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

2. Approval of the minutes of JPA meeting October 13, 2010 (Chair Snyder)
   ➢ (Staff recommendation is for the JPA Board to approve minutes as presented)

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

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

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

5. Bill No. WH 10-03A Resolution to Approve the Assignment and Assumption Agreement Between Burlington Northern Santa Fe Railroad, the City of Lincoln and West Haymarket Joint Public Agency (Rick Peo)
   ➢ Public Comment
   ➢ (Staff recommendation is for the JPA Board to approve the assignment and assumption of the BNSF agreement with the City of Lincoln)

6. Bill No. WH 10-09 Resolution to Approve the Consultant Agreement with CSL Marketing Group for Professional Assistance in Providing Marketing Services for the West Haymarket Arena (Rick Peo)
   ➢ Public Comment
   ➢ (Staff Recommendation is for the JPA Board to Approve the Consultant Agreement with CSL Marketing Group)

7. Bill No. WH 10-13 Resolution to Delegate to Dan Marvin the Power to Execute, Receive and Acknowledge Documents and Agreements on Behalf of the West Haymarket Joint Public Agency (Rick Peo)
   ➢ Public Comment
   ➢ (Staff Recommendation is for the JPA Board to Approve the Resolution)

8. Bill No. WH 10-14 Resolution authorizing the issuance of not to exceed $100,000,000 of the Agency’s General Obligation Facility Bonds, consisting of (a) not to exceed 67,965,000 principal amount of General Obligation Facility Bonds, Taxable Series 2010B
(Build America Bonds – Direct Pay) and (b) not to exceed the Agency’s allocation of General Obligation Recovery Zone Economic Development Facility Bonds, Series 2010C (Lauren Wismer and Scott Keene)

➢ Public Comment
➢ (Staff recommendation is for the JPA Board to approve the Bond Resolution)

9. Bill No. WH 10-15 Resolution to Execute an Engagement Letter with BKD for Auditing Services for the Period of the JPA’s Inception Through August 31, 2010 (Don Herz)

➢ Public Comment
➢ (Staff Recommendation is for the JPA Board to Approve the Resolution)

10. Set next meeting date: Tuesday November 18, 2010 3:00 P.M. (Council Chambers Rm 112)

11. Motion to Adjourn
WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
October 13, 2010

Meeting Began At: 3:38 P.M.
Meeting Ended At: 4:25 P.M.
Members Present: Jayne Snyder, Chris Beutler, Tim Clare

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

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Approval of the Minutes of the JPA Meeting September 23, 2010

Snyder asked for any corrections or changes to the minutes from the JPA meeting on September 23, 2010. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. The motion passed 3-0.

Item 3 – Public Comment and Time Limit Notification

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

Snyder announced that there were two changes to the agenda. Staff requested that public hearing and action be delayed on Item 7, the three agreements with BNSF, until Tuesday October 19th. Accordingly, the date of the next Board Meeting has been changed from Friday October 22nd to Tuesday October 19th at 5:00 PM. The meeting will be held in Council Chambers.

Beutler made a motion that Item 12 and Item 16 on the agenda be held over until the next meeting as he has not had a chance to review the resolutions. Clare seconded the motion. Motion passed 3-0.

Item 4 – Approval of Payment Registers (Herz)

Don Herz brought forward the payment registers for the weeks ending September 22, 2010 and September 29, 2010. There were not a significant amount of transactions other than the cost of issuance for the $100 million debt. The payment to Standard and Poor’s is for their rating and at this time Herz has not received an invoice from Moody’s. There was a $500 payment to Union Bank for trustee services. Grant Street is the firm that provided the web based sales transaction.
The second register contains a payment to BKD and two large payments to Ameritas and Gilmore & Bell as part of a fee schedule we have with them.

Beutler asked about the McGrath North charge and if we are contracting out part of the bond legal services. Herz explained that the charge was for Law to get an opinion regarding Davis Bacon applicability.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked about Gilmore & Bell. It was mentioned that they have been working on this for years and Austin wanted to know what would have happened if the arena had not passed. Herz stated that if it had not passed they would not have been paid.

Beutler made a motion to approve the payment registers. Clare seconded the motion. Motion carried 3-0.

**Item 5 – Review of the September 2010 Expenditure Reports**

Herz had two expenditure reports for the Board to review. The first was the Construction Expenditure Report which shows the total budget that the Board approved for a total of $321 million. Through the end of September there has been $906,179 in payments. The other report was the Operating Expenditure Report for the period of September 1, 2010 through the end of September 2010. This is the new budget the Board adopted for the current fiscal year. The year to date expenditure is $15,638.

Clare asked about the payment to BKD and if it was paid under bonding services in the construction budget or auditing services in the operating budget. Herz explained that the payment to BKD is part of the cost of issuance of the debt in the construction budget. Auditing services in the operating budget are for the routine annual audits.

**Item 6 – Update on the Next JPA Bond Issue Including Economic Recovery Zone Bonds (ERZB’s) and Build America Bonds (BAB’s)**

Herz explained that approximately $30 million of Economic Recovery Zone Bonds have been allocated to the City which carry a significant cost of borrowing advantage. He wanted to get those completed before the end of the calendar year because the authority goes away at that time. Due to the low interest rates and a number of factors he is looking at capturing the lower interest rates on as much as another $100 million.

Scott Keene stated that this financing would look a lot like the first financing. The City has about $32 in ERZB’s and he would like to have the balance of the $100 million to be financed through BAB’s. The difference between the two is that BAB’s provide for 35% interest subsidy from the federal government while ERZB’s provide for 45% subsidy. The original plan was to bring $175 million of financings before the Board this calendar year but because of the extremely low interest rates Keene would like to try to lock in a little bit more and is looking at a total of $100 million between the two financings. The ERZB allocation and the BAB authorization expire at the end of this year, so this may be the last chance to take advantage of
these financing vehicles. Keene will come back sometime in 2011 with a traditional tax exempt financing to finish out the funding. While all of the models have assumed approximately $340 million of debt, due to some structuring features he currently estimates that there will be approximately $300 million of total borrowings. This would take care of approximately 2/3 of the entire capital plan at very low interest rates.

Keene will be coming to the October 19th Board meeting to ask for approval of an Adopting Resolution that will set all of the terms and conditions of the financing. He hopes to be in the market place in the middle of November and settle the financing around Thanksgiving or just after. Given that the other financing was just brought to market, Keene thinks it will move quickly through the rating process with Moody’s and Standard & Poor’s.

Herz added that this would account for 2/3 of the financing and that it would be locked into a rate that is substantially lower than what was budgeted. Herz estimated a 5% cost of borrowing and the first financing was approximately 3.2%. That one transaction saved $1.8 million per year in carrying costs.

Snyder asked how many of the bonds issued were ERZB’s and BAB’s. Keene answered that he expects to have $32 million in ERZB’s and about $68 million in BAB’s. They are lobbying the State to get more of an allocation because not many of the ERZB’s have been issued state wide and many communities that were provided this allocation haven’t used them.

Keene reported that in the packet that will come out on Friday, there will be drafts of the Adopting Resolution, Bond Resolution and the Preliminary Official Statement. These documents will be structured as a series A and series B. Series A will include BAB’s with maturities in 2020-2035. The longest maturities will be the ERZB’s due to the 45% subsidy. Keene wants the subsidy on the highest interest rate bonds for the longest period of time, therefore he is pushing the ERZB’s out to the tail end of the amortization schedule. He anticipates taking this financing to a competitive sale the same way the first series of bonds were sold, with settlement around the 30th of November.

Lauren Wismer gave the Board a first draft of the Resolution. One of the changes he would like to make from last time is the inclusion of an Adopting Resolution which approves the general form but gives the officers the ability to tweak it if necessary due to market conditions. The City frequently takes this approach as does the University. The Resolution will go before the City Council for first reading on October 25th and approval on November 1st.

Clare appreciated the work done so far but was concerned because the use of this funding comes with Davis Bacon requirements. Dan Marvin came forward and stated that the Department of Labor determines what the prevailing wage is. In the City of Lincoln for building construction, the prevailing wage is set county wide. Highway construction is much broader with a multi-county prevailing wage. When compared to the Bureau of Labor’s statistics, the wages of many of the categories are similar. There is a significant difference for electricians, but on balance there are not a lot of differences.
Roger Figard added that as far back as 1979 the City has followed Davis Bacon requirements on any project with Federal Aid. To the best of his knowledge, there haven’t been any excess bid prices due to Davis Bacon. The City completes wage surveys and he has not seen any wages paid to the workers that don’t already meet or exceed prevailing wages. On any given day if bid prices are compared between a federal aid project and a City only project, Figard is not seeing a difference in the bids. Marvin noted that on Public Works projects the requirement is put on the bid documents and the contractor is asked to comply with Davis Bacon.

Clare noted that the Board has a duty to make sure the project stays on time and under budget so he wants to make sure that costs are kept low on all elements.

Snyder asked for any comments from the public. John “Cash” Austin came forward and noted that the Board is dealing with a lot of money. He suggested that the University of Nebraska be included in the bond because if this goes under, the City will have to pay for the whole thing. The University is going to make more money on this than the City of Lincoln.

**Item 7 – Bill No. WH 10-3A Resolution to Approve the Assignment and Assumption Agreement Between Burlington Northern Santa Fe Railroad, The City of Lincoln and West Haymarket Joint Public Agency.**

Item 7 will be held until the next meeting on October 19, 2010 at 5:00 PM.

**Item 8 – Bill No. WH 10-05 Resolution to Approve Amendment No. 1 to the Agreement Between the West Haymarket JPA and DLR Group, Inc. to Provide Architectural Services for the Design of the Arena and Other Arena Improvements for the West Haymarket Project**

Rick Peo came forward and reported that this item was held over at the last meeting. Marvin stated that he has been working with DLR for a couple years. DLR went through an open process and won the bid. A provision of that contract was that it would be revisited and rescooped after the election. Marvin has worked through the summer with DLR and feels that he represented the City’s interest in this agreement and lowered the cost to the taxpayers. The agreement provides for a work credit of approximately $591,000. If this had gone out for bid and new architect was selected, the credit is wouldn’t have been included.

Clare asked Stan Meredith to come forward. Clare explained that when Innovation Campus was in its infancy stages he received comments that they needed to look at including interns from the University and other campuses in Lincoln. As a representative of the University of Nebraska, Clare encouraged Meredith to bring in interns when possible. Meredith stated that he was asked by the Dean of the College of Architecture to address a graduate class of about 100 students last night. Several of the students approached him and asked to be placed in one of the offices in Lincoln. Meredith indicated that he will do his best to get them involved in the project. Marvin added that there were others from the University, such as engineers, who have offered to work with DLR on tasks that they would do for free. Marvin will pursue that as well. Jim Martin, Program Manager, came forward and stated that he would be willing to place interns in his office as well.
Snyder asked for any comments from the public. John “Cash” Austin came forward and asked what DLR stands for. Meredith answered that it stands for Dana Larsen Roubal and Associates which is a Nebraska corporation formed in 1966. They are entirely employee owned.

Beutler made a motion to approve Amendment No. 1 to the Agreement with DLR Group. Clare seconded the motion. Motion carried 3-0.

**Item 9 – Bill No. WH 10-06 Resolution to Approve the Assignment Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for Benham Companies, LLC. To Perform Program Management Services**

Peo explained that this is a resolution to approve an Assignment and Assumption Agreement which was entered into by the City with Benham Companies to provide program management services for the arena project. Due to the short timeline it was initially entered into by the City but it has always been the expectation that it would come before the Board for approval.

Snyder asked for any comments from the public. No one came forward.

Beutler made a motion to approve the Assignment Assumption Agreement between the City of Lincoln and West Haymarket Joint Public Agency providing for Benham Companies to perform program management services as shown in the materials. Clare seconded the motion. Motion carried 3-0.

**Item 10 – Bill No. WH 10-07 Resolution to Approve the Purchase Agreement with Noohznik, L.P. and the West Haymarket Joint Public Agency**

Peo reported that this purchase agreement is needed for the JPA to acquire property for the storm water mitigation area. In addition, a portion of this property has to be conveyed to BNSF for their future railroad corridor. The purchase price is $18,000.

Snyder asked for any comments from the public. No one came forward.

Beutler made motion to approve the Purchase Agreement with Noohznik, L.P. and the West Haymarket Joint Public Agency. Clare seconded the motion. Motion carried 3-0.

**Item 11 – Bill No. WH 10-08 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for a Transfer and Exchange of Land with the Lower Platte South Natural Resource District**

Peo explained that this is property that needs to be acquired for the storm water mitigation area and the BNSF railroad corridor. Initially this was entered into as an agreement with the City and NRD and now needs to be transferred to the JPA.
Beutler took this time to thank Rick Peo for all of his work on these items especially with the volume of work he has completed under many time constraints. Snyder was also appreciative of the work Rick has done.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked if there was any money involved in this agreement. Peo answered that this is an exchange of land. The NRD is giving the land for free but we would be giving conservation easements to them.

Beutler made a motion to adopt the Resolution to approve the Assignment and Assumption Agreement between the City of Lincoln and West Haymarket Joint Public Agency providing for the transfer and exchange of land with the Lower Platte South Natural Resource District. Clare seconded the motion. Motion carried 3-0.

Item 12 – Bill No. WH 10-09 Resolution to Approve the Consultant Agreement with CSL Marketing Group for Professional Assistance in Providing Marketing Services for the West Haymarket Arena

Item 12 will be held until the next meeting on October 19, 2010 at 5:00 PM.

Pee gave the Board a copy of a Motion to Amend to substitute a new marketing services attachment and the budget for that contract. Those items just came in today and will be put online and be available for the public. Attachment A had some minor revisions and Attachment B was omitted from the item on the agenda.

Item 13 – Bill No. WH 10-10 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for T.J. Osborn to Complete the West Haymarket Utility Relocation Project

Pee explained that this is a contract with T.J. Osborn to do the sanitary sewer work in the West Haymarket area which has to be completed before the railroad can start relocating tracks. The total cost on this project is $1.161 million.

Snyder asked for any comments from the public. No one came forward.

Beutler made a motion to adopt the Resolution to approve the Assignment and Assumption Agreement between the City of Lincoln and the West Haymarket Joint Public Agency providing for T.J. Osborn to complete the West Haymarket utility relocation project. Clare seconded the motion. Motion carried 3-0.

Item 14 – Bill No. WH 10-11 Resolution to Approve the Purchase Agreement between Magdalen Franssen and the West Haymarket Joint Public Agency

Pee explained that this is a purchase agreement for land that is needed for the storm water mitigation area for the West Haymarket Project. The cost for this land is $18,000.

Snyder asked for any comments from the public. No one came forward.
Beutler made a motion to adopt the Resolution to approve the Purchase Agreement between Magdalen Franssen and the West Haymarket Joint Public Agency. Clare seconded the motion. Motion

**Item 15 – Bill No. WH 10-12 Resolution to Approve the Consultant Agreement between Thought District and the West Haymarket Joint Public Agency to Provide Website and Facebook Development Design Services**

Peo explained that this is an agreement with a consultant to create a website. Marvin added that he has had meetings with Thought District for the last six weeks. They’ve made efforts to go throughout the community to find out what kind of content to put on the website. The launch date will probably be the first or second week of December. The webpage will include agenda items, webcams, and a robust amount of information to fulfill the promise to be open and transparent. Thought District is a very creative operation and takes this very seriously.

Snyder asked if they would be working with the marketing company. Marvin stated that there may be elements in the future but that is probably a year or two down the road. There are things they can do in terms of helping with the marketing end of the arena which will be key for some of the financing we are doing.

Clare asked if this service was put out to bid. Marvin answered that it was not due to the small amount of the contract, $23,000, and because the City has prior experience with Thought District. There will be some follow up at some point about updating content and ongoing maintenance but this will get the project up and running.

Snyder asked for any comments from the public. Coby Mach came forward and stated that Thought District has already been in contact with LIBA about things they would like to see and different ways to provide for transparency. Mach thanked the board for continuing to provide a transparent arena project.

Beutler made a motion to adopt the Resolution to approve the Consultant Agreement between Thought District and the West Haymarket Joint Public Agency to provide website and Facebook development design services. Clare seconded the motion. Motion carried 3-0

**Item 16 – Bill No. WH 10-13 Resolution to Delegate to Dan Marvin the Power to Execute, Receive and Acknowledge Documents and Agreements on Behalf of the West Haymarket Joint Public Agency**

Item 16 will be held until the next meeting on October 19, 2010 at 5:00 PM.

Peo explained that the purpose of this Resolution is to have someone available to sign supplemental documents as they come through. All of the agreements listed in the Resolution will be approved by the Board; however, those agreements incorporate by reference multiple other agreements such as easements, licenses and deeds. In order to accommodate closings and processing those additional agreements as they come through, it would be easier if someone were
available to sign documents on a quick basis. As Dan Marvin is the Secretary of the JPA which designates him as an Executive Office in the bylaws, he seemed to be the appropriate person to do that. Marvin would only be authorized to sign agreements that have been approved by the body as to form and executed at a later date. For example, with the railroad there may be 20 different utility easements that need to be executed based on the form in the agreement.

Clare asked if this were approved today would Marvin be allowed to sign documents in regards to BNSF. Peo stated that he would have to strike that item out of the resolution as the Board has not approved the BNSF agreements.

Marvin stated that he did not lobby for the job but he is available if needed. Snyder stated that she would also be available until the issue is decided.

**Item 17 – Set Next Meeting Date: Tuesday October 19, 2010 5:00 P.M.**

The next JPA Board meeting is scheduled for October 19, 2010 at 5:00 P.M.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked who Dan Marvin is and if he worked for the Mayor’s Office. Clare answered that Marvin is under contract with the JPA. Austin stated that he thinks the State needs to audit the JPA every six months. Rod Confer came forward and stated that under the Joint Public Agency’s rules, which are different than the City Council, members of the public are only allowed to address the Joint Public Agency concerning matters that are on the agenda so these comments are out of order.

Snyder thanked Austin for his comments.

**Item 18 – Motion to Adjourn**

Beutler motioned to adjourn. Clare seconded the motion. Motion carried 3-0. Meeting adjourned at 4:25.

Prepared by: Melissa Ramos-Lamml, Engineering Services
### West Haymarket JPA Check Register
**9/30/10 through 10/6/10**

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THIRD ASSIGNMENT AND ASSUMPTION AGREEMENT

This Third Assignment and Assumption Agreement ("Assignment") is made and entered into as of the _____ day of ____________, 2010, between the City of Lincoln, Nebraska, a municipal corporation ("City") and the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

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

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

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

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

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

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

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City’s rights, title and interest in and to and under the Agreements as authorized under the agreements listed in Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreements. Agency shall fully and completely indemnify and hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreements.
3. **Future Performance of City.** City agrees to cooperate fully with Agency and to assist Agency in exercising Agency’s rights under the Agreements if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Third Assignment and Assumption Agreement as of the ____ day of ______________, 2010.

ATTEST: [Signature]

City of Lincoln, Nebraska
a municipal corporation

By: [Signature] Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: [Signature] Jayne Snyder, Chairperson

STATE OF NEBRASKA )
) ss.
COUNTY OF LANCASTER )

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

[Signature]
Notary Public
STATE OF NEBRASKA       )
COUNTY OF LANCASTER      ) ss.

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

___________________________________
Notary Public
LIST OF AGREEMENTS ASSIGNED TO AGENCY

1. Master Development Agreement between the City and BNSF to provide for a land exchange needed to create the new BNSF rail corridor and the site for the West Haymarket Project improvements; to provide for the removal of BNSF improvements on the property to be acquired by the City from BNSF; to provide for BNSF’s construction of replacement tracks and related improvements; and to provide for BNSF’s granting of certain license and easement rights to the City for Right of Entry Work related to the West Haymarket Project Improvements.

2. Land Exchange Agreement between the City and BNSF for acquisition of property from BNSF for the West Haymarket Project.

3. Construction and Maintenance Agreement between the City and BNSF to provide for terms and conditions regarding construction of the City’s rights of entry work under the Master Development Agreement for the West Haymarket Project.
CONSTRUCTION AND MAINTENANCE AGREEMENT

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

RECITALS

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

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

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

AGREEMENTS

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

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

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

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

2.1.1 The Temporary Access License for Initial Construction as defined and described in Section 3.2.1 of the Master Agreement and attached thereto as Exhibit EE:
2.1.2 The Temporary Grading License for Storm Water Mitigation as defined and described in Section 3.2.2(a) of the Master Agreement and attached thereto as Exhibit FF-1;

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

3.1.1 If any City C&M Work is not included in the City Work Final Design (as defined in the Master Agreement), City must furnish to BNSF four sets of plans and specifications for such City C&M Work (reduced size 11” x 17”), together with two copies of calculations, and two copies of specifications in English Units, for approval prior to commencement of any construction. For each set of such plans and specifications submitted by City to BNSF, BNSF shall approve or reject such plans and specifications within thirty (30) days after BNSF’s receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans and specifications shall be approved or rejected in the manner hereinafore provided. BNSF will give City final written approval of the plans and specifications substantially in the form of Exhibit B, attached hereto and incorporated herein by reference. Upon BNSF’s final written approval of the plans and specifications (the "Approved Plans"), the Approved Plans will
become part of this C&M Agreement and incorporated herein. Any approval of the Approved Plans by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the Approved Plans meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the Approved Plans or construction is structurally sound and appropriate or that the Approved Plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

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

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

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

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

(i) BNSF’s "Project Engineer" is:

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

(ii) BNSF’s "Division Engineer" is:

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

(iii) BNSF’s "Manager Signal" is:

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

(iv) BNSF’s "Director Engineering Services" is:

Tom Schmidt
Thomas.Schmidt@BNSF.com
913-551-4330 (office)
3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Construction and Contractor Requirements.

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

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction (“Legal Requirements”), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each
portion of the City C&M Work must be promptly commenced by the Party obligated hereunder to perform
the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore,
any changes or modifications of the City C&M Work which affect BNSF will be subject to BNSF's written
approval prior to the commencement of any such changes or modifications from BNSF's Project Engineer.

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

3.3.4 Safety/Security.

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

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

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

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to
locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences,
buildings, improvements or other facilities located within BNSF’s property (collectively, “Other
Improvements”). City must contact the owner(s) of the Other Improvements notifying them of any work
that may damage these Other Improvements and/or interfere with their service and, if required, obtain the
owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF
improvements and Other Improvements on the applicable Approved Plans and mark all BNSF
improvements and Other Improvements in the field in order to verify their locations. City must also use all
reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or
Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this Section 3.3.5, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

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

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

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

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

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

3.4 Environmental Compliance and Notification.

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

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

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

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

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

3.5 Timing.

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

3.6 Indemnifications.

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

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

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

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

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

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

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

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

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

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

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

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

3.6.4 City agrees that its obligations under the provisions of this Section 3.6 expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement and the Rights of Entry agreements.
3.7 Waiver of Municipal and Sovereign Immunity. To the fullest extent permitted by law, City waives its municipal immunity and its sovereign immunity with respect to BNSF for matters arising out of the West Haymarket Project, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and this C&M Agreement, including, without limitation, (i) for environmental and other conditions of the Replacement BNSF Property that City is conveying to BNSF pursuant to the Master Agreement and the Exchange Agreement; (ii) for environmental and other conditions of the real property that BNSF is quitclaiming to City pursuant to the Master Agreement and the Exchange Agreement and of property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest, including remediation costs beyond Nebraska Department of Environmental Quality Title 200 funds ("Title 200 Funding"); (iii) for claims arising out of work performed by City or its contractors pursuant to the provisions of this C&M Agreement, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and the Exchange Agreement; and (iv) for claims arising out of continuing rights of City to enter onto property of BNSF, including work performed by City and City Contractors on such property of BNSF. Any lawful waiver of City's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of City's sovereign immunity pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement, and the Rights of Entry agreements.

3.8 Insurance Obligations.

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

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

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

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

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

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

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

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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
• Waiver of subrogation in favor of and acceptable to Railroad.
• Additional insured endorsement in favor of and acceptable to Railroad.
• Separation of insureds.
• The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

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

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

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

3.8.1.5 Other Requirements:

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

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

City is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automotive Liability and up to $500,000 per occurrence and $500,000 aggregate on Worker’s Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions.
of this C&M Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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

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

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

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

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

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

Failure to provide evidence as required by this Section 3.8 will entitle, but not require, Railroad to immediately suspend, until such default is cured, any and/or all work under this C&M Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work, and (iii) any other work on or affecting any BNSF property, subject to termination as provided in the Master Agreement. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.
The fact that insurance (including, without limitation, self-insurance) is obtained by City will not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this C&M Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

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

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

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

ARTICLE IV – MISCELLANEOUS

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

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

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

4.4 This C&M Agreement shall be in effect for so long as the Master Agreement and/or any Right of Entry is in effect; provided, however, that if the Master Agreement and all Rights of Entry have expired or been terminated, BNSF has the right to terminate this C&M Agreement upon written notice to City.
4.5 Neither termination nor expiration of this C&M Agreement will release either Party from any liability or obligation under this C&M Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

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

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

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

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

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

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

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

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

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

4.13 This C&M Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.
4.14 As of this same Effective Date, City and BNSF have also entered into the Master Agreement, the Exchange Agreement and to the extent executed, certain Right of Entry licenses and/or easements. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Right of Entry licenses and/or easements. City and BNSF agree that, except as otherwise stated in Article 1 of this C&M Agreement: (i) in the event the terms of the Master Agreement and the terms of the C&M Agreement, the Exchange Agreement and the various licenses and/or easements are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement and the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the Exchange Agreement shall prevail, and (iii) in the event the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the C&M Agreement shall prevail.

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

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

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

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

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

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: ______________________________________
    Chris Beutler, Mayor of Lincoln

Date: _________________________________

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: _________________________________
EXHIBIT A

Project Area

[See attached]
PARKING RECONFIGURATION

EXISTING PARKING STALL COUNT 540
NO. STALLS LOST 125 (APPROX.)
NO. STALLS GAINED 125
NET STALLS LOST ZERO

PG 1185.4
PG 1,143.3 +
PG 1,144.4 +
EG 1145.6
15'-9" CLEAR BRIDGE DECK TO RAMP SURFACE
PG 1170.6
30 STALLS
45 STALLS
PARKING GARAGE
300' x 180'
MIXED USE
835 STALLS +/-
960 STALLS +/-
1505 STALLS +/-

PG 1187.0
PG 1187.0
30 STALLS
45 STALLS
PARKING GARAGE
300' x 180'
MIXED USE
835 STALLS +/-
960 STALLS +/-
1505 STALLS +/-

15'-9"
30 STALLS
45 STALLS
PARKING GARAGE
300' x 180'
MIXED USE
835 STALLS +/-
960 STALLS +/-
1505 STALLS +/-

PARKING RECONFIGURATION
EXISTING PARKING STALL COUNT 540
NO. STALLS LOST 125 (APPROX.)
NO. STALLS GAINED 125
NET STALLS LOST ZERO

48'-2"
37'-6"
42'-3"

Bridge Elev. = 1187.0
231' Span (31'-0" Clear)

RAILROAD ACCESS ROAD
FUTURE MAINLINE TRACK

RAILROAD ACCESS ROAD

1157 (500 yr flood + 2') + 36' = 1193
1153 (100 yr flood + 1') + 32' = 1185

DATE: 8/23/2010
DGN:
8/23/2010
008-0645
8/23/2010
008-0645

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

DATE:
DGN:
8/23/2010
f:\projects\008-0645\_trns\base\exhibits\railroad agreement exhibits\BNSF Exhibits\DISPLAYS\BNSF_Exhibit A Display.dgn
8/23/2010
008-0645
8/23/2010
008-0645

UP
DN
parking level 1
Date: ______________________

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

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

Dear Mr. Peo:

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

Regards,

Gerald Maczuga  
Project Engineer
EXHIBIT C

Contractor Requirements
EXHIBIT C
Contractor Requirements

1.01 General

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

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

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

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

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

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

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

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

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

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

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

- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.
1.01.09 For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.

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

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

1.03.01 The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's
operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

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

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15' Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
  - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge

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

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

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

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

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited.
and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

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

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

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

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

### 1.05 Railway Flagger Services:

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

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

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

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

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

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

1.05.03 Flagging services will be performed by qualified Railway flaggers.

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

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

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

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

1.06 Contractor General Safety Requirements

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

1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the
personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

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

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

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

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

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

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

- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF
THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING.
PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE
AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.

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

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

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

### 1.07 Excavation

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

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

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

- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway
employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

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

1.08 Hazardous Waste, Substances and Material Reporting

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

1.09 Personal Injury Reporting

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

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

1. Accident City/St
2. Date: ________________ Time: ________________ County:
3. Temperature:
4. Weather
   (if non-Railway location)
5. Social Security #
6. Name (last, first, mi)
7. Address: Street: __________________________________________ City: St. ______ Zip:
8. Date of Birth: ________________ and/or Age ______ Gender:
   (if available)
9. (a) Injury: ______________________________ (b) Body Part:
   (i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.):
12. Treatment:
    __ First Aid Only
    __ Required Medical Treatment
    __ Other Medical Treatment
13. Dr. Name ___________________________ 30. Date: ________
14. Dr. Address:
    Street: ______________________________ City: __________________ St: ______ Zip: ______
15. Hospital Name:
16. Hospital Address:
    Street: ______________________________ City: _________________ St: ______
    Zip: ______
17. Diagnosis:

FAX TO RAILWAY AT (817) 352-7595
AND COPY TO RAILWAY ROADMASTER FAX
EXHIBIT C-1(A)

CONTRACTOR’S RIGHT OF ENTRY
For C&M Work
EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

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

(i) ANY RIGHTS OR INTERESTS GRANTED TO CONTRACTOR PURSUANT TO THIS AGREEMENT;
(ii) The use, occupancy or presence of contractor and contractor parties (defined below) and/or any work performed by contractor and contractor parties in, on, or about railway's property or right-of-way and/or the west haymarket project, including, without limitation, operation of the pedestrian bridge, security fencing, or storm water mitigation by any contractor party (defined below);

(iii) Any environmental matters arising from contractor and/or contractor parties' use and occupancy of railway's right-of-way or other railway property, including without limitation use and occupancy of railway's right-of-way or other railway property in connection with performance of the C&M work;

(iv) Any damage to or destruction of any telecommunication lines in connection with the west haymarket project by contractor and/or contractor parties, including but not limited to (A) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees as a result of such damage or destruction, and/or (B) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies) as a result of such damage or destruction;

(v) Contractor's breach of the terms and conditions of this agreement; or

(vi) Any act or omission of contractor or its officers, agents, invitees, employees or subcontractors (such officers, agents, invitees, employees and subcontractors being referred to herein individually as a "contractor party" and collectively, "contractor parties"), or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.

The liability assumed by contractor will not be affected by the fact, if it is a fact, that any damage, destruction, injury or death was occasioned by or contributed to by the negligence of railway, its agents, servants, employees or otherwise, but excluding claims wholly caused by railway's sole negligence and excluding claims to the extent that such claims are caused by the willful misconduct or gross negligence of railway.

Further, to the fullest extent permitted by law, contractor agrees, regardless of any negligence or alleged negligence of railway, to indemnify, defend and hold harmless railway against and assume the defense of any liabilities asserted against or suffered by railway under or related to the federal employers' liability act ("fela") whenever employees of contractor or any contractor party claim or allege that they are employees of railway or otherwise. This indemnity shall also extend, on the same basis, to fela claims based on actual or alleged violations of any federal, state or local laws or regulations, including but not limited to the safety appliance act, the locomotive inspection act, the occupational safety and health act, the resource
CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

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

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

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations
This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor 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 of willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor’s care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

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

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

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

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best’s Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

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

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

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

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

________________________
(Contractor)

By:________________________
Printed Name:_______________
Title:______________________

Contact Person:_______________
Address:____________________

City:_________________ State:___ Zip:____
Fax:______________________
Phone:____________________
E-mail:____________________

BNSF Railway Company

By:________________________
Name:______________________

Project Engineer

Accepted and effective this _____day of 20__. 
EXHIBIT C-1(B)

CONTRACTOR’S RIGHT OF ENTRY
For C&M Work
EXHIBIT C-1(B)

CONTRACTOR’S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

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

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

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

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

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

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

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

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

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

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

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

**Section 2. TERM**

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

**Section 3. INSURANCE**

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

**A. Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000.00 per occurrence, and $4,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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


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

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

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

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

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

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

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

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor 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 of willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

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

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

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

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best’s Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

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

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

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

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

________________________
(Contractor)

By:________________________
Printed Name:______________
Title:______________________

Contact Person:______________
Address:____________________

City:________________ State:___ Zip:____
Fax:________________________
Phone:_____________________
E-mail:____________________

BNSF Railway Company

By:________________________
Name:_____________________
Project Engineer

Accepted and effective this _____day of 20__.
EXHIBIT D

Final Clearances

Pursuant to the provisions of Section 3.1.3 of the C&M Agreement, approved Final Clearances for each segment of City C&M Work being constructed pursuant to the City Work Final Design are attached hereto as Exhibit D.
In addition to and not in limitation of the requirements and obligations of City and City Contractors contained in the C&M Agreement, the following requirements shall apply to City and City Contractors with respect to management of impacted environmental media. In the event of conflicts between the terms of this Exhibit E and the rest of the C&M Agreement, including but not limited to the provisions of Exhibit C and, as applicable, Exhibit C-1(A) or Exhibit C-1(B), the most restrictive provisions shall apply to City and City Contractors.

Proper Management of Impacted Media

1. Access

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

2. Management Practices

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

2.1 Impacted Soil and Debris Management

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

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

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

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

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

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

2.2 Grading/Excavation

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

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

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

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

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

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

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

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

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

2.3 Utility Work

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

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

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

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

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

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

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

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

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

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

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:
Frank Uhlarik – Alfred Benesch & Company: 402-333-5792
Cell: 402-669-0546

Alternate:
Bill Imig – Olsson Associates: 402-458-5903
Cell: 402-314-4568

Alternate:
Miki Esposito – Environmental Project Management Team: 402-441-6173

Agencies/Railroad Authorities:

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

After Hours, Weekends and Holidays:

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

ALL OTHER INCIDENTS

Fire and Police: Dial 911
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<td>CR</td>
<td>Contractor’s Representative</td>
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<td>SMP</td>
<td>Soil Management Plan</td>
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<tr>
<td>EPMT</td>
<td>City of Lincoln Environmental Project Management Team</td>
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<td>PM</td>
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<td>Environmental Project Management Team Technical Representative</td>
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EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT ("Agreement") is made to be effective as of October _____, 2010 ("Effective Date") between the CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation ("City"), and BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"). City and BNSF, respectively, are sometimes referred to in this Agreement each as a "Party" and collectively, as the "Parties".

RECITALS

A. City and BNSF have entered into that certain Master Development Agreement (the "Master Agreement") and certain Construction and Maintenance Agreement ("C&M Agreement"), both of even date herewith. In connection with certain economic development objectives of City as set forth in the Master Agreement, City desires to acquire the Replacement City Property (defined below) from BNSF in exchange for the Replacement BNSF Property (defined below) and Cash Payment (defined below). All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

B. BNSF owns or controls certain real property and related improvements (collectively, the "Existing BNSF Property") located in the City of Lincoln, Lancaster County, Nebraska, and depicted on Exhibit B attached hereto and incorporated herein by reference. The Existing BNSF Property consists of (i) the "Retained BNSF Property" as depicted on Exhibit B-1 attached hereto and incorporated herein by reference, and (ii) the "Transferred BNSF Property" as depicted on Exhibit B-1 attached hereto.

C. BNSF owns or controls that certain bridge over Salt Creek (the "BNSF Bridge") located in the City of Lincoln, Lancaster County, Nebraska, and depicted on Exhibit C attached hereto and incorporated herein by reference.

D. BNSF holds certain ordinance rights, licenses, easements, and/or other interests (collectively "BNSF Reversionary Interests") over that certain real property depicted on Exhibit J and over certain other City streets and alleys immediately abutting the Project Area ("Other BNSF Reversionary Interests") as shown on Exhibit S attached hereto and incorporated herein by reference.

E. For purposes of this Agreement, the Transferred BNSF Property, the BNSF Bridge, the BNSF Reversionary Interests and the Other BNSF Reversionary Interests shall be referred to collectively herein as the "Replacement City Property".

F. City desires to acquire certain real property and related improvements ("UP/Replacement BNSF Property") located in the City of Lincoln, Lancaster County, Nebraska, from Union Pacific Railroad Company ("UP"), as depicted on Exhibit E-1 attached hereto and incorporated herein by reference.

G. City desires to acquire certain real property and related improvements located in the City of Lincoln, Lancaster County, Nebraska, from certain additional third parties ("Third Party/Replacement BNSF Property"), as depicted on Exhibit F-1 attached hereto and incorporated herein by reference.

H. City desires to vacate those streets and alleys (the "Vacated Right of Way/Replacement BNSF Property") as depicted on Exhibit D-1 attached hereto and incorporated herein by reference, and to promptly cause all reversionary interests in the Vacated Right of Way/Replacement BNSF Property to be transferred to BNSF.

I. For purposes of this Agreement, the Vacated Right of Way/Replacement BNSF Property, UP/Replacement BNSF Property, and the Third Party/Replacement BNSF Property shall be referred to collectively herein as the "Replacement BNSF Property".

J. The Replacement City Property and the Replacement BNSF Property may be collectively referred to hereinafter as the "Exchange Properties" or individually as an "Exchange Property". As used
in this Agreement, “Transferor” refers to the Party that will be quitclaiming the respective Exchange Property, and “Transferee” refers to the Party to which the respective Exchange Property will be quitclaimed.

AGREEMENTS

In consideration of the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. City Initial Acquisition of UP/Replacement BNSF Property and Third Party/Replacement BNSF Property.

1.1 On or before the First Closing (defined below), City shall acquire, at its sole cost and expense, the UP/Replacement BNSF Property from UP. BNSF shall have no obligation to pay for or assist in the acquisition of the UP/Replacement BNSF Property.

1.2 On or before the First Closing, City shall acquire, at its sole cost and expense, the applicable Third Party/Replacement BNSF Property from Noohznik L.P. and the Lower Platte South Natural Resources District. BNSF shall have no obligation to pay for or assist in the acquisition of the Third Party/Replacement BNSF Property from such parties.

1.3 On or before the Second BNSF Closing (defined below), City shall acquire, at its sole cost and expense, the applicable Third Party/Replacement BNSF Property from N Street Company, LLC. BNSF shall have no obligation to pay for or assist in the acquisition of the Third Party/Replacement BNSF Property.

1.4 City's acquisition of the UP/Replacement BNSF Property and Third Party/Replacement BNSF Property are collectively the "Initial Acquisitions".

Section 2. Exchange Consideration; Bargain Sale.

2.1 Subject to the terms and conditions set forth in this Agreement (i) BNSF agrees to convey its interest in the Replacement City Property to City; (ii) BNSF agrees to convey the Rights of Entry (as defined in the Master Agreement); (iii) City agrees to convey its interest in the Replacement BNSF Property to BNSF; (iv) City agrees to pay to BNSF the Cash Payment; and (v) City agrees to cooperate with BNSF to substantiate the Charitable Donation.

2.2 City will convey its interest in the Replacement BNSF Property to BNSF by quitclaim deeds at the BNSF Closings (defined below) as set forth below, free and clear of all Encumbrances (defined below) except the Permitted Encumbrances (defined below). For purposes of this Agreement, all references to a quitclaim deed for the Replacement BNSF Property shall include an easement instead of a quitclaim deed for any parcel over which BNSF elects to receive an easement interest instead of fee simple ownership (as provided for in Section 9.1 below); provided, however, that any easement interests in the Replacement BNSF Property which are conveyed in lieu of fee simple title shall be quitclaimed to BNSF.

2.3 City hereby advises BNSF that City has immediate need for the Replacement City Property for incorporation into City’s development project and should BNSF not agree to exchange the Replacement City Property to City under the terms and conditions of this Agreement, City’s staff intends to recommend to its governing body that City immediately initiate the process to exercise its power of eminent domain to acquire the Replacement City Property in accordance with applicable law. In order to avoid the expense and delay of such a condemnation action by City, BNSF is willing to convey the Replacement City Property to City in lieu of such condemnation action on the terms and conditions set forth in this Agreement.

2.4 BNSF will convey its interest in the Replacement City Property to City by quitclaim deeds and deliver the Rights of Entry agreements at the City Closings (defined below) as set forth below.
2.5 In addition to the conveyance to BNSF of the Replacement BNSF Property, City shall also pay to BNSF the sum of One Million and no/100 Dollars ($1,000,000.00) ("Cash Payment") as additional consideration for the Replacement City Property at the First Closing.

2.6 BNSF intends to make a charitable donation to City ("Charitable Donation") for the amount equal to the fair market value of the Replacement City Property (less the Cash Payment) minus the fair market value of the Replacement BNSF Property (the "Donation Amount"). To the extent permitted by law, City agrees to cooperate with BNSF to execute the Donee Acknowledgment Section of Internal Revenue Service Form 8283 and a charitable contribution receipt ("Charitable Contribution Receipt") for the Donation Amount. To establish the respective fair market values of the Replacement City Property and Replacement BNSF Property, BNSF, at its sole cost and expense and using an appraiser of BNSF's choice, shall obtain appraisals of each conveyed parcel for the Replacement City Property and Replacement BNSF Property, each such appraisal to be conducted within sixty (60) days prior to the Closing conveying each applicable parcel. BNSF agrees to provide City with copies of such appraisals. The Charitable Donation shall be allocated among the properties included in the City Closings as reasonably determined by BNSF and in compliance with applicable Internal Revenue Service regulations (the "Donation Allocation").

Section 3. Existing Information.

3.1 As of the Effective Date, the City has taken reasonable efforts to provide BNSF with copies of (i) any environmental assessments and reports, (ii) any contracts or agreements, (iii) any soil or engineering reports, and (iv) any written notices from any governmental authority relating to the Replacement BNSF Property and in the possession or direct control of the City's designated document custodian (collectively, the "City Existing Information"). If during the term of this Agreement and subsequent to such initial delivery, City obtains additional or updated materials that would have been included in the City Existing Information, City shall promptly deliver such additional or updated materials to BNSF.

