AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, June 24, 2011 AT 3:30 P.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
Room 112
LINCOLN, NE 68508

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

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

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

3. Approval of the minutes from the JPA meeting held June 2, 2011 (Chair Snyder)
   ➢ (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. West Haymarket Progress Report (Jim Martin)
   ➢ Public Comment

5. Approval of Payment Registers (Don Herz)
   ➢ Public Comment
   ➢ (Staff recommendation is for the JPA Board to approve the payment registers)

6. Review of the May 2011 Expenditure Reports (Don Herz)
   ➢ Public Comment

7. Bill No. WH 11-45 - Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (existing Watson Brickson site). (Marvin/Austin)
   ➢ Public Comment
   ➢ (Staff recommendation is for the JPA Board to approve the resolution)

8. Bill No. WH 11-46 - Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (stormwater mitigation site/conservation easement). (Marvin/Austin)
   ➢ Public Comment
   ➢ (Staff recommendation is for the JPA Board to approve the resolution)

9. Bill No. WH 11-47 - Resolution to approve the Executive and Founders West Haymarket Arena Private Suite Use Agreements as model private suite use agreements (“Model Agreements”) and authorizing the Chair to execute private suite use agreements utilizing the applicable Model Agreement on behalf of the Agency without further action of the Board of Representatives. (Kirkpatrick/Wrigley)
   ➢ Public Comment
   ➢ (Staff recommendation is for the JPA Board to approve the resolution)
10. Bill No. WH 11-48 - Resolution delegating to the Project Manager/Secretary of the West Haymarket Joint Public Agency the power to execute Change Orders to contracts for the provision of services under certain conditions provided that the fiscal impact will be $25,000.00 or less and delegating to the Chair of the West Haymarket Joint Public Agency the power to execute Change Orders to contracts for the provision of services under certain conditions provided that the fiscal impact will be $100,000.00 or less. (Marvin)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

11. Bill No. WH 11-49 - Resolution to approve Amendment No. 5 to the Agreement for Engineering Services with Olsson Associates for the Haymarket Infrastructure Design Project providing for completion of the work needed for the USPS Environmental Review and Watson Brickson Recordation, and the purchase of Supplemental Insurance to meet insurance requirements as required by the BNSF Agreement. (Martin)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

12. Bill No. WH 11-50 - Resolution to approve Amendments Nos. 004, 005, 006, and 007 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency dated September 1, 2010 providing for smoke modeling to assist in the design of smoke control systems for smoke-protected egress paths in the Arena; payment of the customary costs to the design team for expenses identified in the original agreement; the design, coordination and specifications for furnishing and interior design of the specialty hospitality areas in the Arena; and construction services for the ramp and elevated plaza on the east side of the Arena, respectively. (Yancey)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

13. Bill No. WH 11-51 - Resolution to approve the Temporary License for Partial Removal of Platform and Canopy and the Temporary License for Arena Shoring and Initial Construction of Footings and Columns between BNSF Railway Company and the West Haymarket Joint Public Agency in order to allow planned construction activities to begin prior to acquisition of the work sites for BNSF. (Peo)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

14. Bill No. WH 11-52 - Resolution to approve Change Order No. 2 to the TCW Construction Inc. Agreement regarding the 10th and Salt Creek Roadway - Haymarket Infrastructure Improvement Project No. 870304 to reflect a number of items that need to be added or changed resulting in a net contract reduction in the amount of $2,249.22. (Blahak)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

15. Bill No. WH 11-53 - Resolution to approve a Contract with T.J. Osborn Construction Inc. for the Haymarket Infrastructure Improvement – M & N Street Sanitary Sewer Project, JPA Project 87032, Bid No. 3565, for the sum of $377,272.00 to be completed by August 26, 2011. (Blahak)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)
16. Set Next Meeting Date: Friday, July 15, 3:30 P.M. (Room 112, City Council Chambers)

17. Closed Executive Session: Discussion of Work Performance

18. Motion to Adjourn
Meeting Began At: 3:35 P.M.
Meeting Ended At: 5:28 P.M.
Members Present: Tim Clare, Jayne Snyder, Chris Beutler

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

Chair Snyder opened the meeting and introduced the members of the JPA Board. She advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

Snyder announced that public comment is welcome. Individuals from the audience wishing to speak will be given a total of five minutes to speak on specific items listed on today’s agenda. Those testifying should come forward, identify themselves for the official record and sign in, and comments need to be relative to the item on the agenda.

Item 3 – Approval of the minutes from the JPA meeting held May 5, 2011

Snyder asked for any corrections or changes to the minutes from May 5, 2011. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Jim Martin, Program Manager with SAIC, came forward to review the May Progress Report. Since the last meeting the second and third major infrastructure projects are underway. 10th and Salt Creek began at the end of March. We now have the projects called Initial Site Preparation and the USPS Parking Lot contracted and underway.

The first work on Initial Site Preparation is removal of unsuitable soils on the area north of „R” Street where the arena will go. The arena design continues in the design and development phase. This is taking the schematic design approved by the Board and refining it for a final review in the fall. Mortensen/Hampton, Construction Managers at Risk, are in the process of working with the design team to assemble what is called design assist packages on the major mechanical, electrical, concrete, steel. The qualification packages were sent out a couple of weeks ago and the actual RFP’s will be forthcoming over the next several weeks.
10th and Salt Creek construction is well underway. On two of the three segments completed so far the contractor was ahead of schedule and will be on schedule on the third. The parking lot on the USPS needs be completed by September 15. There is a right-of-access agreement on the agenda today that allows us to start some work. The second part, phase I of the arena site preparation, needs to be completed by September 15.

Design work on parking garages one block south of 10th Street and south of Q Street continues. Parking Garage #1 design is underway for approximately 980 cars. Parking Garage #2 is a shared foundation garage with the DEC. That will take about one-third of the capacity. With the shared capacity, Garage #2 is now anticipated to be in the 650 car range. Both those numbers could change as design continues.

The M and N Streets design has been split into two phases. The first phase involves some curb work on 10th Street, a temporary access road continues off N Street to allow the passengers to get to the new Amtrak Station, and preparation of the pad work where the Station will actually sit. Phase two is actually M and N Streets proper. We are delaying work on M Street due to large vehicles needing to transverse that area. We don’t want to damage a newly paved street. Also, we will do the little block of 8th Street between M and N Streets. That work will begin late spring next year.

Charleston Street Bridge review and design continues. The first submittal was delivered in May and all key stakeholders are now involved in planning the design and schedule of that construction.

The Amtrak Station design work is nearing completion. Construction estimation continues. Meetings are being held with BNSF to coordinate construction access and where the site fences need to go to protect the live tracks. As mentioned previously, the temporary access road for passengers will be done with the M and N Street project.

The District Energy design continues adjacent to Parking Garage #2 south of Q Street. That will be completed in late fall or early winter of 2012 to supply heating and cooling to allow interior work on the arena.

Title 200 environmental work is complete. A study to characterize the remaining soils on the site will be underway shortly south of 10th Street down to Q Street. Some monitoring wells will be installed in the next few months around the Title 200 site. The City Remediation Action Plan was submitted to DEQ and a public meeting was held for comment on May 9. We are expecting NDEQ approval of the action plan during the middle of June.

The rest of the infrastructure projects are in various stages of design. Completion dates are sequenced throughout the remainder of the program as needed. The critical path issues are keeping the initial site preparation work on schedule so we can start the arena foundation work. Pending weather or other items we can’t control, we are on target for that completion. It is imperative that the railroad work by Union Pacific and BNSF, as well as the property acquisitions, stay on track.
As a summary, overall things are looking good and things are proceeding as a major construction program should and activity is picking up every week. Snyder commented that she had made a site visit around 6:30 last night and was impressed to see the amount of activity that late in the day. She observed them compressing the soil before it settles. She was delighted to see the roadway up to the roundabout was completed. Jim confirmed that they are doing a good job and working some weekends. The contracts were well written providing for incentives and penalties. Snyder would encourage the public to go out to see the progress – which can be viewed from the walking bridge as you go to the Salt Dogs Stadium.

Item 5 – Approval of Payment Registers

Don Herz, City Finance Director, presented the April Check Register and Public Works Engineering Costs to the Board. Copies of this information are available to the public at the back of the meeting room today and on the website. There is one page of check register payments and one page of engineering payroll costs. On the check register payments a change was made on the fourth column from the left. The project number was added so you can see for each payment what project was charged. This will provide both the Board and the public additional information.

Clare asked for clarification regarding the small payment to Jinni Chug Revocable Living Trust for a temporary easement. Dan Marvin explained that was for the „M” and „N” Streets project, and Don verified that is where it was charged. They have a copy of the actual easement for viewing. Snyder asked if all the engineering costs were within the budget that was earmarked for Public Works Engineering costs. Don responded that the costs were covered by the budgeted dollars.

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

Item 6 – Review of the April 2011 Expenditure Reports

Don Herz noted that the Construction Expenditure Report was for the month of April. May activity was not ready for the Board packets and reports will be presented at the next meeting.

For the month of April, the total budget is still $321 million. We have expended $61 million, much of which is the payment to the BNSF escrow account. There are encumbrances of $26 million which represent contracts for which we have made commitments, but expenditures have not been made. We’ve had about $1.5 million in expenditures, which is not significantly different than the previous month. However, as construction payments start to increase, we will be seeing a fair amount of increased activity. On the next report you’ll see under environmental an accounts receivable of approximately $800,000 representing the money we will receive from the State. So, whereas the billable balance shows negative amount, that will adjust as we receive the payment from the State, showing a positive balance of approximately $300,000. We also added subtotals after each major project to assist in analysis of this report. We are willing to take any other suggestions for improving the report. On the last two pages, on the activity and operating budget, the expenses are within budget except for some postage expense. We went
about $1,500 over budget due to several mailings in an effort to communicate with restaurants, bars, and hotels on occupation tax. Later on the agenda, Don will give an update on those revenues. Snyder requested that Don revisit the information on the railroad payment and asked about the negatives they are seeing. Don explained that two thirds of our expenditures were in one check, that being to the railroad escrow for the first closing. Minus amounts are usually reflective of the need for some sort of adjustment. There also may need to be some amounts reallocated between the major categories.

**Item 7 – Bill No. WH 11-38 Resolution to approve the final reconciliation to the Agreement with General Excavating for work associated with diesel plume remediation. (Miki Esposito)**

Miki Esposito with the West Haymarket Environmental Team distributed a breakdown of the environmental remediation budget for north of „O” Street and a list of environmental milestones. Frank Uhlarik from Benesh is also available here today to answer any technical questions. Miki reviewed the final reconciliation, which is essentially the last step to finalize the contract with General Excavating. The Title 200 diesel plume remediation work was completed May 10. What we need to do now is review the overruns and under runs within the contract, to close out the project, and to proceed with reimbursement application to the State. That will allow us to tap into the $809,000 reimbursement for this activity. There are 13 pay items. At the beginning of a contract you have certain amounts that are estimated. By the end of the contract you have pay items that are clear and defined and quantifiable. So you may have additions to the quantities, deductions, or you may have an item completely removed. So, you will see in each of the pay items that some were added, some were reduced, and some were deleted. On the second page of the reconciliation, we had total additions of $208,890.32 and deductions of $150,681.79 for a net reconciliation of the contract of $58,208.53. That is what we are asking the Board to approve today to get this contract closed out. So to keep all of this in context, you have been provided an update to the budget for north of „O” Street. The State Title 200 reimbursement is shown as a deduct item under expenses. The expenses to date are just over $1.9 million, leaving a remaining balance for north of „O” Street of approximately $2.2 million. That amount will then be used south of „O” Street and added to an estimated $3.2 million. That leaves a total environmental budget of around $5.4 million to address the scrap yard, the lumber yard, and some other challenges south of „O” Street. Clare asked Miki about the total budget amount and whether agenda item dollars are shown on the handouts. Miki affirmed that the total environmental budget was $7.35 million for both north and south of „O” Street. Of that total, $4.1 was for north and $3.2 was for south of „O” Street. There is still site preparation going on, but we appear to be in good shape with the environmental dollars at this point. The $58,000 under this agenda item, as well as the approximately $184,000 in next agenda item, are taken into consideration within this budget update. Also, each member received an environmental milestones handout. The strikeouts show what actions have been accomplished thus far and the sheet gives you a look at what is left to do. For the environmental work, we are on time and under budget. Snyder asked about a letter from the State on what they would like us to do to complete the remedial action and associated deadline of August 1 to complete those items. Miki explained this is for the initial site preparation activities going on now for the eastern flank of the site. This letter is to approve those activities which DEQ has to review. NDEQ says in this letter that we have a green light to proceed. Clare summarized that the site north of „O” Street is clean, and we came
in $2.2 under budget. Frank Uhlarik explained that the $2.2 would also be reserved for any work on the festival area. Miki explained that that area is yet to be characterized. NDEQ is saying the arena and developable areas south of the arena (the eastern flank or the hole in the donut) are cleared, and we have done enough work there. The only exception to that is where the actual diesel plume was -- that isolated area requires performance monitoring for a year to provide clean samples. Once that is cleared, then the entire area is fully developable. We are making progress.

Being no further comments on this item, Beutler made a motion to adopt WH 11-38. Clare seconded the motion. Motion carried 3-0.

**Item 8 – Bill No. WH 11-39 Resolution to approve Amendment No. 2 to the Agreement with Alfred Benesh Company (formerly HWS) for services associated with environmental remediation. (Miki Esposito)**

Miki Esposito introduced this resolution relative to Amendment No. 2 to the agreement with Benesh. Again, Frank is here to answer any technical questions. On the first page of the Amendment No. 2 the supplemental request for Task 5 in the amount of $3,970 is to cover the cost of updating the Phase I Environmental Site Assessments. We have visited previously about how important those are to property acquisitions. When you do your due diligence, they reduce your liability. They are very important and they have to be within six months of any property acquisitions. So these additional funds would be used to compensate the consultant for the additional work to assess the Alter Scrap Yard and also for the update to the Jaylynn Phase I ESA. On Task 6 the supplemental request is for $173,450. As the project evolved, we found we needed to provide compliance assistance for other projects – like infrastructure projects, Amtrak, and the Arena. It isn’t that you clean up the site and walk away. The Environmental Team is needing to shepherd the projects through environmental compliance, asbestos inspections and abatement, lead inspections and abatement, managing contaminated soil and groundwater issues and making sure the impacted media gets managed appropriately and to the correct landfill if appropriate or gets treated in some other way. The Team’s role has expanded and the additional cost is to respond to the needs of those projects to avoid any delays and avoid issues with the State. We are proactive through the Environmental Contingency Plan. This is the best and most responsible way to deal with the sites. The third request is for Task 15 for oversight of the diesel plume remediation contract. Benesh provided us with contract oversight and remediation. Because the contract extended, we would like to compensate them in the amount of $7,085 for that additional work.

Clare requested clarification on Task 6 as to whether this work was requested in the original contract. Seems like this is a very large adjustment and that people may be doing things we did not ask them to do in the beginning. Miki responded that, when the contract was originally scoped, we did not know that we would have to provide compliance assistance to every individual project. Every time you do a project, you are potentially coming in contact with impacted media, and a decision must be made about how to appropriately handle that impacted media and mitigate our liability. Under normal circumstances, we would let the contractor at a non-dirty site just manage the dirt as they wish. They may take to a landfill or to a private property for use as beneficial fill. DEQ looked at the Environmental Team as a representative of
the JPA on this project since there are different rules on a dirty site. Someone from the team had to step up and take responsibility for the contaminated media. We had a relationship with DEQ and we have the expertise with the impacted media or environmental contaminated or sensitive areas so it just sort of naturally fell in this Team’s lap to take responsibility. Under the Contingency Plan we will help these projects and facilitate their compliance so they are not getting into trouble. Previously, the Mayor had asked a question about how to limit our liability if we are managing the soil and impacted media for the contractor. If a contractor did mess up, the State would look to all of us as being responsible. They would not selectively hold just the contractor responsible, so we took this proactive approach. Clare asked if the environmental cleanup costs are included within the budgets for the individual projects or is the environmental budget simply for the Arena project. Miki explained that environmental response dollars are within our budget. It was known that there would be environmental impacts and needs so contingencies were created for appropriate response by a team environmentally. When you have a dirty site there are many unknowns until the shovel is in the ground. We just naturally fill that role. Clare appreciates the work being done. However, he is stunned that such a large amount was not estimated and included in the budget. Miki used the canopy as an example of where the lead issue was actually a bigger problem than anticipated and required a change in scope. Instead of a canopy removal project it became a lead abatement project, and caused a $90,000 increase for the lead abatement. We are regulatory charged to meet standards and provide cleanup. Snyder also shares the concern with items on today’s agenda where JPA is being asked to approve additional reimbursements. Even if budgeted, it would be helpful if the Board knew prior that costs were coming. It seems we have been approving numerous change orders, and not for such small amounts. Dan Marvin emphasized that we may know about some issues coming, but we may not have determined which funding pocket or who specifically should handle those issues until we are confronted with them. Regulatory items have changed or expanded as we move forward affecting the scope on some projects, such as on the areas designated by the State where the groundwater has been identified as needing treated differently. Miki went on to clarify that it is a better explanation to say that we are simply moving the monies from one bucket to another to accommodate the needs. But then we have to come to the JPA for authority to use that bucket. Snyder confirmed that this keeps the JPA informed. It seems like JPA is seeing a lot of these, but as we move forward it is anticipated those will increase.

Frank Uhlarik explained that when the remediation contract was initially negotiated we foresaw some of these items within individual projects and thought they would be handled by the individual contractors. However, we have found it more cost effective and efficient to avoid delays to have the Environmental Team respond. Clare asked whether this change order affected the $2.2 million of savings to do the environmental remediation north of „O‟ Street. Miki responded that she had already taken into account both this amendment and the prior request when figuring the $2.2 million savings.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve Resolution WH 11-39. Clare seconded the motion. Motion carried 3-0.
Item 9 – Bill No. WH 11-40 Resolution to approve Change Order No. 2 to the West Haymarket Utility Relocation Project Agreement with T.J. Osborn Construction for additional costs in the amount of $231,814.23 due to plan revisions changing the location of sanitary sewer pipe. (Figid/Blahak)

Chad Blahak of Public Works, serving as Project Coordinator for the Department, detailed that this change order included the amount for the change in location of sanitary sewer pipe, as well as a few other significant items. In the original design we were cutting across the festival parking lot area. In the revised design, we instead took the sewer out and around the area. Although, quite a bit more length, it added a lot more flexibility for the use of the festival area. At that time, that was looked as a possible location for the ice sheet, so the sanitary sewer was moved out from underneath that site to avoid any possible future conflict. This resulted in a lot larger quantity for steel encasement for the sanitary sewer underneath what would be a portion of the railroad right-of-way for about $60,000. The other major component to this change order was a lot larger amount of unsuitable materials encountered during construction. This required about 6.5 thousand yards of new materials to get compaction at a cost of $80,000 additional expense. They also had to haul additional materials across the site to meet environmental testing requirements, rather than offsite as may have been anticipated originally. Also, a 4" communications conduit had to be lowered in the area of the railroad grading for the City’s flood mitigation area to the west. Another additional item within the sanitary sewer relocation for was the bypass pumping station where we tied into the live line. Those represent the largest items. Clare asked the same question as on the last item regarding why these items could not be anticipated upfront. Chad clarified that the original alignment most likely represented the shortest route to an existing sanitary sewer that did not have to be relocated. He was not aware of the decision making process originally, but two factors for the relocation were the possible location of the ice sheet and to move it out from under the festival parking lot area to add future flexibility to that space. As far as the conduit, sometimes things do get missed and this may have been one of those items. We try to minimize those negative effects on a project and project costs. Clare asked if the work had already been completed on this change order, and what is the impact of saying no? Chad responded that the vast majority of the sanitary sewer relocation has occurred. Clare would like options ahead of time versus after the work is completed for the future. Chad assured the Board that we try to follow that procedure. We are working to streamline the process. Clare informed staff he would rather have emergency meetings if necessary than approve these types of changes after the fact.

Bob Olson from the audience asked whether the figures are being checked to be sure they are realistic so costs are not being padded. He is concerned about items being ‘rubber-stamped” after the fact.

Jim Martin from SAIC explained that the sanitary sewer was one of the first items completed as it had to be so the railroad could get started. The original estimates were done in 2008. At that time there was no building anticipated – there was only a parking lot. Since that time, new ideas have developed creating the need for change in plans to increase the flexibility of the space. It would be a much higher cost to have to go back and change later if needed once the sanitary sewer is completed. As to auditing, Public Works provided project management. Their project managers actually create the quantities, observe the work, and measure the work. These finished
measurements are looked at up through the management of that Department and a decision is made as to how much the contractor is to be paid for on the project. When they come across SAIC desk, these charges are reviewed to be sure they fall within normal construction rates for a project of that size. These costs fall within those parameters.

Being no further discussion, Beutler moved to adopt WH 11-40. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-41 Resolution to approve reimbursement to BNSF for actual costs and expenses incurred for additional work and authorizing the Program Administrator to revise the draw schedule for the escrow agreement and to negotiate the terms and conditions for payments to BNSF for such additional work. (Confer)

Ron Confer, Lincoln City Attorney and counsel for the West Haymarket JPA, presented information on this resolution which is to request authority to pay BNSF to catch up to the construction schedule that was originally set out for the project. Originally BNSF was to conduct quite a bit of their work in 2010 as a summer signing of the contract was anticipated. In 2010 negotiations took longer than anticipated by anyone and contracts were not signed until October. Therefore, they missed a large portion of the construction season upon which they counted. Clare asked for clarification on the timing. If anticipated in July and signed in October, did that mean there was approximately a three month delay? Rod acknowledged that was correct. In order to catch up and get back on the original tight schedule, BNSF said they will need to charge extra to cover the increased labor costs, increased materials cost due to inflation, and additional equipment rental. The additional amount estimated by BNSF is $3,379,913 to catch up. This resolution is authorizing payment up to that amount. The amount would be held in escrow and allow them a draw schedule. BNSF would have to account for the expense they are incurring and, if less, only actual amount would be paid. This work has not been completed yet; but, in order to meet the deadline to have the arena ready for the 2013 UNL basketball schedule, we have to get back on schedule. Snyder is aware that the reasons for the delays were not all our fault. But, although railroad added to those delays, we are taking the financial brunt which is of concern. Have the figures been checked to be reasonable? Rod stated that we have had Olsson and Associates, as well as City staff, review these figures and the recommendation is that these be allowed. The BNSF is not willing to work on the basis of not being paid until the work is done. They get paid in advance and will be doing quarterly draws. Clare wondered about what efforts we made to help expedite the work to be done by BNSF due to the three month delay. Did we assume some of their contractual obligations? Rod confirmed there were certain items that we were able to allow BNSF to start without the contract in place and some things BNSF was not willing to undertake without a contract. We did whatever we could to speed up that process, and both sides worked very hard and stayed in communication. It was and is a tremendously complex contract. It really doesn’t make much difference who is to blame. The railroad said for them to undertake this move, they were not willing to assume any costs. So, with that in mind, it doesn’t really matter why the delay occurred. They were perfectly happy to stay where they are currently. If we wanted BNSF to move, it was on the terms they stated. Clare expressed that he was bothered by the fact that this is a community project requiring a lot of teamwork on behalf of public and private sector within the community. It sounds as though there is one party not willing to work with the others. He finds it hard to
believe that a three month “delay” resulted in a $3.4 million added cost to us. He is also concerned on what is to prevent this from happening again at future closings. Obviously, Rod stated he cannot give any assurances on what will happen in the future. We are told this is the estimate of costs to get back on track. Snyder asked if the railroad would allow anyone else to do any of the work. Rod stated they would not give rights to anyone else as it is work on their property to build their new rail yard.

Jocelyn Baade was curious to know who says this has to be done by 2013 UNL basketball season. Is it not a City project? Dan Marvin said that we have agreements with UNL, and would like to get this done since they will need a place to play basketball. We created an incentive program to try to have the building done by September 1, 2013, but may have a couple of weeks before basketball season would start in November. We have a good working relationship with UNL, but the City is between a rock and a hard place because we cannot slide the schedule and still accommodate the needs for the basketball season. Although a City project, we have certain obligations as a landlord with UNL as the tenant.

Bob Olson wondered what the dollar contribution is from UNL since they are considered a partner in the Haymarket. Clare explained that the University is paying a lease and surrendering dollars they would normally receive from tickets, naming rights, concessions, premium seating, etc. In the new arrangement, most of that goes to the project so they are surrendering revenue. Bob feels they are getting much more than they are giving and calling the shots as to dates. He is also concerned about railroad costs and how to avoid future escalation. He has some experience in engineering and railroading and the costs seem way too high. However, he is unsure what we do now as it appears we are over a barrel.

Snyder stressed that the JPA Board will continue to monitor these issues for the benefit of both the project and the protection of the citizens. They are equally concerned.

Snyder asked for further comments. Hearing none, Beutler moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 11 – Bill No. WH 11-42 Resolution to approve Amendment No. 1 to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company adopting a revised Exhibit “E” (Subcontractor Procurement) which provides for use of the City of Lincoln’s e-bid system to distribute information, allows responses to an RFQ and proposals to an RFP to be received directly by email and hard copy, requires a list of proposers to an RFP and a list of responders to an RFQ to be posted on Haymarket Now, and makes other minor changes for clarification. (Yancey/Peo)

Rick Peo, City Law Department, said that reading the description pretty well summarizes this request. This is a minor amendment to simplify the bid process to allow them to be received by e-mail and hard copy as well as sent in on the e-bid system and provides increased public disclosure by posting names of responders on RFP and RFQ’s on HaymarketNOW! Snyder asked if we had used previously. Rick responded that we had used procurement exhibit previously. With the major bids that will be coming in, we wanted to be able to use the revised process for those bids.
Dan Marvin reported that they have been through an RFQ process posting the people who qualified. There was a good response, with approximately two-thirds being local businesses. As we move forward to RFP’s they will be narrowing this and getting down to actual bids. John Henshaw from Mortenson reported that they received a great response for the qualification process for nine designer assists subcontracts. They are now in the proposal stage. So they are moving forward with the Design Team on procuring those nine designer assist subcontracts. There were approximately two thirds of the teams who are local or teaming with local businesses. Clare thanked John for the transparency in posting information on HaymarketNOW! Public transparency was very important to the Board and efforts are appreciated.

Snyder asked if there were any other comments. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 12 – Bill No. WH 11-43 Resolution to authorize the Program Administrator to execute a Right-of-Entry and/or Temporary Construction Easement with USPS, upon terms and conditions acceptable to the JPA’s legal counsel, in order to allow the JPA to timely construct parking lot improvements on the south side of the Main Post Office Building and to remove the existing wall blocking the extension of „R” Street to the west. (Marvin/Peo)

Rick Peo explained that this is one of those situations where we are trying to not to fall behind on the arena project. We want to get in and have access to USPS property to make certain improvements prior to formal agreement with the USPS. We are trying to prepare and finalize those documents. They are willing to open up the land for some work on the parking lot improvements south of their building via a temporary construction easement. The wall would not be able to come down, but we would be able to start and that would allow for timely completion once the formal agreement is finalized. We should have final agreements before they need to go to Phase II of the project. Snyder suggested posting the map submitted with the resolution so people today could view. When she was there she saw work on what she assumed is the parcel belonging to the City. Jim Martin confirmed that would be the correct parcel. Rick explained that the City had to do some infrastructure work under the JPA Parcel that is currently utilized by the Post Office under an agreement for parking. They allowed us to basically disrupt their parking to do that work. The USPS Parcel is south and we would have to acquire that parcel. The „R” Street extension would cross that parcel. Once completed, the current access south of the main Post Office will not function in same manner. The JPA Parcel would have to be reconfigured to allow the Post Office to function at current capacity. We will be doing some restriping on the east side of the building to create some additional parking stalls. That is during the first phase. The Post Office will allow us to come in and do that and not charge for the temporary construction easement. We just have to build according to plans submitted to them, maintain the property during construction, and restore the property after construction. The Post Office sent a template for a temporary easement and Rick returned a draft. He will be discussing any issues with them. Dan Marvin added that a purchase agreement for USPS Parcel 2 containing approximately 31,982 SF will come back before the Board. That is the agreement currently under review by USPS. And the JPA Parcel 1 will be leased to the USPS and will continue to have parking on the west side. Snyder wondered if that would eventually go away. Dan responded that the green parcel on the map (JPA Parcel) will be leased to USPS and
continue to be used for parking. The pink parcel on the map (USPS Parcel 2) will be purchased and used for the „R” Street extension and remainder will be used eventually as an open plaza area. It is adjacent to Iron Horse Parking Lot which will remain as parking even after acquisition of the USPS property, at least until other parking is built for the Haymarket area so we don’t create parking difficulties. Rick explained that one of the unique issues in the timing of work with the Post Office is that they want to be the drafter of all of those agreements so we are waiting until they initiate. Then we are the responder. Clare questioned who determines fair market value in purchasing the USPS Parcel 2. Dan relayed that the appraisal has been completed by Great Plains and accepted by the parties. Rick further commented that there were concerns, but those have been worked on, and we won’t be fighting over fair market value.

Snyder asked if there were further comments from the JPA or comments from the audience.

Chris Beutler asked Don Herz to come forward relative to this and numerous discussions today. Beutler recounted the procedure at the beginning of this process before the vote of the people. Don put together what at the time were reasonable estimates of costs for the dozens and dozens and dozens of components on this huge project – largest one in the history of the City. After those figures were put together, they were examined by numerous private and public people for input as their reasonableness. You checked with experts in numerous fields to gather input. Would that be right? Don confirmed that was true and, in fact, we contracted with Michael Sullivan to analyze all aspects of the overall financial plan. He reviewed all revenues and expenditures. Beutler went on to point out that we all knew some of those components would be high and some would be low. On this scale of a project it is unreasonable to assume we would be right on target on all the components. Don acknowledged that was true. They costed everything in 2009 dollars and provided an inflation contingency. On top of that, we added another 15% contingency to deal with uncertainties. The total budget was in the range of $340 million. We have not yet allocated any of the contingency dollars. Beutler reiterated that we understood when we went to the public that there may be variances, and the contingencies were there to deal with any variances on the high side. After we were done with the estimates and reviews, we went to the public we went to the public with a total price and overall schedule. When the public voted, they were counting on that information in its totality. As we have proceeded to date, some estimates have been high and some have been low. Don assumes the public was voting on overall cost. On the financing side the news is very very good. We were conservative on the tax collection estimates. Those two aspects are positive variances. Beutler recognized that the areas being dealt with on today’s agenda are only a couple of the components. Considering all the components we know about to date, are we on time and on schedule. Don responded in the affirmative. At this point, he doesn’t know that we need to increase the budget above the $321 million estimate. Until we get in bids we won’t know exactly where we are, but to date we have not allocated any contingency monies. It would be premature to do so until we see some of those major construction bids.

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

**Item 13 – Bill No. WH 11-44 Resolution to amend the Memorandum of Understanding with „N” Street Company LLC (Alter) to revise dates and to express the parties’ intentions to**
use best efforts to cooperate during the lease term to allow „N” Street to continue to operate its business during relocation. (Marvin/Austin)

Dan Marvin, Project Manager, explained that this item came after discussion with „N” Street Company LLC (Alter). There were certain dates in that agreement. A key date for them was July 1. If they performed or behaved in such a way to allow the BNSF closing on May 10, which was a critical date for the entire project, then we would not proceed with condemnation against them prior to July 1, 2011. We went to the West „O” Business Association meeting in May, involving West „O” businesses and Capitol Beach residents. There was a lot of discussion about the land use and Lincoln Steel as a future home for Alter. After that discussion, Alter wanted time to work with those neighbors. They asked Planning Department to delay discussion before Planning Commission, which was on pending currently. They wanted to extend by 30 days. Since that time it has been extended an additional two weeks, resulting in about a six week delay. It was delayed on Planning Commission to mid June. If they get positive votes, it would move forward to the City Council in July. The possible action date would be past the July 1 date, and we could break faith with Alter by condemnation. The July 1 date made Alter nervous with this timeframe in mind. So Alter asked us, if they work with the businesses and neighbors, would we be willing to extend this date. This key date is proposed in this resolution to be extended to August 1. There are some other dates and additional minor clarifications. Bill Austin has been in contact with Alter and is available if the Board has any additional questions.

Snyder asked if there were questions from the JPA or comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 14 -- Bill No. WH 11-45 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (existing Watson Brickson site). (Marvin/Austin)

Item 15 -- Bill No. WH 11-46 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (stormwater mitigation site/conservation easement). (Marvin/Austin)

Items 14 and 15 were called together. Dan Marvin requested a delay until the next JPA Board meeting on June 24 as these items are not emergencies and there are still documents coming in on these items. Calculations are fairly benign and clarifications are needed. Basically these deal with buying property that is Watson Brickson and moving it to an area on West „O” Street. Again, we are working with a business without condemnation. It would provide an additional five acres to be acquired, creating storage capacity on the east side of the tracks to offset a reduction in fill on the west side, giving us a no net rise situation. This will help long term as we true up our calculations.

Clare made a motion to approve the delay WH 11-45 and WH 11-46 until June 24. Beutler seconded the motion. Motion carried 3-0.
Item 16 – Discussion Only: Proposed process for approving change orders. (Herz/Marvin)

Don Herz requested we look at creating a formal process on change orders. Original thought is to have a tiering approach to authorize change orders prior to coming to the Board. The thinking would be to get some input from the Board on what those thresholds would be so we can bring forward a resolution.

Dan Marvin suggested that there may be three thresholds. Maybe the Project Manager and Program Manager could approve the lowest or first tier amounts. There will be shorts and longs for unanticipated costs within the contracts. As these occur on a daily basis (moving a fire hydrant or a telephone pole or the need for additional hours worth of work) there needs to be a system to approve to handle the small change orders on a timely manner. The City handles this by giving the people in the field the authority to make those small amount authorizations in the field. It still would go up through an appeal process through Roger Figard, City Engineer, or Greg MacLean, Director of Public Works. Since this is a larger project, we were thinking of a second tier, maybe $25,000 to $100,000, that would require a few more signatures. The third tier might be over $100,000 and would not move forward until after getting JPA Board approval. There are going to be a lot of these types of change orders, and we would like to have a system in place to handle these like the City does.

Don stated that the Finance Department would aggregate these small dollar change orders and bring forward to the Board monthly. We are asking Board members to visit about any ideas on the thresholds with Dan, Rod, Rick or himself. Beutler asked about the authority on the different tiers. Don said they had thought about the project manager and Program Manager (SAIC) on first tier. The next level may require the Treasurer and Secretary to sign off as well, as those people are more in tune with the overall view of the project.

Snyder asked about how to gather comments. Dan said they would get some type of paperwork into the hands of the Board for comment so we can move forward with a resolution.

Item 17 – Other Issues

Don Herz reported that we had collected four months of Occupation Taxes. We’ve collected approximately $3.6 million, which annualized is $10.8 million. That is about a million more than estimated. And, the peak activity is thought to be during the next six months. We think there is good news as we made a very conservative estimate on our major revenue stream. That number goes on as long as there are outstanding bonds. The Financial Team is looking at issuing the third and last major series of bonds due to the favorable interest rates. As you recall, we are saving about $3 million a year in lower cost of borrowing on the first $200 million. We think interest rates are the lowest they may be, so we may want to be in the market this fall. Dollars saved are not only saved in one year, but for the life of the bonds (30 years). JPA has to be audited to issue debt and report financial activity. RFP will be going out within the next week. The intent is to have someone under contract in August and bring a resolution to the Board for that audit.

Snyder asked if there were any other issues to be discussed today.
Item 18 – Set Next Meeting Date

The next meeting will be held on Friday, June 24, 2011 3:30 P.M. in Room 112, City Council Chambers. Previously scheduled meeting on June 16 is cancelled.

Snyder recognized Trish Owen, the Deputy Chief of Staff to the Mayor, who has been overseeing this project. Today is her birthday. Board expresses their thanks to Trish.

Beutler made a motion to adjourn. Clare seconded the motion. Motion carried 3-0.

Meeting adjourned at 5:28 P.M.

Prepared by: Pam Gadeken, Public Works and Utilities
ENVIRONMENTAL MILESTONES

Petroleum Remediation (Title 200 work)

- Notice to Proceed: January 13, 2011
- Initial Completion Date: March 9, 2011
- Contingencies/Possible Delays: March 9, 2011 – May 22, 2011 (2-1/2 months)
- Revised Completion Date: May 10, 2011
- Initial Site Preparation: May 23, 2011
- Reimbursement Applications: Summer 2011 – Winter 2012
- Performance Monitoring (4 quarters): August 2011 – August 2012
- Final Report (following monitoring period): September 2012
- Well Abandonment: October 2012
- No Further Action/Closure Letter: November 2012

Voluntary Cleanup Program Phase I (Properties North of O Street)

- Submit Interim Remedial Action Plan to NDEQ: March 15, 2011 (Eastern Flank)
- NDEQ Approval of Interim Remedial Action Plan: May 13 – May 22, 2011 (Arena Footprint Cleared for Development)
- Initial Site Preparation: May 23, 2011
- Remedial Action (Eastern Flank): May 23 – November 2011
- Submit Report & Remedial Action Plan: August 1, 2011 (Western/Northern Portions)
- NDEQ Review & Public Participation Process: August 1 – December 1, 2011
- Remedial Action (Western/Northern Portions): December 2011
- Submit Final Report (Site-Wide): February 2012
- No Further Action/Closure Letter: March 2012
# Breakdown of Environmental Remediation Budget (North of O Street)

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<td><strong>Total Estimated Budget for Remediation North of O Street</strong></td>
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**Environmental Remediation Expenses to Date:**

- AON Insurance (environmental insurance)          | 259,987.00  |
- Benesch – Environmental Consultant               | 1,016,543.00|
- General Excavating – T.200 Plume Remediation     | 1,415,592.38|
- State Title 200 Reimbursement                    | (809,449.00) |
- NDEQ Oversight Expenses                          | 22,213.23   |
- Engineering Services Expenses                    | 8,891.54    |
- Health Department Expenses                       | 312.22      |
- BNSF Expenses                                    | 1,307.13    |
- Other/Miscellaneous                              | 138.32      |

**Total Expenses to Date:**                       | 1,915,535.82|

**Balance remaining:**                             | **2,202,902.18**|

** Budgeted amount North of O only represents a portion of the overall $7.35 million environmental remediation budget. Budget amount for environmental remediation South of O street is estimated at $3,234,375.00 (leaving a total remaining balance for environmental remediation of $5,437,277.18).**
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City of Lincoln, NE
West Haymarket
Job Cost Report
As of May 31, 2011
<table>
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<tr>
<th>Service</th>
<th>Original Budget</th>
<th>Reappro &amp; P/Y Enc</th>
<th>Budget Revisions</th>
<th>Total</th>
<th>YTD Expend</th>
<th>Available Balance</th>
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<td><strong>13 Capital Outlay - Equipment</strong></td>
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City of Lincoln, NE  
West Haymarket JPA  
Operating Expenditure Report  
As of May 31, 2011

<table>
<thead>
<tr>
<th>ORIGINAL BUDGET</th>
<th>REAPPROP &amp; P/Y ENC</th>
<th>BUDGET REVISIONS</th>
<th>TOTAL</th>
<th>YTD EXPEND</th>
<th>AVAILABLE BALANCE</th>
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<td>15 Debt Service</td>
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<tr>
<td>6235 Bd Trustee Pmt-Interest</td>
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<td>15 Debt Service</td>
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## West Haymarket JPA
### Operating Expenditure Report
#### As of May 31, 2011

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Original Budget</th>
<th>Reapprp &amp; P/Y ENC</th>
<th>Budget Revisions</th>
<th>Total</th>
<th>YTD Expend</th>
<th>Available Balance</th>
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<tr>
<td>00950</td>
<td>West Haymarket Revenue</td>
<td>501,555</td>
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<td>6235 Bd Trustee Pmt-Interest</td>
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<td>Debt Service</td>
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</tbody>
</table>

**Total:**
- **Revenue:** 9,085,277
- **Available Balance:** 163,361
PURCHASE AGREEMENT

(Jaylynn Existing Site)

THIS AGREEMENT is made and entered into on this ______ day of ____________, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company, (“Seller”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (“JPA”).

RECITALS

I.

Seller is the owner of certain real estate (as defined in Neb. Rev. Stat. § 76-201) and improvements commonly known as 660 N Street in Lincoln, Lancaster County, Nebraska, and more fully described hereinafter (the “Property”); and

II.

Seller is agreeable to selling and JPA desires to acquire the Property in fee simple, subject to the terms and conditions as set forth hereinafter.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1.  Conveyance.

   1.1.  Sale and Conveyance. Seller agrees to sell and convey to the JPA and JPA agrees to buy and take from the Seller, upon the terms and conditions hereinafter set forth, the real property owned by Seller legally described as:

         All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 51 in the City of Lincoln, Lancaster County, Nebraska, and the West 25.0 feet of Lot 16 of said Block 51, excepting therefrom, a 17.0 foot wide corridor, being 8.5 feet wide on each side of the Burlington Northern and Santa Fe Railway Company’s (formerly Chicago, Burlington & Quincy Railroad Company) spur track centerline, as now located and constructed upon, over and across said Lots 7, 8 and 15, in Lincoln, Lancaster County, Nebraska, together with and including all buildings, improvements, fixtures, rights, privileges and
appurtenances thereunto belonging, if any, (hereinafter referred to as the “Property”).

Seller represents and warrants that it has good, valid, and marketable title, in fee simple, and agrees at closing (as hereinafter defined) to convey title to the Property to JPA by warranty deed free and clear of all liens, encumbrances, or special taxes levied or assessed, or other restrictions, except the Permitted Exceptions as hereinafter defined.

1.2. **Compensation.** JPA shall pay to Seller Four Hundred Forty-One Thousand Dollars ($441,000.00), (“Purchase Price”), payable at Closing, subject to adjustments and prorations as herein provided.

1.3. **Date of Closing.** Seller and JPA agree to close and complete this sale in accordance herewith on or before the ______ day of June, 2011, (“Closing”).

1.4. **Evidence of Title.** Within thirty (30) days from the date of this Agreement, JPA shall obtain a title commitment (the “Title Commitment”) for an ALTA owner’s title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the “Title Company”) covering title to the Property and showing the condition of title to the Property. For purposes hereof, “Permitted Exceptions” shall mean (i) covenants, conditions and restrictions of record which shall be approved by JPA if they do not interfere with JPA’s intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by JPA, and which do not interfere with JPA’s intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which Seller is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of JPA, specifically including the Declaration of Restrictive Covenant by and between Jaylynn, LLC, and BNSF Railway Company requested by the JPA; (vi) easements and use restrictions to be granted under this Agreement; (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by JPA; and (viii) the rights, if any, of Lamar Outdoor Advertising under that certain lease filed in the office of the Register of Deeds of Lancaster County, Nebraska, as Instrument No. 2004-071992. The cost of the owner’s title insurance policy shall be paid by the JPA. Within fourteen (14) days of JPA’s receipt of the title commitment, the JPA shall notify Seller of any objections to the title to the Property disclosed by the title commitment. Seller shall have a reasonable period to cure or correct JPA’s objections to the title and deliver an amended title commitment; otherwise, JPA may, at its option, either terminate this Agreement or waive the objection and proceed to Closing.

1.5. **Survey.** JPA may, at its option, obtain an ALTA/ASCM survey with minimum standard detail requirements showing area dimensions and location of the real property, the nearest monument streets, adjoining streets, roadways and properties, location of all buildings, improvements, and encroachments, if any, the location of all recorded easements, square footage, together with all current floodplain zoning designations of the Property.
1.6. **Title and Possession.** Seller agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to JPA free and clear of all adverse mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or adverse claims of any kind or character whatsoever, except for Permitted Exceptions. Seller shall deliver possession of the Property to JPA on or before September 30, 2011, and shall occupy the Property up until that time pursuant to the provisions of the Lease, attached hereto and marked as Attachment “A.”

1.7. **Environmental; Tests.** Prior to Closing, JPA and its agents or representatives shall have the right to have access to the Property to perform any type of environmental studies, including without limitation, Phase I and Phase 2 environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively “Tests”). In the event JPA determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then JPA’s sole remedy shall be the right to terminate this Agreement. A copy of the Tests together with related documents, reports and test reports shall be delivered to the Seller. JPA shall have until the Closing Date to complete the Tests and to provide notice of termination to the Seller.

