$ 16.33	5.60
OPERATOR: Backhoe/Excavator	$ 19.43	3.59
OPERATOR: Crane	$ 24.00	5.56
OPERATOR: Loader	$ 17.67	2.98
TRUCK DRIVER, Includes Dump		

EXHIBIT D TO CONTRACT AGREEMENT

and Tandem Truck.....$ 13.62 2.60

TRUCK DRIVER: Lowboy Truck.....$ 21.49 7.40

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)).

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 rates.

0000/9999: weighted union wage rates will be published annually each January.

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 majority 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

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

EXHIBIT D TO CONTRACT AGREEMENT

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20___.

By: _____

Title:_____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On _____, 20___, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

_____
Notary Public

(S E A L)

WH 14-14 Introduce: 3-12-14

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 10 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to prepare an area-wide Operations and Maintenance Plan for the West Haymarket Redevelopment Site North and West Haymarket Redevelopment Site South under new Task 29, and to complete a supplemental investigation feasibility analysis to address free product at the JayLynn Property under new Task 30, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 10 on behalf of the JPA.

The City Clerk is directed to return a fully executed original of Amendment No. 10 to Alfred Benesch & Company, Attn: Chin Lim, 825 J Street, Lincoln, NE 68508.

Adopted this _____ day of March, 2014.

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

_____
Tim Clare

_____
Doug Emery

AMENDMENT NO. 10

to the AGREEMENT for

ENVIRONMENTAL REMEDIATION CONSULTING SERVICES

between ALFRED BENESCH & COMPANY

and the

WEST HAYMARKET JOINT PUBLIC AGENCY

WEST HAYMARKET ENVIRONMENTAL REMEDIATION PROJECT

Specification No. 10-083

This Contract Amendment is made by and between Alfred Benesch & Company (Consultant), and the West Haymarket Joint Public Agency, hereinafter called JPA, this _____ day of _____ 2014 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 West Haymarket Environmental Remediation Contract which was entered into with the City of Lincoln on July 15, 2010 by Executive Order No. 083296 to provide environmental remediation consulting services. Such agreement was approved by the JPA under Resolution *WH-JPA Resolution for Assignment and Assumption Agreements* on July 22, 2010.

The general description of work covered by this Amendment shall include the preparation of an area-wide Operation and Maintenance (O&M) plan for the West Haymarket Redevelopment Site North (WHRSN) and West Haymarket Redevelopment Site South (WHRSS) under new Task 29 and to complete a supplemental investigation/feasibility analysis to address the free product at the JayLynn Property under new Task 30.

A detailed breakdown of the scope and fee for this amendment is included in the attached "**Amendment No. 10 to Scope of Services**."

The total estimated fee for completion of the work associated with this Amendment is **$47,671.00,** which increases the total not-to-exceed contract amount from **$2,261,358.17** to **$2,309,029.17**.

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described in the attached "**Amendment No. 10 to Scope of Services**."

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:_____

Environmental Consultant – Alfred Benesch & Company

By: Anthony Dirks

Title: Vice President

Attachment:

Amendment no. 10 to Scope of Services

Amendment No. 10 to Scope of Services

Qualified Environmental Consultants

Haymarket Environmental Remediation Services - Specification no. 10-083

On July 15, 2010, Alfred Benesch & Company (Consultant) entered into an agreement with the City of Lincoln under EO 083296 to provide environmental remediation consulting services. The agreement allows for adjustments in the scope of services and corresponding adjustments in compensation for such changes in the scope of services.

This Amendment No. 10 include the preparation of an area-wide Operation and Maintenance (O&M) plan for the West Haymarket Redevelopment Site North (WHRSN) and West Haymarket Redevelopment Site South (WHRSS) under new Task 29 and to complete a supplemental investigation/feasibility analysis to address the free product at the JayLynn Property under new Task 30.

Task 29 – Area-Wide Operation & Maintenance (O&M) Plan

An area-wide Operation & Maintenance (O&M) plan will be prepared to address all WHRSN and WHRSS parcels that have or will have undergone remedial action where restrictions are applied to future use. All institutional and engineering controls including prohibition on groundwater drinking water wells, procedures and controls for utility and construction activities, and maintenance of soil or hard cover caps will be addressed in the O&M plan. The frequency of inspections and the reporting requirement will also be laid out

The total projected fees for this task are estimated at **$21,148.00** as detailed below:

FEE ESTIMATE			
PROJECT NAME:	WHRA		
PROJECT LOCATION:	Lincoln, NE		
CLIENT:	City of Lincoln		
		Task 29	
ITEM/DESCRIPTION	RATE	Area-Wide O&M Plan	
LABOR		HRS	$$
Project Manager/Lim	$140.00	16	$2,240
Senior Environmental Scientist/Lim	$132.00	60	$7,920
Senior Environmental Scientist QC/Imig	$132.00	16	$2,112
Environmental Scientist/Thomssen	$96.00	20	$1,920
Senior Technician/Prochaska	$87.00	20	$1,740
GIS/Data Management	$108.00	40	$4,320
WP Support/Accounting	$56.00	16	$896
TOTAL LABOR (HRS/$)		188	$21,148
EXPENSES		UNITS	$$
TOTAL EXPENSES			$0
TOTAL TASK/ACTIVITY			***$21,148***

Task 30 – Supplemental Investigation/Feasibility Analysis

Benesch has completed the Interim Remedial Measure (IRM) for the JayLynn Property of the West Haymarket Redevelopment Site South (WHRSS). The polycyclic aromatic hydrocarbon contaminated soil and free product above the groundwater table and the concrete/brick bottom of a small gas holder tank (also located above the groundwater table) of the former manufactured gas plant (FMGP) were excavated and disposed of at a Subtitle D landfill as special waste, removing the source of the soil and groundwater contamination at the JayLynn Property. Benesch will prepare a supplemental investigation/feasibility analysis to address the free product that remains under the groundwater table at the JayLynn Property. The supplemental investigation/feasibility analysis will include the preparation of a brief work plan, amending the WHRSS QAPP, performing the field work, and preparing the final report.

The total projected fees for this task are estimated at **$26,523.00** as detailed below:

FEE ESTIMATE			
PROJECT NAME:	WHRA		
PROJECT LOCATION:	Lincoln, NE		
CLIENT:	City of Lincoln		
		Task 30	
ITEM/DESCRIPTION	RATE	JayLynn Supplemental Investigation/Feasibility Analysis	
LABOR		HRS	$$
Project Manager/Lim	$140.00	40	$5,600
Senior Environmental Scientist/Lim	$132.00	60	$7,920
Geochemist/Data Specialist/Loppoldt	$132.00	20	$2,640
GIS/Data Management/Gustafson	$108.00	20	$2,160
Environmental Scientist/Thomssen	$96.00	20	$1,920
Senior Technician/Prochaska	$87.00	20	$1,740
WP Support/Accounting/Trutna	$56.00	8	$448
TOTAL LABOR (HRS/$)		188	$22,428
EXPENSES		UNITS	$$
Organic Vapor Meter	$95.00	1	$95
Drilling Services (Geoprobe)	$2,000.00	2	$4,000
TOTAL EXPENSES			$4,095
TOTAL TASK/ACTIVITY			***$26,523***