3.2 As of the Effective Date, BNSF has taken reasonable efforts to provide City with copies of (i) any environmental assessments and reports, (ii) any contracts or agreements (including without limitation known existing licenses and easements to be assigned to City pursuant to the provisions of Section 4.7.1 below), (iii) any soil or engineering reports, and (iv) any written notices from any governmental authority relating to the Replacement City Property to be conveyed to City and in the possession or direct control of BNSF's designated document custodian (collectively, the "BNSF Existing Information"). If during the term of this Agreement and subsequent to such initial delivery, BNSF obtains additional or updated materials that would have been included in the BNSF Existing Information, BNSF shall promptly deliver such additional or updated materials to City.

3.3 Any information provided by the Transferor for each Exchange Property ("Information") has been provided without any representation or warranty as to the completeness or accuracy of the data other information contained therein, and all such Information is furnished to the Transferee solely as a courtesy, and the Party delivering such Information has neither verified the accuracy or any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an AS-IS, WHERE-IS BASIS, AND EACH TRANSFEREE EXPRESSLY ACKNOWLEDGES THAT THE TRANSFEROR MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION.

Section 4. Title Insurance, Surveys and Other Matters.

4.1 Title Commitments. City will obtain an ALTA Owner's Policy Title Insurance Commitments ("Title Insurance Commitments") from Chicago Title Insurance Company through its agent Nebraska Title Company ("Title Company") during the City Due Diligence Period (defined below) covering the
Replacement City Property. City has also obtained Title Insurance Commitments from the Title Company dated May 11, 2010 (with file numbers BNSF001 and BNSF002) covering the Replacement BNSF Property. City has caused the Title Insurance Commitments to be separated into parcels corresponding to each Closing (defined below) and Property Survey prior to the applicable Closing. Prior to each Closing, City, at its sole cost and expense, shall update the applicable Title Insurance Commitments to the dates of the applicable Closings (defined below) (such title commitments, as updated, are respectively the "Replacement City Property Commitments" and the "Replacement BNSF Property Commitments"). The Replacement City Property Commitments and the Replacement BNSF Property Commitments shall be referred to collectively herein as the "Title Commitments". BNSF has been provided with a copy of the initial form of the Replacement BNSF Property Commitment.

4.2 Surveys and Legal Descriptions. City, at its sole cost and expense, has obtained and delivered or caused to be delivered to BNSF surveys of the Replacement BNSF Property dated May 28, 2010 and the Replacement City Property dated May 22, 2009, pursuant to current on-the-ground staked surveys performed by Daniel A. Thomson of Olsson Associates ("Surveyor"); provided, however, such surveys shall be updated during the BNSF Due Diligence Period (defined below) and City Due Diligence Period as reasonably requested by the Parties so that they (i) are certified to City, BNSF and Title Company, (ii) reflect the actual dimensions of and the total number of gross and net acres within the land described therein, (iii) identify any rights-of-way, easements, or other Encumbrances by applicable recording reference, (iv) show the location of all improvements (including, but not limited to, railroad tracks), (v) are conducted in accordance with the Minimum Detail Requirements and Standards for Land Title Surveys of the American Title Association and American Congress on Surveying and Mapping, (vi) provide a recordable legal description for each parcel of the Replacement City Property and the Replacement BNSF Property, which legal descriptions will be attached to the applicable deed or easement at the applicable Closing, and (vii) include the Surveyor's registered number, seal, and the date of the survey (such surveys, as updated are respectively the "Replacement BNSF Property Surveys" and "Replacement City Property Surveys"). For purposes of this Agreement, the Replacement BNSF Property Surveys and the Replacement City Property Surveys shall be referred to collectively herein as the "Property Surveys".

4.3 Replacement BNSF Property. If the Replacement BNSF Property Commitments or the Replacement BNSF Property Surveys disclose any Encumbrances or other matters that are not acceptable to BNSF, then BNSF may give City written notice thereof during the BNSF Due Diligence Period, specifying BNSF’s objections ("BNSF Objections"), if any. If BNSF Objections are made, City will use reasonable efforts to, but is not obligated to, cure any BNSF Objections. If BNSF gives notice of BNSF Objections to City and City is unable or unwilling to cure the BNSF Objections or cause the Title Company to insure BNSF, at City's sole cost and expense and to the extent acceptable to BNSF in BNSF's sole discretion, against loss or damage that may be occasioned by such Encumbrances within the twenty (20) day period following receipt of the notice ("City Cure Period"), then BNSF may either (i) terminate this Agreement by giving written notice thereof to City within ten (10) days after the expiration of such City Cure Period ("BNSF Title Termination Deadline"), and, upon such termination, neither Party will have any further rights or obligations under this Agreement, or (ii) waive the BNSF Objections and consummate the conveyance of the Replacement BNSF Property subject to the BNSF Objections (which will be deemed to be Permitted Encumbrances). If BNSF does not terminate this Agreement prior to the BNSF Title Termination Deadline, then BNSF shall have no further right to terminate this Agreement for matters disclosed in the Replacement BNSF Property Commitments or the Replacement BNSF Property Surveys, except to the extent permitted as part of the BNSF Pre-Conveyance Review as described in Section 11.1.2 and 11.1.3.

4.4 Replacement City Property. The "City Due Diligence Period" shall commence upon the Effective Date and continue until the date that is 60 days after the date upon which the City receives the Replacement City Property Commitments and the last of the BNSF Existing Information, environmental reports, and any other deliverables from BNSF, and has been granted access to the Replacement BNSF Property for such evaluation and inspection purposes (but in no event less than 60 days after the Effective Date), except as otherwise waived in writing. If the Replacement City Property Commitments or the Replacement City Property Surveys disclose any Encumbrances or other matters that are not acceptable to City, then City may give BNSF written notice thereof within the City Due Diligence Period specifying City's objections ("City Objections"), if any. If City Objections are made, BNSF may, but is not obligated to, cure
any City Objections, but in any case BNSF will not be required to incur any expense or liability to cure such City Objections. If City gives notice of City Objections to BNSF and BNSF is unable or unwilling to cure the City Objections or cause the Title Company to insure City, to the extent acceptable to City in City's sole discretion, against loss or damage that may be occasioned by such Encumbrances within the twenty (20) day period following receipt of the notice ("BNSF Cure Period"), then City may either (i) terminate this Agreement by giving written notice thereof to BNSF within ten (10) days after the expiration of the BNSF Cure Period ("City Title Termination Deadline"), and, upon such termination, neither Party will have any further rights or obligations under this Agreement, or (ii) waive the City Objections and consummate the quitclaim of the Replacement City Property subject to the City Objections (which will be deemed to be Permitted Encumbrances). If City does not terminate this Agreement prior to the City Title Termination Deadline, then City shall have no further right to terminate this Agreement for matters disclosed in the Replacement City Property Commitments or the Replacement City Property Surveys, except to the extent permitted as part of the City Pre-Conveyance Review as described in Section 11.2.2.

4.5 **No Monetary Encumbrances.** Notwithstanding the above, except as set forth in Section 4.6 below, in no event will any liens or other monetary Encumbrances affecting the Exchange Properties be Permitted Encumbrances.

4.6 **Exception.** Notwithstanding the foregoing or anything to the contrary contained herein:

4.6.1 if any portion of the Replacement City Property is encumbered by liens of one or more mortgages of BNSF (or its predecessors), BNSF, at its expense, shall deliver to City good and sufficient releases of such liens that are applicable to the Replacement City Property within one hundred eighty (180) days after the first meeting of BNSF's Board of Directors held after the applicable Closing;

4.6.2 any judgment against BNSF that may appear of record as a lien against the Replacement City Property shall be settled and satisfied by BNSF and a release filed of record if and when it is judicially determined to be valid, and BNSF hereby indemnifies City for any losses or costs arising out of BNSF's failure to have such a valid judgment lien so settled and satisfied, including attorneys' fees; and

4.6.3 the releases, settlements or satisfaction by BNSF of such liens referred to in Sections 4.6.1 or 4.6.2 above shall be deemed an acceptable cure of such items for purposes of this Section 4. The provisions in Sections 4.6.1 and 4.6.2 shall survive each applicable Closing, shall be binding on the Parties' successors and assigns, and shall not merge into the quitclaim deeds to the Replacement City Property or any Closing documents.

4.7 For purposes of this Agreement, "Encumbrances" shall be defined as all liens, claims, easements, right-of-ways, reservations, restrictions, encroachments, tenancies, leases, licenses and any other encumbrances of whatsoever nature affecting the Exchange Properties. "Permitted Encumbrances" shall be defined as all the Encumbrances appearing in the Title Commitments for the Exchange Properties that are either not objected to, insured by the Title Company in a form acceptable to the Parties, or are objected to but not cured and that are subsequently waived pursuant to this Section 4.

4.7.1 **Permitted Encumbrances – Replacement City Property.**

4.7.1.1 The Parties agree that with respect to the Replacement City Property, Permitted Encumbrances shall also be deemed to include, without limitation:

4.7.1.1.1 All existing longitudinal easements and licenses with third parties and all easements and licenses that cross multiple properties (collectively, "Longitudinal Agreements") that would not materially interfere with the use of the Replacement City Property for its intended uses under the West Haymarket Redevelopment Plan as determined by the City at the City's sole discretion and that extend beyond the limits of the Replacement City Property for pipelines, telecommunications
(including without limitation, fiber optic cables or lines, communications equipment, control systems and various types of cables), power, water or other utilities; and

4.7.1.2 All other existing easements and licenses with third parties (collectively, the "Non-Longitudinal Agreements"); provided, however, that BNSF agrees to assign (to the extent assignable), and City to accept, all Non-Longitudinal Agreements to City at the applicable Closings, each such assignment to be substantially in the form attached hereto as Exhibit SS for complete assignments and as Exhibit SS-1 for partial assignments, both incorporated herein by reference (each a "License Assignment" and collectively, "License Assignments"). BNSF does not represent or warrant that the Non-Longitudinal Agreements to be assigned (to the extent assignable) or other information contained in the Non-Longitudinal Agreements or License Assignments constitute all of the agreements affecting the Replacement City Property.

4.7.2 Upon completion of the Fiber Optics Work (defined in the Master Agreement), BNSF will use reasonable efforts to, but will have no obligation to, secure or obtain written releases from the Fiber Optic Companies (defined in the Master Agreement) for any easements and licenses for fiber optic lines that were relocated from the Replacement City Property to the Future BNSF Corridor. BNSF shall have no obligation to incur any costs or expenses with regards to obtaining such releases.

4.7.2 Permitted Encumbrances – Replacement BNSF Property. The Parties agree that with respect to the Replacement BNSF Property, Permitted Encumbrances shall also be deemed to include the following UP/Replacement BNSF Property encumbrances contained in the Purchase and Sale Agreement between UP and the City of Lincoln approved by Executive Order No. 83205, dated June 15, 2010 ("UP/City PSA"): (i) all mineral rights reserved in Section 5(a)(i) of the UP/City PSA, (ii) all leases and licenses referred to in Section 6(a) of the UP/City PSA, and (iii) the restriction on the use set forth in Section 8 of the UP/City PSA, subject to City’s indemnity obligations under Section 10.1.1.5 of the Master Agreement and Section 3.6.1(v) of the C&M Agreement.

Section 5. Additional Agreements. Except as otherwise set forth in this Agreement, neither Party shall (a) enter into or agree to enter into any lease, easement, license or other agreement concerning occupancy or use of any of the Replacement BNSF Property or Replacement City Property; (b) enter into, or consent in writing to, any easement, encumbrance, covenant, condition, restriction or right-of-way affecting the Replacement BNSF Property or Replacement City Property; or (c) cause or permit to arise any matter affecting title to any of the Replacement BNSF Property or Replacement City Property, without first obtaining the other Party’s prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. City and BNSF shall each pay in full prior to the date of each of the applicable Closings for all labor, material and services required to be provided by such Party or otherwise contracted for by or on behalf of such Party. At each Closing, Transferor will represent to Transferee and to the Title Company that there are no outstanding unpaid bills for labor, material, or utilities furnished on behalf of Transferor with respect to the Exchange Property, and will agree to indemnify and hold harmless Transferee and Title Company against all payments and expenses, including court costs and attorneys’ fees, if the above representation proves to be inaccurate in whole or in part.

Section 6. Representations and Warranties. Each Party represents and warrants to the other Party as of the date of this Agreement and as of the date of each of the applicable Closings hereunder that:

6.1 It has all necessary power and authority to enter into and consummate the transactions contemplated herein, and the person executing this Agreement on behalf of the Party is duly authorized to do so.

6.2 Except as disclosed to the Transferee in the studies or other materials delivered to the Transferee, to the Transferor's knowledge:
6.2.1 No actions, suits, proceedings, orders, inquiries, or investigations are pending or are threatened against, involving, or affecting the Exchange Property, at law or in equity, or before or by any federal, state, municipal, or other governmental department, court, commission, board, bureau, agency, or instrumentality, alleging the violation of any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Matters (defined below) or the release of any Hazardous Substances (defined below).

6.2.2 Except as provided for in Section 2.3 above and Section 6.2.3 below, no actions, suits, or proceedings are pending, threatened or asserted against the Exchange Property or against Transferor in connection with the Exchange Property, before or by any federal, state, municipal, or other governmental department, court, commission, board, bureau, agency, or instrumentality.

6.2.3 Except as provided for in Section 2.3 above, and except as to the Third Party/BNSF Replacement Property owned by N. Street Company LLC, no pending or threatened condemnation actions exist with respect to the Exchange Property.

6.2.4 Transferor has not received any notice that any ordinance, regulation, law, or statute of any governmental agency pertaining to the Exchange Property has been violated.

6.2.5 No permission, approval, or consent by third parties or governmental authorities is required for Transferor to consummate this transaction.

6.3 The term "knowledge" as used in this Agreement, including without limitation this Section 6, refers to the actual, present knowledge of: (i) David P. Schneider, General Director – Land Revenue Management for BNSF, and (ii) Ernest R. Peo, III, Chief Assistant City Attorney for City (each, the respective Party's "Information Representative"), as of the Effective Date of this Agreement, without any duty of investigation or inquiry of any kind or nature whatsoever.

Section 7. Amtrak. City acknowledges that the Replacement City Property is subject to that certain agreement between National Rail Passenger Service Corporation ("Amtrak") and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated September 1, 1996, as amended ("Operating Agreement"). City also acknowledges that BNSF is obligated to provide property in the City of Lincoln for intercity rail passenger use under the terms of the federal Rail Passenger Service Act (Title 49 United States Code Section 24308(a)). On or prior to the First Closing: (i) City shall enter into an agreement with Amtrak for a new station lease ("Station Lease") for City to provide an intercity railroad passenger station facility for Lincoln, Nebraska for Amtrak on the Replacement City Property (or on other equitable replacement property), on terms and conditions mutually acceptable to City and Amtrak. City does not guarantee that Amtrak will enter into the Station Lease. The new Station Lease shall be binding upon and inure to the benefit of City and Amtrak, and their respective successors and assigns. BNSF agrees to use commercially reasonable efforts to enter into the Amtrak/BNSF Lease (as defined in the Master Agreement) with Amtrak. BNSF does not guarantee that Amtrak will enter into the Amtrak/BNSF Lease.

Section 8. Closing Conditions.

8.1 Notwithstanding anything herein to the contrary, the obligations of each Party to consummate the transactions under this Agreement shall be subject to the fulfillment on or before each applicable Closing Date (defined below) of all of the applicable conditions contained in Sections 8.2 through 8.13, any or all of which may be waived only by the benefitted Party by written notice to the other Party. In the event any of such applicable conditions are not satisfied or waived by the benefitted Party prior to or at the applicable Closing then either Party may extend the applicable Closing Date by delivering notice to the other Party prior to or on the applicable Closing Date in which case the applicable Closing Date shall be extended to give additional time to satisfy the foregoing conditions and the Parties shall proceed with the terms of this Agreement. Subsequent Closings shall be suspended during any such extension period. If any Closing Date is extended or suspended for more than eighteen (18) months, either Party shall have the right to terminate this Agreement and following any such termination neither Party will have any further rights or obligations under
this Agreement except for those rights and obligations that expressly survive termination of this Agreement. Notwithstanding anything herein to the contrary, if the Master Agreement is terminated prior to the completion of all Closings, this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

8.2 City’s obligations to close on the First Closing are contingent upon the satisfaction of the following conditions precedent prior to the First Closing:

8.2.1 The City Council for City and/or the Board of Representatives for JPA (defined below) approving the necessary agreements, resolutions and ordinances for the implementation of the activities contemplated herein;

8.2.2 City obtaining any necessary consents and approvals authorizing the transactions contemplated by this Agreement;

8.2.3 All Initial Acquisitions have taken place, or City has obtained the necessary authority to complete the Initial Acquisitions, including by condemnation if necessary, on a schedule that would satisfy the dates in the Timeline (as defined in the Master Agreement);

8.2.4 BNSF and Amtrak have entered into the Amtrak/BNSF Lease;

8.2.5 The City Due Diligence Period and the City Title Termination Deadline have both expired, or all City Objections have been waived;

8.2.6 The applicable City Pre-Conveyance Review has been completed to City’s satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.2.7 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;

8.2.8 All contingencies under **Section 22.1** of the Master Agreement have been satisfied;

8.2.9 The Parties have agreed to the terms and conditions of the Rights of Entry;

8.2.10 City and Amtrak have entered into the Station Lease; and

8.2.11 Title Company has committed to issue the Replacement City Property Owner Policy (defined below) for the First City Closing Property (defined below) in a form acceptable to City.

8.3 BNSF’s obligations to close on the First Closing are contingent upon the satisfaction of the following conditions precedent prior to the First Closing:

8.3.1 BNSF obtaining any necessary consents and approvals authorizing the transactions contemplated by this Agreement;

8.3.2 BNSF and Amtrak have entered into the Amtrak/BNSF Lease;

8.3.3 The BNSF Due Diligence Period and the BNSF Title Termination Deadline have both expired, or all BNSF Objections have been waived;

8.3.4 The applicable BNSF Pre-Conveyance Review is completed to BNSF’s satisfaction, or all BNSF Pre-Conveyance Review Objections have been waived;
8.3.5 All Initial Acquisitions have taken place, or City has obtained the necessary authority to complete the Initial Acquisitions, including by condemnation if necessary, on a schedule that would satisfy the dates in the Timeline;

8.3.6 City and Amtrak have entered into the Station Lease;

8.3.7 Title Company has committed to issue the Replacement BNSF Property Owner Policy (defined below) for the First BNSF Closing Property (defined below) in a form acceptable to BNSF;

8.3.8 The Parties have agreed to the terms and conditions of the Rights of Entry;

8.3.9 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods; and

8.3.10 All contingencies under Section 22.2 of the Master Agreement have been satisfied.

8.4 City's obligations to close on the Second BNSF Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second BNSF Closing:

8.4.1 All Initial Acquisitions have taken place;

8.4.2 The First Closing has taken place; and

8.4.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.5 BNSF's obligations to close on the Second BNSF Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second BNSF Closing:

8.5.1 All Initial Acquisitions have taken place;

8.5.2 The First Closing has taken place;

8.5.3 The applicable BNSF Pre-Conveyance Review has been completed to BNSF's satisfaction, or all BNSF Pre-Conveyance Review Objections (defined below) have been waived;

8.5.4 The cleanup obligations of City with respect to the Alter Parcel, such obligations being more particularly described in Section 11.1.1.2(c) and Exhibit F-2 attached hereto and incorporated by this reference, have been completed (or BNSF has agreed in writing to waive the requirement that such cleanup obligations be completed before the Second BNSF Closing as set forth in, and subject to the conditions of, Section 11.1.1.2(c));

8.5.5 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods; and

8.5.6 Title Company has committed to issue the Replacement BNSF Property Owner Policy for the Second BNSF Closing Property (defined below) in a form acceptable to BNSF.

8.6 City's obligations to close on the Second City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second City Closing:

8.6.1 The First Closing has taken place;

8.6.2 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;
8.6.3 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections (defined below) have been waived; and

8.6.4 Title Company has committed to issue the Replacement City Property Owner Policy for the Second City Closing Property in a form acceptable to City.

8.7 BNSF's obligations to close on the Second City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second City Closing:

8.7.1 The First Closing and the Second BNSF Closing have taken place; and

8.7.2 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.8 City's obligations to close on the Third City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Third City Closing:

8.8.1 The Second City Closing has taken place;

8.8.2 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.8.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods; and

8.8.4 Title Company has committed to issue the Replacement City Property Owner Policy for the Third City Closing Property (defined below) in a form acceptable to City.

8.9 BNSF's obligations to close on the Third City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Third City Closing:

8.9.1 The Second City Closing has taken place; and

8.9.2 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.10 City's obligations to close on the Fourth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fourth City Closing:

8.10.1 The Third City Closing has taken place;

8.10.2 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.10.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;

8.10.4 Passenger Track No. 2 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.10.5 Title Company has committed to issue the Replacement City Property Owner Policy for the Fourth City Closing Property in a form acceptable to City.

8.11 BNSF's obligations to close on the Fourth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fourth City Closing:
8.11.1 The Third City Closing has taken place;
8.11.2 Passenger Track No. 2 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and
8.11.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.12 City's obligations to close on the Fifth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fifth City Closing:

8.12.1 The Fourth City Closing has taken place;
8.12.2 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;
8.12.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;
8.12.4 Passenger Track No. 1 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and
8.12.5 Title Company has committed to issue the Replacement City Property Owner Policy for the Fifth City Closing Property (defined below) in a form acceptable to City.

8.13 BNSF's obligations to close on the Fifth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fifth City Closing:

8.13.1 The Fourth City Closing has taken place;
8.13.2 Passenger Track No. 1 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and
8.13.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

Section 9. Closings. The BNSF Closings and the City Closings are referred to individually herein as a "Closing" and collectively as the "Closings." The "First Closing" shall consist of a conveyance of certain property from City to BNSF as described in Section 9.1.1 below, and a simultaneous quitclaim of certain property from BNSF to City as described in Section 9.2.1 below. Each Closing shall occur at the offices of Title Company, on the date for such Closing set forth in the Timeline (each such date to be referred to herein individually as a "Closing Date" and collectively as the "Closing Dates"). City shall be responsible for all costs associated with the Closings, including, without limitation, escrow fees, documentary stamps and other recording costs, any state, county, or local excise taxes, and costs of all surveys and title policies.

9.1 The "BNSF Closings" shall include the First Closing and the Second BNSF Closing. At least two (2) days before each of the BNSF Closings, BNSF shall deliver to City written notice of BNSF's decision as to whether each parcel is to be conveyed to BNSF via an easement or by quitclaim deed.

9.1.1 First Closing. At the First Closing, City shall, at its sole cost and expense, vacate the existing public at-grade crossing at 2nd and "J" Street, and vacate that portion of the Vacated Right of Way/Replacement BNSF Property abutting the UP/Replacement BNSF Property, Third Party/Replacement BNSF Property owned by Noohznik L.P., Third Party Replacement BNSF Property owned by Lower Platte South Natural Resources District, and Retained BNSF Property generally shown on Exhibit G (BNSF shall have no obligation to pay for or assist in the vacation of the Vacated Right of Way/Replacement BNSF Property and/or the transfer of the Vacated Right of Way/Replacement BNSF Property).
Way/Replacement BNSF Property), and shall convey to BNSF that portion of the Replacement BNSF Property generally shown on Exhibit G attached hereto and incorporated herein by this reference, including any remaining improvements located on any such land (collectively, the “First BNSF Closing Property”).

9.1.2 Second BNSF Closing. At the Second BNSF Closing, City shall, at its sole cost and expense, vacate the Vacated Right of Way/Replacement BNSF Property abutting the remaining Third Party/Replacement BNSF Property as generally shown on Exhibit G-1 (BNSF shall have no obligation to pay for or assist in the vacation of the Vacated Right of Way/Replacement BNSF Property and/or the transfer of the Vacated Right of Way/Replacement BNSF Property), and shall convey to BNSF all remaining Replacement BNSF Property as generally shown on Exhibit G-1 attached hereto and incorporated herein by this reference, including any remaining improvements located on any such land (collectively, the “Second BNSF Closing Property”).

9.2 At each Closing, City shall deliver, or cause to be delivered, to BNSF the following items with respect to the applicable portion of the Replacement BNSF Property:

9.2.1 With respect to the BNSF Closings, a quitclaim deed ("Replacement BNSF Property Deed") in the form attached to this Agreement as Exhibit QQ, attached hereto and incorporated herein by this reference, with the applicable legal description prepared pursuant to Section 4.2 attached thereto, fully executed and acknowledged by City, to be countersigned and accepted by BNSF at the applicable Closing, conveying to BNSF the City's interest in the Replacement BNSF Property for the applicable BNSF Closing, subject only to the Permitted Encumbrances (provided, however, that for all properties for which BNSF elects to receive an easement in lieu of fee ownership, City shall deliver an easement ["Replacement BNSF Property Easement"] in the form attached hereto as Exhibit QQ-1, incorporated herein by this reference, with the applicable legal description prepared pursuant to Section 4.2 attached thereto, fully executed and acknowledged by City, granting to BNSF an easement for the Replacement BNSF Property for the applicable BNSF Closing, subject only to the Permitted Encumbrances).

9.2.1.1 For any properties in which BNSF elects to receive an easement in lieu of fee ownership, BNSF will quitclaim to City BNSF's interest, if any, in the vacated streets and alleys comprising any part of the properties for which BNSF elects to receive an easement in lieu of fee ownership, subject to BNSF's reservation of an easement back to BNSF over such vacated streets and alleys as part of and under the terms of the Replacement BNSF Property Easement, all as more particularly described in Exhibit QQ-1.

9.2.1.2 Subsequent to the BNSF Closing(s), BNSF has the right, but not the obligation, to require City to convey, for no additional consideration, fee simple to any parcel of Replacement Property in which BNSF originally accepted an easement interest, all as more particularly described in Exhibit QQ-1.

9.2.2 With respect to the First Closing, reasonable documentation of City's and Amtrak's execution of the Station Lease.

9.2.3 At all applicable Closings and in accordance with the Donation Allocation, City shall, to the extent permitted by law, deliver to BNSF any and all documentation necessary to complete and establish the Charitable Donation.

9.2.4 With respect to the First Closing, City shall deliver to BNSF the Cash Payment.

9.2.5 License Assignments, as applicable.

9.2.6 Rights of Entry agreements, as applicable.
9.2.7 Such other and further documents as may be reasonably required to consummate the transactions contemplated by this Agreement and for Title Company to issue the Replacement BNSF Property Owner Policy (defined below) in accordance with this Agreement.

9.2.8 Possession of the Replacement BNSF Property as required under this Agreement.

9.3 In addition to the foregoing, for each BNSF Closing, City shall cause Title Company to issue to BNSF an ALTA Owner's Extended Coverage Policy of Title Insurance ("Replacement BNSF Property Owner Policy") in the amount equal to the fair market value of the parcel of Replacement BNSF Property conveyed at such Closing (as determined by appraisal pursuant to the provisions of Section 2.6), insuring such parcel of Replacement BNSF Property conveyed to BNSF at the applicable BNSF Closing free and clear of all matters except the Permitted Encumbrances applicable to such parcel of Replacement BNSF Property.

9.4 The "City Closings" shall include the First Closing, the Second City Closing, the Third City Closing, the Fourth City Closing, and the Fifth City Closing (each as defined below).

9.4.1 First Closing. At the First Closing, BNSF shall convey to City BNSF's interest in (a) that portion of the Replacement City Property generally shown on Exhibit J-1 attached hereto and incorporated herein by this reference, (b) any and all BNSF Reversionary Interests as generally shown on Exhibit J-1 attached hereto and (c) any and all Other BNSF Reversionary Interests as generally shown on Exhibit J-5 attached hereto, including any remaining improvements located on any such land (collectively, the "First City Closing Property").

9.4.2 Second City Closing. At the "Second City Closing", BNSF shall convey to City BNSF's interest in (a) that portion of the Replacement City Property generally shown on Exhibit J-2 attached hereto and incorporated herein by this reference (the "Holes in the Donut"), and (b) any and all BNSF Reversionary Interests to the streets and alleys abutting the Holes in the Donut as generally shown on Exhibit J-2 attached hereto, including any remaining improvements located on any such land (collectively, the "Second City Closing Property").

9.4.3 Third City Closing. At the "Third City Closing", BNSF shall convey to City BNSF's interest in (a) that portion of the Replacement City Property generally shown on Exhibit J-3 attached hereto and incorporated herein by this reference; (b) any and all BNSF Reversionary Interests to the streets and alleys abutting such property and the BNSF Bridge as generally shown on Exhibit J-3 attached hereto; and (c) the BNSF Bridge, including any remaining improvements located on any such land or the BNSF Bridge (collectively, the "Third City Closing Property").

9.4.4 Fourth City Closing. At the "Fourth City Closing", BNSF shall convey to City BNSF's interest in (a) the Replacement City Property generally shown on Exhibit J-4, attached hereto and incorporated herein by this reference, and (b) any and all BNSF Reversionary Interests to the streets and alleys abutting such property, including any remaining improvements located on any such land as generally shown on Exhibit J-4 attached hereto (collectively, the "Fourth City Closing Property").

9.4.5 Fifth City Closing. At the "Fifth City Closing", BNSF shall convey to City BNSF's interest in (a) all Replacement City Property not previously conveyed to City in the previous Closings, as generally shown on Exhibit J-5, attached hereto and incorporated herein by this reference, and (b) any and all BNSF Reversionary Interests not previously conveyed to City in the previous Closings (collectively, the "Fifth City Closing Property").

9.4.6 The First City Closing Property, Second City Closing Property, Third City Closing Property, Fourth City Closing Property, and the Fifth City Closing Property shall be referred to collectively herein as the "City Closing Properties".

9.5 At each Closing, BNSF shall deliver, or cause to be delivered, to City the following items with respect to the applicable portion of the Replacement City Property:
9.5.1 A quitclaim deed ("Replacement City Property Deed") in the form attached to this Agreement as Exhibit RR, attached hereto and incorporated herein by this reference, fully executed and acknowledged by BNSF, to be countersigned and accepted by City at the applicable Closing, conveying to City BNSF’s interest in the Replacement City Property for the applicable City Closing;

9.5.2 A quitclaim bill of sale ("Bill of Sale") in the form attached to this Agreement as Exhibit PP, attached hereto and incorporated herein by this reference, fully executed by BNSF, to be countersigned and accepted by City at Closing, conveying to City any remaining improvements located on the Replacement City Property for the applicable City Closing (other than remaining improvements necessary for BNSF’s railroad operations as described in Section 11.2.7.1 below), the cost of which is included in the Cash Payment;

9.5.3 With respect to the First Closing, (i) a bill of sale quitclaiming to City the excavated fill described in Section 11.2.4 below, the cost of which is included in the Cash Payment, and (ii) reasonable documentation of BNSF’s and Amtrak’s execution of the Amtrak/BNSF Lease.

9.5.4 With respect to the Third City Closing, a bill of sale ("Bridge Bill of Sale") in the form attached hereto as Exhibit PP-1 and incorporated herein by reference, fully executed and acknowledged by BNSF, quitclaiming to City the BNSF Bridge, the cost of which is included in the Cash Payment.

9.5.5 License Assignments, as applicable.

9.5.6 Rights of Entry agreements, as applicable.

9.5.7 Such other and further documents as may be reasonably required to consummate the transactions contemplated by this Agreement and for Title Company to issue the Replacement City Property Owner Policy in accordance with this Agreement, including delivery to Title Company of an Assistant Secretary's Certificate and documentation that BNSF, a corporation of the State of Delaware, is in good standing according to the Secretary of State, State of Delaware; and

9.5.8 Possession of the Replacement City Property as required under this Agreement.

9.6 BNSF acknowledges and agrees that City may, at City's sole cost and expense, obtain, to the extent obtainable, an ALTA Owner’s Extended Coverage Policy of Title Insurance ("Replacement City Property Owner Policy") for all or any portion of the Replacement City Property conveyed at such City Closing insuring such parcel of Replacement City Property conveyed to City at the applicable City Closing, free and clear of all matters except the Permitted Encumbrances applicable to such parcel of Replacement City Property.

Section 10. Taxes.

10.1 City Replacement Property.

10.1.1 Locally Assessed Taxes. BNSF shall pay on or before each City Closing Date all locally assessed (i.e., not centrally assessed) real estate taxes, personal property taxes, and special tax assessments ("Taxes") levied or assessed against the applicable Replacement City Property that are due and payable on or before such City Closing Date. City shall pay, without proration, all locally assessed real estate taxes and special tax assessments (but not personal property taxes) levied or assessed against the applicable Replacement City Property that are not yet due and payable as of each City Closing Date. BNSF shall pay all locally assessed personal property taxes levied against existing improvements of BNSF remaining on the applicable City Replacement Property that are not yet due and payable as of each City Closing Date.
10.1.2 **Centrally Assessed Taxes.** BNSF shall pay all real estate and personal property taxes centrally assessed against the Replacement City Property for the year of Closing and all prior years.

10.2 **BNSF Replacement Property.**

10.2.1 **Locally Assessed Taxes.** City shall pay on or before each BNSF Closing Date all locally assessed Taxes against the applicable Replacement BNSF Property that are due and payable on such BNSF Closing Date. Locally assessed Taxes levied and/or assessed against the BNSF Replacement Property that are not due and payable as of such BNSF Closing Date shall be prorated to the date of Closing at the prior year tax rate and assessed value.

10.2.2 **Centrally Assessed Taxes.** City shall pay or cause UP to pay all taxes centrally assessed against the UP/Replacement BNSF Property for the year of Closing and all prior years.

**Section 11. Due Diligence Period; Condition of Exchange Properties; Release and Indemnity.**

11.1 **Replacement BNSF Property.**

11.1.1 BNSF shall be allowed to conduct Tests (defined below) and evaluate and inspect the Replacement BNSF Property, City Existing Information, and other information related to the Replacement BNSF Property for the "BNSF Due Diligence Period" described herein. The BNSF Due Diligence Period shall commence upon the Effective Date and continue until the date that is 60 days after the date upon which BNSF receives the last of the City Existing Information, Title Insurance Commitments, Replacement BNSF Property Surveys, environmental reports, and any other deliverables from City, and has been granted access to the Replacement BNSF Property (except for N Street Company LLC parcel) for such evaluation and inspection purposes (but in no event less than 60 days after the Effective Date), except as otherwise waived in writing. To the extent City has not completed the Initial Acquisitions, City will reasonably cooperate with BNSF and obtain rights from the underlying landowners as necessary to facilitate BNSF's due diligence investigations and evaluations.

11.1.1.1 During the BNSF Due Diligence Period, BNSF will determine whether BNSF is willing to accept the physical, title, and environmental conditions of each parcel comprising the Replacement BNSF Property. BNSF shall perform investigations of the Replacement BNSF Property as it deems necessary to determine the condition of the Replacement BNSF Property, including without limitation the physical condition, the environmental condition, and the condition of title.

11.1.1.2 BNSF may, at its sole option and discretion, waive its rights to conduct Tests and evaluate and inspect the Replacement BNSF Property during the BNSF Due Diligence Period. If BNSF elects to so waive its rights under the BNSF Due Diligence Period, such waiver shall be subject to and conditioned on all of the following:

(a) BNSF's delivery of written notice to City of BNSF's intent to waive its rights to conduct Tests and inspect the Replacement BNSF Property during the BNSF Due Diligence Period.

(b) City shall promptly perform, or cause to be performed, at City's sole cost and expense, clean up of the Replacement BNSF Property: (i) in accordance with a workplan submitted to BNSF for review and consented to in writing by BNSF, (ii) in accordance with the requirements and standards set forth on Exhibit F-2 ("Cleanup Standards") attached hereto and incorporated herein by this reference, (iii) in accordance with all terms and conditions of the C&M Agreement applicable to the performance of City C&M Work, including without limitation all provisions of Article III of the C&M Agreement concerning City Obligations, (iv) in compliance
with all applicable Environmental Laws and (v) in a manner that minimizes interference, as determined by BNSF in its sole discretion, with rail operations. Review and consent by BNSF to the workplan shall not constitute approval of the sufficiency or effectiveness of such workplan.

(c) The parties intend that the obligations of City described in Section 11.1.1.2(b) above and Exhibit F-2 are to be completed on or before the Second BNSF Closing. Notwithstanding the foregoing, however, if City cannot reasonably complete such obligations on or before the Second BNSF Closing because of events that are beyond City's reasonable control, City shall so notify BNSF in writing at least fifteen (15) days before the Second BNSF Closing is scheduled to occur. BNSF has the right, at its option, to elect to either: (i) extend the Second BNSF Closing until such obligations are completed or (ii) proceed to Closing, in which case City's obligations hereunder shall survive the Closing and shall not merge with the Replacement City Property Deed or any Closing documents. All costs and expenses incurred by the parties that are caused by or arise from BNSF's agreement to extend the Second BNSF Closing or proceed to Closing, including without limitation all costs and expenses resulting from delays in the performance in the BNSF Work, shall be deemed to be Additional City Cost Work.

(d) To the extent Hazardous Substances or contaminants: (i) remain in place and/or (ii) are discovered after the (1) termination of this Agreement, (2) occurrence of any or all Closings hereunder, and/or (3) the completion of the clean up described in Section 11.1.1.2(b) above, City shall continue to bear the responsibility for any incremental costs caused by or arising from construction activities, excavation, soil handling or management on the Replacement BNSF Property. BNSF has the right, in its sole discretion, to either: (1) remove, remediate, cure or otherwise address such Hazardous Substances or contaminants and present City with an invoice for the incremental costs, which City agrees to pay to BNSF within thirty (30) days after receipt of the invoice, or (2) notify City of such Hazardous Substances or contaminants, whereupon City shall, at City's sole cost and expense, promptly remove, remediate, cure or otherwise address such Hazardous Substances or contaminants: (i) in accordance with a workplan submitted to BNSF for review and consented to in writing by BNSF, (ii) in compliance with all applicable Environmental Laws and (iii) in a manner and in accordance with a schedule that minimizes interference, as determined by BNSF in its sole discretion, with rail operations. Review and consent by BNSF to the workplan shall not constitute approval of the sufficiency or effectiveness of such workplan.

(e) City's obligations under this Section 11.1.1.2 are in addition to, and not in limitation of, any other obligations of City (including without limitation all indemnification obligations) under the C&M Agreement (including but not limited to obligations under the SMP as defined therein), Master Agreement, this Exchange Agreement and all Rights of Entry.
11.1.2 In addition to BNSF's rights during the BNSF Due Diligence Period, BNSF shall have the right to perform a final walk-through inspection, and to review the applicable Title Commitments and any additional or updated Existing City Information during the week prior to each of the First Closing and the BNSF Second Closing (collectively, the "BNSF Pre-Conveyance Reviews" and each individually a "BNSF Pre-Conveyance Review") to confirm there have been no material changes to the Replacement BNSF Property or to the title thereof.

11.1.2.1 If the BNSF Pre-Conveyance Review conducted before the First Closing reveals material changes to the Replacement BNSF Property or to the title thereof that did not exist as of the expiration of the BNSF Due Diligence Period and the BNSF Title Termination Deadline, that are not acceptable to BNSF, then BNSF shall deliver to City written notice specifying BNSF's objections ("BNSF Pre-Conveyance Review Objections") prior to the First Closing. If BNSF Pre-Conveyance Review Objections are made, City will use reasonable efforts to, but is not obligated to, cure any BNSF Pre-Conveyance Review Objections within thirty (30) days from the receipt of the notice and in any event prior to the First Closing. If such changes are not cured by City within such time period, then BNSF may either (i) terminate this Agreement by giving written notice thereof to City prior to the First Closing, and, upon such termination, neither Party will have any further rights or obligations under this Agreement, or (ii) waive any objections and proceed to the First Closing.

11.1.2.2 If the BNSF Pre-Conveyance Review conducted for the Second BNSF Closing, reveals material changes to the Replacement BNSF Property not conveyed to BNSF at the First Closing or to the title thereof that did not exist as of the expiration of the BNSF Due Diligence Period and the BNSF Title Termination Deadline that are not acceptable to BNSF, then City shall cure such changes within thirty (30) days and indemnify BNSF from any BNSF Losses (defined below) arising out of such changes. BNSF shall have no obligation to consummate the Second BNSF Closing until City has complied with the provisions of this Section 11.1.2.2 to BNSF's satisfaction.

11.1.3 BNSF represents and warrants to City that BNSF has not relied and will not rely on, and City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Replacement BNSF Property or relating thereto (including specifically, without limitation, any City Existing Information related to the Replacement BNSF Property) made or furnished by City or any agent representing or purporting to represent City, to whomever made or given, directly or indirectly, orally or in writing. EXCEPT WITH RESPECT TO ENVIRONMENTAL MATTERS, ENVIRONMENTAL CONDITION AND AS OTHERWISE PROVIDED IN THIS AGREEMENT, BNSF IS ACCEPTING THE REPLACEMENT BNSF PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS.

11.1.4 Prior to City's quitclaim of the Replacement BNSF Property to BNSF, City shall, at its sole cost and expense, remove all debris, rubbish, litter, refuse, and other materials and improvements as directed by BNSF from the Replacement BNSF Property. Except with respect to Environmental Matters, environmental condition and as otherwise provided in this Agreement, City shall have no obligations with respect to any improvements remaining on the Replacement BNSF Property following the applicable Closing.