JPA and its agents or representatives shall be responsible for and hereby agree to indemnify and hold Seller harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by JPA or its representatives. JPA and its representatives shall take all reasonable efforts to maintain the security of the premises Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property.

1.8. **Taxes, Assessments and Other Costs.** All taxes related to the Property for 2010, and all prior years, shall be paid by Seller at or prior to closing. Any tax related to the Property for 2011, shall be the responsibility of JPA. Any special assessment arising out of any improvement completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Seller. Rents, if any, are to be adjusted on and as of the date of closing and completion of the sale. JPA shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from Seller to JPA. JPA shall pay its own costs of the preparation of all documents and other related expenses in connection with the sale of the Property. The closing of the sale shall be paid by JPA.

2. **Representations and Warranties.**
2.1. **Representations and Warranties of Seller.** Seller represents and warrants to JPA as follows:

2.1.1. **Organization; Power; Good Standing.** Seller is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.1.2. **Authority Relative to Agreement.** This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies. Seller is the owner of the Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

2.1.3. **Effect of Agreement.** The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Seller and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Seller, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which the Property may be bound.

2.1.4. **Brokers.** Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of JPA to pay any finder’s fee, brokerage or agent’s commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Seller is not aware of any claim or basis for any claim for payment of any finder’s fee, brokerage or agent’s commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

2.1.5. **“Non-Foreign Person.”** Seller is not prohibited from consummating the transactions contemplated hereby and is not a “foreign person” as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

2.2. **Representations and Warranties of JPA.**
2.2.1. **Organization; Power; Good Standing.** JPA is a political subdivision and body corporate and politic organized under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.2.2. **Authority Relative to Agreement.** This Agreement has been duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA, enforceable against JPA in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies.

2.2.3. **Effect of Agreement.** The execution, delivery and performance of this Agreement by JPA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by JPA and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of JPA to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to JPA, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which JPA is a party or by which the Property may be bound.

3. **Indemnification.**

3.1. **Indemnification by Seller.** Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Seller agrees to indemnify and hold JPA harmless against, and will reimburse JPA upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against JPA in respect of any and all damages or deficiencies resulting from: (a) any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Seller contained in this Agreement; and (b) any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished to JPA pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.2. **Indemnification by JPA.** Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, JPA agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made
or incurred by or asserted against Seller in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.3. **Conditions of Indemnification.** With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections 3.1 or 3.2 hereof:

3.3.1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

3.3.2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party’s sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party’s inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

3.4. **Inspection and Testing.** At any time after the date of this Agreement, JPA and its employees and agents shall have the right to enter upon the Property and perform such tests and inspections as it deems necessary to determine suitability of the Property for its intended use. JPA shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. **Conditions of Closing.**

4.1. **JPA’s Conditions of Closing.** Unless waived by JPA in writing, the obligations of JPA to close under this Agreement are subject to fulfillment of the following conditions:
4.1.1. **Executed Instruments.** JPA shall receive at Closing:

4.1.1.1. The executed warranty deed and easements, if any, in accordance with this Agreement; and

4.1.1.2. A “non-foreign person” affidavit reasonably acceptable to JPA, signed and sworn to by Seller.

4.1.2. **Representations and Warranties.** There have been no material inaccuracies in the representations and warranties of Seller and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.2. **Seller’s Conditions of Closing.** Unless waived by Seller in writing, the obligations of Seller to close under this Agreement are subject to fulfillment of the following conditions:

4.2.1. **Payment.** At Closing, Seller shall receive the Purchase Price in Good Funds from JPA.

4.2.2. **Representations and Warranties.** There have been no material inaccuracies in the representations and warranties of JPA and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.3. **Termination.** If the conditions of Closing for a party have not been materially complied with or performed and such noncompliance or nonperformance shall not have been waived by the other, such other party may terminate this Agreement and upon such termination neither JPA nor Seller shall have any liability one to the other.

4.4. **Risk of Loss.** All risk of loss or damage to the Property by fire or other casualty until the delivery of the executed instruments as provided in this Agreement is assumed by the Seller, and in such event, JPA shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.

5. **Relocation Costs.** Seller and JPA understand and agree that Seller is entitled, under the Relocation Assistance Act (Neb. Rev. Stat. § 76-1214, et seq.) and regulations promulgated thereunder, to relocation assistance as a result of the acquisition of the Property by the JPA. Further, Seller and JPA agree that existing lumber racking within the buildings currently located on the Property shall be considered personal property to be relocated under the provisions of the Relocation Assistance Act and regulations promulgated thereunder.

The parties understand and agree that the amount of relocation assistance is presently estimated at One Hundred Twenty-One Thousand Four Hundred Forty-Six Dollars ($121,446.00) for the racking and at Three Hundred Fourteen Thousand Dollars ($314,000.00) for moving costs, but the final amount of relocation assistance is subject to the actual eligible costs related to Seller’s relocation to its new site pursuant to the Act and the regulations promulgated thereunder. JPA shall pay to Seller, at Closing, an amount equal to one-half (1/2) of the relocation costs described above in
partial satisfaction of its obligations under the Relocation Assistance Act and regulations promulgated thereunder.

6. Miscellaneous.

6.1. Binding Effect - Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

6.2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.3. Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

6.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

6.5. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following addresses or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to JPA: West Haymarket Joint Public Agency
c/o City Attorney’s Office
555 S. 10th Street, Suite 300
Lincoln, NE 68508

With a Copy to: Dan Marvin
555 S. 10th Street
Lincoln, NE 68508

If to Seller: Jaylynn, L.L.C.
Attention: Brad Devall
660 N Street
Lincoln, NE 68508
6.6. **Severability.** If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

6.7. **Survival and Nonmerger.** All terms, conditions, representations, and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.

6.8. **Time of Essence.** The parties agree that time is of the essence in the performance of their respective obligations hereunder.

6.9. **Waiver.** Either JPA or Seller may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

6.10. **Construction.** The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

EXECUTED by Seller this _____ day of _________________, 2011.

JAYLYNN, L.L.C., a Nebraska limited liability company
By: ________________________________
Title: ______________________________

Fed. Id. No. or Social Security No.

EXECUTED by JPA this _____ day of ________________, 2011.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

By: ________________________________
Title: ______________________________

STATE OF NEBRASKA )
COUNTY OF LANCASTER )

On the _____ day of ________________, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came _______________________, known to me to be the ______________________ of Jaylynn, L.L.C., a Nebraska limited liability company, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.
STATE OF NEBRASKA )
) ss:
COUNTY OF LANCASTER )

On the _____ day of _____________, 2011, before me, the undersigned, a Notary Public
duly commissioned for and qualified in said County, personally came ____________________,
known to me to be the ______________________ of the West Haymarket Joint Public Agency, a
political subdivision and body corporate and politic, and identical person who signed the foregoing
instrument and acknowledged the execution thereof to be his/her voluntary act and deed as such
officer and the voluntary act and deed of said agency by its authority.

Witness my hand and notarial seal the day and year last above written.

_______________________________________
Notary Public
ATTACHMENT “A”

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on this _____ day of ____________, 2011, by and between the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the state of Nebraska created under the Joint Public Agency Act (“Lessor”), and Jaylynn, L.L.C., a Nebraska limited liability company (“Lessee”).

RECITALS

I.

Lessee is selling to Lessor the property hereinafter described as the premises, but finds it necessary to retain possession thereof for a period of time after the closing in order to proceed with orderly removal of its business to a new location.

II.

Lessor is agreeable to leasing the premises back to Lessee for the term set forth below so as to allow Lessee to make an orderly transfer of its business to its new location, upon the terms and conditions as herein set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained here, the parties agree as follows:

1. **Premises.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the premises located at 660 N Street, Lincoln, Nebraska, and legally described as:

   All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 51, in the City of Lincoln, Lancaster County, Nebraska, and the West 25.0 feet of Lot 16 of said Block 51, excepting therefrom a 17 foot wide corridor, being 8.5 feet wide on each side of the Burlington Northern and Santa Fe Railway Company’s (formerly Chicago Burlington and Quincy Railroad Company) spur track center line, as now located and
constructed upon, over and across said Lots 7, 8 and 15, in Lincoln, Lancaster County, Nebraska (the “Premises”).

2. **Term.** The term of this Lease shall commence on June ____, 2011, and shall terminate upon the earlier of (i) Lessee’s notification that it has vacated the Premises, or (ii) September 30, 2011.

3. **Rent.** Lessee shall pay to Lessor the sum of One Dollar ($1.00) as rent for the full term of this Lease, receipt of which is hereby acknowledged.

4. **Use of Premises.** The Premises described herein shall be used by Lessee for the purpose of conducting the business of a lumber yard and for no other purpose without the written consent of the Lessor. Notwithstanding Lessee’s right to use the Premises as hereinabove described, Lessee agrees that Lessor shall, with reasonable notice to Lessee and no material disruption to the lumber yard business, be entitled to enter upon the Premises as may be necessary to conduct such tests, engage in surveys, or other inspections as may be necessary in furtherance of the West Haymarket Arena Project. In addition thereto, it is specifically understood and agreed that Lessor shall be entitled to remove the fence along the west property line and widen the existing 6th Street roadway to within three (3) feet, more or less, of the west exterior wall of the westernmost existing building and, two (2) months after the commencement date of this Lease, to remove all or a portion of the existing office structure located at 6th and N, all for the purpose of operating two-way truck traffic and other vehicular traffic over and across that portion of the Premises during the term of this Lease.

5. **Utilities.** Lessee shall pay the cost and charges of all utilities and any other services which may be furnished to the Premises and shall indemnify and hold Lessor harmless for the same. Lessor shall not be liable for interruptions to the telephone, plumbing, heating, ventilating, air conditioning, electrical or other mechanical or utility systems or cleaning services, by reason of
accident, emergency, or repairs, alterations, improvements, or shortages or lack of availability of materials or services.

6. **Maintenance and Repairs.** Lessee shall, at its sole expense, maintain and make repairs and replacements as needed to the improvements on the Premises, including, but not limited to, interior maintenance (including heating, ventilation and air conditioning systems), exterior maintenance, snow removal, lawn care and parking maintenance. Lessee shall maintain the Premises in clean, safe, and good condition and keep and return the Premises in at least as good condition as they currently exist, ordinary wear and tear excepted.

7. **Alterations or Improvements.** Lessee shall not make any improvements or alterations to the Premises during the term of this Lease.

8. **Americans with Disabilities Act; Compliance.** Lessee shall be solely responsible for any expenses necessary to comply with the American with Disabilities Act and similar state statutes or requirements triggered solely by a disability of one or more of Lessee’s employees.

9. **Signs.** Lessee shall have the right to maintain that signage existing on the Premises at the time of execution of this Lease and no other signage.

10. **Insurance.**

    (a) Lessee shall insure the Premises against fire and other casualty for not less than the full replacement value thereof with proceeds to be payable to Lessor and Lessee as their interest may appear.

    (b) Lessee, at its own cost and expense, shall procure and maintain, at all times, comprehensive commercial liability insurance in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence with respect to personal injury or death and damage to property. Said policy shall name Lessor as an additional insured, contain a wavier of
subrogation in favor or Lessor, and provide that said insurance cannot be cancelled or modified unless thirty (30) days prior written notice has been given to the Lessor.

Said policies or certificates thereof shall be delivered to Lessor by Lessee upon the commencement of the term of this Lease and upon each renewal of said insurance.

11. **Indemnification.** Lessee hereby agrees to indemnify and hold harmless Lessor, its agents and employees from and against any and all claims or demands for the loss, theft, or damage to property or for injury or death to any person from any cause whatsoever while in, upon, or about the Premises, during the term of this Lease, except to the extent that such claim is compensated by insurance and except further that Lessee’s indemnification shall not include an indemnification for liability for the gross negligence or willful misconduct of Lessor, its agents or employees. Each party agrees to indemnify and hold the other harmless from any and all claims and demands of third parties arising from any breach or default of such indemnifying party in the performance of any obligation of such indemnifying party under this Lease or arising from or based upon any alleged act, omission, or negligence of such indemnifying party, or any of its agents, employees, licensees, servants, invitees, or employees.

12. **Mutual Waiver of Subrogation.** Without limiting the obligation of Lessee to maintain insurance which permits waiver of subrogation (unless otherwise approved in writing by Lessor), and notwithstanding the indemnification provision set forth above or anything else to the contrary set forth herein, Lessor and Lessee hereby waive all causes of action and rights of recovery against each other for any loss occurring to the property of Lessor or Lessee resulting from any of the perils insured against under any and all fire or other extended casualty insurance policies in effect at the time of any such loss, regardless of cause or origin of such loss.
13. **Destruction of Premises.** If the Premises are damaged by fire or other casualty or peril so as to become untenantable, this Lease shall automatically terminate.

14. **Environmental Provisions.** Lessee shall not allow any hazardous materials as defined by the Environmental Protection Agencies of the state or federal government to come upon the Premises or be used thereon and shall not allow any obnoxious odors or vapors to be omitted from the Premises.

15. **Holding Over.** Should Lessee hold possession hereunder after the expiration of the term of this Lease, Lessee shall be deemed to be a tenant at sufferance and subject to removal pursuant to the Forcible Entry and Detainer statutes of the state of Nebraska (Neb. Rev. Stat. § 25-21,219 et seq.).

16. **Notices.** Notices under this Lease shall be given in writing and may be served personally by facsimile transmittal or by mail if addressed as follows:

   **To Lessor:**  
   West Haymarket Joint Public Agency  
   Attention: Dan Marvin  
   555 S. 10th Street  
   Lincoln, NE 68508  
   Fax: (402) ____________

   **To Lessee:**  
   Jaylynn, LLC  
   Attention: Brad Devall  
   660 N Street  
   Lincoln, NE 68508  
   Fax: (402) ____________

   Each party reserves the right to change the name, address, and/or telephone and fax numbers with respect to which notices are to be sent by giving written notice of such change to the other party at any time.

17. **Time is of the Essence.** It is hereby agreed that time is of the essence of this Lease.
18. **Entire Agreement.** This Lease represents all agreements between Lessor and Lessee as regards this subject and can only be amended in writing signed and agreed to by both parties.

19. **Successors and Assigns.** Lessee shall not assign, sublease or otherwise transfer, by operation of law or otherwise, this Lease or the Premises or any interest herein or portion thereof without the prior written consent of Lessor, which may be withheld in Lessor’s sole discretion. This Lease is for the benefit and shall be binding upon the successors and assigns of each party.

20. **Security.** Lessee shall be solely responsible for the security of the Premises and for the security of Lessee’s employees, agents, guest, and invitees on the Premises. Lessee shall be responsible to lock and secure all doors, windows and entrances to the Premises and to take all other reasonable security measures to protect persons and properties upon the Premises.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first written above.

JAYLYNN, L.L.C., a Nebraska limited liability company

By: ____________________________________
Brad Devall, Managing Member

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

By: ____________________________________
__________________________, Chairman
MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-45 by accepting the attached Purchase Agreement to replace the Purchase Agreement previously attached to Bill No. WH 11-45.

Introduced by: _______________________________

Approved as to Form & Legality:

_____________________________
City Attorney

Requested by: Bill Austin
PURCHASE AGREEMENT

(Jaylynn New Site)

THIS AGREEMENT is made and entered into on this ______ day of _____________, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company, (“Seller”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (“JPA”).

RECATLS

I.

Seller has agreed to sell and convey to the JPA certain real estate located at 660 N Street, which real estate presently serves as the business location of the Watson Brickson Lumber Company owned by Seller.

II.

Seller has contracted to purchase certain real estate located at 335 P Street and legally described in the attached Exhibit “A” from First Street Properties, a Nebraska general partnership, to provide a new location at which to reestablish the Watson Brickson Lumber Company.

III.

For purposes of storm water mitigation requirements, the JPA is desirous of acquiring a portion of the real estate being acquired by the Seller from First Street Properties, which portion is legally described on the attached Exhibit “B” (the “Property”), with the remainder of the real estate to serve as Seller’s new site (the “New Site”).

IV.

Seller desires to sell and JPA desires to acquire the Property in fee simple, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Conveyance.
1.1. **Sale and Conveyance.** Seller agrees to sell and convey to the JPA and JPA agrees to buy and take from the Seller, upon the terms and conditions hereinafter set forth, the real property owned by Seller legally described on Exhibit “B” (the “Property”).

Seller represents and warrants that it has good, valid, and marketable title, in fee simple and agrees at closing (as hereinafter defined) to convey title to the Property to JPA by warranty deed free and clear of all liens, encumbrances or special taxes levied or assessed or other restrictions, except the Permitted Exceptions as hereinafter defined.

1.2. **Compensation.**

1.2.1. JPA shall pay to Seller Five Hundred Twelve Thousand Nine Hundred Dollars ($512,900.00), (“Property Purchase Price”) for the Property, payable at Closing, subject to adjustments and prorations as herein provided.

1.2.2. JPA shall pay to the Seller Eighty Thousand Dollars ($80,000.00) (“Conservation Easement Purchase Price”) for the Conservation Easement, as more particularly described in paragraph 5.4 hereof, payable at Closing, subject to the terms and provisions hereof.

The Property Purchase Price and the Conservation Easement Purchase Price shall collectively be referred to hereinafter as the “Purchase Price.”

1.3. **Date of Closing.** Seller and JPA agree to close and complete this sale in accordance herewith on or before the ______ day of June, 2011, (“Closing”).

1.4. **Evidence of Title.** Within thirty (30) days from the date of this Agreement, JPA shall obtain a title commitment (the “Title Commitment”) for an ALTA owner’s title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the “Title Company”) covering title to the Property and showing the condition of title to the Property. For purposes hereof, “Permitted Exceptions” shall mean (i) covenants, conditions and restrictions of record which shall be approved by JPA if they do not interfere with JPA’s intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by JPA, and which do not interfere with JPA’s intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which Seller is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of JPA; (vi) easements and use restrictions to be granted under this Agreement; and (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by JPA. The cost of the owner’s title insurance policy shall be paid by the JPA. Within fourteen (14) days of JPA’s receipt of the title commitment, the JPA shall notify Seller of any objections to the title to the Property disclosed by the title commitment. Seller shall have a reasonable period to cure or correct JPA’s objections to the title and deliver an amended title commitment; otherwise,
JPA may, at its option, either terminate this Agreement or waive the objection and proceed to Closing.

1.5. **Survey.** JPA may, at its option, obtain an ALTA/ASCM survey with minimum standard detail requirements showing area dimensions and location of the real property, the nearest monument streets, adjoining streets, roadways and properties, location of all buildings, improvements, and encroachments, if any, the location of all recorded easements, square footage, together with all current floodplain zoning designations of the Property.

1.6. **Title and Possession.** Seller agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to JPA free and clear of all adverse mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or adverse claims of any kind or character whatsoever, except for Permitted Exceptions. Seller shall deliver possession of the Property to JPA at the time of Closing.

1.7. **Environmental; Tests.** Prior to Closing, JPA and its agents or representatives shall have the right to have access to the Property to perform any type of environmental studies, including without limitation, Phase I and Phase 2 environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively “Tests”). In the event JPA determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then JPA’s sole remedy shall be the right to terminate this Agreement. A copy of the Tests together with related documents, reports and test reports shall be delivered to the Seller. JPA shall have until the Closing Date to complete the Tests and to provide notice of termination to the Seller.

JPA and its agents or representatives shall be responsible for and hereby agree to indemnify and hold Seller harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by JPA or its representatives. JPA and its representatives shall take all reasonable efforts to maintain the security of the premises Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property.

1.8. **Taxes, Assessments and Other Costs.** All taxes related to the Property for 2010, and all prior years, shall be paid by Seller at or prior to closing. Any tax related to the Property for 2011, shall be the responsibility of the JPA. Any special assessment arising out of any improvement completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Seller. Rents, if any, are to be adjusted on and as of the date of closing and completion of the sale. JPA shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from Seller to JPA. JPA shall pay its own costs of the preparation of all documents and
other related expenses in connection with the sale of the Property. The closing of the sale shall be paid by JPA.

2. **Representations and Warranties.**

2.1. **Representations and Warranties of Seller.** Seller represents and warrants to JPA as follows:

2.1.1. **Organization; Power; Good Standing.** Seller is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.1.2. **Authority Relative to Agreement.** This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies. Seller is the owner of the Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

2.1.3. **Effect of Agreement.** The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Seller and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Seller, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which the Property may be bound.

2.1.4. **Brokers.** Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of JPA to pay any finder’s fee, brokerage or agent’s commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Seller is not aware of any claim or basis for any claim for payment of any finder’s fee, brokerage or agent’s commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.
2.1.5. “Non-Foreign Person.” Seller is not prohibited from consummating the transactions contemplated hereby and is not a “foreign person” as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

2.2. Representations and Warranties of JPA.

2.2.1. Organization; Power; Good Standing. JPA is a political subdivision and body corporate and politic organized under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.2.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by JPA and constitutes a legal, valid, and binding obligation of JPA, enforceable against JPA in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies.

2.2.3. Effect of Agreement. The execution, delivery and performance of this Agreement by JPA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by JPA and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of JPA to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to JPA, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which JPA is a party or by which the Property may be bound.

3. Indemnification.

3.1. Indemnification by Seller. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Seller agrees to indemnify and hold JPA harmless against, and will reimburse JPA upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against JPA in respect of any and all damages or deficiencies resulting from: (a) any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Seller contained in this Agreement; and (b) any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished to JPA pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.
3.2. **Indemnification by JPA.** Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, JPA agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against Seller in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.3. **Conditions of Indemnification.** With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections 3.1 or 3.2 hereof:

3.3.1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

3.3.2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party’s sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party’s inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

3.4. **Inspection and Testing.** At any time after the date of this Agreement, JPA and its employees and agents shall have the right to enter upon the Property and perform such tests and inspections as it deems necessary to determine suitability of the Property for its intended use. JPA shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. **Conditions of Closing.**
4.1. **JPA’s Conditions of Closing.** Unless waived by JPA in writing, the obligations of JPA to close under this Agreement are subject to fulfillment of the following conditions:

4.1.1. **Executed Instruments.** JPA shall receive at Closing:

4.1.1.1. The executed warranty deed;

4.1.1.2. The Conservation Easement;

4.1.1.3. A “non-foreign person” affidavit reasonably acceptable to JPA, signed and sworn to by Seller.

4.1.2. **Representations and Warranties.** There have been no material inaccuracies in the representations and warranties of Seller and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.2. **Seller’s Conditions of Closing.** Unless waived by Seller in writing, the obligations of Seller to close under this Agreement are subject to fulfillment of the following conditions:

4.2.1. **Payment.** At Closing, Seller shall receive the Purchase Price in Good Funds from JPA.

4.2.2. **Representations and Warranties.** There have been no material inaccuracies in the representations and warranties of JPA and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.3. **Termination.** If the conditions of Closing for a party have not been materially complied with or performed and such noncompliance or nonperformance shall not have been waived by the other, such other party may terminate this Agreement and upon such termination neither JPA nor Seller shall have any liability one to the other.

4.4. **Risk of Loss.** All risk of loss or damage to the Property by fire or other casualty until the delivery of the executed instruments as provided in this Agreement is assumed by the Seller, and in such event, JPA shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.

5. **Special Provisions.**

5.1. **Subdivision Approval.** In the event that subdivision approval is needed to authorize the conveyance of the Property to the JPA, then and in that event the JPA shall be
responsible, at its own cost and expense, for making application and obtaining approval from the City for any necessary subdivision or plat.

5.2. **Fill.** The JPA agrees that, at the option of the Seller, the JPA shall deposit upon Seller’s New Site, at such location as Seller may designate, such fill as the JPA intends to remove from the Property in furtherance of its intended use of the site as a storm water mitigation facility. JPA in no way warrants the suitability of such soil for fill purposes, and upon deposit upon Seller’s new site, such fill shall for all purposes become the property of the Seller. The deposit of such fill upon the New Site shall be conditional upon and subject to receipt by Seller of a proper and authorizing fill permit for any amount of fill to be deposited on the New Site.

5.3. **Vehicular Access.** The JPA agrees to obtain approval (if necessary) for a driveway access on Seller’s New Site providing access from Seller’s New Site onto North 2nd Street. Such driveway access shall be located generally south of the common property line between the Property and Seller’s New Site as shown on Exhibit “C.”

5.4. **Grant of Conservation Easement to JPA.** Seller shall, at the time of Closing, deliver to the JPA an easement over those portions of the Seller’s New Site, more specifically set forth in the Conservation Easement, a copy of which is attached hereto as Exhibit “D,” relinquishing Seller’s right to a portion of the otherwise allowable fill assigned to the area covered by the Conservation Easement as otherwise permitted under Chapter 27.52 of the Lincoln Municipal Code. The acceptance of such Conservation Easement by the JPA shall be conditioned upon the prior referral to and comment thereon by the Lincoln-Lancaster County Planning Commission.

6. **Miscellaneous.**

6.1. **Binding Effect - Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

6.2. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.3. **Further Assurances.** Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

6.4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
6.5. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following addresses or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to JPA: West Haymarket Joint Public Agency
c/o City Attorney’s Office
555 S. 10th Street, Suite 300
Lincoln, NE 68508

With a Copy to: Dan Marvin
555 S. 10th Street
Lincoln, NE 68508

If to Seller: Jaylynn, L.L.C.
Attention: Brad Devall
660 N Street
Lincoln, NE 68508

With a Copy to: Peter W. Katt, Esq.
Baylor, Evnen, Curtiss
Grimit & Witt, LLP
Wells Fargo Center
1248 O Street, Suite 600
Lincoln, NE 68508

6.6. **Severability.** If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

6.7. **Survival and Nonmerger.** All terms, conditions, representations, and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.

6.8. **Time of Essence.** The parties agree that time is of the essence in the performance of their respective obligations hereunder.

6.9. **Waiver.** Either JPA or Seller may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c)
waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

6.10. **Construction.** The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

EXECUTED by Seller this _____ day of ________________, 2011.

JAYLYNN, L.L.C., a Nebraska limited liability company

By: _____________________________________

Title: _____________________________________

Fed. Id. No. or Social Security No.

EXECUTED by JPA this _____ day of ________________, 2011.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic
By: _______________________________________

Title: _____________________________________

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

On the ______ day of ________________, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came ____________________, known to me to be the ____________________ of Jaylynn, L.L.C., a Nebraska limited liability company, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

_______________________________________
Notary Public

STATE OF NEBRASKA )
) ss:
COUNTY OF LANCASTER )

On the ______ day of _______________, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came ____________________, known to me to be the ____________________ of the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed as such officer and the voluntary act and deed of said agency by its authority.

Witness my hand and notarial seal the day and year last above written.

_______________________________________
Notary Public
EXHIBIT “A”

1st Street Properties

Lots 1 through 6, inclusive, Block 253, and the North 1/2 of the vacated alley adjacent to the South lot line of said lots; and all of Block 262 and the vacated portion of the East-West alley that bisects Block 262 and the vacated portion of Q Street that is adjacent to the South lot line of Lots 7-12, inclusive, Block 262; and all of the West 1/2 portion of vacated 3rd Street starting at the extension of the South lot line of Lot 1, Block 253 and extending North to the point where 3rd Street intersects with the Union Pacific Railroad right-of-way, Original Plat of Lincoln, Lancaster County, Nebraska, all located upon the Southwest Quarter (SW ¼) of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska;

AND

That portion of Lots 3 through 12, inclusive, Block 274, that lies west and south of the Union Pacific Railroad right-of-way, including the vacated East-West alley bisecting Block 274 and the vacated portion of S Street that lies between Block 274 and Block 265; and all of Block 265, including the vacated East-West alley bisecting Block 265 and the vacated portion of R Street that lies between Block 265 and Block 262, Original Plat of Lincoln, Lancaster County, Nebraska, all located upon the Southwest Quarter of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.
A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL, A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'04"E, A DISTANCE OF 592.04' TO A POINT; THENCE N00°15'16"E ALONG A LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 50.02' TO THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN ORIGINAL, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "R" STREET; THENCE S89°45'39"E ALONG THE NORTH LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 359.78' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG THE EAST LINE OF THE WEST HALF OF SAID RIGHT-OF-WAY, A DISTANCE OF 642.39' TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE EASTERLY EXTENSION OF THE EAST-WEST ALLEY, BLOCK 253, LINCOLN ORIGINAL; THENCE N89°42'25"W ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID ALLEY, AND THE NORTH LINE OF SAID ALLEY, A DISTANCE OF 360.08' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 231,153.73 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.
EXHIBIT “D”

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into on this ______ day of ________________, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company (“Owner”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the state of Nebraska created under the Joint Public Agency Act (“JPA”).

RECITALS

I.

Owner is the owner in fee simple of a tract of land, Lincoln, Lancaster County, Nebraska, legally described as follows:

A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL, A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF NO0°16'04"E, A DISTANCE OF 592.04' TO A POINT; THENCE NO0°15'16"E ALONG A LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 50.02' TO THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN
(hereinafter referred to as the “Easement Area”). Owner agrees to convey and JPA desires to accept a permanent conservation easement to preserve a portion of the flood storage capacity on and within the Easement Area.

II.

The Easement Area is located within the Salt Creek Flood Storage Area No. 9 and has been assigned an allowable fill, for flood storage purposes, of no more than forty percent (40%) on a volumetric basis, all in accordance with the “Standards for Salt Creek Flood Storage Area” (LMC 27.52.035) adopted by the City of Lincoln.

III.

The Owner is agreeable to granting and conveying to the JPA a permanent conservation easement relinquishing to the JPA fifty percent (50%) of the allowable fill otherwise assigned to the Easement Area as described above representing 10,390 cubic yards of fill, which the JPA may, or may not, at its option, assign to another location within Storage Area No. 9 as contemplated by LMC 27.52.035.
IV.

The JPA is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act (Neb. Rev. Stat. § 76-2,111 et seq.).

V.

This Agreement has been submitted to the Lincoln City-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

VI.

The Board of Representatives of the JPA has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Chairman to execute this Agreement on behalf of the JPA.

NOW, THEREFORE, in consideration of the mutual value to the Owner and JPA and to encourage and preserve wetlands, the Owner and JPA agree as follows:

1. **Grant of Conservation Easement.** Owner hereby creates, establishes, grants and conveys to the JPA for its benefit and the benefit of the public, a conservation easement over the Easement Area relinquishing its right to place upon or within the Easement Area the fifty percent (50%) of the otherwise allowable fill by volume assigned to the Easement Area pursuant to the Standards for Salt Creek Flood Storage Area as adopted by the City of Lincoln (LMC 27.52.035). The amount of allowable fill being assigned to JPA by Owner, as calculated based on the 2004 Aerial Topographical Survey information provided by the City of Lincoln.
Geographic Information System with the base flood elevation of 1,151.7 feet at the north end of the Easement Area and 1,152.0 feet at the south end of the Easement Area, is 10,390 cubic yards.

A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area;

i. Construction or placement of fill material, cement, buildings, fences, signs, or any other structure except to the extent of allowable fill remaining to Owner under this Conservation Easement;

ii. Any other use or practice that would adversely impact the flood storage capacity.

iii. Existing buildings shall not be flood-proofed in such a manner as to reduce the flood storage capacity of the Easement Area beyond the amount of allowable fill remaining to Owner under this Conservation Easement.

B. The term of this Conservation Easement shall be in perpetuity unless earlier terminated pursuant to any of the following provisions:

i. By the JPA pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.

ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.
The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

C. The Owner understands and agrees that the JPA may, at its option, transfer a portion or the total amount of the allowable fill capacity assigned to the Easement Area pursuant to the “Standards for Salt Creek Flood Storage Area” adopted by the City of Lincoln to another location within the same storage area.

2. **Condition of the Easement Area at Time of Grant.** The conditions of the Easement Area at the time of this grant shall mean the flood storage capacity of the Easement Area existing at the time of this grant as shown on the attached Attachment “A.”

3. **Protection and Maintenance of the Easement Area.**

   A. Owner agrees at Owner’s own cost and expense to protect and maintain the flood storage capacity of the Easement Area in the same condition existing at the time of this grant except as otherwise authorized by this Conservation Easement.

   B. Owner agrees to pay any real estate taxes, or assessments levied by competent authorities on the Easement Area, including, but not limited to, any tax or assessment affecting the easement granted herein. Owner further agrees to obtain, pay for, and continuously maintain liability and property insurance covering the Easement Area.

   C. Owner shall cooperate with and assist the JPA at JPA’s cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications
which the JPA deems necessary or desirable for the management, maintenance or
development of the Easement Area for the purposes provided for herein.

4. **Inspection and Access by City.** The JPA shall have the right of reasonable ingress
and egress to and from the Easement Area from public roads and streets and from adjacent
properties for its employees, contractors, vehicles and equipment for the purpose of inspecting,
maintaining, or protecting the flood storage capacity of the Easement Area as the JPA may deem
necessary or desirable.

5. **Enforcement.** Owner agrees that the JPA may enforce the provisions of this
Conservation Easement by any proceeding at law or in equity, including, but not limited to, the
right to require restoration of the Easement Area to the condition at the time of this grant. Owner
further agrees that the JPA may seek an injunction restraining any person from violating the
terms of this Conservation Easement and that the JPA may be granted such injunction without
posting of any bond whatsoever. Owner further agrees that the JPA does not waive or forfeit the
right to take any action as it deems necessary to insure compliance with the covenants and
purposes of this grant by any prior failure to act. Owner further agrees that should Owner
undertake any activity requiring the approval of the JPA without or in advance of securing such
approval, or undertake any activity in violation of the terms of this Conservation Easement that
JPA shall have the right to enforce the restoration of that portion of the Easement Area affected
by such activity to the condition that existed prior to the undertaking of such unauthorized
activity. In such case, the cost of such restoration and the JPA’s cost of suit, including
reasonable attorney fees, shall be paid by Owner.
6. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner and JPA.

8. **Recordation.** The parties agree that this Agreement shall be duly filed by the JPA with the Lancaster County Register of Deeds upon execution and acceptance by the JPA. Filing fees shall be paid in advance by the Owner.

9. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

JAYLYNN, L.L.C., a Nebraska limited liability company, Owner

By: ____________________________________
Brad Devall, Managing Member

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

By: ____________________________________
__________________________, Chairman
STATE OF NEBRASKA  )  
COUNTY OF LANCASTER  )  ss.

On the _____ day of ________________, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came __________________________, known to me to be the ____________________ of Jaylynn, L.L.C., a Nebraska limited liability company, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

____________________________________
Notary Public

STATE OF NEBRASKA  )  
COUNTY OF LANCASTER  )  ss:

On the _____ day of ______________, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came __________________________, known to me to be the ________________ of the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed as such officer and the voluntary act and deed of said agency by its authority.

Witness my hand and notarial seal the day and year last above written.

____________________________________
Notary Public
A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL. A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OFF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OFF-WAY. ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OFF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING, THENCE NORTHERLY ALONG A EAST LINE OF SAID RIGHT-OFF-WAY ON AN ASSUMED BEARING OF N00°15'16"E, A DISTANCE OF 50.02' TO THE SOUTH CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OFF-WAY LINE OF 2ND STREET, THENCE S89°45'39"E ALONG THE SOUTH LINE OF SAID VACATED RIGHT-OFF-WAY, A DISTANCE OF 359.78' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OFF-WAY; THENCE S89°42'25"W ALONG THE EASTERLY EXTENSION OF THE EAST-WEST ALLEY, BLOCK 253, LINCOLN ORIGINAL, A DISTANCE OF 360.08' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 231,153.73 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.
MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-46 by accepting the attached Purchase Agreement to replace the Purchase Agreement previously attached to Bill No. WH 11-46.

Introduced by:

_______________________________

Approved as to Form & Legality:

________________________________
City Attorney

Requested by: Bill Austin
RESOLUTION NO. WH - _______

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

That the attached Executive and Founders West Haymarket Arena Private Suite Use Agreements are hereby accepted and approved as model private suite use agreements (“Model Agreements”). The Chair is hereby authorized to execute private suite use agreements utilizing the applicable Model Agreement on behalf of the Agency without further action of the Board of Representatives.

Adopted this ___ day of June, 2011.

Introduced by:

____________________________________

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler
WEST HAYMARKET ARENA
PRIVATE SUITE USE AGREEMENT

1. PARTIES. This Private Suite Use Agreement (this “Agreement”) is entered into by and between the West Haymarket Joint Public Agency (the “JPA”) and XYZ, Inc. a Nebraska corporation, (the “User”) to be effective on the date of execution by the JPA (the “Effective Date”).

2. TERM. This Agreement shall be in full force and effect on the Effective Date, however, the term of the right to use the Private Suite shall be for a period of ten (10) years commencing on September 1, 2013 and terminating on August 31, 2023, (the “Term”) unless this Agreement is terminated earlier pursuant to the provisions hereof.

3. RIGHT TO USE SUITE. Subject to the terms and conditions set forth herein and upon payment of the Use Fees, Security Deposit, and other amounts due as set forth in this Agreement, User shall be entitled to the exclusive privilege and right during the Term of this Agreement to use the Suite in the West Haymarket Arena, (the “Suite”) the approximate location of which is indicated on the West Haymarket Arena diagram, which is attached hereto as Exhibit A. User acknowledges and agrees that the actual location of the Suite may vary from that set forth in the West Haymarket Arena diagram referenced herein. The Suite is to be constructed as part of the West Haymarket Arena and will generally consist of a furnished private deck with seats facing the playing surface of the West Haymarket Arena, climate controlled seating, and a bar area.

4. SUITE BENEFITS.

   (a) The benefits granted pursuant to this Agreement including, but not limited to, ticket availability for West Haymarket Arena events, parking rights, suite amenities, and other opportunities (the “Suite Benefits”) are set forth herein and in Exhibit B.

   (b) User acknowledges and agrees that there may be certain events for which the Suite Rights may be limited by the JPA in the exercise of its reasonable discretion.

5. PAYMENTS.

   (a) Security Deposit.

User shall submit to the JPA with this executed Agreement a security deposit made payable to the JPA in the amount of FIVE THOUSAND DOLLARS ($5,000.00) (the “Security Deposit”). The Security Deposit shall be used as security for the prompt and full payment of all fees, including Use Fees, and User’s good faith performance of its obligations hereunder. Application of said Security Deposit is more particularly described in paragraph 12 herein.
Use Fees.

User shall pay to the JPA annual Use Fees for the Suite Rights as set forth on Exhibit C, attached hereto and incorporated herein by this reference. Payment of the initial annual Use Fee for Year 1 of the Term shall be paid in three (3) installments, as follows:

TWENTY THOUSAND DOLLARS ($20,000) shall be paid to the JPA with this executed Agreement, in order to reserve the Suite;  
SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS ($17,500) shall be paid to the JPA on or before July 1, 2012; and  
SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS ($17,500) shall be paid to the JPA on or before July 1, 2013.

An annual payment of the Use Fee for each remaining year of the Use Term shall be paid to the JPA on or before September 1 of each year of the Term.

A portion of the Use Fees shall be utilized by the JPA to fulfill its obligations under this Agreement including, but not limited to, the obligation to provide the tickets and parking passes included under this Agreement and to satisfy any contractual obligation to pay a commission related to the sale of this right to use the Suite.

User represents and warrants to the JPA that it has not entered into and is not subject to any agreement, arrangement, or understanding with any individual or entity whereby such individual or entity is entitled to a fee or commission with respect to any amount payable under this Agreement.

FURNISHINGS, FIXTURES, AND ALTERATIONS.

(a) The Suite shall be furnished and equipped with such fixtures, furnishings, and equipment as set forth in Exhibit B, attached hereto.

(b) The JPA intends to establish and maintain a basic color scheme and a uniform design and aesthetic for the suites in the West Haymarket Arena. User shall not make any additions or alterations in the interior or exterior of the Suite or to the fixtures, furnishings, and equipment therein without the prior written consent of the JPA, which may be withheld in its sole discretion. Any approved changes, alterations, or additions authorized by the JPA shall be made at User’s sole cost and expense, free of any liens, in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws and ordinances and other legal requirements which may apply. Any fixtures or materials incorporated in or attached to the Suite by User shall become the property of the JPA, unless User has received the JPA’s written consent to remove those fixtures or materials on or before the expiration of the Term, in which case User shall, subject to normal wear and tear, restore the Suite to its original condition at User’s sole cost and expense.

(c) In the event that the Suite falls into a state of disrepair or substandard condition not attributable to normal wear and tear, the JPA shall notify User in writing to repair and/or refurbish the Suite. User shall, within forty-five (45) days of the date of receipt of said notice,
complete such repairs or refurbishments at User’s sole expense and subject to the JPA’s approval. Should User fail to timely complete said repairs or refurbishments, the JPA shall have the right to complete said repairs and refurbishments and deduct the cost of same from the User’s Security Deposit. The JPA shall invoice User for the cost of the repairs and refurbishments to the extent that such cost exceeds the balance of User’s Security Deposit. User’s failure to pay the JPA within thirty (30) days of receipt of said invoice shall constitute a default of this Agreement.

7. ADMISSION TICKETS.

(a) For all pre-season, regular season, and post season Tenant games held in the West Haymarket Arena, User shall be entitled to receive twelve (12) admission tickets and two (2) guest passes and shall be entitled to purchase four (4) additional tickets. Tenants are University of Nebraska Men’s and Women’s Basketball Teams. A guest pass allows a patron holding a ticket for other seating in the West Haymarket Arena access to the Suite.

(b) Except as provided below, User shall also be entitled to receive twelve (12) admission tickets and two (2) guest passes and shall be entitled to purchase four (4) additional tickets for non-Tenant events at the West Haymarket Arena for which User desires to use the Suite, pursuant to Section 1 of Exhibit B, attached hereto, with the specific and acknowledged exception of up to three (3) events per calendar year designated by the JPA, in its sole discretion, as “Special Events” and any other events for which User’s Suite privileges are relocated. In addition, for multi-show or performance events, User shall select one (1) show or performance, as applicable, and shall be entitled to receive tickets for the selected show or performance as set forth herein. For the remaining shows and performances relating to such multi-show or performance events, as applicable, User shall have the right to purchase tickets.

(c) User acknowledges and agrees that there may be certain events which are outside the control of the JPA and require that User’s Suite privileges be temporarily relocated to another West Haymarket Arena suite or the next best comparable seating in the West Haymarket Arena. In the event User’s Suite privileges are proposed for temporary relocation, the JPA shall provide User advance notice of said relocation and User shall confirm to the JPA whether it desires tickets to such events within ten (10) days of receipt of the aforementioned notice from the JPA. In the event User desires tickets to such events, then the JPA shall use its best efforts to provide User with seating privileges as comparable as possible to those normally enjoyed by User.

(d) In the event that the Suite is deemed restricted by the promoter of any other event in the West Haymarket Arena, or in the event the sponsor of certain extraordinary events restricts the sale of tickets, User shall not have the right to purchase admission tickets for the Suite nor to utilize such Suite. The JPA shall notify User of any such restricted events in advance.

(e) Except as otherwise set forth herein, User shall have no right to admit any person to the Suite during any event for which User does not purchase or receive admission tickets.

(f) User acknowledges and agrees that in the event any professional or amateur sports league should award a franchise to play its home games in the West Haymarket Arena, User shall have no right to use its Suite nor its admission privileges for any pre-season, regular season,
or post season game of such team until such time as the JPA and User renegotiate this Agreement and this Agreement is amended in writing.

8. POSSESSION AND USE.

(a) User shall be entitled to the exclusive use and possession of the Suite during the Term (except for “Special Events” and the other occasions referenced herein), subject to the provisions of the Agreement. User and User’s guests shall be entitled to use the Suite at all times for which appropriate tickets for admission to the Suite have been obtained. User and User’s guests shall have access to a private lounge, if any, at the West Haymarket Arena in accordance with such procedures as shall be established by the JPA. During dates on which events occur, access to the Suite and the suite area, as well as the private club facilities, shall be controlled by and shall require the presentation by each person using such area of a ticket for admission to such event. In addition to the benefits described in Exhibit B, attached hereto, User shall be given access to the Suite on other dates upon such terms and conditions as the JPA, in its discretion, may permit or designate. User and User’s guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to the West Haymarket Arena have been issued by the JPA or by any event sponsor, including, without limitation, the policy adopted by the issuer of such tickets with respect to the cancellation or postponement of any event.

(b) Access to the Suite shall be from a separate level of the West Haymarket Arena. Access to the Suite shall be shared only by persons holding appropriate tickets or passes for admission to the Suite. The Suite shall be provided with a lock on the door.

(c) The Agreement provides User only with the right and privilege to possess and use the Suite in the manner set forth in the Agreement, and, except as it pertains to any special right and privilege to so possess and use the Suite, the Agreement does not confer upon the User nor User’s guests any greater or lesser rights and privileges with respect to admission to the West Haymarket Arena than that afforded to other holders of tickets for admission thereto.

9. PARKING. User shall have the right to receive, at no additional cost or charge, at all times during which User is entitled to use the Suite under this Agreement, four (4) parking passes for parking in a facility designated by the JPA. User agrees and acknowledges that the number and location of parking spaces is subject to change at the JPA’s discretion.

10. FOOD AND BEVERAGE SERVICES. Food and beverage service shall be provided by a caterer designated by the JPA, at prevailing rates established by such caterer, to be billed directly to User. User shall pay on a timely basis all charges and expenses, including applicable taxes for catering and other services incurred by User in connection with the use of the Suite by User or its guests. No food or beverages other than those purchased from such designated caterer or from the West Haymarket Arena concessionaire may be brought into, prepared in, or consumed within the Suite.

11. REPAIRS AND MAINTENANCE. The JPA will be responsible for ordinary repairs and maintenance to the interior and exterior of the Suite, including ordinary cleaning, sweeping, vacuuming, trash removal, and dusting. The JPA reserves the right to charge User for, and User agrees to pay for, the cost of what the JPA considers, in its sole and absolute discretion,
to be extraordinary repairs, maintenance, replacements, or cleaning of the Suite resulting from any act or omission of User or its guests. User agrees and acknowledges that the JPA may designate the catering, cleaning, restroom, trash removal, and Suite supply and repair functions to any third party retained or hired by the JPA. The JPA will be responsible for the periodic replacement of wall coverings, furnishings, carpeting, and equipment in the Suite as the JPA determines, in its sole discretion, is necessary due to normal wear and tear.

12. APPLICATION OF SECURITY DEPOSIT.

(a) The Security Deposit may be commingled with other JPA funds and may be used by the JPA for any business purpose. If User complies with the terms and conditions of this Agreement and chooses not to renew the right to use the Suite granted pursuant to the Agreement, then the Security Deposit shall be used to repair any damages to the Suite and to satisfy any unpaid obligations of User under this Agreement. The balance shall be refunded to User within thirty (30) days of termination of the Agreement.

(b) If, at any time during the Term, any portion of the Use Fee or any other amount payable by User to the JPA is not promptly paid when due, the JPA may, without prior notice and without waiving any other remedy which it may have under the Agreement, appropriate and apply all or any portion of the Security Deposit to the payment of such amount. User shall, upon written demand of the JPA, remit to the JPA an amount sufficient to restore the Security Deposit to the original sum deposited. User’s failure to do so within five (5) business days after receipt of such demand shall constitute a breach of the Agreement.

(c) If User’s right to use the Suite is terminated, the JPA may, at its option, appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate the JPA for any loss or damage sustained or suffered by the JPA due to User’s breach of this Agreement and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

13. OBLIGATION TO PAY.

(a) Except as otherwise set forth herein, the obligation of User to pay the Security Deposit, the Use Fees, food and beverage concessions charges, telephone charges, if applicable, or other sums due to the JPA, the JPA’s caterers and concessionaires, or any event sponsor is independent of the liabilities or limitations of the JPA under the Agreement. User shall promptly make all such payments without any deductions, setoffs, or counterclaims against such payments on account of any breach or default by or claims against the JPA, or any breach or default by or claims against any caterer or concessionaire or any event sponsor. Nothing in this section shall prevent User from bringing an independent action against the JPA or any caterer or concessionaire or event sponsor.

(b) The JPA shall not be liable for, and User shall not assert any deduction, setoff, or claim of any nature against the JPA for any act or omission of or any breach or default by any caterer or concessionaire or event sponsor. User shall be bound by the terms and conditions established from time to time by the JPA or any event sponsor for cancellation or postponement of an event. Except as otherwise set forth in this Agreement, the JPA shall have no liability to
User on account of any such cancellation or postponement or other failure or deficiency in the conduct of such event.

(c) User’s rights under the Agreement, including the rights to have access to and use of the Suite and the private suite level facilities and to obtain admission to the West Haymarket Arena or the Suite, are subject to the conditions precedent of payment by User to the JPA of all sums then due to the JPA and upon User’s continued compliance with the Agreement.

(d) Annual Use Fees for the Suite set forth in Exhibit C, attached hereto, will be billed to User and will be due and payable at the times designated in paragraph 5(b). In addition, User shall pay any sales, privilege, rental, use, property, or other taxes due on, or with respect to, the Use Fees or on account of the use of the Suite or the private suite level facilities.

14. WEST HAYMARKET ARENA CONSTRUCTION. The JPA expects, but makes no guarantee, that the construction of the West Haymarket Arena will be completed by September 2013. If, for any reason, upon completion of the West Haymarket Arena, the Suite is not included in the West Haymarket Arena, then the JPA shall promptly return to User any payments made toward the Use Fee and the Security Deposit. Upon return of said payments to User, the Agreement will terminate and the parties will have no further liability or obligation to each other. The JPA shall not have any obligation to refund the initial amount of the Use Fee or the Security Deposit to User in the event that (a) completion of the West Haymarket Arena or the Suite is delayed or (b) the location of the Suite varies from that set forth in this Agreement.

15. NONOCCURRENCE OF EVENTS. The Agreement shall not operate as or constitute any warranty, representation, covenant, or guarantee by the JPA that any number of events or particular event, sports team or individual group shall occur, play, or appear at the West Haymarket Arena during the Term of the Agreement. During the Term of the Agreement, the West Haymarket Arena may be improved, altered, expanded, or enlarged which User acknowledges may cancel certain events and the JPA shall have no liability for such cancellations.

16. LATE FEE. Any Use Fee or other monetary obligation of User under the Agreement not paid to the JPA by the date specified in the Agreement shall bear interest accruing from such date at the rate of fifteen percent (15%) per year or the highest rate permitted by law, whichever is less.

17. RIGHT OF FIRST REFUSAL TO RENEW. If not in default in the performance of its obligations under this Agreement, User shall have the right of first refusal to renew the right of use granted pursuant to this Agreement before the expiration of the Term at such Use Fee and on such other terms and conditions as the JPA may, in its sole discretion, determine. Prior to the expiration of the Term, the JPA shall submit to the User an agreement which sets forth the Use Fee and other terms and conditions established by the JPA for the renewal agreement. User may exercise, if at all, its right of first refusal by executing and returning such agreement to the JPA, together with any deposit or other payment which may be required thereunder within thirty (30) days after the agreement is sent to User or one hundred eighty (180) days before the conclusion of the original Term, whichever comes later.
18. **COVENANTS OF USER.** User covenants and agrees with the JPA as follows:

(a) User shall keep and maintain the Suite in good repair, order, and condition at all times. Except for ordinary wear and tear, User will reimburse the JPA for the repair of any damage caused to the Suite or the JPA’s property in the Suite by User or any of User’s guests or invitees.

(b) User shall abide by, and shall notify and require its guests to abide by, such rules, regulations, and policies as the JPA shall establish, in its sole discretion, concerning the use and occupancy of the Suite and attendance at the West Haymarket Arena, including any modifications to such rules, regulations, and policies that may be adopted or administered by the JPA or its designee from time to time.

(c) User and User’s guests shall at all times maintain proper decorum while using the Suite. User shall be held responsible for its actions as well as those of its guests, including, but not limited to, actions arising from the consumption of alcoholic beverages. Should User or any of User’s guests create a disturbance or cause objects to be thrown or dropped from the Suite, the JPA shall have the right to eject the parties responsible for such action, or all the persons in the Suite, from the confines of the West Haymarket Arena, or exercise any of the JPA’s rights upon default in accordance with the provisions of this Agreement, including, without limitation, termination of this Agreement. User and User’s guests shall comply with all applicable present and future laws, ordinances, orders, rules, and regulations and shall not permit any violation thereof.

19. **DEFAULT.**

(a) In the event User fails to pay when due any amounts to be paid by User pursuant to the Agreement or otherwise defaults in the performance or observation of its duties and obligations under the Agreement, the JPA may, at its option: (i) withhold distribution to User of tickets for games and events played in or held at the West Haymarket Arena and parking and guest passes until such time as such default is cured; and/or (ii) terminate the rights of User under the Agreement after giving User not less than twenty (20) days prior written notice of such default or breach. In the event that User shall not have cured the default or breach specified in said notice by the date specified in said notice, the JPA may terminate the right of User to the use and possession of the Suite and all other rights and privileges of User under the Agreement and declare the entire unpaid balance of the Use Fee (which for purposes hereof shall include the total aggregate unpaid balance of the Use Fees for the remainder of the Term) immediately due and payable, whereupon the JPA shall have no further obligation of any kind to User. The JPA shall use reasonable efforts to re-market the right to use and possession of the Suite to another party provided that, if there are any other suites in the West Haymarket Arena available to be marketed, then the JPA may give priority to marketing such other suites. User shall remain obligated to make all payments due or becoming due under the Agreement, but if the JPA enters into an agreement for the right to use and possess the Suite with another party, then all amounts received from such other party, applicable to the remaining period of the Agreement, shall be applied first to the expense of re-marketing and then to the reduction of any obligations of User to the JPA under the Agreement. If the consideration collected by the JPA upon any such re-
marketing is not sufficient to pay the full amount of all such obligations of User, User shall pay such deficiency upon demand.

(b) The foregoing remedies of the JPA shall not be to the exclusion of any other right or remedy set forth in the Agreement or otherwise available to the JPA in law or in equity. User shall be responsible for all attorneys’ fees and costs incurred by the JPA in the enforcement of the Agreement whether or not litigation is actually commenced.

(c) No waiver by the JPA of any default or breach by User of its obligations under the Agreement shall be construed to be a waiver or release of any other subsequent default or breach by User under the Agreement, and no failure or delay by the JPA in the exercise of any remedy provided for in the Agreement shall be construed as a forfeiture or waiver of any other right or remedy available to the JPA.

20. **DAMAGE OR DESTRUCTION TO SUITE.** In the event of damage to or destruction of the Suite which renders the Suite unusable when events are scheduled in the West Haymarket Arena, an equitable adjustment to User will be made, unless a reasonably comparable suite is made available to the User. No adjustment will be made if the unavailability of the Suite is caused by the fault or negligence of User or User’s guests. If, in the event of any damage to or destruction of the Suite, the JPA elects not to repair or restore the same, this Agreement shall terminate as of the date of such damage or destruction, and a prorated portion of the prepaid annual Use Fee shall be refunded to User. Upon payment of such refund, the JPA shall have no further liability under the Agreement.

21. **ACCESS BY JPA.** The JPA and its agents and employees shall have access to the Suite to the extent deemed necessary by the JPA: (a) for the performance of its obligations under the Agreement and for any and all purposes related thereto, (b) to investigate any suspected violations of the terms and conditions of this Agreement, or (c) otherwise in connection with the Suite, including in the event of an emergency, by use of a master key or forcible entry. User shall not interfere with the JPA’s right of access by installation of additional or changed locks or otherwise. Unless the emergency necessitating the forcible entry is caused by the fault or negligence of User or User’s guests or User has interfered with the JPA’s right of access by installing additional or changed locks or otherwise, the JPA shall repair any property damage to the door or entryway caused by said emergency forcible entry and shall have no other liability for entry into the Suite.

22. **DISCLAIMER OF LIABILITY.**

(a) Neither the JPA, any West Haymarket Arena manager designated by the JPA (the “West Haymarket Arena Manager”) nor any of their officers, employees, or agents shall be liable or responsible for any loss, damage, or injury to any person or to any property of User or User’s guests in or upon the West Haymarket Arena, resulting from any cause whatsoever, including, but not limited to, theft and vandalism.

(b) User and its guests and invitees hereby assume all risks and danger incidental to the games of basketball, arena football, and hockey and events generally (whether sporting or otherwise), whether occurring prior to, during or subsequent to, the actual playing of the game or
conducting of the event, including specifically (but not exclusively) the danger of being injured by balls, pucks, sticks, or other missiles, and agree that the JPA, any sports league, the West Haymarket Arena Manager, the teams, their agents and players, and other individuals performing or participating in events shall not be liable for injuries from such causes.

(c) In addition, User agrees to indemnify and hold the JPA and the West Haymarket Arena Manager harmless from and against any liability, losses, claims, demands, costs, and expenses, including attorneys’ fees and litigation expenses, arising out of any personal injury or property damage occurring in or upon the West Haymarket Arena in connection with User’s use or occupancy of the Suite or due to the contravention of the provisions of this Agreement or of any applicable laws, rules, regulations, or order of any governmental agency having appropriate jurisdiction over any actions or negligence of User.

23. INSURANCE. In addition, User shall, at its sole cost and expense, obtain and keep in full force and effect at all times during the Term, a comprehensive general liability insurance policy (including, without limitation, host liquor liability coverage), with a combined single occurrence limit of at least $1,000,000 and $2,000,000 aggregate, including coverage for bodily injury or death, property damage, and personal injury liability, and for the performance by User of the indemnity provisions of the Agreement. The limits of this insurance shall not, however, limit the liability of User under the Agreement. Prior to User’s occupancy of the Suite, User shall deliver to the JPA a certificate evidencing the issuance of such insurance policy. User’s comprehensive general liability insurance policy and certificate evidencing such insurance shall (i) name the JPA and the West Haymarket Arena Manager as additional insureds, (ii) contain a provision by which the insurer agrees that the policy shall not be cancelled except after thirty (30) days written notice to the JPA and (iii) be issued by an insurance company reasonably satisfactory to the JPA and qualified to do business in the State of Nebraska. Any liability insurance carried or to be carried by User under this Agreement shall be primary over any policy carried by the JPA or the West Haymarket Arena Manager.

24. ASSIGNMENT: WHEN PERMITTED.

(a) Assignment. User hereby acknowledges and agrees that the identity of Suite Users is of crucial importance to the JPA. Accordingly, User hereby agrees that, unless User has obtained the JPA’s consent as provided herein, it shall not assign, sell, transfer, mortgage, or otherwise alienate or encumber (any such act being to “assign” and to result in an “assignment”) this Agreement or any interest herein; provided, however, that User may distribute tickets or passes for use of parking spaces to its guests and invitees for use in the manner permitted herein. User further agrees not to sell any tickets or any rights to admission to the Suite, the parking spaces, or any private club lounge or otherwise permit any person to occupy the same for hire, it being expressly understood that the use of the tickets, the Suite, and any private club lounge shall be solely and exclusively for the use, enjoyment, and entertainment of User and officers, employees, visitors, guests, and invitees of User. User agrees not to solicit or accept any direct or indirect payment or income from any person for the use and enjoyment of tickets, the Suite, parking spaces, or any private club lounge. The provisions of this Section shall not prohibit User from requiring its employees, guests, and invitees, pursuant to User’s company or internal policy and procedures, to pay or reimburse User for the use of tickets.
(b) Consent. If User desires to assign its interest in this Agreement to any person or entity, User shall notify the JPA in writing of such desire, setting forth the identity of the proposed assignee and the name, address, and telephone number of the individual representing the proposed assignee so that the JPA may communicate with the proposed assignee regarding the assignment. The JPA shall have the right to contact the proposed assignee and conduct such investigation of the creditworthiness of such proposed assignee as the JPA shall deem necessary, including requiring the proposed assignee to submit to the JPA such financial and other information as the JPA shall deem advisable. The JPA shall have the right, in the exercise of its sole discretion, to refuse to consent to such proposed assignment. If the JPA consents to the proposed assignment, it shall not be effective until the JPA has received an instrument executed by the proposed assignee by which it agrees to be bound by this Agreement, and an instrument of assignment satisfactory to the JPA executed by User. Upon the JPA’s written consent to the assignment of this Agreement and receipt of such instruments, User shall be released from any further obligations under this Agreement. Any consent by the JPA to any assignment or other transfer by User shall not be deemed to be consent by the JPA to any further assignment or other transfer by the successor User. Any attempted assignment, sale, transfer, sublease, pledge, mortgage, or other alienation or encumbrance of this Agreement or any interest therein in contravention of this Agreement shall be null and void, and further shall constitute a default in the performance of User’s duties and obligations under this Agreement.

(c) Suite Not to be Mortgaged or Used as Collateral or Security. User acknowledges and agrees that User’s interest in the Suite shall not be used as collateral or security for User to support, finance, or underwrite any other financial obligation of User, nor shall User use its interest in the Suite to obtain any mortgage or monies related to a mortgage. User acknowledges and agrees that any failure to comply with the terms of this paragraph shall constitute a default of this Agreement.

25. COST-SHARING ARRANGEMENTS. User hereby covenants, represents and warrants that, except with respect to the parties disclosed on Exhibit D attached to and made a part of this Agreement, User has not entered into, nor will it enter into, any agreements or arrangements by which User and any other party or parties share the costs attributable to the Suite, including, but not limited to, the Use Fees provided for hereunder, in consideration for the use of the Suite during the Term hereof (a “Cost-Sharing Arrangement”). A Cost-Sharing Arrangement shall include any and all agreements to transfer, for any consideration whatsoever, one or more Suite tickets. In the event that Exhibit D discloses any parties with whom User has entered into a Cost-Sharing Arrangement, the JPA has approved such arrangements by its execution of this Agreement. No Cost-Sharing Arrangement shall relieve User from being fully liable for all obligations under this Agreement, including all Use Fees. The JPA shall have the right, exercisable in the JPA’s sole and absolute discretion, to prohibit and to reject any proposed Cost-Sharing Arrangement or to limit the number of parties to a Cost-Sharing Arrangement, both upon execution hereof and at any time thereafter. User hereby represents and warrants that all amounts payable by the other parties under any Cost-Sharing Arrangement do not exceed the Use Fees and other costs imposed on User hereunder for the use of the Suite reasonably allocable to the use of the Suite by the other parties to the Cost-Sharing Arrangement. In the event that User desires to enter into a Cost-Sharing Arrangement after execution of this Agreement, User shall be required with respect thereto to provide to the JPA the identity of the
parties to the proposed Cost-Sharing Arrangement, and the address and phone number of such parties, so that the JPA may contact them to request such financial or other information as the JPA shall deem advisable. All such future Cost-Sharing Arrangements shall be subject to the same conditions and restrictions as a Cost-Sharing Arrangement disclosed herein. Transfer of Suite tickets for the appropriate allocable cost pursuant to an approved Cost-Sharing Arrangement shall not violate this Agreement.

26. **ADMINISTRATIVE MATTERS.** User shall provide to the JPA at least sixty (60) days prior to the commencement of the Term the following information:

(a) The name and address of the person to whom all correspondence, including but not limited to tickets and parking passes, relating to the Suite shall be sent.

(b) Unless User is an individual, the name and address of the person authorized to receive notices sent to User and generally bind User with respect to all matters relating to the Suite and this Agreement.

(c) The JPA may from time to time provide a form on which User shall provide such information as required herein, and User shall in any event notify the JPA in writing of any changes in such information.

27. **MISCELLANEOUS.**

(a) Upon the expiration of the Term (or, if applicable, upon the expiration of any renewal term pursuant to User’s right of first refusal) or upon the earlier termination of the Agreement, User shall surrender possession of the Suite to the JPA in the condition in which it was originally delivered to User, normal wear and tear and/or damage caused by casualty or force beyond the control of User or User’s guests excepted.

(b) It is understood that the JPA may mortgage, pledge, assign, or otherwise encumber the JPA’s rights in the Agreement for any reason, in its sole discretion.

(c) User acknowledges and agrees that the West Haymarket Arena is a smoke-free building and environment and that User and its guests shall not smoke anywhere within the West Haymarket Arena or its environment except in designated smoking areas.

(d) User shall not bring or keep animals, birds, fish, or other living creatures in the Suite, with the exception of guide dogs or other animals specifically trained to assist persons utilizing the Suite. User shall not use or allow the Suite to be used as sleeping quarters.

(e) User shall not display any sign, advertisement, or notice or allow same to be affixed to the Suite or the West Haymarket Arena.

(f) All notices, demands, and other communications between the parties required or appropriate hereunder shall be in writing and deemed given if mailed certified mail, return receipt requested, postage prepaid, or actually delivered, to the respective addresses set forth
below the signatures of the parties to this Agreement, or to such other address as may be designated by either party, from time to time in writing.

(g) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Nebraska, without regard to conflicts of law principles. The parties agree that venue of any legal action arising out of this Agreement or incident thereto shall be proper in a court of competent jurisdiction in Lancaster County, Nebraska and each party waives any objection to such venue.

(h) This Agreement, together with the Exhibits attached hereto, contains the entire agreement of the parties with respect to the matters provided for herein, and shall supersede any written instrument or oral agreement previously made or entered into by the parties to the Agreement. In the event of any inconsistency between the Agreement (including the attached Exhibits) and any other documents regarding the Suite, this Agreement shall control.

(i) The JPA makes no representation as to the tax treatment of any payments made to the JPA under this Agreement. User is urged to seek the advice of its professional tax advisor to determine the tax treatment of any payment made under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below to be effective on the date of execution by the JPA.

USER

XYZ, Inc.

By: _______________________________

Date: _____________________________

Name
Printed: __________________________
Title: _____________________________

Address: ______________________________
____________________________________
____________________________________
JPA

By: ____________________________________________
Chair of JPA

Date: __________________________

Address:  555 South 10th Street, Room 103
          Lincoln, NE 68508

APPROVED:

____________________________

JPA Attorney
EXHIBIT A

West Haymarket Arena Diagram

JPA’s Approval: _______  User’s Approval: _______
EXHIBIT B

Executive Suite Benefits

Subject to the Terms and Conditions of this Agreement, User shall be entitled to the following benefits:

1. Admission Tickets. Subject to User’s timely payment for the Suite as set forth in Exhibit C, User shall receive twelve (12) admission tickets to all West Haymarket Arena events with the specific exception of no more than three (3) events per calendar year (the “Special Events”) to be designated by the JPA. User shall have the option to purchase four (4) additional Suite tickets and the option to receive two (2) guest passes for User’s guests to utilize the Suite while such guests hold tickets for other seating in the West Haymarket Arena. There shall be no additional charge for the guest passes.

2. Parking Passes. The JPA shall provide User, at no additional cost, for all events at the West Haymarket Arena, with the specific exception of the Special Events, four (4) parking passes for non-valet parking in a parking facility near the West Haymarket Arena. User acknowledges and agrees that, as of the time of this Agreement, the parking patterns for the West Haymarket Arena are still being developed and that the number of parking passes to which User is entitled, as well as the location of those parking spaces, is subject to change in the sole discretion of the JPA.

3. Suite Features. Each Executive Suite is currently designed to provide:

- Twelve (12) exterior seats
- Drink rail inside Suite with four (4) bar stools
- Professionally finished interior with upscale furnishings
- Under-counter refrigerator
- Storage cabinets
- Buffet counter
- Wet bar
- Television with in-house feed and cable
- Coat and storage closet
- Company identification at entrance to Suite (optional)

4. Suite Amenities. User shall be entitled to the following amenities:

- Private entrance to the West Haymarket Arena
- Private elevator to suite level
- Access to restrooms on the suite level
- Access to private lounge on the suite level
- Concierge service
- Suite attendant
- Day use of Suite during normal Monday-Friday business hours; such use to be permitted at the JPA’s discretion, building schedule permitting and advance reservations required, upon such terms and conditions as the JPA may set.

5. The JPA shall use its best efforts to assure that the foregoing Features and Amenities will be included with the Suite, but does not guarantee that changes to the Features and Amenities will not be made over the course of the Agreement.
EXHIBIT C

$55,000 Suite

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $55,000 for Year 1
- $55,000 for Year 2
- $55,000 for Year 3
- $55,000 for Year 4
- $55,000 for Year 5
- $55,000 for Year 6
- $55,000 for Year 7
- $55,000 for Year 8
- $55,000 for Year 9
- $55,000 for Year 10

_____________________________________
User Signature
EXHIBIT C

$55,000 Suite

7 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $55,000 for Year 1
- $55,000 for Year 2
- $55,000 for Year 3
- $56,650 for Year 4
- $58,350 for Year 5
- $60,100 for Year 6
- $61,903 for Year 7

____________________________
User Signature
EXHIBIT C

$55,000 Suite

5 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $55,000 for Year 1
- $55,000 for Year 2
- $57,200 for Year 3
- $59,488 for Year 4
- $61,868 for Year 5

____________________________
User Signature
EXHIBIT C

$45,000 Suite

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $45,000 for Year 1
- $45,000 for Year 2
- $45,000 for Year 3
- $45,000 for Year 4
- $45,000 for Year 5
- $45,000 for Year 6
- $45,000 for Year 7
- $45,000 for Year 8
- $45,000 for Year 9
- $45,000 for Year 10

____________________________
User Signature
1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $45,000 for Year 1
- $45,000 for Year 2
- $45,000 for Year 3
- $46,350 for Year 4
- $47,741 for Year 5
- $49,173 for Year 6
- $50,648 for Year 7

____________________________
User Signature
EXHIBIT C

$45,000 Suite

5 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $45,000 for Year 1
- $45,000 for Year 2
- $46,800 for Year 3
- $48,672 for Year 4
- $50,619 for Year 5

User Signature
EXHIBIT D

COST-SHARING ARRANGEMENTS

Subject to the terms and conditions of the Agreement, User may engage in a “Cost-Sharing Arrangement” so that the cost of the subject Suite is borne by more than one person or business entity.

User acknowledges and agrees that said Cost-Sharing Arrangement shall not collectively include any combination of more than three (3) persons and/or business entities, so that the aggregate number of persons or entities controlling access to said Suite does not exceed three (3).

User further acknowledges and agrees that User is responsible for all payments due to the JPA regardless of any Cost-Sharing Arrangement. User further acknowledges and agrees that granting a right to use the Suite in the name of more than one person or entity is not permitted.

User shall inform the JPA of the identity of persons or entities involved in any Cost-Sharing Arrangement and shall supply the contact information for the persons or entities participating in said Cost-Sharing Arrangement below. User shall promptly notify the JPA in writing of any change in the information supplied.

User may identify those persons or entities participating in cost-sharing on any and all permitted signage identifying the users of said Suite.

Names of and contact information for the parties participating in the Cost-Sharing Arrangement are as follows:

User: ____________________________
Mailing Address: ____________________________
Telephone: ____________________________
E-mail address: ____________________________
Designated Representative: ____________________________

Cost-Sharer No. 1: ____________________________
Mailing Address: ____________________________
Telephone: ____________________________
E-mail address: ____________________________
Cost-Sharer No. 2: ____________________________
Mailing Address: ____________________________
Telephone: ____________________________
E-mail address: ____________________________
WEST HAYMARKET ARENA
PRIVATE SUITE USE AGREEMENT

1. PARTIES. This Private Suite Use Agreement (this “Agreement”) is entered into by and between the West Haymarket Joint Public Agency (the “JPA”) and XYZ, Inc. a Nebraska corporation, (the “User”) to be effective on the date of execution by the JPA (the “Effective Date”).

2. TERM. This Agreement shall be in full force and effect on the Effective Date, however, the term of the right to use the Private Suite shall be for a period of ten (10) years commencing on September 1, 2013 and terminating on August 31, 2023, (the “Term”) unless this Agreement is terminated earlier pursuant to the provisions hereof.

3. RIGHT TO USE SUITE. Subject to the terms and conditions set forth herein and upon payment of the Use Fees, Security Deposit, and other amounts due as set forth in this Agreement, User shall be entitled to the exclusive privilege and right during the Term of this Agreement to use the Suite in the West Haymarket Arena, (the “Suite”) the approximate location of which is indicated on the West Haymarket Arena diagram, which is attached hereto as Exhibit A. User acknowledges and agrees that the actual location of the Suite may vary from that set forth in the West Haymarket Arena diagram referenced herein. The Suite is to be constructed as part of the West Haymarket Arena and will generally consist of a furnished private deck with seats facing the playing surface of the West Haymarket Arena, climate controlled seating, and a bar area.

4. SUITE BENEFITS.

(a) The benefits granted pursuant to this Agreement including, but not limited to, ticket availability for West Haymarket Arena events, parking privileges, suite amenities, and other opportunities (the “Suite Benefits”) are set forth herein and in Exhibit B.

(b) User acknowledges and agrees that there may be certain events for which the Suite Rights may be limited by the JPA, in the exercise of its reasonable discretion.

5. PAYMENTS.

(a) Security Deposit.

User shall submit to the JPA with this executed Agreement a security deposit made payable to the JPA in the amount of FIVE THOUSAND DOLLARS ($5,000.00) (the “Security Deposit”). The Security Deposit shall be used as security for the prompt and full payment of all fees, including Use Fees, and User’s good faith performance of its obligations hereunder. Application of said Security Deposit is more particularly described in paragraph 12 herein.

1
(b) Use Fees.

User shall pay to the JPA annual Use Fees for the Suite Rights as set forth on Exhibit C, attached hereto and incorporated herein by this reference. Payment of the initial annual Use Fee for Year 1 of the Use Term shall be paid in three (3) installments, as follows:

TWENTY-FIVE THOUSAND DOLLARS ($25,000) shall be paid to the JPA with this executed Agreement, in order to reserve the Suite;
TWENTY THOUSAND DOLLARS ($20,000) shall be paid to the JPA on or before July 1, 2012; and
TWENTY THOUSAND DOLLARS ($20,000) shall be paid to the JPA on or before July 1, 2013.

An annual payment of the Use Fee for each remaining year of the Use Term shall be paid to the JPA on or before September 1 of each year of the Term.

(c) A portion of the Use Fees shall be utilized by the JPA to fulfill its obligations under this Agreement including, but not limited to, the obligation to provide the tickets and parking passes included under this Agreement and to satisfy any contractual obligation to pay a commission related to the sale of this right to use the Suite.

(d) User represents and warrants to the JPA that it has not entered into and is not subject to any agreement, arrangement, or understanding with any individual or entity whereby such individual or entity is entitled to a fee or commission with respect to any amount payable under this Agreement.

6. FURNISHINGS, FIXTURES AND ALTERATIONS.

(a) The Suite shall be furnished and equipped with such fixtures, furnishings, and equipment as set forth in Exhibit B, attached hereto.

(b) The JPA intends to establish and maintain a basic color scheme and a uniform design and aesthetic for the suites in the West Haymarket Arena. User shall not make any additions or alterations in the interior or exterior of the Suite or to the fixtures, furnishings, and equipment therein without the prior written consent of the JPA, which may be withheld in its sole discretion. Any approved changes, alterations, or additions authorized by the JPA shall be made at User’s sole cost and expense, free of any liens, in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws and ordinances and other legal requirements which may apply. Any fixtures or materials incorporated in or attached to the Suite by User shall become the property of the JPA, unless User has received the JPA’s written consent to remove those fixtures or materials on or before the expiration of the Term, in which case User shall, subject to normal wear and tear, restore the Suite to its original condition at User’s sole cost and expense.

(c) In the event that the Suite falls into a state of disrepair or substandard condition not attributable to normal wear and tear, the JPA shall notify User in writing to repair and/or refurbish the Suite. User shall, within forty-five (45) days of the date of receipt of said notice,
complete such repairs or refurbishments at User’s sole expense and subject to the JPA’s approval. Should User fail to timely complete said repairs or refurbishments, the JPA shall have the right to complete said repairs and refurbishments and deduct the cost of same from the User’s Security Deposit. The JPA shall invoice User for the cost of the repairs and refurbishments to the extent that such cost exceeds the balance of User’s Security Deposit. User’s failure to pay the JPA within thirty (30) days of receipt of said invoice shall constitute a default of this Agreement.

7. ADMISSION TICKETS.

(a) For all pre-season, regular season, and post season Tenant games held in the West Haymarket Arena, User shall be entitled to receive twelve (12) admission tickets and two (2) guest passes and shall be entitled to purchase four (4) additional tickets. Tenants are University of Nebraska Men’s and Women’s Basketball Teams. A guest pass allows a patron holding a ticket for other seating in the West Haymarket Arena access to the Suite.

(b) Except as provided below, User shall also be entitled to receive twelve (12) admission tickets and two (2) guest passes and shall be entitled to purchase four (4) additional tickets for non-Tenant events at the West Haymarket Arena for which User desires to use the Suite, pursuant to Section 1 of Exhibit B, attached hereto, with the specific and acknowledged exception of up to three (3) events per calendar year designated by the JPA, in its sole discretion, as “Special Events” and any other events for which User’s Suite privileges are relocated. In addition, for multi-show or performance events, User shall select one (1) show or performance, as applicable, and shall be entitled to receive tickets for the selected show or performance as set forth herein. For the remaining shows and performances relating to such multi-show or performance events, as applicable, User shall have the right to purchase tickets.

(c) User acknowledges and agrees that there may be certain events which require that User’s Suite privileges be temporarily relocated to another West Haymarket Arena suite or the next best comparable seating in the West Haymarket Arena. In the event User’s Suite privileges are proposed for temporary relocation, the JPA shall provide User advance notice of said relocation and User shall confirm to the JPA whether it desires tickets to such event(s) within ten (10) days of receipt of the aforementioned notice from the JPA. In the event User desires tickets to such event(s), then the JPA shall use its best efforts to provide User with seating privileges as comparable as possible to those normally enjoyed by User.

(d) In the event that the Suite is deemed restricted by the promoter of any non-Tenant event in the West Haymarket Arena, or in the event the sponsor of certain extraordinary events restricts the sale of tickets, User shall not have the right to purchase admission tickets for the Suite nor to utilize such Suite. The JPA shall notify User of any such restricted events in advance.

(e) Except as otherwise set forth herein, User shall have no right to admit any person to the Suite during any event for which User does not purchase or receive admission tickets.

(f) User acknowledges and agrees that in the event any professional or amateur sports league should award a franchise to play its home games in the West Haymarket Arena, User
shall have no right to use its Suite nor its admission privileges for any pre-season, regular season, or post season game of such team until such time as the JPA and User renegotiate this Agreement and this Agreement is amended in writing.

8. **POSSESSION AND USE.**

(a) User shall be entitled to the exclusive use and possession of the Suite during the Term (except for “Special Events” and the other occasions referenced herein), subject to the provisions of the Agreement. User and User’s guests shall be entitled to use the Suite at all times for which appropriate tickets for admission to the Suite have been obtained. User and User’s guests shall have access to a private lounge, if any, at the West Haymarket Arena in accordance with such procedures as shall be established by the JPA. During dates on which events occur, access to the Suite and the suite area, as well as the private club facilities, shall be controlled by and shall require the presentation by each person using such area of a ticket for admission to said event. In addition to the benefits described in Exhibit B, attached hereto, User shall be given access to the Suite on other dates upon such terms and conditions as the JPA, in its discretion, may permit or designate. User and User’s guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to the West Haymarket Arena have been issued by the JPA or by any event sponsor, including, without limitation, the policy adopted by the issuer of such tickets with respect to the cancellation or postponement of any event.

(b) Access to the Suite shall be from a separate level of the West Haymarket Arena. Access to the Suite shall be shared only by persons holding appropriate tickets or passes for admission to the Suite. The Suite shall be provided with a lock on the door.

(c) The Agreement provides User only with the right and privilege to possess and use the Suite in the manner set forth in the Agreement, and, except as it pertains to any special right and privilege to so possess and use the Suite, the Agreement does not confer upon the User nor User’s guests any greater or lesser rights and privileges with respect to admission to the West Haymarket Arena than that afforded to other holders of tickets for admission thereto.

9. **PARKING.** User shall have the right to receive, at no additional cost or charge, six (6) parking passes with year-round access for parking in a facility designated by the JPA. User agrees and acknowledges that the number and location of parking spaces is subject to change at the JPA’s discretion.

10. **FOOD AND BEVERAGE SERVICES.** Food and beverage service shall be provided by a caterer designated by the JPA, at prevailing rates established by such caterer, to be billed directly to User. User shall pay, on a timely basis, all charges and expenses incurred by User in connection with the use of the Suite by User or its guests, including applicable taxes for catering and other services. No food or beverages other than those purchased from such designated caterer or from the West Haymarket Arena concessionaire may be brought into, prepared in, or consumed within the Suite.

11. **REPAIRS AND MAINTENANCE.** The JPA will be responsible for ordinary repairs and maintenance to the interior and exterior of the Suite, including ordinary cleaning, sweeping, vacuuming, trash removal, and dusting. The JPA reserves the right to charge User for,
and User agrees to pay for, the cost of what the JPA considers, in its sole and absolute discretion, to be extraordinary repairs, maintenance, replacements, or cleaning of the Suite resulting from any act or omission of User or its guests. User agrees and acknowledges that the JPA may designate the catering, cleaning, restroom, trash removal, and Suite supply and repair functions to any third party retained or hired by the JPA. The JPA will be responsible for the periodic replacement of wall coverings, furnishings, carpeting, and equipment in the Suite as the JPA determines, in its sole discretion, is necessary due to normal wear and tear.

12. APPLICATION OF SECURITY DEPOSIT.

(a) The Security Deposit may be commingled with other JPA funds and may be used by the JPA for any business purpose. If User complies with the terms and conditions of this Agreement and chooses not to renew the right to use the Suite granted pursuant to the Agreement, then the Security Deposit shall be used to repair any damages to the Suite, to satisfy any unpaid obligations of User under this Agreement, and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

(b) If, at any time during the Term, any portion of the Use Fee or any other amount payable by User to the JPA is not promptly paid when due, the JPA may, without prior notice and without waiving any other remedy which it may have under the Agreement, appropriate and apply all or any portion of the Security Deposit to the payment of such amount. User shall, upon written demand of the JPA, remit to the JPA an amount sufficient to restore the Security Deposit to the original sum deposited. User’s failure to do so within five (5) business days after receipt of such demand shall constitute a breach of the Agreement.

(c) If User’s right to use the Suite is terminated, the JPA may, at its option, appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate the JPA for any loss or damage sustained or suffered by the JPA due to User’s breach of this Agreement and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

13. OBLIGATION TO PAY.

(a) Except as otherwise set forth herein, the obligation of User to pay the Security Deposit, the Use Fees, food and beverage concessions charges, telephone charges, if applicable, or other sums due to the JPA, the JPA’s caterers and concessionaires, or any event sponsor is independent of the liabilities or limitations of the JPA under the Agreement. User shall promptly make all such payments without any deductions, setoffs, or counterclaims against such payments on account of any breach or default by or claims against the JPA, or any breach or default by or claims against any caterer or concessionaire or any event sponsor. Nothing in this section shall prevent User from bringing an independent action against the JPA or any caterer or concessionaire or event sponsor.

(b) The JPA shall not be liable for, and User shall not assert any deduction, setoff, or claim of any nature against the JPA for any act or omission of or any breach or default by any caterer or concessionaire or event sponsor. User shall be bound by the terms and conditions established from time to time by the JPA or any event sponsor for cancellation or postponement
of an event. Except as otherwise set forth in this Agreement, the JPA shall have no liability to User on account of any such cancellation or postponement or other failure or deficiency in the conduct of such event.

(c) User’s rights under the Agreement, including the rights to have access to and use of the Suite and the private suite level facilities and to obtain admission to the West Haymarket Arena or the Suite, are subject to the conditions precedent of payment by User to the JPA of all sums then due the JPA and upon User’s continued compliance with the Agreement.

(d) Annual Use Fees for the Suite set forth in Exhibit C, attached hereto, will be billed to User and will be due and payable at the times designated in paragraph 5(b). In addition, User shall pay any sales, privilege, rental, use, property, or other taxes due on, or with respect to, the Use Fees or on account of the use of the Suite or the private suite level facilities.

14. WEST HAYMARKET ARENA CONSTRUCTION. The JPA expects, but makes no guarantee, that the construction of the West Haymarket Arena will be completed by September 2013. If, for any reason, upon completion of the West Haymarket Arena, the Suite is not included in the West Haymarket Arena, then the JPA shall promptly return to User any payments made toward the Use Fee and the Security Deposit. Upon return of said payments to User, the Agreement will terminate and the parties will have no further liability or obligation to each other. The JPA shall not have any obligation to refund the initial amount of the Use Fee or the Security Deposit to User in the event that (a) completion of the West Haymarket Arena or the suite is delayed or (b) the location of the Suite varies from that set forth in this Agreement.

15. NONOCCURRENCE OF EVENTS. The Agreement shall not operate as or constitute any warranty, representation, covenant, or guarantee by JPA that any number of events or particular event, sports team, or individual group shall occur, play, or appear at the West Haymarket Arena during the Term of the Agreement. During the Term of the Agreement, the West Haymarket Arena may be improved, altered, expanded, or enlarged which User acknowledges may cancel certain events and the JPA shall have no liability for such cancellations.

16. LATE FEE. Any Use Fee or other monetary obligation of User under the Agreement not paid to the JPA by the date specified in the Agreement shall bear interest accruing from such date at the rate of fifteen percent (15%) per year or the highest rate permitted by law, whichever is less.

17. RIGHT OF FIRST REFUSAL TO RENEW. If not in default in the performance of its obligations under this Agreement, User shall have the right of first refusal to renew the right of use granted pursuant to this Agreement before the expiration of the Term at such Use Fee and on such other terms and conditions as the JPA may, in its sole discretion, determine. Prior to the expiration of the Term, the JPA shall submit to the User an agreement which sets forth the Use Fee and other terms and conditions established by the JPA for the renewal agreement. User may exercise, if at all, its right of first refusal by executing and returning such agreement to the JPA, together with any deposit or other payment which may be required thereunder within thirty (30) days after the agreement is sent to User or one hundred eighty (180) days before the conclusion of the original Term, whichever comes later.
18. **COVENANTS OF USER.** User covenants and agrees with the JPA as follows:

(a) User shall keep and maintain the Suite in good repair, order, and condition at all times. Except for ordinary wear and tear, User will reimburse the JPA for the repair of any damage caused to the Suite or the JPA’s property in the Suite by User or any of User’s guests or invitees.

(b) User shall abide by, and shall notify and require its guests to abide by, such rules, regulations, and policies as the JPA shall establish, in its sole discretion, concerning the use and occupancy of the Suite and attendance at the West Haymarket Arena, including any modifications to such rules, regulations, and policies that may be adopted or administered by the JPA or its designee from time to time.

(c) User and User’s guests shall at all times maintain proper decorum while using the Suite. User shall be held responsible for its actions as well as those of its guests, including, but not limited to, actions arising from the consumption of alcoholic beverages. Should User or any of User’s guests create a disturbance or cause objects to be thrown or dropped from the Suite, the JPA shall have the right to eject the parties responsible for such action, or all the persons in the Suite, from the confines of the West Haymarket Arena, or exercise any of the JPA’s rights upon default in accordance with the provisions of this Agreement, including, without limitation, termination of this Agreement. User and User’s guests shall comply with all applicable present and future laws, ordinances, orders, rules, and regulations and shall not permit any violation thereof.

19. **DEFAULT.**

(a) In the event User fails to pay when due any amounts to be paid by User pursuant to the Agreement or otherwise defaults in the performance or observation of its duties and obligations under the Agreement, the JPA may, at its option: (i) withhold distribution to User of tickets for games and events played in or held at the West Haymarket Arena and parking and guest passes until such time as such default is cured; and/or (ii) terminate the rights of User under the Agreement after giving User not less than twenty (20) days prior written notice of such default or breach. In the event that User shall not have cured the default or breach specified in said notice by the date specified in said notice, the JPA may terminate the right of User to the use and possession of the Suite and all other rights and privileges of User under the Agreement and declare the entire unpaid balance of the Use Fee (which for purposes hereof shall include the total aggregate unpaid balance of the Use Fees for the remainder of the Term) immediately due and payable, whereupon the JPA shall have no further obligation of any kind to User. The JPA shall use reasonable efforts to re-market the right to the use and possession of the Suite to another party provided that, if there are any other suites in the West Haymarket Arena available to be marketed, then the JPA may give priority to marketing such other suites. User shall remain obligated to make all payments due or becoming due under the Agreement, but if the JPA enters into an agreement for the right to use and possess the Suite with another party, then all amounts received from such other party, applicable to the remaining period of the Agreement, shall be applied first to the expense of re-marketing and then to the reduction of any obligations of User to the JPA under the Agreement. If the consideration collected by the JPA upon any such re-
marketing is not sufficient to pay the full amount of all such obligations of User, User shall pay such deficiency upon demand.