11.2 Replacement City Property.

11.2.1 City acknowledges and agrees that it has been allowed to perform an inspection of the Replacement City Property pursuant to the provisions of (i) that certain License for Environmental Access between BNSF and HWS Consulting Group, Inc. (as the inspecting agent for City) dated June 11, 2008, and as modified by that certain Supplemental Agreement dated December 17, 2008, (ii) that certain Temporary Access License for Survey/Geotech/Environmental
Activities/Advance Construction between BNSF and City, dated October ____, 2010, permitting City and its Personnel, at its election and expense, to perform certain surveying, geotechnical, environmental and engineering explorations as more particularly described therein on those portions of the Replacement City Property that will be quitclaimed to City in the Second BNSF Closing, and (iii) this Section 11.2.

11.2.2 In addition to its previous inspection, City shall have the right to perform a final walk-through inspection, and to review any Title Commitments during the week prior to the applicable Closing (collectively, the “City Pre-Conveyance Reviews” and each individually a “City Pre-Conveyance Review”) to confirm there have been no material changes to the applicable Replacement City Property. Any entry by City onto the Replacement City Property prior to Closing shall be subject to the terms and conditions of the Entry Agreement.

11.2.2.1 If a City Pre-Conveyance Review conducted before the First Closing reveals material changes to the First City Closing Property or to the title thereof that did not exist as of the expiration of the City Due Diligence Period and the City Title Termination Deadline, that are not acceptable to the City, then the City shall personally deliver to BNSF written notice specifying the City’s Objections (“City Pre-Conveyance Review Objections”) prior to or on the date of Closing. If the City Pre-Conveyance Review Objections are made, BNSF will use reasonable efforts to, but is not obligated to, cure any City Pre-Conveyance Review Objections within thirty (30) days from the receipt of the notice and in any event prior to the First Closing. If such changes are not cured by BNSF within such time period, then City may either (i) terminate this Agreement by giving written notice thereof to BNSF prior to the First Closing, and, upon such termination, neither Party will have any further rights or obligations under this Agreement except as expressly survive termination, or (ii) waive objections and proceed to the First Closing.

11.2.2.2 If a City Pre-Conveyance Review conducted for the other City Closings reveals material changes to the Replacement City Property or to the title thereof that did not exist as of the expiration of the City Due Diligence Period and the City Title Termination Deadline for the remaining City Closings, and if such changes (i) are not acceptable to City, (ii) are a direct result of the negligence or intentional misconduct of BNSF, and (iii) are not covered by City’s indemnification obligation under Section 11.4 below, then BNSF shall cure such changes within thirty (30) days or indemnify from any City Losses (defined below) arising out of such changes. City shall have no obligation to consummate the remaining City Closings until BNSF has complied with the provisions of this Section 11.2.2.2 to City’s satisfaction.

11.2.3 CITY IS ACCEPTING THE REPLACEMENT CITY PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE REPLACEMENT CITY PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF AS TO ANY MATTERS CONCERNING THE REPLACEMENT CITY PROPERTY, including, but not limited to, the physical condition of the Replacement City Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Replacement City Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Replacement City Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Replacement City Property; the condition or existence of any above ground or underground structures or improvements, including tanks and transformers in, on or under the Replacement City Property; the condition of title to the Replacement City Property, and the existence of any leases, easements, permits, orders, licenses, or other agreements, affecting the Replacement City Property (collectively, the "Replacement City Property Conditions").
11.2.4 City acknowledges that portions of the Replacement City Property are subject to certain environmental remediation under applicable laws and regulations administered and enforced by the Nebraska Department of Environmental Quality (NDEQ Files #062076; UG #07116-MBS-1100). BNSF understands and acknowledges that under applicable NDEQ laws and regulations, BNSF is deemed the responsible party and that it retains responsibility for this ongoing environmental remediation as between BNSF and the NDEQ. However, as between City and BNSF, City shall be solely responsible for all such environmental remediation, and City agrees to assume and perform such environmental remediation, provided that BNSF agrees as the party responsible to NDEQ to: (i) designate City (or at City's discretion, City's contractor) as BNSF's designated representative; (ii) allow City to submit a more aggressive remedial action work plan (prepared by City or City's contractor) for completing BNSF's environmental obligations, subject to the review and approval of NDEQ; (iii) allow City or City's contractor to carry out such remedial action work plan as proposed and approved; (iv) allow City or City's contractor, as BNSF's designated representative, to submit requests for and receive direct reimbursement for the approved remedial actions from NDEQ Title 200 funds, or other such available funds; and (v) following completion of such remedial actions, provide City the NDEQ-issued "No Further Action" letter for the property. If NDEQ Title 200 funds are unavailable or insufficient for any reason to complete all remediation, City shall nevertheless be solely responsible for all costs of remediation as between City and BNSF, and City's release and indemnity obligations set forth herein shall include such remediation and any funding shortfalls. Following completion of remediation, City shall cooperate with BNSF to cause NDEQ to look solely to City thereafter. City further acknowledges that BNSF plans to excavate materials from Exchange Properties and to quitclaim such fill materials to City by quitclaim bill of sale at the First Closing. City shall be responsible for testing, managing, and transporting such material to Replacement BNSF Property for stockpiling and future usage, including any necessary treatment and disposal, and City's foregoing release and indemnity expressly includes such excavated materials.

11.2.5 City represents and warrants to BNSF that City has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Replacement City Property or relating thereto (including specifically, without limitation, any BNSF Existing Information related to the Replacement City Property) made or furnished by BNSF or any agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

11.2.6 Subject to Section 11.2.7, BNSF shall have the right, but not the obligation, to remove all or any portion of improvements from the Replacement City Property prior to BNSF's quitclaim of the Replacement City Property to City; provided, however, that BNSF shall not have the right or the obligation to remove the BNSF Bridge. BNSF shall have no obligations with respect to any improvements or other materials remaining on the Replacement City Property on or after BNSF's quitclaim of the Replacement City Property to City. Notwithstanding the foregoing, BNSF will pull up all tracks and ties from tracks 204, 205, 309, 310, 320, 321, 322, and 323, and a portion consisting of eight hundred (800) feet of track 324 (collectively, the "Removed Tracks & Ties") within ten (10) days after the applicable Closing, stockpile such Removed Tracks & Ties, and load such Removed Tracks & Ties onto cars supplied by BNSF for shipment to and disposal at an appropriate disposal site. BNSF's costs of pulling up, stockpiling and loading the Removed Tracks & Ties onto cars shall be treated as BNSF Additional City Cost Work (as defined in the Master Agreement). BNSF's right to enter upon the Replacement City Property to pull up, stockpile and load the Removed Tracks & Ties onto cars, and all obligations of City under the provisions of this Section 11.2.6, shall survive all Closings hereunder. Except with respect to the Removed Tracks & Ties, BNSF shall not be responsible for removal or disposal of tracks or ties, or any costs of track and tie removal or disposal, for or from any Replacement City Property.

11.2.7 If, after the applicable Closing, improvements belonging to BNSF or third parties that are not covered by Longitudinal Agreements and were not assigned to City pursuant to a License Assignment are discovered on Replacement City Property, then the Party discovering such improvements shall promptly notify the other Party in writing thereof.
11.2.7.1 If such improvements are necessary for BNSF’s railroad operations or otherwise, as determined by BNSF in BNSF’s sole discretion and the remaining improvements do not materially interfere with City’s intended use of the Replacement City Property, as determined by City in City’s sole discretion, then BNSF may request that City, at City’s election, to either (i) permit BNSF to enter upon the Replacement City Property, upon notice to City, to remove and relocate such improvements to a location off of the Replacement City Property, such removal and relocation to be at City’s sole cost and expense, or (ii) promptly obtain and for no monetary consideration, a permanent easement from City to BNSF in form and substance acceptable to BNSF for the Operation (as defined in the Master Agreement) of such improvements. If BNSF elects to remove and relocate such improvements, then BNSF shall have a reasonable amount of time for the Operation of such improvements prior to such removal and relocation.

11.2.7.2 If such improvements are necessary for BNSF’s railroad operations or otherwise, as determined by BNSF in BNSF’s sole discretion, and the remaining improvements materially interfere with City’s intended use of the Replacement City Property, as determined by City in City’s sole discretion, then BNSF shall have the right to enter upon the Replacement City Property, upon notice to City, to remove and relocate such improvements to a location off of the Replacement City Property, such removal and relocation to be at City’s sole cost and expense. If BNSF elects to remove and relocate such improvements, then BNSF shall have a reasonable amount of time for the Operation of such improvements prior to such removal and relocation.

11.2.7.3 If such improvements are not necessary or desirable for BNSF’s railroad operations or otherwise, as determined by BNSF in BNSF’s sole discretion, then BNSF shall quitclaim such improvements to City via a bill of sale in the form attached hereto as Exhibit PP, whereupon BNSF shall have no further obligations with respect to such improvements.

11.2.7.4 If such improvements belong to a third party, and BNSF determines it has a known license or similar agreement with such third party, then BNSF agrees, at no cost to BNSF, to assign such license or similar agreement to City; provided, however, if such improvements are not covered by an agreement with BNSF, and/or a license or similar agreement cannot be located by BNSF, then BNSF shall notify City of such in writing. Upon such assignment or notification, BNSF shall have no further obligations with respect to such improvements.

11.2.7.5 All rights of BNSF under the provisions of this Section 11.2.7 shall survive all Closings hereunder.

11.2.8 Notwithstanding anything in this Agreement to the contrary, City acknowledges and affirms that BNSF may not hold fee simple title to the Replacement City Property and that BNSF’s interest in all or part of the Replacement City Property, if any, may rise only to the level of an easement for railroad purposes. City is willing to accept BNSF’s interest in the Replacement City Property, if any, on this basis and expressly releases BNSF, its successors and assigns from any claims that City or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Replacement City Property. In light of BNSF’s disclosure that it may not hold a fee interest in all or part of the Replacement City Property, City agrees to indemnify, defend and hold BNSF harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys’ fees, or civil penalties that may be imposed on BNSF as the result of any person or entity claiming an interest in any portion of the Replacement City Property or claiming that BNSF did not have the right to transfer all or part of the Replacement City Property to City.

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

11.4 Release and Indemnity. To the fullest extent permitted by law, City assumes the risk that Hazardous Substances or other adverse matters may affect the Replacement City Property and other land acquired and/or developed by City as part of the West Haymarket Project, and to the fullest extent allowed by law hereby indemnifies, defends and holds harmless and hereby waives, releases and discharges forever BNSF and BNSF's officers, directors, employees and agents (collectively, "BNSF Indemnitees") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees to the extent permitted by law) of any and every kind or character, known or unknown, arising from or in any way related to Replacement City Property Conditions and the condition of any other land acquired and/or developed by City as part of the West Haymarket Project, including the alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Replacement City Property or such other property (collectively, the "BNSF Losses"). "BNSF Losses" shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause BNSF's remaining property or the operations or business of BNSF on its remaining property to be in compliance with the requirements of any Environmental Law, and (c) losses for injury or death of any person, and (d) losses arising under any Environmental Law enacted after transfer. The rights of BNSF under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of City to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Replacement City Property or such other property. ALL INDEMNITY OBLIGATIONS OF CITY UNDER THIS SECTION 11.4 SHALL INCLUDE BNSF LOSSES CAUSED BY BNSF PRIOR TO THE APPLICABLE CLOSING, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE OF BNSF, but shall exclude all cost, liability, or expense actually incurred by BNSF arising out of the condition of such property to the extent such condition is caused, contributed to, exacerbated or aggravated by BNSF after the date of conveyance.

11.5 For purposes of this Agreement:

11.5.1 "Environmental Law(s)" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

11.5.2 "Hazardous Substance(s)" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

11.5.3 "Environmental Matters" means matters relating to the generation, manufacture, use, storage, handling, transportation and/or disposal of Hazardous Substances, or conditions with
respect to the atmosphere, soil, surface and ground waters, wetlands, stream sediments, vegetation, endangered species and storm water runoff or discharge.

11.6 The provisions of this Section 11 shall survive the Closing, bind each Party and their respective heirs, successors and assigns, shall be included in each Replacement City Property Deed and each Replacement BNSF Property Deed and shall be covenants running with the land.

Section 12. **BNSF Reserved Rights.**

12.1 Notwithstanding the provisions of Section 2.4 above, the Parties acknowledge and agree that the Replacement City Property quitclaimed to City pursuant to this Agreement excludes all rights in and to the BNSF Reserved Rights (defined below), which BNSF Reserved Rights may be exercised by BNSF as deemed necessary or advisable by BNSF and without charge and without notification to City; provided, however, BNSF's exercise of the BNSF Reserved Rights shall not unreasonably interfere with City's and City's successor's and permitted assign's use and occupancy of the Replacement City Property. The BNSF Reserved Rights shall be binding upon City and its successors and assigns.

12.2 BNSF hereby specifically reserves to itself and its successors and assigns the following interests in the Replacement City Property, which are referred to herein collectively as the "BNSF Reserved Rights":

12.2.1 The Longitudinal Agreements and rights to the revenues or fees (collectively, "License Fees") attributable to any Longitudinal Agreements involving BNSF or the Replacement City Property of whatever nature. The Parties agree that BNSF shall reserve 100% of its rights to License Fees and this Agreement or the transactions contemplated hereunder shall not alter or otherwise affect such rights.

12.2.2 For BNSF improvements described in Section 11.2.7.1 that BNSF elects to remove and relocate, BNSF has the limited right to enter upon the Replacement City Property to remove and relocate BNSF improvements as described in Section 11.2.7.1 above. In addition to and not in limitation of the foregoing, BNSF has the right to continue to Operate such BNSF improvements for such time as is reasonably necessary for BNSF to remove and relocate the BNSF improvements or construct replacement improvements.

12.2.3 For BNSF improvements described in Section 11.2.7.1 that BNSF desires to continue to Operate in place, BNSF has the right to obtain an easement from City for access to the BNSF improvements, and to Operate the BNSF improvements as described in Section 11.2.7.1 above.

12.2.4 Any improvements constructed or altered on the Replacement City Property after the date BNSF quitclaims its interest to City shall be constructed or altered in such a manner to provide adequate drainage of water away from any of BNSF's railroad tracks on nearby property, except as expressly provided under the Master Agreement with regard to the Storm Water Mitigation Area.

12.3 The provisions of this Section 12 shall survive the Closing and bind each Party and their respective heirs, successors and assigns. The provisions of Sections 12.1 and 12.2 shall be included in each Replacement City Property Deed and the Bill of Sale and shall be covenants running with the land benefiting BNSF and BNSF's successors and assigns.

Section 13. **Intentionally Deleted.**

Section 14. **Default and Remedies.** If either Party fails to perform any of its obligations under this Agreement, and, after written notice is given by the non-defaulting Party to the defaulting Party specifying the default, the defaulting Party fails either to promptly commence to cure the default, or to complete the cure expeditiously but in all events to complete the cure within thirty (30) days after the default notice is given, then the non-defaulting Party may (i) seek specific performance of the unperformed obligations; or
(ii) bring a claim for damages. Additionally, any default by City shall entitle, but not require, BNSF to immediately suspend any further Closings until such default is cured. If BNSF suspends a Closing for more than eighteen (18) months, either Party shall have the right to terminate this Agreement and/or pursue any other remedies available at law or in equity. For purposes of this Agreement, a default in the Master Agreement or any of the Rights of Entry agreements shall be considered a default under this Agreement. The remedies set forth in this Section 14 shall be in limitation of any other remedies that a Party may have at law or in equity.

Section 15. Master Agreement. Notwithstanding anything else herein to the contrary, in the event that, prior to the final Closing hereunder, the Master Agreement is terminated for any reason then either City or BNSF may terminate this Agreement, with respect only to all portions of the Exchange Properties that have not yet closed as contemplated herein, by giving written notice thereof to the other Party, and, upon such termination, neither Party will have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

Section 16. Information. If this Agreement is terminated without the final Closing having occurred, then promptly after such termination: (i) each Party shall deliver to the other Party, with respect solely to the Exchange Properties that have not been conveyed to the Transferee, legible copies of all property examinations, surveys, engineering and other inspections, tests and studies, including without limitation Phase I and Phase II environmental assessments (collectively, "Tests"), Property Surveys, studies, reports and other written materials obtained or produced solely with respect to its inspection and due diligence review of the other Party's Exchange Property that have not been conveyed to the Transferee and (ii) all copies of the Existing Information provided to the other Party pursuant to the provisions of Section 3 above. The Parties agree that the results of any Tests, Property Surveys, studies, reports and other written materials obtained or produced with respect to its inspection and due diligence review of the of the other Party's Exchange Property conducted shall be maintained in absolute confidence, except as otherwise required by law or order of a court with jurisdiction. The obligations under this Section 16 shall survive the termination of this Agreement.

Section 17. No Brokers. The Parties agree that there are no brokers involved in connection with this exchange. EACH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM AND AGAINST THE CLAIMS, DEMANDS, CAUSES OF ACTION, OR OTHER LIABILITY OF ANY AGENT, BROKER, OR OTHER SIMILAR PARTY ARISING FROM OR PERTAINING TO ANY BROKERAGE COMMISSION, FEE, COST, OR OTHER EXPENSE IN CONNECTION WITH THE EXCHANGE OF THE EXCHANGE PROPERTY, TO THE EXTENT SUCH CLAIMS, DEMANDS, CAUSES OF ACTION, OR OTHER LIABILITY ARISE OUT OF ANY COMMITMENTS OR AGREEMENTS OF THE INDEMNIFYING PARTY.

Section 18. Tax Effect. No Party has made or is making any representations to the other concerning any of the tax effects of the transactions provided for in this Agreement. No Party shall be liable for or in any way responsible to any other Party because of any tax effect resulting from the transactions provided for in this Agreement.

Section 19. Notice. 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:
Section 20. **Miscellaneous.**

20.1 Time is of the essence of this Agreement.

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

20.3 This Agreement binds and is for the benefit of both Parties and their permitted successors and assigns. No Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("JPA") without further consent of BNSF, provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF’s then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to the JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to the JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF’s rights, and (iii) in no event shall this Agreement or any interest herein be assigned unless City's entire interest under the C&M Agreement, the Master Agreement, and all Rights of Entry agreements are assigned at the same time to the same assignee.

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

20.5 If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
20.6 This Agreement, the Master Agreement, the C&M Agreement, and the Rights of Entry agreements contain the entire agreement between BNSF and City with respect to the transactions described herein. Oral statements or prior written matters not specifically incorporated into this Agreement are superseded hereby. No variation, modification, or change to this Agreement shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party’s right to require strict compliance with any term of this Agreement. The captions next to the section numbers of this Agreement are for reference only and do not modify or affect this Agreement.

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

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

20.9 This Agreement is governed by and must be construed in accordance with the laws of the State of Nebraska.

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

20.11 If a Closing Date or the day for performance of any act required under this Agreement falls on a Saturday, Sunday or legal holiday, then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day.

20.12 All warranties, representations, covenants, obligations, and agreements contained in or arising out of this Agreement will survive the Closing and conveyance of the Replacement City Property and the Replacement BNSF Property. The indemnity obligations set forth in this Agreement shall survive all Closings under, or earlier termination of, this Agreement.

20.13 If prior to the Fifth City Closing any portion of the Exchange Properties that have not yet closed is the actual or threatened subject of a condemnation or eminent domain action (other than City's notification as detailed in Section 2.3 above), the Party to which such Exchange Property is to be conveyed shall proceed to Closing and receive an assignment of all condemnation proceeds for the Exchange Property.

20.14 Nothing in this Agreement shall be deemed a submission by BNSF to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law.

20.15 Each Transferor and Transferee will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Transferor and Transferee shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement. Notwithstanding anything herein to the contrary, neither Party shall be required pursuant to this Section 20.15 to incur any additional expense or accept or convey any property interests on terms or conditions that are not acceptable to such Party.
Signature Page - Exchange Agreement

Executed by the Parties as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: ______________________________________
    Chris Beutler, Mayor of Lincoln

Date: ________________________________

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: ________________________________
Exhibits attached to Exchange Agreement:

Exhibit B:      Existing BNSF Property
Exhibit B-1:    Retained BNSF Property / Transferred BNSF Property
Exhibit C:      BNSF Bridge
Exhibit D-1:    Vacated Right of Way/Replacement BNSF Property
Exhibit E-1:    UP/Replacement BNSF Property
Exhibit F-1:    Third Party/Replacement BNSF Property
Exhibit F-2:    Cleanup Standards
Exhibit G:      First BNSF Closing Property
Exhibit G-1:    Second BNSF Closing Property
Exhibit J:      Replacement City Property
Exhibit J-1:    First City Closing Property
Exhibit J-2:    Second City Closing Property and Holes in the Donut
Exhibit J-3:    Third City Closing Property
Exhibit J-4:    Fourth City Closing Property
Exhibit J-5:    Fifth City Closing Property
Exhibit S:      Other BNSF Reversionary Interests (portion outside project footprint)
Exhibit PP:     Form of Bill of Sale
Exhibit PP-1:   Bridge Bill of Sale
Exhibit QQ:     Form of Replacement BNSF Property Deed
Exhibit QQ-1:   Form of Replacement BNSF Property Easement
Exhibit RR:     Form of Replacement City Property Deed
Exhibit SS:     Form of License Assignment (100% Assigned Permits)
Exhibit SS-1:   Form of License Assignment (Partially Assigned Permits)
MASTER DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT ("Master Agreement") is made to be effective the _____ day of October, 2010 ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation ("City"). City and BNSF, respectively, are sometimes referred to in this Master Agreement each as a "Party" and collectively, as the "Parties".

RECITALS

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

B. The West Haymarket Project requires the acquisition and redevelopment of certain real property, including real property currently owned or controlled by BNSF. City anticipates the acquisition of all necessary rights-of-way, easements, or other interests in land by voluntary purchase if possible, or by condemnation if necessary, for the real property related to the West Haymarket Project. In order to avoid the expense and delay of such condemnation action by City, BNSF is willing to quitclaim to City and City is willing to accept all of BNSF's right, title and interest, if any, in and to the needed BNSF property in lieu of such condemnation action on the terms and conditions set forth in herein.

C. BNSF owns or has an interest in certain parcels of real estate in the Project Area ("Existing BNSF Property"). The Existing BNSF Property is legally described in and identified as all or part of Parcels 1, 3, 6, 8, 19, 22-26, 31, 40, 42-47, 53-60, 67, 69, and 71 on the Title Insurance Commitment (as defined in the Exchange Agreement [defined below]) and the Survey (as defined in the Exchange Agreement). The Existing BNSF Property also includes Lots 1-3, Block 286, Original Plat of Lincoln. The Existing BNSF Property is shown on the map attached hereto as Exhibit B and incorporated herein by reference.

D. BNSF will retain its ownership interest in and continue railroad operations on certain portions of the Existing BNSF Property as shown on the attached Exhibit B-1 and incorporated herein by reference ("Retained BNSF Property") during and after construction of the West Haymarket Project. BNSF's interest, if any, in the remaining portions of the Existing BNSF Property (totaling approximately 41 acres) as shown on Exhibit B-1 attached hereto ("Transferred BNSF Property") will be quitclaimed to City by quit claim deed and used for the West Haymarket Project. The Transferred BNSF Property consists of all of Parcels 3, 8, 19, 24, 31, 42, 43, 58, 59, 60, and 71 and part of Parcels 1, 6, 22, 25, 40, 44, 47, 55-57 and Lots 1-3, Block 286, Original Lincoln. In addition, BNSF will quitclaim to City by quit claim deed and bill of sale all of BNSF’s rights, title and interest, if any, in the existing BNSF railroad bridge over Salt Creek ("BNSF Bridge") as shown on the attached Exhibit C and incorporated herein by reference.

E. Certain streets and alleys in the Project Area, as shown on Exhibit D, attached hereto and incorporated herein by reference have been previously platted and dedicated to City (collectively "Existing City Streets and Alleys"). As part of the West Haymarket Project, City will
vacate the Existing City Streets and Alleys and create other new streets and alleys to serve the West Haymarket Project. A portion of the Existing City Streets and Alleys will be vacated subject to title to the real property comprising the vacated Existing City Streets and Alleys being retained by City ("Vacated Right of Way/Retained City Property") as shown on Exhibit D-1, attached hereto and incorporated herein by reference. The remaining balance of the Existing City Streets and Alleys (i.e., within the Future BNSF Corridor [defined below]) as shown on Exhibit D-1 attached hereto will be vacated by City and title to the real property transferred to BNSF by quit claim deed as part of the Land Exchange described below ("Vacated Right of Way/Replacement BNSF Property").

F. BNSF may have certain reversionary and/or other real estate claims, ordinance rights, licenses, easements and interest relating to providing rail service over the Vacated Right of Way/Retained City Property shown on Exhibit D-1 attached hereto (collectively "BNSF Reversionary Interests") and over certain other City streets and alleys immediately abutting the Project Area ("Other BNSF Reversionary Interests") as shown on Exhibit S, attached hereto and incorporated herein by reference. BNSF will quitclaim any and all BNSF Reversionary Interests and Other BNSF Reversionary Interests to City by quit claim deed as part of the Land Exchange.

G. Implementation of the West Haymarket Project will require City to acquire from Union Pacific Railroad Company ("UP") certain parcels of real property or railroad rights-of-way ("Existing UP Property") as shown on the attached Exhibit E and incorporated herein by reference. After acquiring the Existing UP Property, City will retain portions of the Existing UP Property ("UP/City Retained Property"), as shown on the attached Exhibit E-1 and incorporated herein by reference, and will convey certain other portions of the Existing UP Property to BNSF ("UP/Replacement BNSF Property") as shown on Exhibit E-1 attached hereto.

H. Implementation of the West Haymarket Project will further require City to acquire certain parcels of real property as shown on the attached Exhibit F, and incorporated herein by reference, from certain third parties ("Third Party Properties"). After acquiring the Third Party Properties, City will retain portions of the Third Party Properties, as shown on the attached Exhibit F-1 and incorporated herein by reference ("Third Party/Retained City Property"), and will convey the remaining portions of the Third Party Properties, as shown on Exhibit F-1 attached hereto, to BNSF ("Third Party/Replacement BNSF Property").

I. The Vacated Right of Way/Replacement BNSF Property, UP/Replacement BNSF Property, and Third Party/Replacement BNSF Property are hereinafter collectively referred to as the "Replacement BNSF Property". The Replacement BNSF Property consists of parcels identified in the Title Insurance Commitments BNSF001 and BNSF002 and the Survey as Tract 1 (Parcels 1-16), Tract 2, Tract 3, Tract 4, Tract 5 and Tract 6. The Replacement BNSF Property is shown on the maps attached hereto as Exhibit G and Exhibit G-1 and incorporated herein by reference. The Replacement BNSF Property and the Retained BNSF Property is hereinafter referred to as the "Future BNSF Corridor" and is shown on Exhibit H attached hereto and incorporated herein by reference.

J. Implementation of the West Haymarket Project will also require City to perform certain Rights of Entry Work (defined below) pursuant to the Rights of Entry (defined below). The Storm Water Mitigation Area (defined below), the Soil Staging Area (defined below), and the location of the Pedestrian Bridge (defined below) are shown on Exhibits I-1, I-2, I-3, and I-4, which are attached hereto and incorporated herein by reference.
K. As part of the Land Exchange, BNSF will quitclaim to City BNSF's interest, if any, in and to the Transferred BNSF Property, BNSF Reversionary Interests, Other BNSF Reversionary Interests, BNSF Bridge (collectively "Replacement City Property"). The Replacement City Property is shown on the map attached hereto as Exhibit J and incorporated herein by reference. The Replacement City Property currently includes ballast, rail, railcar storage tracks, rail switching facilities, communication systems, utilities, buildings and other related railroad improvements (collectively "BNSF Existing Improvements"). BNSF shall have the right, but not the obligation, to remove all or any portion of the BNSF Existing Improvements (excluding the BNSF Bridge and related support structure, which BNSF shall have no right or obligation to remove) prior to quitclaiming BNSF's interest, if any, in and to the underlying real property to City, as set forth in more detail in the Exchange Agreement. Any BNSF Existing Improvements not removed by BNSF shall be conveyed to City concurrently with the underlying real property and become the property of City upon conveyance of the underlying real property. The Vacated Right of Way/Retained City Property, UP/Retained City Property, and Third Party/Retained City Property are collectively referred to as the "Retained City Property". The Replacement City Property and the Retained City Property is hereinafter referred to as the "Future City Property" and is shown on Exhibit K attached hereto and incorporated herein by reference.

L. Implementation of the West Haymarket Project will also require BNSF to perform the BNSF Work (defined below). Pursuant to a letter agreement dated October 11, 2010 between BNSF and City, a copy of which is attached hereto as Exhibit W and incorporated herein by reference, City has requested BNSF to advance certain track removal and crossing construction work.

M. In 2008 City, at its expense, engaged HWS Consulting Group, Inc. ("HWS") to prepare preliminary design of the BNSF Track Work (defined below) which was completed and submitted to City and BNSF in December 2008 ("BNSF Track Work 30% Design"). Subsequently, BNSF, at its expense, engaged HWS to advance the BNSF Track Work 30% Design to a 60% preliminary design ("BNSF Track Work 60% Design") in order to refine trackage quantities and project cost estimates to complete the BNSF Track Work which was completed and submitted to City and BNSF on April 1, 2009.

N. In association with the BNSF Track Work 60% Design, BNSF, at its expense, prepared the preliminary design and construction cost estimates for the BNSF Signals and Facilities Work Preliminary Design and for BNSF Utilities Work Preliminary Design on the Future BNSF Corridor and other property owned, controlled, or to be acquired by BNSF. The BNSF Signals and Facilities Work Preliminary Design and BNSF Utilities Work Preliminary Design will serve as a general guideline for preparation of the BNSF Signal and Facilities Work Final Design and BNSF Utilities Work Final Design, subject to further review and revision by BNSF. The BNSF Signal and Facilities Work Final Design and BNSF Utilities Work Final Design will be prepared and completed by BNSF as part of the Included BNSF Work, and submitted to City as information with respect to the sequence of actions for completion of the BNSF Work. The BNSF Signals and Facilities Work Final Design and BNSF Utilities Work Final Design will be completed and submitted to City as information on the date shown on the Timeline. Notwithstanding any provision in this Master Agreement, the Exchange Agreement, or the C&M Agreement (defined below) to the contrary, upon request of City, BNSF shall commence preparation of all or part of the BNSF Signal and Facilities Work Final Design and/or BNSF Utilities Work Final Design prior to the dates shown in the Timeline; provided that the request of City shall be in writing and shall contain an affirmation on the part of City to reimburse BNSF for all reasonable design costs incurred in preparing the BNSF Utilities Work Final Design. Pursuant to a letter agreement dated September 28, 2010 between BNSF and City, a copy of which is attached hereto as Exhibit V and
incorporated herein by reference, City has requested that BNSF prepare the BNSF Signals Final Design and Telecommunication's order and procure materials for tower relocation in the wye.

O. In 2010, BNSF, pursuant to a letter agreement with City dated February 12, 2010, a copy of which is attached as Exhibit U hereto, engaged HWS to advance the BNSF Track Work 60% Design to final design ("BNSF Track Work Final Design") in order to finalize trackage quantities and project cost estimates to complete the BNSF Track Work. The BNSF Track Work Final Design entitled West Haymarket Track Relocation and dated August 13, 2010, has been provided to City and Amtrak on August 13, 2010.

P. The BNSF Track Work Final Design, the final design of the BNSF Signals and Facilities Work ("BNSF Signals and Facilities Work Final Design"), and the final design of the Utilities Work ("BNSF Utilities Work Final Design") are sometimes collectively referred to as "BNSF Work Final Design".

Q. Implementation of the West Haymarket Project will also require preparation of the City Work Final Design (defined below) by City or others and the completion and Operation (defined below) of the Arena, Ice Center, City Amtrak Work (defined below), Storm Water Mitigation Work (except for the 2010 Storm Water Mitigation Work [defined below]), 2010 Sanitary Sewer Work (defined below), Fiber Optic Work (defined below) and Public Utilities Work (defined below), (collectively "City Work"). Notwithstanding anything to the contrary herein, the City Work, BNSF Work and any other work that is or becomes a part of the West Haymarket Project shall be at City's cost and expense, except only to the extent that BNSF becomes responsible for costs to construct the Included BNSF Work in excess of $44,000,000 as described in Section 2.7.4.

R. As part of the West Haymarket Project, City, at its expense, engaged Olsson Associates ("Olsson") and other professional designers to prepare preliminary design for the West Haymarket Project and the Rights of Entry Work (collectively "Preliminary City Design"). The Preliminary City Design is on file with the City Clerk's Office for the City of Lincoln and incorporated herein by reference. The Preliminary City Design includes work that will generally be implemented by City or third parties.

S. City, at its expense, has engaged Olsson to advance the Preliminary City Design for the Storm Water Mitigation Work to final design ("2010 Storm Water Mitigation Work Final Design") for the Storm Water Mitigation Area, but excluding the area north of the Future BNSF Corridor in order to permit BNSF to complete the final design of the BNSF Track Work. The Storm Water Mitigation Work for the Storm Water Mitigation Area shown on the Timeline (defined below) to be carried out in calendar year 2010, excluding the area north of the Future BNSF Corridor, shall be the "2010 Storm Water Mitigation Work", and BNSF shall complete the 2010 Storm Water Mitigation Work as part of the BNSF Additional City Cost Work. The 2010 Storm Water Mitigation Work Final Design entitled West Haymarket Track Relocation and dated August 13, 2010, has been provided to City on August 13, 2010.

T. City, at its expense, has engaged Olsson to advance the Preliminary City Design for three sanitary sewer lines and related improvements shown on the Timeline to be constructed in 2010 ("2010 Sanitary Sewer Work") to final design ("2010 Sanitary Sewer Work Final Design") in order to permit BNSF to complete the final design on the BNSF Track Work. The 2010 Sanitary Sewer Work Final Design entitled West Haymarket Utility Relocation (2010) (City Project #870501) and dated August 31, 2010, has been completed, reviewed and approved by City and BNSF on September 2, 2010. City, at its expense, will commence and complete the construction of the 2010 Sanitary Sewer Work in accordance with the Timeline, provided that any and all obstacles, if any, preventing or otherwise impacting City’s ability to undertake and/or complete the 2010 Sanitary Sewer Work have been resolved to City’s sole satisfaction.
Under the terms and conditions of this Master Agreement, City will complete the balance of the final design of the City Work ("Balance of City Work Final Design") based upon the general framework of the Preliminary City Design. The 2010 Storm Water Mitigation Work Final Design, 2010 Sanitary Sewer Work Final Design and Balance of City Work Final Design are sometimes collectively referred to as "City Work Final Design".

AGREEMENTS

NOW, THEREFORE, in consideration of the benefits accruing to the Parties, as described herein, and incorporating all of the above referenced Recitals into the agreements below as if fully set forth therein, the Parties do mutually agree as follows:

1. **LAND EXCHANGE.** Concurrently with the execution of this Master Agreement, BNSF and City shall enter into a property exchange agreement ("Exchange Agreement") for the exchange of the Replacement BNSF Property and the Cash Payment (as defined in the Exchange Agreement) for the Replacement City Property ("Land Exchange").

2. **BNSF WORK.**

   2.1 "BNSF Work" shall collectively mean:

   (i) BNSF's removal, at BNSF's sole election, of all or any portion of BNSF Existing Improvements upon the Future City Property (other than the BNSF Bridge and related support structure) ("BNSF Removal Work"); BNSF shall terminate the use of certain BNSF Existing Improvements upon the Future City Property in accordance with the Timeline and BNSF Work Final Design; provided, however, that BNSF may, with City's agreement, which shall not be unreasonably withheld, continue using the BNSF Existing Improvements upon the Future City Property for a limited time if such termination would result in BNSF's inability to provide railroad operations. The rights and obligations of BNSF and City with respect to removal of the BNSF Existing Improvements are as set forth in the Exchange Agreement;

   (ii) BNSF's design, site grade and construction of replacement tracks, crossovers, switches and related improvements, including related trackage for the BNSF Amtrak Work (defined below) (collectively "BNSF Track Work");

   (iii) BNSF's design and construction of signal systems, communication lines and systems, electrical systems, Microwave Work (defined below) facilities, buildings, and improvements on the Future BNSF Corridor and other property owned, controlled, or to be acquired by BNSF (collectively "BNSF Signal and Facilities Work") (the BNSF Track Work and BNSF Signals and Facilities Work is sometimes collectively referred to as "BNSF Replacement Work") (the BNSF Removal Work and the BNSF Track Work are generally shown or listed on Exhibit L attached hereto and incorporated herein by reference); BNSF shall complete the BNSF Replacement Work on the Future BNSF Corridor and other property owned, controlled, or to be acquired by BNSF, all generally in accordance with the Timeline and BNSF Work Final Design; provided that BNSF shall have the flexibility and discretion to determine the final design, configuration, and elements
comprising any of the BNSF Replacement Work based on BNSF's operational needs without notice to or approval of City, as long as any such unilateral changes by BNSF do not cause any BNSF Additional City Cost Work (defined below), adverse impact to the dates in the Timeline for the City Closings as defined in the Exchange Agreement, and/or adverse impact to the dates in the Timeline for BNSF to complete the BNSF Work;

(iv) the Microwave Work, as described in Section 6 below;

(v) the BNSF Amtrak Work, as described in Section 7 below;

(vi) the BNSF Utilities Work, as described in Section 8.1 below;

(vii) the 2010 Storm Water Mitigation Work, as described in Recital S above;

(viii) BNSF's obtaining any NPDES Approval (defined below), issuing any necessary STB Notification (defined below), and obtaining any necessary STB Approval (each as described in Section 14 below);

(ix) BNSF's activities related to shutting down and remobilizing, whether as a result of weather, delays in property acquisition, or otherwise, and including without limitation protecting job sites;

(x) BNSF's activities and temporary operating measures necessary or desirable to compensate for any failure by City to timely acquire and convey to BNSF the Replacement BNSF Property or otherwise meet the dates set forth in the Timeline;

(xi) any related railroad engineering, inspection, flagging, coordination, labor, planning, design, accounting, legal, consultants, investigations, testing, overhead, and administration;

(xii) removal and loading of Removed Tracks & Ties (as defined in the Exchange Agreement) on BNSF railcars for shipment to a disposal site as described in Section 11.2.6 of the Exchange Agreement, and;

(xiii) shipping and disposal of railroad ties removed from the Replacement City Property.

All BNSF Work is either Included BNSF Work or BNSF Additional City Cost Work. The performance of the BNSF Work is divided into the 2010 BNSF Work (as described in Section 2.5 below), the 2011 BNSF Work (as described in Section 2.6.1 below), and the 2012 BNSF Work (as described in Section 2.6.2 below).

2.2 "Included BNSF Work" shall collectively mean:

(i) the BNSF Work listed on Exhibit X-1 attached hereto and incorporated by reference herein;

(ii) BNSF's completion of the BNSF Work Final Design;
(iii) BNSF's preliminary engineering, design, and contract preparation costs, and the costs and fees of its outside consultants and attorneys, even though such work may have preceded the Effective Date above; and

(iv) BNSF’s cost to ship and dispose of railroad ties removed from the Replacement City Property.

The BNSF Work Payment Amount (defined below) is based on the Parties’ agreement and understanding that (a) all grading included in the BNSF Work will be completed in 2010; (b) no BNSF Work will be performed between Thanksgiving and April 1; and (c) minimal or no overtime costs will be incurred in performing the BNSF Work. City shall be responsible for any costs or expenses arising as a result of the failure or non-occurrence of any or all of the foregoing items, and such costs and expenses shall be BNSF Additional City Cost Work. Except as set forth in this Master Agreement, the Exchange Agreement, C&M Agreement, and the Rights of Entry, BNSF has no knowledge of any BNSF requirements to facilitate and accommodate the BNSF Work that are not reflected in the Included BNSF Work. For purposes of this section, BNSF's knowledge is limited to the current actual knowledge of Robert J. Boileau, P.E., Assistant Vice President, Engineering Services.

2.3 “BNSF Additional City Cost Work” shall collectively mean:

(i) the costs and expenses of any and all additional BNSF Work required beyond the Included BNSF Work or requested or approved by City as BNSF Additional City Cost Work;

(ii) the increased costs and expenses of the Included BNSF Work caused by delays due to (a) the failure of City to timely satisfy any of the Section 2.4 conditions precedent to BNSF’s obligation to commence the BNSF Work, or (b) any act or omission of City, including without limitation City’s failure to timely acquire and convey to BNSF the Replacement BNSF Property or otherwise meet the dates set forth in the Timeline, notwithstanding City's use of commercially reasonable efforts to do so, or (c) BNSF’s failure to meet the dates set forth in the Timeline, notwithstanding BNSF’s use of commercially reasonable efforts to do so;

(iii) the costs and expenses related to the items described in Exhibit W attached hereto and incorporated herein by reference;

(iv) the costs and expenses related to the items listed in Exhibit X-2 attached hereto and incorporated herein by reference;

(v) BNSF’s costs and expenses to complete the 2010 Storm Water Mitigation Work;

(vi) BNSF's costs and expenses for construction of any temporary crossings requested by the City or otherwise arising out of the West Haymarket Project;

(vii) BNSF's flagging costs and expenses as described in Article III of the C&M Agreement;
(viii) Pedestrian Bridge maintenance costs and expenses incurred by BNSF as described in Exhibit HH attached hereto and incorporated herein by reference;

(ix) BNSF's costs and expenses for installation and/or relocation of microwave tower equipment as described in Section 6 below;

(x) any costs and expenses incurred by BNSF for the Fiber Optic Work as described in Section 8.2 below;

(xi) any costs and expenses incurred by BNSF for the Public Utilities Work as described in Section 8.3 below;

(xii) any costs and expenses incurred by BNSF for the parking rights relinquishment as described in Section 18 below;

(xiii) BNSF’s costs and expenses for railroad track and tie removal from the Replacement City Property and loading such railroad ties onto BNSF railcars for shipment to a disposal site for disposal;

(xiv) any costs and expenses for which City is responsible that are incurred by BNSF;

(xv) any BNSF Work that is not listed in Section 2.2 above; and

(xvi) applicable additives for (i) – (xv) above at the applicable government rate.

City acknowledges and agrees that any delay described in Section 2.3(ii) above could be greater than the number of days affected by such events if the delay causes BNSF or City to miss applicable construction seasons or BNSF’s work force schedules, or causes any Governmental Approvals to expire.