(b) The foregoing remedies of the JPA shall not be to the exclusion of any other right or remedy set forth in the Agreement or otherwise available to the JPA in law or in equity. User shall be responsible for all attorneys’ fees and costs incurred by the JPA in the enforcement of the Agreement whether or not litigation is actually commenced.

(c) No waiver by the JPA of any default or breach by User of its obligations under the Agreement shall be construed to be a waiver or release of any other subsequent default or breach by User under the Agreement, and no failure or delay by the JPA in the exercise of any remedy provided for in the Agreement shall be construed as a forfeiture or waiver of any other right or remedy available to the JPA.

20. DAMAGE OR DESTRUCTION TO SUITE. In the event of damage to or destruction of the Suite which renders the Suite unusable when events are scheduled in the West Haymarket Arena, an equitable adjustment to User will be made, unless a reasonably comparable suite is made available to the User. No adjustment will be made if the unavailability of the Suite is caused by the fault or negligence of User or User’s guests. If, in the event of any damage to or destruction of the Suite, the JPA elects not to repair or restore the same, this Agreement shall terminate as of the date of such damage or destruction, and a prorated portion of the prepaid annual Use Fee shall be refunded to User. Upon payment of such refund, the JPA shall have no further liability under the Agreement.

21. ACCESS BY JPA. The JPA and its agents and employees shall have access to the Suite to the extent deemed necessary by the JPA (a) for the performance of its obligations under the Agreement and for any and all purposes related thereto, (b) to investigate any suspected violations of the terms and conditions of this Agreement, or (c) otherwise in connection with the Suite, including in the event of an emergency, by use of a master key or forcible entry. User shall not interfere with the JPA’s right of access by installation of additional or changed locks or otherwise. Unless the emergency necessitating the forcible entry is caused by the fault or negligence of User or User’s guests or User has interfered with the JPA’s right of access by installing additional or changed locks or otherwise, the JPA shall repair any property damage to the door or entryway caused by said emergency forcible entry and shall have no other liability for entry into the Suite.

22. DISCLAIMER OF LIABILITY.

(a) Neither the JPA, any West Haymarket Arena manager designated by the JPA (the “West Haymarket Arena Manager”), nor any of their officers, employees, or agents shall be liable or responsible for any loss, damage, or injury to any person or to any property of User or User’s guests in or upon the West Haymarket Arena, resulting from any cause whatsoever, including, but not limited to, theft and vandalism.

(b) User and its guests and invitees hereby assume all risks and dangers incidental to the games of basketball, arena football, and hockey and events generally (whether sporting or otherwise), whether occurring prior to, during, or subsequent to, the actual playing of the game
or conducting of the event, including specifically (but not exclusively) the danger of being injured by balls, pucks, sticks, or other missiles, and agree that the JPA, any sports league, the West Haymarket Arena Manager, the teams, their agents and players, and other individuals performing or participating in events shall not be liable for injuries from such causes.

(c) In addition, User agrees to indemnify and hold the JPA and the West Haymarket Arena Manager harmless from and against any liability, losses, claims, demands, costs, and expenses, including attorneys’ fees and litigation expenses, arising out of any personal injury or property damage occurring in or upon the West Haymarket Arena in connection with User’s use or occupancy of the Suite or due to the contravention of the provisions of this Agreement or of any applicable laws, rules, regulations, or order of any governmental agency having appropriate jurisdiction over any actions or negligence of User.

23. INSURANCE. In addition, User shall, at its sole cost and expense, obtain and keep in full force and effect at all times during the Term, a comprehensive general liability insurance policy (including, without limitation, host liquor liability coverage), with a combined single occurrence limit of at least $1,000,000 and $2,000,000 aggregate, including coverage for bodily injury or death, property damage, and personal injury liability, and for the performance by User of the indemnity provisions of the Agreement. The limits of this insurance shall not, however, limit the liability of User under the Agreement. Prior to User’s occupancy of the Suite, User shall deliver to the JPA a certificate evidencing the issuance of such insurance policy. User’s comprehensive general liability insurance policy and certificate evidencing such insurance shall (i) name the JPA and the West Haymarket Arena Manager as additional insureds, (ii) contain a provision by which the insurer agrees that the policy shall not be cancelled except after thirty (30) days written notice to the JPA and (iii) be issued by an insurance company reasonably satisfactory to the JPA and qualified to do business in the State of Nebraska. Any liability insurance carried or to be carried by User under this Agreement shall be primary over any policy carried by the JPA or the West Haymarket Arena Manager.

24. ASSIGNMENT: WHEN PERMITTED.

(a) Assignment. User hereby acknowledges and agrees that the identity of Suite Users is of crucial importance to the JPA. Accordingly, User hereby agrees that, unless User has obtained the JPA’s consent as provided herein, it shall not assign, sell, transfer, mortgage, or otherwise alienate or encumber (any such act being to “assign” and to result in an “assignment”) this Agreement or any interest herein; provided, however, that User may distribute tickets or passes for use of parking spaces to its guests and invitees for use in the manner permitted herein. User further agrees not to sell any tickets or any rights to admission to the Suite, the parking spaces, or any private club lounge or otherwise permit any person to occupy the same for hire, it being expressly understood that the use of the tickets, the Suite, and any private club lounge shall be solely and exclusively for the use, enjoyment, and entertainment of User and officers, employees, visitors, guests, and invitees of User. User agrees not to solicit or accept any direct or indirect payment or income from any person for the use and enjoyment of tickets, the Suite, parking spaces, or any private club lounge. The provisions of this Section shall not prohibit User from requiring its employees, guests, and invitees, pursuant to User’s company or internal policy and procedures, to pay or reimburse User for the use of tickets.
(b) **Consent.** If User desires to assign its interest in this Agreement to any person or entity, User shall notify the JPA in writing of such desire, setting forth the identity of the proposed assignee and the name, address, and telephone number of the individual representing the proposed assignee so that the JPA may communicate with the proposed assignee regarding the assignment. The JPA shall have the right to contact the proposed assignee and conduct such investigation of the creditworthiness of such proposed assignee as the JPA shall deem necessary, including requiring the proposed assignee to submit to the JPA such financial and other information as the JPA shall deem advisable. The JPA shall have the right, in the exercise of its sole discretion, to refuse to consent to such proposed assignment. If the JPA consents to the proposed assignment, it shall not be effective until the JPA has received an instrument executed by the proposed assignee by which it agrees to be bound by this Agreement, and an instrument of assignment satisfactory to the JPA executed by User. Upon the JPA’s written consent to the assignment of this Agreement and receipt of such instruments, User shall be released from any further obligations under this Agreement. Any consent by the JPA to any assignment or other transfer by User shall not be deemed to be consent by the JPA to any further assignment or other transfer by the successor User. Any attempted assignment, sale, transfer, sublease, pledge, mortgage, or other alienation or encumbrance of this Agreement or any interest therein in contravention of this Agreement shall be null and void, and further shall constitute a default in the performance and observance of User’s duties and obligations under this Agreement.

(c) **Suite Not to be Mortgaged or Used as Collateral or Security.** User acknowledges and agrees that User’s interest in the Suite shall not be used as collateral or security for User to support, finance, or underwrite any other financial obligation of User, nor shall User use its interest in the Suite to obtain any mortgage or monies related to a mortgage. User acknowledges and agrees that any failure to comply with the terms of this paragraph shall constitute a default of this Agreement.

25. **COST-SHARING ARRANGEMENTS.** User hereby covenants, represents, and warrants that, except with respect to the parties disclosed on Exhibit D attached to and made a part of this Agreement, User has not entered into, nor will it enter into, any agreements or arrangements by which User and any other party or parties share the costs attributable to the Suite, including, but not limited to, the Use Fees provided for hereunder, in consideration for the use of the Suite during the Term hereof (a “Cost-Sharing Arrangement”). A Cost-Sharing Arrangement shall include any and all agreements to transfer, for any consideration whatsoever, one or more Suite tickets. In the event that Exhibit D discloses any parties with whom User has entered into a Cost-Sharing Arrangement, the JPA has approved such arrangements by its execution of this Agreement. In no event shall the JPA’s approval of these parties imply approval by the JPA of any other parties. No Cost-Sharing Arrangement shall relieve User from being fully liable for all obligations under this Agreement, including all Use Fees. The JPA shall have the right, exercisable in the JPA’s sole and absolute discretion, to prohibit and to reject any proposed Cost-Sharing Arrangement or to limit the number of parties to a Cost-Sharing Arrangement, both upon execution hereof and at any time thereafter. User hereby represents and warrants that all amounts payable by the other parties under any Cost-Sharing Arrangement do not exceed the Use Fees and other costs imposed on User hereunder for the use of the Suite reasonably allocable to the use of the Suite by the other parties to the Cost-Sharing Arrangement. In the event that User desires to enter into a Cost-Sharing Arrangement after execution of this Agreement, User shall be required with respect thereto to provide to the JPA the identity of the
parties to the proposed Cost-Sharing Arrangement, and the address and phone number of such parties, so that the JPA may contact them to request such financial or other information as the JPA shall deem advisable. All such future Cost-Sharing Arrangements shall be subject to the same conditions and restrictions as a Cost-Sharing Arrangement disclosed herein. Transfer of Suite tickets for the appropriate allocable cost pursuant to an approved Cost-Sharing Arrangement shall not violate this Agreement.

26. **ADMINISTRATIVE MATTERS.**  User shall provide to the JPA at least sixty (60) days prior to the commencement of the Term the following information:

(a) The name and address of the person to whom all correspondence, including but not limited to tickets and parking passes, relating to the Suite shall be sent.

(b) Unless User is an individual, the name and address of the person authorized to receive notices sent to User and generally bind User with respect to all matters relating to the Suite and this Agreement.

(c) The JPA may from time to time provide a form on which User shall provide such information as required herein, and User shall in any event notify the JPA in writing of any changes in such information.

27. **MISCELLANEOUS.**

(a) Upon the expiration of the Term (or, if applicable, upon the expiration of any renewal term pursuant to User’s right of first refusal) or upon the earlier termination of the Agreement, User shall surrender possession of the Suite to the JPA in the condition in which it was originally delivered to User, normal wear and tear and/or damage caused by casualty or force beyond the control of User or User’s guests excepted.

(b) It is understood that the JPA may mortgage, pledge, assign, or otherwise encumber the JPA’s rights in the Agreement for any reason, in its sole discretion.

(c) User acknowledges and agrees that the West Haymarket Arena is a smoke-free building and environment and that User and its guests shall not smoke anywhere within the West Haymarket Arena or its environment except in designated smoking areas.

(d) User shall not bring or keep animals, birds, fish, or other living creatures in the Suite, with the exception of guide dogs or other animals specifically trained to assist persons utilizing the Suite. User shall not use or allow the Suite to be used as sleeping quarters.

(e) User shall not display any sign, advertisement, or notice or allow same to be affixed to the Suite or the West Haymarket Arena.

(f) All notices, demands, and other communications between the parties required or appropriate hereunder shall be in writing and deemed given if mailed certified mail, return receipt requested, postage prepaid, or actually delivered, to the respective addresses set forth
below the signatures of the parties to this Agreement, or to such other address as may be
designated by either party, from time to time in writing.

(g) This Agreement shall be governed by and enforced in accordance with the laws of
the State of Nebraska, without regard to conflicts of law principles. The parties agree that venue
of any legal action arising out of this Agreement or incident thereto shall be proper in a court of
competent jurisdiction in Lancaster County, Nebraska and each party waives any objection to
such venue.

(h) This Agreement, together with the Exhibits attached hereto, contains the entire
agreement of the parties with respect to the matters provided for herein, and shall supersede any
written instrument or oral agreement previously made or entered into by the parties to the
Agreement. In the event of any inconsistency between the Agreement (including the attached
Exhibits) and any other documents regarding the Suite, this Agreement shall control.

(i) The JPA makes no representations as to the tax treatment of any payments made
to the JPA under this Agreement. User is urged to seek the advice of its professional tax advisor
to determine the tax treatment of any payment made under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set
forth below to be effective on the date of execution by the JPA.

USER

XYZ, Inc. Date:______________________________

By: ________________________________

Name Printed: ________________________________

Title: ________________________________

Address: ________________________________

___________________________

___________________________

___________________________
JPA

By: _______________________________ 
Chair of JPA

Date: ________________________________

Address:  555 South 10th Street, Room 103  
   Lincoln, NE 68508

APPROVED:

__________________________

JPA Attorney
EXHIBIT A

West Haymarket Arena Diagram

JPA’s Approval: _______  User’s Approval: _______
EXHIBIT B

Founders Suite Benefits

Subject to the Terms and Conditions of this Agreement, User shall be entitled to the following benefits:

1. Admission Tickets. Subject to User’s timely payment for the Suite as set forth in Exhibit C, User shall receive twelve (12) admission tickets to all West Haymarket Arena events with the specific exception of no more than three (3) events per calendar year (the “Special Events”) to be designated by the JPA. User shall have the option to purchase four (4) additional Suite tickets and shall receive two (2) guest passes for User’s guests to utilize the Suite while such guests hold tickets for other seating in the West Haymarket Arena. There shall be no additional charge for the guest passes.

2. Parking Passes. The JPA shall provide User, at no additional cost, six (6) parking passes with year-round access for parking in a parking facility near the West Haymarket Arena. User acknowledges and agrees that as of the time of this Agreement, the parking patterns for the West Haymarket Arena are still being developed and that the number of parking passes to which User is entitled, as well as the location of those parking spaces, is subject to change in the sole discretion of the JPA.

3. Suite Features. Each Founders Suite is currently designed to provide:
   - Twelve (12) exterior seats
   - Drink rail inside Suite with four (4) bar stools
   - Professionally finished interior with upscale furnishings
   - Under-counter refrigerator
   - Storage cabinets
   - Buffet counter
   - Wet bar
   - Television with in-house feed and cable
   - Coat and storage closet
   - Company identification at entrance to Suite (optional)

4. Suite Amenities. User shall be entitled to the following amenities:
   - Recognition as a Founder in the West Haymarket Arena
   - Annual Founders event
   - Use of arena premium spaces one day per year (subject to schedule)
   - Option to purchase non-premium tickets for West Haymarket Arena events (subject to event promoter restrictions)
   - Opportunities for company employees to purchase tickets for West Haymarket Arena events prior to public sale (subject to event promoter restrictions)
   - Private entrance to the West Haymarket Arena
   - Private elevator to suite level
• Access to restrooms on the suite level
• Access to private lounge on the suite level
• Concierge service
• Suite attendant
• Day use of Suite during normal Monday-Friday business hours; such use to be permitted at the JPA’s discretion, building schedule permitting and advance reservations required, upon such terms and conditions as the JPA may set.

5. The JPA shall use its best efforts to assure that the foregoing Features and Amenities will be included with the Suite, but does not guarantee that changes to the Features and Amenities will not be made over the course of the Agreement.
EXHIBIT C

$65,000 Suite

10 year Use Agreement

1. ANNUAL USE FEE. The “Use Fee” payable by User to the JPA in respect of each year of the Agreement is as set forth below:

- $65,000 for Year 1
- $65,000 for Year 2
- $65,000 for Year 3
- $65,000 for Year 4
- $65,000 for Year 5
- $65,000 for Year 6
- $65,000 for Year 7
- $65,000 for Year 8
- $65,000 for Year 9
- $65,000 for Year 10

____________________________
User Signature
EXHIBIT D

COST-SHARING ARRANGEMENTS

Subject to the terms and conditions of the Agreement, User may engage in a “Cost-Sharing Arrangement” so that the cost of the subject Suite is borne by more than one person or business entity.

User acknowledges and agrees that said Cost-Sharing Arrangement shall not collectively include any combination of more than three (3) persons and/or business entities, so that the aggregate number of persons or entities controlling access to said Suite does not exceed three (3).

User further acknowledges and agrees that User is responsible for all payments due to the JPA regardless of any Cost-Sharing Arrangement. User further acknowledges and agrees that granting a right to use the Suite in the name of more than one person or entity is not permitted.

User shall inform the JPA of the identity of persons or entities involved in any Cost-Sharing Arrangement and shall supply the contact information for the persons or entities participating in said Cost-Sharing Arrangement below. User shall promptly notify the JPA in writing of any change in the information supplied.

User may identify those persons or entities participating in cost-sharing on any and all permitted signage identifying the users of said Suite.

Names of and contact information for the parties participating in the Cost-Sharing Arrangement are as follows:

User: ____________________________
Mailing Address: ____________________________
Telephone: ____________________________
E-mail address: ____________________________
Designated Representative: ____________________________

Cost-Sharer No. 1:
Mailing Address: ____________________________
Telephone: ____________________________
E-mail address: ____________________________
| Cost-Sharer No. 2:          | ____________________________ |
| Mailing Address:           | ____________________________ |
| Telephone:                 | ____________________________ |
| E-mail address:            | ____________________________ |
WEST HAYMARKET ARENA  
PRIVATE SUITE USE AGREEMENT

1. PARTIES. This Private Suite Use Agreement (this “Agreement”) is entered into by and between the West Haymarket Joint Public Agency (the “JPA”) and XYZ, Inc. a Nebraska corporation, (the “User”) to be effective on the date of execution by the JPA (the “Effective Date”).

2. TERM. This Agreement shall be in full force and effect on the Effective Date, however, the term of the right to use the Private Suite shall be for a period of ten (10) years commencing on September 1, 2013 and terminating on August 31, 2023, (the “Term”) unless this Agreement is terminated earlier pursuant to the provisions hereof.

3. RIGHT TO USE SUITE. Subject to the terms and conditions set forth herein and upon payment of the Use Fees, Security Deposit, and other amounts due as set forth in this Agreement, User shall be entitled to the exclusive privilege and right during the Term of this Agreement to use the Suite in the West Haymarket Arena, (the “Suite”) the approximate location of which is indicated on the West Haymarket Arena diagram, which is attached hereto as Exhibit A. User acknowledges and agrees that the actual location of the Suite may vary from that set forth in the West Haymarket Arena diagram referenced herein. The Suite is to be constructed as part of the West Haymarket Arena and will generally consist of a furnished private deck with seats facing the playing surface of the West Haymarket Arena, climate controlled seating, and a bar area.

4. SUITE BENEFITS.

(a) The benefits granted pursuant to this Agreement including, but not limited to, ticket availability for West Haymarket Arena events, parking privileges, suite amenities, and other opportunities (the “Suite Benefits”) are set forth herein and in Exhibit B.

(b) User acknowledges and agrees that there may be certain events for which the Suite Rights may be limited by the JPA, in the exercise of its reasonable discretion.

5. PAYMENTS.

(a) Security Deposit.

User shall submit to the JPA with this executed Agreement a security deposit made payable to the JPA in the amount of FIVE THOUSAND DOLLARS ($5,000.00) (the “Security Deposit”). The Security Deposit shall be used as security for the prompt and full payment of all fees, including Use Fees, and User’s good faith performance of its obligations hereunder. Application of said Security Deposit is more particularly described in paragraph 12 herein.
(b) Use Fees.

User has elected to pay to the JPA the entire total of annual Use Fees for the Suite Rights for the Term in the amount of $550,000 prior to the opening of the West Haymarket Arena. Payment of the Use Fees for the Term shall be paid in three (3) installments, as follows:

TWO HUNDRED THOUSAND DOLLARS ($200,000) shall be paid to the JPA with this executed Agreement, in order to reserve the Suite;
ONE HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS ($175,000) shall be paid to the JPA on or before July 1, 2012; and
ONE HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS ($175,000) shall be paid to the JPA on or before July 1, 2013.

(c) A portion of the Use Fees shall be utilized by the JPA to fulfill its obligations under this Agreement including, but not limited to, the obligation to provide the tickets and parking passes included under this Agreement and to satisfy any contractual obligation to pay a commission related to the sale of this right to use the Suite.

(d) User represents and warrants to the JPA that it has not entered into and is not subject to any agreement, arrangement, or understanding with any individual or entity whereby such individual or entity is entitled to a fee or commission with respect to any amount payable under this Agreement.

6. FURNISHINGS, FIXTURES AND ALTERATIONS.

(a) The Suite shall be furnished and equipped with such fixtures, furnishings, and equipment as set forth in Exhibit B, attached hereto.

(b) The JPA intends to establish and maintain a basic color scheme and a uniform design and aesthetic for the suites in the West Haymarket Arena. User shall not make any additions or alterations in the interior or exterior of the Suite or to the fixtures, furnishings, and equipment therein without the prior written consent of the JPA, which may be withheld in its sole discretion. Any approved changes, alterations, or additions authorized by the JPA shall be made at User’s sole cost and expense, free of any liens, in a good and workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws and ordinances and other legal requirements which may apply. Any fixtures or materials incorporated in or attached to the Suite by User shall become the property of the JPA, unless User has received the JPA’s written consent to remove those fixtures or materials on or before the expiration of the Term, in which case User shall, subject to normal wear and tear, restore the Suite to its original condition at User’s sole cost and expense.

(c) In the event that the Suite falls into a state of disrepair or substandard condition not attributable to normal wear and tear, the JPA shall notify User in writing to repair and/or refurbish the Suite. User shall, within forty-five (45) days of the date of receipt of said notice, complete such repairs or refurbishments at User’s sole expense and subject to the JPA’s approval. Should User fail to timely complete said repairs or refurbishments, the JPA shall have
the right to complete said repairs and refurbishments and deduct the cost of same from the User’s Security Deposit. The JPA shall invoice User for the cost of the repairs and refurbishments to the extent that such cost exceeds the balance of User’s Security Deposit. User’s failure to pay the JPA within thirty (30) days of receipt of said invoice shall constitute a default of this Agreement.

7. ADMISSION TICKETS.

(a) For all pre-season, regular season, and post-season Tenant games held in the West Haymarket Arena, User shall be entitled to receive twelve (12) admission tickets and two (2) guest passes and shall be entitled to purchase four (4) additional tickets. Tenants are University of Nebraska Men’s and Women’s Basketball Teams. A guest pass allows a patron holding a ticket for other seating in the West Haymarket Arena access to the Suite.

(b) Except as provided below, User shall also be entitled to receive twelve (12) admission tickets and two (2) guest passes and shall be entitled to purchase four (4) additional tickets for non-Tenant events at the West Haymarket Arena for which User desires to use the Suite, pursuant to Section 1 of Exhibit B, attached hereto, with the specific and acknowledged exception of up to three (3) events per calendar year designated by the JPA, in its sole discretion, as “Special Events” and any other events for which User’s Suite privileges are relocated. In addition, for multi-show or performance events, User shall select one (1) show or performance, as applicable, and shall be entitled to receive tickets for the selected show or performance as set forth herein. For the remaining shows and performances relating to such multi-show or performance events, as applicable, User shall have the right to purchase tickets.

(c) User acknowledges and agrees that there may be certain events which require that User’s Suite privileges be temporarily relocated to another West Haymarket Arena suite or the next best comparable seating in the West Haymarket Arena. In the event User’s Suite privileges are proposed for temporary relocation, the JPA shall provide User advance notice of said relocation and User shall confirm to the JPA whether it desires tickets to such event(s) within ten (10) days of receipt of the aforementioned notice from the JPA. In the event User desires tickets to such event(s), then the JPA shall use its best efforts to provide User with seating privileges as comparable as possible to those normally enjoyed by User.

(d) In the event that the Suite is deemed restricted by the promoter of any non-Tenant event in the West Haymarket Arena, or in the event the sponsor of certain extraordinary events restricts the sale of tickets, User shall not have the right to purchase admission tickets for the Suite nor to utilize such Suite. The JPA shall notify User of any such restricted events in advance.

(e) Except as otherwise set forth herein, User shall have no right to admit any person to the Suite during any event for which User does not purchase or receive admission tickets.

(f) User acknowledges and agrees that in the event any professional or amateur sports league should award a franchise to play its home games in the West Haymarket Arena, User shall have no right to use its Suite nor its admission privileges for any pre-season, regular season,
or post season game of such team until such time as the JPA and User renegotiate this Agreement and this Agreement is amended in writing.

8. POSSESSION AND USE.

(a) User shall be entitled to the exclusive use and possession of the Suite during the Term (except for “Special Events” and the other occasions referenced herein), subject to the provisions of the Agreement. User and User’s guests shall be entitled to use the Suite at all times for which appropriate tickets for admission to the Suite have been obtained. User and User’s guests shall have access to a private lounge, if any, at the West Haymarket Arena in accordance with such procedures as shall be established by the JPA. During dates on which events occur, access to the Suite and the suite area, as well as the private club facilities, shall be controlled by and shall require the presentation by each person using such area of a ticket for admission to said event. In addition to the benefits described in Exhibit B, attached hereto, User shall be given access to the Suite on other dates upon such terms and conditions as the JPA, in its discretion, may permit or designate. User and User’s guests shall be bound by and shall observe the terms and conditions upon which tickets for admission to the West Haymarket Arena have been issued by the JPA or by any event sponsor, including, without limitation, the policy adopted by the issuer of such tickets with respect to the cancellation or postponement of any event.

(b) Access to the Suite shall be from a separate level of the West Haymarket Arena. Access to the Suite shall be shared only by persons holding appropriate tickets or passes for admission to the Suite. The Suite shall be provided with a lock on the door.

(c) The Agreement provides User only with the right and privilege to possess and use the Suite in the manner set forth in the Agreement, and, except as it pertains to any special right and privilege to so possess and use the Suite, the Agreement does not confer upon the User nor User’s guests any greater or lesser rights and privileges with respect to admission to the West Haymarket Arena than that afforded to other holders of tickets for admission thereto.

9. PARKING. User shall have the right to receive, at no additional cost or charge, six (6) parking passes with year-round access for parking in a facility designated by the JPA. User agrees and acknowledges that the number and location of parking spaces is subject to change at the JPA’s discretion.

10. FOOD AND BEVERAGE SERVICES. Food and beverage service shall be provided by a caterer designated by the JPA, at prevailing rates established by such caterer, to be billed directly to User. User shall pay, on a timely basis, all charges and expenses incurred by User in connection with the use of the Suite by User or its guests, including applicable taxes for catering and other services. No food or beverages other than those purchased from such designated caterer or from the West Haymarket Arena concessionaire may be brought into, prepared in, or consumed within the Suite.

11. REPAIRS AND MAINTENANCE. The JPA will be responsible for ordinary repairs and maintenance to the interior and exterior of the Suite, including ordinary cleaning, sweeping, vacuuming, trash removal, and dusting. The JPA reserves the right to charge User for,
and User agrees to pay for, the cost of what the JPA considers, in its sole and absolute discretion, to be extraordinary repairs, maintenance, replacements, or cleaning of the Suite resulting from any act or omission of User or its guests. User agrees and acknowledges that the JPA may designate the catering, cleaning, restroom, trash removal, and Suite supply and repair functions to any third party retained or hired by the JPA. The JPA will be responsible for the periodic replacement of wall coverings, furnishings, carpeting, and equipment in the Suite as the JPA determines, in its sole discretion, is necessary due to normal wear and tear.

12. APPLICATION OF SECURITY DEPOSIT.

(a) The Security Deposit may be commingled with other JPA funds and may be used by the JPA for any business purpose. If User complies with the terms and conditions of this Agreement and chooses not to renew the right to use the Suite granted pursuant to the Agreement, then the Security Deposit shall be used to repair any damages to the Suite, to satisfy any unpaid obligations of User under this Agreement, and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

(b) If, at any time during the Term, any portion of the Use Fee or any other amount payable by User to the JPA is not promptly paid when due, the JPA may, without prior notice and without waiving any other remedy which it may have under the Agreement, appropriate and apply all or any portion of the Security Deposit to the payment of such amount. User shall, upon written demand of the JPA, remit to the JPA an amount sufficient to restore the Security Deposit to the original sum deposited. User’s failure to do so within five (5) business days after receipt of such demand shall constitute a breach of the Agreement.

(c) If User’s right to use the Suite is terminated, the JPA may, at its option, appropriate and apply the Security Deposit, or so much thereof as may be necessary, to compensate the JPA for any loss or damage sustained or suffered by the JPA due to User’s breach of this Agreement and the balance shall be refunded to User within thirty (30) days of termination of the Agreement.

13. OBLIGATION TO PAY.

(a) Except as otherwise set forth herein, the obligation of User to pay the Security Deposit, the Use Fees, food and beverage concessions charges, telephone charges, if applicable, or other sums due to the JPA, the JPA’s caterers and concessionaires, or any event sponsor is independent of the liabilities or limitations of the JPA under the Agreement. User shall promptly make all such payments without any deductions, setoffs, or counterclaims against such payments on account of any breach or default by or claims against the JPA, or any breach or default by or claims against any caterer or concessionaire or any event sponsor. Nothing in this section shall prevent User from bringing an independent action against the JPA or any caterer or concessionaire or event sponsor.

(b) The JPA shall not be liable for, and User shall not assert any deduction, setoff, or claim of any nature against the JPA for any act or omission of or any breach or default by any caterer or concessionaire or event sponsor. User shall be bound by the terms and conditions
established from time to time by the JPA or any event sponsor for cancellation or postponement of an event. Except as otherwise set forth in this Agreement, the JPA shall have no liability to User on account of any such cancellation or postponement or other failure or deficiency in the conduct of such event.

(c) User’s rights under the Agreement, including the rights to have access to and use of the Suite and the private suite level facilities and to obtain admission to the West Haymarket Arena or the Suite, are subject to the conditions precedent of payment by User to the JPA of all sums then due the JPA and upon User’s continued compliance with the Agreement.

(d) User shall pay any sales, privilege, rental, use, property, or other taxes due on, or with respect to, the Use Fees or on account of the use of the Suite or the private suite level facilities.

14. WEST HAYMARKET ARENA CONSTRUCTION. The JPA expects, but makes no guarantee, that the construction of the West Haymarket Arena will be completed by September 2013. If, for any reason, upon completion of the West Haymarket Arena, the Suite is not included in the West Haymarket Arena, then the JPA shall promptly return to User any payments made toward the Use Fee and the Security Deposit. Upon return of said payments to User, the Agreement will terminate and the parties will have no further liability or obligation to each other. The JPA shall not have any obligation to refund the initial amount of the Use Fee or the Security Deposit to User in the event that (a) completion of the West Haymarket Arena or the Suite is delayed or (b) the location of the Suite varies from that set forth in this Agreement.

15. NONOCCURRENCE OF EVENTS. The Agreement shall not operate as or constitute any warranty, representation, covenant, or guarantee by User that any number of events or particular event, sports team, or individual group shall occur, play, or appear at the West Haymarket Arena during the Term of the Agreement. During the Term of the Agreement, the West Haymarket Arena may be improved, altered, expanded, or enlarged which User acknowledges may cancel certain events and the JPA shall have no liability for such cancellations.

16. LATE FEE. Any Use Fee or other monetary obligation of User under the Agreement not paid to the JPA by the date specified in the Agreement shall bear interest accruing from such date at the rate of fifteen percent (15%) per year or the highest rate permitted by law, whichever is less.

17. RIGHT OF FIRST REFUSAL TO RENEW. If not in default in the performance of its obligations under this Agreement, User shall have the right of first refusal to renew the right of use granted pursuant to this Agreement before the expiration of the Term at such Use Fee and on such other terms and conditions as the JPA may, in its sole discretion, determine. Prior to the expiration of the Term, the JPA shall submit to the User an agreement which sets forth the Use Fee and other terms and conditions established by the JPA for the renewal agreement. User may exercise, if at all, its right of first refusal by executing and returning such agreement to the JPA, together with any deposit or other payment which may be required
thereunder within thirty (30) days after the agreement is sent to User or one hundred eighty (180) days before the conclusion of the original Term, whichever comes later.

18. COVENANTS OF USER. User covenants and agrees with the JPA as follows:

(a) User shall keep and maintain the Suite in good repair, order, and condition at all times. Except for ordinary wear and tear, User will reimburse the JPA for the repair of any damage caused to the Suite or the JPA’s property in the Suite by User or any of User’s guests or invitees.

(b) User shall abide by, and shall notify and require its guests to abide by, such rules, regulations, and policies as the JPA shall establish, in its sole discretion, concerning the use and occupancy of the Suite and attendance at the West Haymarket Arena, including any modifications to such rules, regulations, and policies that may be adopted or administered by the JPA or its designee from time to time.

(c) User and User’s guests shall at all times maintain proper decorum while using the Suite. User shall be held responsible for its actions as well as those of its guests, including, but not limited to, actions arising from the consumption of alcoholic beverages. Should User or any of User’s guests create a disturbance or cause objects to be thrown or dropped from the Suite, the JPA shall have the right to eject the parties responsible for such action, or all the persons in the Suite, from the confines of the West Haymarket Arena, or exercise any of the JPA’s rights upon default in accordance with the provisions of this Agreement, including, without limitation, termination of this Agreement. User and User’s guests shall comply with all applicable present and future laws, ordinances, orders, rules, and regulations and shall not permit any violation thereof.

19. DEFAULT.

(a) In the event User fails to pay when due any amounts to be paid by User pursuant to the Agreement or otherwise defaults in the performance or observation of its duties and obligations under the Agreement, the JPA may, at its option: (i) withhold distribution to User of tickets for games and events played in or held at the West Haymarket Arena and parking and guest passes until such time as such default is cured; and/or (ii) terminate the rights of User under the Agreement after giving User not less than twenty (20) days prior written notice of such default or breach. In the event that User shall not have cured the default or breach specified in said notice by the date specified in said notice, the JPA may terminate the right of User to the use and possession of the Suite and all other rights and privileges of User under the Agreement and declare the entire unpaid balance of the Use Fee (which for purposes hereof shall include the total aggregate unpaid balance of the Use Fees for the remainder of the Term) immediately due and payable, whereupon the JPA shall have no further obligation of any kind to User. The JPA shall use reasonable efforts to re-market the right to the use and possession of the Suite to another party provided that, if there are any other suites in the West Haymarket Arena available to be marketed, then the JPA may give priority to marketing such other suites. User shall remain obligated to make all payments due or becoming due under the Agreement, but if the JPA enters into an agreement for the right to use and possess the Suite with another party, then all amounts
received from such other party, applicable to the remaining period of the Agreement, shall be applied first to the expense of re-marketing and then to the reduction of any obligations of User to the JPA under the Agreement. If the consideration collected by the JPA upon any such re-marketing is not sufficient to pay the full amount of all such obligations of User, User shall pay such deficiency upon demand.

(b) The foregoing remedies of the JPA shall not be to the exclusion of any other right or remedy set forth in the Agreement or otherwise available to the JPA in law or in equity. User shall be responsible for all attorneys’ fees and costs incurred by the JPA in the enforcement of the Agreement whether or not litigation is actually commenced.

(c) No waiver by the JPA of any default or breach by User of its obligations under the Agreement shall be construed to be a waiver or release of any other subsequent default or breach by User under the Agreement, and no failure or delay by the JPA in the exercise of any remedy provided for in the Agreement shall be construed as a forfeiture or waiver of any other right or remedy available to the JPA.

20. DAMAGE OR DESTRUCTION TO SUITE. In the event of damage to or destruction of the Suite which renders the Suite unusable when events are scheduled in the West Haymarket Arena, an equitable adjustment to User will be made, unless a reasonably comparable suite is made available to the User. No adjustment will be made if the unavailability of the Suite is caused by the fault or negligence of User or User’s guests. If, in the event of any damage to or destruction of the Suite, the JPA elects not to repair or restore the same, this Agreement shall terminate as of the date of such damage or destruction, and a prorated portion of the prepaid annual Use Fee shall be refunded to User. Upon payment of such refund, the JPA shall have no further liability under the Agreement.

21. ACCESS BY JPA. The JPA and its agents and employees shall have access to the Suite to the extent deemed necessary by the JPA: (a) for the performance of its obligations under the Agreement and for any and all purposes related thereto, (b) to investigate any suspected violations of the terms and conditions of this Agreement, or (c) otherwise in connection with the Suite, including in the event of an emergency, by use of a master key or forcible entry. User shall not interfere with the JPA’s right of access by installation of additional or changed locks or otherwise. Unless the emergency necessitating the forcible entry is caused by the fault or negligence of User or User’s guests or User has interfered with the JPA’s right of access by installing additional or changed locks or otherwise, the JPA shall repair any property damage to the door or entryway caused by said emergency forcible entry and shall have no other liability for entry into the Suite.

22. DISCLAIMER OF LIABILITY.

(a) Neither the JPA, any West Haymarket Arena manager designated by the JPA (the “West Haymarket Arena Manager”), nor any of their officers, employees, or agents shall be liable or responsible for any loss, damage, or injury to any person or to any property of User or User’s guests in or upon the West Haymarket Arena, resulting from any cause whatsoever, including, but not limited to, theft and vandalism.
(b) User and its guests and invitees hereby assume all risks and dangers incidental to the games of basketball, arena football, and hockey and events generally (whether sporting or otherwise), whether occurring prior to, during, or subsequent to, the actual playing of the game or conducting of the event, including specifically (but not exclusively) the danger of being injured by balls, pucks, sticks, or other missiles, and agree that the JPA, any sports league, the West Haymarket Arena Manager, the teams, their agents and players, and other individuals performing or participating in events shall not be liable for injuries from such causes.

(c) In addition, User agrees to indemnify and hold the JPA and the West Haymarket Arena Manager harmless from and against any liability, losses, claims, demands, costs, and expenses, including attorneys’ fees and litigation expenses, arising out of any personal injury or property damage occurring in or upon the West Haymarket Arena in connection with User’s use or occupancy of the Suite or due to the contravention of the provisions of this Agreement or of any applicable laws, rules, regulations, or order of any governmental agency having appropriate jurisdiction over any actions or negligence of User.

23. INSURANCE. In addition, User shall, at its sole cost and expense, obtain and keep in full force and effect at all times during the Term, a comprehensive general liability insurance policy (including, without limitation, host liquor liability coverage), with a combined single occurrence limit of at least $1,000,000 and $2,000,000 aggregate, including coverage for bodily injury or death, property damage, and personal injury liability, and for the performance by User of the indemnity provisions of the Agreement. The limits of this insurance shall not, however, limit the liability of User under the Agreement. Prior to User’s occupancy of the Suite, User shall deliver to the JPA a certificate evidencing the issuance of such insurance policy. User’s comprehensive general liability insurance policy and certificate evidencing such insurance shall (i) name the JPA and the West Haymarket Arena Manager as additional insureds, (ii) contain a provision by which the insurer agrees that the policy shall not be cancelled except after thirty (30) days written notice to the JPA and (iii) be issued by an insurance company reasonably satisfactory to the JPA and qualified to do business in the State of Nebraska. Any liability insurance carried or to be carried by User under this Agreement shall be primary over any policy carried by the JPA or the West Haymarket Arena.

24. ASSIGNMENT: WHEN PERMITTED.

(a) Assignment. User hereby acknowledges and agrees that the identity of Suite Users is of crucial importance to the JPA. Accordingly, User hereby agrees that, unless User has obtained the JPA’s consent as provided herein, it shall not assign, sell, transfer, mortgage, or otherwise alienate or encumber (any such act being to “assign” and to result in an “assignment”) this Agreement or any interest herein; provided, however, that User may distribute tickets or passes for use of parking spaces to its guests and invitees for use in the manner permitted herein. User further agrees not to sell any tickets or any rights to admission to the Suite, the parking spaces, or any private club lounge or otherwise permit any person to occupy the same for hire, it being expressly understood that the use of the tickets, the Suite, and any private club lounge shall be solely and exclusively for the use, enjoyment, and entertainment of User and officers, employees, visitors, guests, and invitees of User. User agrees not to solicit or accept any direct or indirect payment or income from any person for the use and enjoyment of tickets, the Suite,
parking spaces, or any private club lounge. The provisions of this Section shall not prohibit User from requiring its employees, guests, and invitees, pursuant to User’s company or internal policy and procedures, to pay or reimburse User for the use of tickets.

(b) Consent. If User desires to assign its interest in this Agreement to any person or entity, User shall notify the JPA in writing of such desire, setting forth the identity of the proposed assignee and the name, address, and telephone number of the individual representing the proposed assignee so that the JPA may communicate with the proposed assignee regarding the assignment. The JPA shall have the right to contact the proposed assignee and conduct such investigation of the creditworthiness of such proposed assignee as the JPA shall deem necessary, including requiring the proposed assignee to submit to the JPA such financial and other information as the JPA shall deem advisable. The JPA shall have the right, in the exercise of its sole discretion, to refuse to consent to such proposed assignment. If the JPA consents to the proposed assignment, it shall not be effective until the JPA has received an instrument executed by the proposed assignee by which it agrees to be bound by this Agreement, and an instrument of assignment satisfactory to the JPA executed by User. Upon the JPA’s written consent to the assignment of this Agreement and receipt of such instruments, User shall be released from any further obligations under this Agreement. Any consent by the JPA to any assignment or other transfer by User shall not be deemed to be consent by the JPA to any further assignment or other transfer by the successor User. Any attempted assignment, sale, transfer, sublease, pledge, mortgage, or other alienation or encumbrance of this Agreement or any interest herein in contravention of this Agreement shall be null and void, and further shall constitute a default in the performance of User’s duties and obligations under this Agreement.

(c) Suite Not to be Mortgaged or Used as Collateral or Security. User acknowledges and agrees that User’s interest in the Suite shall not be used as collateral or security for User to support, finance, or underwrite any other financial obligation of User, nor shall User use its interest in the Suite to obtain any mortgage or monies related to a mortgage. User acknowledges and agrees that any failure to comply with the terms of this paragraph shall constitute a default of this Agreement.

25. COST-SHARING ARRANGEMENTS. User hereby covenants, represents, and warrants that, except with respect to the parties disclosed on Exhibit C attached to and made a part of this Agreement, User has not entered into, nor will it enter into, any agreements or arrangements by which User and any other party or parties share the costs attributable to the Suite, including, but not limited to, the Use Fees provided for hereunder, in consideration for the use of the Suite during the Term hereof (a “Cost-Sharing Arrangement”). A Cost-Sharing Arrangement shall include any and all agreements to transfer, for any consideration whatsoever, one or more Suite tickets. In the event that Exhibit C discloses any parties with whom User has entered into a Cost-Sharing Arrangement, the JPA has approved such arrangements by its execution of this Agreement. In no event shall the JPA’s approval of these parties imply approval by the JPA of any other parties. No Cost-Sharing Arrangement shall relieve User from being fully liable for all obligations under this Agreement, including all Use Fees. The JPA shall have the right, exercisable in the JPA’s sole and absolute discretion, to prohibit and to reject any proposed Cost-Sharing Arrangement or to limit the number of parties to a Cost-Sharing Arrangement, both upon execution hereof and at any time thereafter. User hereby represents and
warrants that all amounts payable by the other parties under any Cost-Sharing Arrangement do not exceed the Use Fees and other costs imposed on User hereunder for the use of the Suite reasonably allocable to the use of the Suite by the other parties to the Cost-Sharing Arrangement. In the event that User desires to enter into a Cost-Sharing Arrangement after execution of this Agreement, User shall be required with respect thereto to provide to the JPA the identity of the parties to the proposed Cost-Sharing Arrangement, and the address and phone number of such parties, so that the JPA may contact them to request such financial or other information as the JPA shall deem advisable. All such future Cost-Sharing Arrangements shall be subject to the same conditions and restrictions as a Cost-Sharing Arrangement disclosed herein. Transfer of Suite tickets for the appropriate allocable cost pursuant to an approved Cost-Sharing Arrangement shall not violate this Agreement.

26. ADMINISTRATIVE MATTERS. User shall provide to the JPA at least sixty (60) days prior to the commencement of the Term the following information:

(a) The name and address of the person to whom all correspondence, including but not limited to tickets and parking passes, relating to the Suite shall be sent.

(b) Unless User is an individual, the name and address of the person authorized to receive notices sent to User and generally bind User with respect to all matters relating to the Suite and this Agreement.

(c) The JPA may from time to time provide a form on which User shall provide such information as required herein, and User shall in any event notify the JPA in writing of any changes in such information.

27. MISCELLANEOUS.

(a) Upon the expiration of the Term (or, if applicable, upon the expiration of any renewal term pursuant to User’s right of first refusal) or upon the earlier termination of the Agreement, User shall surrender possession of the Suite to the JPA in the condition in which it was originally delivered to User, normal wear and tear and/or damage caused by casualty or force beyond the control of User or User’s guests excepted.

(b) It is understood that the JPA may mortgage, pledge, assign, or otherwise encumber the JPA’s rights in the Agreement for any reason, in its sole discretion.

(c) User acknowledges and agrees that the West Haymarket Arena is a smoke-free building and environment and that User and its guests shall not smoke anywhere within the West Haymarket Arena or its environment except in designated smoking areas.

(d) User shall not bring or keep animals, birds, fish, or other living creatures in the Suite, with the exception of guide dogs or other animals specifically trained to assist persons utilizing the Suite. User shall not use or allow the Suite to be used as sleeping quarters.
(e) User shall not display any sign, advertisement, or notice or allow same to be affixed to the Suite or the West Haymarket Arena.

(f) All notices, demands, and other communications between the parties required or appropriate hereunder shall be in writing and deemed given if mailed certified mail, return receipt requested, postage prepaid, or actually delivered, to the respective addresses set forth below the signatures of the parties to this Agreement, or to such other address as may be designated by either party, from time to time in writing.

(g) This Agreement shall be governed by and enforced in accordance with the laws of the State of Nebraska, without regard to conflicts of law principles. The parties agree that venue of any legal action arising out of this Agreement or incident thereto shall be proper in a court of competent jurisdiction in Lancaster County, Nebraska and each party waives any objection to such venue.

(h) This Agreement, together with the Exhibits attached hereto, contains the entire agreement of the parties with respect to the matters provided for herein, and shall supersede any written instrument or oral agreement previously made or entered into by the parties to the Agreement. In the event of any inconsistency between the Agreement (including the attached Exhibits) and any other documents regarding the Suite, this Agreement shall control.

(i) The JPA makes no representation as to the tax treatment of any payments made to the JPA under this Agreement. User is urged to seek the advice of its professional tax advisor to determine the tax treatment of any payment made under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below to be effective on the date of execution by the JPA.

USER

XYZ, Inc.

By: _______________________________

Date: ______________________________

Name

Printed: ______________________________

Title: ______________________________

Address: ______________________________

___________________________

___________________________

___________________________
JPA

By: _______________________________
Chair of JPA

Address:  555 South 10th Street, Room 103
         Lincoln, NE 68508

APPROVED:

_________________________________
JPA Attorney
EXHIBIT A

West Haymarket Arena Diagram

JPA’s Approval: _______  User’s Approval: _______
EXHIBIT B

Founders Suite Benefits

Subject to the Terms and Conditions of this Agreement, User shall be entitled to the following benefits:

1. Admission Tickets. User shall receive twelve (12) admission tickets to all West Haymarket Arena events with the specific exception of no more than three (3) events per calendar year (the “Special Events”) to be designated by the JPA. User shall have the option to purchase four (4) additional Suite tickets and shall receive two (2) guest passes for User’s guests to utilize the Suite while such guests hold tickets for other seating in the West Haymarket Arena. There shall be no additional charge for the guest passes.

2. Parking Passes. The JPA shall provide User, at no additional cost, six (6) parking passes with year-round access for parking in a parking facility near the West Haymarket Arena. User acknowledges and agrees that as of the time of this Agreement, the parking patterns for the West Haymarket Arena are still being developed and that the number of parking passes to which User is entitled, as well as the location of those parking spaces, is subject to change in the sole discretion of the JPA.

3. Suite Features. Each Founders Suite is currently designed to provide:
   - Twelve (12) exterior seats
   - Drink rail inside Suite with four (4) bar stools
   - Professionally finished interior with upscale furnishings
   - Under-counter refrigerator
   - Storage cabinets
   - Buffet counter
   - Wet bar
   - Television with in-house feed and cable
   - Coat and storage closet
   - Company identification at concourse entrance to Suite (optional)

4. Suite Amenities. User shall be entitled to the following amenities:
   - Recognition as a Founder in the West Haymarket Arena
   - Annual Founders event
   - Use of the arena premium spaces one day per year (subject to schedule)
   - Option to purchase non-premium tickets for West Haymarket Arena events (subject to event promoter restrictions)
   - Opportunities for company employees to purchase tickets for West Haymarket Arena events prior to public sale (subject to event promoter restrictions)
   - Private entrance to the West Haymarket Arena
   - Private elevator to suite level
   - Access to restrooms on the suite level
- Access to private lounge on the suite level
- Concierge service
- Suite attendant
- Day use of Suite during normal Monday-Friday business hours; such use to be permitted at the JPA’s discretion, building schedule permitting and advance reservations required, upon such terms and conditions as the JPA may set.

5. The JPA shall use its best efforts to assure that the foregoing Features and Amenities will be included with the Suite, but does not guarantee that changes to the Features and Amenities will not be made over the course of the Agreement.
EXHIBIT C

COST-SHARING ARRANGEMENTS

Subject to the terms and conditions of the Agreement, User may engage in a “Cost-Sharing Arrangement” so that the cost of the subject Suite is borne by more than one person or business entity.

User acknowledges and agrees that said Cost-Sharing Arrangement shall not collectively include any combination of more than three (3) persons and/or business entities, so that the aggregate number of persons or entities controlling access to said Suite does not exceed three (3).

User further acknowledges and agrees that User is responsible for all payments due to the JPA regardless of any Cost-Sharing Arrangement. User further acknowledges and agrees that granting a right to use the Suite in the name of more than one person or entity is not permitted.

User shall inform the JPA of the identity of persons or entities involved in any Cost-Sharing Arrangement and shall supply the contact information for the persons or entities participating in said Cost-Sharing Arrangement below. User shall promptly notify the JPA in writing of any change in the information supplied.

User may identify those persons or entities participating in cost-sharing on any and all permitted signage identifying the users of said Suite.

Names of and contact information for the parties participating in the Cost-Sharing Arrangement are as follows:

User:

Mailing Address:

Telephone:
E-mail address:
Designated Representative:

Cost-Sharer No. 1:
Mailing Address:
Telephone:
E-mail address:
Cost-Sharer No. 2: ____________________________
Mailing Address: ____________________________
Telephone: ____________________________
E-mail address: ____________________________
RESOLUTION NO. WH - ____________

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

Pursuant to Article IV, Section 4 of the Rules of Governance of the West Haymarket Joint Public Agency, the Board of Representatives does hereby delegate to the Project Manager/Secretary of the West Haymarket Joint Public Agency, the power to execute on behalf of the West Haymarket Joint Public Agency, any and all Change Orders to contracts for the provision of services subject to the following requirements:

1. The Change Order shall have a fiscal impact of $25,000.00 or less;
2. A Change Order is not to be used for the purpose of entering into a new contract for services not directly related to the contract being amended in order to avoid complying with all bidding requirements of the County Purchasing Act and/or the JPA’s Rules of Governance.
3. The Change Order shall be executed by an Administrative Order
4. The Administrative Order (and attached Change Order) shall be initiated by the JPA’s contracted Program Manager for the West Haymarket Project or the City Public Works staff representing the JPA management of the contract proposed to be amended by the Change Order. The Administrative Order shall be signed as to approval by the Program Manager or the City Public Works staff representing the JPA (as applicable) and then submitted to the Finance Director for approval as to availability of funds. If approved by the Finance Director, the Administrative Order may then be executed by the Project Manager/Secretary. Following execution the Administrative Order shall then be submitted to the City Attorney’s office for
approval as to form and legality. If so approved, the City Attorney’s office shall immediately
file the Administrative Order with the City Clerk. Such Administrative Order shall not become
effective until filed with the City Clerk.

BE IT FURTHER RESOLVED that the Board of Representative does hereby delegate to
the Chair of the Board of Representatives the power to execute, on behalf of the West Haymarket
Joint Public Agency any and all Change Orders to contracts for the provision of services subject
to the following requirements:

1. The Change Order shall have a fiscal impact of $100,000.00 or less.
2. A Change Order is not to be used for the purpose of entering into a new contract
for services not directly related to the contract being amended in order to avoid complying with
all bidding requirements of the County Purchasing Act and/or the JPA’s Rules of Governance.
3. The Change Order shall be executed by an Administrative Order
4. The Administrative Order (and attached Change Order) shall be initiated by the
JPA’s contracted Program Manager for the West Haymarket Project or the City Public Works
staff representing the JPA management of the contract proposed to be amended by the Change
Order. The Administrative Order shall be signed as to approval by the Program Manager or the
City Public Works staff representing the JPA (as applicable) and then submitted to the Finance
Director for approval as to availability of funds. If approved by the Finance Director the
Administrative Order may then be executed by the Chair. Following execution the
Administrative Order shall then be submitted to the City Attorney’s office for approval as to
form and legality. If so approved, the City Attorney’s office shall immediately file the
Administrative Order with the City Clerk. Such Administrative Order shall not become effective until filed with the City Clerk.

Sample Administrative Orders are attached for guidance in preparing such Administrative Orders.

Adopted this ___ day of June, 2011.

Introduced by:

______________________________

Approved as to Form & Legality: West Haymarket Joint Public Agency Board of Representatives

______________________________

Legal Counsel for West Haymarket Joint Public Agency

Jayne Snyder, Chair

______________________________

Tim Clare

______________________________

Chris Beutler
WEST HAYMARKET JOINT PUBLIC AGENCY
ADMINISTRATIVE ORDER NO. 11-__

By virtue of the authority vested in me by the Board of Representatives of the Joint Public Agency, pursuant to the delegation of authority under Resolution No. WH ____, I hereby execute and approve on behalf of the West Haymarket Joint Public Agency the attached Change Order to the contract with ______________ (name) for ______________ (description of services). The purpose of this Change Order is to amend the contract to provide for additional services consisting of ________________.

Dated this ____ day of ____________, 2011.

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

Approved as to scope of work:       Approved as to availability of funds:

__________________________________
Public Works & Utilities Department    Finance Director

Approved as to form and legality:

___________________________________
City Attorney
WEST HAYMARKET JOINT PUBLIC AGENCY
ADMINISTRATIVE ORDER NO. 11-__

By virtue of the authority vested in me by the Board of Representatives of the Joint Public Agency, pursuant to the delegation of authority under Resolution No. WH _____, I hereby execute and approve on behalf of the West Haymarket Joint Public Agency the attached Change Order to the contract with ____________ (name) for _________________ (description of services). The purpose of this Change Order is to amend the contract to provide for additional services consisting of _________________.

Dated this ____ day of _____________, 2011.

___________________________________
Jayne Snyder, Chair
Board of Representatives
West Haymarket Joint Public Agency

Approved as to scope of work:      Approved as to availability of funds:

__________________________________  ______________________________
Public Works & Utilities Department  Finance Director

Approved as to form and legality:

__________________________________
City Attorney
RESOLUTION NO. WH- ______________

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

That Amendment No. 5 to the Agreement for Engineering Services with Olsson Associates for the Haymarket Infrastructure Design Project providing for completion of the work needed for the USPS Environmental Review and Watson Brickson Recordation, and the purchase of Supplemental Insurance as required by BNSF Agreement is hereby accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 5 on behalf of the West Haymarket Joint Public Agency.

The total estimated fee for the work associated with this Amendment No. 5 is $64,142, which increases the total not-to-exceed contract amount from $8,655,630.00 to $8,719,772.00.

Adopted this _____ day of ______________, 2011.

Introduced by:

______________________________

Approved as to Form & Legality: West Haymarket Joint Public Agency Board of Representatives

______________________________

Legal Counsel for West Haymarket Joint Public Agency

Jayne Snyder, Chair

__________

Tim Clare

______________________________

Chris Beutler
AMENDMENT NO. 5
to AGREEMENT for ENGINEERING SERVICES
between OLSSON ASSOCIATES
dba LINCOLN HAYMARKET INFRASTRUCTURE TEAM and the
WEST HAYMARKET JOINT PUBLIC AGENCY
HAYMARKET INFRASTRUCTURE DESIGN PROJECT
Project No. 870000

This Contract Amendment is made by and between Olsson Associates, dba Lincoln Haymarket Infrastructure Team, hereinafter called ENGINEER, and the West Haymarket Joint Public Agency, hereinafter called JPA, this ______ day of ____________________________ 2011 and approved by Resolution No. ____________________________.

WHEREAS, it is the mutual desire of the parties hereto to amend the Agreement to provide professional services associated with the Haymarket Infrastructure Design Contract which was entered into on November 18, 2010 under Resolution WH-12, hereinafter called the existing Agreement. The general description of work to be added to the existing Agreement under this Amendment generally shall include completion of additional environmental analysis that was required to be done by an independent third party on the USPS property; recordation of the Watson Brickson property which will be taken as a result of the proposed project; and supplemental insurance that is required by the BNSF railroad for construction activities and access to these lands by LHT personnel. A detailed breakdown of scope of services for each of these project components is included in the attached appendices as shown below:

- USPS Environmental Review – Appendix A-2 Additional Services
- Watson Brickson Recordation – Appendix A-4 Additional Services
- Supplemental Insurance as required by BNSF Agreement – Appendix A-19

The fee for the additional services for the USPS Environmental Review is $5,614; the fee for the Watson Brickson Recordation is $8,528; the fee for Supplemental Insurance is $50,000 for a one and one half year duration. The total fee for the work associated with this Amendment is $64,142, which increases the total contract amount from $8,655,630 to $8,719,772.

The JPA recognizes that early work associated with the above tasks was necessary to keep land transfers/acquisition on schedule. Therefore the JPA has provided the Engineer an early notice to proceed effective February 1, 2011.

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described in appendices, Appendix A-2 and A-4 Additional Services, and payment of the cost of supplemental insurance in Appendix A-19.

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

Title: ______________________

Engineer – Olsson Associates dba
Lincoln Haymarket Infrastructure Team

By: ______________________  By: ______________________
Title: ______________________  Title: ______________________
Appendix A-2

Scope of Services

USPS Environmental Review

By: EnviroAnalytics (Subconsultant to Engineer)

Additional environmental analysis as required by NEPA.
Appendix A-4

Scope of Services

Watson Brickson Recordation

By: Sinclair Hille (Subconsultant to Engineer)

Scope of Work

The Watson Brickson lumberyard, located at 660 "N" Street, will be demolished as part of the West Haymarket Arena project. The West Haymarket JPA as the project sponsor recognizes the historic importance of the property. Therefore, the following recordation plan shall be carried out:

Photographs:

- High resolution digital photographs shall be taken of all facades of each building existing on the site. Photos of the overall site to illustrate the relationship of the buildings to one another shall also be provided.
- Two copies of each image shall be provided, one for storage with the City's West Haymarket Arena Team, and one to provide to the Nebraska State Historic Preservation Office (NeSHPO) for their files.
- Engineer shall generate a site plan to key the location of all photographs.
- Photographs shall be numbered for reference on the site plan.

Documentation:

- Engineer shall provide a brief statement documenting the general history of the site. This statement should highlight construction dates and significant dates in the evolution of the site. This documentation should not exceed two pages in length.
- Engineer shall provide two copies of this document for distribution as mentioned above.

Duration:

- Engineer shall complete all documentation for the Watson Brickson lumberyard no later than May 1, 2011.

Final copies of the documentation for the Watson Brickson lumberyard shall be stored with the JPA's management team (SAIC) throughout the duration of the construction activity for the West Haymarket Arena, then transferred to the files of the City's Historic Preservation Planner for permanent storage. The second copy of all documentation shall be provided to the NeSHPO for use in their files.
Appendix A-19

Scope of Services

Supplemental Insurance – BNSF

As described on the following page, supplemental insurance is required for those entities working on or near BNSF property, inclusive of the Lincoln Haymarket Infrastructure (LHI) team members. This includes both Commercial and General Liability at $5mil per occurrence and $10mil aggregate (primary and non-contributory coverage) as well as Railroad Protective Liability coverage.

The exact duration for when this additional coverage is needed is expected to be up and through the final closing with the BNSF Railroad in the Fall of 2012. Based on actual insurance quotes received from LHI firms to date, it is anticipated that the average cost for both additional policies shall be in the vicinity of $7,000 for 18 months of coverage per firm. This Amendment thus provides a maximum of $50,000 for additional polices for LHI member firms to access the lands for construction. Actual cost for the supplemental premiums shall be invoiced, and said costs shall be invoiced to the Initial Site Preparation projects (CPN 870703).
It is the opinion of the City's Law Department that ALL companies working on the West Haymarket Redevelopment, both design and construction, must carry the Railroad's Protective Insurance. This is over and above the extended General Liability Insurance with limits of $5M/$10M. Any person that goes onto railroad property or crosses active rail lines at a private crossing (not a public street) falls under this requirement. For example, although the Second Closing has occurred, and the JPA has title to the land inside the "doughnut", we will be working within the 25' track clearance limit, and thus will be on railroad property.

I will forward specific information under separate cover and will make sure the forms and/or links are on the WH SharePoint site later today. We need to put this additional coverage into place as soon as possible and must do so prior to going onto railroad property.

Please share this message with your team members. Contact Rick Peo if you have specific, contractual requirement questions.
RESOLUTION NO. WH - __________

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

That the attached Amendments Nos. 004, 005, 006, and 007 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency dated September 1, 2010 are hereby approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract Amendments on behalf of the West Haymarket Joint Public Agency. Amendment No. 004 provides for the use of Computational Fluid Dynamics (CFD) smoke modeling to assist in the design of smoke control systems for smoke-protected egress paths in the Arena lump sum fee of $47,500.00, plus labor and reimbursable expenses not to exceed $1,500.00. Amendment No. 005 provides for the payment of customary costs to the design team for expenses identified in the original agreement at the rate of $10,000.00 per month for 42 months. Amendment No. 006 provides for DLR to complete design, coordination and specifications for Contract furnishings, and interior design of specialty hospitality areas for a stipulated fee of $197,000.00 to include labor and related expenses. Amendment No. 007 provides for architectural and engineering design and construction services for the ramp and elevated plaza on the east side of the Arena for a stipulated sum of $102,564.00 which includes labor, related expenses and an administrative markup (Management Fee) for DLR.
Adopted this ___ day of June, 2011.

Introduced by:


Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler
Amendment to the Professional Services Agreement

Amendment Number: 004

TO: Jayne Snyder
(Owner or Owner's Representative)

In accordance with the Agreement dated: September 01, 2010

BETWEEN the Owner:
(Name and address)
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

and the Architect:
(Name and address)
DLR Group, inc. (a Nebraska corporation)
1111 Lincoln Mall
Suite 201
Lincoln, NE 68508

for the Project:
(Name and address)
Lincoln Arena
Lincoln, Nebraska

Authorization is requested
☒ to proceed with Additional Services.
☐ to incur additional Reimbursable Expenses.

As follows:
Fire Modeling Proposal per attached Exhibit A.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:
A stipulated sum of forty-seven thousand five hundred dollars ($47,500) to include labor and reimbursable expenses not to exceed one thousand five hundred dollars ($1,500). (See Exhibit A)

Time:
Work to be performed in accordance with approved project schedule.

AGREED TO:

(Signature)
Jayne Snyder
Chair

(Printed name and title)

(Inserted stamp)

June 13, 2011
(Date)
DESCRIPTION OF SERVICES

The scope of services outlined in this proposal would use Computational Fluid Dynamics (CFD) smoke modeling to assist in the design of smoke control systems for smoke-protected egress paths. The International Building Code references NFPA 92B, Standard for Smoke Management Systems in Malls, Atria, and Large Spaces, for the design of smoke control systems. NFPA 92B allows smoke control systems to be designed using either of the following methods:

1. Algebraic Calculations
2. Smoke Modeling

CCI provided preliminary algebraic calculations of the required smoke exhaust rates in sketches dated April 27, 2011. Exhaust rates calculated using the algebraic method typically exceed the exhaust rates that would be required based on smoke modeling. For example, the preliminary algebraic calculations indicate that the seating bowl requires an exhaust rate of 960,000 cfm. Smoke modeling calculations that CCI has prepared for other similar projects have required 600,000 cfm or less for similar spaces, a savings of more than 350,000 cfm just in the seating bowl. In total we anticipate that the smoke exhaust rates required for the building could be reduced by 400,000 cfm using CFD smoke modeling in lieu of the algebraic calculations. Based on a rough cost estimate of $1.50 per cfm, a savings of 400,000 cfm of exhaust would reduce the construction cost by $600,000. While CCI cannot guarantee that the results of a CFD smoke modeling analysis will result in any specific reduction in system capacity or cost, our significant experience with smoke control systems and sports venues has demonstrated the value of CFD smoke modeling in reducing construction costs while maintaining compliance with applicable code requirements for smoke-protected egress paths.

SCOPE OF SERVICES

1. Code Consultants, Inc. (CCI) will review available architectural and mechanical design documents to develop smoke control concepts for the seating bowl and concourses using Computational Fluid Dynamics (CFD) analyses of smoke movement.

2. CCI will evaluate the configuration and contents of the Event Level and Concourses to select up to Twelve (12) appropriate design fires based on, but not limited to:
   a. the amount of combustible fuel loading within the space;
   b. available fire test data;
   c. sprinkler activation;
   d. guidelines in NFPA 92B - Smoke Management Systems in Malls, Atria, and Large Areas; and
   e. minimum prescriptive requirements from the applicable codes.

3. CCI will perform Computational Fluid Dynamics (CFD) calculations to show the following:
   a. time to sprinkler activation;
   b. air and smoke flow patterns;
   c. required exhaust and make-up air rates;
   d. required exhaust locations;
   e. temperature at 6 ft above means of egress;
   f. carbon monoxide concentration at 6 ft above means of egress; and
   g. visibility at 6 ft above means of egress.

ST. LOUIS • NEW YORK
4. CCI will prepare a preliminary smoke control analysis that will document the findings of the CFD analysis and will include the following material:
   a. color graphics of the 3-dimensional computer model of the arena;
   b. graphs of the results of the analysis;
   c. computer generated graphics indicating the development of the fire and the products of combustion within smoke-protected egress paths; and
   d. a CD-ROM with video animations of the CFD results.

5. CCI, upon preparation of the preliminary analysis, will forward such to the client to coordinate that the proposed concepts are compatible with the needs of the project.

6. CCI will revise the preliminary analysis, if necessary, and will issue the final analysis in a bound format that is suitable for submission to the authority having jurisdiction.

   If, upon commencing preparation of the CFD analysis, revisions to the design require changes to the CFD model such additional analysis will be billed as extra services. The extra services will be provided upon the request and approval of such by the client.

7. CCI will meet with representatives of the Authority Having Jurisdiction in conjunction with the client to present and solicit approval of the smoke control analysis. (One (1) one-person meeting included.)

8. CCI will provide telephone and electronic mail consultation related to this scope of services up to a maximum of Eight (8) hours.

9. CCI will develop smoke control testing and pass/fail criteria.

**FEE SCHEDULE**

For the Scope of Services listed above, CCI will bill a lump sum fee of Forty-Seven Thousand Five Hundred Dollars ($47,500.00), subject to the General Conditions section of this proposal.
Amendment to the Professional Services Agreement

TO: Jayne Snyder
(Owner or Owner’s Representative)

In accordance with the Agreement dated: September 01, 2010

BETWEEN the Owner:
(Name and address)
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

and the Architect:
(Name and address)
DLR Group, Inc. (a Nebraska corporation)
1111 Lincoln Mall
Suite 201
Lincoln, NE 68508

for the Project:
(Name and address)
Lincoln Arena
Lincoln, Nebraska

Authorization is requested
☑ to proceed with Additional Services.
☐ to incur additional Reimbursable Expenses.

As follows:
Task 6: Fixed Reimbursable Expenses
This additional expense recognizes customary costs to the design team for expenses identified in the AIA agreement.

Costs are estimated at $10,000/Month to run the 42 months the design team is active on the project.

These expenses will be billed to catch-up with current status of the project ($12,000) thru the end of April, and will be billed $10,000/Month thereafter thru January 2014.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:
$10,000/Month - $420,000 Total Cost

Time:
To be billed monthly
SUBMITTED BY:

(Signature)
Stanley M. Meradith
Principal
(Printed name and title)
June 13, 2011
(Date)

AGREED TO:

(Signature)
Jayne Snyder
Chair
(Printed name and title)
(Date)
Amendment to the Professional Services Agreement

Amendment Number: 006

TO: Jayne Snyder
(Owner or Owner's Representative)

In accordance with the Agreement dated: September 01, 2010

BETWEEN the Owner:
(Name and address)
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

and the Architect:
(Name and address)
DLR Group, Inc. (a Nebraska corporation)
1111 Lincoln Mall
Suite 201
Lincoln, NE 68508

for the Project:
(Name and address)
Lincoln Arena
Lincoln, Nebraska

Authorization is requested
☒ to proceed with Additional Services.
☐ to incur additional Reimbursable Expenses.

As follows:
Furniture/Interiors $197,000

This additional service fee is for partial design services of FFE (Furnishings, Fixtures and Equipment).
The primary scope for this work is for design, coordination, and specifications for Contract furnishings, and Interior
Design of specialty hospitality areas. Equipment will be designed and procured thru the Project Manager.

The following adjustments shall be made to compensation and time.
(Inset provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:
A stipulated fee of one hundred ninety-seven thousand dollars ($197,000) to include labor and related expenses (see
Exhibit A).

Time:
Work to be performed in accordance with approved project schedule.
SUBMITTED BY:

(Signature)
Stanley Meredith
Principal
(Printed name and title)
June 13, 2011
(Date)

AGREED TO:

(Signature)
Jayne Snyder
Chair
(Printed name and title)
(Date)
<table>
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<tr>
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<th>Activity Description</th>
<th>Hours</th>
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**Estimated non-reimbursable expenses**

**Total**

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**Notes:**

1. Does not include interior design hours associated with the basic services contract.
2. * To include furniture for the Office Space, Public Space, Service Floor and Premium Areas.
Amendment to the Professional Services Agreement

TO: Jayne Snyder
(Owner or Owner's Representative)

In accordance with the Agreement dated: September 01, 2010

BETWEEN the Owner:
(Name and address)
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

and the Architect:
(Name and address)
DLR Group, Inc. (a Nebraska corporation)
1111 Lincoln Mall
Suite 201
Lincoln, NE 68508

for the Project:
(Name and address)
Lincoln Arena
Lincoln, Nebraska

Authorization is requested
☒ to proceed with Additional Services.
☐ to incur additional Reimbursable Expenses.

As follows:

Additional services related to the Lincoln Arena are described below:

Complete architectural and engineering design and construction services for the ramp and elevated plaza on the east side of the Arena. Services to be performed by a consultant, Clark Enersen Partners, and will be in accordance with the Owner's approved program and coordinated with all design team members involved in the Arena project.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:
A stipulated sum of one hundred two thousand five hundred sixty-four dollars ($102,564) to include labor, related expenses and 10% administrative markup for Consultant. (See Exhibits A & B)

Time:
Work to be performed in accordance with approved project schedule.
SUBMITTED BY:  
(Signature)  
Stanley Meredith  
Principal in the Firm  
(Printed name and title)  
June 13, 2011  
(Date)

AGREED TO:  
(Signature)  
Jayne Snyder  
Chair  
(Printed name and title)  
(Date)
Professional Fee Summary - Exhibit D/ May 31, 2011

Arena Ramp
Professional Hour Matrix

<table>
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<tr>
<th>Name</th>
<th>Hours</th>
<th>$/Hour</th>
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Subtotal $91,240.00 $91,240.00

The Clark Enersen Partners' Labor Total $91,240.00

Consultants

- $ - $ -

Total Lump Sum Fee $91,240.00

Reimbursables

- In-house Printing for Submittals/Reviews/Presentations, Postage, etc. $2,000.00
- $2,000.00 $2,000.00

Total Estimated Professional Fees, including Reimbursables $93,240.00

DLR Group Management Fee (10%) $9,324.00
Proposed Personnel Hours- Exhibit D/ May 31, 2011

Arena Exterior Ramp

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<td>a. Addenda/Questions, etc.</td>
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## Proposed Personnel Hours - Exhibit D/ May 31, 2011

**Arena Exterior Ramp**

<table>
<thead>
<tr>
<th>Task/Note</th>
<th>Principal/Project Manager</th>
<th>Architect/Prep</th>
<th>Landscape Architecture</th>
<th>Structural Engineer</th>
<th>Electrical Engineer</th>
<th>Engineering CAD</th>
<th>Development Administration</th>
<th>Subtotal</th>
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<tr>
<td>V. Construction Administration</td>
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<td>a. Model Construction/Modeling/Tests</td>
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<td>b. Schedule/Progress</td>
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<td>c. Preliminary Design</td>
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<td>e. Pay Applications, Submittal, Computations, etc.</td>
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<td>f. Panel Lead</td>
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</tbody>
</table>

Following are assumptions that this proposal is based on. The proposal will need to be modified if these assumptions change:

1. The space below the proposed ramp will be designed for storage, with access from the interior of the arena as well as to the exterior (east).
2. The storage space will be designed to include lighting, but no mechanical HVAC.
3. The ramp surface does not include an interior walk system.
4. The ramp width will be the same width as the pedestrian bridge.
5. There will be an expansion joint between the ramp structure and the arena structure.
6. Adjacent to the arena, the ramp structure will share foundations with the arena structure. Reaction loads from the ramp will be given to the structural engineer for the arena.
7. The structural engineer for the arena will design these foundations with the "cross" ramp load. The ramp will use any lateral load on the arena walls.
8. Guardrail design will be coordinated with the structural engineer for the pedestrian bridge.
9. The ramp structure does not include the upper concourse level plaza as indicated on attached plan drawing.
10. Location of pedestrian bridge connection is shown on the attached plan drawing.
RESOLUTION NO. WH - ____________

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

That the attached Temporary License for Partial Removal of Platform and Canopy and the Temporary License for Arena Shoring and Initial Construction of Footings and Columns between BNSF Railway Company and the West Haymarket Joint Public Agency are hereby approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Temporary Licenses on behalf of the West Haymarket Joint Public Agency. The Temporary License for Partial Removal of Platform and Canopy authorizes the JPA to remove the north 380 feet of existing Amtrak platform and removal of the north 160 feet of existing canopy over said platform as part of initial site preparation prior to acquisition of the property from BNSF. The Temporary License for Arena Shoring and Initial Construction of Footings and Columns will allow for the initial construction of certain sub-grade, at-grade and above-grade footings and columns, including but not limited to related shoring and other falsework for the Arena prior to acquisition of the property in question from BNSF.

Adopted this ___ day of June, 2011.

Introduced by:
Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler
TEMPORARY LICENSE FOR PARTIAL REMOVAL OF PLATFORM AND CANOPY

THIS TEMPORARY LICENSE FOR PARTIAL REMOVAL OF PLATFORM AND CANOPY ("License") is made to be effective as of the __ day of June, 2011 ("Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 et seq. ("Licensee").

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

1. GENERAL.

1.1 Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to enter upon that area of Licensor's property shown in orange and described as "Platform Removal" and "Canopy Removal" on the print prepared by Olsson Associates, dated 5/20/2011, labeled "Amtrak Exhibit Existing Canopy Phasing", which print is attached hereto and incorporated herein by reference as Exhibit A, situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (collectively, the "Premises") for the purposes specified in Section 1.3 below (the "Permitted Uses").

1.2 In the event the Permitted Uses will affect any improvements or facilities of Licensor or Licensor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "Other Improvements"), if any, or interfere with the use of the Other Improvements, Licensee will be responsible at Licensee's sole risk to locate and make any adjustments necessary to such Other Improvements. Licensee must contact the owner(s) of the Other Improvements notifying them of any work that may damage and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses. In addition to and not in limitation of the foregoing, Licensee acknowledges and agrees that the electrical lighting installed in the Removed Canopy is owned by an entity other than Licensor. Licensee is responsible, at Licensee's sole cost and expense, for arranging with the owner for the removal of such electrical lighting.

1.3 In connection with the performance of certain of the Amtrak Work (as defined in that certain Master Development Agreement between Licensor and Licensee dated October 18, 2010 [the "Master Agreement"], a portion of the platform (the "Platform") and canopy ("Canopy") at the existing Amtrak station ("Existing Depot") must be removed. Licensee shall use the Premises exclusively as a site for: (i) access to, demolition and removal of approximately 381 feet of the existing Platform labeled as "Platform Removal" (such portion, the "Removed Platform") as more particularly shown in orange on Exhibit A, and (ii) access to, demolition and removal of approximately 160 feet of the existing Canopy labeled as "Canopy Removal" (such portion, the "Removed Canopy"), including related electrical lighting, all as more particularly shown in orange on Exhibit A. Licensee agrees to install a pipe barrier at the end of the remaining Platform and Canopy. The removal of the Removed Platform and Removed Canopy shall be performed in accordance with: (i) the overall work plan labeled "West Haymarket Joint Public Agency (2011) Existing Historic Canopy Renovation, Phase I" attached hereto as Exhibit B and incorporated herein by this reference and (ii) the "Existing Historic Canopy Renovation - Phase I" plans and specifications agreed to by the parties, the table of contents to which is attached hereto as Exhibit
C and incorporated herein by this reference. In addition to and not in limitation of the foregoing, Licensee expressly acknowledges and agrees that Amtrak may have additional requirements for barriers or safety devices at the end of the Platform and Canopy, which Licensee shall confirm with Amtrak. All such work shall be at Licensee's sole cost and expense. Licensee shall not use the Premises for any other purpose whatsoever.

1.4 Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

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

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

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

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

3. COMPENSATION.

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

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

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

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

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

4.3 Licensee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Licensor and Licensee dated October 18, 2010 (the "C&M Agreement"). In the event of conflicts between the terms of this License and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

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

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

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

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

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

7. LICENSEE'S OPERATIONS.

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

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

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

7.4 Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, complete the Permitted Uses in such a manner that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of Licensor's railroad. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this Section 7.4, Licensor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

7.5 During the completion of the Permitted Uses, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The Permitted Uses shall be completed within one (1) year of the Effective Date.

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

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

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

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

7.9.1 filled in to surrounding ground level with compacted bentonite grout; or
7.9.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on the Premises for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

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

7.10.1 remove all of its equipment from the Premises;
7.10.2 report and restore any damage to the Premises arising from, growing out of, or connected with Licensee’s use of the Premises;
7.10.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
7.10.4 leave the Premises in the condition which existed as of the Effective Date.

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

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

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

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

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

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

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

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

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

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

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

15. DEFAULT. If default shall be made in any of the covenants or agreements of Licensee contained in this License, Licensor may pursue any and all remedies set forth in Section 24 of the Master Agreement. The remedy set forth in this Section 15 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
16. **LIENS.** Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 16 or any other Section of this License.

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

18. **ASSIGNMENT.** Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this License or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

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

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

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

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

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

21. **RECORDATION.** It is understood and agreed that this License shall not be filed of record with the Lancaster County, Nebraska Register of Deeds Office or otherwise recorded in the official records of Lancaster County, Nebraska.
22. **APPLICABLE LAW.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

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

24. **SEVERABILITY.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

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

26. **MISCELLANEOUS.**

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

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

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

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

**LICENSOR:**

BNSF Railway Company, a Delaware corporation

By: 
Name: 
Title: 
Date: 

**LICENSEE:**

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

By: 
Jayne Snyder
Chairperson
Date: 

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EXHIBIT A

Amtrak Exhibit Existing Canopy Phasing

[see attached]
EXISTING PLATFORM TO BE REMOVED AS PART OF INITIAL SITE PREP PROJECT. CANOPY TO BE REMOVED AS SEPARATE JPA PROJECT.

EXISTING CANOPY TO REMAIN IN SERVICE UNTIL NEW AMTRAK STATION IS IN SERVICE.
EXHIBIT B

West Haymarket Joint Public Agency (2011) Existing Historic Canopy Renovation, Phase I

[see attached]
EXHIBIT C

Existing Historic Canopy Renovation - Phase I - Table of Contents

[see attached]
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TEMPORARY LICENSE FOR ARENA SHORING AND INITIAL CONSTRUCTION OF FOOTINGS AND COLUMNS

THIS TEMPORARY LICENSE FOR ARENA SHORING AND INITIAL CONSTRUCTION OF FOOTINGS AND COLUMNS ("License") is made to be effective as of the ____ day of June, 2011 ("Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision of the State of Nebraska created by the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501 et seq. ("Licensee").

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

1. GENERAL.

1.1 Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to use those two (2) areas of Licensor's property shown in red and described as "Right of Entry for Arena Shoring and Initial Construction for Footings and Columns" on the print prepared by Olsson Associates, dated 5/4/2011, labeled "Right of Entry for Initial Arena Construction and Electrical Service", which print is attached hereto and incorporated herein by reference as Exhibit A, situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (collectively, the "Premises") for the purposes specified in Section 1.3 below (the "Permitted Uses").

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

1.3 Licensee shall use the Premises exclusively as a site for: (i) ingress and egress, (ii) site preparation approved by Licensor in writing in advance, and (iii) initial construction of certain sub-grade, at-grade and above-grade footings and columns, including but not limited to related shoring and other falsework, approved by Licensor in writing in advance (collectively, the "Advance Construction"). Licensee shall not use the Premises for any other purpose whatsoever. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

1.4 Licensor and Licensee mutually agree that no construction activities for the Permitted Uses, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on Licensor's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to Licensor's Network Operations Center (telephone number: 800 832-5452). Licensor and Licensee mutually understand and agree that trains cannot be subjected to delay during this time period.
1.5 In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.

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

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

3. COMPENSATION.

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

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

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

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

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

4.3 Licensee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Licensor and Licensee dated October 18, 2010 (the "C&M Agreement"). In the event of conflicts between the terms of this License and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

5. DEFINITION OF COST AND EXPENSE. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
6. **RIGHT OF LICENSOR TO USE.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

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

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

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

7. **LICENSEE'S OPERATIONS.**

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

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

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

7.4 Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, complete the Advance Construction in such a manner that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of Licensor's railroad. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this Section 7.4, Licensor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to
perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

7.5 During the completion of the Advance Construction, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The Advance Construction shall be completed within one (1) year of the Effective Date.

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

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

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

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

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

7.9.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on the Premises for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.
7.10 Upon completion of Licensee's work on the Premises or upon termination of this License, whichever shall occur first, Licensee shall, at its sole cost and expense:

7.10.1 remove all of its equipment from the Premises;

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

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

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

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

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

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

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

11. **ENVIRONMENTAL.**

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

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

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

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

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

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

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

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

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

17. TERMINATION. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.
18. **ASSIGNMENT.** Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this License or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

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

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

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

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

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

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

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

23. **VENUE.** To the fullest extent permitted by law any dispute arising under or in connection with this License or related to any subject matter which is the subject of this License shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by Licensor and Licensee to be mandatory and not permissive. Licensor and Licensee each hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.
24. **SEVERABILITY.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

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

26. **MISCELLANEOUS.**

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

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

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

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

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: ______________________________________
Name: ____________________________________
Title: _____________________________________
Date: _____________________________________

LICENSEE:

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

By: Jayne Snyder
   Chairperson

Date: _____________________________________
RESOLUTION NO. WH- __________

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

That the attached Change Order No. 2 to the TCW Construction Inc. agreement regarding the 10th and Salt Creek Roadway Haymarket Infrastructure Improvement, Project No. 870304, to reflect a number of items that need to be added or changed resulting in a net contract reduction in the amount of $2,249.22, is hereby accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Change Order No. 1 on behalf of the JPA.

Adopted this _____ day of June, 2011.

Introduced by:

___________________________________

Approved as to Form & Legality:        West Haymarket Joint Public Agency
                                       Board of Representatives

___________________________________

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler
CHANGE ORDER NO. 2
West Haymarket Joint Public Agency
Haymarket Infrastructure Improvements
10th & Salt Creek Roadway
Project 870304

PROJECT DESCRIPTION: Haymarket Infrastructure Improvements 10th & Salt Creek Roadway

CONTRACTOR: TCW Construction
ADDRESS: 141 M Street
           Lincoln NE

BID DATE: March 23, 2011
ORIGINAL COMPLETION DATE: November 4, 2011

REASON FOR CHANGE ORDER: See Attached Change Order No. 2 - Unforseen conditions, incentives met and plan revisions

The West Haymarket Joint Public Agency, and TCW Construction agree to the following revisions to the above-mentioned contract.

I. QUANTITY REVISIONS
   Contract Change Order No. 2 $(50,964.00)
   SubTotal Quantity Revision Costs $(50,964.00)

II. ADDITIONAL BID ITEMS
   Contract Change Order No. 2 $48,714.78
   SubTotal Additional Bid Items Cost $48,714.78

Total of Both Quantity Revisions and Additional Bid Items Cost: $(2,249.22)

III. REVISED CONTRACT COST

   The estimated contract construction cost is revised as follows:

   Original Bid Estimated Construction Cost = $2,787,464.22
   Change Order No. 1 = $14,469.00
   Change Order No. 2 = $(2,249.22)

   Revised Estimated Construction Cost = $2,799,684.00
IV. COMPLETION DATE

The completion date for this contract shall remain the same.

All other provisions of this contract shall remain the same. The changes included in this change order are to be accomplished in accordance with the terms, stipulations, and conditions of the original contract as though included therein.

ACCEPTED BY THE OWNER ON ________________, 2011.

By: ________________________________
President

APPROVED BY THE CITY OF LINCOLN ON ________________, 20__.

By: ________________________________
JPA Chair

Resolution No. ____________________________
## CONTRACT CHANGE ORDER

**Contract:** 5725, Haymarket Infrastructure Imp - 10th & Salt Creek Roadway  
**Change Order No.:** 2  
**Change Order Date:** 06/10/2011  
**Approved Date:** 

**Owner:** 5725, Haymarket Infrastructure Imp - 10th & Salt Creek Roadway  
**Contractor:** TCW CONSTRUCTION, INC  
141 'M' STREET

### SUMMARY OF CHANGES

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Contract Amount</th>
<th>Current Contract Amount</th>
<th>Net Change This Order</th>
<th>Amount After Change</th>
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### SHORT DESCRIPTION

Unforeseen conditions and plan revisions

### DESCRIPTION OF CHANGES

These are a number of items that needed to be added or changed at various locations throughout the project for various reasons.

#### INCREASE/DECREASE

<table>
<thead>
<tr>
<th>Line No.</th>
<th>Pay Item No.</th>
<th>Description</th>
<th>Unit</th>
<th>Proposed Qty</th>
<th>Unit Price</th>
<th>Total</th>
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</thead>
<tbody>
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<td>SF</td>
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<td>-$50,964.00</td>
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</table>

**Total**

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<thead>
<tr>
<th>Description</th>
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</table>

### NEW ITEMS

<table>
<thead>
<tr>
<th>Line No.</th>
<th>Pay Item No.</th>
<th>Description</th>
<th>Unit</th>
<th>Proposed Qty</th>
<th>Unit Price</th>
<th>Total</th>
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</thead>
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<td>Crushed Concrete for subgrade</td>
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<tr>
<td>50.0015</td>
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</table>

**Total**

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<td>1 0000</td>
<td>3127 3700</td>
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<td>Incentives for Phase B</td>
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<td>$7,000.00</td>
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<tr>
<td>Conc Bikeway, 5&quot;</td>
<td>SF</td>
<td>3959 00000</td>
<td>3 8000</td>
<td>$15,044.20</td>
</tr>
</tbody>
</table>

**Total**

$48,714.78
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 West Haymarket Joint Public Agency and T.J. Osborn Construction, Inc. for the Haymarket Infrastructure Improvement – M & N Street Sanitary Sewer Project, JPA Project No. 87032, Bid No. 3565, for the sum of $377,272.00 to be completed by August 26, 2011, is hereby accepted and approved and the Chair is hereby authorized to execute said Contract Agreement on behalf of the Agency.

Adopted this ____ day of _____________, 2011.

Introduced by:

___________________________________

Approved as to Form & Legality: West Haymarket Joint Public Agency
Board of Representatives

___________________________________

Legal Counsel for Jayne Snyder, Chair
West Haymarket Joint Public Agency

___________________________________

Tim Clare

___________________________________

Chris Beutler
WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)

BID NO. 3565
JPA Haymarket Infrastructure Improvement -
M & N Street Sanitary Sewer Project,
JPA Project 870302

CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this _____ day of ________, 2011 by and between

T. J. Osborn Construction, Inc., 5801 Johanna Rd, Lincoln, NE 68507

hereinafter called the Contractor and the WEST HAYMARKET JOINT PUBLIC AGENCY, a
municipal corporation, hereinafter called JPA.