2.4 Commencement of BNSF Work. Unless otherwise stated herein, BNSF shall have no obligation to commence any portion of the BNSF Work until (i) the First Closing (as defined in the Exchange Agreement) has been completed; (ii) City has made arrangements satisfactory to BNSF to acquire (including by condemnation if necessary) and convey to BNSF by the completion date such remaining Third Party/Replacement Property as is needed for the BNSF Work as shown on the Timeline and not conveyed to BNSF at the First Closing, and BNSF has approved the condition of such Third Party/Replacement Property; (iii) the Escrow Account (defined below) has been fully funded; (iv) the BNSF Work Payment Amount has been disbursed to BNSF from the Escrow Account in accordance with the Construction Draw Schedule (defined below) as set forth herein; (v) BNSF has issued any STB Notification required for the 2010 BNSF Work and has obtained the NPDES Approval required for the 2010 BNSF Work, (vi) BNSF has approved any terms or conditions of, and City has obtained, all other Governmental Approvals necessary for the 2010 BNSF Work, the 2010 Storm Water Mitigation Work, the 2010 Sanitary Sewer Work, the UP Work, the 2011 BNSF Work, and the 2012 BNSF Work, other than any STB Approval that may be later required to be obtained by BNSF for the 2011 BNSF Work or the 2012 BNSF Work, and (vii) any and all obstacles, if any, preventing or otherwise impacting BNSF’s ability to continue to provide railroad operations in the Project Area have been resolved to BNSF’s sole satisfaction.

2.5 Commencement and Completion of 2010 BNSF Work. Following satisfaction of the conditions in Section 2.4 above, or if such conditions have been waived in
writing by BNSF, BNSF will promptly commence the 2010 BNSF Work after receiving written notice from City to proceed ("2010 Notice to Proceed") with such 2010 BNSF Work. BNSF shall use commercially reasonable efforts to complete the 2010 BNSF Work (defined below) on or before the completion date for the 2010 BNSF Work established in the Timeline. The "2010 BNSF Work" shall be the BNSF Work shown on the Timeline to be carried out in calendar year 2010.

2.6 Commencement and Completion of 2011 BNSF Work and 2012 BNSF Work. Unless otherwise stated herein, BNSF shall have no obligation to commence any portion of the 2011 BNSF Work and 2012 BNSF Work until (i) the Second BNSF Closing (as defined in the Exchange Agreement) has been completed; (ii) City has completed all third party relocations as described in Section 13 below; (iii) BNSF has obtained required STB Approval, if any, for the 2011 BNSF Work and 2012 BNSF Work; and (iv) any and all obstacles, if any, preventing or otherwise impacting BNSF’s ability to continue to provide railroad operations in the Project Area have been resolved to BNSF’s sole satisfaction. Following satisfaction of such conditions or if such conditions have been waived in writing by BNSF, BNSF will promptly commence the 2011 BNSF Work and 2012 BNSF Work after receiving written notice from City to proceed ("2011/2012 Notice to Proceed") with such 2011 BNSF Work and 2012 BNSF Work. BNSF shall use commercially reasonable efforts to complete the 2011 BNSF Work and 2012 BNSF Work on or before the completion dates for the 2011 BNSF Work and the 2012 BNSF Work established in the Timeline.

2.6.1 2011 BNSF Work. The "2011 BNSF Work" shall be the BNSF Work shown on the Timeline to be carried out in calendar year 2011.

2.6.2 2012 BNSF Work. The "2012 BNSF Work" shall be the BNSF Work shown on the Timeline to be carried out in calendar year 2012.

2.7 Payments.

2.7.1 Escrow Account. Prior to the First Closing, City shall establish with U.S. Bank National Association, a national banking association, ("Escrow Agent") an escrow account (the "Escrow Account") pursuant to joint escrow instructions executed by City and BNSF ("Escrow Agreement") attached hereto as Exhibit Z and incorporated herein by reference. The Escrow Agreement shall direct Escrow Agent to deposit, hold in trust for BNSF’s benefit, and periodically disburse the funds in the Escrow Account according to the Construction Draw Schedule attached hereto as Exhibit Z-1 and incorporated herein by reference ("Construction Draw Schedule"). City shall be solely responsible for all costs and expenses associated with the Escrow Account; however, interest accrued on the Escrow Account shall be for City's benefit.

2.7.2 Escrow Account Deposits. Prior to the First Closing, City shall deposit the BNSF Work Payment Amount, and the initial amounts attributable to BNSF Additional City Cost Work as set forth on the Construction Draw Schedule into the Escrow Account. City shall deposit those additional amounts listed on the Construction Draw Schedule for the BNSF Additional City Cost Work according to the schedule on the Construction Draw Schedule, and any incremental amounts for BNSF Additional City Cost Work over and above the amounts listed on the Construction Draw Schedule shall be deposited by City within fifteen (15) days following City’s receipt of (i) written notice of the amount by which the Escrow Account needs to be increased, and (ii) the reason therefor set forth in reasonable detail.

2.7.2.1 In addition to its other rights and remedies under this Master Agreement, if any quarterly payment is not paid within fifteen (15) days after due in accordance with the Construction Draw Schedule then BNSF shall have the unilateral right to suspend the BNSF Work until the applicable quarterly payment is paid. Any payments made to BNSF
hereunder shall not result in any waiver of contractual rights of City to later maintain an action for breach of this Agreement.

2.7.2.2 BNSF shall have no obligation to undertake any BNSF Additional City Cost Work, and shall have the right to suspend other BNSF Work as necessary, until (i) the Escrow Account has been increased by an amount equal to the cost of such BNSF Additional City Cost Work, (ii) the dates in the Timeline are extended by the number of days reasonably requested by BNSF as a result of any delays related to such Additional City Cost Work, and (iii) the Escrow Agreement and the Construction Draw Schedule are amended by BNSF and City to reflect the increased BNSF Additional City Cost Work and Escrow Agent is notified of such amendment.

2.7.3 Escrow Account Disbursements. The Escrow Agreement will direct Escrow Agent to disburse payments from the Escrow Account to BNSF on the first day of each quarter in advance in accordance with the Construction Draw Schedule.

2.7.4 BNSF Work Payment Amount. City will pay BNSF and BNSF will accept as full and complete payment for all of BNSF's costs, expenses, and fees for the Included BNSF Work, the sum of Forty-Four Million and no/100 Dollars ($44,000,000.00) (“BNSF Work Payment Amount”). Except as provided herein, any cost to construct the Included BNSF Work in excess of $44,000,000.00 shall be the sole responsibility of BNSF.

2.7.5 BNSF Additional City Cost Work. The BNSF Additional City Cost Work shall be the sole responsibility of City, and the Escrow Account shall be increased by the amount of such additional and incremental costs and expenses. BNSF and City shall remain in contact during the performance of the BNSF Work, and shall meet as reasonably necessary regarding coordination of budgeting and scheduling.

2.7.6 Credit for Costs of BNSF Work Final Design.

2.7.6.1 City shall be entitled to take as a credit toward the BNSF Work Payment Amount an amount equal to all costs previously paid by City to BNSF prior to City's deposit of the BNSF Work Payment Amount into the Escrow Account solely for the preparation of the BNSF Track Work Final Design.

2.7.6.2 City shall be entitled to take as a credit toward the BNSF Work Payment Amount an amount equal to all costs previously paid by City to BNSF prior to City's deposit of the BNSF Work Payment Amount into the Escrow Account solely for the preparation of the BNSF Signal and Facilities Work Final Design and/or BNSF Utilities Work Final Design and for the purchase of materials needed for a relocation of the tower in the wye, as described in Section 6 below.

2.7.6.3 City shall be entitled to take as a credit toward the BNSF Work Payment Amount an amount equal to all costs previously paid by City to Qwest Communications Company LLC prior to City's deposit of the BNSF Work Payment Amount into the Escrow Account solely for the cost of longitudinal conduits that are included in the BNSF Fiber Optic Communications.

2.8 Work Force; Applicable Standards. BNSF will be responsible for the BNSF Work Final Design and construction and implementation of the BNSF Work Final Design, using either its own forces or by contract with others in accordance with BNSF’s labor agreements as determined by BNSF. All BNSF Work will meet applicable BNSF or American Railway Engineering
and Maintenance-of-Way Association standards, as determined by BNSF in BNSF's reasonable discretion.

3. **RIGHTS OF ENTRY.** The West Haymarket Project requires that BNSF grant certain license and/or permanent or temporary easement rights to City and certain third parties (each a "Right of Entry" and, in multiples, "Rights of Entry") for certain activities on BNSF's property (each a "Right of Entry Work" and collectively, "Rights of Entry Work"). BNSF shall grant the Rights of Entry described in this Section 3 subject to the following:

3.1 **Rights of Entry Work Design.** The Preliminary City Design is hereby accepted by BNSF and will become the basis for the more detailed and final design, specifications and construction documents for the Rights of Entry Work ("Rights of Entry Work Final Design"). The Rights of Entry Work Final Design will be prepared and completed by City and submitted to Gerald Maczuga, Project Engineer for BNSF's review and written approval. City's commencement of the applicable Rights of Entry Work shall not begin until the applicable Rights of Entry Work Final Design has been coordinated with the BNSF Work and approved in writing by BNSF, which approval shall not be unreasonably withheld. BNSF shall so approve or reject the Rights of Entry Work Final Design within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans for the Rights of Entry Work Final Design shall be approved or rejected in the manner hereinbefore provided. Any approval by BNSF shall mean only that the applicable subject matter meets the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that any plans and specifications or construction is adequate, structurally sound, appropriate, or that any plans and specifications or construction meet applicable regulations, laws, statutes or local ordinances and/or building codes. City will be solely responsible for determining whether its plans and specifications, construction, and maintenance (i) are adequate and meet its needs and (ii) will provide for safe operation.

3.2 **Grants of Rights of Entry.** BNSF agrees to grant rights of entry for the following Rights of Entry Work over the applicable Existing BNSF Property and Future BNSF Corridor in the forms as set forth below, and at the times set forth below, and without additional monetary consideration:

3.2.1 **Access to Initial West Haymarket Project.** At the Second BNSF Closing, BNSF will grant to City, including its authorized employees, agents, contractors, invitees, and subcontractors (such representatives of either Party are referred to collectively as its "Personnel"), a temporary Right of Entry (the "Temporary Access License for Initial Construction") in the form attached hereto as Exhibit EE and incorporated by reference herein, to provide access to and from the east Hole in the Donut using the three (3) areas on the Future City Property labeled as "Temporary Access Road" generally located at Q, R and T Streets and shown as blue on Exhibits J-2 and M-1, both attached hereto and incorporated herein by reference, in order for City and its Personnel to implement final design, site preparation, grading, utilities, roadways, and initial construction for the West Haymarket Project on those portions of the Transferred BNSF Property that have been quitclaimed to City in the Second BNSF Closing.

3.2.2 **Storm Water Mitigation.** On or before the First Closing, BNSF will grant to City and its Personnel:

(a) a temporary Right of Entry (the "Temporary Grading License for Storm Water Mitigation") in the form attached hereto as Exhibit FF-1 incorporated by reference herein for grading as part of the Storm Water Mitigation Work (as defined below) on the areas labeled on Exhibit I-1 as "Stormwater Mitigation Grading Completed Under City Project" and shown purple with symbols (not crosshatched).
(b) a permanent Right of Entry (the "Storm Water Mitigation Easement") in the form attached hereto as Exhibit FF incorporated by reference herein for ingress and egress, site preparation, construction, reconstruction, inspection, use, operation, maintenance, repair and replacement (collectively "Operate" or "Operation") of a detention area and related drainage appurtenances for storm water management and mitigation (collectively "Storm Water Mitigation") within the areas labeled on Exhibit I-2 as "New Perm. Easement" and shown in gold.

The site preparation and initial construction of the Storm Water Mitigation shall be referred to herein collectively as the "Storm Water Mitigation Work". The drainage system will be free-draining and designed to not raise the average water level any higher or closer to the tracks than that average water level existing as of the date of this Master Agreement, including "no net rise" based on and factoring in the anticipated construction of a fourth BNSF main track. The Operation of the Storm Water Mitigation will tie into the existing storm drainage system, and City will ensure that no wetlands subject to jurisdiction of a federal, state, or local agency or wetland mitigation areas will be created or established on any portion of the Future BNSF Corridor. City will be solely responsible for monitoring and maintaining the Storm Water Mitigation in good working condition so that no new wetlands subject to jurisdiction of a federal, state, or local agency are created or established on any portion of the Future BNSF Corridor. City will be responsible under the applicable Right of Entry for any Liabilities (as defined below) arising out of the Storm Water Mitigation, including without limitation costs and assessments, additional fees for runoff capacity, and damage to track structure and environmental liabilities arising from increased drainage and run-off from increases in the impervious surfaces. If, despite the foregoing obligations of City, any wetlands subject to jurisdiction of a federal, state, or local agency do arise on any portion of the Future BNSF Corridor as a result of the Storm Water Mitigation, City will be responsible for providing off-site mitigation for such wetlands subject to jurisdiction of a federal, state, or local agency, for filling and removing such wetlands from the Future BNSF Corridor, and all other costs and obligations of wetlands compliance. City's obligations under this Section 3.2.2 shall be incorporated into the applicable Right of Entry, and shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings (as defined in the Exchange Agreement) under the Exchange Agreement.

### 3.2.3 Soil Staging Areas

Soil Staging Areas. At the First Closing, BNSF will grant to City and its Personnel, a temporary Right of Entry (the "Temporary Access License for Soil Staging") in the form attached hereto as Exhibit GG, incorporated by reference herein, to and from the north Hole in the Donut using the areas labeled as "Temporary Access Road" and shown as blue on Exhibit I-3 attached hereto and incorporated herein by reference, solely for the purposes of ingress and egress to one or more staging areas on land owned by the City, which City intends to use for segregation by City of suitable and unsuitable fill for development that may be necessary to address both known and unknown areas of environmental contamination subject to a remedial action plan approved by BNSF and the applicable governing jurisdiction or jurisdictions (collectively "Soil Staging Areas"). The location and manner of operation of any Soil Staging Areas will be determined by City and subject to prior written approval by BNSF with respect to distances from trackage, and blockage of access roads. No portion of the Soil Staging Areas shall be located on any property then-owned by BNSF or any portion of the Future BNSF Corridor. City will be responsible under the applicable Right of Entry for any Liabilities arising out of the Soil Staging Area, including without limitation environmental liabilities (including re-use and/or disposal of any material), as set forth in more detail in the applicable Right of Entry.

### 3.2.4 Pedestrian Bridge

Pedestrian Bridge. At the Third City Closing (as defined in the Exchange Agreement), BNSF will grant to City and its Personnel:
(a) a temporary Right of Entry (the "Temporary Access License for Construction Staging - Pedestrian Bridge") in the form attached hereto as Exhibit HH-1, incorporated by reference herein, for the initial access to, site preparation for, and the initial construction of the Pedestrian Bridge on the areas shown in the inset cloud in the box labeled "Location Map" on Page 1 of 4 of Exhibit HH-A attached hereto and incorporated herein by reference.

(b) a permanent Right of Entry (the "Pedestrian Bridge Easement") in the form attached hereto as Exhibit HH, incorporated by reference herein, for the Operation of a pedestrian bridge (including support structures) over the Future BNSF Corridor in the area labeled on Exhibit I-4 as "New Perm. Easement for Pedestrian Bridge, Retaining Walls and Utilities" and shown in gold (collectively "Pedestrian Bridge").

The Pedestrian Bridge will have a minimum of a thirty-one (31) foot high vertical clearance over the BNSF tracks from the top of the rail to the bottom of the Pedestrian Bridge and twenty-five foot horizontal distance measured perpendicular from the centerline of the existing or future track to the face of the pier or abutment structure. The Pedestrian Bridge will be owned and maintained by City at City's sole cost and expense, as set forth in more detail in the Pedestrian Bridge Easement. It is expressly understood by City and BNSF that any right to install utilities on, in or along the Pedestrian Bridge will be governed by a separate easement or license agreement between the Parties.

3.2.5 City Amtrak Work. At the Second City Closing (as defined in the Exchange Agreement), BNSF will grant to City, Amtrak and their respective Personnel a temporary Right of Entry, subject to the terms and conditions of the Amtrak/BNSF Lease (the "Temporary Access License for Amtrak Work"), in the form attached hereto as Exhibit II, incorporated by reference herein, for ingress and egress to and from the west Hole in the Donut for Operation of the City Amtrak Work as described in Section 7 below over the area labeled on Exhibit M and Exhibit M-2, each attached hereto and incorporated herein by reference, as "Temporary Access Road" and generally located at N Street and shown as light blue thereon.

3.2.6 Fiber Optic Work. To the extent not already covered by existing agreements, BNSF will grant to the Fiber Optic Companies (defined below) and their Personnel without additional monetary consideration Rights of Entry for Operation of the Fiber Optic Work (as described in Section 8.2 below) pursuant to BNSF's standard form of agreement or by amending existing agreements.

3.2.7 Public Utilities Work. At the First Closing, BNSF will grant to City permanent Rights of Entry (each an "Existing City Utility Easement" and collectively the "Existing City Utility Easements") in the form attached hereto as Exhibit TT-1, incorporated by reference herein, for the Operation of existing Public Utilities Work (as described in Section 8.3 below) in those easement areas depicted in Exhibit O, attached hereto and incorporated herein by reference. At the First Closing, BNSF will also grant to City permanent rights of entry (each a "City Utility Easement" and collectively the "City Utility Easements") in the form attached hereto as Exhibit TT, incorporated by reference herein, for the Operation of planned Public Utilities Work (as described in Section 8.3 below) as depicted and described in Exhibit O. Future utility work in the areas covered by Existing City Utility Easements and City Utility Easements will be subject to the approval procedures set forth therein and to BNSF's standard fees for utility supplements. All Public Utilities Work shall be subject to BNSF's then-current Utility Accommodation Policy and other approval processes. City shall have the right to assign such Rights of Entry to the Public Utility Companies (defined below) without additional monetary consideration on the condition that such Public Utility Companies assume and comply with the terms and conditions of such Rights of
Entry, including without limitation BNSF’s then-current Utility Accommodation Policy and other approval processes.

3.2.8 Security Fencing. At the Third City Closing (as defined in the Exchange Agreement), BNSF will grant to City and its Personnel a Right of Entry (the "Security Fencing License") in the form attached hereto as Exhibit JJ, incorporated by reference herein, to the extent necessary for City to construct, install, maintain, repair, and replace the security fencing (together with all gates and appurtenances generally depicted on Exhibit P-1 attached hereto and incorporated herein by reference, collectively the "Security Fencing") on City property and a portion of BNSF property as described in Section 9 below and as depicted on Exhibit P, all such exhibits attached hereto and incorporated herein by reference. The ingress and egress route for the exercise of such Right of Entry will be as determined by BNSF. Notwithstanding the above, City shall not be responsible for maintenance of the Security Fencing during any such time BNSF has not provided City with an ingress and egress route for the exercise of such Right of Entry.

3.2.9 Grading Easements along Arena Drive and North Festival Parking Lot. At the Second City Closing, BNSF will grant to City and its Personnel a temporary Right of Entry (the "Temporary Grading License For Arena Drive and Parking Lot Construction") for grading, in the form attached hereto as Exhibit KK incorporated by reference herein, covering the areas labeled on Exhibits AA - AA-7 as "Temporary Right-of-Entry" and shown as red thereon, such exhibits attached hereto and incorporated herein by reference.

3.2.10 2nd and "J" Utility Crossing. At the First Closing, BNSF will grant to City permanent Rights of Entry (each a "2nd and J Utility Easement" and collectively the "2nd and J Utility Easements") in the form attached hereto as Exhibit TT, for the Operation of existing Public Utilities Work without additional monetary consideration after the crossing closure described in Section 19 below. Future Public Utilities Work will be permitted under the 2nd and J Utility Easements, subject to the approval procedures set forth therein. All Public Utilities Work shall be subject to BNSF’s then-current Utility Accommodation Policy and other approval processes. City shall have the right to assign such Rights of Entry to the Public Utility Companies (defined below) on the condition that such Public Utility Companies assume and comply with the terms and conditions of such Rights of Entry, including without limitation BNSF’s then-current Utility Accommodation Policy and other approval processes.

3.2.11 Access to Transferred BNSF Property.

(a) As of this same Effective Date, BNSF has granted to City, including its Personnel, a temporary access and construction license for performing surveys, geotechnical work, environmental activities and certain construction activities (the "Temporary License for Survey / Geotech / Environmental Activities / Advance Construction") in the form attached hereto as Exhibit BB and incorporated herein by reference. The Temporary License for Survey / Geotech / Environmental Activities / Advance Construction will provide access to and from the Transferred BNSF Property over the areas labeled as "Existing BNSF Property" and shown purple on Exhibit B, in order for City and its Personnel to prepare and implement an environmental remediation work plan, conduct surveys and geotechnical soil borings, perform certain construction activities and prepare the City Work Final Design.

(b) On or before the Effective Date, BNSF has granted to City, including its Personnel, a temporary access and construction license (the "Temporary Construction and Access License for Sanitary Sewer Work") in the form attached hereto as Exhibit BB-1 and incorporated by reference herein, to provide access to and from the three (3) areas of Licensors Property labeled as "Prop San Sewer" shown as heavy dashed green lines on Exhibit O, in order for City and its Personnel to perform the 2010 Sanitary Sewer Work. At the applicable Closing (as
defined in the Exchange Agreement), City will enter into a City Utility Easement for the portions of the sanitary sewer installation located within the Future BNSF Corridor.

3.2.12 Track Crossing Agreements. At the First Closing and the Second City Closing, BNSF will grant to City, including its Personnel, one or more temporary private at-grade crossings (each a "Crossing Agreement" and collectively the "Crossing Agreements") for the locations shown as a green circle on Exhibit J-1 (First Closing) and as red and yellow circles on Exhibit J-2 (Second City Closing), each attached hereto and incorporated herein by reference, in the form attached hereto as Exhibit UU and incorporated herein by reference, across the rail corridor of BNSF.

3.2.13 Additional Cooperation. BNSF understands and acknowledges that except for the Sanitary Sewer Work Final Design and the Storm Water Mitigation Work Final Design, the City Work and City C&M Work (as defined in the C&M Agreement) has only been preliminarily designed and that final design may require modification to the Rights of Entry, licenses, and/or easements to be granted herein. City may reasonably request additional or modified Rights of Entry, including temporary and permanent licenses and/or easements for the construction and/or Operation of City Work necessary to implement the West Haymarket Project pursuant to the Timeline, and BNSF agrees to reasonably cooperate with such requests without additional monetary consideration for such Rights of Entry, licenses and/or easements; provided that, any additional or modified Rights of Entry, licenses and/or easements will be based upon BNSF's standard forms, as may be modified by mutual agreement of the Parties and subject to BNSF's customary approval processes with regard to location, safety, scope, duration, and notification to BNSF's local roadmaster prior to any entry.

4. GENERAL CONSTRUCTION AND MAINTENANCE TERMS. Concurrently with the execution of this Master Agreement, BNSF and City shall enter into a construction and maintenance agreement ("C&M Agreement"). The provisions of the C&M Agreement, in addition to and not in limitation of the provisions contained in the applicable Rights of Entry, shall apply with respect to the Rights of Entry Work and any other construction, maintenance, Operation, or other work being performed on or adjacent to BNSF property by or for City. In the event of conflicts between the terms of the C&M Agreement and any applicable Right of Entry agreement, the most restrictive provisions shall apply to City.

5. TEMPORARY CONSTRUCTION AGREEMENTS. City shall grant to BNSF, the Fiber Optic Companies, Public Utility Companies, and Amtrak, and their respective Personnel, without additional monetary consideration, temporary construction easements to use and temporarily occupy the Vacated Right of Way/Retained City Property during the initial construction of the West Haymarket Project, the BNSF Work and the Rights of Entry Work, and appurtenances and improvements thereto, for the accommodation of construction equipment, construction activity, and materials, subject to City's reasonable rules and regulations; provided that such temporary construction easements shall be granted pursuant to City's standard easement agreement forms, as may be modified by mutual agreement of the parties, and subject to City's customary approval processes with regard to location, safety, scope, duration, and notification to BNSF's local roadmaster prior to any entry. The grant of said easements shall be at no cost to BNSF and each such easement shall terminate upon completion of the applicable work.

6. MICROWAVE TOWERS. If BNSF determines at any time prior to, during, or after completion of development of the West Haymarket Project that any part of the West Haymarket Project will interfere with BNSF's use and operation of the microwave tower located on the Lincoln Station Office Building, City will, and will cause West Haymarket developers to, cooperate with BNSF in providing suitable locations for replacement and/or repeater antennae within or in the vicinity of the West Haymarket Project, including granting or acquiring permanent easements
and/or restrictive covenants as necessary, and installing and/or relocating such replacement and/or repeater antennae at City's sole cost and expense to ensure BNSF's communications will not be interfered with. Any and all BNSF costs and expenses associated with such installation and/or relocation shall be included in the BNSF Additional City Cost Work (design and relocation of the microwave tower located in the existing wye ("Microwave Work") is included as part of the Included BNSF Work). The provisions of this Section 6 shall survive expiration of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

7. AMTRAK. City acknowledges and agrees that National Railroad Passenger Corporation, doing business as Amtrak ("Amtrak") operates over BNSF’s track, including track affected by the Land Exchange and the BNSF Replacement Work.

7.1 Design of Amtrak Work. City and BNSF acknowledge that Amtrak has reviewed and approved the BNSF Track Work Final Design, BNSF Signals and Facilities Work Preliminary Design and Preliminary City Design. Amtrak has concurred that these designs include all the necessary work for Amtrak operations ("Amtrak Work"). The track, signal and communication (connections for phone, fax, and Amtrak intranet) portion of the Amtrak Work will be constructed by BNSF ("BNSF Amtrak Work"), as part of the BNSF Track Work and BNSF Signals and Facilities Work. The remaining balance of the Amtrak Work, including the Amtrak depot, utilities, roadway, parking lot, landscape, platform and canopy work items as shown or listed on Exhibit N attached hereto ("City Amtrak Work") will be constructed by City, at its expense, as part of the City Work. City and BNSF understand and agree that the final design for the BNSF Amtrak Work and City Amtrak Work ("Amtrak Final Design") that involves Amtrak operations must be approved by Amtrak and that City will be responsible for obtaining Amtrak's approval; provided, however, BNSF agrees to assist and cooperate with City in obtaining Amtrak's approval through the Amtrak MOU (defined below).

7.2 Amtrak/BNSF Lease. BNSF agrees to seek to enter into a new agreement with Amtrak, or amend its existing agreement with Amtrak, ("Amtrak/BNSF Lease") to lease to Amtrak the future platform access and maintenance area depicted on Exhibit N, for nominal rent, subject to City’s entry into and performance of its obligations pursuant to the provisions of the Amtrak Agreement (defined below), UP Agreement (defined below), this Master Agreement, the C&M Agreement and the Exchange Agreement. BNSF does not guarantee that Amtrak will enter into the Amtrak/BNSF Lease. The Parties intend that the BNSF Replacement Work, Amtrak Work, BNSF Utilities Work and BNSF Work Final Design will provide similar operational services and flexibility to that which currently exists or that which will be required by BNSF and Amtrak pursuant to the Amtrak/BNSF Lease regarding Amtrak operations, and that City will have no obligations under the Amtrak/BNSF Lease between Amtrak and BNSF.

7.3 Construction of Amtrak Work. City, at its expense and in accordance with the terms of the BNSF/Amtrak Lease, will use commercially reasonably efforts to cause the construction and completion of the City Amtrak Work under this Master Agreement and consistent with the Timeline. BNSF will use commercially reasonable efforts to cause the construction of the BNSF Amtrak Work under this Master Agreement and consistent with the Timeline. All City Amtrak Work will be located on Future City Property, except for the platform, canopies, and portions of the communications, which will be located on the Future BNSF Corridor and owned by Amtrak during the term of the BNSF/Amtrak Lease. All City Amtrak Work on the Future BNSF Corridor will be owned by Amtrak during the term of the Amtrak/BNSF Lease and upon termination of the BNSF/Amtrak Lease, the Parties intend that all improvements on the premises leased to Amtrak pursuant to the Amtrak/BNSF Lease shall be conveyed to BNSF by Amtrak for no monetary consideration by bill of sale. All BNSF Amtrak Work will be located on the Future BNSF Corridor and owned by BNSF pursuant to Amtrak/BNSF Lease.
7.4 **Amtrak MOU Between City and Amtrak.** In connection with implementation of the West Haymarket Project, City intends to enter into a definitive agreement with Amtrak ("Amtrak Agreement") with regards to the City Amtrak Work and a new depot lease. The Amtrak Agreement shall be subject to, in part, to Amtrak and BNSF entering into the Amtrak/BNSF Lease.

8. **UTILITIES WORK.** All BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work (collectively "Utilities Work") shall be required to satisfy the terms and conditions of BNSF’s Utility Accommodation Policy, as may be modified by the licenses and/or easements described herein or mutual agreement of the Parties.

8.1 **BNSF Utilities Work.** Utilities Work serving BNSF and to be located upon the Future BNSF Corridor and other BNSF property shall be considered part of the BNSF Work ("BNSF Utilities Work") and shall be as generally shown or listed on Exhibit O attached hereto. The BNSF Utilities Work will be considered part of the BNSF Work Final Design. BNSF shall construct or cause others to construct the BNSF Utilities Work.

8.2 **Fiber Optic Work.** Removal and relocation of fiber optic cable systems to be located upon the Future BNSF Corridor and other BNSF property ("Fiber Optic Work") is described in the Preliminary City Design, and is generally shown on Exhibit O attached hereto. The "Fiber Optic Companies" (any private companies holding rights within the Project Area for fiber optic facilities as of the applicable Closings), with City’s cooperation and assistance, will prepare the Fiber Optic Final Design and implement and construct the Fiber Optic Work. The Fiber Optic Work is not part of BNSF Work and BNSF shall have no obligation to perform, implement, or pay for any portion of the Fiber Optic Work. Any costs incurred by BNSF for the Fiber Optic Work shall be reimbursed by City as BNSF Additional City Cost Work. At no additional cost to BNSF, BNSF agrees to reasonably cooperate with City and Fiber Optic Companies on the Fiber Optic Work Final Design, the Operation of the Fiber Optic Work and to modify, release and relocate, the replacement permanent easement(s) or license(s) for the Fiber Optic Work as generally shown on Exhibit O.

8.3 **Public Utilities Work.** Public utilities work presently planned to be located upon the Future City Property, Future BNSF Corridor and other public right-of-way and easements ("Public Utilities Work") is not part of the BNSF Work, is described in the Preliminary City Design, and is generally shown on Exhibit O attached hereto. Existing Public Utilities Work is generally located in those streets and alleys identified on Exhibit O as Existing Public Right-of-Way to be Vacated and Retained as Permanent Utility Easement or shown on the Survey. Plans and Specifications for future Public Utilities Work shall be submitted to BNSF for review and approval per BNSF’s Utility Accommodation Policy. City and/or other "Public Utility Companies" (any municipal or public utility companies holding rights and Operating utilities within the Project Area) will implement and Operate the Public Utilities Work. BNSF shall have no obligation to perform, implement, or pay for any portion of the Public Utilities Work. Any costs incurred by BNSF for the Public Utilities Work shall be reimbursed by City as BNSF Additional City Cost Work. At no additional cost to BNSF, BNSF agrees to reasonably cooperate with City and Public Utility Companies on the BNSF Utilities Work Final Design and the Operation of the Public Utilities Work.

8.4 **BNSF Fiber Optic Communications.** City will install, at its sole cost and expense and for BNSF’s sole benefit, fiber line within the Vacated Right of Way/Retained City Property from the Lincoln Station Office Building to the Future BNSF Corridor, as designated by BNSF and subject to BNSF’s requirements with regard to capacity and location ("BNSF Fiber Optic Communications"), and shall grant BNSF, without additional monetary consideration, a nonexclusive and permanent easement in the form attached hereto as Exhibit NN, incorporated by reference herein, for the Operation of such fiber line, including without limitation the right to repair,
maintain, replace, and remove such line as BNSF deems necessary, subject to City's customary approval processes with regard to compliance with City design standards within City's right-of-way or public easements, and notification to City's Public Works Department prior to any entry. The BNSF Fiber Optic Communications will be for a minimum of two 4-inch conduits to be located in the future Canopy Street, the extension of "P" Street, the extension of "Q" Street, and the crossings of "Backbone Road" at "P" and "Q" Streets as shown on Exhibit O, the exact locations of the BNSF Fiber Optic Communications to be identified at mutually agreeable locations within the City's future roadway network at the time of such roadway network's final design. Upon identification of such locations by the parties, City, at City's sole cost and expense, shall prepare or cause to be prepared legal descriptions for such locations. The BNSF Fiber Optic Communications will be owned and Operated by BNSF at BNSF's sole cost and expense, as set forth in more detail in the applicable Right of Entry.

8.5 Licenses and Easements. City and BNSF acknowledge and agree that the final design for the BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work, will be shown in the BNSF Work Final Design, Rights of Entry Work Final Design and final design of the BNSF Fiber Optic Communications, and such final designs must be approved by the applicable easement or license holder, City, and BNSF. City will be responsible for obtaining the easement or license holder's approval for the Fiber Optic Work, Public Utilities Work and BNSF Fiber Optic Communications; provided however, BNSF agrees to assist and cooperate with City in obtaining the easement or license holder's approval for the Fiber Optic Work, Public Utilities Work and BNSF Fiber Optic Communications.

8.6 No Change in Cost Allocation. Nothing in this Master Agreement shall change any allocation of costs or responsibility for utility and fiber optic customer/property owner charges and assessments for utilities and fiber optic services that BNSF uses, consumes or directly benefits from in operating its railroad services.

9. SECURITY FENCING.

9.1 In an effort to strengthen security, City as part of the Rights of Entry Work, will own and Operate the Security Fencing upon the Future City Property (and a small portion of the Future BNSF Corridor) on or near the perimeter of the Future City Property as generally shown on Exhibit P attached hereto, and according to fencing requirements attached hereto as Exhibit VV and incorporated herein by reference. BNSF will grant City, without additional monetary consideration, a license over BNSF roadways located upon the Future BNSF Corridor and a portion of Future BNSF Corridor to permit City access to Operate the Security Fencing as part of the Right of Entry described in Section 3.2.8 above. City will Operate the Security Fencing to comply with all of BNSF's requirements, and all recommendations of the Department of Homeland Security. BNSF shall have no responsibility for the Operation of the Security Fencing. City shall be responsible for all costs of Operation of the Security Fencing (including all gates and related appurtenances thereto), including the costs of initial construction.

9.2 Notwithstanding the provisions of Section 9.1 above, however, BNSF reserves the right to terminate the Security Fencing License upon fifteen (15) days' prior written notice to City. As more particularly described in the Security Fencing License, upon such termination by BNSF: (i) City will grant to BNSF a license, as more particularly described in the Security Fencing License, for access to, and Operation of, the Security Fence located on City's property, and (ii) BNSF will assume all responsibility and bear all costs for Operating the Security Fence.
10. CITY INDEMNITIES / WAIVER OF SOVEREIGN AND MUNICIPAL IMMUNITY.

10.1 Indemnifications.

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

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

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

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

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

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

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

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

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

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

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

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

10.1.4 City agrees that its obligations under the provisions of this Section 10.1 expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Exchange Agreement, the C&M Agreement, and the Rights of Entry agreements.

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

10.3 Survival. The terms and conditions of indemnification and liability provisions of this Section 10 shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

11. INSURANCE OBLIGATIONS.

11.1 Development Period. The "Development Period" shall be that period beginning with the date that is the earlier of (i) the Effective Date or (ii) the initial date City or City's contractors enter onto BNSF's property in connection with the West Haymarket Project, and continuing through final completion of (a) the Storm Water Mitigation, (b) the Arena, (c) the Ice Center, (d) the Amtrak Work, (e) the Pedestrian Bridge, (f) the Security Fencing, (g) the grading for Arena Drive and the North Festival Parking Lot and other upgrades to parking, utilities and surface transportation access to the area, (h) any other work in connection with the West Haymarket Project within 50 feet of property owned or controlled by BNSF, and (i) any work in connection with the West Haymarket Project that involves Fouling (defined below) or a significant risk of Fouling. "Fouling" shall mean the existence, movement or placement of material, equipment and/or personnel on BNSF's track or within twenty-five (25) feet vertically or laterally of the centerline of BNSF's track, or any other activity which in BNSF's sole opinion may interfere with any operations of BNSF. During the Development Period, City shall, at its sole cost and expense, procure and maintain the following insurance:

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

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

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

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

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

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

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

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

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

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

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
Waiver of subrogation in favor of and acceptable to Railroad.

11.1.4 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 Master Agreement.

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

11.1.5 Other Requirements:

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

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

City is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automotive Liability and up to $500,000 per occurrence and $500,000 aggregate on Worker’s Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions of this Master Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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

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

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

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

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

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

Failure to provide evidence as required by this Section 11 will entitle, but not require, Railroad to immediately suspend, until such default is cured, any and/or all work under this Master Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work and/or (iii) any other work on or affecting any BNSF property, subject to future termination pursuant to Section 24 below. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City’s obligations hereunder.

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

For purposes of this Section 11, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

11.2 Post-Development Period. Commencing on the date that is the earlier of (i) the final completion of the West Haymarket Project or (ii) the expiration or termination of this Master Agreement, and continuing thereafter so long as the C&M Agreement and/or any Right of Entry agreement is in effect (the "Post-Development Period"), City shall, and shall require City's contractors to, at City's sole cost and expense, procure and maintain the insurance coverages described in the applicable Rights of Entry.

12. TIMELINE; FUTURE SEQUENCING MEETINGS. The Parties will use commercially reasonable efforts to cause their respective work to be completed on or before the dates established in the Timeline. The timeline set forth on Exhibit Q attached hereto and incorporated by reference herein ("Timeline") is the proposed timeline for completion of the initial West Haymarket Project, the BNSF Work, UP Work, the Rights of Entry Work and related matters. City and BNSF agree that the Timeline may need further refinement including, but not limited to, specific project sequencing consensus reached by the Parties and all key third parties including, but not limited to, the matters listed in Sections 12.1 and 12.2 below.

12.1 BNSF Work, UP Work, and Amtrak Work Sequencing. BNSF and City have held preliminary design and sequencing meetings with UP and Amtrak to refine the West Haymarket Project, the BNSF Work, UP Work, Amtrak Work and the Rights of Entry Work schedules. City and BNSF have obtained UP's input on preliminary design matters for the UP Work (defined below) and have obtained Amtrak's input on preliminary design matters for the Amtrak Work. BNSF and City will seek to schedule and hold further design and sequencing meetings as needed with UP and Amtrak when BNSF, City, and the applicable third parties are ready to complete final design, further refine implementation sequencing and seek each other's input and consent on final design matters. Said meetings may be held with UP and Amtrak, either individually or jointly.

12.2 BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work Sequencing. BNSF and City will seek to schedule and hold preliminary Utilities Work design and sequencing meeting(s) as needed with all necessary Fiber Optic Companies and Public Utility Companies as shown on the Timeline to refine the work schedules for the BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work and seek to obtain the Fiber Optic Companies' and Public Utility Companies' input and consent on preliminary design matters. Thereafter, BNSF and City will seek to schedule and hold further design and sequencing meetings as needed when BNSF, City and the applicable third parties are ready to complete final design, further refine implementation sequencing and seek each utility company's input or, if required, consent on final design matters. Said preliminary and further meetings may be held jointly or individually with all or select subgroups of the Fiber Optic Companies and Public Utility Companies.

12.3 Force Majeure. In the event that BNSF or City is delayed, directly or indirectly, from the performance of any act or thing required under the terms of this Master Agreement, the C&M Agreement, or the Exchange Agreement (except for payment of monetary obligations) by a force majeure event, including but not limited to acts of God, emergencies, accident, fire, flood, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kind, labor shortages and/or unavailability of labor, strikes or labor difficulties of
any and all kinds, shortages of or delay in the delivery of material, act of war, riot, and civil
commotion, or by any similar or dissimilar cause beyond the reasonable control of BNSF or City, as
the case may be (as used herein, "Force Majeure"), such failure shall not be deemed to be a
breach of this Master Agreement, the C&M Agreement, or the Exchange Agreement or a violation
of any such covenants and the time within which BNSF or City must perform any such act shall be
extended by a period of time equal to the period of delay arising from any said causes.

13. SERVICE TO ADJACENT PROPERTIES. City has indicated that N-Street
Company LLC (Alter Metals) and Jaylynn LLC (Watson-Brickson Lumber) properties will be
acquired by the City as part of City’s implementation of the West Haymarket Project. BNSF and
City will reasonably cooperate in City’s efforts and obligations to relocate such third parties;
provided that BNSF shall have no obligation to incur any expense or liability in connection with
such cooperation. City acknowledges that any adverse impact to rail service to any shippers could
delay the Timeline, including without limitation by requiring additional Governmental Approvals.