WITNESS, that:

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

Haymarket Infrastructure Improvement - M & N Street Sanitary Sewer Project, JPA
Project 870302, Bid No. 3565; and

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

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened,
examined, and canvassed the Proposals submitted in response to such advertisement, and as a
result of such canvass has determined and declared the Contractor to be the lowest and best
bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof
being attached to and made a part of this Contract.

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

CONTRACT AGREEMENT
CONTRACT AGREEMENT

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 Proposal, or part thereto, as follows:

Agreement to full proposal. The JPA will pay for products/services, according to the pricing as listed in the Contractor's Proposal/Supplier Response, a copy thereof being attached to and made a part of this contract for a total of $377,272.00.

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

COMPLETION DATE – The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than August 26, 2011.

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

CONTRACT DOCUMENTS – The Contract Documents comprise the Contract, and consist of the following:
2. Proposal Forms
3. Contract Agreement Forms
4. Commentary to Accompany Construction Bonds
5. Construction Performance Bond
6. Construction Payment Bond
7. Special Provisions
8. Lincoln Standard Plans 2010
10. Plan and Profile Detail Sheets
11. Any executed Addenda or Change Orders
12. 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.
13. The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, are exempt from sales and use taxes.
14. Sales tax exempt forms will be provided upon award of bid.

CONTRACT AGREEMENT
CONTRACT AGREEMENT

These Contract Agreements, 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.

EXECUTION BY JPA

ATTEST:

________________________________________ (Seal)
JPA

BY:

JPA CHAIR

Dated:

JOINT PUBLIC AGENCY

EXECUTION BY CONTRACTOR

IF A CORPORATION

ATTEST:

________________________________________ (Seal)

(Name of Corporation)

(Address)

By:

(Duly Authorized Official)

(Legal Title of Official)

IF OTHER TYPE ORGANIZATION

(Name and Type of Organization)

(Address)

(Member)

(Member)

IF AN INDIVIDUAL

By:

(Name)
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):
T.J. Osborn Construction, Inc.
5801 Johanna Rd
Lincoln, NE 68507

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: 06/14/11
Amount: $377,272.00

Description (Name and Location):
For all labor, material and equipment necessary for Haymarket Infrastructure Improvement - M & N Street Sanitary Sewer Project, JPA Project 870302, Bid Number 3565

BOND
Date: 06/14/11
Amount: $377,272.00

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company:
T. J. Osborn Construction, Inc.
5801 Johanna Rd
Lincoln, NE 68507

SURETY
( Corp. Seal )
Company:
( Corp. Seal )

Signature: _____________________________
Name and Title: ___________________________

Signature: _____________________________
Name and Title: ___________________________

EJDC No. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.
1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety’s obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Contractor Default and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor’s right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor’s default, or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Sub-paragraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor’s right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor’s Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be commenced within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions:

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONTRACT AGREEMENT - City.
CONSTRUCTION PAYMENT BOND

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

CONTRACTOR (Name and Address):
T. J. Osborn Construction, Inc.
5801 Johanna Rd
Lincoln, NE 68507

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: 06/14/11
Amount: $377,272.00

Description (Name and Location):
For all labor, material and equipment necessary for Haymarket Infrastructure Improvement - M & N Street Sanitary Sewer Project, JPA Project 870302, Bid Number 3565

BOND
Date: 06/14/11
Amount: $377,272.00

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
5801 Johanna Rd
Lincoln, NE 68507

SURETY
Company: (Corp. Seal)

Signature: __________________________
Name and Title: ____________________

Signature: __________________________
Name and Title: ____________________

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 to 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 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 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 suit or action shall be commenced by a Claimant under this Bond other than in 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 Bid No. 3565, 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 )
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)
## Bid Information

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
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<tbody>
<tr>
<td>Bid Creator</td>
<td>Deb Winkler Systems Administrator</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:dwinkler@lincoln.ne.gov">dwinkler@lincoln.ne.gov</a></td>
</tr>
<tr>
<td>Phone</td>
<td>1 (402) 441-7410</td>
</tr>
<tr>
<td>Fax</td>
<td>1 (402) 441-6513</td>
</tr>
<tr>
<td>Bid Number</td>
<td>3565 Addendum 1</td>
</tr>
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<td>Title</td>
<td>Haymarket Infrastructure Improvement - M &amp; N Street Sanitary Sewer project 870302</td>
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<td>Bid Type</td>
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<tr>
<td>Close Date</td>
<td>6/13/2011 3:00:00 PM CST</td>
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<td>Need by Date</td>
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## Contact Information

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<th>Details</th>
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</thead>
<tbody>
<tr>
<td>Address</td>
<td>Purchasing\City &amp; County 440 S. 8th St. Lincoln, NE 68508</td>
</tr>
<tr>
<td>Contact</td>
<td>Vince Mejer Purchasing Agent</td>
</tr>
<tr>
<td>Department</td>
<td>Building</td>
</tr>
<tr>
<td>Floor/Room</td>
<td></td>
</tr>
<tr>
<td>Telephone</td>
<td>1 (402) 441-8314</td>
</tr>
<tr>
<td>Fax</td>
<td>1 (402) 441-6513</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:vmejer@lincoln.ne.gov">vmejer@lincoln.ne.gov</a></td>
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## Supplier Information

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<tr>
<td>Company</td>
<td>T.J.Osborn Construction Inc.</td>
</tr>
<tr>
<td>Address</td>
<td>5801 Johanna Rd. Lincoln, NE 68507</td>
</tr>
<tr>
<td>Contact</td>
<td>Terry Osborn</td>
</tr>
<tr>
<td>Department</td>
<td>Building</td>
</tr>
<tr>
<td>Floor/Room</td>
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</tr>
<tr>
<td>Telephone</td>
<td>1 (402) 4644235</td>
</tr>
<tr>
<td>Fax</td>
<td>1 (402) 4645077</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:TJOsborn@neb.rr.com">TJOsborn@neb.rr.com</a></td>
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<tr>
<td>Submitted</td>
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<tr>
<td>Total</td>
<td>$377,272.00</td>
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</table>

## Supplier Notes

**NOTE:** West Haymarket Joint Public Agency (JPA) is Owner. <br><br> If you need assistance in preparing your bid, there are several options.

1) Click the "Help" button in the upper right hand corner of any screen; 2) Contact our office for a training session in Purchasing or assistance over the phone; 3) View the PowerPoint presentation at http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt

## Bid Activities

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3565 Addendum 1 - Page 1 of 4
<table>
<thead>
<tr>
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<th>Time</th>
<th>Name</th>
<th>Description</th>
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<td>6/13/2011</td>
<td>3:00:00 PM</td>
<td>General Contractors - Call 402-441-7410 or e-mail <a href="mailto:purchasing@lincoln.ne.gov">purchasing@lincoln.ne.gov</a> to be added to this list.</td>
<td>Suppliers who will bid as a general contractor on this bid.</td>
</tr>
<tr>
<td>6/13/2011</td>
<td>3:00:00 PM</td>
<td>Sub-Contractors - Call 402-441-7410 or e-mail <a href="mailto:purchasing@lincoln.ne.gov">purchasing@lincoln.ne.gov</a> to be added to this list.</td>
<td>Suppliers who will bid as a sub-contractor.</td>
</tr>
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Bid Messages

Please review the following and respond where necessary

<table>
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<tr>
<th>#</th>
<th>Name</th>
<th>Note</th>
<th>Response</th>
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<tr>
<td>2</td>
<td>NDOR Standard Specs for Hwy Construction</td>
<td>I acknowledge reading and understanding the current Nebraska Department of Road's Standard Specifications for Highway Construction Supplemental Specifications to the Standard Specifications for Highway Construction, view at: <a href="http://www.dor.state.ne.us/ref-man/">http://www.dor.state.ne.us/ref-man/</a></td>
<td>Yes</td>
</tr>
<tr>
<td>3</td>
<td>Instructions to Bidders</td>
<td>I acknowledge reading and understanding the Instructions to Bidders.</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Insurance Requirements</td>
<td>I acknowledge reading and understanding the Insurance Requirements.</td>
<td>Yes</td>
</tr>
<tr>
<td>5</td>
<td>Specifications</td>
<td>I acknowledge reading and understanding the Specifications and Special Provisions.</td>
<td>Yes</td>
</tr>
<tr>
<td>7</td>
<td>Plan, Profile &amp; Detail Sheets</td>
<td>I acknowledge reading and understanding the Plan, Profile &amp; Detail Sheets included with this bid.</td>
<td>Yes</td>
</tr>
<tr>
<td>8</td>
<td>Davis Bacon</td>
<td>I acknowledge reading and understanding the Davis Bacon documents.</td>
<td>Yes</td>
</tr>
<tr>
<td>9</td>
<td>Sample Contract</td>
<td>I acknowledge reading and understanding the sample contract.</td>
<td>Yes</td>
</tr>
<tr>
<td>10</td>
<td>Form of Bonds</td>
<td>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.</td>
<td>Yes</td>
</tr>
<tr>
<td>11</td>
<td>Tax Exempt Certificate Forms</td>
<td>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</td>
<td>Yes</td>
</tr>
</tbody>
</table>
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!

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 no later than August 26, 2011.

I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.

I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.

Name of person submitting this bid: Terry J Osborn

Please check here for your electronic signature.

I acknowledge the Excel spreadsheet is attached to this bid in the Response Attachment Section. The unit price of the Excel Spreadsheet takes precedence over the total submitted in Line Items.

I acknowledge signing and returning the Certification of Compliance by attaching to this bid.

Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. <br>Reason: Attached Addendum No. 1.
### Line Items

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</table>

**Item Notes:** Fill out the itemized Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.

**Supplier Notes:**

---

Response Total: $377,272.00
<table>
<thead>
<tr>
<th>Line No.</th>
<th>Timer</th>
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<th>Unit</th>
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$377,272.00 Total Amount
Contractor Certification of Compliance
West Haymarket Infrastructure Improvements
N Street Sanitary Sewer
NPDES Dewatering Discharge Permit No. NEG671000

In accordance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et. seq., as amended), the Nebraska Environmental Protection Act (Neb. Rev. Stat. § 81-1501 et. seq., as amended), and the Rules and Regulations promulgated thereunder, the West Haymarket Joint Public Agency (JPA) has submitted a site-wide Dewatering Notice of Intent (DW-NOI) for dewatering discharges authorization under the General NPDES Permit NEG671000, attached as Exhibit A and incorporated as if fully set forth herein, for the West Haymarket Redevelopment Site. The JPA is designated as an “Owner” and the Contractor is designated as an “Operator” pursuant to the permit.

As such, I certify that:

I, or qualified members of my staff, have reviewed and understand the terms and conditions of the NPDES General Permit Number NEG671000 and I understand that the submission of this “Contractor Certification of Compliance” obligates the Contractor to comply with all said terms and conditions of the permit.

Operator’s Signature

Title

T.J. Osborn Construction, Inc.
5801 Johanna Rd.
Lincoln, NE 68507

Business Address
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).
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:

Rod Confer
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
Addendum #1
for
Haymarket Infrastructure Improvement - M & N Street Sanitary Sewer Project 870302
Bid (Quote) No. 3565

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:

Question:

Our suppliers do not know what to bid for the following material, is there a spec for these items:

22.0020 - 24" Sanitary Sewer Pipe
50.0005- 15" P.V.C. lined Steel Waste Water pipe, Bored In Place.

Answer:

22.0020 - For 24" Sanitary Sewer Pipe please refer to the City of Lincoln Standard Specifications for Municipal Construction section 22.02 Materials. (Line 7 of the Itemized Pricing Sheet)

50.0005 - Delete the words "P.V.C. Lined Steel Waste Water Pipe, Bored In Place". and replace with 50.0005 - 15" Smooth Steel Casing 0.375" Thick, Bored in Place. (Line 17 of the Itemized Pricing Sheet)

All other terms and conditions shall remain unchanged.

Dated this 10th day of June, 2011.

Vince M. Mejer
Purchasing Agent
Environmental Contingency Plan
West Haymarket Redevelopment Site

Prepared for:
The Joint Public Agency of Lincoln, Nebraska

Benesch Project Number: 110058.00.00006

Revision 2 March 18, 2011

Prepared by:

bnesch
engineers - scientists - planners

Alfred Benesch & Company
14748 West Center Road, Suite 100
Omaha, NE 68144
P: (402) 333-5792
F: (402) 333-2248

In consultation with

and

EnviroGroup Limited
SPILL/INCIDENT RESPONSE REFERRAL SHEET

Note: Waste/excess soil or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed below:

SPILL REPORTING

(Through City of Lincoln Environmental Project Management Team Decision Authority as described in Section 3.3 of the ECP)

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
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## FIGURES

- Figure 1: Project Location
- Figure 2: WHRS Area Boundaries
- Figure 3a: North Area Soil Impacts (in Packet)
- Figure 3b: South Area Soil Impacts (in Packet)
- Figure 4a: North Area Groundwater Impacts (in Packet)
- Figure 4b: South Area Groundwater Impacts (in Packet)
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- Table 1: Potential Wetland Disturbance Activities
- Table 2: Common Wetland Avoidance Measures
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## ATTACHMENTS

- Attachment 1: Chemical Information
- Attachment 2: Project Forms
- Attachment 3: Project – Specific Authorizations
**LIST OF ACRONYMS**

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<th>Definition</th>
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<td>CERCLA</td>
<td>Comprehensive Environmental Response Compensation and Liability Act</td>
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<td>COPC</td>
<td>Chemicals of Potential Concern</td>
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<td>CR</td>
<td>Contractor's Representative</td>
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<td>ECP</td>
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<td>Environmental Project Management Team Technical Representative</td>
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<td>VOCs</td>
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<td>WHRS</td>
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1.0 PURPOSE
The purpose of this Project Environmental Contingency Plan (ECP) is to prescribe management procedures and preventive measures relevant to areas and activities associated with construction within the West Haymarket Redevelopment Site (WHRS) that present the potential for environmental impacts or regulatory concerns if not properly controlled. The ECP is further intended to provide the City of Lincoln's Environmental Project Management Team (EPMT) with a mechanism for centralized management and documentation control of environmental matters—most specifically related to management of impacted soils or other contaminated media throughout the duration of planned WHRS projects.

2.0 SCOPE

2.1 Background
The WHRS and surrounding area has been home to large scale industrial and commercial operations for over a century including railroad thru-freight and switching, locomotive and railcar servicing/repair, manufactured gas plant operations, tanneries, paint and pigment manufacturing and scrap processing. Environmental and geotechnical investigations performed within the WHRS in recent years have identified the presence of petroleum constituents, heavy metals, polychlorinated biphenyls (PCBs), and a variety of fuel and chemical components and breakdown products classified under the general categories of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) in soil and/or groundwater.

In some areas, the levels of constituent impacts in soil or groundwater have been documented to exceed health-based standards established by the Environmental Protection Agency (EPA) and/or Nebraska Department of Environmental Quality (NDEQ). These standards are established under differing assumptions of life-long exposure using residential and commercial/industrial scenarios and do not necessarily represent threats to human health under instantaneous or short term exposure as may be the case under a construction worker exposure scenario. The known presence of these constituents in certain defined areas and their potential occurrence in areas not yet thoroughly investigated, however, presents a scenario for human exposure and/or corollary environmental or regulatory impacts that must be avoided in order to 1) protect human health and the environment and 2) minimize disruptions and cost impacts to the overall WHRS project.

2.2 Applicability
The location of the project and general boundary of redevelopment activity are depicted in Figures 1 and 2, respectively. The boundary in Figure 2 represents tentatively planned redevelopment footprints which is not strictly defined or intended to restrict applicability of this ECP to related WHRS construction activities outside of the boundary. Figures 3 and 4 provide a representation of soil boring and groundwater monitoring well data showing values in soil or groundwater, respectively, that exceed health-based standards referenced in Section 2.1 of this ECP. With the exception of the free-product diesel fuel plume depicted northwest of the Lincoln Depot, there is no representation or assumption that impacts are continuous...
between affected borings, nor is there a representation or assumption that impacts do not occur between borings represented as below health-based standards.

A tentative list of the suspected chemicals of potential concern (COPC) known to have been detected in site soils and/or groundwater along with representative chemical profiles is included as Attachment 1. The preponderance of COPC occurrence consists of petroleum, petroleum constituents, traces of heavy metals (some — largely arsenic believed to be naturally occurring) VOCs, SVOCs and limited occurrences of PCBs. Compounds detected are common to railroad operations, former manufactured gas plant operations and/or scrap operations which encompass the major focus of investigations in the WHRS.

The scope of preventive measures and management procedures prescribed in this ECP are designed to cover all intrusive work in the WHRS. Intrusive work activities include (but are not limited to):

- Excavation
- Grading
- Drilling
- Boring
- Utility Trenching
- De-watering

This ECP does not address standard safety — related activities and programs such as confined space entry, electrical safety, fall protection, etc. regulated by the Federal Occupational Health and Safety Administration (OSHA under 29 CFR 1910). Project safety policies, procedures and compliance are the responsibility of the respective organizations and personnel who have cause to be in the project area in some official capacity or employment including railroads, City of Lincoln employees, regulatory agencies, contractors, consultants, and other suppliers of services to the project. The need for safety — specific precautions (including the potential for vapors in excavations and utility corridors) should, however be discussed during pre-construction briefings.

Section 4.0 of this ECP describes management procedures and required preventive measures to be followed by all personnel involved in WHRS construction activities.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

3.0 ECP MANAGEMENT

3.1 Roles and Responsibilities

This ECP has been prepared for and will be managed by the City of Lincoln's Environmental Project Management Team (EPMT) led by the Public Works Liaison & Compliance Administrator. The EPMT has contracted with Alfred Benesch & Company (Benesch) to provide environmental consulting services including preparation and implementation of the ECP.
Specifically, as an agent or technical representative (TR) of the EPMT, Benesch will:

- Prepare and amend the ECP as needed
- Disseminate the ECP to key stakeholders in the WHRS Project(s)
- Provide project/task start-up briefings when applicable (see Section 2.2)
- Provide compliance verification relative to handling of impacted soils/other media
- Provide on-call incident assistance to Project Managers (PM) and Contractor’s Representatives (CR) including sampling and analysis of suspect materials

The EPMT in turn provides routine coordination and support to the WHRS Program Manager in terms of environmental issues related to the overall WHRS project. Roles and responsibilities of the EPMT and WHRS Program Manager as well as other key stakeholders in the WHRS project with an interest and responsibility in conforming to this ECP are described in the table below:

<table>
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<th>Organization</th>
<th>Role</th>
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<th>Contact</th>
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| WHRS Program Manager          | Overall WHRS program execution            | Support conformance to the ECP                   | Jim Martin
|                               |                                           |                                                  | 417-251-1695
|                               |                                           |                                                  | jim.martin@benham.com                        |
| City of Lincoln EPMT          | Overall WHRS environmental performance    | Prepare and oversee execution of the ECP         | Miki Esposito
|                               |                                           |                                                  | 402-441-6173
|                               |                                           |                                                  | mesposito@lincoln.ne.gov                     |
| Benesch/Olsson Associates     | Technical Representative to EPMT          | Prepare and oversee execution of the ECP         | Frank Uhlarik
|                               |                                           |                                                  | 402-669-0546
|                               |                                           |                                                  | fuhlarik@benesch.com                         |
|                               |                                           |                                                  | Bill Bilmig
|                               |                                           |                                                  | (402) 314-4568
|                               |                                           |                                                  | blimg@oaconsulting.com                      |
| BNSF                          | Landowner, Project Manager                | Support conformance to the ECP by BNSF work forces and contractors | Greg Jeffries
|                               |                                           |                                                  | 763-782-3490
|                               |                                           |                                                  | Gregory.jeffries@bsnf.com                    |
|                               |                                           |                                                  | Gerald Maczuga
|                               |                                           |                                                  | 402-458-7537
|                               |                                           |                                                  | Gerald.maczuga@bsnf.com                      |
| Contractors                   | Performance of any construction work in WHRS | - Attend pre-construction briefings on ECP - Comply with ECP | As identified by City, BNSF or other Property Owners within the WHRS |
| NDEQ                          | Regulatory Authority                       | Provide advice to EPMT regarding compliance requirements | Mike Felix
|                               |                                           |                                                  | 402-471-2938
|                               |                                           |                                                  | Mike.felix@nebraska.gov                      |

### 3.2 Documentation and Control

The following forms (included in Attachment 2) are to be used in maintaining and documenting compliance with the ECP:

**ECP-1: Contractor Certification of Receipt and Special Precautions**

This form will be reviewed and signed by the PM or CR certifying that he/she has received a copy of the ECP and agrees to comply with applicable work practices. In addition, task-specific precautions pertaining to COPCs, likely areas/volumes of impacted soil to remove, potential re-use of material as fill, etc. are to be documented on this form reflecting agreed upon
procedures for the project and task between the contractor and TR. The Form ECP-1 will be co-signed by the TR.

**ECP-2: Incident Log**

This form will be filled out by the TR to record “incidents” and any follow-up corrective actions. “Incidents” will generally refer to observed or reported deviations from standard construction procedures, plans and specifications including, the following:

- Spills or discharges of hazardous substances, petroleum or equipment wash water/wastewater released to the environment associated with construction activities.
- Any observed or reported encounter with visibly or otherwise apparent impacted soil, groundwater, surface water or sediment contamination resulting from intrusive activities (grading, excavating, drilling, boring, utility work).
- Encroachment/impact upon defined wetland areas as further discussed in Section 4.2.

It is the responsibility of all stakeholders listed above in their capacity as project managers and contractors to comply with the provisions of the ECP and ensure notifications are made to the hierarchy of contacts listed on the Spill/Incident Response Referral Sheet found at the beginning of this ECP. Each contractor/stakeholder shall designate one responsible point of contact and one alternate for reporting incidents to ensure uniform and consistent control and reporting of information and to avoid duplicative or superfluous reporting.

Incident reporting in itself is not a cause for work stoppage – merely a notification to the EPMT of a condition that may require further investigation, evaluation through sampling/testing or other approved methods of determination and documented resolution by the TR. **It is not the role of the TR to direct or in any way affect work stoppage. Work stoppage will be dictated solely by the project manager or contractor’s representative based on his or her corporate health and safety policies and procedures.**

Copies of all completed Forms ECP-1 and ECP-2 will be maintained by the TR at the Benesch offices located at 825 “J” Street in Lincoln, NE.

### 3.3 Regulatory Reporting

The need for reporting releases to State, Federal or Local authorities will be determined by the EPMT in consultation with the BNSF or other landowners potentially impacted by the release. Required reporting contacts are listed on the Spill/Incident Response Referral Sheet found at the beginning of this ECP. The following reporting guidelines have been extracted from NDEQ Title 126 - Rules and Regulations Pertaining to Management of Waste, Chapter 18 - Releases of Oil or Hazardous Substances which will be used by the EPMT in determining the need to report incidents:

**002 Release Notification Requirements:**

**002.01** It shall be the duty of any responsible person to notify the Department of any release or suspected release of an oil or hazardous substance, in the following manner:
002.01A Immediate notification is required regardless of the quantity of an oil or hazardous substance release which occurs beneath the surface of the land or impacts or threatens waters of the state or threatens the public health and welfare.

002.01B Immediate notification is required of a release upon the surface of the land of an oil in a quantity that exceeds 25 gallons, or of a hazardous substance which equals or exceeds 100 pounds or its reportable quantity under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (40 CFR Part 302) and Section 329(3) of the Emergency Planning and Community Right-to-Know Act of 1986 (40 CFR Part 355), whichever is less.

002.01B1 Notification is not required for a release under this subsection if either of the following conditions is met:

002.01B1a The release is confined and expected to stay confined within a building or otherwise wholly enclosed structure, owned by the responsible party, in which the floors and walls are of non-earthen materials which are adequately impervious to the released substance(s) and is cleaned up within 24 hours of its discovery, or

002.01B1b The release is in compliance with conditions established in State statutes, regulations or permits.

002.01C Notification is not required for any release upon the surface of the land of oil or hazardous substance that does not exceed the reportable quantities in 002.01B above and which will not constitute a threat to public health and welfare, the environment, or a threat of entering the waters of the state and provided that the release is cleaned up.

002.02 Notification shall be made by telephone to the Department during office hours, from 8:00 a.m. to 5:00 p.m. Monday through Friday. After hours and holidays, reports shall be made to the Nebraska State Patrol (numbers listed in the Spill/Incident Referral Sheet at the beginning of this Plan). All information known about the release at the time of discovery is to be included, such as time of occurrence, quantity and type of material, location and any corrective or cleanup actions presently being taken.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.0 WORK PROCEDURES

4.1 Access
Access to the 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.

4.2 Best Management Practices

In general, PMs and CRs are accountable for obtaining applicable permits and authorizations for project activities under their purview including:

- Storm Water NPDES Construction Permits
- Flood Plain Permits
- Wetland (Section 404) Permits
- Special Waste Disposal Approval (Lincoln Lancaster County Health Department (LLCHD) or other entity that will receive the waste) for impacted soils/debris
- Dewatering Permit for Deep Excavations and Utilities (NPDES)
- State Historic Preservation Office (SHPO) Coordination

Some permits/authorizations (such as the Wetland Section 404 Permit) have been or will be obtained from the regulatory agency by the City of Lincoln for the WHRS. Special waste disposal will also be coordinated by and with the EPMT, however, PMs and CRs must be aware of and comply with provisions associated with these permits/authorizations.

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:

4.2.1 Impacted Soil and Debris Management

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 PM or CR in consultation with the TR 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. In accordance with Federal and State regulations and guidance, routine trench or foundation excavation spoils that are generated at a site are not considered a waste unless it is intended for disposal. Such spoils can normally be replaced in the excavation.
It should be noted, however that any suspect material encountered during trench and foundation excavation must be inspected by the TR and only replaced if deemed by the TR not to be a vapor hazard within the utility corridor or building being constructed.

5. Prior to initiation of each construction task, the project manager or contractor’s representative will consult with the TR 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. Provisions for temporary storage of potentially impacted soil/debris must be explicitly agreed upon. A written summary of these determinations is to be included in the Form ECP-1 completed for the work effort and filed according to procedures listed in Section 3.2 above.

6. On March 8, 2011, the NDEQ issued a guideline for management of excess soils for various activities within the WHRS covered under this ECP. Any discrepancies between NDEQ guidance and what is prescribed in the ECP must be resolved with the TR. The guidance is in Attachment 3.

7. A special waste authorization has been obtained from the Lincoln/Lancaster County Health Department for disposal of specified petroleum – impacted soils at the City of Lincoln’s Bluff Road Landfill. This authorization is included in Attachment 3 and may only be used when approved by the TR.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.1.1 Investigative Drilling/Boring
Drilling investigations conducted under the supervision and oversight of the NDEQ under the Voluntary Cleanup Program or Title 200 Programs require preparation of specific investigation work plans to address drill cuttings and other "Investigation – Derived Wastes" (IDW). This effort is managed by the TR and will follow established work plan protocols.

Geotechnical investigations (GI) within the WHRS will require conformance to the following management practices:

1. The GI Project Manager must contact the TR at least 7 days prior to drilling to discuss anticipated conditions and any special precautions to consider.

2. The GI Project Manager must arrange for all utility clearance.

3. The GI Project Manager will complete Form ECP-1 in consultation with the TR.
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 soil cuttings.

5. Unless superseded by other special considerations (such as drilling in known or highly suspected areas of impacted soils/groundwater), drilling procedures and soil cuttings management may proceed under standard GI processes and procedures including boring abandonment.

6. If during the completion of the boring the drill crew encounters potentially impacted soils, cuttings will be placed on plastic sheeting and segregated from non-impacted cuttings. Work shutdown will be at the discretion of the GI Project Manager’s corporate health and safety policies and practices.

7. At the conclusion of the boring, impacted soil cuttings should be placed back in the boring at the relative depth/order which retrieved. The surface should be sealed with a minimum of three ft. of bentonite/cement slurry and if within 100 ft. of a planned building should ideally extend from the surface to the depth of identified impacts.

8. Any remaining impacted soil cuttings will be sampled and analyzed as determined by the TR and instructions provided to the GI Project Manager for proper handling of the material. Cuttings must remain on plastic sheeting and covered with plastic or placed in sealed drums and labeled with the boring number until directions for further handling are provided by the TR.

9. Upon final resolution, the TR will complete and file an ECP-2 form relative to any IDW disposed of off-site or additional activities resulting in on-site re-use or application (land-spreading) of drill cuttings.

4.2.1.2 Grading/Excavation
Grading and excavating activities conducted under the supervision and oversight of the NDEQ under the Voluntary Cleanup Program or Title 200 Programs require preparation of specific remedial action work plans to address management of impacted soils and debris. This effort is managed by the TR and will follow established work plan protocols.

All other construction grading and excavation activities associated with applicable WHRS project activities require coordination and ECP compliance as follows:

1. Grading/excavation project manager/contractor’s representative (PM/CR) must contact the 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 4.2), complete and sign Form ECP-1 and provide to the TR for co-signature and filing.

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 (documented in ECP-1), 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 in Form ECP-1, 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 on Form ECP-2 and filed according to procedures in Section 3.2.

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

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.1.3 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 4.2), complete and sign Form ECP-1 and provide to the TR for co-signature and filing.

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 (documented in ECP-1), utility construction activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/odors or 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 in Form ECP-1, 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 on Form ECP-2 and filed according to procedures in Section 3.2.

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

**Note:** Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

### 4.2.2 De-Watering Operations

De-watering operations within the WHRS will generally be associated with excavation or utility work described above. A project – specific Dewatering Permit has been provided by the NDEQ that governs any de-watering operations bounded by 2nd Street on the west, Salt Creek on the north and west, 8th Street on the east and “J” Street on the south. The permit and related conditions is included in Attachment 3. The City of Lincoln has been issued the permit and all
contractors intending to utilize the permit will co-sign as owner/operator and will be held to all terms and conditions of the permit.

Required sampling and reporting to NDEQ will be conducted by the TR and approval to discharge accumulated storage of dewatering fluids must be obtained from the TR prior to discharge. Initial dewatering discharge flows must be containerized for sampling and testing by the TR, whereupon results will be provided to the contractor along with permission to discharge under the above referenced permit. Alternative means of discharge (whether to the City of Lincoln's Sanitary Sewer System or off-site disposal), may be required if permit parameters are exceeded. Such alternative means will be in accordance with contractual requirements and shall be explicitly agreed upon by the CR and TR and documented on Form ECP-2.

Note: Waste/excess soil, sludge or debris may not be removed from properties covered under this document (whether for disposal or reuse) without review/concurrence of such actions by the Environmental Project Management Team Representatives listed in the table in Section 3.1 and on the Spill/Incident Referral Sheet at the beginning of this document.

4.2.3 Wetland Protection

4.2.3.1 Summary of Delineated Wetland Areas
Olsson and Associates (OA) and HWS Consulting Group (HWS) staff conducted a wetland delineation and assessment for the Haymarket Project area in 2007. According to the 2007 Wetland Delineation Report (Olsson/HWS September 2008), the Study Area encompassed 443 acres of land for the Project. Based on the methodology as described in the September 2008 Wetland Delineation Report, 22 separate and distinct wetland areas are located within the Study Area totaling 8.65 acres. In addition, two perennial streams are located within the Study Area and are considered jurisdictional waterways. A map of the defined areas is provided as Figure 5.

4.2.3.2 Avoidance and Minimization
State and federal regulations require that an applicant utilize a three-part process (mitigation sequencing) when evaluating potential impacts to wetlands and waterways. The mitigation sequence generally is as follows:

- **Avoid** adverse impacts to wetlands
- **Minimize** adverse impacts that cannot be avoided
- **Mitigate** for the remaining impacts that cannot be avoided or further minimized. Note: compensatory mitigation relates to permanent impacts and permanent loss of function, and can be used to offset significant short-term impacts that may be in effect for an extended period of time.

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State and Federal Law generally requires that the applicant demonstrate that impacts\(^1\) to jurisdictional wetlands and waters have been avoided and minimized to the greatest extent practicable. Potential construction practices near the boundaries of the delineated wetland areas should be considered when evaluating grading alternatives. For the purpose of the WHRS projects, wetland resources will be avoided to the extent practicable according to Section 404(b)(1) guidelines.

Tables 1 through 3 describe the typical disturbance activities, avoidance and minimization measures, respectfully for the wetland areas known to exist in the WHRS project area. These activities must be reviewed and determined by the PM/CR to what extent they must be employed and specified in EP-1 described above. Additional provisions relative to the 404 permit to be aware of and complied with will be attached to this ECP when the permit is obtained.

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\(^1\) 'Impacts' include fill, removal, mechanized land clearing (e.g., grubbing, bulldozing vegetation)
FIGURES
Figure 1
Site Location Map

Legend

West Haymarket Study Area

Environmental Contingency Plan
Lincoln, Nebraska
Figure 3a North Area Soil Impacts
Figure 3b South Area Soil Impacts
Figure 4a North Area Groundwater Impacts
Figure 4b South Area Groundwater Impacts

*Note that these figures are continually updated to reflect ongoing field investigations. A copy of the most current figures can be obtained from the Benesch Project Manager.*
<table>
<thead>
<tr>
<th>Type of Activity</th>
<th>Description</th>
<th>Typical Examples and Effects</th>
</tr>
</thead>
</table>
| Fill              | Fill is defined as any organic or inorganic material that is placed in a wetland or waterway. | • Temporary construction access roads  
• Stockpiling of construction material and or debris  
• Demolition  
• Construction pads for boring or other work  
• Trench side cast material  
• Work bridge or temporary detour structure piling  
• Highway improvements—shoulder widening, additional lanes, guardrail flares, etc. |
| Removal           | Removal is defined as any organic or inorganic material that is removed from a wetland or waterway. | • Exploratory sampling or boring  
• Surface grading to create construction 'pad' or flat work area  
• Temporary trenching  
• Ditch cleaning where not exempt |
| Clearing / Grubbing | Clearing and grubbing involves the removal of vegetation and the top layer of soil to remove part of the roots. | • Sub-grade preparation  
• Abutment construction  
• Road bank re-contouring |
| Vegetation Clearing | To claim vegetation disturbance without soil disturbance the activity must involve cutting trees and shrubs off at their base, plucking them up, placing the debris in a truck and hauling it off. | • Creation of a roadway clear-zone |
| Hydrologic Changes | Changes that the project causes that affect the hydrology of the wetland or waterway | • Impeding or restricting the passage of normal or expected high flows  
• Stormwater treatment or drainage design that effectively alters wetland hydrology  
• Causing flooding or erosion downstream of the project  
• Draining an adjacent wetland by trenching/ditching/excavating |

2 According to the U.S. Army Corps of Engineers, piling is considered a structure and the placement of piling in a wetland or waterway does not require a permit under Section 404 of the Clean Water Act, which regulates the discharge of fill material. The placement of piling may be regulated under Section 10 of the Rivers and Harbors Act, which applies to tidally influenced and navigable waterways.
Table 2
Common Avoidance Measures

<table>
<thead>
<tr>
<th>Construction and Design Elements</th>
<th>Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reducing the Build Footprint</td>
<td>The use walls instead of fill slopes near wetlands and waterways should be considered if feasible and sustainable (i.e., will protect wetland functions with little maintenance). Walls are usually more costly than fill but the cost of mitigation should be weighed against the cost of fill.</td>
</tr>
<tr>
<td>Road Placement</td>
<td>Designing the placement of roadways to avoid wetlands and waterways is often not feasible; however slight shifts in alignment can often avoid and or minimize impacts to wetlands and waterways.</td>
</tr>
<tr>
<td>Temporary Roads and Access</td>
<td>Consider construction staging to avoid impacts where necessary and safety allows. Place staging areas, temporary access roads, or storage areas outside of wetlands and waterways. The wetlands and waterways will be demarcated on the plans sheets as well as in the field as no work zones to avoid incidental impacts. If temporary access to piers or girders on a bridge is needed, evaluate the feasibility of conducting the work using scaffolding hanging from the topside of the bridge or limiting equipment access to the bank above ordinary high watermark.</td>
</tr>
<tr>
<td>Stormwater Facilities</td>
<td>Avoid constructing storm water facilities in wetlands. Other locations or designs for stormwater facilities should be reviewed to determine that no other practicable alternative to locating them within a wetland exists.</td>
</tr>
<tr>
<td>Temporary Stockpiling of Materials</td>
<td>Avoid temporarily stockpiling construction material in wetlands. Suitable staging and stockpile areas are usually available. If absolutely necessary, follow minimization techniques for temporary fill described in Table 3.</td>
</tr>
</tbody>
</table>
Table 3  
Minimization Measures

<table>
<thead>
<tr>
<th>Design and Construction Elements</th>
<th>Minimization Measure(s)</th>
</tr>
</thead>
</table>
| **Temporary Fill for access roads, staging, other.** | Can compact soil and also be difficult to remove after use (e.g., individual pieces of gravel sink into the soil substrate.  
Fill material removal can be made easier by using geotextile fabric in combination with either chain link fencing (placed below the geotextile fabric), or a geogrid (placed on top of geotextile fabric). Fill material is then placed on the top of these materials. When construction is complete fill is removed in lifts until a small amount remains to allow the sub material to be pulled up without ripping or breaking.  
The use of large 'balloon' tires on trucks and other equipment can help prevent soil compaction. |
| **Construction Near Wetlands** | If not properly demarcated construction impacts can “spread” into wetlands intended for avoidance.  
To minimize impacts clearly identify wetlands on plan sheets and demarcate on the ground using orange construction fencing and or silt fencing. |
| **Construction Pads** | Consider the use of crane mats, which are easily removed upon project completion with little mess (see photo). |
| **Side cast material** | Side cast material placed in wetlands should be replaced in the trench in the same order removed (i.e. topsoil segregation) to ensure the integrity of the soil is maintained and wetland impacts where the trench is located are minimized. |
| **Sampling or Boring** | Limit access to the wetland by sampling the edges instead of driving through the middle. If access is necessary it should be timed when the area is dry. |
| **Temporary Trenching** | Temporary impacts can become permanent if the trench is not adequately backfilled to prevent draining the adjacent wetland. Consider using clay plugs in the trench if the trench has the potential to “dewater” a wetland. Monitor area for changes. |
| **Clearing / Grubbing and Vegetation Clearing** | Limits of construction should be clearly shown on plans and identified on the ground.  
Wetlands should not be grubbed unless necessary or where they will be permanently impacted.  
If appropriate re-vegetate cleared and grubbed areas. |
| **Hydrologic Changes** | Implement erosion control measures and manage construction storm water to avoid sedimentation in wetlands.  
Place permeable fill material or install small culverts to maintain connectivity between wetlands.  
New stormwater facilities should use infiltration or avoid redirection from or to an existing wetland or waterway. |
ATTACHMENT 1
## Preliminary Chemicals of Potential Concern

<table>
<thead>
<tr>
<th>ALTER PCOPCs</th>
<th>BNSF PCOPCs</th>
<th>JAYLYNN PCOPCs</th>
<th>LINCOLN DEPOT PCOPCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-Butanone (MEK)</td>
<td>1-Methylnaphthalene</td>
<td>1,1,2-Trichloroethane</td>
<td>1,3,5-Trimethylbenzene</td>
</tr>
<tr>
<td>Azochlor 1248</td>
<td>2-Methylnaphthalene</td>
<td>2-Methylnaphthalene</td>
<td>Benzene</td>
</tr>
<tr>
<td>Azochlor 1260</td>
<td>4-Methyl-2-pentanone</td>
<td>4-Chloroanilin</td>
<td>Benz(a)anthracene</td>
</tr>
<tr>
<td>Arsenic</td>
<td>Acenaphthene</td>
<td>Acenaphthene</td>
<td>Benz(a)pyrene</td>
</tr>
<tr>
<td>Barium</td>
<td>Acenaphthylene</td>
<td>Acenaphthylene</td>
<td>Benz(a)anthracene</td>
</tr>
<tr>
<td>Benzene</td>
<td>Ace tone</td>
<td>Acetone</td>
<td>Benz(a)pyrene</td>
</tr>
<tr>
<td>Cadmium</td>
<td>Anthracene</td>
<td>Anthracene</td>
<td>Benzo(b)fluoranthene</td>
</tr>
<tr>
<td>Chromium</td>
<td>Arsenic</td>
<td>Arsenic</td>
<td>Benzo(g,h,i)perylene</td>
</tr>
<tr>
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<td>Barium</td>
<td>Azobenzene</td>
<td>Benzene</td>
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<td>Benzene</td>
<td>Barium</td>
<td>Cadmium</td>
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<td>Benzo(a)anthracene</td>
<td>Carbon disulfide</td>
</tr>
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<td>Benzo(a)anthracene</td>
<td>Chromium</td>
</tr>
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<td>Silver</td>
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<td>Benzo(a)pyrene</td>
<td>Chrysene</td>
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<tr>
<td>Toluene</td>
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<td>Benzo(b)fluoranthene</td>
<td>Dibenzofuran</td>
</tr>
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<td>Benzo(k)fluoranthene</td>
<td>Dibenzofuran</td>
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<tr>
<td></td>
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<td>Indeno(1,2,3-cd)pyrene</td>
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<tr>
<td></td>
<td>Cadmium</td>
<td>Carbazole</td>
<td>Isopropy benzene</td>
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<td>Carbazole</td>
<td>Carbon disulfide</td>
<td>Lead</td>
</tr>
<tr>
<td></td>
<td>Chloroform</td>
<td>Chromium</td>
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<td>Dibenzofuran</td>
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<td>Hexane</td>
<td>TEH (Diesel)</td>
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<td>Isopropy benzene</td>
<td>Indeno(1,2,3-cd)pyrene</td>
<td>TEH (Motor Oil)</td>
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<td>Xylenes, total</td>
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<tr>
<td></td>
<td>TEH (Diesel)</td>
<td>Xylenes, total</td>
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</tr>
</tbody>
</table>
**1,1,2-TRICHLOROETHANE**

What is 1,1,2-trichloroethane?

1,1,2-Trichloroethane is a colorless, sweet-smelling liquid. It does not burn easily, can be dissolved in water, and evaporates easily. It is used as a solvent (a chemical that dissolves other substances) and as an intermediate in the production of the chemical, 1,1-dichloroethane. 1,1,2-Trichloroethane is sometimes present as an impurity in other chemicals, and it may be formed when another chemical breaks down in the environment under conditions where there is no air.

What happens to 1,1,2-trichloroethane when it enters the environment?

- Most 1,1,2-trichloroethane released into the environment will go into the air.
- 1,1,2-Trichloroethane breaks down slowly in air; it takes approximately 49 days for half of it to break down.
- 1,1,2-Trichloroethane may enter the groundwater by filtering through the soil.
- It appears to stay in water for a long time; it takes years for it to break down.

**1,2-DICHLOROETHANE**

What is 1,2-dichloroethane?

1,2-Dichloroethane, also called ethylene dichloride, is a manufactured chemical that is not found naturally in the environment. It is a clear liquid and has a pleasant smell and sweet taste. The most common use of 1,2-dichloroethane is in the production of vinyl chloride which is used to make a variety of plastic and vinyl products including polyvinyl chloride (PVC) pipes, furniture and automobile upholstery, wall coverings, house wares, and automobile parts. It is also used as a solvent and is added to leaded gasoline to remove lead.

What happens to 1,2-dichloroethane when it enters the environment?

- Most of the 1,2-dichloroethane released to the environment is released to the air. In the air, 1,2-dichloroethane breaks down by reacting with other compounds formed by sunlight. It can stay in the air for more than 5 months before it is broken down.
- 1,2-Dichloroethane can also be released into rivers and lakes. It breaks down very slowly in water and most of it will evaporate to the air.
1,2-DICHLOROETHENE

What is 1,2-dichloroethene?
1,2-Dichloroethene, also called 1,2-dichloroethylene, is a highly flammable, colorless liquid with a sharp, harsh odor. It is used to produce solvents and in chemical mixtures. You can smell very small amounts of 1,2-dichloroethene in air (about 17 parts of 1,2-dichloroethene per million parts of air [17 ppm]). There are two forms of 1,2-dichloroethene; one is called cis-1,2-dichloroethene and the other is called trans-1,2-dichloroethene. Sometimes both forms are present as a mixture.