14. PERMITS AND APPROVALS. The implementation and Operation of the West
Haymarket Project, the BNSF Work, the Rights of Entry Work and related activities will require
certain federal, state, Lower Platte South Natural Resources District, City of Lincoln and other
governing jurisdiction review, waivers, variances, agreements, permits, conditional approvals, and
approvals (e.g., Section 106 of the National Historic Preservation Act (NHPA) review, Section 404
wetland permit(s), levy protection letter(s), floodplain management and fill permit(s), NPDES
permit(s), grading and land disturbance permit(s), mandatory and voluntary environmental and
hazardous waste and material clean-up and mitigation, zoning, subdivision, historic place/district
and land use permit(s), and building permit(s)) (collectively "Governmental Approvals"). City will
be the lead party responsible to secure all Governmental Approvals, except for the NPDES
Approval and the STB Notification and STB Approval, and shall also be responsible to pay the
costs to implement any required condition or term of the Governmental Approvals and to pay any
related soft costs (engineering, design, application, processing and publishing costs) necessary to
secure the Governmental Approvals; provided that BNSF shall have the right to participate in the
process for obtaining any Government Approvals, and to approve in advance any conditions or
other requirements. BNSF shall reasonably cooperate with City in obtaining the Governmental
Approvals, including signing applications as landowner when applicable and necessary, subject to
BNSF’s approval of any such applications, in its sole discretion. If the required applicant of the
Governmental Approvals must be the interim property owner, the Parties agree to transfer and
assign at Closing to the new property owner the pending application and/or Governmental
Approvals, including resulting benefits and liabilities associated with the Governmental Approvals.
In addition, BNSF, at its own cost and expense, will (i) obtain the NPDES permit(s) for the BNSF
Work (the "NPDES Approval"), and (ii) make any necessary filings to the Surface Transportation
Board ("STB") necessary in connection with the 2010 BNSF Work and related BNSF’s operations
("STB Notification"). The Timeline provides that City will acquire all property from all existing
shippers that may otherwise have been impacted by the West Haymarket Project prior to the
removal of any infrastructure and/or conveyance of property required for service to any such
shippers. Therefore, according to the Timeline, rail service to shippers will not be impacted by the
BNSF Work, the conveyance of any Transferred BNSF Property, or any other activities of BNSF.
Consequently, the Parties do not anticipate that any STB approval will be necessary. Should rail
service to any shippers be impacted by the West Haymarket Project, BNSF shall use commercially
reasonable efforts to obtain any and all necessary abandonment approvals and other approvals (if
any) for the BNSF Work and Land Exchange (collectively "STB Approval"). City will be
responsible for any costs associated with any STB Approval. Nothing in this Master Agreement,
the C&M Agreement, or the Exchange Agreement shall be deemed a submission by BNSF to the
jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal
law.
15. **PURCHASE AND SALE AGREEMENT WITH UNION PACIFIC.** In connection with implementation of the West Haymarket Project, City has entered into a Purchase and Sale Agreement, dated June 15, 2010 ("UP Agreement") with UP wherein UP agrees to sell and City agrees to buy approximately 14 acres of Existing UP Property, which is identified as Tract 1 (Parcels 1-16) in the Title Insurance Commitment and is shown on the map attached hereto as Exhibit E. The UP Agreement will require UP to rehabilitate the existing UP bridge over Salt Creek (i) to accommodate 40 mph travel, (ii) to meet such other requirements of BNSF as provided to City in writing in advance, (iii) to be used by BNSF as access for the new wye track; the UP Agreement will also require UP to reconstruct a segment of UP track generally located to the north of the new wye beginning at the location just east of the UP bridge and extending in a northwesterly direction where it connects to existing track under Sun Valley Boulevard (collectively "UP Work"). UP's obligation to complete the UP Work shall survive closing under the UP Agreement. The UP Agreement is contingent in part upon UP entering into the JFA MOU (defined below). City agrees to convey the UP/Replacement BNSF Property as shown on Exhibit E-1 to BNSF as part of the Replacement BNSF Property.

16. **JOINT FACILITIES AGREEMENT BETWEEN UP AND BNSF.** BNSF agrees to enter into good faith negotiations with UP and to use commercially reasonable efforts to finalize and execute a Joint Facilities Agreement with UP ("JFA") regarding certain BNSF facilities within the Future BNSF Corridor. BNSF contemplates the proposed JFA would be substantially similar in substance as that certain Memorandum of Understanding between BNSF and UP dated February 22, 2010 (the "JFA MOU") and attached hereto as Exhibit R, and incorporated herein by reference. BNSF warrants and represents that City shall have no obligations under the JFA. BNSF does not guarantee that UP will execute the JFA.

17. **UP AND BNSF OPERATIONAL SERVICES.** The BNSF Replacement Work, Amtrak Work, BNSF Utilities Work, and UP Work are intended to provide BNSF similar operational services and flexibility to that which currently exists or that which BNSF anticipates will be required by BNSF and UP pursuant to the JFA.

18. **LINCOLN STATION REPLACEMENT PARKING.** BNSF agrees that, upon request of City, BNSF shall relinquish and give up all or some of its parking rights, and/or otherwise cease parking on the Transferred BNSF Property and at and adjacent to the Lincoln Station Office Building, subject to any termination notice required to be provided by BNSF in order to relinquish such rights, and subject to reimbursement of BNSF by City for any termination fees or related costs payable by BNSF in connection with such termination (which shall be treated as part of the BNSF Additional City Cost Work), provided that BNSF receives seventy-five (75) parking stalls for use by its employees, licensees, and invitees within five hundred (500) feet of the Lincoln Station Office Building at no cost to BNSF for so long as BNSF shall require such stalls for related business purposes associated with on-going BNSF business activities at Lincoln Station Office Building or replacement office property within the Lincoln Haymarket Historic District or the West Haymarket Project Area. BNSF shall not assign, transfer, lease, sublease, license or sublicense these parking stalls to any third parties who are not performing business activities for BNSF. Said request may be exercised by City by delivering written notice to BNSF within two (2) years after the Third City Closing (as defined in the Exchange Agreement). Any of the above described parking stalls used for BNSF business activities and located upon land owned, leased, controlled or operated by City shall be subject to City’s reasonable parking rules and regulations, as modified to be consistent with the terms of this Master Agreement. City may reasonably modify its rules and regulations to reflect then-current City parking management and safety practices in the Downtown Lincoln and the West Haymarket Project, subject to the terms of this Master Agreement.

19. **2nd and “J” CROSSING CLOSURE.** Prior to the First Closing, City shall take all necessary actions to permanently close, relinquish, abandon, and vacate the existing public at-
grade crossing at 2nd and "J" Street ("2nd & J"), as shown on Exhibit AA, at no expense to BNSF. Upon vacation of said crossing, title will by law automatically revert to BNSF as the abutting property owner; provided, however, that City shall provide any documentation requested by BNSF to confirm such reversion to BNSF. BNSF agrees to execute and deliver to City at the First Closing an easement in the form of Exhibit TT attached hereto granting City and Public Utilities Companies the necessary license or easement rights to permit existing and future utilities Operation within the vacated right-of-way, provided that for future Utilities, plans and specifications are submitted to BNSF for review and approval per BNSF’s Utility Accommodation Policy. If this Master Agreement, the C&M Agreement, and/or the Exchange Agreement expire or terminate following the vacation of 2nd & J, BNSF’s obligation under this Section 19 shall survive such expiration or termination.

20. OTHER BNSF TRACKS TO BE RELINQUISHED. BNSF has investigated and determined that BNSF has no need to retain either the existing tracks or any remaining rights to operate future tracks in the bubble area shown on Exhibit S attached hereto (as labeled "EXIST. SIDING TRACKS TO BE RELINQUISHED"). BNSF agrees, without additional monetary consideration, to take all action reasonably necessary to relinquish its rights to use such labeled tracks and bubble area. BNSF shall have the right, but not the obligation, to remove all or any portion of such tracks and related appurtenances as BNSF Existing Improvements, provided that if any such tracks and related appurtenances are removed by BNSF, BNSF shall restore the area to as near the condition prior to such track removal as may be practicable. BNSF will quitclaim any BNSF Reversionary Interests in the Existing City Streets and Alleys and other City streets and alleys underlying such tracks to City by quit claim deed as part of the Replacement City Property at the First Closing. Any BNSF Existing Improvements not removed by BNSF shall be conveyed to City and become the property of City concurrently with BNSF’s relinquishment of rights to use such tracks. BNSF will reasonably cooperate with City to amend or extinguish any ordinance rights to occupy such portions of the Existing Streets and Alleys as necessary.

21. FUTURE AT-GRADE CROSSINGS. Other than the Rights of Entry agreements and temporary construction crossings expressly described herein or in the Exchange Agreement, no at-grade vehicular or pedestrian crossings shall be created or permitted in connection with the West Haymarket Project, without the prior written consent of BNSF, whether as part of the initial development or in the future. The provisions of this Section 21 shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

22. CONTINGENCIES. In addition to, and not in limitation of, the contingencies set forth in the Exchange Agreement, the obligations of each Party as set forth below shall be subject to the fulfillment on or before each applicable Closing Date (as defined in the Exchange Agreement) of all of the applicable conditions set forth below.

22.1 City Contingencies for First Closing and 2010 Notice to Proceed. City’s obligations to close on the First Closing and to deliver the 2010 Notice to Proceed to BNSF hereunder shall be contingent upon the following:

22.1.1 The City Council for City and/or JPA (defined below) approving the necessary agreements, resolutions and ordinances for the implementation of the West Haymarket Project, the City Work, the BNSF Work and the Rights of Entry Work on or before the completion date shown on the Timeline;

22.1.2 Execution of a JFA MOU between UP and BNSF, with terms and conditions acceptable to BNSF and UP;
22.1.3 Execution of the UP Agreement between UP and City for the West Haymarket Project;

22.1.4 Execution of the Amtrak/BNSF Lease, with terms and conditions acceptable to Amtrak and BNSF;

22.1.5 Execution of the Amtrak Agreement;

22.1.6 Obtaining any necessary consents and approvals authorizing the transactions contemplated by this Master Agreement, the licenses and/or easements described herein and in the Exchange Agreement, and all related work;

22.1.7 Governmental Approvals necessary for the 2010 BNSF Work, the 2010 Storm Water Mitigation Work, 2010 Sanitary Sewer Work, UP Work, the 2011 BNSF Work, and the 2012 BNSF Work and City's approval or acceptance of any terms or conditions of such Governmental Approvals; and

22.1.8 During City's due diligence period, City accepting title and environmental conditions of the Replacement City Property.

22.2 BNSF Contingencies for First Closing and 2010 BNSF Work. BNSF's obligations hereunder to close on the First Closing and proceeding with the implementation of the 2010 BNSF Work (subject to the requirements of Section 2.4 above being satisfied) shall be contingent upon the following:

22.2.1 Execution of the JFA MOU, with terms and conditions acceptable to BNSF and UP;

22.2.2 Execution of the Amtrak/BNSF Lease;

22.2.3 Execution of the UP Agreement between UP and JPA for the West Haymarket Project;

22.2.4 Execution of the Amtrak Agreement;

22.2.5 Receipt by BNSF of satisfactory evidence from City and Escrow Agent that the BNSF Work Payment Amount has been funded and deposited in the Escrow Account pursuant to the Escrow Agreement;

22.2.6 Obtaining any necessary consents and approvals authorizing the transactions contemplated by this Master Agreement, the licenses and/or easements described herein and in the Exchange Agreement, and all related work;

22.2.7 Obtaining Governmental Approvals necessary for the construction and implementation of the 2010 BNSF Work, the 2010 Storm Water Mitigation Work, 2010 Sanitary Sewer Work, UP Work, the 2011 BNSF Work, and the 2012 BNSF Work and BNSF's approval of any terms or conditions of the applicable Governmental Approvals; and

22.2.8 During BNSF's due diligence period, BNSF accepting title and environmental conditions of the Replacement BNSF Property.

22.3 City and BNSF Contingencies for Second BNSF Closing and All Other City Closings, Notices to Proceed, and BNSF Work. City's and BNSF's obligations to close on the
Second BNSF Closing and all subsequent City Closings, the City delivering the Second Notice to Proceed to BNSF and BNSF proceeding with the implementation of the 2011 BNSF Work hereunder shall be contingent upon BNSF obtaining required STB Approval, if any, for the 2011 BNSF Work and 2012 BNSF Work.

22.4 Contingencies Not Satisfied. In the event any of the contingencies in Section 22.1 and Section 22.2 are not satisfied to the benefitted Party’s reasonable satisfaction by December 31, 2010, or mutual extension thereof by the Parties, or in the event any of the contingencies in Section 22.3 are not satisfied to the benefitted Party’s reasonable satisfaction within eighteen (18) months after the proposed date in the Timeline for the Second BNSF Closing, or mutual extension thereof by the Parties, then the benefitted Party’s sole and exclusive remedies hereunder shall be to either (i) waive such contingency by written notice to the other Party; or (ii) terminate this Master Agreement, upon which termination the Parties shall have no further obligations hereunder except those that expressly survive termination.

23. FUNDING. City has secured federal grants and funds to implement environmental assessment and remediation of the West Haymarket Project Area. Furthermore, City may seek additional federal grants and funds to help implement environmental remediation of the West Haymarket Project Area and help implement other aspects of the West Haymarket Project. City represents and warrants to BNSF that there are or will be no conditions or requirements associated with such grants and funds that BNSF will be responsible to satisfy or implement regarding the use of the BNSF Work Payments, the Cash Payment, or any other amounts payable to BNSF for the West Haymarket Project. City’s representations and warranties contained in this Section 23 shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

24. DEFAULT AND TERMINATION.

24.1 If either Party fails to perform any of its obligations under this Master Agreement, and, after written notice is given by the non-defaulting Party to the defaulting Party specifying the default, the defaulting Party fails either to promptly commence to cure the default, or to complete the cure expeditiously but in all events to complete the cure within thirty (30) days after the default notice is given, then the non-defaulting Party may (i) seek specific performance of the unperformed obligations; (ii) at defaulting Party’s sole cost, arrange for the performance of unperformed City Work or BNSF Work as may be applicable; or (iii) bring a claim for damages. Additionally, any default by City shall entitle, but not require, BNSF to immediately suspend, until such default is cured, any and/or all work under this Master Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work and/or (iii) any other work on or affecting any BNSF property. If BNSF suspends any or all such work for more than eighteen (18) months, either Party shall have the right to terminate this Master Agreement and/or pursue any other remedies available at law or in equity. For purposes of this Master Agreement, a default in the Exchange Agreement, the C&M Agreement, or any Right of Entry shall be considered a default under this Master Agreement. The remedies set forth in this Section 24.1 shall be in limitation of any other remedies that a Party may have at law or in equity.

24.2 Any waiver by either Party of any default or defaults under this Master Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Master Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect such Party’s ability to enforce any section of this Master Agreement.
24.3 The term of this Master Agreement shall begin on the Effective Date and continue for the full duration of the Development Period, unless sooner terminated as set forth herein.

24.4 If this Master Agreement terminates for any reason prior to the final Closing under the Exchange Agreement, then BNSF shall have the right, but not the obligation, to terminate, at BNSF’s sole discretion, (i) any or all of the temporary Rights of Entry, and/or (ii) any or all of the permanent Rights of Entry for which the improvements contemplated thereunder have not been completed.

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

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

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

MISCELLANEOUS

26. Time is of the essence of this Master Agreement.

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

28. This Master Agreement binds and is for the benefit of both Parties and their permitted successors and assigns. No Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein, City shall have the right to assign this Master Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("JPA") without further consent of BNSF, provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enter into BNSF’s then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to the JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to the JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) City's entire interest under the C&M Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to JPA.
29. Each Party and its counsel have reviewed and revised this Master Agreement. The Parties agree that the rule of construction that any ambiguities are to be resolved against the drafting party must not be employed to interpret this Master Agreement or its amendments or exhibits.

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

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

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

33. This Master Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.

34. As of this same Effective Date, City and BNSF have also entered into the Exchange Agreement, the C&M Agreement, and to the extent executed, certain Rights of Entry. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Rights of Entry. City and BNSF agree that, except as otherwise stated in Section 4, (i) in the event the terms of the Master Agreement, the C&M Agreement, the Exchange Agreement, and the various Rights of Entry are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement, the C&M Agreement, and the terms of the various Rights of Entry are inconsistent, then the Exchange Agreement shall prevail; and (iii) in the event the terms of the C&M Agreement and the terms of the various Rights of Entry are inconsistent, then the C&M Agreement shall prevail.

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

36. All aspects of this Master Agreement shall be governed by the laws of the State of Nebraska.

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

38. By signing below, the Parties affirm they have the legal authority to enter into this Master Agreement.

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

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties have set their hands as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: ______________________________
    Chris Beutler, Mayor of Lincoln

Date: ______________________________

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: ______________________________
Exhibits attached to Master Development Agreement:

Exhibit A: Depiction of West Haymarket Project
Exhibit B: Depiction of Existing BNSF Property
Exhibit B-1: Depiction of Retained BNSF Property / Transferred BNSF Property
Exhibit C: Depiction of BNSF Bridge
Exhibit D: Depiction of Existing City Streets and Alleys
Exhibit D-1: Depiction of Vacated Right of Way / Retained City Property, Vacated Right of Way / Replacement BNSF Property, and BNSF Reversionary Interests
Exhibit E: Depiction of Existing UP Property
Exhibit E-1: Depiction of UP / City Retained Property / UP / Replacement BNSF Property
Exhibit F: Depiction of Third Party Properties
Exhibit F-1: Depiction of Third Party / Retained City Property and Third Party / Replacement BNSF Property
Exhibits G and G-1: Depiction of Replacement BNSF Property
Exhibit H: Depiction of Future BNSF Corridor
Exhibit I: Intentionally Deleted.
Exhibit I-1: Depiction of Storm Water Mitigation Area (Temporary Grading)
Exhibit I-2: Depiction of Storm Water Mitigation Area (Permanent Improvements)
Exhibit I-3: Depiction of Soil Staging Areas
Exhibit I-4: Depiction of Pedestrian Bridge Area
Exhibit J: Depiction of Replacement City Property
Exhibit J-1: Depiction of Crossing Agreement Areas
Exhibit J-2: Depiction of Holes in the Donut and Temporary Access Areas
Exhibit K: Depiction of Future City Property
Exhibit L: Depiction of BNSF Replacement Work and BNSF Removal Work Areas
Exhibit M-1: Depiction of Temporary Access for Temporary Access License
Exhibit M-2: Depiction of Temporary Access for City Amtrak Work Area
Exhibit N: Depiction of City Amtrak Work Area
Exhibit O: Depiction of Fiber Optic Work and Public Utilities Work Areas
Exhibit P: Depiction of Security Fencing Area
Exhibit P-1: Depiction of Gate Locations on Security Fencing Area
Exhibit Q: Timeline
Exhibit R: JFA MOU
Exhibit S: Depiction of Other BNSF Reversionary Interests
Exhibit T: Intentionally Deleted.
Exhibit U: Letter Agreement for Part of the Final Design Work
Exhibit V: Letter Agreement for Final Design of Signal and Facilities Work
Exhibit W: Letter Agreement for Early Track Removal and Temporary Crossing Construction
Exhibit X-1: Included Work
Exhibit X-2: BNSF Work Payment Exclusions
Exhibit Y: Depiction of Existing and Proposed Utilities
Exhibit Z: Escrow Agreement
Exhibit Z-1: Construction Draw Schedule
Exhibits AA – AA-7: Depiction of Arena Drive Grading Area
Exhibit BB: Form of Temporary License for Survey / Geotech / Environmental Activities / Advanced Construction
Exhibit BB-1: Form of Temporary Construction and Access License for Sanitary Sewer Work
Exhibit DD: Intentionally Deleted.
Exhibit EE: Form of Temporary Access License for Initial Construction
Exhibit FF: Form of Storm Water Mitigation Easement
Exhibit FF-1: Form of Temporary Grading License for Storm Water Mitigation
Exhibit GG: Form of Temporary Access License for Soil Staging
Exhibit HH: Form of Pedestrian Bridge Easement
Exhibit HH-1: Form of Temporary Access License for Construction Staging - Pedestrian Bridge
Exhibit HH-A (pp. 1-4): Depiction of Pedestrian Bridge License Area
Exhibit II: Form of Temporary Access License for Amtrak Work
Exhibit JJ: Form of Security Fencing License
Exhibit KK: Form of Temporary Grading License for Arena Drive and Parking Lot Construction
Exhibit NN: Form of Fiber Optic Communication Easement
Exhibit OO: Intentionally Deleted.
Exhibit TT: Form of City Utility Easement / 2nd and J Utility Easement
Exhibit UU: Form of Crossing Agreement
Exhibit VV: Fencing Requirements
RESOLUTION NO. WH- __________

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

That the Consent to Assignment and Assumption Agreement, which is attached hereto marked as Attachment “A” and incorporated herein by this reference, between the BNSF Railway Company (BNSF), the City of Lincoln, Nebraska (City) and the West Haymarket Joint Public Agency (Agency) providing for the City, as assignor, to assign and for the Agency, as assignee, to assume all of the City’s rights, interests, duties and obligations under the Agreements listed in Exhibit “A” attached to the Consent to Assignment and Assumption Agreement and providing for BNSF’s consent to the assignment, is hereby accepted and approved and the Board of Representatives have executed said Consent to Assignment and Assumption Agreement on behalf of the West Haymarket Joint Public Agency.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Jayne Snyder, Chair

Tim Clare

Chris Beutler
MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 10-09 in the following manner by substituting the attached Marketing Service and Marketing Budget as Attachments A and B respectively to the Consultant Agreement attached to Resolution No. WH 10-09:

Introduced by:

________________________________________

Approved as to Form & Legality:

Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Law Department

Reason for Request: To incorporate the latest version of the Marketing Services and Marketing Budget.
RESOLUTION NO. WH- __________

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

That the Consultant Agreement between CSL Marketing Group and the West Haymarket Joint Public Agency for professional assistance in providing marketing services for the West Haymarket Arena, upon the terms and conditions set out in said Agreement attached hereto as Attachment “A” and incorporated herein by this reference, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

Introduced by:

___________________________

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

Legal Counsel for  Board of Representatives
West Haymarket Joint Public Agency

Jayne Snyder, Chair

___________________________

Tim Clare

___________________________

Chris Beutler
CONSULTANT AGREEMENT

This Agreement is entered into this ___ day of _____________, 2010, by and between the West Haymarket Joint Public Agency, hereinafter referred to as “JPA” and CSL Marketing Group, 7200 Bishop Road, Suite 220, Plano, TX 75024, hereinafter referred to as “Consultant.”

RECITALS

A.

The JPA proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in providing marketing services for the West Haymarket Arena and Haymarket District, as more fully set forth in Attachment “A” (hereinafter referred to as “Consultant Services”).

B.

Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the JPA, and the JPA desires to engage Consultant for such Consultant Services on the terms herein provided.

C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

D.

The City of Lincoln, Nebraska, a municipal corporation and member of the JPA, shall provide support and administrative services under this Agreement with the Lincoln Municipal Code as the source of several clauses in this Agreement.
NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree as follows:

I.

ADMINISTRATOR OF AGREEMENT

The Project Manager of the JPA shall be the JPA’s representative for the purposes of administering this Agreement and shall have authority on behalf of the JPA to give approvals under this Agreement. A representative to be designated by the Consultant, will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

II.

SCOPE OF SERVICES

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Attachment A on behalf of the JPA. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III.

TERM OF AGREEMENT

The term of this Agreement shall commence effective September 1, 2010 upon execution of this Agreement by both parties and shall continue through October 31, 2013 or sixty (60) days after opening of the Arena, whichever is later. Consultant shall have the right to extend the term of this Agreement upon the same terms and conditions for two additional periods of one year each upon receipt of written notice delivered to the JPA on or before the date of expiration of the term or any additional extended term thereafter.
IV.
COMPENSATION

The JPA agrees to pay Consultant for the services set forth in Attachment “A” the Professional Fees set forth in Attachment “A” in accordance with the Marketing Budget set forth in Attachment “B”. The Marketing Budget shall not be amended nor exceeded without the prior written approval of the JPA.

V.
SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval of the JPA or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

VI.
NON-RAIDING CLAUSE

Consultant shall not engage the services of any person or persons presently in the employ of the City of Lincoln, Nebraska for work covered by this Agreement without the written consent of the City of Lincoln, Nebraska.

VII.
TERMINATION OF AGREEMENT

A. This Agreement may be terminated by the Consultant if the JPA fails to adequately perform any material obligation required by this Agreement (“Default”). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from the Consultant specifying the nature of the Default.
B. The JPA may terminate this Agreement, in whole or part, for any reason for the JPA's own convenience upon at least ten days written notice to the Consultant.

If the Agreement is terminated by either the JPA or Consultant as provided in A or B above, Consultant shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination. In either such event, JPA agrees to compensate or assume payment for any outstanding lease agreements (including office space and apartments) Consultant signed in performing its work for the JPA.

Further, Consultant agrees that, upon termination as provided in this paragraph, it shall not be employed by any developer or other party who is or may be interested in the work effort as defined in Article II, or interested in the decisional process relating to the application of such findings as may result from the tasks performed as defined in Article II for a period of one (1) year after such termination, without prior approval of the JPA.

VIII.
ADDITIONAL SERVICES

The JPA may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

IX.
FAIR EMPLOYMENT

In connection with the performance of work under this Agreement, Consultant agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because
of such person’s race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122, as amended.

X.

FAIR LABOR STANDARDS

The Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.

XI.

ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the JPA thereto; provided, however, that claims for money due or to become due to the Consultant from JPA under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

XII.

INTEREST OF CONSULTANT

Consultant covenants that Consultant presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by Consultant under this Agreement.
XIII.

OWNERSHIP, PUBLICATION, REPRODUCTION
AND USE OF MATERIAL

Consultant agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without the express written consent of JPA.

The JPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the JPA deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.

XIV.

COPYRIGHTS, ROYALTIES & PATENTS

Without exception, Consultant represents the consideration for this Agreement includes Consultant's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement. Further, Consultant shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Consultant shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights that Consultant has used in the course of performing this Agreement.
XV. COPYRIGHT; CONSULTANT’S WARRANTY

A. Consultant represents that all materials, processes, or other protected rights to be used in the Consultant Services have been duly licensed or authorized by the appropriate parties for such use.

B. Consultant agrees to furnish the JPA upon demand written documentation of such license or authorization. If unable to do so, Consultant agrees that the JPA may withhold a reasonable amount from Consultant’s compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

XVI. INDEMNIFICATION

A. Consultant’s Duty. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the JPA, its members, representatives of the members, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney’s fees, arising out of or resulting from the performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by the negligence, gross negligence, or intentional tort of the Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable. This section will not require Consultant to indemnify or hold harmless the JPA for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the JPA. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.
B  **Total Liability.** The total liability of the Consultant arising under, in connection
with or out of this Agreement, whether in contract, tort, or any legal or equitable theory of
recovery, shall not exceed $2,000,000.00 (Two Million Dollars).

C.  **Consequential Damages.** Consultant shall not be liable for any indirect,
incidental or consequential loss, injury or damage or liability, including but not limited to loss of
profit, business, production, income or revenue, reputation, or any other consequential damages
incurred from any cause of action whatsoever.

**XVII.**

**INSURANCE**

A.  **Insurance Coverage.** At all times during the term of this Agreement, the
Consultant shall maintain insurance coverage as follows:

1.  **Workers’ Compensation; Employer’s Liability.** Such insurance coverage as
will fully protect both Consultant and JPA from any and all claims under any Worker’s
Compensation Act or Employer’s Liability Law. Consultant shall exonerate, indemnify and hold
harmless the JPA from and against, and shall assume full responsibility for payment of all
federal, state, and local taxes and contributions imposed or required under unemployment
insurance, social security and income tax laws with respect to Consultant or any such employees
of Consultant as may be engaged in the performance of this Agreement. The minimum
acceptable limits of liability to be provided by such Workers’ Compensation policy shall be as
follows:
<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></td>
<td>State</td>
<td>Statutory</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Applicable Federal</td>
<td>Statutory</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></td>
<td>$500,000</td>
<td>each accident</td>
</tr>
<tr>
<td>Bodily Injury by disease</td>
<td></td>
<td>$500,000</td>
<td>each employee</td>
</tr>
<tr>
<td>Bodily Injury</td>
<td>$500,000</td>
<td>policy limit</td>
<td></td>
</tr>
</tbody>
</table>

2. **Automobile Liability Insurance.** For all of the Consultant's automobiles, including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in an capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:
   
   i. Bodily Injury Limit $500,000 Each Person/$1,000,000 Each Occurrence
   
   ii. Property Damage Limit $500,000 Each Occurrence

   iii. Combined Single Limit $1,000,000 Each Occurrence

3. **General Liability Insurance.** General Liability Insurance, naming and protecting Consultant and the JPA and the City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Consultant and Consultant's employees, students, or those directly or indirectly employed by Consultant. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:
   
   i. All Acts or Omissions - $2,000,000 Aggregate;
ii. Bodily Injury/Property Damage - $2,000,000 Aggregate;
iii. Personal Injury and Advertising - $1,000,000 each Occurrence;
iv. Contractual Liability - $1,000,000 each Occurrence;
v. Products Liability and Completed Operations - $1,000,000 each Occurrence;
vi. Medical Expenses (any one person) - $10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. **Professional Liability Insurance.** Professional Liability Insurance, naming and protecting Consultant against claims for damages resulting from the Consultant’s errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than One Million Dollars ($1,000,000) per claim and aggregate.

B. **Minimum Scope of Insurance.** All liability insurance policies (except Professional Liability) shall be written on an “occurrence” basis only, except for professional liability insurance which may be based upon a “claims-made” basis. All insurance coverages 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 not less than A.VIII unless specific approval has been granted by the JPA.

C. **Deductibles.** All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the JPA at the time the evidence of insurance is provided.
D. Memorandum of Insurance. All Memoranda of Insurance shall be filed with the City showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA and the City of Lincoln as additional insureds for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance, satisfactory to the JPA, in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as if the Consultant possessed General Liability Insurance. Such memorandum shall specifically state that insurance policies are to be endorsed to require the Consultant to provide the JPA thirty (30) days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

XVIII.

NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

West Haymarket Joint Public Agency
Attn: Dan Marvin
555 South 10th Street, Suite 301
Lincoln NE 68508
(402) 441-7511

CSL Marketing Group
Attn: Bill Rhoda
7200 Bishop Road, Suite 220
Plano, TX 75024
(972) 491-6900
XIX.
INDEPENDENT CONTRACTOR

The JPA is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor and it is expressly understood and agreed that Consultant is not an employee of the JPA and is not entitled to any benefits to which JPA employees are entitled, including, but not limited to, overtime, retirement benefits, workmen’s compensation benefits, sick leave and/or injury leave.

XX.
NEBRASKA LAW

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

XXI.
INTEGRATION

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

XXII.
AMENDMENT

This Agreement may be amended or modified only in writing signed by both the JPA and Consultant.

XXIII.
SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such
provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XXIV.

WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XXV.

AUDIT AND REVIEW

The Consultant 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 this Agreement, as allowed by law. The Consultant shall also be subject to audits required by the State and shall make available to any authorized auditor.

XXVI.

FEDERAL IMMIGRATION VERIFICATION

A. If the Consultant is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant 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 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The
Consultant 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 Consultant 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.

XXVII.

REPRESENTATIONS

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, Consultant and the JPA do hereby execute this Agreement as of the Execution Date set forth above.

WEST HAYMARKET JOINT PUBLIC

AGENCY

By: _______________________________
    Jayne Snyder, Chair
    Board of Representatives

CSL MARKETING GROUP

By: _______________________________
Title: President
ATTACHMENT “A”

MARKETING SERVICES

Consultant has developed a scope of services for the JPA for the planning, development and execution of marketing services to maximize revenues for the new Arena. Consultant will plan and execute comprehensive sales campaigns for naming rights, sponsorships and premium seating.

The services provided by Consultant will be divided into two phases:
- Phase I Naming Rights, Sponsorship and Premium Seating Analysis and Planning
- Phase II Naming Rights, Sponsorship and Premium Seating Sales Execution

Phase I Analysis and Planning
Consultant will evaluate the potential demand for naming rights, sponsorships and premium seating at the Arena and develop recommendations regarding the naming rights, sponsorships and premium seating concepts, inventory, pricing, locations and potential amenities.

Consultant’s Phase I services will include, but are not limited to the following:

1. **Situation / Comparative Analysis** - Review existing sponsorship and premium seating packages at the Pershing Center, Memorial Stadium, the Bob Devaney Sports Center and other Omaha area venues. In addition, we will review other comparable collegiate and municipal naming rights, sponsorship and premium seating programs including the following:
   - Entitlements;
   - signage inventory and number of partnerships;
   - premium seating packages including types, inventory and pricing; and,
   - current trends in naming rights, sponsorships and premium seating.

2. **Market Analysis** - Develop an in-depth analysis to determine the most appropriate naming rights, sponsorship and premium seating inventory and pricing. Consultant will analyze the marketability of each specific concept using research methods that may include telephone surveys, email surveys, one-on-one interviews and focus groups. The market analysis will provide a better understanding of and assess the following:
   - Potential interest in proposed premium seating concepts;
   - location preferences for premium seating;
   - sensitivity to potential price points for premium seating;
   - perceived value of premium seating benefits and amenities;
   - interest in naming rights and sponsorships;
   - potential sales processes;
   - impact of other sports venues in the area; and,
   - other key issues.
3. **Architectural Interface**
   - Consult with architects and project principals on seating bowl design, premium seating configuration and fan amenities that maximize revenue and minimize potential operating expenses.
   - Work with architects and project principals to review traffic flow and sightlines to determine the optimal locations for signage in the seating bowl, around the concourses and on the exterior of the arena to maximize naming rights and sponsorship opportunities.

4. **Yield Analysis** - Determine the optimum mix of naming rights opportunities, sponsorship zones, signage and premium seat products to generate maximum revenue.

5. **Naming Rights / Sponsorship Valuation** - Determine the optimum mix of naming rights opportunities, sponsorship zones, signage and premium seat products to generate maximum revenue.
   - **Asset Identification** - Identify and quantify tangible assets for potential inclusion in naming rights and sponsorship packages including but not limited to the following:
     - On-site advertising
     - Broadcast exposure
     - Editorial media coverage
     - Publications
     - Collateral material
     - Promotional opportunities
     - Event marketing
     - Internet
     - Premium seating
     - Ticketing
     - Merchandising
   - **Asset Valuation** - Measure the tangible and intangible benefits and determine the values of naming rights and sponsorship packages using asset models, impression models, comparables and market conditions.

6. **Pricing and Packaging**
   - Develop naming rights and sponsorship packages including pricing, term and benefits.
   - Create premium seat packages including quantity, configuration, pricing, terms, benefits and amenities.

7. **Marketing Plan / Sales Strategy** - Develop a comprehensive naming rights, sponsorship, and premium seat marketing plan to serve as a template for execution of sales programs. The marketing plan will include the following:
   - **Sales Objectives and Revenue Goals** - Develop goals for naming rights, sponsorships and premium seating.
   - **Sales Strategy** - Identify strategies for positioning and marketing naming rights, sponsorships and premium seating to VIPs, arena vendors, existing premium seat holders, season ticket holders, and the general public.
   - **Prospect Action Plan** - Create specific tactics, messages, action steps and sales forecasts for each group of prospects.
• Client Interface - Develop a communications plan for existing arena clients
• Premium Seat Holder Priority - Determine priority (location, seniority or other) for purchase of new premium seat options
• Public Relations - Plan to support sales programs
• Sales Functions - Create a detailed list of monthly and/or weekly events to attract prospects and introduce products
• Sales / Project Timeline - Prepare a timeline detailing release dates (sales sequence) for naming rights, sponsorships and premium seating, sales tactics, sales functions, key dates, arena milestones and responsibilities

8. Database Development - Identify local, regional, national and international companies and organizations best suited for purchasing naming rights, sponsorships and premium seating

9. Sales / Marketing Center - Develop sales / marketing center including site location, design and build-out as headquarters for sales activities and construction tours.

10. Printed Collateral - Work with creative firms to develop and produce naming rights, sponsorship and premium seating brochure(s) and other ancillary sales materials (as necessary).

11. Presentation Materials - Develop computer and/or audio-visual presentations for both sales / marketing center and remote sales presentations.

12. Website - Develop West Haymarket Arena website to provide project updates, disseminate sponsorship and premium seating information and answer frequently asked questions.

13. Sales / License Agreements - Develop the naming rights, sponsorship and premium seat agreements.

Phase II Sales Execution

Consultants will plan and execute comprehensive turnkey sales campaigns to market naming rights, sponsorships and premium seating for the new Arena. Consultant principals will direct the execution of the sales programs and provide the following services:

1. Turnkey Sales - Targeting of prospects, execution of initial sales calls and all required follow-up to close.

2. Sales Tactics - Execute tactics to create awareness and engage prospects. Tactics include but are not limited to the following
   • Sales / Marketing Center Grand Opening and Press Conference
   • Sales / Marketing Center Presentations
   • Arena Tours
   • Events centered around Arena announcements such as the unveiling of the design and groundbreaking
• Host prospects at Sales / Marketing Center events
• Utilize existing media opportunities at the Pershing Center to deliver messages
• Identify and participate in area events that align with our target demographic
• Direct Mail Campaigns
• Email Campaigns

3. **Sales Functions** - Plan and coordinate overall sales "kick-off function", as well as other sales functions including meetings, presentations, events and social functions designed to attract prospects and sell products.

4. **Sales Meetings** - Conduct regular sales meetings with the, JPA and Owners Representative.

5. **Sales Reports** - Provide ongoing communication and weekly sales, milestone and prospective business reports to keep, JPA, Owners Representative and project principals informed of Consultant's progress.

6. **File Maintenance** - Maintain the sponsorship and premium seating account files.

7. **Seat Selection** - Develop a plan to that allows club seat purchasers to select their seat locations based on priority.

8. **Contract Administration** - Manage the contract execution process.

9. **Customer Service** - Coordinate program to keep customers informed, involved and satisfied with their purchase(s). Direct jointly with the JPA and Owners Representative the customer service rollout of the arena plans.
PROFESSIONAL FEES

Consultant shall receive the following compensation for its work on behalf of the JPA with marketing services for the West Haymarket Arena and the Haymarket District:

1. Monthly Retainer. During the Term, JPA shall pay Consultant a monthly fee ("Monthly Retainer") of $16,000 per month.

2. Budget. In addition to the Monthly Retainer, the JPA shall reimburse Consultant for the expenses actually incurred by Consultant during the Term on a monthly basis in accordance with the Marketing Budget ("Budget") in Attachment B, which is incorporated herein by reference.

3. Sales Commissions. Consultant will be paid Commissions on all gross term revenue for the West Haymarket Arena and Haymarket Arena Products as outlined in the following schedule:

<table>
<thead>
<tr>
<th>Gross Term Revenue</th>
<th>Commission Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - $20,000,000</td>
<td>5.0%</td>
</tr>
<tr>
<td>$20,000,001 - $30,000,000</td>
<td>7.0%</td>
</tr>
<tr>
<td>$30,000,001 - $40,000,001</td>
<td>12.0%</td>
</tr>
<tr>
<td>$40,000,001 +</td>
<td>14.0%</td>
</tr>
</tbody>
</table>

Gross term revenue is defined as gross revenue payable to the JPA under the full initial term of any agreement, including any and all revenue received under any escalation provision before offset for any expenses and without deduction for Arena event cancellations or postponements, or any refunds paid by the JPA. Gross term revenue shall also include the fair market value of any in-kind contribution received by the JPA in exchange for any benefit granted by the JPA.

As to sales to be counted in calculating the amount of Commissions earned and due to Consultant, a sale shall be deemed completed upon signature of the agreement or contract by the West Haymarket Arena or Haymarket District customer and the JPA; provided, however, that Consultant shall receive credit for any sales initiated during the Term and concluded within 90 days after the expiration or termination of this Agreement. The JPA shall negotiate in good faith any changes to the form agreement or contracts requested by requested West Haymarket Arena or Haymarket District customers and the JPA shall use reasonable efforts to conclude a sale within 10 days after Consultant forwards an agreement or contract executed by the West Haymarket Arena or Haymarket District customer to the JPA.

The commissions earned for year 1 revenue will be paid monthly as revenues are received by the JPA. Commissions due Consultant for years two and beyond for multi-year agreements shall be paid by the JPA in equal installments with the final installment being paid no later than two years after the opening of the West Haymarket Arena.
CONDITIONS OF OUR WORK

During the term of this contract, Consultant will formulate a marketing program for the West Haymarket Arena and Haymarket District and will act as the JPA’s sole and exclusive representative for marketing West Haymarket Arena and Haymarket District products including, but not limited to the following:

1. Haymarket District Naming Rights
2. West Haymarket Arena Naming Rights
3. Common area (defined to include, but not limited to plazas, walkways an connectors) Naming Rights, Sponsorships and Signage
4. Naming Rights to areas inside and outside the West Haymarket Arena (including but not limited to entrances, lobbies, concourses, clubs, restaurants, box office, and other designated areas)
5. Scoreboard (including, but not limited to video board, electronic signage, rottaiing signahe and static signage)
6. West Haymarket Arena Signage
7. Haymarket District Signage
8. Exterior Marquee Signage
9. Public Address Announcements
10. Display Rights
11. West Haymarket Arena Promotions
12. Haymarket District Promotions
13. Concessions Rights
14. Pouring Rights
15. Official Suppliers
16. Website advertisements and features
17. Suite Licenses
18. Loge Box Licenses
19. Club Seat Licenses
20. Other Premium Seating Licenses

The term “Premium Seating” shall mean seating sold at the West Haymarket Arena or Haymarket District with special amenities.

JPA cannot sell, assign, sublet, transfer, grant or license to any other party the exclusive rights granted to Consultant under this Agreement.

The JPA agrees to promptly refer all leads for purchasers of West Haymarket Arena and Haymarket District products to Consultant.