What happens to 1,2-dichloroethene when it enters the environment?
- 1,2-Dichloroethene evaporates rapidly into air.
- In the air, it takes about 5-12 days for half of it to break down.
- Most 1,2-dichloroethene in the soil surface or bodies of water will evaporate into air.
- 1,2-Dichloroethene can travel through soil or dissolve in water in the soil. It is possible that it can contaminate groundwater.
- In groundwater, it takes about 13-48 weeks to break down.
- There is a slight chance that 1,2-dichloroethene will break down into vinyl chloride, a different chemical which is believed to be more toxic than 1,2-dichloroethene.

1,2-DICHLOROPROPANE

What is 1,2-dichloropropane?
1,2-Dichloropropane is a colorless, flammable liquid with a chloroform-like odor. It is moderately soluble in water and readily evaporates into air. It does not occur naturally in the environment. 1,2-Dichloropropane production in the United States has declined over the past 20 years. It was used in the past as a soil fumigant, chemical intermediate, and industrial solvent and was found in paint strippers, varnishes, and furniture finish removers. Most of these uses were discontinued. Today, almost all of the 1,2-dichloropropane is used as a chemical intermediate to make perchloroethylene and several other related chlorinated chemicals.

What happens to 1,2-dichloropropane when it enters the environment?
- 1,2-Dichloropropane released to air can spread to areas far from where it was released because it is not rapidly broken down by reactions with other chemicals and sunlight.
- Most of the 1,2-dichloropropane in water will evaporate to the air.
- When released to soil, it is not easily broken down by bacteria, but will easily evaporate to the air and filter into the groundwater.
1,2-Dichloropropane does not build up in the food chain.

**SILVER**

What is silver?

Silver is a naturally occurring element. It is found in the environment combined with other elements such as sulfide, chloride, and nitrate. Pure silver is "silver" colored, but silver nitrate and silver chloride are powdery white and silver sulfide and silver oxide are dark-gray to black. Silver is often found as a by-product during the retrieval of copper, lead, zinc, and gold ores. Silver is used to make jewelry, silverware, electronic equipment, and dental fillings. It is also used to make photographs, in brazing alloys and solders, to disinfect drinking water and water in swimming pools, and as an antibacterial agent. Silver has also been used in lozenges and chewing gum to help people stop smoking.

What happens to silver when it enters the environment?

- Silver may be released into the air and water through natural processes such as the weathering of rocks.
- Human activities such as the processing of ores, cement manufacture, and the burning of fossil fuel may release silver into the air.
- It may be released into water from photographic processing.
- Rain may wash silver out of soil into the groundwater.
- Silver does not appear to concentrate to a significant extent in aquatic animals.

**ARSENIC**

Arsenic is a metalloid

- Arsenic is ordinarily a steel gray metal-like material that occurs naturally.
- Arsenic compounds can be categorized as inorganic or organic.
- Inorganic arsenic is primarily used as a preservative for wood to make it resistant to rotting and decay. In 2003, the use of arsenic-containing wood preservatives was phased out for certain residential uses such as play structures, picnic tables, decks, fencing, and boardwalks. Arsenic wood preservatives are still used in industrial applications.
- Inorganic arsenic occurs naturally in soil and in many kinds of rock, especially in minerals and ores that contain copper or lead.
Elemental arsenic is used as an alloying element in ammunition and solders, as an anti-friction additive to metals used for bearings, and to strengthen lead-acid storage battery grids.

In the past, inorganic arsenic compounds were used as pesticides; this use is no longer permitted.

MMA is used for weed control on cotton turf grass and lawns and under trees, vines, and shrubs. DMA, also referred to as cacodylic acid, is used for weed control under nonbearing citrus trees, around buildings and sidewalks, and for lawn renovation.

Arsenic in the Environment

- Arsenic cannot be destroyed in the environment. It can only change its form or become attached to or separated from particles.
- Arsenic attached to very small particles may stay in the air for many days and travel long distances.
- Arsenic in soil may be transported by wind or in runoff or may leach into the subsurface soil. Arsenic is largely immobile in agricultural soils, therefore, it tends to concentrate and remain in upper soil layers indefinitely.
- Transport and partitioning of arsenic in water depends upon the chemical form. Soluble forms move with the water and may be carried long distances. Arsenic may be adsorbed from water onto sediments or soils.

BARIUM

Barium is an alkaline earth metal

- Barium is a silvery-white metal that primarily occurs in nature as barite (barium sulfate) and witherite (barium carbonate) ores.
- Barium compounds are solids, existing as powder or crystals.

Barium in the Environment

- Barium enters the environment naturally through the weathering of rocks and minerals. Anthropogenic releases are primarily associated with industrial processes.
- In the atmosphere, barium is likely to present in particulate form and is primarily removed by wet and dry deposition.
- In aquatic media, barium is likely to precipitate out of solution as an insoluble salt.
• Barium is not very mobile in most soil systems due to the formation of water-insoluble salts and the inability of barium to form soluble complexes with fulvic and humic acids.
• Barium has the potential to bio-concentrate in marine animals and plants and in some terrestrial plants such as legumes, forage plants, Brazil nuts, and mushrooms.

BENZENE

Benzene is a colorless liquid
• Benzene, also known as benzol, has a sweet odor.
• Benzene is highly flammable.
• Benzene is made mostly from petroleum sources. Various industries use benzene to make other chemicals, such as styrene (for Styrofoam® and other plastics), cumene (for various resins), and cyclohexane (for nylon and synthetic fibers).
• Benzene is also used for the manufacturing of some types of rubbers, lubricants, dyes, detergents, drugs, and pesticides.
• Benzene is also a natural component of crude oil, gasoline and cigarette smoke.

Benzene in the Environment
• Benzene enters the air, water, and soil as a result of industrial processes, emissions from burning coal and oil, tobacco smoke, gasoline exhaust and gasoline leaks, and from natural sources including volcanoes and forest fires.
• Benzene in the atmosphere chemically degrades in only a few days.
• Benzene released to soil or waterways is subject to volatilization, photooxidation, and biodegradation.

CARBON DISULFIDE

What is carbon disulfide?
Pure carbon disulfide is a colorless liquid with a pleasant odor that is like the smell of chloroform. The impure carbon disulfide that is usually used in most industrial processes is a yellowish liquid with an unpleasant odor, like that of rotting radishes. Carbon disulfide evaporates at room temperature, and the vapor is more than twice as heavy as air. It easily explodes in air and also catches fire very easily. In nature, small amounts of carbon disulfide are found in gases released to the earth's surface as, for example, in volcanic eruptions or over marshes. Commercial carbon disulfide is made by combining carbon and sulfur at very high temperatures.
What happens to carbon disulfide when it enters the environment?

- The amount of carbon disulfide released into the air through natural processes is difficult to judge because it is so small.
- Carbon disulfide evaporates rapidly when released to the environment.
- Most carbon disulfide in the air and surface water is from manufacturing and processing activities.
- It is found naturally in coastal and ocean waters.
- Carbon disulfide does not stay dissolved in water very long, and it also moves through soils fairly quickly.
- Carbon disulfide does not appear to be taken up in significant amounts by the organisms living in water.

**CADMIUM**

What is cadmium?

Cadmium is a natural element in the earth's crust. It is usually found as a mineral combined with other elements such as oxygen (cadmium oxide), chlorine (cadmium chloride), or sulfur (cadmium sulfate, cadmium sulfide). All soils and rocks, including coal and mineral fertilizers, contain some cadmium. Most cadmium used in the United States is extracted during the production of other metals like zinc, lead, and copper. Cadmium does not corrode easily and has many uses, including batteries, pigments, metal coatings, and plastics.

What happens to cadmium when it enters the environment?

- Cadmium enters soil, water, and air from mining, industry, and burning coal and household wastes.
- Cadmium does not break down in the environment, but can change forms.
- Cadmium particles in air can travel long distances before falling to the ground or water.
- Some forms of cadmium dissolve in water.
- Cadmium binds strongly to soil particles.
- Fish, plants, and animals take up cadmium from the environment.

**CHROMIUM**

What is chromium?

Chromium is a naturally occurring element found in rocks, animals, plants, and soil. It can exist in several different forms. Depending on the form it takes, it can be a liquid, solid, or gas.
most common forms are chromium(0), chromium(III), and chromium(VI). No taste or odor is associated with chromium compounds. The metal chromium, which is the chromium(0) form, is used for making steel. Chromium(VI) and chromium(III) are used for chrome plating, dyes and pigments, leather tanning, and wood preserving.

What happens to chromium when it enters the environment?

- Chromium can be found in air, soil, and water after release from the manufacture, use, and disposal of chromium-based products, and during the manufacturing process.
- Chromium does not usually remain in the atmosphere, but is deposited into the soil and water.
- Chromium can easily change from one form to another in water and soil, depending on the conditions present.
- Fish do not accumulate much chromium in their bodies from water.

**DI-n-BUTYL PHTHALATE**

What is di-n-butyl phthalate?

Di-n-butyl phthalate is a manufactured chemical that does not occur naturally. It is an odorless and oily liquid that is colorless to faint yellow in color. It is slightly soluble in water and does not evaporate easily. Di-n-butyl phthalate is used to make plastics more flexible and is also in carpet backings, paints, glue, insect repellents, hair spray, nail polish, and rocket fuel.

What happens to di-n-butyl phthalate when it enters the environment?

- Di-n-butyl phthalate is released to air as a vapor. It can react with other chemicals in the air and is usually broken down within a few days. Di-n-butyl phthalate can also attach to particles in the air and eventually settle to the land and water.
- Most of the di-n-butyl phthalate in water attaches to sediment and settles out of the water or is broken down by bacteria. Small amounts may evaporate to the air.
- When released to the soil, it attaches to soil particles and is broken down by bacteria.
- There is no evidence that it builds up in the food chain.

**DIETHYL PHTHALATE**

What is diethyl phthalate?

Diethyl phthalate is a colorless liquid that has a bitter, disagreeable taste. This synthetic substance is commonly used to make plastics more flexible. Products in which it is found include toothbrushes, automobile parts, tools, toys, and food packaging. Diethyl phthalate can
be released fairly easily from these products, as it is not part of the chain of chemicals (polymers) that makes up the plastic. Diethyl phthalate is also used in cosmetics, insecticides, and aspirin.

**What happens to diethyl phthalate when it enters the environment?**
- Diethyl phthalate has been found in waste sites and landfills from discarded plastics.
- It may break down in the air.
- It can become attached to particles of dust in the air, and can settle out.
- It is broken down to harmless products by microorganisms in soil and water.
- Small amounts of it can build up in fish and shellfish living in water containing it.

**ETHYLBENZENE**

*Ethylbenzene is a liquid*
- Ethylbenzene is a colorless liquid with an aromatic odor.
- Ethylbenzene is flammable and combustible.
- It is naturally found in crude petroleum.
- It is a high production volume chemical primarily used for the production of styrene.

**Ethylbenzene in the Environment**
- Ethylbenzene partitions primarily to air and removal via photochemically generated hydroxyl radicals is an important degradation mechanism.
- The half-life in air is approximately 1-2 days.
- In surface water, most of the ethylbenzene will evaporate. The remaining ethylbenzene is broken down through photooxidation and biodegradation.
- Ethylbenzene is moderately mobile in soil.
- Ethylbenzene does not appear to bioconcentrate in aquatic food chains

**MERCURY**

*What is mercury?*
Mercury is a naturally occurring metal which has several forms. The metallic mercury is a shiny, silver-white, odorless liquid. If heated, it is a colorless, odorless gas. Mercury combines with other elements, such as chlorine, sulfur, or oxygen, to form inorganic mercury compounds or "salts," which are usually white powders or crystals. Mercury also combines with carbon to make organic mercury compounds. The most common one, methylmercury, is produced mainly by
microscopic organisms in the water and soil. More mercury in the environment can increase the amounts of methylmercury that these small organisms make. Metallic mercury is used to produce chlorine gas and caustic soda, and is also used in thermometers, dental fillings, and batteries. Mercury salts are sometimes used in skin lightening creams and as antiseptic creams and ointments.

What happens to mercury when it enters the environment?

- Inorganic mercury (metallic mercury and inorganic mercury compounds) enters the air from mining ore deposits, burning coal and waste, and from manufacturing plants.
- It enters the water or soil from natural deposits, disposal of wastes, and volcanic activity.
- Methylmercury may be formed in water and soil by small organisms called bacteria.
- Methylmercury builds up in the tissues of fish. Larger and older fish tend to have the highest levels of mercury.

**METHYL TERT-BUTYL ETHER**

What is methyl tert-butyl ether?

Methyl tert-butyl ether (MTBE) is a flammable liquid with a distinctive, disagreeable odor. It is made from blending chemicals such as isobutylene and methanol, and has been used since the 1980s as an additive for unleaded gasoline to achieve more efficient burning. MTBE is also used to dissolve gallstones. Patients treated in this way have MTBE delivered directly to their gall bladders through special tubes that are surgically inserted.

What happens to MTBE when it enters the environment?

- MTBE quickly evaporates from open containers and surface water, so it is commonly found as a vapor in the air.
- Small amounts of MTBE may dissolve in water and get into groundwater.
- It remains in underground water for a long time.
- MTBE may stick to particles in water, which will cause it to eventually settle to the bottom sediment.
- MTBE may be broken down quickly in the air by sunlight.
- MTBE does not build up significantly in plants and animals.
POLYCYCLIC AROMATIC HYDROCARBONS (PAHs)

What are polycyclic aromatic hydrocarbons?
Polycyclic aromatic hydrocarbons (PAHs) are a group of over 100 different chemicals that are formed during the incomplete burning of coal, oil and gas, garbage, or other organic substances like tobacco or charbroiled meat. PAHs are usually found as a mixture containing two or more of these compounds, such as soot. Some PAHs are manufactured. These pure PAHs usually exist as colorless, white, or pale yellow-green solids. PAHs are found in coal tar, crude oil, creosote, and roofing tar, but a few are used in medicines or to make dyes, plastics, and pesticides.

What happens to PAHs when they enter the environment?
- PAHs enter the air mostly as releases from volcanoes, forest fires, burning coal, and automobile exhaust.
- PAHs can occur in air attached to dust particles.
- Some PAH particles can readily evaporate into the air from soil or surface waters.
- PAHs can break down by reacting with sunlight and other chemicals in the air, over a period of days to weeks.
- PAHs enter water through discharges from industrial and wastewater treatment plants.
- Most PAHs do not dissolve easily in water. They stick to solid particles and settle to the bottoms of lakes or rivers.
- Microorganisms can break down PAHs in soil or water after a period of weeks to months.
- In soils, PAHs are most likely to stick tightly to particles; certain PAHs move through soil to contaminate underground water.
- PAH contents of plants and animals may be much higher than PAH contents of soil or water in which they live.

LEAD

Lead is a metal
- Lead is a naturally-occurring bluish-gray metal that is rarely found in its elemental form, but occurs in the Earth's crust primarily as the mineral galena (PbS), and to a lesser extent as anglesite (PbSO₄) and cerussite (PbCO₃).
- Lead is not a particularly abundant element, but its ore deposits are readily accessible and widely distributed throughout the world. Its properties, such as corrosion resistance,
density, and low melting point, make it a familiar metal in pipes, solder, weights, and storage batteries.

- Natural lead is a mixture of four stable isotopes, $^{206}\text{Pb}$ (51–53%), $^{208}\text{Pb}$ (23.5–27%), $^{207}\text{Pb}$ (20.5–23%), and $^{204}\text{Pb}$ (1.35–1.5%). Lead isotopes are the stable decay product of three naturally radioactive elements: $^{205}\text{Pb}$ from uranium, $^{207}\text{Pb}$ from actinium, and $^{206}\text{Pb}$ from thorium.

**Lead in the Environment**

- Lead is dispersed throughout the environment primarily as the result of anthropogenic activities. In the air, lead is in the form of particles and is removed by rain or gravitational settling.
- The fate of lead in soil is affected by the adsorption at mineral interfaces, which are dependent upon physical and chemical characteristics of the soil (e.g., pH, soil type, particle size, organic matter content).
- Sources of lead in dust and soil can include lead from weathering and chipping of lead-based paint from buildings, bridges, and other structures.
- The solubility of lead compounds in water is a function of pH, hardness, salinity, and the presence of humic material. Solubility is highest in soft, acidic water.

**PHENOL**

What is phenol?

Phenol is both a manufactured chemical and a natural substance. It is a colorless-to-white solid when pure. The commercial product is a liquid. Phenol has a distinct odor that is sickeningly sweet and tarry. You can taste and smell phenol at levels lower than those that are associated with harmful effects. Phenol evaporates more slowly than water, and a moderate amount can form a solution with water. Phenol is used primarily in the production of phenolic resins and in the manufacture of nylon and other synthetic fibers. It is also used in slimicides (chemicals that kill bacteria and fungi in slimes), as a disinfectant and antiseptic, and in medicinal preparations such as mouthwash and sore throat lozenges.

What happens to phenol when it enters the environment?

- Following small, single releases, phenol is rapidly removed from the air (generally, half is removed in less than a day).
- Phenol generally remains in the soil only about 2 to 5 days.
• Phenol can remain in water for a week or more.
• Larger or repeated releases of phenol can remain in the air, water, and soil for much longer periods of time.
• Phenol does not build up in fish, other animals, or plants.

SELENIUM
What is selenium?
Selenium is a naturally occurring mineral element that is distributed widely in nature in most rocks and soils. In its pure form, it exists as metallic gray to black hexagonal crystals, but in nature it is usually combined with sulfide or with silver, copper, lead, and nickel minerals. Most processed selenium is used in the electronics industry, but it is also used: as a nutritional supplement; in the glass industry; as a component of pigments in plastics, paints, enamels, inks, and rubber; in the preparation of pharmaceuticals; as a nutritional feed additive for poultry and livestock; in pesticide formulations; in rubber production; as an ingredient in antidandruff shampoos; and as a constituent of fungicides. Radioactive selenium is used in diagnostic medicine.

What happens to selenium when it enters the environment?
• Selenium occurs naturally in the environment and can be released by both natural and manufacturing processes.
• Selenium dust can enter the air from burning coal and oil. This selenium dust will eventually settle over the land and water.
• It also enters water from natural deposits in rocks and soil, and from agricultural and industrial waste. Some selenium compounds will dissolve in water, and some will settle to the bottom as particles.
• Insoluble forms of selenium will remain in soil, but soluble forms are very mobile and may enter surface water from soils.
• Selenium may accumulate up the food chain.

STYRENE
What is styrene?
Styrene is a colorless liquid that evaporates easily and has a sweet smell. It often contains other chemicals that give it a sharp, unpleasant smell. Styrene is widely used to make plastics and rubber. Products containing styrene include insulation, fiberglass, plastic pipes, automobile parts, shoes, drinking cups and other food containers, and carpet backing. Most of these
products contain styrene linked together in a long chain (polystyrene) as well as unlinked styrene. Low levels of styrene also occur naturally in a variety of foods such as fruits, vegetables, nuts, beverages, and meats. In addition, small amounts of styrene can be transferred to food from styrene-based packaging material.

**What happens to styrene when it enters the environment?**

- Styrene can be found in air, water, and soil after release from the manufacture, use, and disposal of styrene-based products.
- It is quickly broken down in the air, usually within 1 to 2 days.
- Styrene evaporates from shallow soils and surface water. Styrene that remains in soil or water may be broken down by bacteria or other microorganisms.
- Styrene is not expected to build up in animals.

**XYLENES**

**Xylene is a colorless liquid**

- Xylene is a colorless, flammable liquid with a somewhat sweet odor.
- Xylene evaporates and burns easily.
- Xylenes (mixtures of ortho-, meta-, and para-isomers) are used as industrial solvents, synthetic intermediates, and solvents in commercial products such as paints, coatings, adhesive removers, and paint thinners; they are also a component of gasoline.
- Xylene occurs naturally in petroleum and coal tar and is formed during forest fires.

**Xylene in the Environment**

- Xylene released to the atmosphere is quickly transformed by photooxidation with a half-life of approximately 8–14 hours.
- When released to soil or surface water, xylene volatilizes into the atmosphere, where it is quickly degraded.
- Xylene that does not volatilize quickly may undergo biodegradation in the soil or water.
- Xylene may also leach into groundwater, where degradation by microbes becomes the primary removal process.
ATTACHMENT 2
WEST HAYMARKET REDEVELOPMENT SITE

ENVIRONMENTAL CONTINGENCY PLAN

WORK ACTIVITY:

PROJECT MANAGER/CONTRACTOR’S REPRESENTATIVE:

DATES OF CONSTRUCTION:

ATTACHMENTS (LIST):

SPECIAL PRECAUTIONS:

CERTIFICATION

By signing this certification, I acknowledge on behalf of ______________________ (organization) that I have received a copy of the WHRS ECP, understand the obligations and procedures relevant to my organization’s planned work activity and agree to abide by any and all special precautions described above. Deviations to planned work activities and special precautions will be coordinated with the City of Lincoln’s Environmental Project Management Team’s Technical Representative (TR).

Organizational Representative

(Print Name and Title): ____________________________________________________________

Signature/Date: ____________________________

EPMT TR:

Signature/Date: ____________________________
WEST HAYMARKET REDEVELOPMENT SITE

ENVIRONMENTAL CONTINGENCY PLAN

WORK ACTIVITY:

PROJECT MANAGER/CONTRACTOR'S REPRESENTATIVE:

DATE OF ECP-1 AND ANY SUPPLEMENTS:

ATTACHMENTS (LIST) INCLUDING ANY PHOTO LOG:

OBSERVATION(S):

CORRECTIVE ACTION(S):

______________________________
EPMT TR:

______________________________
Signature/Date:
ATTACHMENT 3
Soil Management Guidance

On-Site Utilities, Grading Work, and Geotechnical Boring Soil:
- Generation of spoils is not considered active management, can be replaced in the excavation/hole
- Excess spoils should be containerized, or if stockpiled, an Area of Contamination (AOC) designation should be requested (use of plastic sheeting not acceptable)
- Soil must be sampled either “as generated” with reasonable sampling frequency OR pre-characterized with densely-spaced horizontal and vertical in-situ sampling
- Soil must be tested before taken off-site using either the TCLP method OR a totals analysis with moisture content (100% dry solids if 20 to 1 rule used)
  - Visual/olfactory evidence alone cannot be used
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

On-Site Unsuitable Geotechnical Material Soil:
- Excess spoils should be containerized, or if stockpiled, an Area of Contamination (AOC) designation should be requested (use of plastic sheeting not acceptable)
- Soil must be sampled either “as generated” with reasonable sampling frequency OR pre-characterized with densely-spaced horizontal and vertical in-situ sampling
- Soil must be tested before taken off-site using either the TCLP method OR a totals analysis with moisture content (100% dry solids if 20 to 1 rule used)
  - Visual/olfactory evidence alone cannot be used
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

On-Site Investigation Derived Waste and Remediation Waste Soil:
- Must be containerized and tested
- Soil must be sampled either “as generated” with reasonable sampling frequency OR pre-characterized with densely-spaced horizontal and vertical in-situ sampling OR based on collected environmental sample from groundwater or soil (soil sample must be representative of entire soil boring column)
- Soil must be tested before taken off-site using either the TCLP method OR a totals analysis with moisture content (100% dry solids if 20 to 1 rule used)
  - Visual/olfactory evidence alone cannot be used
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment

Off-Site Utilities and Road Construction Soil:
- Generation of spoils is not considered active management, can be replaced in the excavation/hole
- Stockpiling of excess spoils and use of visual/olfactory evidence for soil characterization is acceptable unless there is knowledge of contamination in the area, then sampling must be done as described above for on-site utilities work
  - This knowledge may be acquired by conducting a records search of the Nebraska Department of Environmental Quality files
- If contamination is encountered during construction, the contaminated soil must be managed as described above for on-site utilities work
- Soil to be used as fill must be tested and contain contaminants at levels less than those listed on the Voluntary Cleanup Program Lookup Tables, or otherwise demonstrate that use of fill would be protective of human health and the environment
SPECIAL WASTE DISPOSAL PERMIT

Lincoln-Lancaster County Health Department
Special Waste Program
3140 N Street
Lincoln, Nebraska 68510
(402) 441-8021

18355-001-8C
JOINT PUBLIC AGENCY-HAYMARKET ARENA
555 S 10TH ST
ROOM 111
LINCOLN, NE 68508

The following permits are granted for the disposal of Special Waste at the sites shown below. These permits were issued based on the waste description information provided on the permit application. Any substantial change in the nature of the waste from that described in the permit application, will invalidate the permit. Failure to comply with the General Permit Conditions or special conditions described on this permit will invalidate the permit.

PERMIT NUMBER: 10-18355-001-10-09  HAULER: NO DESIGNATED HAULER
WASTE TYPE: 10  PETROLEUM CONTAMINATED REFUSE (A. FILTERS, B. SHOP RAGS, C. SOIL, D. ABSORBENTS, OR E. OTHER MATERIAL)
WASTE DESCRIPTION: SOIL FROM EAST-CENTRAL (FUEL DEPOT) & WEST GRADING AREA
DISPOSAL SITE: BLUFF ROAD LANDFILL ONLY
SPECIAL CONDITIONS: *** PETROLEUM-CONTAMINATED SOIL GENERATED AT THE FUEL RELEASE SITE NEAR THE EAST-CENTRAL AREA NEAR THE FORMER FUELING STATION. SOIL MAY ALSO BE GENERATED FROM OTHER AREAS (DETAILED MAP ON FILE AT LLCHD).

THIS PERMIT EXCLUDES CONTAMINATED SOILS THAT MAY BE ENCOUNTERED AT THE FORMER ROUNDHOUSE AND THE FORMER UPRR TURNTABLE. ***

*** PLEASE NOTE THE FOLLOWING INFORMATION CONCERNING YOUR PERMIT ***
WASTE DISPOSED UNDER THIS PERMIT IS TO BE DIRECTED TO BLUFF ROAD LANDFILL ONLY!
PERMIT VALID FOR THE WASTE TYPE AND SOURCE LOCATION DESCRIBED ABOVE ONLY. PERMIT DOES NOT AUTHORIZE DISPOSAL OF HAZARDOUS WASTE. GENERATOR IS RESPONSIBLE FOR DETERMINING IF WASTE IS HAZARDOUS. ALL LOADS SUBJECT TO INSPECTION.
WASTE IN THIS CATEGORY MAY NOT CONTAIN "FREE PETROLEUM PRODUCT" OR OTHER LIQUIDS.
PLEASE CONTACT TINA BAKER AT THE LANDFILL AT 441-8102 BEFORE INITIATING THE FIRST LOADS OF WASTE TO DISCUSS QUANTITIES AND TIME SCHEDULES OF DELIVERY.
A COPY OF THIS PERMIT MUST ACCOMPANY ALL LOADS.
ALL LOADS TRAVERSING LANCASTER COUNTY ROADS AND/OR ENTERING THE LANDFILL MUST BE COVERED/TARPED.
RE: Dewatering Authorization Restrictions Under General National Pollutant Discharge Elimination System (NPDES) NEG671000 for Lincoln Haymarket/Arena Construction
(Area bounded by 2nd Street, Salt Creek Street, 8th Street, and J Street, Lincoln, NE)

Dear Mr. Blahak,

This letter provides requirements for continued authorization under the Department of Environmental Quality's General NPDES Permit for Construction Dewatering (NEG671000). Due to the known pollutants present in groundwater and soils in this area, additional restrictions will be required in order to protect surface water.

The general permit cannot authorize discharge that in accordance with Part I. C of the permit may create potential water quality impacts on the receiving stream. In addition, in accordance with Part IV.B, the permit prohibits toxic discharges. Known toxins have been determined to be present on this site, and therefore, unless there is further analysis of the dewatering water, it cannot be authorized by this permit to discharge. In order to determine whether or not an authorized discharge can take place, the water must be analyzed prior to discharge. Therefore, to continue authorization under NPDES General Permit NEG67100, all work requiring dewatering discharges must:

1. Containerize the dewatering water.
2. Test each container for the constituents found in Table 1, 2, and 3.
3. Test results must be completed and compared to maximum discharge levels found in Table 1, 2, and 3.
4. If all test results are below maximum discharge levels found in Table 1, 2, and 3 discharge authorization is continued under the NPDES General Permit NEG671000. All other terms and conditions of the permit continue to apply.
5. If any test result is above maximum discharge levels found in Table 1, 2, and 3, the discharge is no longer authorized under the NPDES General Permit NEG671000 and is prohibited from direct discharge. Alternate disposition and/or treatment are required.
   a. Approval from a municipal wastewater treatment facility (WWTF) is required prior to discharging to the WWTF. Please be advised that some of the pollutants found on this site may adversely affect the quality of biosolids from the WWTF.
   b. Any type of treatment on site will require a site-specific NPDES permit applicable to the type of treatment and the pollutants treated. A site specific application for this permit will be required. (Form 1 and 2C)
   c. Treatment can be performed by an off-site facility that is designed, permitted, and approved to treat the pollutants present.
6. Test results shall be recorded on the attached Discharge Monitoring Reports (DMR) and submitted to the Department on a quarterly basis. Reports can be sent to the address at the end of the DMR form.

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<thead>
<tr>
<th>Table 1: Requirements for Dieldrin, PCBs, and TPH</th>
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<td><strong>Parameters</strong></td>
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<td>Dieldrin</td>
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<td>Polychlorinated Biphenyls</td>
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<tr>
<td>Total Petroleum Hydrocarbons</td>
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<th>Table 2: Requirements for Metals</th>
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<tr>
<td><strong>Parameters</strong></td>
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<tr>
<td>Arsenic, Total Recoverable</td>
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<td>Cadmium, Total Recoverable</td>
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<td>Chromium (III), Total Recoverable</td>
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<td>Chromium (VI), Total Recoverable</td>
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<td>Lead, Total Recoverable</td>
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<td>Mercury, Total Recoverable</td>
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<td>Selenium, Total Recoverable</td>
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These additional restrictions must be satisfied to qualify for authorization under the NPDES General Dewatering Permit NEG 671000 for construction dewatering activity in the area bounded by 2nd Street, Salt Creek Street, 8th Street and J Street, Lincoln, NE and are effective immediately. Please contact me if you have questions.

Sincerely,

Donna K. Garden, Supervisor
NPDES Permits and Compliance Unit
Wastewater Section
402-471-1367
donna.garden@nebraska.gov

cc: T. J. Osborn Construction, 5801 Johanna Road, Lincoln, Nebraska 68507 (402-464-4235)
Frank Uhlarik, Alfred Benesch and Co., 825 J Street, PO Box 80358, Lincoln, Nebraska 68501
Miki Esposito, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508
DW-DMR

Dewater Discharges Discharge Monitoring Report (DMR)
Authorized Under NPDES General Permit NEG671000

This DW-DMR is to be submitted monthly (i.e., within 28 days after the end of each calendar month), unless alternative submittal arrangements are approved. Any pH, Oil & Grease, or Total Suspended Solids monitoring results that are not in compliance with the permit effluent limits shall be reported to the Department within 24 hours (Telephone 402/471-4220) and a written non-compliance report must be submitted within 7 days (See Appendix A, Sections D.2 and D.3 in the permit). If the appropriate information is included on this form, it may be used as a non-compliance report form and to provide notification of project completion. Be sure to fill in all of the appropriate blanks below and sign on the back of this form.

NPDES Tracking Number: NEG671 _____ _____ - R

Project Owner or Operator: ____________________________________________

Project Name & Location: ______________________________________________________________________

When is the discharge anticipated to begin? (mo/day/yr) ______________________________

What is the Outfall Designation(s): ______________________________________________________________________

What is the Source of the outfall? (i.e. well, pit, foundation pump, etc.) ______________________________________________________________________
### Discharge Monitoring Report

**Parameter** | **Discharge Limit** | **Unit** | **Monitoring Result** | **Unit** | **Sample Type** |
--- | --- | --- | --- | --- | --- |
**Volume Discharged** | **Report** | **Gallons** | | | |
**Dieldrin** | 0.00144 | µg/L | | | |
**Polychlorinated Biphenyls** | 0.0017 | µg/L | | | |
**Total Petroleum Hydrocarbons** | 10.0 | mg/L | | | |

### Parameter

**Parameter** | **Discharge Limit** | **Unit** | **Monitoring Result** | **Unit** | **Sample Type** |
--- | --- | --- | --- | --- | --- |
**Arsenic, Total Recoverable** | 16.7 | µg/L | | | |
**Cadmium, Total Recoverable** | 0.527 | µg/L | | | |
**Chromium (III), Total Recoverable** | 189.0 | µg/L | | | |
**Chromium (VI), Total Recoverable** | 11.0 | µg/L | | | |
**Lead, Total Recoverable** | 8.1 | µg/L | | | |
**Mercury, Total Recoverable** | 0.77 | µg/L | | | |
**Selenium, Total Recoverable** | 5.0 | µg/L | | | |

### Parameter

**Parameter** | **Discharge Limit** | **Unit** | **Monitoring Result** | **Unit** | **Sample Type** |
--- | --- | --- | --- | --- | --- |
**Benzo(a)anthracene** | 0.49 | µg/L | | | |
**Benzo(a)pyrene** | 0.49 | µg/L | | | |
**Benzo(b)fluoranthene** | 0.49 | µg/L | | | |
**Benzo(k)fluoranthene** | 0.49 | µg/L | | | |
**Chrysene** | 0.49 | µg/L | | | |
**Dibenzo(a,h)anthracene** | 0.49 | µg/L | | | |
**Indene(1,2,3-cd)pyrene** | 0.49 | µg/L | | | |
**Naphthalene** | 620 | µg/L | | | |
Certification
I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Owner or Operator Signature or Authorized Representative** Date Signed

Print Name

Title

For Information on the submission of the DW-DMR see page 4.
The qualifications and responsibilities of the authorized representative are described on page 4.
Requirements for and Responsibilities of Owner/Operator and Authorized Representative
The "owner or operator" is responsible for signing all permit applications and must meet the requirements set forth in NDEQ Title 119 Chapter, 13 002:
"All permit applications submitted to the Department shall be signed:
002.01 - For a corporation, by a responsible corporate officer;
002.02 - For a partnership or a sole proprietorship by a general partner or the proprietor; and
002.03 - For a municipal, State, Federal, or other public facility by either a principal executive officer or ranking elected official."
The "authorized representative" is the primary facility contact for correspondence and monitor reporting, and must meet the requirements set forth in NDEQ Title 119, Chapter 13 003:
"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.03 above; and the written authorization is submitted to the Director."

Submit the completed DW-DMR form to one of the following addresses:

US Postal Service Address
Wastewater Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

Alternate Carrier Address
Wastewater Section
Nebraska Department of Environmental Quality
The Atrium, 1200 N Street, Suite 400
Lincoln, NE 68509
SPECIAL PROVISIONS
WEST HAYMARKET JOINT PUBLIC AGENCY (2011)
HAYMARKET INFRASTRUCTURE IMPROVEMENTS
M & N STREET PROJECT
Sanitary Sewer Improvements
PROJECT NO. 870302

The work as detailed on the plans shall be completed in accordance with the requirements of the 2006 City of Lincoln Standard Plans and the 2006 City of Lincoln Standard Specifications for Municipal Construction, including all amendments, Supplemental Specifications and additions thereto effective at the date of the contract, the Special Provisions, Environmental Contingency Plan West Haymarket Redevelopment, Plans, and all supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project.

In case of a discrepancy:

2. The Special Provisions shall govern over the Plans.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications. Upon discovery of such an error or omission, the Contractor shall notify the Engineer immediately. The Engineer will then make such corrections or interpretations as necessary to fulfill the intent of the plans and specifications.

Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.

Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Engineer and the Engineer’s decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work.

Any reference the City, or OWNER, in the City of Lincoln Standard Specifications for Municipal Construction shall be considered reference to the West Haymarket Joint Public Agency (JPA), its employees, or representatives hired by the JPA as a consultant for construction project management, observation or testing services. The JPA’s address is 555 South 10th Street, Lincoln, Nebraska 68508.
JPA: JPA shall mean the West Haymarket Joint Public Agency, a joint administrative entity under the Interlocal Cooperation Act, comprised of the City of Lincoln and the University of Nebraska – Lincoln for the purpose of implementing and overseeing the operation of the West Haymarket arena and infrastructure improvement projects.

The bid amount for Mobilization cannot exceed ten percent of the total bid amount for the individual contract in which it is bid.

PROJECT TIES

This project is NOT tied to other projects.

BONDING PERIOD

The City of Lincoln Standard Specifications, General Provisions and Requirements has been amended as follows:

1. Award and Execution of Contract.

   B. Construction Performance and Construction Payment Bonds and Execution of Contract.

   Within five (5) days after the acceptance of the bid, the successful Bidder must execute a written Contract between the Bidder and the JPA, said Contract will incorporate the JPA’s Contract Documents and be on forms provided by the JPA, Construction Performance and Construction Payment Bonds, in a sum not less than the contract price, executed by the Bidder and by a corporate surety company authorized to transact business in the State of Nebraska.

SALES TAX

This language modifies and clarifies Section VI, Paragraph S of the General Conditions and Requirements of the City of Lincoln’s 2006 Standard Specification for Municipal Construction.

Sales and Uses Tax

Any portion of this project used for providing water service, such as pipe and fittings for water mains, is subject to sales and use taxes.

The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, are exempt from sales and use taxes.
No one shall issue the Purchasing Agent Appointment (PAA) certificate forms except the Purchasing Agent. When the contractor requests these forms they need to inform the Purchasing Agent what materials they are buying and for which project (identify with project description and number).

**SUBSTANTIAL AND FINAL COMPLETION**

Substantial completion for the work means the completion of all work associated with construction of the work identified in the plans including all removal, paving, storm sewers and utilities. The work must be completed by August 26, 2011.

**STATUS OF RIGHT-OF-WAY**

All work to be completed shall be performed in existing public right-of-way, new right-of-way or private properties where a right-of-entry or temporary or permanent construction easements will be obtained. The JPA is currently negotiating with the adjacent property owners to acquire the additional right-of-way and easements to construct the project.

**STATUS OF UTILITIES**

The following information is current as of June 1, 2011. The Contractor should request a utility status update at the project pre-construction conference, and/or prior to starting work. The Contractor shall coordinate all construction activities with affected utilities that have identified relocations which are to be completed concurrent with the utility/roadway construction.

Utilities known to have facilities in the project area:

**City of Lincoln**

The City of Lincoln has existing water mains and sanitary sewers within the limits of the project. All necessary adjustments, relocations and extension of water mains or sanitary sewers shall be completed by the Contractor as part of the project as shown on the plans.

All work within this area which may impact public water or sewer facilities will require coordination with the City of Lincoln Water System, City of Lincoln Wastewater System, and the Engineer to minimize impact to daily activities.

City of Lincoln Water System  
Contact: Steve Owen  
Phone: (402) 441-5925
Private Utilities

The following utilities are known to exist within the Project limits, and may be relocated as a result of the project. The Contractor shall take into consideration the associated durations of utility relocations, and these associated durations should be considered in the baseline schedule, and prosecution of the work. The Contractor shall conduct ongoing coordination meetings with all utility owners to facilitate these relocations.

Black Hills Energy – Black Hills Energy has a 4” line along the North side of N Street that will be abandoned and a new 2” gas line will be constructed on the South side of N Street, possibly before the M & N Street project begins. The Contractor shall coordinate with Black Hills Energy during the project.

Contact: Randy Kreifels
Phone: (402) 437-1715

Lincoln Electric System - Lincoln Electric System (LES) will relocate some electrical overhead power at various locations along the project. LES plans to begin relocation work on the electrical facilities in ...?; they will likely be concurrent with street construction. Good coordination will be needed.

Contact: Lighting – Larry Kathol
Phone: (402) 467-7642
Distribution - Al Cameron
Phone: (402) 467-7603

Windstream
Contact: Ken Adams
Phone: (402) 467-7680

Time Warner Cable
Contact: Lou Kipper
Phone: (402) 421-0393

Galaxy Cablevision
Contact: Randy Vanderheiden
Phone: (402) 362-3334
BNSF Railway

The BNSF Railway has existing buried and overhead fiber, electric, signal and other communication lines within the project area that are being relocated as part of the railroad track relocation project. The BNSF relocation work for their communication lines and signal lines will be on-going with this project and the Contractor shall be required to coordinate all work within the existing BNSF right-of-way with the BNSF Railway representatives throughout the course of the work. Failure of the Contractor to coordinate with the BNSF and adjust their work activities as necessary to avoid impacting existing railroad facilities that are being relocated shall not be grounds for an extension in contract time unless otherwise approved by the Engineer.

The Contractor shall not perform any excavation work on existing BNSF property without having contacted the appropriate BNSF staff to locate and flag all underground utilities that may still be in service at the time the work begins.

The primary point of contact for the BNSF Railway is:

Contact: Gerald Maczuga – BNSF Project Engineer
Phone: (402) 458-7537 (office)
(206) 265-2427 (cell)

Additional contact for BNSF communication work is:

Contact: Byron Mitchell
Phone: (402) 458-7600

UTILITIES

The CONTRACTOR shall notify the Digger’s Hotline of Nebraska (HOTLINE), Phone Number 1-800-331-5666, at least 48 hours in advance of the commencement of work at any site to allow the member utilities to examine the construction site and mark the location of the utilities’ respective facilities. The CONTRACTOR shall also notify the BNSF Railway as stipulated in the Contractor Requirements for work on the BNSF property that is included with these Special Provisions.

The CONTRACTOR acknowledges that some (or all) of the utility companies, with facilities shown on the drawings may not be members of the Hotline and, therefore, not
automatically contacted by the above-referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the Hotline, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall also be responsible for verifying that each utility has responded to such notification.

**PERMITS AND LICENSES**

The OWNER will provide the following permits:

1) NPDES Construction Storm Water Permit
2) NPDES Dewatering Permit

The CONTRACTOR shall be responsible for complying with the requirements of all permits acquired by the JPA.

The CONTRACTOR shall acquire all permits required by Laws or Regulations, including, without limitation, the following specific permits (if applicable):

1) Certificates and permits are required for uses such as, but not limited to:
   a) Fuel burning equipment
   b) Gasoline and petroleum distillate storage containers
   c) Land disturbing activities
   d) Odors
2) All associated building demolition permits
3) City, State, and County Transportation Encroachment permits
4) Permit-Required Confined Space
   The workplace in which the WORK is to be performed may contain permit-required confined spaces (permit spaces) as defined 29 CFR 1910.146 and, if so, permit space entry is allowed only through compliance with a confined space entry program meeting the requirements of 29 CFR 1910.146. Contractor shall submit a confined space entry program or submit in writing that compliance with the City’s program will be made.
5) Dewatering Permits or notifications as required by the Lower Platte South Natural Resources District.
6) Fugitive Dust Control Permit

**SPECIAL PROSECUTION AND PROGRESS**

6
The following prosecution and progress of work shall be used in developing the baseline schedule for the project. The Contractor will be required to generally proceed with sequencing the construction work as shown on the phasing plans unless otherwise approved by the Engineer.

All work on BNSF owned property shall be coordinated with the BNSF's designated project representative as shown on the plans.

The Contractor shall be responsible for providing the traffic control plan, stamped and signed by a registered professional engineer, licensed in Nebraska, and submitting to the owner for approval for each phase of the work. The Contractor shall also be responsible for supplying all temporary construction signs and traffic control devices for the project as outlined in the City of Lincoln Standard Specifications for Municipal Construction.

The Contractor shall not close any portion of the public roads or begin any work which may impact drive access to adjacent properties without the permission of the Engineer. The Contractor shall at all times, to the extent practical, provide facilities of ingress and egress to and from the public street to maintain access to adjacent properties throughout the duration of the project as noted on the plans or as directed by the Engineer.

This may require the Contractor to construct new drives or pavement in phases to allow access from the public street during construction, use high early strength concrete for drive construction, or to provide temporary drives as shown on the plans or as directed by the Engineer. All temporary drives and approaches to provide ingress and egress to adjacent properties shall be provided and maintained by the Contractor. All temporary drives which have active sidewalks (permanent or temporary sidewalks) crossing the drive shall be constructed using temporary hard surfacing and shall be ADA compliant. Crushed rock surfacing shall not be used at temporary drives that have permanent or temporary pedestrian access routed across the drives.