Consultant shall market West Haymarket Arena and Haymarket District products using the agreements and contracts provided or approved by the JPA. All agreements and contracts shall
be directly between the JPA and the West Haymarket Arena and Haymarket District purchasers. JPA hereby acknowledges and agrees that Consultant is not guarantying any level of purchase of, or the receipt of payment for, any West Haymarket Arena and Haymarket District products marketed by Consultant.
# ATTACHMENT “B”

## MARKETING BUDGET

<table>
<thead>
<tr>
<th>Category</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSLMG Retainer¹</td>
<td>$64,000</td>
<td>$192,000</td>
<td>$192,000</td>
<td>$160,000</td>
<td>$608,000</td>
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<tr>
<td>Sales Center Staff²</td>
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<td>Sales Support³</td>
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<td>Sales Center Buildout⁴</td>
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<tr>
<td>Sales Center Operations⁵</td>
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<td>23,950</td>
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<tr>
<td>Arena Model⁶</td>
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<td>Audio-Visual⁷</td>
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<td>Architectural Sales Tools⁸</td>
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<td>Website⁹</td>
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<td>50,000</td>
<td>25,000</td>
<td>25,000</td>
<td>100,000</td>
</tr>
</tbody>
</table>

**Project Total** $68,790 $774,740 $361,300 $319,088 $1,523,918

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1. Retainer - $16,000 per month (includes sales director, travel and operation of a 1,200 sq. ft. Office)
2. Administrative Assistant for the Public Sales Center
3. Sales brochures, direct mail, invitations, invoices, postage, miscellaneous printing, etc.
4. Build-out of a 2,500 sq. ft. sales center in Haymarket District to include suite mock-up and A/V presentation.
5. Rent, utilities and other expenses for sales center.
6. Scale arena model with removable roof, removable floors to be displayed at the sales center.
7. Sales video with three dimensional arena fly-thru.
8. Renderings, computer generated images, plan view diagrams and section diagrams.
9. Website update with interactive 3-D arena model and seat selector.
10. "Kick-off" event, sales functions, open houses, prospect events, etc.
CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this _____ day of_________________, 2010 , by and between the West Haymarket Joint Public Agency, hereinafter referred to as “JPA” and CSL Marketing Group, 7200 Bishop Road, Suite 220, Plano, TX 75024, hereinafter referred to as “Consultant.”

RECITALS

A. The JPA proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in providing marketing services for the West Haymarket Arena, as more fully set forth in Attachment “A” (hereinafter referred to as “Consultant Services”).

B. Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the JPA, and the JPA desires to engage Consultant for such Consultant Services on the terms herein provided.

C. Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

D. The City of Lincoln, Nebraska, a municipal corporation and member of the JPA, shall provide support and administrative services under this Agreement with the Lincoln Municipal Code as the source of several clauses in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree as follows:
I. ADMINISTRATOR OF AGREEMENT

The Project Manager of the JPA shall be the JPA’s representative for the purposes of administering this Agreement and shall have authority on behalf of the JPA to give approvals under this Agreement. A representative to be designated by the Consultant, will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

II. SCOPE OF SERVICES

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Attachment A on behalf of the JPA. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III. TERM OF AGREEMENT

The term of this Agreement shall commence effective September 1, 2010 upon execution of this Agreement by both parties and shall continue through October 31, 2013 or six (6) months after opening of the Arena, whichever is later.

IV. COMPENSATION

The JPA agrees to pay Consultant for the services set forth in Attachment “A” the fees set forth in Attachment “A”.

V. SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval
of the JPA or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

VI.

NON-RAIDING CLAUSE

Consultant shall not engage the services of any person or persons presently in the employ of the City of Lincoln, Nebraska for work covered by this Agreement without the written consent of the City of Lincoln, Nebraska.

VII.

TERMINATION OF AGREEMENT

A. This Agreement may be terminated by the Consultant if the JPA fails to adequately perform any material obligation required by this Agreement (“Default”). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from the Consultant specifying the nature of the Default.

B. The JPA may terminate this Agreement, in whole or part, for any reason for the JPA’s own convenience upon at least ten days written notice to the Consultant.

If the Agreement is terminated by either the JPA or Consultant as provided in A or B above, Consultant shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this paragraph in the event of termination.

Further, Consultant agrees that, upon termination as provided in this paragraph, it shall not be employed by any developer or other party who is or may be interested in the work effort as defined in Article II, or interested in the decisional process relating to the application of such findings as may result from the tasks performed as defined in Article II for a period of one (1) year after such termination, without prior approval of the JPA.
VIII. ADDITIONAL SERVICES

The JPA may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

IX. FAIR EMPLOYMENT

In connection with the performance of work under this Agreement, Consultant agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person’s race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122, as amended.

X. FAIR LABOR STANDARDS

The Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.

XI. ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the JPA thereto; provided, however, that claims for money due or to become
due to the Consultant from JPA under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

XII.

INTEREST OF CONSULTANT

Consultant covenants that Consultant presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by Consultant under this Agreement.

XIII.

OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Consultant agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without the express written consent of JPA.

The JPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the JPA deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.
XIV.
COPYRIGHTS, ROYALTIES & PATENTS

Without exception, Consultant represents the consideration for this Agreement includes Consultant’s payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement. Further, Consultant shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Consultant shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights that Consultant has used in the course of performing this Agreement.

XV.
COPYRIGHT; CONSULTANT'S WARRANTY

A. Consultant represents that all materials, processes, or other protected rights to be used in the Consultant Services have been duly licensed or authorized by the appropriate parties for such use.

B. Consultant agrees to furnish the JPA upon demand written documentation of such license or authorization. If unable to do so, Consultant agrees that the JPA may withhold a reasonable amount from Consultant’s compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

XVI.
INDEMNIFICATION

A. Consultant’s Duty. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the JPA, its members, representatives of the members, officers, agents, and employees, as indemnitees, from and against all claims, damages, losses, and expenses, including but not limited to attorney’s fees, arising out of or resulting from the performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, that is caused in whole or in part by the
negligence, gross negligence, or intentional tort of the Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable. This section will not require Consultant to indemnify or hold harmless the JPA for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the JPA. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

B Total Liability. The total liability of the Consultant arising under, in connection with or out of this Agreement, whether in contract, tort, or any legal or equitable theory of recovery, shall not exceed $2,000,000.00 (Two Million Dollars).

C. Consequential Damages. Consultant shall not be liable for any indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income or revenue, reputation, or any other consequential damages incurred from any cause of action whatsoever.

XVII. INSURANCE

A. Insurance Coverage. At all times during the term of this Agreement, the Consultant shall maintain insurance coverage as follows:

1. Workers’ Compensation; Employer’s Liability. Such insurance coverage as will fully protect both Consultant and JPA from any and all claims under any Worker’s Compensation Act or Employer’s Liability Law. Consultant shall exonerate, indemnify and hold harmless the JPA from and against, and shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers’ Compensation policy shall be as follows:
2. **Automobile Liability Insurance.** For all of the Consultant’s automobiles, including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in an capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by a such Automobile Liability Insurance shall be as follows:

   i. Bodily Injury Limit $500,000 Each Person/$1,000,000 Each Occurrence  
   ii. Property Damage Limit $500,000 Each Occurrence  
   iii. Combined Single Limit $1,000,000 Each Occurrence

3. **General Liability Insurance.** General Liability Insurance, naming and protecting Consultant and the JPA and the City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Consultant and Consultant’s employees, students, or those directly or indirectly employed by Consultant. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

   i. All Acts or Omissions - $2,000,000 Aggregate;  
   ii. Bodily Injury/Property Damage - $2,000,000 Aggregate;  
   iii. Personal Injury and Advertising - $1,000,000 each Occurrence;
iv. Contractual Liability - $1,000,000 each Occurrence;

v. Products Liability and Completed Operations - $1,000,000 each Occurrence;

vi. Medical Expenses (any one person) - $10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. Professional Liability Insurance. Professional Liability Insurance, naming and protecting Consultant against claims for damages resulting from the Consultant’s errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than Two Million Dollars ($2,000,000) per claim and aggregate.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an “occurrence” basis only, except for professional liability insurance which may be based upon a “claims-made” basis. All insurance coverages 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 not less than A:VIII unless specific approval has been granted by the JPA.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the JPA at the time the evidence of insurance is provided.

D. Memorandum of Insurance. All Memoranda of Insurance shall be filed with the City showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA and the City of Lincoln as additional insureds for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance, satisfactory to the JPA, in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as
if the Consultant possessed General Liability Insurance. Such memorandum shall specifically state that insurance policies are to be endorsed to require the Consultant to provide the JPA thirty (30) days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

XVIII.
NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

West Haymarket Joint Public Agency
Attn: Dan Marvin
555 South 10th Street, Suite 301
Lincoln NE 68508
(402) 441-7511

CSL Marketing Group
7200 Bishop Road, Suite 220
Plano, TX  75024

XIX.
INDEPENDENT CONTRACTOR

The JPA is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor and it is expressly understood and agreed that Consultant is not an employee of the JPA and is not entitled to any benefits to which JPA employees are entitled, including, but not limited to, overtime, retirement benefits, workmen’s compensation benefits, sick leave or and injury leave.
XX.
NEBRASKA LAW

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

XXI.
INTEGRATION

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

XXII.
AMENDMENT

This Agreement may be amended or modified only in writing signed by both the JPA and Consultant.

XXIII.
SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XXIV.
WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with every provision of this Agreement.
XXV.
AUDIT AND REVIEW

The Consultant 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 this Agreement, as allowed by law. The Consultant shall also be subject to audits required by the State and shall make available to any authorized auditor.

XXVI.
FEDERAL IMMIGRATION VERIFICATION

A. If the Consultant is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant 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 USC 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 Consultant 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 Consultant 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.
XXVII.

REPRESENTATIONS

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, Consultant and the JPA do hereby execute this Agreement as of the Execution Date set forth above.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: __________________________________
    Jayne Snyder, Chair
    Board of Representatives

CSL MARKETING GROUP,

By: __________________________________
    Title: _____________________________
MARKETING SERVICES

CSLMG has developed a scope of services for the JPA for the planning, development and execution of marketing services to maximize revenues for the new Arena. CSLMG will plan and execute comprehensive sales campaigns for naming rights, sponsorships and premium seating.

The services provided by CSLMG will be divided into two phases:

- **Phase I** Naming Rights, Sponsorship and Premium Seating Analysis and Planning
- **Phase II** Naming Rights, Sponsorship and Premium Seating Sales Execution

**Phase I Analysis and Planning**

CSLMG will evaluate the potential demand for naming rights, sponsorships and premium seating at the Arena and develop recommendations regarding the naming rights, sponsorships and premium seating concepts, inventory, pricing, locations and potential amenities.

CSLMG’s phase I services will include, but are not limited to the following:

1. **Situation / Comparative Analysis** - Review existing sponsorship and premium seating packages at the Pershing Center, Memorial Stadium, the Bob Devaney Sports Center and other Omaha area venues. In addition, we will review other comparable collegiate and municipal naming rights, sponsorship and premium seating programs including the following:
   - Entitlements;
   - signage inventory and number of partnerships;
   - premium seating packages including types, inventory and pricing; and,
   - current trends in naming rights, sponsorships and premium seating.

2. **Market Analysis** - Develop an in-depth analysis to determine the most appropriate naming rights, sponsorship and premium seating inventory and pricing. CSLMG will analyze the marketability of each specific concept using research methods that may include telephone surveys, email surveys, one-on-one interviews and focus groups. The market analysis will provide a better understanding of and assess the following:
   - Potential interest in proposed premium seating concepts;
   - location preferences for premium seating;
   - sensitivity to potential price points for premium seating;
   - perceived value of premium seating benefits and amenities;
   - interest in naming rights and sponsorships;
   - potential sales processes;
   - impact of other sports venues in the area; and,
   - other key issues.

3. **Architectural Interface**
   - Consult with architects and project principals on seating bowl design, premium seating configuration and fan amenities that maximize revenue and minimize potential operating expenses
   - Work with architects and project principals to review traffic flow and sightlines to determine the optimal locations for signage in the seating bowl, around the concourses and on the exterior of the arena to maximize naming rights and sponsorship opportunities
4. **Yield Analysis** - Determine the optimum mix of naming rights opportunities, sponsorship zones, signage and premium seat products to generate maximum revenue.

5. **Naming Rights / Sponsorship Valuation** - Determine the optimum mix of naming rights opportunities, sponsorship zones, signage and premium seat products to generate maximum revenue.
   - Asset Identification - Identify and quantify tangible assets for potential inclusion in naming rights and sponsorship packages including but not limited to the following:
     - On-site advertising
     - Broadcast exposure
     - Editorial media coverage
     - Publications
     - Collateral material
     - Promotional opportunities
     - Event marketing
     - Internet
     - Premium seating
     - Ticketing
     - Merchandising
   - Asset Valuation - Measure the tangible and intangible benefits and determine the values of naming rights and sponsorship packages using asset models, impression models, comparables and market conditions.

6. **Pricing and Packaging**
   - Develop naming rights and sponsorship packages including pricing, term and benefits
   - Create premium seat packages including quantity, configuration, pricing, terms, benefits and amenities.

7. **Marketing Plan / Sales Strategy** - Develop a comprehensive naming rights, sponsorship, and premium seat marketing plan to serve as a template for execution of sales programs. The marketing plan will include the following:
   - **Sales Objectives and Revenue Goals** - Develop goals for naming rights, sponsorships and premium seating
   - **Sales Strategy** - Identify strategies for positioning and marketing naming rights, sponsorships and premium seating to VIPs, arena vendors, existing premium seat holders, season ticket holders, and the general public
   - **Prospect Action Plan** - Create specific tactics, messages, action steps and sales forecasts for each group of prospects
   - **Client Interface** - Develop a communications plan for existing arena clients
   - **Premium Seat Holder Priority** - Determine priority (location, seniority or other) for purchase of new premium seat options
   - **Public Relations** - Plan to support sales programs
   - **Sales Functions** - Create a detailed list of monthly and/or weekly events to attract prospects and introduce products
   - **Sales / Project Timeline** - Prepare a timeline detailing release dates (sales sequence) for naming rights, sponsorships and premium seating, sales tactics, sales functions, key dates, arena milestones and responsibilities

8. **Database Development** - Identify local, regional, national and international companies and organizations best suited for purchasing naming rights, sponsorships and premium seating

9. **Sales / Marketing Center** - Develop sales / marketing center including site location, design and build-out as headquarters for sales activities and construction tours.
10. **Printed Collateral** - Work with creative firms to develop and produce naming rights, sponsorship and premium seating brochure(s) and other ancillary sales materials (as necessary).

11. **Presentation Materials** - Develop computer and/or audio-visual presentations for both sales / marketing center and remote sales presentations.

12. **Website** - Develop West Haymarket Arena website to provide project updates, disseminate sponsorship and premium seating information and answer frequently asked questions.

13. **Sales / License Agreements** - Develop the naming rights, sponsorship and premium seat agreements.

**Phase II Sales Execution**

CSLMG will plan and execute comprehensive turnkey sales campaigns to market naming rights, sponsorships and premium seating for the new Arena. CSLMG principals will direct the execution of the sales programs and provide the following services:

1. **Turnkey Sales** - Targeting of prospects, execution of initial sales calls and all required follow-up to close.

2. **Sales Tactics** - Execute tactics to create awareness and engage prospects. Tactics include but are not limited to the following:
   - Sales / Marketing Center Grand Opening and Press Conference
   - Sales / Marketing Center Presentations
   - Arena Tours
   - Events centered around Arena announcements such as the unveiling of the design and groundbreaking
   - Host prospects prior to and during University of Nebraska football, basketball and volleyball games
   - Host prospects prior to and during Pershing Center events
   - Utilize existing media opportunities at the Pershing Center to deliver messages
   - Identify and participate in area events that align with our target demographic
   - Direct Mail Campaigns
   - Email Campaigns

3. **Sales Functions** - Plan and coordinate overall sales "kick-off function", as well as other sales functions including meetings, presentations, events and social functions designed to attract prospects and sell products.

4. **Sales Meetings** - Conduct regular sales meetings with th, JPA and Owners Representative.

5. **Sales Reports** - Provide ongoing communication and weekly sales, milestone and prospective business reports to keep, JPA, Owners Representative and project principals informed of CSLMG's progress.

6. **File Maintenance** - Maintain the sponsorship and premium seating account files.

7. **Seat Selection** - Develop a plan to that allows club seat purchasers to select their seat locations based on priority.

8. **Contract Administration** - Manage the contract execution process.

9. **Customer Service** - Coordinate program to keep customers informed, involved and satisfied with their purchase(s). Direct jointly with the JPA and Owners Representative the customer service rollout of the arena plans.
PROFESSIONAL FEES

CSLMG proposes the following compensation for its work on behalf of the JPA with marketing services for the new Arena:

Phase I and Phase II

- Monthly retainer of $16,000 per month for the term of the agreement. The term will commence September 1, 2010 and conclude October 31, 2013 or six (6) months after opening.
- Retainer includes CSLMG overhead, travel, staffing and local office operations;
- CSLMG will work with the JPA and Owners Representative to develop a sales and marketing budget. Budget items may include: sales / marketing center build-out, collateral material, presentation material, sales video, website, public relations and sales functions; and,
- Commissions paid on all gross term revenue as outlined in the following schedule:

<table>
<thead>
<tr>
<th>Gross Term Revenue</th>
<th>Commission Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - $20,000,000</td>
<td>5.0%</td>
</tr>
<tr>
<td>$20,000,001 - $30,000,000</td>
<td>7.0%</td>
</tr>
<tr>
<td>$30,000,001 - $40,000,001</td>
<td>12.0%</td>
</tr>
<tr>
<td>$40,000,001 +</td>
<td>14.0%</td>
</tr>
</tbody>
</table>

Gross term revenue is defined as gross revenue payable to the JPA under the full initial term of any agreement secured by CSLMG, including any and all revenue received under any escalation provision. Gross term revenue shall also include the fair market value of any in-kind contribution received by the JPA.

A sale shall be deemed completed upon signature of the agreement or contract by the client and the JPA; provided, however, that CSLMG shall receive credit for any sales initiated during the term and concluded within 90 days after the expiration or termination of this Agreement. The JPA shall use reasonable efforts to conclude a sale within 10 days after CSLMG forwards an agreement or contract executed by the client.
MOTION TO AMEND NO. 2

I hereby move to amend Bill No. WH 10-09 by accepting the First Amendment to Consultant Agreement attached hereto which amends Attachment “A” Marketing Services to the Consultant Agreement.

Introduced by:

______________________________

Approved as to Form & Legality:

______________________________

Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Law Department

Reason for Request: To clarify that performance of CSL’s contract is subject to City and JPA agreements with UNL.
FIRST AMENDMENT TO CONSULTANT AGREEMENT

This First Amendment to Consultant Agreement is made and entered into this _____ day of ________________, 2010 by and between the West Haymarket Joint Public Agency, hereinafter referred to as “JPA” and CSL Marketing Group, 7200 Bishop Road, Suite 220, Plano, TX 75024, hereinafter referred to as “Consultant”.

RECITALS

It is recognized by and between Consultant and JPA that JPA’s Naming Rights to the Arena are subject to a Memorandum of Understanding ("MOU") between the University of Nebraska Lincoln ("UNL") and the City of Lincoln, Nebraska. The MOU provides, and requires that UNL will enter into a lease with the JPA ("UNL Lease") for use of the Arena which shall also provide, that UNL and JPA shall cooperate in the sale and promotion of Naming Rights and that UNL shall have an opportunity and right to register objections to sponsors or the conferral of Naming Rights to entities which it believes will not reflect well on UNL or its image.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

It is therefore agreed by and between Consultant and JPA that JPA may refuse to enter into any contract or agreement with any person or entity on the basis that UNL has expressed an objection to the sale or conferral of Naming Rights to that person or entity. Consultant hereby agrees that any such refusal by JPA on that basis is reasonable and proper according to this Consultant Agreement, and that Consultant shall not be entitled to receive any commission or compensation by reason of any proposed or prospective sale that is the subject of, or the failure or inability to consummate any sale because of, such refusal.
IN WITNESS WHEREOF, Consultant and the JPA do hereby execute this First Amendment to Consultant Agreement as of the execution date set forth above.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: __________________________________
    Jayne Snyder, Chair
    Board of Representatives

CSL MARKETING GROUP,

By: __________________________________
    Title: _________________________________
RESOLUTION NO. WH- __________

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

Pursuant to Article III, Section 3a and Section 4 of the Rules of Governance West Haymarket Joint Public Agency, the Board of Representatives does hereby delegate to Dan Marvin, in his capacity as Project Manager/Secretary of the West Haymarket Joint Public Agency, the power to execute, receive and acknowledge on behalf of the West Haymarket Joint Public Agency any and all documents, including but not limited to quitclaim deeds, easements, warranties, and owner’s affidavits, as may be necessary to complete the conveyances of property to be conveyed to or by the West Haymarket Joint Public Agency pursuant to the following agreements:

1. The Purchase and Sale Agreement dated June 15, 2010 between Union Pacific Railroad Company and the City of Lincoln as assigned to the West Haymarket Joint Public Agency by assignment dated August 13, 2010 (“Purchase and Sale Agreement”).


4. The Cooperative Agreement dated October 1, 2010 between the Lower Platte South Natural Resources District and the City of Lincoln as assigned to the West Haymarket Joint Public Agency by assignment dated October 13, 2010 (“Cooperative Agreement”).
5. The Master Development Agreement and Land Exchange Agreement, each dated October 18, 2010, between the BNSF Railway Company and the City of Lincoln as assigned to the West Haymarket Joint Public Agency by assignment dated October 19, 2010 (hereinafter “Master Agreement” and “Exchange Agreement” respectively).

BE IT FURTHER RESOLVED that the Board of Representatives does hereby delegate to Dan Marvin in his capacity as Project Manager/Secretary of the West Haymarket Joint Public Agency, the power to execute the following agreements on behalf of the West Haymarket Joint Public Agency:

1. The Agreement covering rehabilitation of track and bridge in Lincoln, Nebraska, the form of which is attached as Exhibit D to the Purchase and Sale Agreement.

2. Assignment and Assumption Agreement, the form of which is attached as Exhibit F to the Purchase and Sale Agreement.

3. License Agreement, the form of which is attached as Exhibit H to the Purchase and Sale Agreement.

4. Escrow Agreement attached as Exhibit Z to the Master Agreement.

5. The various licenses and easement agreements referred to in the Master Agreement including, but not limited to, those agreements the forms of which are attached thereto as Exhibits BB, BB-1, EE, FF, FF-1, GG, HH, HH-1, II, JJ, KK, NN, TT, TT-1 UU, and VV.

6. The agreements referred to in the Exchange Agreement including, but not limited to, those agreements the forms of which are attached thereto as Exhibits PP, PP-1, QQ, QQ-1, RR, SS, and SS-1.
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
RESOLUTION NO. WH-__________

WHEREAS, the Agency has been duly organized by The City of Lincoln, Nebraska (the “City”) and The Board of Regents of the University of Nebraska (the “Regents”) pursuant to the provisions of the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, herein referred to as the “Act”) and the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010 (the “JPA Agreement”), between the City and the Regents, and is validly existing as a joint public agency of the State of Nebraska (the “State”); and

WHEREAS, the Agency is organized (a) for purposes of constructing, equipping, furnishing and financing public facilities in the West Haymarket Redevelopment Area of the City including but not limited to (1) a sports/entertainment arena (the “Arena”), (2) roads, streets and sidewalks, (3) a pedestrian overpass, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the “Facilities”), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on Exhibit A to the Facilities Agreement, dated September 8, 2010, between the City and the Agency, as the same may be amended from time to time, the “Projects,” and, individually, a “Project”); and

WHEREAS, the Agency has previously issued $100,000,000 of its General Obligation Facility Bonds, Series 2010A (the “Series 2010A Bonds”) for the purpose of paying a portion of the costs of the Projects; and

WHEREAS, it is necessary, desirable, advisable and in the best interests of the City and the Agency that the Agency approve the issuance of additional bonds at this time to provide additional funds to pay costs of the Project; and

WHEREAS, the Agency will receive an assignment of the City’s allocations of the national Recovery Zone Economic Development Bonds limitation (1) in the amount of $17,504,000 pursuant to the American Recovery and Reinvestment Tax Act of 2009, codified in Title 26 of the United States Code and Internal Revenue Service, Notice 2009-50, issued on June 12, 2009, (2) in the amount of $14,533,430 from the State of Nebraska Department of Economic Development pursuant to allocations of Recovery Zone Economic Development Bond limitation waived or deemed waived to the State of Nebraska, and (3) in such additional amount as may be allocated to the City by the State of Nebraska Department of Economic Development pursuant to allocations of Recovery Zone Economic Development Bonds limitation waived or deemed waived to the State of Nebraska (collectively, the “Allocation”); and

WHEREAS, there has been presented to the Agency a draft of a Bond Resolution (the “Bond Resolution”) authorizing the issuance of not to exceed $100,000,000 principal amount of general obligation facility bonds consisting of (a) General Obligation Facility Bonds, Series 2010B (the “Series 2010B Bonds”) of the Agency in a principal amount not to exceed $67,965,000, and (2) General Obligation Recovery Zone Economic Development Facility Bonds, Series 2010C (the “Series 2010C Bonds”) of the Agency in an amount not to exceed the Allocation to pay additional costs of the Project; and

WHEREAS, it is necessary, desirable and advisable that the Finance Director of the City and City staff, Agency bond counsel, and all other officers, employees, and agents of the Agency proceed
as expeditiously as possible with the issuance of the Series 2010B Bonds and the Series 2010C Bonds (collectively, the “Bonds”) for the purposes set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the West Haymarket Joint Public Agency that the members and officers of the Agency and the officers and agents of the City or any of them, be, and hereby are, authorized and directed to take any and all action, including the execution of all papers, certificates, receipts and documents they or any of them may deem necessary or desirable to issue and deliver the Series 2010B Bonds, in an amount not to exceed $67,965,000, and to issue and deliver the Series 2010C Bonds, in an amount not to exceed the Allocation; and

BE IT FURTHER RESOLVED by the governing body of the West Haymarket Joint Public Agency that the Bond Resolution in substantially the form presented to the governing body is hereby approved, adopted, ratified and affirmed, together with such changes or modifications as the Chair, the Finance Director and bond counsel shall approve as being in the best interests of the Agency; and

BE IT FURTHER RESOLVED by the governing body of the West Haymarket Joint Public Agency that the Finance Director is hereby authorized and directed to offer and sell the Bonds in one or more series at a public sale or a negotiated sale at one time or from time to time at a price not less than 98.00% of the principal amount thereof, which shall include an underwriting discount of not more than 1.00% of the principal amount thereof and to fix, with respect to each series of Bonds, (a) the dated date, which shall not be later than December 31, 2010, (b) the principal amount of such series of Bonds including the principal amounts of the respective serial bonds and term bonds of such series of the Bonds and the denominations thereof; provided, however that the aggregate amount of the bonds to be issued pursuant to the Bond Resolution shall not exceed $100,000,000, consisting of (1) Series 2010B Bonds in a principal amount not to exceed $67,965,000, but which may be less than that amount, and (2) Series 2010C Bonds in a principal amount not to exceed the Allocation but which may be less than that amount; (c) the rate or rates of interest to be borne by each maturity of each series of the Bonds, provided that none of the Bonds shall bear interest at a coupon rate in excess of 5.00% per annum; (d) the principal amount of each series of the Bonds maturing in each year; (e) the mandatory sinking fund redemption dates and the principal amount of each series of Bonds which shall be subject to mandatory sinking fund redemption; (f) the dates upon which each series of Bonds will be subject to redemption at the option of the Agency and the Redemption Price of each series of Bonds (which may include “make-whole” provisions), which shall not exceed 104% of the principal amount being redeemed, and the period(s) during which each Redemption Price is applicable; (g) the final maturity date of each series of Bonds, which shall be not later than December 31, 2045; any additional accounts or subaccounts to be established within the funds created by the Facilities Agreement or the Bond Resolution, (h) the form and contents of any agreement or agreements under which the Registrar and the Paying Agent would service in such respective capacities with respect to each series of the Bonds, (i) the form, content, terms, and provisions of any closing and other documentation executed and delivered by the Agency in connection with authorization, issuance, sale and delivery of each series of Bonds, and (j) all of the other terms and provisions of the Bonds not otherwise specified or fixed by the provisions of the Bond Resolution or this Resolution; and

BE IT FURTHER RESOLVED by the governing body of the West Haymarket Joint Public Agency that all actions heretofore taken for or on behalf of, or in the name of the Agency, by any of the members, officers or agents thereof or by any officers or agents of Agency with respect to the authorization or negotiation of the Bonds are hereby validated, ratified and confirmed.
BOND RESOLUTION

OF

WEST HAYMARKET JOINT PUBLIC AGENCY
IN THE STATE OF NEBRASKA

PASSED

OCTOBER __, 2010

AUTHORIZING

NOT TO EXCEED $[2010B Principal Amount]
GENERAL OBLIGATION FACILITY BONDS
SERIES 2010B

NOT TO EXCEED $[2010C Principal Amount]
GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT FACILITY BONDS
SERIES 2010C
Resolution

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WEST HAYMARKET JOINT PUBLIC AGENCY

BOND RESOLUTION

A RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED (A) $[2010B Principal Amount],000,000 AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION FACILITY BONDS, SERIES 2010B and (B) $[2010C Principal Amount] AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS, SERIES 2010C; PRESCRIBING THE FORM AND DETAILS OF SUCH BONDS; PROVIDING FOR THE APPLICATION OF REVENUES RECEIVED FROM THE CITY OF LINCOLN, NEBRASKA AND THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SUCH BONDS AS THEY BECOME DUE; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

BE IT RESOLVED BY THE BOARD OF THE WEST HAYMARKET JOINT PUBLIC AGENCY IN THE STATE OF NEBRASKA, AS FOLLOWS:

FINDINGS AND DETERMINATIONS

The Board (the “Board”) of the West Haymarket Joint Public Agency in the State of Nebraska (the “Agency”) hereby finds and determines as follows:

1. The Agency has been duly organized by The City of Lincoln, Nebraska (the “City”) and The Board of Regents of the University of Nebraska (the “Regents”) pursuant to the provisions of the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, herein referred to as the “Act”) and the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010 (the “JPA Agreement”), between the City and the Regents, and is validly existing as a joint public agency of the State of Nebraska (the “State”). The Nebraska Secretary of State has issued a Certificate of Creation and notice of the creation thereof has been published as required by the Act.

2. The Agency is organized (a) for purposes of constructing, equipping, furnishing and financing public facilities in the West Haymarket Redevelopment Area (herein defined) of the City including but not limited to (1) a sports/entertainment arena (the “Arena”), (2) roads, streets and sidewalks, (3) a pedestrian overpass, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the “Facilities”), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the Facilities (collectively, as itemized on Exhibit B hereto, as the same may be amended from time to time, the “Projects,” and, individually, a “Project”).

3. The City has received recovery zone economic development bond allocations of (a) $17,504,000 from the United States Department of the Treasurer and (b) $14,533,430 from the State of
Nebraska Department of Economic Development, all of which have been sub-allocated to the Agency pursuant to Resolution No. A-____________ of the City.

4. Pursuant to Resolution No. _____, adopted by the Agency on __________, 2010, the Agency has declared all of the area within the corporate limits of the City as the “Recovery Zone” for the Agency, for the purpose of issuing Recovery Zone Economic Development Bonds pursuant to Section 1400U-2 of the Internal Revenue Code of 1986, as amended.

5. It is necessary, desirable, advisable and in the best interests of the Agency and the Participants, that the Agency (a) undertake the Projects, (b) issue (1) general obligation facility bonds (the “Facility Bonds”) and (2) general obligation recovery zone economic development facility bonds (the “Recovery Zone Bonds”) for the purposes of paying (A) a portion of the costs of one or more Projects, (B) the interest accruing and falling due on the Bonds through and including June 15, 2011, and (C) the costs of issuing the Bonds, and (c) levy taxes in an amount sufficient to pay the principal or redemption price of and interest on the Facility Bonds and the Recovery Zone Bonds (collectively, the “Bonds”).

6. Pursuant to the JPA Agreement, (a) the City has irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid hereunder, its authority to cause the levy of taxes within the taxing district of the City (the “Agency Bond Levy”), beginning in the year 2010 for collection in 2011, for the purpose of paying all or a portion of the costs of one or more Projects pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, solely for the purpose of paying the principal or redemption price of and interest on the Bonds and (b) the Agency Bond Levy shall be certified to the County as provided by law for levy and collection in such amounts, if any, as may be required to pay the principal or redemption price of and interest on the Bonds as the same become due.

7. The City and the Agency have entered into a Facilities Agreement, dated September 8, 2010, (the “Facilities Agreement”), pursuant to which the City has agreed to maintain, operate and manage the Projects as provided therein, and which provides for the collection, deposit and application of the Revenues (as defined in the Facilities Agreement).

8. All conditions, acts, and things required by law to exist or to be done precedent to the issuance of the Bonds do exist and have been done in due form and time as required by law.

ARTICLE I
DEFINITIONS

Section 101. Definitions of Words and Terms. Unless the context shall clearly indicate some other meaning, for all purposes of this Resolution, all words and terms used in this Resolution which are defined in the Facilities Agreement shall have the respective meanings given to them in the Facilities Agreement. In addition to words and terms defined elsewhere herein, the following words and terms used in this Resolution have the following meanings:

“Act” means the Joint Public Agency Act, Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended.

“Agency” means the West Haymarket Joint Public Agency, a joint public agency duly organized and validly existing under the laws of the State, and its successors and assigns.
“Agency Bond Levy” means the authority of the City which is irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, to cause the levy of taxes within the taxing jurisdiction of the City, beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the Projects pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which will be sufficient to pay the principal or redemption price of and interest on the Bonds when and as the same become due.

“Arena” has the meaning assigned in the Findings and Determinations hereof.

“Authorized Officer” means the Chair and the Secretary, or in the event that either the Chair or the Secretary is unavailable for any reason, any other member of the Board or the Treasurer or any other officer of the Agency authorized by the Board to execute documents for and on behalf of the Agency.

“Beneficial Owner” means any Person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Board” means the board of representatives of the Agency.

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

“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

“Bond” or “Bonds” means, collectively, the Series 2010B Bonds and the Series 2010C Bonds authorized by Section 201 of this Resolution.

“Budget Act” means Sections 13-501 to 13-513, inclusive, Reissue Revised Statutes of Nebraska, as amended.

“Build America Bonds” means a series of Bonds issued as taxable “build America bonds”, pursuant to Section 54AA of the Code.

“Business Day” means a day other than a Saturday, Sunday or holiday on which the Registrar is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.


“City” means The City of Lincoln, Nebraska.

“City Payment” means a payment made by the City to the Agency pursuant to the Facilities Agreement for the purpose of paying the principal of and interest due on the Bonds on the next Interest Payment Date.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.
“Completion Date” means the date established pursuant to Section 504(c) on which construction of the Projects is complete.

“Construction Fund” means the fund by that name created by Section 501 in the Construction Fund established by the Facilities Agreement, in which there shall be established such accounts as shall be determined by the Finance Director in accordance with the provisions of Section 212.

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate executed by the Agency and the City, dated the date of delivery of the Bonds, as originally executed and as amended from time to time in accordance with its terms.

“2010B Debt Service Account” means the account by that name created by Section 501 in the Debt Service Fund, in which there shall be established such subaccounts as shall be determined by the Finance Director in accordance with the provisions of Section 212.

“2010C Debt Service Account” means the account by that name created by Section 501 in the Debt Service Fund, in which there shall be established such subaccounts as shall be determined by the Finance Director in accordance with the provisions of Section 212.

“Debt Service Fund” means the fund by that name established by the Facilities Agreement.

“Defaulted Interest” means interest on any Bond which is payable but not paid on any Interest Payment Date.

“Defeasance Obligations” means any of the following obligations:

(a) Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or Government Obligations that may be applied only to the principal or Redemption Price of and interest payments on such obligations;

(3) such cash and the principal of and interest on such Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and
(6) the obligations are rated in the highest rating category by Moody’s Investors Service, Inc. (presently “Aaa”) or Standard & Poor’s Ratings Group (presently “AAA”).

“Designated Office” means the corporate trust administration office maintained by the Paying Agent at which the Paying Agent discharges its obligations under this Resolution and which may be changed by the Paying Agent upon written notice to the Agency and to each Registered Owner.

“Facilities Agreement” means the Facilities Agreement, dated September 8, 2010, as amended from time to time in accordance with its terms, between the City and the Agency, governing the acquisition, construction, equipping, furnishing, operation and management of the Projects, and the collection, deposit and application of the Revenues.

“Finance Director” means the Finance Director of the City, as the chief financial officer of the Agency.

“Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States, including evidences of a direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the United States (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Agency.

“Interest Payment Date” means June 15 and December 15 of each year beginning June 15, 2011.

“JPA Agreement” means the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency dated as of April 1, 2010 between the City and the Regents.

“Maturity” when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for optional or mandatory redemption or otherwise.

“Outstanding” means, when used with reference to the Bonds, as of any particular date of determination, all Bonds theretofore authenticated and delivered hereunder, except the following Bonds:

(a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of Section 701 hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered hereunder.

“Participants” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“Paying Agent” means the paying agent designated in Section 203 hereof.
“Permitted Investments” means any of the following securities, if and to the extent the same are at the time legal for investment of the Agency’s funds:

(a) Government Obligations;

(b) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;

(c) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(d) repurchase agreements with any bank, bank holding company, trust company, or other financial institution organized under the laws of the United States or any state, that are continuously and fully secured by any one or more of the securities described in clause (a), (b) or (c) above and that have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the Agency; and

(e) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time deposits.

“Person” means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

“Project” and “Projects” have the meaning assigned in the Findings and Determinations as specified and identified in Exhibit B, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

“Purchaser” means (a) if the Bonds are sold in a public sale, the responsible bidder(s) offering to purchase the Bonds at the lowest true interest costs to the Agency at the public sale for the Bonds and (b) if the Bonds are sold in a negotiated sale, the senior managing underwriter.

“Record Date” for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) next preceding an Interest Payment Date.

“Redemption Date” when used with respect to any Bond to be redeemed means the date fixed for the redemption of such Bond pursuant to the terms of this Resolution.

“Redemption Price” when used with respect to any Bond to be redeemed means the price at which such Bond is to be redeemed pursuant to the terms of this Resolution.

“Regents” means The Board of Regents of the University of Nebraska.
“Registrar” means Union Bank and Trust Company, Lincoln, Nebraska, and any successors or assigns.

“Registered Owner” when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register.

“Replacement Bonds” means Bonds issued to Beneficial Owners in accordance with Section 207.

“Resolution” means this Resolution adopted by the governing body of the Agency, authorizing the issuance of the Bonds, as amended from time to time.


“Series 2010B Bonds” means the $[2010B Principal Amount] principal amount of the Agency’s General Obligation Facility Bonds, Series 2010B, dated the date of delivery thereof, authorized by Section 201 of this Resolution.

“Series 2010C Bonds” means the $[2010C Principal Amount] principal amount of the Agency’s General Obligation Recovery Zone Economic Development Facility Bonds, Series 2010C, dated the date of delivery thereof, authorized by Section 201 of this Resolution.

“Special Record Date” means the date fixed by the Paying Agent pursuant to Section 204 hereof for the payment of Defaulted Interest.

“State” means the State of Nebraska.

“Stated Maturity” means, when used with respect to any Bond, the date specified in such Bond and this Resolution as the fixed date on which the principal of such Bond is due and payable.

“2010B Tax Agreement” means the 2010B Tax Compliance Agreement dated the date of its execution and delivery by the Agency, the City and the Regents concerning the requirements of the Code with respect to the Series 2010B Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

“2010C Tax Agreement” means the 2010B Tax Compliance Agreement dated the date of its execution and delivery by the Agency, the City and the Regents concerning the requirements of the Code with respect to the Series 2010C Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

“Treasurer” means the Treasurer of the Agency.

“United States” means the United States of America.

“West Haymarket Redevelopment Area” means the area in the City generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and “M” Street on the south, as the same may be amended from time to time by the City.
“West Haymarket Facilities” has the meaning assigned in the Findings and Determinations hereof.

ARTICLE II

AUTHORIZATION OF BONDS

Section 201. Authorization of Bonds. The Agency is hereby authorized and directed to issue (a) General Obligation Facility Bonds, Series 2010B in the principal amount of $[2010B Principal Amount] to be issued as Build America Bonds and (b) General Obligation Recovery Zone Economic Development Facility Bonds, Series 2010C in the principal amount of $[2010C Principal Amount] for the purpose of paying (1) all or a portion of the costs of one or more Projects, (2) the interest accruing and falling due on the Bonds thorough and including June 15, 2011, and (3) the costs of issuing the Bonds.

Section 202. Description of Bonds. The Series 2010B Bonds shall be entitled and designated as “Lincoln, Nebraska West Haymarket Joint Public Agency General Obligation Facility Bonds, Series 2010B (Build America Bonds – Direct Pay).” The Series 2010C Bonds shall be entitled and designated as “Lincoln, Nebraska West Haymarket Joint Public Agency General Obligation Recovery Zone Economic Development Facility Bonds, Series 2010C.” The Bonds shall consist of fully registered bonds, numbered from R-1 upward within each series in order of issuance, in denominations of $5,000 or any integral multiple thereof. The Bonds shall be in substantially the form set forth in Exhibit A attached hereto and shall be subject to registration, transfer and exchange as provided in Section 205 hereof. All of the Bonds shall be dated the date of delivery thereof, shall become due and payable serially in the amounts on the Stated Maturities, subject to redemption and payment prior to their Stated Maturities as provided in Article III hereof, and shall bear interest at the rates per annum determined by the Finance Director in accordance with the provisions of Section 212 hereof.

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from the date thereof or from the most recent Interest Payment Date to which interest has been paid or duly provided for.

Section 203. Designation of Paying Agent. The Agency hereby designates the Registrar as its paying agent for the payment of principal of and interest on the Bonds and bond registrar with respect to the registration, transfer and exchange of Bonds. The Paying Agent shall serve in such capacities under the terms of an agreement entitled “Bond Registrar and Paying Agent Agreement” between the Agency and the Paying Agent (the “Registrar Agreement”), in the form attached hereto as Exhibit C, which is hereby ratified and approved. One or more Authorized Officers are hereby authorized to execute the Registrar Agreement in substantially the form presented but with such changes as such Authorized Officer shall deem appropriate or necessary.

The Agency will at all times maintain a Paying Agent meeting the qualifications herein described for the performance of the duties hereunder. The Agency reserves the right to appoint a successor Paying Agent by (a) filing with the Paying Agent then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent and appointing a successor, and (b) causing notice of the appointment of the successor Paying Agent to be given by first-class mail to each Registered Owner. No resignation or removal of the Paying Agent shall become effective until a successor has been appointed and has accepted the duties of Paying Agent.

Every Paying Agent appointed hereunder shall at all times be a commercial banking association or corporation or trust company organized and doing business under the laws of the United States or of a
state of the United States, authorized under such laws to exercise trust powers and subject to supervision or examination by federal or state regulatory authority.

Section 204. Method and Place of Payment of Bonds. The principal or Redemption Price of and interest on the Bonds shall be payable in any coin or currency of the United States that on the respective dates of payment thereof is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity by check or draft to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the Designated Office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Registered Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register.

Notwithstanding the foregoing provisions of this Section 204, any Defaulted Interest with respect to any Bond shall cease to be payable to the Registered Owner of such Bond on the relevant Record Date and shall be payable to the Registered Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as specified in this paragraph. The Agency shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Agency of such Special Record Date and, in the name and at the expense of the Agency, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first-class mail, postage prepaid, to each Registered Owner of a Bond entitled to such notice at the address of such Registered Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of the payment of principal or Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Agency.

Section 205. Registration, Transfer and Exchange of Bonds. The Agency covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the Designated Office. Each Bond when issued shall be registered in the name of the Registered Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section 205. Upon surrender of any Bond at the Designated Office, the Paying Agent shall transfer or exchange such Bond for a new Bond or Bonds in any authorized denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange. Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Registered Owner thereof or by the Registered Owner’s duly authorized agent.
In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Paying Agent shall authenticate and deliver Bonds in accordance with the provisions of this Resolution. The Agency shall pay the fees and expenses of the Paying Agent for the registration, transfer and exchange of Bonds provided for by this Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Paying Agent, are the responsibility of the Registered Owners of the Bonds. In the event any Registered Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Registered Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Registered Owner hereunder or under the Bonds.

The Agency and the Paying Agent shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to Section 303 hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption, or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Agency of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to Section 204 hereof.

The Agency and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on such Bond and for all other purposes. All payments so made to any such Registered Owner or upon the Registered Owner’s order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Agency nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Paying Agent, the Bond Register may be inspected and copied by the Registered Owners of 10% or more in aggregate principal amount of the Bonds then Outstanding or any designated representative of such Registered Owners whose authority is evidenced to the satisfaction of the Paying Agent.

Section 206. Execution, Registration, Authentication and Delivery of Bonds. Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be signed by the manual or facsimile signature of the Chair and attested by the manual or facsimile signature of the Secretary. In case any officer whose signature appears on any Bond ceases to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Chair and Secretary are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and, when duly executed and registered, to deliver the Bonds to the Paying Agent for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A attached hereto, which shall be manually executed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Resolution or be valid or obligatory for any purpose.
unless and until such certificate of authentication has been duly executed by the Paying Agent. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution. Upon authentication, the Paying Agent shall deliver the Bonds to the Purchaser upon payment of the purchase price of the Bonds plus accrued interest thereon to the date of their delivery.

Section 207. Mutilated, Destroyed, Lost and Stolen Bonds. If (a) any mutilated Bond is surrendered to the Paying Agent or the Paying Agent receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Paying Agent such security or indemnity as may be required by the Paying Agent, then, in the absence of notice to the Paying Agent that such Bond has been acquired by a bona fide purchaser, the Agency shall execute and, upon the Agency’s request, the Paying Agent shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Agency, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section 207, the Agency may require the payment by the Registered Owner of an amount sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section 207 shall constitute a replacement of the prior obligation of the Agency, and shall be entitled to all the benefits of this Resolution equally and ratably with all other Outstanding Bonds.

Section 208. Cancellation and Destruction of Bonds Upon Payment. All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Agency.

Section 209. Book-Entry Bonds; Securities Depository.

(a) The Bonds shall initially be registered to Cede & Co., as nominee for the Securities Depository, and no Beneficial Owner will receive any certificate representing its respective interest(s) in the Bonds, except in the event the Paying Agent issues Replacement Bonds as provided in Section 209(b) hereof. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of the principal or Redemption Price of and interest on the Bonds to the Participants until and unless the Paying Agent authenticates and delivers Replacement Bonds to the Beneficial Owners as described in Section 209(b) hereof.

(b) (1) If the Agency determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (C) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Registered Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (2) if the Paying Agent receives written notice from Participants having interests in not
less than 50% in aggregate principal amount of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Registered Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Paying Agent shall notify the Registered Owners of such determination or such notice and of the availability of certificates to Registered Owners requesting the same, and the Paying Agent shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under Section 209(b)(1)(A) or (1)(B) hereof, the Agency, with the consent of the Paying Agent, may select a successor securities depository in accordance with Section 209(c) hereof to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Paying Agent, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Agency, the Paying Agent or Registered Owners are unable to locate a qualified successor of the Securities Depository in accordance with Section 209(c) hereof, then the Paying Agent shall authenticate and cause delivery of Replacement Bonds to Registered Owners as provided herein. The Paying Agent may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing Replacement Bonds shall be paid for by the Agency.

(c) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, the Agency may appoint a successor Securities Depository provided the Paying Agent receives written evidence satisfactory to the Paying Agent with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Paying Agent upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

Section 210. Preliminary and Final Official Statement. The Preliminary Official Statement, in substantially the form attached hereto as Exhibit C, is hereby ratified and approved, and the final Official Statement is hereby authorized and approved by supplementing, amending and completing the Preliminary Official Statement with such changes and additions thereto as are necessary to conform to and describe the transaction. The use and public distribution of the final Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The Authorized Officers are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

The Agency agrees to provide to the Purchaser within seven Business Days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of Rule 15c2-12(b)(4) of the Securities and Exchange Commission and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

Section 211. Sale of Bonds. The Bonds shall be sold in a public to the responsible Purchaser offering to purchase the Bonds at the lowest true interest cost to the Agency pursuant to a Notice of Sale in substantially the form attached hereto as Exhibit E, under which the Agency offers to sell the Bonds,
upon the terms and conditions set forth therein and with such changes therein as shall be approved by the Finance Director. The purchase price for the Bonds shall be not less than 98.00% of the principal amount thereof and the underwriting discount shall not exceed 1.50%. The true interest cost on the Bonds (taking into account any interest payment subsidy from the federal government) shall not exceed 5.50% per annum, calculated on the basis of a 360-day year consisting of twelve 30-day months. The Finance Director is authorized to accept the bid of the Purchaser and to execute all other documents necessary to effectuate the sale of the Bonds to the Purchaser.

Section 212. Determination of Terms and Provisions of Bonds. The Finance Director shall determine whether the Bonds shall be sold in a public sale or a negotiated sale and shall determine and fix (a) the dated date, which shall not be later than December 31, 2010; (b) the aggregate principal amount of the Bonds, which shall not exceed $100,000,000, and whether the Bonds shall be issued as Build America Bonds, whether the Bonds shall be issued as serial bonds or term bonds or a combination of serial bonds and term bonds, (c) the rate or rates of interest to be borne by each maturity of Bonds within each series; (d) the principal amount of Bonds maturing in each year; (e) the mandatory sinking fund redemption dates and amount with respect to the Bonds in each year for which the Finance Director determines that a mandatory sinking fund redemption shall be made; (f) the date upon which the Bonds will be subject to redemption at the option of the Agency and the Redemption Price of the Bonds (which may include “make-whole” provisions), which shall not exceed 104% of the principal amount being redeemed and the period(s) during which each Redemption Price is applicable; (g) the final maturity date of the Bonds, which shall be not later than December 31, 2045; (h) any additional accounts or subaccounts to be established within the funds created by Section 501 hereof; and (i) any other provisions related to the Bonds not set forth in this Resolution.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional and Mandatory Redemption of Bonds.

(a) Optional Redemption by Agency. At the option of the Agency, Bonds or portions thereof may be called for redemption and payment prior to their Stated Maturity at any time on or after the date determined by the Finance Director in accordance with the provisions of Section 212 hereof, as a whole or in part at Redemption Prices determined by the Finance Director in accordance with the provisions of Section 212 hereof, plus accrued interest thereon to the Redemption Date.

(b) Mandatory Redemption. The Bonds issued as term bonds shall be subject to mandatory redemption and payment prior to their Stated Maturity pursuant to the mandatory redemption requirements of this Section 301(c) at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The City Payments which are to be deposited into the 2010B Debt Service Account in the Debt Service Fund shall be sufficient to redeem, and the Agency shall redeem on December 15 in each year, the principal amounts of such Series 2010B Bonds issued as term bonds as determined by the Finance Director in accordance with the provisions of Section 212 hereof. The City Payments which are to be deposited into the 2010C Debt Service Account in the Debt Service Fund shall be sufficient to redeem, and the Agency shall redeem on December 15 in each year, the principal amounts of such Series 2010C Bonds issued as term bonds as determined by the Finance Director in accordance with the provisions of Section 212 hereof.

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Agency may: (1) deliver to the Paying Agent for cancellation Term Bonds subject
to mandatory redemption on such mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on such mandatory Redemption Date from any Registered Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Agency under this Section for any Term Bonds subject to mandatory redemption on such mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection (b)) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection (b).

Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Agency to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Agency intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Agency will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment.

Section 302. Selection of Bonds to Be Redeemed.

(a) The Paying Agent shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Paying Agent at least 45 days prior to the Redemption Date of written instructions of the Agency specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The Paying Agent may in its discretion waive such notice period so long as the notice requirements set forth in Section 303 hereof are met.

(b) Bonds shall be redeemed only in the principal amount of $5,000 or any integral multiple thereof. When fewer than all of the Outstanding Bonds are to be redeemed, such Bonds shall be redeemed in such principal amounts and from such Stated Maturities as the Agency, in its sole and absolute discretion, may determine, and Bonds of less than a full Stated Maturity shall be selected by the Paying Agent in $5,000 units of principal amount in such equitable manner as the Paying Agent may determine.

(c) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then for all purposes in connection with such redemption, each $5,000 of face value shall be treated as through it were a separate Bond of the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond are selected for redemption, then upon notice of intention to redeem such $5,000 unit or units, the Registered Owner of such Bond or the Registered Owner’s duly authorized agent shall present and surrender such Bond to the Paying Agent (1) for payment of the Redemption Price and interest to the Redemption Date of such $5,000 unit or units of face value called for redemption, and (2) for exchange, without charge to the Registered Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Registered Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as provided, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the $5,000 unit or units of face value called for redemption (and to that extent only).
Section 303. Notice and Effect of Call for Redemption. Unless waived by any Registered Owner of Bonds to be redeemed, official notice of any redemption shall be given by the Paying Agent on behalf of the Agency by mailing a copy of an official redemption notice by first-class mail at least 30 days prior to the Redemption Date to the Purchaser and each Registered Owner of the Bonds to be redeemed at the address shown on the Bond Register.

All official notices of redemption shall be dated and shall contain the following information:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the Designated Office.

The failure of any Registered Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Agency shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on that date.

Official notice of redemption having been given as provided, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Agency defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

The Paying Agent is also directed to comply with any mandatory or voluntary standards then in effect for processing redemptions of municipal securities established by the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

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ARTICLE IV

SECURITY FOR AND PAYMENT OF BONDS

Section 401. Security for the Bonds. The Bonds shall be general obligations of the Agency payable as to both principal and interest from the General Account in the Revenue Fund, and to the extent such revenues are insufficient, from ad valorem taxes which may be levied upon all the taxable property in the City as provided in Section 402 hereof. The full faith, credit and resources of the Agency are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

Section 402. Levy and Collection of Property Tax. Pursuant to the JPA Agreement, the City has assigned and allocated to the Agency its authority to levy ad valorem property taxes for the purposes of paying the principal or redemption price of and interest on the Bonds. Pursuant to the Facilities Agreement, the Agency shall (a) collect all Revenues and (b) if an Agency Bond Levy is to be made for the following tax year, include in its next “proposed budget statement” (as defined in Section 13-504 of the Budget Act) the amount required by Section 15 of the Facilities Agreement to be raised from the Agency Bond Levy for the following tax year and shall levy upon all of the taxable property within the City the Agency Bond Levy, in addition to all other taxes, sufficient in rate and amount to reimburse the City all amounts advanced by the City pursuant to the Facilities Agreement, the Agency hereby pledging such levy of taxes for such purpose.

The taxes referred to above shall be budgeted by the Agency in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as ad valorem taxes of the City are levied and collected. The proceeds derived from such taxes shall be used to reimburse the City for any loan to the Agency by the City under the Facilities Agreement.

ARTICLE V

ESTABLISHMENT OF FUNDS; DEPOSIT AND APPLICATION OF MONEY

Section 501. Establishment of Funds. There have been or shall be established in the treasury of the Agency the separate funds set forth in the Facilities Agreement to be held and administered by the Agency. There is hereby established in the treasury of the Agency the following accounts and subaccounts:

(a) 2010B Construction Account in the Construction Fund in which there shall be established such subaccounts as shall be determined by the Finance Director in accordance with the provisions of Section 212 hereof.

(b) 2010C Construction Account in the Construction Fund in which there shall be established such subaccounts as shall be determined by the Finance Director in accordance with the provisions of Section 212 hereof.

(c) 2010B Debt Service Account, in which there shall be established the 2010B Capitalized Interest Account.

(d) 2010C Debt Service Account, in which there shall be established the 2010C Capitalized Interest Account.
The Finance Director may establish one or more accounts in the funds set forth above, pursuant to the authority granted in Section 212 hereof.

Section 502. Deposit of Bond Proceeds. The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

(a) All accrued interest received from the sale of the Series 2010B Bonds shall be deposited in the 2010B Debt Service Account and applied in accordance with Section 504.

(b) All accrued interest received from the sale of the Series 2010C Bonds shall be deposited in the 2010C Debt Service Account and applied in accordance with Section 504.

(c) An amount sufficient to pay the interest accruing and falling due on the Series 2010B Bonds through and including June 15, 2011 shall be deposited in the 2010B Capitalized Interest Account.

(d) An amount sufficient to pay the interest accruing and falling due on the Series 2010C Bonds through and including June 15, 2011 shall be deposited in the 2010C Capitalized Interest Account.

(e) Proceeds of the Bonds shall be deposited into such accounts or subaccounts as may be established by the Finance Director pursuant to the provisions of Section 212 hereof in the amounts determined by the Finance Director.

(f) The proceeds of the Series 2010B Bonds which remain after the deposits required by Sections 502(a), (c) and (e) hereof have been made shall be deposited in the 2010B Construction Account. All amounts on deposit in the 2010B Construction Account shall be applied in accordance with Section 504(a) hereof.

(g) The proceeds of the Series 2010C Bonds which remain after the deposits required by Sections 502(a), (c) and (e) hereof have been made shall be deposited in the 2010C Construction Account. All amounts on deposit in the 2010C Construction Account shall be applied in accordance with Section 504(a) hereof.

Section 503. Revenue Fund. The JPA shall deposit the Revenues, when received from the City in accordance with the Facilities Agreement, to be held and applied as provided in the Facilities Agreement.

Section 504. Application of Money in the 2010B Construction Account.

(a) Money in the 2010B Construction Account shall be used by the Agency solely for the purpose of (1) paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency’s architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency’s architects and approved by the City and the Agency, and (2) if appropriate, paying the costs and expenses of issuing the Bonds.
The Treasurer shall make a withdrawal from the 2010B Construction Account only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency’s architects stating that such payment is being made for a purpose within the scope of this Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Nothing hereinbefore contained shall prevent the payment out of the 2010B Construction Account or another subaccount in the 2010B Construction Account of all costs and expenses incident to the issuance of the Bonds without a certificate from the Agency’s architects.

(b) Money in the 2010C Construction Account shall be used by the Agency solely for the purpose of (1) paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency’s architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency’s architects and approved by the City and the Agency, and (2) if appropriate, paying the costs and expenses of issuing the Bonds.

The Treasurer shall make a withdrawal from the 2010C Construction Account only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency’s architects stating that such payment is being made for a purpose within the scope of this Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Nothing hereinbefore contained shall prevent the payment out of the 2010C Construction Account or another subaccount in the 2010C Construction Account of all costs and expenses incident to the issuance of the Bonds without a certificate from the Agency’s architects.

(c) On the date on which the construction of all of the Projects all or a portion of the costs of which have been paid from the proceeds of the Bonds has been completed (the “Completion Date”) as certified by the Agency’s architects, (1) any surplus remaining in any fund or account in the 2010B Construction Account shall be transferred to and deposited in the 2010B Debt Service Account in the Debt Service Fund and (2) any surplus remaining in any fund or account in the 2010C Construction Account shall be transferred to and deposited in the 2010C Debt Service Account in the Debt Service Fund.

Section 505. Application of Money in the Debt Service Fund. The Agency shall make deposits into the 2010B Debt Service Account in the Debt Service Fund and the 2010B Debt Service Account as provided in the Facilities Agreement.

Any money or investments remaining in the Debt Service Fund after the retirement of the indebtedness for which the Bonds were issued and all other indebtedness of the Agency shall be transferred and paid to the City.

Section 506. Application of Money in the Rebate Fund.

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Agreement. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the requirements of the Code, for payment to the United States of America, and neither the Agency nor the Registered Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 509 and the Tax Agreement.
(b) The Agency shall periodically determine the arbitrage rebate under Section 148(f) of the Code in accordance with the Tax Agreement, and the Agency shall make payments to the United States of America at the times and in the amounts determined under the Tax Agreement. Any money remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be released to the Agency.

(c) Notwithstanding any other provision of this Resolution, including in particular Article VIII hereof, the obligation to pay arbitrage rebate to the United States and to comply with all other requirements of this Section and the Tax Agreement shall survive the defeasance or payment in full of the Bonds.

Section 507. Deposits and Investment of Money. Money in each of the funds or accounts created by and referred to in this Resolution shall be deposited in a bank or banks or other legally permitted financial institutions that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the financial institutions holding such deposits as provided by the laws of the State. All money held in the funds created by this Resolution shall be kept separate and apart from all other funds of the Agency so that there shall be no commingling of such funds with any other funds of the Agency.

Money held in any fund referred to in this Resolution may be invested by the Treasurer at the direction of the Board, in accordance with this Resolution and the Tax Agreement, in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any fund shall be transferred to the appropriate account in the Construction Fund until the Completion Date, and thereafter shall accrue to and become a part of the fund which generated the earnings.

Section 508. Payments Due on Saturdays, Sundays and Holidays. If any payment on a Bond is due on a date which is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such payment date, and no interest shall accrue for the period after such payment date.

Section 509. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Agency to the Registered Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Registered Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Resolution or on, or with respect to, such Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay to the Agency the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Agency, and the Registered Owner thereof shall be entitled to look only to the Agency for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Agency shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.
ARTICLE VI

REMEDIES

Section 601. Remedies. The provisions of this Resolution, including the covenants and agreements herein contained, shall constitute a contract between the Agency and the Registered Owners of the Bonds, and the Registered Owner or Owners of not less than 10% in aggregate principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Registered Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Registered Owner or Owners against the Agency and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Agency, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners of the Bonds.

Section 602. Limitation on Rights of Registered Owners. The covenants and agreements of the Agency contained herein and in the Bonds shall be for the equal benefit, protection and security of the Registered Owners of any or all of the Bonds. All of the Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, or date of Maturity or right of prior redemption as provided in this Resolution. No one or more Registered Owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Registered Owners of such Outstanding Bonds.

Section 603. Remedies Cumulative. No remedy conferred herein upon the Registered Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies consequent thereon. No delay or omission of any Registered Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered Owners of the Bonds by this Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. If any suit, action or proceedings taken by any Registered Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to such Registered Owner, then, and in every such case, the Agency and the Registered Owners of the Bonds shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Registered Owners shall continue as if no such suit, action or other proceedings had been brought or taken.
ARTICLE VII

DEFEASANCE

Section 701. Defeasance. When the principal or Redemption Price of and interest on any or all of the Bonds have been paid and discharged, then the requirements contained in this Resolution and the pledge of the Agency’s faith and credit hereunder and all other rights granted hereby shall terminate with respect to such Bonds so paid and discharged. Bonds or the interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company having full trust powers, at or prior to the Stated Maturity or Redemption Date of such Bonds, in trust for and irrevocably appropriated thereto, money and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of such Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments, provided, however, that if any such Bonds are to be redeemed prior to their Stated Maturity, (a) the Agency has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the Agency has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to give such notice of redemption in compliance with Section 302(a) hereof. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Agency, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Registered Owners of the Bonds, and such money shall be and is hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or other bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Resolution.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 801. Tax Covenants.

(a) The Agency covenants and agrees that it will comply with the Tax Agreement.

(b) The foregoing covenant shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to Article VII hereof or any other provision of this Resolution, until the final maturity date of all Bonds Outstanding.

Section 802. Filing of Internal Revenue Service Return Required for U.S. Treasury Interest Subsidy.

(a) As a condition to eligibility for receipt of any U.S. Treasury Interest Subsidy for any Bonds which may be issued as Build America Bonds or Recovery Zone Economic Development Bonds, the Agency understands that current law requires it to complete, sign and file Form 8038-CP with the U.S. Internal Revenue Service no earlier than 90 days or later than 45 days prior to each Interest Payment Date. Failure to comply with applicable filing procedures may result in late payment of one or more U.S. Treasury Interest Subsidy payments. The Agency further understands that, under Code Sections 6401 and 6402, U.S. Treasury Interest Subsidy payments are treated as “overpayments” of tax, and the U.S. Internal Revenue Service may offset all or a portion of one or more U.S. Treasury Interest Subsidy payments
against any outstanding tax liability of the Agency, including unpaid federal payroll taxes, debts owed to other federal agencies, and other federal taxes due. Failure to receive U.S. Treasury Interest Subsidy payments shall not result in any abatement, diminution, deduction, setoff or defense to the Agency’s obligations to pay interest on the Bonds and to perform and observe the other covenants and agreements herein.

(b) Not earlier than 100 days or later than 90 days prior to each Interest Payment Date, the Registrar shall send a notice to the Agency containing the following information:

1. The filing period during which the next Form 8038-CP must be filed (i.e., 45 to 90 days prior to the next Interest Payment Date);

2. The dollar amount of the interest coming due on the next subsequent Interest Payment Date (without deduction of any U.S. Treasury Interest Subsidy, and assuming no further unanticipated prepayments of interest);

3. The dollar amount of the U.S. Treasury Interest Subsidy due; and

4. A blank Form 8038-CP, together with the instructions issued by the United States Treasury.

(c) Form 8038-CP shall be completed, signed and filed with the IRS by the Agency not earlier than 90 days or later than 45 days prior to each Interest Payment Date, with a copy of such filing sent to the Registrar. If the Registrar has not received a copy of the filed Form 8038-CP by 75 days prior to the Interest Payment Date, the Registrar shall re-send the filing reminder notice previously sent to the Agency. The Registrar shall not be responsible for the actual filing of Form 8038-CP with the U.S. Internal Revenue Service, or any payment from the United States Treasury in accordance with §§ 54AA and 6431 of the Code.

(d) Nothing contained in this Section shall limit the Agency from engaging the Registrar or any other individual or firm to complete Form 8038-CP as a paid tax return preparer under a separate agreement. In such event, the Agency may notify the Registrar of such engagement and thereafter the information described in Section 802(b) and (c) above may, if requested by the Agency, be provided only to the tax return preparer identified by the Agency.

Section 803. Continuing Disclosure. The Agency hereby (a) authorizes and directs that an Authorized Officer execute and deliver, on the date of issue of the Bonds, the Continuing Disclosure Certificate in such form as shall be satisfactory to Bond Counsel, and (b) covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Resolution, failure of the Agency to comply with the Continuing Disclosure Certificate shall not be considered an event of default hereunder; however, any Participating Underwriter (as such term is defined in the Continuing Disclosure Certificate) or any Beneficial Owner or any Registered Owner of a Bond may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Agency to comply with its obligations under this Section 804.

Section 804. Amendments. The rights and duties of the Agency and the Registered Owners, and the terms and provisions of the Bonds or of this Resolution, may be amended or modified at any time in any respect by resolution of the Agency with the written consent of the Registered Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Registered Owners and duly acknowledged.
or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Secretary, but no such modification or alteration shall:

(a) extend the maturity of any payment of principal or interest due upon any Bond;

(b) effect a reduction in the amount which the Agency is required to pay as principal of or interest on any Bond;

(c) permit preference or priority of any Bond over any other Bond; or

(d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Resolution.

Any provision of the Bonds or of this Resolution may, however, be amended or modified by resolution duly adopted by the governing body of the Agency at any time in any legal respect with the written consent of the Registered Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Registered Owners, the Agency may amend or supplement this Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Registered Owners.

Every amendment or modification of the provisions of the Bonds or of this Resolution, to which the written consent of the Registered Owners is given, as above provided, shall be expressed in a resolution adopted by the Board amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Resolution shall always be kept on file in the office of the Secretary, and shall be made available for inspection by the Registered Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Resolution will be sent by the Secretary to any such Registered Owner or prospective purchaser.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Secretary a copy of such amendatory or supplemental resolution of the Agency, duly certified, as well as proof of any required consent to such modification by the Registered Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Agency shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Resolution which affects the duties or obligations of the Paying Agent under this Resolution.

Section 805. Notices, Consents and Other Instruments by Registered Owners. Any notice, consent, request, direction, approval or other instrument to be signed and executed by any Registered Owner may be in any number of concurrent writings of similar tenor and may be signed or executed by such Registered Owner in person or by an agent with written authorization. Proof of the execution of any such instrument or writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Resolution, and shall be conclusive in favor of the Agency and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:
(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Registered Owners of the requisite aggregate principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Resolution, Bonds owned by the Agency shall be disregarded and deemed not to be Outstanding under this Resolution, except that, in determining whether the Registered Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Registered Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as provided if the pledgee establishes to the satisfaction of the Registered Owners the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Agency.

Section 806. Further Authority. The officers of the Agency, including the Chair and Secretary, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 807. Severability. If any section or other part of this Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Resolution.

Section 808. Facilities Agreement; Inconsistencies. In the event that any provisions of this Resolution are inconsistent with the Facilities Agreement, the provisions of the Facilities Agreement shall govern.

Section 809. Governing Law. This Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 810. Effective Date. This Resolution shall take effect and be in full force from and after its passage by the Board as provided by law.

The remainder of this page intentionally left blank.
PASSED: October __, 2010.

WEST HAYMARKET JOINT PUBLIC AGENCY IN THE STATE OF NEBRASKA

ATTEST:

By: ____________________________
    Chair

By: ____________________________
    Secretary
EXHIBIT A  
(FORM OF BOND)  

EXCEPT AS OTHERWISE PROVIDED IN THE RESOLUTION (REFERRED TO HEREIN), THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

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<th>Registered No. R-__</th>
<th>Registered $__________</th>
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UNITED STATES OF AMERICA  
STATE OF NEBRASKA  
LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY

GENERAL OBLIGATION [RECOVERY ZONE ECONOMIC DEVELOPMENT] FACILITY BOND  
TAXABLE SERIES 2010[B/C]  
[(BUILD AMERICA BOND – DIRECT PAY)]

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Maturity Date</th>
<th>Dated Date</th>
<th>CUSIP Number</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>June 15, 20__</td>
<td>__________, 2010</td>
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REGISTERED OWNER: CEDE & CO.  

PRINCIPAL AMOUNT: DOLLARS

WEST HAYMARKET JOINT PUBLIC AGENCY (the “Agency”), a joint public agency duly organized and validly existing under and pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, the “Act”) and the West Haymarket Joint Public Agency Agreement dated as of April 1, 2010 (the “Agreement”) duly authorized, executed and delivered by The City of Lincoln, Nebraska (the “City”) and The Board of Regents of the University of Nebraska, for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount stated above on the Maturity Date shown above unless called for redemption prior to such Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months) from the Dated Date shown above or from the most recent interest payment date to which interest has been paid or duly provided for, payable semiannually on June 15 and December 15 in each year, beginning June 15, 2011, until the Principal Amount has been paid.

The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption by check or draft mailed to the person in whose name this Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the designated corporate trust
administration office of **UNION BANK AND TRUST COMPANY** (the “**Paying Agent**”). The interest payable on this Bond on any interest payment date shall be paid to the person in whose name this Bond is registered on the registration books maintained by the Paying Agent at the close of business on the Record Date for such interest, which shall be the fifteenth day (whether or not a Business Day) preceding an interest payment date. Such interest shall be payable by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register. The principal or redemption price of and interest on this Bond shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon has been executed by the Paying Agent.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions and things required to be done and to exist precedent to and in the issuance of the Bonds have been done and performed and do exist in due and regular form and manner as required by the constitution and laws of the State of Nebraska; that the Agency has covenanted and agreed that it will cause to be levied and collected a direct annual tax, in addition to all other taxes, upon all taxable property in the City in accordance with the provisions of the Act and the Agreement sufficient in rate and amount to pay the principal or redemption price of and interest on the Bonds when due; and that the total indebtedness of the Agency, including this Bond and the series of which it is one, does not exceed any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the **WEST HAYMARKET JOINT PUBLIC AGENCY** has caused this Bond to be executed by the manual or facsimile signature of the Chair of the Board and attested by the manual or facsimile signature of the Secretary of the Board.

**WEST HAYMARKET JOINT PUBLIC AGENCY**

ATTEST:

By: __________ (facsimile signature) 
Chair

By: __________ (facsimile signature) 
Secretary

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds of the issue described in the within-mentioned Resolution.

Authentication Date: ________________

**UNION BANK AND TRUST COMPANY**, Paying Agent

By: ________________________________

Authorized Officer or Signatory
ADDITIONAL PROVISIONS

This Bond is one of an authorized series of bonds of the Agency designated “General Obligation [Recovery Zone Economic Development] Facility Bonds, Taxable Series 2010[B/C] [[Build America Bonds – Direct Pay]],” aggregating the principal amount of $100,000,000 (the “Bonds”), issued by the Agency for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket Redevelopment Area (herein defined) of the City including but not limited to a sports/entertainment arena (the “Arena”), roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively, the “West Haymarket Facilities”), and acquiring land and relocating existing businesses, to undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities, (b) paying the interest accruing and falling due on the Bonds through and including June 15, 2011, and (c) paying the costs of issuing the Bonds, under the authority of and in full compliance with the constitution and laws of the State of Nebraska, and pursuant to the Act, the Agreement and the Bond Resolution duly passed (the “Resolution”) and proceedings duly and legally had by the Board of the Agency. Reference is hereby made to the Act, the Agreement, the Resolution and the Facilities Agreement, dated September 8, 2010 (the “Facilities Agreement”), between the City and the Agency, to all of the provisions of each of which any Registered Owner hereof by the acceptance hereof thereby assents, for a description of the nature and extent of the security for the Bonds, the terms and conditions upon which the Agency may issue obligations thereunder, definitions of terms, the funds, taxes and revenues pledged to the payment of the principal or redemption price of and interest on the Bonds, the nature and extent and manner of enforcement of the pledge, the rights and remedies of the Registered Owner hereof with respect thereto; the terms and conditions upon which this Bond is issued; and the rights, duties and obligations of the Agency. Certified copies of the Resolution and the Agreement are on file at the office of the agency and at the Designated Office (defined in the Resolution) of the Paying Agent.

At the option of the Agency, Bonds or portions thereof maturing on or after December 1, 201__ may be redeemed and paid prior to maturity at any time on or after _________________, 201__, as a whole or in part in such principal amounts and from such maturity or maturities as the Agency may determine (Bonds of less than a full maturity to be selected in multiples of $5,000 principal amount in such equitable manner as the Paying Agent shall designate) at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest on such principal amount to the redemption date.

[The Bonds maturing on June 15 in the years 2030, 2035, 2040 and 2045 are subject to redemption prior to maturity in part by lot by operation of a mandatory sinking fund on June 15 in each of the years and in the principal amounts set forth in the Resolution, upon payment of such principal amount thereof plus accrued interest thereon to such date of redemption, but without premium. Selection of any Bonds maturing June 15 in the years 2030, 2035, 2040 or 2045 or portions thereof, to be redeemed shall be in the sole discretion of the Registrar.]

[The Bonds shall be subject to extraordinary optional redemption prior to maturity at the option of the Agency, in whole or in part upon the occurrence of the modification, amendment or interpretation of Sections 54AA or 6431 of the Code in a manner that would cause any interest subsidy payment from
the U.S. Treasury to be reduced or eliminated (an “Extraordinary Event”), at a Redemption Price equal to the greater of:

(i) 100% of the principal amount of the Bonds to be redeemed; or

(ii) the sum of the present values of the remaining scheduled payments of principal and interest to [the first optional par call date] of such Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Bonds are to be redeemed, discounted to the date on which such Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at a discount rate equal to the sum of (A) as of any Redemption Date, the yield to [the first optional par call date] as of such Redemption Date of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the Redemption Date (excluding inflation indexed securities) (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the Redemption Date to the [the first optional par call date] of the Bonds to be redeemed; provided, however, that if the period from the Redemption Date to such [the first optional par call date] is less than one year, the weekly average yield on actually traded U.S. Treasury securities adjusted to a constant maturity of one year will be used (the “Treasury Rate”) plus (B) ______ basis points;

plus in each case, accrued and unpaid interest on such Bonds to be redeemed to the Redemption Date.

Notice of redemption, unless waived, is to be given by the Paying Agent by mailing an official redemption notice by first-class mail at least 30 days prior to the redemption date to the original purchaser of the Bonds and each registered owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register maintained by the Paying Agent. Notice of redemption having been given as provided, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Agency defaults in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest.

The Bonds constitute general obligations of the Agency payable as to both principal and interest from (a) the Revenues (as defined in the Facilities Agreement) and (b) ad valorem taxes which may be levied in accordance with the provisions of the Act and the Agreement upon all the taxable property within the City sufficient in rate and amount to pay the principal or redemption price of and interest on this Bond when and as the same become due.

The Bonds are issuable in the form of fully registered Bonds in the denominations of $5,000 or any integral multiple thereof.

This Bond may be transferred or exchanged, as provided in the Resolution, only on the Bond Register kept for that purpose at the Designated Office of the Paying Agent, upon surrender of this Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Paying Agent duly executed by the Registered Owner or the Registered Owner’s duly authorized agent, and thereupon a new Bond or Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Resolution and upon payment of the charges therein prescribed. The Agency and the Paying Agent may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.
The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Resolution. One Bond certificate with respect to each date on which the Bonds are stated to mature or with respect to each form of Bonds, registered in the nominee name of The Depository Trust Company (the “Securities Depository”), is being issued and required to be deposited with the Securities Depository and immobiized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository’s participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Agency and the Paying Agent will recognize the Securities Depository nominee, while the registered owner of this Bond, as the owner of this Bond for all purposes, including (a) payments of principal or redemption price of and interest on this Bond, (b) notices and (c) voting. Transfer of principal or redemption price and interest payments to participants of the Securities Depository, and transfer of principal or redemption price and interest payments to beneficial owners of the Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The Agency and the Paying Agent will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Bond, notwithstanding the provision hereinafore contained, payments of principal or redemption price of and interest on this Bond shall be made in accordance with existing arrangements among the Agency, the Paying Agent and the Securities Depository.

EXCEPT AS OTHERWISE PROVIDED IN THE RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.
ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

____________________________________________________________________________________

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
____________________ agent to transfer the within Bond on the books kept by the Paying Agent for the
registration thereof, with full power of substitution in the premises.

Dated: ____________________ _______________________________________ 

NOTICE: The signature to this assignment must correspond with the name of the Registered
Owner as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

_______________________________________
(Name of Eligible Guarantor Institution as defined by SEC Rule 17 Ad-15 (17 CFR 240.17 Ad-15))

By: ________________________________
Title: ________________________________
EXHIBIT B

DESCRIPTION OF PROJECTS

West Haymarket Facilities (consisting of the following Projects)

(1) a sports/entertainment arena (the “Arena”)

(2) roads, streets and sidewalks

(3) a pedestrian overpass

(4) public plaza space

(5) sanitary sewer mains

(6) water mains

(7) electric transmission lines

(8) drainage systems

(9) flood control

(10) parking garages

(11) surface parking lots

Related Projects (consisting of the following Projects)

(1) acquisition of land and relocation of existing businesses

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

BOND REGISTRAR AND PAYING AGENT AGREEMENT
EXHIBIT D

PRELIMINARY OFFICIAL STATEMENT
EXHIBIT E

FORM OF NOTICE OF SALE
The Bonds are offered in book entry form only when, as and if issued by the Agency and accepted by the Underwriter, subject to the approval of legality by Gilmore & Bell, P.C., Bond Counsel, under existing law, the interest on the Bonds is exempt from income taxation by the State of Nebraska. See “TAX MATTERS.”

OFFICIAL STATEMENT
LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)

[2010B Principal Amount]* [2010C Principal Amount]*

GENERAL OBLIGATION FACILITY BONDS

[2010B Principal Amount]*
TAXABLE SERIES 2010B
(BUILD AMERICA BONDS – DIRECT PAY)

[2010C Principal Amount]*
GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT FACILITY BONDS
TAXABLE SERIES 2010C

Dated: date of delivery
Due: December 15, as set forth on the inside cover

The West Haymarket Joint Public Agency (the “Agency”) will use the proceeds of the Bonds to pay the costs of (a) a sports/entertainment arena (the “Arena”), roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively, the “West Haymarket Facilities”), acquiring land and relocating existing businesses, undertaking environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, the “Projects,” and, individually, a “Project”) pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the “JPA Act”), and certain agreements described herein, (b) interest accruing and falling due on the Bonds through and including June 15, 2011, and (c) issuing the Bonds. See “THE BONDS – Redemption.”

The Bonds are subject to optional, mandatory and extraordinary redemption as set forth under “THE BONDS – Redemption.”

The Bonds are issued pursuant to the terms of a resolution duly passed by the Board of the Agency on October ___, 2010 (the “Resolution”). The Bonds are general obligations of the Agency payable, unless paid from other sources, from taxes levied by valuation on all taxable property without limitation as to rate or amount in The City of Lincoln, Nebraska (the “City”), pursuant to the provisions of the JPA Act and the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency dated as of April 1, 2010 (the “JPA Agreement”) between the City and The Board of Regents of the University of Nebraska (the “Regents”). Pursuant to the Facilities Agreement dated September 8, 2010 (the “Facilities Agreement”) between the City and the Agency, (a) the City is obligated to collect all revenues, receipts and income received by the Agency from any source (the “Revenues”) and (b) in the event that 45 days prior to the payment date of any principal or interest on Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City is obligated to loan to the Agency the full amount of such deficiency not later than such date of payment. Any such loan, together with interest accrued thereon, shall be repaid to the City (a) first, from the first receipts of Revenues, and (b) second, from taxes levied and collected by the Agency pursuant to the provisions of the Facilities Agreement. If the projected actual Available Revenues (defined to be all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund) for the fiscal year are less than the budgeted Available Revenues for such fiscal year by $1,000,000 or more, the Agency is obligated to implement the Agency Bond Levy. See “THE AGENCY,” “SECURITY,” “NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION” and “APPENDIX C – SUMMARY OF PRINCIPAL DOCUMENTS – JPA Agreement” and “Facilities Agreement.”

MATURELY SCHEDULE – SEE INSIDE COVER

[UNDERWRITER NAME]

AMERITAS INVESTMENT CORP.

has acted as Financial Advisor

The Bonds are offered in book entry form only when, and as if issued by the Agency and accepted by the Underwriter, subject to the approval of legality by Gilmore & Bell, P.C., Lincoln, Nebraska, Bond Counsel. Certain legal matters will be passed upon for the City and the Agency by Rodney M. Confer, City Attorney and general counsel to the JPA. It is expected that the Bonds in definitive form will be available for delivery through DTC on or about November ___, 2010.

The Date of this Official Statement is November ___, 2010.

*Preliminary, subject to change.
# MATURITY SCHEDULE

LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY  
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)

## [2010B Principal Amount]*

**GENERAL OBLIGATION FACILITY BONDS**  
**TAXABLE SERIES 2010B**  
**(BUILD AMERICA BONDS – DIRECT PAY)**

<table>
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<th>Maturity (December 15)</th>
<th>Principal Amount*</th>
<th>Rate of Interest</th>
<th>Yield</th>
<th>Price</th>
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## [2010C Principal Amount]*

**GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT FACILITY BONDS**  
**TAXABLE SERIES 2010C**

<table>
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*Preliminary, subject to change.
LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY

Jayne Snyder (City Council) Chair and Representative
Tim Clare (Regent) Vice Chair and Representative
Chris Beutler (Mayor) Representative
Dan Marvin Secretary
Don Herz Treasurer
Rodney Confer General Counsel

THE CITY OF LINCOLN, NEBRASKA

Mayor
Chris Beutler

City Council
John Spatz (Chair)
Jon Camp
Jonathan Cook
Adam Hornung
Eugene Carroll
Doug Emery
Jayne Snyder

City Administration

Don Herz .............................................................................................................................. Finance Director
Rodney Confer .................................................................................................................. City Attorney
Marvin Krout ...................................................................................................................... Planning Director
Lynn Johnson ..................................................................................................................... Parks and Recreation Director
Kevin Wailes .................................................................................................................... LES Administrator and CEO
David Landis .................................................................................................................... Urban Development Director
Pat Leach ............................................................................................................................ Library Director
Greg MacLean .................................................................................................................. Public Works and Utilities Director
Bruce Dart .......................................................................................................................... Health Director
Mark Koller ........................................................................................................................ Personnel Director
Thomas Casady ................................................................................................................ Police Chief
Niles Ford ............................................................................................................................ Fire Chief
Chuck Zimmerman .......................................................................................................... Interim Director, Building and Safety

Peggy Tharnish, City Controller

UNDERWRITER

[Underwriter Name]

REGISTRAR AND PAYING AGENT

Union Bank and Trust Company

FINANCIAL ADVISOR

Ameritas Investment Corp.