Sidewalk closures and detours shall be clearly posted and maintained throughout the course of the project to direct pedestrians around the construction site. The Contractor will be required to maintain pedestrian access to the adjacent properties as directed by the Engineer throughout the duration of the project. All temporary pedestrian pathways shall be a continuous hard surface throughout the entire length of the temporary facility and shall be ADA compliant. Temporary sidewalks shall be 4” concrete or 4” asphalt and shall be paid in accordance with the appropriate pay item shown in the proposal. Removal of temporary sidewalk shall be paid for as Pavement and Sidewalk Removal. Temporary sidewalks shall be constructed as directed by the Engineer to facilitate pedestrian access.

WORKER VISIBILITY
Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:

Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

High-visibility safety apparel is defined to mean personal protective safety clothing that:

1 - is intended to provide conspicuity during both daytime and nighttime usage, and

2 - meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standards for High-Visibility Safety Apparel and Headwear."

If the Contractor fails to comply with the worker visibility requirements and as a result, Federal and State authorities withhold Federal Funds, then JPA reserves the right to seek reimbursement from the Contractor for the loss of federal funds that are attributed to the Contractor’s non-compliance.

COORDINATION WITH OTHERS

The Contractor shall coordinate their work on this project with the BNSF Railway who will be completing relocation work associated with the railroad tracks as well as communication and signal systems adjacent to project area as part of the track relocation project that is being completed to accommodate construction of the new arena. The BNSF also has existing utilities within the project area that may not be abandoned at the time this project starts. The Contractor shall exercise extreme care so as not to damage any of these facilities during construction of this project until the utilities have been abandoned by the BNSF.

The BNSF Railway Project Engineer is:

Gerald Maczuga – BNSF Project Engineer
BNSF Railway
Office: (402) 458-7537
Cell: (206) 265-2427

TECHNICAL PROVISIONS
The following Special Provisions amend or supplement the 2006 City of Lincoln Standard Specifications for Municipal Construction and the State of Nebraska Standard Specifications for Highway Construction, 2007 Edition. All provisions which are not so amended or supplemented remain in full force and effect.

MODIFICATIONS TO CHAPTER 15 – TRAFFIC CONTROL
Add the following:

The Contractor shall not close any portion of the public roads or begin any work which may impact drive access to adjacent properties without the permission of the Engineer. The Contractor shall at all times, to the extent practical, provide facilities of ingress and egress to and from the public street to maintain access to adjacent properties throughout the duration of the project as noted on the plans or as directed by the Engineer.

- Temporary surfacing shall be paid for at the contract unit price per ton for the appropriate material used and shall include all costs for grading and shaping, installation and removal of temporary materials.

- Where temporary roadways need to be constructed to maintain access to specific locations, the temporary roadway surface shall be surfaced with temporary surface course or asphalt millings as directed by the Engineer.

MODIFICATIONS TO CHAPTER 20 – CONSTRUCTION FOR UTILITIES AND STRUCTURES

SECTION 20.02 MATERIALS Add the following:

The approved foundation material shall be wrapped in filter fabric to prevent migration of fines through the system. The Engineer shall approve the filter fabric used by the Contractor. If filter fabric is necessary, then the price for filter fabric will be negotiated during construction.

CONSTRUCTION STAKING

The Contractor shall use the horizontal and vertical control points as shown on the plans for use in establishing the exact location and elevations for the project. The Contractor shall be responsible for preserving (or reestablishing) these control points if necessary. The Contractor shall use this control to provide all construction staking that is required for the project. This shall include staking for utility construction and all other survey work to complete the project in accordance with the details shown on the plans.
The Contractor shall be responsible for the placement and preservation of adequate ties and references necessary to complete his work. Any additional stakes, templates and other materials necessary for marking and maintaining all reference points and lines shall be the responsibility of the Contractor. The Contractor shall be solely and completely responsible for the accuracy of the line and grade for all features of the work. All work shall be completed to the lines, grades, and elevations indicated on the drawings. The Contractor shall remove and reconstruct work that is improperly located at his expense.

The Contractor shall be required to coordinate with the private and public utilities and shall stake all needed references points or lines needed for the private utilities to adequately construct or relocate their utilities to avoid conflicts with the proposed construction. This shall include all needed finished elevations, tie-in points, line and grades for proposed utilities to be installed by the Contractor or any other points approved by the Engineer. Construction staking for utilities that are not to be relocated as part of this contract shall be approved by the Engineer prior to performing the work.

The Contractor's staking records shall be recorded in a bound notebook, in a format approved by the Engineer. Record notebooks will be submitted to the City of Lincoln at the completion of the project.

**Basis of Payment**

Construction staking shall not be measured, but shall be paid for at the Contract Lump Sum amount bid for the pay item “Construction Staking”. The amount of the lump sum to be included in each partial payment shall be in proportion to the value of the work completed with respect to the total amount of the original bid.

DIVERSION AND CARE OF WATER
Methods and details for care and diversion of water are not detailed on the plans. Full responsibility for the diversion and care of water from whatever source, including, but not limited to, direct rainfall, groundwater, surface runoff and sources outside of the construction area shall be borne by the Contractor until completion of work under this contract. The Contractor shall provide all materials, labor, and equipment, and perform all work necessary to facilitate construction and to protect the work in progress from damage by water. The Contractor shall make his own investigation and determination of existing and anticipated conditions concerning care of water. Plans for diversion and care of water during construction shall be submitted to the Engineer, for information only, within 10 calendar days after receipt of Notice to Proceed, and shall show location, material, and method for dewatering the work area and disposal of the water. Discharge of water shall comply with all provisions outlined in the NPDES Permits that have been issued for the project. Direct payment will not be made for diversion and care of water. Work associated with diversion and care of water shall be considered incidental to the work.

DEWATERING

All dewatering activities associated with construction of the roadway or utilities on this project shall be completed in such a manner to meet the discharge limitations as set forth in the NPDES General Permit for Excavation Dewatering and Hydrostatic Testing Discharges, NPDES Number NEG671000 (Area bounded by 2nd Street, Salt Creek Roadway, 8th Street and J Street, Lincoln, NE) as modified by the Nebraska Department of Environmental Quality per letter to City of Lincoln dated February 18, 2011, attached and incorporated as if fully set forth herein. The JPA shall secure the permit and the Contractor will be required to be a co-permittee on the NDEQ dewatering permit for this project.

The Contractor shall provide and maintain pumps, wells, piping and all other equipment and materials needed to conduct dewatering for the construction activity. Furthermore, the contractor shall provide for complete containerization of all water collected from the dewatering operations. The Contractor shall coordinate with the West Haymarket Environmental Team prior to startup of dewatering activities and present their schedule and their dewatering methods. The West Haymarket Environmental Team will be responsible for the collection of representative samples of the water and the laboratory analysis of the dewatering effluent. Based on the laboratory results the West Haymarket Environmental Team will advise the Contractor on the acceptable disposal methods for the effluent from the dewatering operations. No effluent from the dewatering operations shall be discharged from the construction site until the laboratory testing has been completed and the methods of disposal have been determined by the West Haymarket Environmental Team. In determining the number of containers needed for effluent storage for their project, the Contractor shall assume a maximum of 10 days to receive discharge instructions for each container tested.

Dewatering for this project will be measured and paid for directly as shown below based upon the proposed construction activities:
Dewatering that may be required for the over-excavation work and re-compaction of existing site soils as shown on the plans or stipulated in these Special Provisions shall be measured for payment based upon each calendar day the dewatering is required and the Contractor is actively engaged in the over-excavation/re-compaction work that requires the dewatering. Payment shall be made per calendar day of dewatering in accordance with the contract bid item “Dewatering for Over-excavation Work". Said payment shall be full compensation for furnishing all labor, equipment, tools, materials and incidentals to install, operate and maintain the dewatering operations as necessary to complete the work in accordance with the plans and specifications.

Dewatering that may be required for the excavation of trenches for utility construction as shown on the plans or stipulated in these Special Provisions shall be measured for payment based upon the linear foot of trench where dewatering is required. Payment shall be made per linear foot of trench dewatering in accordance with the contract bid items “Dewatering for Sanitary Sewers", “Dewatering for Storm Sewers" or “Dewatering for Water Mains". Said payment shall be full compensation for furnishing all labor, equipment, tools, materials and incidentals to install, operate and maintain the dewatering operations as necessary to complete the work in accordance with the plans and specifications. Dewatering for boring of utilities, if necessary, will be measured and paid for in accordance with the appropriate bid item for the utility trench dewatering and the measurement/payment shall be based upon the linear feet of the boring.

Measurement and payment for containerizing the effluent from dewatering operations until it is tested and for disposal of the effluent into an adjacent City of Lincoln storm sewer or sanitary sewer will be based on a per gallon basis of water containerized and disposed of by the Contractor. If it is determined that the water cannot be discharged directly to the City of Lincoln storm sewer and that it will need to be discharged to the sanitary sewer, then the fees required by Lincoln Wastewater Department for discharge into the sanitary sewer shall be paid directly by the JPA. The Contractor shall be paid for this work in accordance with the contract price bid per gallon for the pay item “Containerize and Disposal of Dewatering Effluent". Such payment shall be full compensation for furnishing all containers, labor, tools, equipment, materials and incidentals to containerize the effluent until tested and to discharge the water into an adjacent storm sewer or sanitary sewer as directed by the West Haymarket Environmental Team.

The Contractor shall base their bid on disposal of the dewatering effluent into the City of Lincoln existing storm sewer system or sanitary sewer system. If the West Haymarket Environmental Team determines that the effluent cannot be discharged to the existing City of Lincoln storm sewer system or sanitary sewer system, then additional compensation for disposal of the effluent based upon the required method for disposal as determined by the West Haymarket Environmental Team will be considered on an “Extra
Work” basis. Additional payment for filtering or other devices required to maintain the discharged effluent below the maximum total suspended solids limits shown in the NDEQ General Permit NEG670000 shall not be made.

ENVIRONMENTAL CONTINGENCY PLAN

During the execution of the work on this project it is anticipated that the Contractor may encounter contaminated soils, debris or groundwater (media). If contaminated media is encountered and it is determined by the West Haymarket Environmental Team that it cannot be used on site (e.g. as backfill for the utility trenches), the Contractor shall be required to dispose of any contaminated media in accordance with all federal, state and local laws.

The Contractor shall also strictly adhere to the requirements and procedures set forth in the Environmental Contingency Plan. The Environmental Contingency Plan is attached and incorporated as if fully set forth herein.

In the event the Contractor or on-site construction management personnel suspect that contaminated media is encountered or will be during the performance of the work, they shall immediately notify the West Haymarket Environmental Team and follow the procedures outlined in the Environmental Contingency Plan for resolution on how to manage the contaminated media. Typical indications of potentially contaminated media include discoloration, odors associated with the media removed as part of boring, trenching or other excavation work. In addition, Figures 3A, 3B and 4A, 4B of the Environmental Contingency Plan illustrates where environmental testing has been taken on site. The Contractor shall familiarize themselves with these Figures to determine whether the project is located in the area of these environmental impacts.

Management of Soil or Debris to be Removed from the Work Site

During the course of the project the Contractor shall not haul any excavated material off site without the prior approval of the West Haymarket Environmental Team. As such, the Contractor shall provide locations on site to temporarily stockpile all excavated material. All temporary stockpiles shall comply with the requirements set forth in the Construction Storm Water Pollution Prevention Plan (SWPPP). The West Haymarket Environmental Team will determine the appropriate method for disposal of the excavated material and make a recommendation to the Contractor.

The Contractor shall base their bid on the basis that any excavated material to be disposed off site can be disposed of at a location selected by the Contractor in accordance with all federal, state and local regulations with no other special handling or restrictions. If the excavated material requires special handling due to contamination (petroleum or other chemicals) and the contamination is not the result of the Contractor’s activities, then additional compensation for disposal of the contaminated material will be considered on an “Extra Work” basis.
GENERAL CLEARING AND GRUBBING

General clearing and grubbing on this project shall include removal and grubbing of all site trees and stumps regardless of size. Direct payment will not be made for removal of trees and stumps twelve inches in diameter and larger and all costs associated with completing this work shall be included in the contract amount bid for General Clearing and Grubbing. In addition, this pay item shall also include the general clearing of all other site items within the project grading limits and that are not specifically shown on the plans or called out in the proposal for direct payment. These items may include abandoned wood poles, signs, sign poles, abandoned cables, abandoned lights, fences, miscellaneous foundations, guard rails, railings and other miscellaneous small structures.

General clearing and grubbing of the site in accordance with the requirements outlined in the Standard Specification for Municipal Construction as amended by these Special Provisions shall be measured and paid for as one lump sum. Such payment shall be full compensation for furnishing all labor, equipment, tools and materials to complete the work including clearing and grubbing of all site trees and stumps within the limits of the work regardless of tree or stump size.
BNSF RAILWAY SPECIAL PROVISIONS

The following Exhibit “C” provides the Contractor Requirements for work that will be completed on existing BNSF Railway property as part of this project. The Contractor shall be required to strictly adhere to all requirements as outlined and shall coordinate their work with the BNSF’s Project Engineer, Gerald Maczuga or other designated representative at all times during completion of work on railroad property.

All Contractor employees that will be involved with work on this project will need to be certified through the BNSF E-Rail Safe program and shall have the required BNSF Contractor Safety Orientation as outlined in the attached BNSF Contractor Requirements. Refer to Exhibit C, Contractor Requirements Section 1.02 for requirements on the Contractor Safety Orientation. Refer to https://www.e-railsafe.com/ev/servlet/hr.utilities.HRInfo for requirements on the BNSF E-Rail Safe certification.

In addition the Contractor will be required to execute the attached agreement Exhibit C-1A and provide certification of the required insurance coverages outlined in the agreement to the BNSF Railway prior to start of any work on railroad property.

Flagging will be required when work is required on BNSF property within 25 feet of the existing tracks and when the Contractor is using any of the temporary construction accesses across the BNSF tracks. Flagging services shall be performed by BNSF employees as outlined in the following Contractor’s Requirements for work on BNSF Railway property. The cost of the flagging up to a maximum amount of $38,500.00 shall be borne by the JPA. The $38,500.00 amount of flagging is based upon 35 flagging days using a standard 10-hour work day and the BNSF requiring a single flagger for this work. If the BNSF requires additional flaggers than the maximum amount is subject to change as determined by the Engineer. All flagging costs in excess of the $38,500.00 amount shall be deducted from the retainage held on the project prior to final payment.
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) Cooper's 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 1996 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 of and acceptable to Railroad.
• Separation of insureds.
• The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
• Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
• Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
• Waiver of subrogation in favor of and acceptable to Railroad.

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
• Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
• Endorsed to include the Limited Seepage and Pollution Endorsement.
• Endorsed to remove any exclusion for punitive damages.
• No other endorsements restricting coverage may be added.
• The original policy must be provided to Railroad prior to performing any work or services under this Agreement.

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

Other Requirements:

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

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

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

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

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

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

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.
Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

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

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

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

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

(Contractor)

By: __________________________
Printed Name: __________________
Title: __________________________

BNSF Railway Company

By: __________________________
Name: _________________________
Project Engineer

Contact Person: __________________
Address: ________________________

Accepted and effective this ___ day of 20__.

City: ______________ State: ___ Zip: ___
Fax: ___________________________
Phone: _________________________
E-mail: _________________________
CONSTRUCTION PHASING

Construct Waste Water Pipe Noted As A on Sheet 5 First. The Engineer Will Then Shoot the As-Built Elevation, Based On The As Built Elevation, The Engineer May Decide To Adjust The Profile Of Waste Water Pipe.

SURVEY CONTROL

<table>
<thead>
<tr>
<th>NORTHING</th>
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<th>ELEVATION</th>
<th>DESCRIPTION</th>
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QUANTITIES

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<td>MOBILIZATION</td>
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<td>GENERAL CLEANING AND SURFACING</td>
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<td>CRUSHED ROCK SURFACING (IN PLACE)</td>
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<tr>
<td>FLUSHABLE TEL</td>
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<tr>
<td>30' SMOOTH STEEL CASING, 0.500' THICK, BORED IN PLACE</td>
<td>LF</td>
<td>202</td>
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<td>24' SANITARY SEWER PIPE</td>
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<td>STANDARD MANHOLE, TYPE &quot;H&quot;</td>
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<td>STANDARD MANHOLE, TYPE &quot;F&quot;</td>
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<td>STANDARD MANHOLE, TYPE &quot;P&quot;</td>
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<td>TILL AND ABANDON EX MH (CMY)</td>
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<td>PIPE SEWER SERVICE</td>
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<td>10&quot; PVC LINED STEEL WASTE WATER PIPE, BORED IN PLACE</td>
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<td>REMOVE EXIST CONC. STRUCTURE</td>
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<tr>
<td>BYPASS PLUMPING - STA 609+50.50</td>
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<tr>
<td>BYPASS PLUMPING - STA 609+73.50</td>
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<td>DEWATERING - SANITARY SEWER TRENCH EXCAVATION</td>
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<tr>
<td>CONTAINERIZE AND DISPOSAL OF DEWATERING EFFLUENT</td>
<td>GAL</td>
<td>1000</td>
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SUMMARY OF QUANTITIES
HORIZONTAL CONTROL

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<tr>
<th>STATION</th>
<th>Northing</th>
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DEWATERING

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<td>607</td>
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BYPASS PUMPING

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<th>LF</th>
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| 601+00.00 | CL | 607=
| 605+55.29 | CL | 1 |
| 606+12.63 | CL | 603+12.63 |

SANITARY SEWER MANHOLES SHALL BE CONSTRUCTED WITH A WATER TIGHT FRAME AND COVER. NEW FRAME AND COVER SHALL BE PRESSURE TIGHT MANHOLE COVER AND FRAME NO. C2075A OR APPROVED EQUIVALENT.

CONSTRUCT THIS PIPE FIRST

STATION 14
601+00 TO 606+12.63

SANITARY SEWER MANHOLES SHALL BE CONSTRUCTED WITH A WATER TIGHT FRAME AND COVER. NEW FRAME AND COVER SHALL BE PRESSURE TIGHT MANHOLE COVER AND FRAME NO. C2075A OR APPROVED EQUIVALENT.

WASTE WATER PLAN AND PROFILE
4. Saw cut pavement around manhole as necessary.
5. Remove and dispose of roadway surface/pavement as necessary to fill and abandon existing manhole.
6. Remove and dispose the upper portion of the existing manhole structure (minimum of 3 feet depth).
7. Fill any in-flow and out-flow pipes with flowable fill.
8. Place and compact 47B sand/gravel. All sand/gravel shall be compacted to a minimum of 90% relative density as determined in accordance with ASTM D 4253 and ASTM D 4254.
9. Place and compact (6 in. lift) lean clay earth material in accordance with the City of Lincoln moisture and density specifications.
10. Replace roadway pavement surface per L.S.P. 183 (Proposed to existing pavement detail).
General Decision Number: NE100002 10/29/2010  NE2

Superseded General Decision Number: NE20080002

State: Nebraska

Construction Types: Heavy and Highway


HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, and railroad construction; bascule, suspension & spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; other major bridges).

<table>
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<th>Modification Number</th>
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SUNE1999-001 06/16/1999

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<tr>
<th>Rates</th>
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<tr>
<td>CARPENTER $13.30</td>
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<tr>
<td>CEMENT FINISHER $12.50</td>
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<tr>
<td>ELECTRICIAN $11.90</td>
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<tr>
<td>Flagger $7.60</td>
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<td>Form Setter $10.80</td>
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<td>LABORER $8.30</td>
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<tr>
<td>MANHOLE BUILDER $10.20</td>
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<tr>
<td>MECHANIC $12.95</td>
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<tr>
<td>PAINTER $8.35</td>
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</tr>
<tr>
<td>Pile driver lead person $8.35</td>
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</table>

Power equipment operators:
- All purpose spreader $9.50
- Asphalt distributor $9.65
- Asphalt paving machine (screed) $10.45

http://www.wdol.gov/wdol/scafiles/davisbacon/NE2.dvb

11/03/2010
<table>
<thead>
<tr>
<th>Equipment Type</th>
<th>Rate</th>
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<tbody>
<tr>
<td>Asphalt paving machine</td>
<td>$12.35</td>
</tr>
<tr>
<td>Asphalt roller, self-propelled</td>
<td>$11.20</td>
</tr>
<tr>
<td>Backhoe excavator (track type)</td>
<td>$12.55</td>
</tr>
<tr>
<td>Bulldozer or push tractors:</td>
<td></td>
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<tr>
<td>115 drawbar h.p. and over</td>
<td>$12.80</td>
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<tr>
<td>Less than 115 drawbar h.p.</td>
<td>$11.60</td>
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<tr>
<td>Clamshell, dragline, crane, pile driver/shovel</td>
<td>$13.60</td>
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<tr>
<td>Concrete cure machine</td>
<td>$12.80</td>
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<tr>
<td>Concrete finishing machine</td>
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<tr>
<td>Concrete or slip form paver</td>
<td>$12.80</td>
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<tr>
<td>Concrete saw operator</td>
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<tr>
<td>Concrete texture machine</td>
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<tr>
<td>Crusher (including those with integral screening)</td>
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<td>Dredge pump</td>
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<td>Front end loaders:</td>
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<td>4 cu. yds. or less</td>
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<td>Over 4 cu. yds.</td>
<td>$12.10</td>
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<tr>
<td>Hydrohammer</td>
<td>$9.60</td>
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<tr>
<td>Loader/backhoe (rubber-tired)</td>
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<tr>
<td>Material stockpiler</td>
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<tr>
<td>Motor grader (finisher)</td>
<td>$13.15</td>
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<tr>
<td>Motor grader (rough)</td>
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</tr>
<tr>
<td>Power broom operator</td>
<td>$9.15</td>
</tr>
<tr>
<td>Power grader machine (trimmer &amp; profiler)</td>
<td>$12.80</td>
</tr>
<tr>
<td>Roller or compactor, earthwork, self-propelled</td>
<td>$10.05</td>
</tr>
<tr>
<td>Scraper</td>
<td>$12.40</td>
</tr>
<tr>
<td>Skid steer loader</td>
<td>$9.50</td>
</tr>
<tr>
<td>Stationary plant (asphalt or concrete)</td>
<td>$12.75</td>
</tr>
<tr>
<td>Stationary plant (base or stabilization)</td>
<td>$11.75</td>
</tr>
<tr>
<td>Tractor (farm type)</td>
<td>$9.50</td>
</tr>
<tr>
<td>Traveling plant</td>
<td></td>
</tr>
<tr>
<td>Stabilization</td>
<td>$11.60</td>
</tr>
<tr>
<td>Trenching machine</td>
<td>$9.85</td>
</tr>
<tr>
<td>Water tankers:</td>
<td></td>
</tr>
<tr>
<td>6000 gallons and over</td>
<td>$11.20</td>
</tr>
<tr>
<td>Under 6000 gallons</td>
<td>$9.65</td>
</tr>
</tbody>
</table>

**Truck drivers:**
- Semi-trailer or lowboy: $10.85
- Single axle: $8.40
- Tandem axle: $9.65
- Transit mix: $9.65

**WELDER:** $12.25

**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.

http://www.wdol.gov/wdol/scafiles/davisbacon/NE2.dvb

11/03/2010
In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

http://www.wdol.gov/wdol/scafiles/davisbacon/NE2.dvb
4.) All decisions by the Administrative Review Board are final.

====================================================================

END OF GENERAL DECISION
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 S. 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.
1.7 If bidding on a construction contract, the City's Standard Specifications for Municipal Construction 2006 shall apply.
1.7.1 Bidders may obtain this document from the City's Design Engineering Division of the Public Works & Utilities Department for a small fee.
1.7.2 Said document can be reviewed at Design Engineering or at the office of the Purchasing Division.

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.
   
   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. 1324a, 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.

11/24/10
INSURANCE REQUIREMENTS
FOR ALL WEST HAYMARKET JOINT
PUBLIC AGENCY CONTRACTS

1. GENERAL PROVISIONS

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

B. Approved Coverage Prior to Commencing Work/Subcontractors Included. Contractor shall purchase and maintain in place insurance to Protect Contractor and JPA against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

C. Occurrence Basis Coverage. All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.

D. Authorized and Rated Insurers Required. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.

E. Certificates Showing Coverage. All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide JPA thirty days notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.

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

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

   (1) Claims under workers’ compensation, disability benefit, or other employee benefit acts;

   (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;

   (3) Claims customarily covered under personal injury liability coverage;

   (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;

   (5) Claims arising out of ownership, maintenance or use of any motor vehicle;

   (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. **Worker’s Compensation Insurance and Employer’s Liability Insurance.** The Contractor shall provide applicable statutory Worker’s Compensation Insurance with minimum limits as provided below covering all Contractor’s employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker’s Compensation Insurance for Subcontractor’s employees.

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

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Listing</th>
<th>Min Amt</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Comp.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Statutory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicable Federal</td>
<td>Statutory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employer’s Liability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bodily Injury by accident</td>
<td>$500,000 each accident</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bodily Injury by disease</td>
<td>$500,000 each employee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bodily Injury</td>
<td>$500,000 policy limit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
C. Commercial General Liability Insurance.

(1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions “a” through “o” and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Min Amt</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>$10,000,000</td>
<td>Aggregate</td>
</tr>
<tr>
<td>Products and Completed Operations</td>
<td>$10,000,000</td>
<td>Aggregate</td>
</tr>
<tr>
<td>Personal and Advertising Injury</td>
<td>$5,000,000</td>
<td></td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$5,000,000</td>
<td></td>
</tr>
<tr>
<td>Fire Damage Limit</td>
<td>$100,000</td>
<td>any one fire</td>
</tr>
<tr>
<td>Medical Damage Limit</td>
<td>$10,000</td>
<td>any one person</td>
</tr>
</tbody>
</table>

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) JPA may at its sole option, and in lieu of being additional insured on the Contractor’s policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner’s Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by JPA being reimbursed or paid to JPA.
D. Vehicle liability insurance coverage.

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.

- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

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

F. Umbrella or Excess Insurance. The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of $3,000,000 each occurrence and aggregate.

G. JPA included as Insured on Contractor’s Policy – Endorsements required. The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that JPA is included as an additional insured along with the Contractor with respect to all of the coverages required in this “Section 2A Insurance Requirements,” except for applicable Worker’s Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include JPA as an additional insured for purposes of Products and Completed Operations. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA.

3. CONTRACTOR’S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:

(1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless JPA, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney’s fees and costs arising out of or related to the Contract or the Contractor’s activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney’s fees and costs:

- is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and

- is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
(2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker’s Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

C. The obligations of indemnification herein shall not include or extend to:

(1) Any outside engineer’s or architect’s professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and

(2) Any claims arising out of the negligence of the JPA to the extent the same is the sole and proximate cause of the injury or damage so claimed.

D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor’s sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor’s counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

4. CONTRACTOR’S INSURANCE FOR OTHER LOSSES.

A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor’s agents, subcontractors, suppliers, or employees.

B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor’s insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.

B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA’s obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.
6. PROPERTY INSURANCE/ BUILDER'S RISK.

A. The Contractor shall provide property insurance (a/k/a Builder’s Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be $5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a “permission to occupy” endorsement.

B. All related Property Insurance shall be provided on a “Special Perils” or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA’s related costs and expenses (as owner) including labor required as a result of such loss.

C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.

D. The Contractor’s Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

Approved by City Law Department, April 1, 2005
Revised to JPA, October 1, 2010
Nebraska Resale or Exempt Sale Certificate
for Sales Tax Exemption

NAME AND MAILING ADDRESS OF PURCHASER
Name
West Haymarket Joint Public Agency
Street or Other Mailing Address
555 South 10th Street
City, State, Zip Code
Lincoln, NE 68508

NAME AND MAILING ADDRESS OF SELLER
Name
T.J. Osborn Construction, Inc.
Street or Other Mailing Address
5801 Johanna Rd.
City, State, Zip Code
Lincoln, NE 68507

Check Type of Certificate
☐ Single Purchase  ☑ Blanket If blanket is checked, this certificate is valid until revoked in writing by the purchaser.

I hereby certify that the purchase, lease, or rental by the above purchaser is exempt from the Nebraska sales tax for the following reason:

Check One ☐ Purchase for Resale (Complete Section A)  ☑ Exempt Purchase (Complete Section B)  ☐ Contractor (Complete Section C)

SECTION A — Nebraska Resale Certificate

I hereby certify that the purchase, lease, or rental of from the above seller is exempt from the Nebraska sales tax as a purchase for resale, rental, or lease in the normal course of our business, either in the form or condition in which purchased, or as an ingredient or component part of other property to be resold.

I further certify that we are engaged in business as a:  ☐ Wholesaler  ☐ Retailer  ☐ Manufacturer  ☐ Lessor

and hold Nebraska Sales Tax Permit Number 01-

or Foreign State Sales Tax Number

SECTION B — Nebraska Exempt Sale Certificate

The basis for this exemption is exemption category 1 (Insert appropriate category as described on reverse of this form.)

If exemption category 2 or 5 is claimed, enter the following information:

Description of Item(s) Purchased

Intended Use of Item(s) Purchased

If exemption categories 3 or 4 are claimed, enter the Nebraska Exemption Certificate number. 05-

If exemption category 6 is claimed, seller must enter the following information and sign this form below:

Description of Item(s) Sold

Date of Seller’s Original Purchase

Was Tax Paid when Purchased by Seller?  ☐ YES  ☐ NO

Was Item Depreciable?  ☐ YES  ☐ NO

SECTION C — For Contractors Only

1. Purchases of Building Materials or Fixtures:

☐ As an Option 1 or Option 3 contractor, I hereby certify that purchases of building materials and fixtures from the above seller are exempt from Nebraska sales tax. My Nebraska Sales or Consumer’s Use Tax Permit Number is: 01-

2. Purchases Made Under Purchasing Agent Appointment on behalf of ____________________________________________ (exempt entity):

☐ Pursuant to an attached Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, I hereby certify that purchases of building materials, and fixtures are exempt from Nebraska sales tax.

Any purchaser, or their agent, or other person who completes this certificate for any purchase which is other than for resale, lease, or rental in the regular course of the purchaser’s business, or is not otherwise exempted from the sales and use tax under Neb. Rev. Stat. §§77-2701 through 77-27,135, shall in addition to any tax, interest, or penalty otherwise imposed, be subject to a penalty of $100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. With regard to a blanket certificate, this penalty shall apply to each purchase made during the period the blanket certificate is in effect. Under penalties of law, I declare that I am authorized to sign this certificate, and to the best of my knowledge and belief, it is correct and complete.

Authorized Signature

Title

Date

NOTE: Sellers must keep this certificate as part of their records. DO NOT SEND TO THE NEBRASKA DEPARTMENT OF REVENUE. Incomplete certificates cannot be accepted.

www.revenue.ne.gov, (800) 742-7474 (toll free in NE and IA), (402) 471-5729

NOTE: This form cannot be used to purchase materials used for WATER services. Materialized used for WATER services are taxable per Reg. 066.14A.
INSTRUCTIONS

WHO MAY ISSUE A RESALE CERTIFICATE. Form 13, Section A, is to be issued by persons or organizations making purchases of property or taxable services in the normal course of their business for the purpose of resale either in the form or condition in which it was purchased, or as an ingredient or component part of other property.

WHO MAY ISSUE AN EXEMPT SALE CERTIFICATE. Form 13, Section B can only be issued by persons or organizations exempt from payment of the Nebraska sales tax by qualifying for one of the six enumerated Categories of Exemption (see below). Nonprofit organizations that have a 501(c) designation and are exempt from federal and state income tax are not automatically exempt from sales tax. Only the entities listed in the referenced regulations are exempt from paying Nebraska sales tax on their purchases when the exemption certificate is properly completed and provided to the seller. Organizations claiming a sales tax exemption may do so only on items purchased for their own use. For health care organizations, the exemption is limited to the specific level of health care they are licensed for. The exemption is not issued to the entire organization when multiple levels of health care or other activities are provided or owned by the organization. Items purchased by an exempt organization that will be resold must be supported by a properly completed Nebraska Resale Certificate, Form 13, Section A.

Indicate the category which properly reflects the basis for your exemption. Place the corresponding number in the space provided in Section B. If category 2 through 6 is the basis for exemption, you must complete the information requested in Section B.

Use Form 13E for purchases of energy sources which qualify for exemption. Use Form 13ME for purchases of mobility enhancing equipment on a motor vehicle.

CONTRACTORS. Form 13, Section C, Part 1, must be completed by contractors operating under Option 1 or Option 3 to document their tax-free purchase of building materials or fixtures from their suppliers. Section C, Part 2, may be completed to exempt the purchase of building materials or fixtures pursuant to a Purchasing Agent Appointment, Form 17. See the contractor information guides on our Web site www.revenue.ne.gov for additional information.

WHERE TO FILE. Form 13 is given to the seller at the time of the purchase of the property or service or when sales tax is due. The certificate must be retained with the seller’s records for audit purposes. Do not send to the Department of Revenue.

SALES TAX NUMBER. A purchaser who completes Section A and is engaged in business as a wholesaler or manufacturer is not required to provide an identification number. Out-of-state purchasers can provide their home state sales tax number. Section B does not require an identification number when exemption category 1, 2, or 5 is indicated.

PROPERLY COMPLETED CERTIFICATE. A purchaser must complete a certificate before issuing it to the seller. To properly complete the certificate, the purchaser must include: (1) identification of the purchaser and seller, (2) a statement whether the certificate is for a single purchase or is a blanket certificate, (3) a statement of basis for exemption including completion of all information for the basis chosen, (4) the signature of an authorized person, and (5) the date the certificate was issued.

PENALTIES. Any purchaser who gives a Form 13 to a seller for any purchase which is other than for resale, lease, or rental in the normal course of the purchaser’s business, or is not otherwise exempted from sales and use tax under the Nebraska Revenue Act, shall be subject to a penalty of $100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse.

Any purchaser, or their agent, who fraudulently signs a Form 13 may be found guilty of a Class IV misdemeanor.

CATEGORIES OF EXEMPTION

1. Purchases made directly by certain governmental agencies identified in Nebraska Sales and Use Tax Reg-1-012, Exemptions; Reg-1-072, United States Government and Federal Corporations; and Reg-1-093, Governmental Units, are exempt from sales tax. A list of specific governmental units are provided in the above regulations. Governmental units are not assigned exemption numbers.

Sales to the United States government, its agencies, and corporations wholly owned by the United States government are exempt from sales tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the United States government for the benefit of the public, generally are taxable. Construction projects for federal agencies have specific requirements, see Reg-1-017 Contractors.

Purchases that are not exempt from Nebraska sales and use tax include, but are not limited to, governmental units of other states, sanitary and improvement districts, urban renewal authorities, rural water districts, railroad transportation safety districts, and county historical or agricultural societies.

2. Purchases when the intended use renders it exempt as set out in paragraph 012.02D of Reg-1-012, Exemptions. Complete the description of the item purchased and the intended use as required on the front of Form 13. Sellers of repair parts for agricultural machinery and equipment cannot accept a Form 13 to exempt such sales from tax.

3. Purchases made by organizations that have been issued a Nebraska Exempt Organization - Certificate of Exemption are exempt from sales tax. Reg-1-090, Nonprofit Organizations; Reg-1-091, Religious Organizations; and Reg-1-092, Educational Institutions, identify such organizations. These organizations will be issued a Nebraska state exemption identification number. This exemption number must be entered in Section B of the Form 13.

4. Purchases of common or contract carrier vehicles and repair and replacement parts for such vehicles.

5. Purchases of manufacturing machinery or equipment by a taxpayer engaged in business as a manufacturer for use predominantly in manufacturing. This includes the installation, repair, or maintenance of such qualified manufacturing machinery or equipment (see Revenue Ruling 01-08-2).

6. A sale that qualifies as an occasional sale, such as a sale of depreciable machinery and equipment productively used by the seller for more than one year and the seller previously paid tax on the item. The seller must sign and give the exemption certificate to the purchaser. The certificate must be retained by the purchaser for audit purposes (see Reg-1-014, Exempt Sale Certificate).
Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax

**PURCHASING AGENT APPOINTMENT**

<table>
<thead>
<tr>
<th>Name and Address of Prime Contractor</th>
<th>Name and Address of Governmental Unit or Exempt Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>T.J. Osborn Construction, Inc.</td>
<td>West Haymarket Joint Public Agency</td>
</tr>
<tr>
<td>Street or Other Mailing Address</td>
<td>Street or Other Mailing Address</td>
</tr>
<tr>
<td>5801 Johanna Rd.</td>
<td>555 So. 10th St.</td>
</tr>
<tr>
<td>City</td>
<td>City</td>
</tr>
<tr>
<td>Lincoln, NE 68507</td>
<td>Lincoln, NE 68508</td>
</tr>
<tr>
<td>State</td>
<td>State</td>
</tr>
<tr>
<td>Zip Code</td>
<td>Zip Code</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name Location of Project</th>
<th>Appointment Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Haymarket Infrastructure Improvement</td>
<td>Effective Date (see instructions)</td>
</tr>
<tr>
<td>M &amp; N Street Sanitary Sewer Project</td>
<td>Expiration Date</td>
</tr>
<tr>
<td>Lincoln, NE</td>
<td>Nebraska Exemption Number (Exempt Organizations Only)</td>
</tr>
</tbody>
</table>

| Identify Project                    | Note: This form cannot be used to purchase materials used for Water services. Materials used for Water Services are taxable per Reg 06.14A. |
| Bid No. 3565, JPA Project 870302    |                                                              |

The undersigned governmental unit or exempt organization appoints the above-named contractor and the contractor's delegated subcontractors as its agent to purchase and pay for building materials that will be annexed to real estate by them into the tax exempt construction project stated above.

**DELEGATION OF PRIME CONTRACTOR'S AUTHORITY**

<table>
<thead>
<tr>
<th>Name and Address of Subcontractor</th>
<th>Delegation Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street or Other Mailing Address</td>
<td>Effective Date</td>
</tr>
<tr>
<td>City</td>
<td>Expiration Date</td>
</tr>
<tr>
<td>State</td>
<td>Portion of Project</td>
</tr>
</tbody>
</table>

The undersigned prime contractor hereby delegates authority to act as the purchasing agent of the named governmental unit or exempt organization to the above-named subcontractor.

**INSTRUCTIONS**

**WHO MUST FILE.** Any governmental unit or organization that is exempt from sales and use tax may appoint as its agent a prime contractor to purchase building materials and/or fixtures that will be annexed to property that belongs to or will belong to the governmental entity or exempt organization pursuant to a construction contract with the governmental unit or exempt organization. The appointment of the prime contractor as its agent is completed by issuing a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, to the prime contractor. The Form 17 is required to be given to the contractor BEFORE he or she annexes building materials. The exempt organization or governmental unit must identify the project (e.g., east wing, chapel construction, or new school auditorium).

The exemption from the payment of the Nebraska and local option sales and use taxes only applies if the governmental unit or exempt organization directly or through its contractor pays for the building materials.

**WHEN TO FILE.** A prime contractor engaging in a construction project with a governmental unit or exempt organization must receive a properly completed and signed Form 17 BEFORE any building materials are annexed. If Form 17 is not issued, the contractor must pay the sales and use taxes and the governmental unit or exempt organization may obtain a refund of the taxes paid by the contractor.

**WHERE TO FILE.** A copy of the completed form should be retained by the governmental unit or exempt organization.

Visit our Web site: www.revenue.ne.gov or call 1-800-742-7474 (toll free in NE and IA) or 1-402-471-5729.
issuing the Form 17. The original is to be retained by the prime contractor. Copies of this form must be made by the prime contractor for delegation purposes to any subcontractors working on the project identified on this form.

**APPOINTMENT INFORMATION.** Enter the dates the purchasing agent appointment will become effective and when it will expire. This appointment will not allow any purchases without payment of the tax by the prime contractor or subcontractor before the effective date or after the expiration date. The dates the delegation becomes effective and the expiration dates must be completed. The phrase “upon completion” or similar phrase is not acceptable as an expiration date. The governmental unit or exempt organization may need to issue another Form 17 if the project is not completed within the prior “effective” and “expiration” dates. Exempt organizations must enter their Nebraska Sales and Use Tax Exemption number.

**DELEGATION OF PRIME CONTRACTOR’S AUTHORITY.**

The prime contractor may delegate his or her authority to act as the purchasing agent of the governmental unit or exempt organization to a subcontractor. The prime contractor must complete his or her copy of Form 17 for each subcontractor who is delegated authority to act as a purchasing agent. Reproductions of this delegation must be provided to the subcontractor, who must retain a copy for his or her records, and to the governmental unit or exempt organization.

Enter the dates the delegation of the subcontractor will become effective, when it will expire, and the portion of the project delegated. This delegation will not allow any purchases without payment of the tax by the subcontractor before the delegation date or after the expiration date. Any further delegation from a subcontractor to additional subcontractors must be delegated by providing a copy of the Form 17 that they received from the prime contractor and attaching it to a separate Form 17 with any further delegation to other subcontractors. The purchasing agent appointment is limited to the contractor’s purchase of building materials and/or fixtures for the specific project and is only valid during the appointment dates shown on the Form 17.

**EXEMPT SALE CERTIFICATE.** A prime contractor who has been appointed to act as a purchasing agent by a governmental unit or exempt organization, and who hires a subcontractor operating as an Option 1 contractor, must provide to that subcontractor a completed copy of Form 17 and a Nebraska Resale or Exempt Sale Certificate, Form 13, with Section C, Part 2, completed. The subcontractor will retain these forms in his or her records, and will not charge the contractor sales tax on any portion of the invoice involving the annexation of materials to the specific project identified on the Form 17. If these forms are not provided to the subcontractor operating under Option 1, the subcontractor must collect and remit sales tax on the charge for the separately stated building materials portion of the invoice. If the Option 1 subcontractor does not separately state the charge for the building materials from contractor labor, then the entire charge is taxable to the prime contractor.

Contractors operating under Option 2 (maintaining a tax-paid inventory) who have been issued a Form 17 from a governmental unit or an exempt organization, must furnish each vendor a copy of the Form 17 and a Form 13, completing Section C, Part 2, when purchasing building materials that will be annexed to real estate. Forms 13 and 17 must be retained with the vendor’s and contractor’s records for audit purposes. A contractor or subcontractor may reproduce copies of these documents which will be furnished to the vendors for each invoice or order made by them.

Invoices from vendors for the purchase of building materials by the contractor as purchasing agent, or the authorized subcontractor, must clearly identify that such purchase is for the specific Form 17 project.

**CREDIT/REFUND OF SALES AND USE TAX.** A contractor or subcontractor who has been appointed as a purchasing agent before any materials are annexed, may withdraw sales or use tax-paid materials from inventory that will be annexed to real estate or used to repair property annexed to real estate and receive a credit for the sales or use tax amount previously paid on those materials.

The contractor or subcontractor may take a credit either against his or her current tax liability, or file a Claim for Overpayment of Sales and Use Tax, Form 7, and receive a refund of the sales or use tax paid on those materials.

**TOOLS, EQUIPMENT, AND SUPPLIES.** The purchase, rental, or lease of tools, supplies, or equipment (i.e., scaffolding, barricades, machinery, etc.) by a contractor for use in the completion of an exempt project CANNOT be purchased tax free, even if the contractor has been issued a Form 17. These items do not become annexed to the real estate.

**OPTION 1 CONTRACTOR ONLY.** If an Option 1 contractor is the only contractor involved in performing work for a governmental unit or exempt organization, a Form 17 is NOT required. The Option 1 contractor must only obtain a Form 13, Section B, from the exempt project owner.

**PENALTY.** Any person who signs this document with the intent to evade payment of tax is liable for the sales and use tax, interest, and penalty, and may be found guilty of a misdemeanor. A contractor can confirm the exempt status of a governmental unit or organization by contacting the Nebraska Department of Revenue.

**AUTHORIZED SIGNATURE.** The Purchasing Agent Appointment must be signed by an officer of the exempt organization or proper government official. The Delegation of Prime Contractor’s Authority must be signed by the owner, partner, corporate officer, or other individual authorized to sign by a power of attorney on file with the Nebraska Department of Revenue.