BOND COUNSEL

Gilmore & Bell, P.C.
THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

Bob Phares, Chair, North Platte, Nebraska
Bob Whitehouse, Vice Chair, Papillion, Nebraska
Tim Clare, Lincoln, Nebraska
Randolph M. Ferlic, Omaha, Nebraska
Chuck Hassebrook, Lyons, Nebraska
Howard L. Hawks, Omaha, Nebraska
Jim McClurg, Lincoln, Nebraska
Kent A. Schroeder, Kearney, Nebraska
Michael Crabb, Student Regent, UNO
Andrew Klutman, Student Regent, UNMC
Justin Solomon, Student Regent, UNL
Nate Summerfield, Student Regent, UNK

UNIVERSITY OF NEBRASKA OFFICERS

James B. Milliken, President
Linda Pratt, Executive Vice President and Provost
Peter Kotsiopulos, Vice President for University Affairs
David E. Lechner, Vice President for Business and Finance
Joel D. Pedersen, Vice President and General Counsel
Donal J. Burns, Corporation Secretary
John Christensen, Chancellor, UNO
Doug Kristensen, Chancellor, UNK
Harold M. Maurer, Chancellor, UNMC
Harvey S. Perlman, Chancellor, UNL
REGARDING USE OF THIS OFFICIAL STATEMENT

AUTHORIZED INFORMATION AND REPRESENTATIONS

No dealer, broker, sales representative or other person has been authorized by the Agency, the City, the Regents or [Underwriter Name] (the “Underwriter”) to give any information or to make any representations, other than those contained in this Official Statement; and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from the Agency, the City, the Regents and other sources that are believed to be reliable, but is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Underwriter. The Underwriter has provided the following sentence for inclusion in this Official Statement: “The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.” The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstance, create any implication that there has been no change in the affairs of the Agency, the City or the Regents since the date hereof.

REGISTRATION EXEMPTION

The Bonds have not been registered with the United States Securities and Exchange Commission under the Securities Act of 1933, as amended (the “Securities Act”), in reliance upon an exemption contained in the Securities Act. In making an investment decision, investors must rely upon their own examination of the Agency and the City and the terms of the offering, including the merits and risks involved. No federal or state securities commission or regulatory authority has recommended the Bonds. Moreover, none of the foregoing authorities has confirmed the accuracy or determined the adequacy of this Official Statement. Any representation to the contrary is a criminal offense.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as “plan,” “expect,” “estimate,” “anticipate,” “budget,” “intend” or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. None of the Agency, the City or any other party plans to issue any updates or revisions to those forward-looking statements if or when the expectations, or events, conditions or circumstances upon which such statements are based occur.
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THE CITY OF LINCOLN, NEBRASKA – GENERAL, ECONOMIC AND FINANCIAL INFORMATION .................................. APPENDIX A

THE CITY OF LINCOLN, NEBRASKA - ACCOUNTANT’S REPORT AND AUDITED FINANCIAL STATEMENTS ................................APPENDIX B

SUMMARY OF PRINCIPAL DOCUMENTS ................................................................................................APPENDIX C

PROJECTED CASH FLOWS .................................................................................................................. APPENDIX D

FORM OF OPINION OF BOND COUNSEL ............................................................................................... APPENDIX E

BOOK-ENTRY SYSTEM .......................................................................................................................... APPENDIX F

THE UNDERWRITER INTENDS TO OFFER THE BONDS INITIALLY AT THE OFFERING PRICES SET FORTH ON THE INSIDE COVER PAGE OF THIS OFFICIAL STATEMENT, WHICH MAY SUBSEQUENTLY CHANGE WITHOUT ANY REQUIREMENT OF PRIOR NOTICE. IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THIS OFFICIAL STATEMENT IS NOT, AND MAY NOT BE CONSTRUED AS, A CONTRACT WITH THE PURCHASERS OF THE BONDS. STATEMENTS CONTAINED IN THE OFFICIAL STATEMENT WHICH INVOLVE ESTIMATES, FORECASTS, OR MATTERS OF OPINION, WHETHER OR NOT EXPRESSLY SO DESCRIBED HEREIN, ARE INTENDED SOLELY AS SUCH AND ARE NOT TO BE CONSTRUED AS A REPRESENTATION OF FACTS.
OFFICIAL STATEMENT

LINCOLN, NEBRASKA WEST HAYMARKET JOINT PUBLIC AGENCY
(The City of Lincoln, Nebraska and The Board of Regents of the University of Nebraska)

$[2010B Principal Amount]*
GENERAL OBLIGATION FACILITY BONDS
SERIES 2010B

$[2010C Principal Amount]*
GENERAL OBLIGATION RECOVERY ZONE ECONOMIC DEVELOPMENT FACILITY BONDS
SERIES 2010C

INTRODUCTION

This introduction is only a brief description and summary of certain information contained in this Official Statement and is qualified in its entirety by reference to more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. Definitions of capitalized terms not otherwise defined herein may be found in “APPENDIX C: SUMMARY OF PRINCIPAL DOCUMENTS – Definitions.”

Purpose of the Official Statement

The purpose of this Official Statement is to furnish information relating to (a) the West Haymarket Joint Public Agency (the “Agency”), (b) The City of Lincoln, Nebraska (the “City”), and (c) the Agency’s (1) $[2010B Principal Amount]* principal amount General Obligation Facility Bonds, Taxable Series 2010B (Build America Bonds – Direct Pay), dated the date of delivery thereof (the “Series 2010B Bonds”) and (2) $[2010C Principal Amount]* principal amount General Obligation Recovery Zone Economic Development Facility Bonds, Taxable Series 2010C, dated the date of delivery thereof (the “Series 2010C Bonds”).

The Agency

The Agency was created pursuant to the Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended, the “JPA Act”), and the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency dated as of April 1, 2010 (the “JPA Agreement”) between the City and The Board of Regents of the University of Nebraska (the “Regents”). The Agency was created (a) for purposes of constructing, equipping, furnishing and financing public facilities in the West Haymarket Redevelopment Area (herein defined) of the City including but not limited to a sports/entertainment arena (the “Arena”), roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively, the “West Haymarket Facilities”), and (b) to acquire land and to relocate existing businesses, to undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as described in the Bond Resolution (hereinafter defined), as the same may be amended from time to time, the “Projects,” and, individually, a “Project”).

The Projects

The Projects consist of constructing, equipping, furnishing and financing various public facilities in the West Haymarket Redevelopment Area of the City including, but not limited to, the Arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots, and acquiring land and relocating existing businesses, undertaking environmental remediation and site preparation as necessary and appropriate for the construction,

*Preliminary, subject to change.
The City

The City is a city of the primary class duly organized and validly existing under the laws of the State, including, without limitation, Chapter 15, Reissue Revised Statutes of Nebraska, as amended. The City’s outstanding General Obligation bonds are rated “Aaa” by Moody’s Investors Service, Inc. and “AAA” by Standard & Poor’s Ratings Group. See “THE CITY.”

The Regents

The Regents are a public body corporate duly created and existing under the laws of the State of Nebraska. Pursuant to a Memorandum of Understanding dated as of March 31, 2010 (the “MOU”) between the City and the Regents, the Regents have agreed to lease the Arena for a term of 30 years which is anticipated to begin on September 1, 2013 to play the University of Nebraska-Lincoln men’s and women’s varsity basketball home games. The terms of the MOU will be formalized through an Operating Agreement between the City and the Regents, which is expected to be executed and delivered by the parties by the end of 2010. Other than the payment of rent for its use of the Arena pursuant to the Operating Agreement, the Regents have no obligation to pay the principal or redemption price of and interest on the Bonds. The Regents’ outstanding bonds are rated “Aa1” by Moody’s Investors Service, Inc. and “AA” by Standard & Poor’s Ratings Group. See “APPENDIX C - SUMMARY OF PRINCIPAL DOCUMENTS – Memorandum of Understanding.”

The Bonds

The Series 2010B and the Series 2010C Bonds (collectively, the “Bonds”) will be issued pursuant to a Bond Resolution passed October ___, 2010 (the “Bond Resolution”) by the Agency for the purpose of paying (a) all or a portion of the costs of one or more Projects, (b) the interest accruing and falling due on the Bonds through and including June 15, 2011, and (c) the costs of issuing the Bonds. See “PLAN OF FINANCING” and “THE BONDS.”

The Bonds are issued pursuant to certain provisions of the Internal Revenue Code of 1986, as amended (the “Code”), as further amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (the “Recovery Act”) and other applicable law. The Agency has elected to treat the Bonds as “Build America Bonds” under Code § 54AA(g)(2). The Agency will elect to receive direct payments from the United States Department of the Treasury (the “U.S. Treasury”) equal to a portion of the interest payable on the Bonds. See “SECURITY– The Recovery Act” and “TAX MATTERS.”

Security and Source of Payment

The principal or redemption price of and interest on the Bonds are general obligations of the Agency payable, unless paid from other sources, from taxes levied by the Agency on all taxable property in the City without limitation as to rate or amount pursuant to the provisions of the JPA Act and the JPA Agreement. Pursuant to the JPA Act, under the
JPA Agreement, the City has allocated to the Agency its authority to cause a levy of taxes within the City pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which will be sufficient to pay the principal or redemption price of and interest on the Bonds when and as the same become due (the “Agency Bond Levy”). The Facilities Agreement requires that (a) the City collect all revenues, receipts and income received by the Agency from any source (the “Revenues”) and (b) in the event that 45 days prior to the payment date of any principal or interest on Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest as provided in the Facilities Agreement from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon, shall be repaid to the City (i) first, from the first receipts of Revenues, and (ii) second, from taxes levied and collected by the Agency pursuant to the provisions of the Facilities Agreement. If the projected actual Available Revenues (defined to be all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund) for the fiscal year are less than the budgeted Available Revenues for such fiscal year by $1,000,000 or more, the Agency is obligated to implement the Agency Bond Levy. See “THE AGENCY,” “SECURITY,” “NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION,” “APPENDIX C – SUMMARY OF PRINCIPAL DOCUMENTS – JPA Agreement,” and “- Facilities Agreement,” and “- Bond Resolution” and “APPENDIX D – PROJECTED CASH FLOWS.”

Financial Statements

The Agency was created on April 2, 2010. The first audited financial statements for the Agency are being prepared for its first partial fiscal year ending August 31, 2010.

The audited financial statements of the City, as of and for the year ended August 31, 2009, are included in “APPENDIX B – THE CITY OF LINCOLN, NEBRASKA - ACCOUNTANT’S REPORT AND AUDITED FINANCIAL STATEMENTS.” These financial statements have been audited by BKD, LLP, independent auditors, to the extent and for the periods indicated in their report, which is also included in “APPENDIX B – THE CITY OF LINCOLN, NEBRASKA - ACCOUNTANT’S REPORT AND AUDITED FINANCIAL STATEMENTS.”

Ratings

The Agency has applied to Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Group for ratings on this issue. See “MISCELLANEOUS – Ratings.”

THE AGENCY

The Agency was created on April 2, 2010 pursuant to the JPA Act and the JPA Agreement for the purpose of exercising any power, privilege or authority to facilitate land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing of public facilities, including, but not limited to, the Arena and the other West Haymarket Facilities and any other capital improvements or other projects pertaining to the redevelopment of an area in the City generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and “M” Street on the south (the “West Haymarket Redevelopment Area”), as determined by the Agency to be necessary, desirable, advisable or in the best interests of the City and the Regents.

Under the JPA Agreement, the governing body of the Agency (the “Board”) consists of the Mayor of the City, the member of The Board of Regents of the University of Nebraska from District No. 1, and a member of the Council of the City appointed by the Mayor. All actions may be taken by the affirmative vote of a majority of the Board, except
that the actions of the Agency related to the Arena (as opposed to the West Haymarket Facilities as a whole) require a
unanimous vote of the Board. Issuance of indebtedness of the Agency must also be approved by the Mayor and
Council of the City.

The members of the Board are as follows: Chris Beutler (Mayor of the City), Tim Clare (Regent from District No. 1),
and Jayne Snyder (member of the Council). The officers of the board are as follows:

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Jayne Snyder</td>
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<tr>
<td>Tim Clare</td>
<td>Vice Chair</td>
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<td>Dan Marvin</td>
<td>Secretary</td>
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<tr>
<td>Don Herz</td>
<td>Treasurer</td>
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Mr. Beutler and Mr. Clare serve on the Board for so long as they hold the office of Mayor and Regent, respectively.
Council Member Snyder’s term on the Board expires when a successor is appointed by the Mayor.

THE CITY

The City is a city of the primary class and political subdivision created and existing under the laws of the State,
including, without limitation, Chapter 15, Reissue Revised Statutes of Nebraska, as amended. The City encompasses
approximately 90 square miles and includes most of the urban area of Lancaster County. Located in southeastern
Nebraska approximately midway between Chicago and Denver, the City has an estimated population of over 251,000.
See “APPENDIX A – THE CITY OF LINCOLN, NEBRASKA – GENERAL, ECONOMIC AND FINANCIAL
INFORMATION” and “APPENDIX B – THE CITY OF LINCOLN, NEBRASKA - ACCOUNTANT’S
REPORT AND AUDITED FINANCIAL STATEMENTS.”

PLAN OF FINANCING

Authorization and Purpose of Bonds

The Bonds are authorized pursuant to and in full compliance with the Constitution and statutes of the State including,
particularly, the JPA Act. The Bonds are being issued pursuant to the Bond Resolution for the purpose of paying (a)
all or a portion of the costs of one or more Projects, (b) the interest accruing and falling due on the Bonds through and
including June 15, 2011, and (c) the costs of issuing the Bonds.

The Projects

The Projects consist of constructing, equipping, furnishing and financing various public facilities in the West
Haymarket Redevelopment Area of the City including, but not limited, to the Arena, roads, streets, sidewalks,
pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage
systems, flood control, parking garages and surface parking lots, and acquiring land and relocating existing businesses,
undertaking environmental remediation and site preparation as necessary and appropriate for the construction,
equipping, furnishing and financing of the West Haymarket Facilities. Upon acquisition of certain property currently
owned by the BNSF and Union Pacific Railroads, the Agency will initially own the property on which the Projects
will be constructed, equipped and furnished. The Arena Projects (consisting of the Arena and the related parking
improvements consisting of the surface parking lot northwest of the BNSF tracks, the parking garage adjacent to the
Arena and the surface parking lot on the Arena site) will be owned by the Agency until the Bonds are no longer
outstanding, at which time the Agency will transfer ownership of the Arena Projects to the City. The remaining
Projects will be transferred to the City upon the completion of construction of such Projects. The City will operate and maintain all of the Projects pursuant to the Facilities Agreement.

The Agency will deposit approximately $__________ of the proceeds of the Bonds in the Construction Fund as provided in the Bond Resolution. The total estimated cost of the Projects is approximately $340,000,000, which will be funded with the proceeds of the Series 2010A Bonds, the Series 2010B Bonds and the Series 2010C Bonds, together with additional debt of the Agency and available cash funds, including private contributions and other receipts of the Agency. The Agency currently estimates issuing bonds in a total amount not in excess of $225,000,000 (including the $100,000,000 principal amount of Bonds described in this Official Statement) to finance the Projects. Construction began in __________, 2010 and is estimated to be completed not later than September, 2013.

While the Agency recognizes that any project has risks related to cost overruns, the City has taken many steps to eliminate the likelihood and impact of any such overruns. Through the engagement of a nationally recognized program management firm, the Agency will have experts overseeing every step of the project design, planning and construction. The program management firm will (a) provide technical expertise for programming, budgeting, and criteria development of both the overall program and individual projects, (b) optimize and control schedule, budgets, quality, functionality, and efficiency of building design, construction and code compliance, (c) review expenditures and manage design and construction claims, (d) provide assistance in selection of architects and engineers, (e) manage construction to mitigate disruptions, delays, cost overruns, and change orders, (f) coordinate all capital expenditures to optimize cash flow, (g) prepare status reports and presentations, and (h) facilitate communication and data access between all project team members as well as a web site accessible by the public. In addition to retaining a program management firm, the Agency will construct the Arena using a “construction manager at risk” that will ensure certainty as to the total cost of the Arena itself. The City has also prioritized the construction of the infrastructure Projects such that any delay in such projects will not delay the opening of the Arena. Such measures will minimize any risk of cost overruns related to the Projects, as well as the risk of any delay in the timely opening of the Arena.

Sources and Uses of Funds

The following table summarizes the estimated sources of funds, including the proceeds from the sale of the Bonds, and the expected uses of such funds, in connection with the plan of financing:

**Sources of Funds:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds from Sale of Bonds</td>
<td>$</td>
</tr>
<tr>
<td>Less/Plus: net original issue discount/premium</td>
<td>$</td>
</tr>
<tr>
<td>Total sources of funds</td>
<td>$</td>
</tr>
</tbody>
</table>

**Uses of Funds:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Costs</td>
<td>$</td>
</tr>
<tr>
<td>Capitalized Interest</td>
<td>$</td>
</tr>
<tr>
<td>Underwriting Discount (____%)</td>
<td>$</td>
</tr>
<tr>
<td>Costs of Issuance</td>
<td>$</td>
</tr>
<tr>
<td>Total uses of funds</td>
<td>$</td>
</tr>
</tbody>
</table>

**THE BONDS**

The following is a summary of certain terms and provisions of the Bonds. Reference is hereby made to the Bonds and the provisions of the Bond Resolution for the detailed terms and provisions thereof.
Principal Maturities and Interest Rates

The Bonds will be dated the date of delivery thereof, numbered from R-1 upward in order of their issuance, mature on December 15 in the years and in the principal amounts set forth on the inside cover page of this Official Statement and bear interest calculated on the basis of a 360-day year consisting of twelve 30-day months at the rates per annum set forth on the cover page hereof. Interest is payable on June 15 and December 15 of each year, commencing June 15, 2011. The “Record Date” for each installment of interest shall be the fifteenth day (whether or not a business day) next preceding such interest payment date.

Form and Denomination

The Bonds are issuable as fully registered bonds and when issued will initially be available in book-entry form only in denominations of $5,000 and any integral multiple thereof. See “THE BONDS – Book-Entry System.”

Place of Payment

Unless the Bonds are being held in book-entry form only, the principal or redemption price thereof due at maturity or upon redemption prior to maturity is payable upon presentation and surrender of the Bonds to Union Bank and Trust Company, as bond registrar and paying agent (the “Registrar”), at its designated corporate trust administration office in Lincoln, Nebraska. Interest on the Bonds is payable by check or draft mailed on the date such interest is payable by the Registrar to the registered owner of such Bonds at such registered owner’s address as shown on the Record Date on the books of registry kept by the Registrar. During such time as the Bonds are being held in book-entry form only, the principal or redemption price of and interest on the Bonds are payable as described under “THE BONDS – Book-Entry System.”

Redemption

Optional Redemption. The Bonds are subject to redemption prior to maturity by written direction of the Agency, in whole or in part, on any Business Day, at a redemption price equal to the greater of:

(1) 100% of the principal amount of the Bonds to be redeemed; or

(2) The sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of the Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed, discounted to the date on which the Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the “Treasury Rate” (as defined herein) plus 30 basis points;

plus, in each case, accrued and unpaid interest on the Bonds to be redeemed to the redemption date.

The “Treasury Rate” is, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H. 15 (519) that has become publicly available at least five Business Days prior to the redemption date (excluding inflation indexed securities) (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Bonds to be redeemed; provided, however, that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

The redemption price of the Bonds to be redeemed pursuant to the optional redemption provision described above will be determined by an independent accounting firm, investment banking firm or financial advisor retained by the
Agency at the Agency’s expense to calculate such redemption price. The Registrar and the Agency may conclusively rely on the determination of such redemption price by such independent accounting firm, investment banking firm or financial advisor and will not be liable for such reliance. If the Bonds are not registered in book-entry form and if fewer than all of such Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate to be redeemed will be selected on a pro rata basis, provided that any such redemption must be performed such that all Bonds remaining outstanding will be in authorized denominations. If the Bonds are registered in book-entry form and if fewer than all of such Bonds of the same maturity and bearing the same interest rate are to be redeemed, the redemption of such Bonds will be performed, to the extent then permitted by the applicable rules and procedures of the then acting securities depository, in accordance with the preceding sentence. To the extent any such pro rata partial redemption is not then permitted by the applicable rules and procedures of the then acting securities depository, such Bonds will be redeemed by lot or other customary method in accordance with such rules and procedures. Currently, the applicable rules and procedures of DTC, the initial securities depository for the Bonds, provide that such partial redemptions be performed by lot. See “APPENDIX D - BOOK-ENTRY SYSTEM.”

Extraordinary Optional Redemption. The Bonds are subject to redemption prior to their maturity at the option of the Agency, in whole or in part, upon the occurrence of an “Extraordinary Event” (as defined herein), at a redemption price equal to the greater of:

1. 100% of the principal amount of the Bonds to be redeemed; or

2. The sum of the present value of the remaining scheduled payments of principal and interest to the maturity date of the Bonds to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed, discounted to the date on which the Bonds are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate, plus 100 basis points;

plus, in each case, accrued and unpaid interest on the Bonds to be redeemed to the redemption date.

An “Extraordinary Event” will have occurred if a material adverse change has occurred to Section 54AA or 6431 of the Internal Revenue Code of 1986, as amended (as such Sections were added by Section 1531 of the Recovery Act, pertaining to “Build America Bonds”) pursuant to which the Agency’s 35% cash subsidy payment from the United States Treasury is reduced or eliminated.

The redemption price of the Bonds to be redeemed pursuant to the extraordinary optional redemption provision described above will be determined by an independent accounting firm, investment banking firm or financial advisor retained by the Agency at the Agency’s expense to calculate such redemption price. The Registrar and the Agency may conclusively rely on the determination of such redemption price by such independent accounting firm, investment banking firm or financial advisor and will not be liable for such reliance. If the Bonds are not registered in book-entry form and if fewer than all of such Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate to be redeemed will be selected on a pro rata basis, provided that any such redemption must be performed such that all Bonds remaining outstanding will be in authorized denominations. If the Bonds are registered in book-entry form and if fewer than all of such Bonds of the same maturity and bearing the same interest rate are to be redeemed, the redemption of such Bonds will be performed, to the extent then permitted by the applicable rules and procedures of the then acting securities depository, in accordance with the preceding sentence. To the extent any such pro rata partial redemption is not then permitted by the applicable rules and procedures of the then acting securities depository, such Bonds will be redeemed by lot or other customary method in accordance with such rules and procedures. Currently, the applicable rules and procedures of DTC, the initial securities depository for the Bonds, provide that such partial redemptions be performed by lot. See “APPENDIX F - BOOK-ENTRY SYSTEM.”
Sinking Fund Redemption of Bonds. The Bonds maturing December 15 in the years ____, ____ , ____ , and ____ are subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements set forth below at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date. The payments specified in the Bond Resolution which are to be deposited into the Debt Service Fund shall be sufficient to redeem, and the Agency shall redeem on each December 15 the following principal amounts of Bonds:

<table>
<thead>
<tr>
<th>Year (December 15)</th>
<th>Principal Amount</th>
<th>Year (December 15)</th>
<th>Principal Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

‡ Maturity

Partial Redemption. The Bonds shall be redeemed in whole multiples of $5,000 and if any Bond be in a denomination in excess of $5,000, portions of the principal amount thereof in installments of $5,000 or any integral multiple thereof may be redeemed, and if less than all of the principal amount thereof is to be redeemed, in such case upon the surrender of such Bond, there shall be issued to the registered owner thereof without charge therefor, for the then unredeemed balance of the principal amount thereof, registered bonds of like series, maturity and interest rate in any of the authorized denominations provided by the Bond Resolution.

Notice of Redemption. Notice of redemption of any Bond shall be sent by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption to the registered owner thereof at the address maintained by the Registrar. No further interest shall accrue after the redemption date on any Bonds duly called for redemption if payment thereof has been duly provided for with the Registrar.

Book-Entry System

General. The Bonds will be made available initially in book-entry form only in denominations of $5,000 each or integral multiples thereof. The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The ownership of one fully registered Bond for each maturity, as set forth on the cover of this Official Statement, each in the aggregate principal amount of such maturity, will be registered in the name of Cede & Co., as the nominee for DTC. Ownership interests in the Bonds will be available to purchasers only through the book-entry system maintained by DTC (the “Book-Entry System”). A description of DTC, the Book-Entry System and definitions of initially capitalized terms used under this heading are found in “APPENDIX F – BOOK-ENTRY SYSTEM.”

Risk Factors. Beneficial Owners of the Bonds may experience some delay in their receipt of distributions of the principal or redemption price of and interest on the Bonds because such distributions will be forwarded by the Registrar to DTC, credited by DTC to the accounts of its Direct Participants, which will thereafter credit them to the accounts of the Beneficial Owners either directly or indirectly through Indirect Participants.
Because transactions in the Bonds can be effected only through DTC, DTC Participants and certain banks, the ability of a Beneficial Owner to pledge a Bond to persons or entities that do not participate in the Book-Entry System or otherwise to take actions in respect of such Bonds may be limited due to the lack of physical certificates. Beneficial Owners will not be recognized by the Registrar as registered owners for purposes of the Bond Resolution, and Beneficial Owners will be permitted to exercise the rights of registered owners only indirectly through DTC and DTC Participants.

CUSIP Numbers

It is anticipated that CUSIP identification numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds, nor any error in the printing of such numbers shall constitute cause for a failure or refusal by the purchaser thereof to accept delivery of and payment for any Bonds.

SECURITY

General

The principal or redemption price of and interest on the Bonds are general obligations of the Agency payable, unless paid from other sources, from taxes levied by the Agency on all taxable property in the City without limitation as to rate or amount pursuant to the provisions of the JPA Act and the JPA Agreement. See “NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION.”

JPA Agreement

Under the JPA Agreement, the City has irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid under the Bond Resolution, its authority pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, to cause the levy of taxes within the City (the “Agency Bond Levy”), beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the Projects in an amount to be levied solely for the purpose of paying the principal or redemption price of and interest on the Bonds. The Agency Bond Levy is unlimited as to both rate and amount and, if levied, (a) would be levied on all the taxable property within the corporate limits of the City and (b) would not affect the ability of the City to levy property taxes.

The JPA Agreement obligates the Agency to certify the Agency Bond Levy to The County of Lancaster, Nebraska in its budget statement as provided in the Nebraska Budget Act, Sections 13-501 to 13-513, Reissue Revised Statutes of Nebraska, as amended, for levy and collection in such amounts, if any, as may be required to pay the principal or redemption price of and interest on the Bonds as the same become due. No further action is required to implement the Agency Bond Levy. All taxes collected under the Agency Bond Levy shall be credited to the Agency as soon as practicable.

Facilities Agreement

The Facilities Agreement provides that in the event that 45 days prior to the payment date of any principal or interest on the Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest at a rate equal to the current interest rate received by the City Investment Pool (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon, shall be repaid to the City (a) first, from the first receipts of Revenues, and (b) second, from taxes levied and collected by the Agency pursuant to the provisions of the Facilities Agreement. If the projected actual Available Revenues
(defined to be all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund) for the fiscal year are less than the budgeted Available Revenues for such fiscal year by $1,000,000 or more, the Agency is obligated to implement the Agency Bond Levy. See “THE AGENCY,” “SECURITY,” “NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION,” “APPENDIX C - SUMMARY OF PRINCIPAL DOCUMENTS - JPA Agreement” and “- Bond Resolution,” and “APPENDIX D – PROJECTED CASH FLOWS.”

Operating Agreement

Pursuant to the MOU, the Regents have agreed to lease the Arena to play the University of Nebraska-Lincoln men’s and women’s varsity basketball home games for a term of 30 years which is anticipated to begin on September 1, 2013. The terms of the MOU will be formalized through an Operating Agreement between the City and the Regents, which is expected to be executed and delivered by the parties by the end of 2010. Other than the payment of rent for its use of the Arena pursuant to the Operating Agreement, the Regents have no obligation for any payments to the Agency, including, without limitation, payment of the principal or redemption price of and interest on the Bonds. See “APPENDIX C - SUMMARY OF PRINCIPAL DOCUMENTS.”

The Recovery Act

Sections 54AA and 6431 of the Code, as amended by the Recovery Act, authorize the Agency to issue taxable bonds known as “Build America Bonds” to finance capital expenditures for which it could otherwise issue tax-exempt bonds and to elect to receive subsidy payments from the U.S. Treasury equal to 35% of the amount of interest payable on those bonds (the “BAB Subsidy Payments”). The Bonds are being issued as qualified Build America Bonds under the Code. The BAB Subsidy Payments will be paid to the Agency; no holders of Bonds will be entitled to any subsidy payment or tax credit. The receipt of the BAB Subsidy Payments by the Agency is subject to certain requirements, including the filing of a form with the Internal Revenue Service prior to each Interest Payment Date, and compliance with federal tax law regarding the investment and use of the Bond proceeds and use of the facilities financed with those proceeds. In addition, the BAB Subsidy Payments are not full faith and credit obligations of the United States and are subject to offset due to any amounts owed by the Agency to the U.S. Treasury. The Agency is obligated to make all payments of principal or redemption price of and interest on the Bonds whether or not it receives BAB Subsidy Payments, but the Agency anticipates using any BAB Subsidy Payments to pay such principal and interest.

NEBRASKA LAWS RELATED TO BUDGETS AND TAXATION

The Nebraska Legislature (the “Legislature”) has in recent years enacted and amended legislation intended to reduce the level of property taxation and political subdivision expenditures in the State of Nebraska (the “State”). The statutory sections having the most significant impact on the Agency are Section 13-519, Reissue Revised Statutes of Nebraska (as enacted in 1996 and amended from time to time, “Section 13-519”), which provides for an overall limitation on general fund budget expenditures for cities, counties and certain other political subdivisions, and Section 77-3442, Reissue Revised Statutes of Nebraska (as enacted in 1996 and amended from time to time, “Section 77-3442”) which reduces the rate of taxation for general property taxes authorized for cities and counties. Among other provisions, Section 13-519 provides that for all fiscal years beginning on or after July 1, 1998, no governmental unit (including the City) may adopt a budget containing a total of budgeted restricted funds more than the prior year’s total of budgeted restricted funds plus allowable growth, plus a basic allowable growth percentage (initially 2½% until adjusted by the Legislature). Restricted funds generally include (a) property taxes, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and

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are not expected to be spent for capital improvements, (h) county license or occupation taxes on admissions, if approved by an election, beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county as a result of overpayment due to clerical error or mistake. Allowable growth includes the percentage increase in taxable valuation in excess of the base limitation established under Section 77-3446, Reissue Revised Statutes of Nebraska, as amended, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property that increase the value of such property and any increase in valuation due to annexation and any personal property valuation over the prior year. Such budget limitations may be exceeded by up to an additional 1% upon the affirmative vote of at least 75% of the governing body, and larger increases are permitted with the approval of a majority of legal voters voting on the issue of such increase at a special election held for such purposes.

Under Section 77-3442, the rates for levying property taxes are limited for each type of governmental unit in the State. The rate for cities such as the City is no more than 50¢ per $100 of taxable valuation, except that 5¢ per $100 of taxable valuation of property subject to the levy may only be levied to provide financing for a city or a county’s share of revenue required under an agreement executed pursuant to the Interlocal Cooperation Act, Chapter 13, Article 8, Reissue Revised Statutes of Nebraska, as amended, or the Joint Public Agency Act, Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended. A county may allocate up to 15¢ of its authority to levy taxes to political subdivisions not specifically excluded under Section 77-3443(1), Reissue Revised Statutes of Nebraska. A political subdivision may exceed the levy limitations provided in Section 77-3442 or a final levy allocation determination as provided in Section 77-3443, Reissue Revised Statutes of Nebraska, as amended, by an amount not to exceed a maximum levy approved by a majority of registered voters. The limitations of Section 13-519 do not apply to restricted funds pledged to retire bonded indebtedness, and the limitations of Section 77-3442 do not apply to property taxes levied for bonded indebtedness approved according to law and secured by a levy on property. The Agency will not be required to make any levy in 2010 for collection in 2011 and is not authorized to make any levy for operating expenses in the future.

Ad valorem taxes levied to pay debt service on the Bonds are not subject to either the Budget Limitations or the Levy Limitations.

Future legislation, decisions of the Nebraska Supreme Court, or initiative petitions proposed and passed by qualified voters in the State may alter the limitations set forth in Section 13-519 and Section 77-3442, or may otherwise modify the sources of and limitations on the revenues used by governmental units in the State to finance their activities.

LEGAL MATTERS

Legal Proceedings

As of the date hereof, there is no controversy, suit or other proceeding of any kind pending or threatened raising, or which may raise, any question or dispute or affecting in any way the legal organization of the Agency, the City or the Regents or the right or title of any officer to his or her respective offices, or the legality of any official act in connection with the authorization, issuance and sale of the Bonds, or the constitutionality or validity of the Bonds or any of the proceedings had in relation to the authorization, issuance or sale thereof, or the levy and collection of a tax to pay the principal and interest thereof, or which might affect the Agency’s ability to meet its obligations to pay the Bonds.

Approval of Legality

All legal matters incident to the authorization and issuance of the Bonds are subject to the approval of Gilmore & Bell, P.C., Lincoln, Nebraska, Bond Counsel. Certain legal matters will be passed upon for the City and the Agency by Rodney M. Confer, City Attorney and general counsel to the JPA. Bond Counsel has participated in the preparation of
TAX MATTERS

The following is a summary of the material Federal and State of Nebraska income tax consequences of holding and disposing of the Bonds. This summary is based upon laws, regulations, rulings and judicial decisions now in effect, all of which are subject to change (possibly on a retroactive basis). This summary does not discuss all aspects of Federal income taxation that may be relevant to investors in light of their personal investment circumstances or describe the tax consequences to certain types of owners subject to special treatment under the Federal income tax laws (for example, dealers in securities or other persons who do not hold the Bonds as a capital asset, tax-exempt organizations, individual retirement accounts and other tax deferred accounts, and foreign taxpayers), and, except for the income tax laws of the State of Nebraska, does not discuss the consequences to an owner under any state, local or foreign tax laws. The summary does not deal with the tax treatment of persons who purchase the Bonds in the secondary market at a premium or a discount. Prospective investors are advised to consult their own tax advisors regarding Federal, state, local and other tax considerations of holding and disposing of the Bonds.

Federal Income Tax Consequences to Owners of the Bonds

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, OWNERS OF THE BONDS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS OFFICIAL STATEMENT RELATING TO THE BONDS IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY OWNERS OF THE BONDS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THOSE OWNERS UNDER THE INTERNAL REVENUE CODE; (B) THE DISCUSSION OF FEDERAL TAX ISSUES IN THIS OFFICIAL STATEMENT RELATING TO THE BONDS WAS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THOSE BONDS; AND (C) OWNERS OF THE TAXABLE BONDS SHOULD SEEK ADVICE FROM AN INDEPENDENT TAX ADVISOR BASED ON THEIR PARTICULAR CIRCUMSTANCES.

Opinion of Bond Counsel Regarding the Bonds

Nebraska Tax Exemption. In the opinion of Bond Counsel, the stated interest on the Bonds is exempt from income taxation by the State of Nebraska. The proposed form of the opinion of Bond Counsel is included in “APPENDIX E – FORM OF OPINION OF BOND COUNSEL.”

Federal Tax Status of Bonds as Build America Bonds; Interest Taxable

Election. The Agency will elect to treat the Bonds as qualified “build America bonds” under Section 54AA of the Code and will elect to receive a direct payment from the U.S. Treasury equal to a portion of the interest payable on the Bonds (“Build America Bonds - Direct Payment”).

Bond Interest Taxable. The interest on the Bonds will be included in gross income for Federal income tax purposes in accordance with the owner’s normal method of accounting.

No Opinion. Bond Counsel is not rendering any opinion to owners of the Bonds regarding the qualification of the Bonds as Build America Bonds – Direct Payment or the treatment of interest on the Bonds for federal income taxation. Purchasers of Bonds should consult their tax advisors as to the applicability of these tax consequences and other
federal income tax consequences of the purchase, ownership and disposition of the Bonds, including the possible application of state, local, foreign and other tax laws.

**Other Federal Income Tax Consequences Applicable to Owners of Bonds**

*Bonds Purchased at a Premium.* If a Bond is purchased at a price that exceeds the stated redemption price of the Bond at maturity, the excess of the purchase price over the stated redemption price at maturity constitutes premium on the Bond, and that Bond is referred to in this discussion as a “**Premium Bond**.” Under Section 171 of the Code, the purchaser of a Premium Bond may elect to amortize the premium over the term of the Premium Bond using constant yield principles, based on the purchaser’s yield to maturity. An owner of a Premium Bond amortizes bond premium by offsetting the qualified stated interest allocable to an accrual period with the bond premium allocable to that accrual period. This offset occurs when the owner takes the qualified stated interest into income under the owner’s regular method of accounting. If the premium allocable to an accrual period exceeds the qualified stated interest for that period, the excess is treated by the owner as a deduction under Section 171(a)(1) of the Code. As premium is amortized, the owner’s basis in the Premium Bond will be reduced by the amount of amortizable premium properly allocable to the owner. Prospective investors should consult their own tax advisors concerning the calculation and accrual of bond premium.

*Bonds Purchased with Original Issue Discount.* For Federal income tax purposes, original issue discount (“**OID**”) is the excess of the stated redemption price at maturity of a Bond over its “issue price,” defined as the first price at which a substantial amount of the Bonds of that maturity have been sold (ignoring sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers). If the OID on a Bond is more than a *de minimis* amount (generally 1/4% of 1% of the stated redemption price at maturity of the Bond multiplied by the number of complete years to its maturity date), then that Bond will be treated as issued with OID (an “**OID Bond**”). The amount of OID that accrues to an owner of an OID Bond during any accrual period generally equals (1) the issue price of that OID Bond, plus the amount of OID accrued in all prior accrual periods, multiplied by (2) the yield to maturity on that OID Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (3) any interest payable on that OID Bond during that accrual period. The amount of OID accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be included in gross income for Federal income tax purposes, and will increase the owner’s tax basis in that OID Bond. Prospective investors should consult their own tax advisors concerning the calculation and accrual of OID.

*Sale or Exchange.* Upon the sale, exchange or retirement (including redemption) of a Bond, an owner of the Bond generally will recognize gain or loss in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale, exchange or retirement of the Bond (other than in respect of accrued and unpaid interest) and the owner’s adjusted tax basis in the Bond. To the extent the Bonds are held as a capital asset, the gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Bond has been held for more than 12 months at the time of sale, exchange or retirement.

*Information Reporting and Backup Withholding.* In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on the Bonds, and to the proceeds paid on the sale of Bonds, other than certain exempt recipients (such as corporations and foreign entities). A backup withholding tax will apply to these payments if the owner fails to provide a taxpayer identification number or certification of foreign or other exempt status or fails to report in full dividend and interest income. The amount of any backup withholding from a payment to an owner will be allowed as a credit against the owner’s Federal income tax liability.
CONTINUING DISCLOSURE

The Agency and the City are executing the Continuing Disclosure Certificate for the benefit of the owners and Beneficial Owners of the Bonds and in order to assist the Underwriter in complying with Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”). The Agency and the City are the only “obligated persons” with responsibility for continuing disclosure.

Annual Reports

Pursuant to the Continuing Disclosure Certificate, the Agency and the City shall, not later than May 1 of each year, commencing May 1, 2011, provide to the Municipal Securities Rulemaking Board (“MSRB”) the following financial information and operating data (the “Annual Report”):

(a) The audited financial statements of the Agency for the prior fiscal year, prepared in accordance with generally accepted accounting principles. If audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement relating to the Bonds, and the audited financial statements shall be filed in the same manner as the Annual Report promptly after they become available.

(b) The audited financial statements of the City for the prior fiscal year, prepared in accordance with generally accepted accounting principles. If audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement relating to the Bonds, and the audited financial statements shall be filed in the same manner as the Annual Report promptly after they become available.

(c) Updates as of the end of the fiscal year of the financial information and operating data relating to the City contained in APPENDIX A of this Official Statement in substantially the same format contained in this Official Statement.

Material Event Notices

Pursuant to the Continuing Disclosure Certificate, the Agency and the City shall also give, or cause a dissemination agent to give, notice of the occurrence of any of the following events with respect to the Bonds, if material (“Material Events”):

(1) principal and interest payment delinquencies;
(2) non-payment related defaults;
(3) unscheduled draws on debt service reserves reflecting financial difficulties;
(4) unscheduled draws on credit enhancements reflecting financial difficulties;
(5) substitution of credit or liquidity providers, or their failure to perform;
(6) adverse tax opinions or events affecting the tax-exempt status of the 2010B Bonds;
(7) modifications to rights of bondowners;
(8) optional, contingent or unscheduled bond calls;
(9) defeasances;
(10) release, substitution or sale of property securing repayment of the Bonds; or
(11) rating changes.
If a dissemination agent has been instructed by the Agency or the City to report the occurrence of a Material Event, the dissemination agent shall promptly file a notice of such occurrence with the MSRB, with a copy to the Agency and the City.

The Agency may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under the Continuing Disclosure Certificate, and may discharge any such dissemination agent, with or without appointing a successor dissemination agent. The dissemination agent shall not be responsible in any manner for the content of any notice or report prepared by the Agency pursuant to the Continuing Disclosure Certificate.

Notwithstanding any other provision of the Continuing Disclosure Certificate, the Agency, the City and any dissemination agent may amend the Continuing Disclosure Certificate (and such dissemination agent shall agree to any amendment so requested by the Agency or the City) and any provision of the Continuing Disclosure Certificate may be waived, provided Bond Counsel or other counsel experienced in federal securities law matters provides the Agency, the City and any dissemination agent with its opinion that the undertaking of the Agency and the City, as so amended or after giving effect to such waiver, is in compliance with the Rule and all current amendments thereto and interpretations thereof that are applicable to the Continuing Disclosure Certificate.

In the event of a failure of the Agency, the City or any dissemination agent to comply with any provision of the Continuing Disclosure Certificate, any owner or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Agency, the City or any dissemination agent, as the case may be, to comply with its obligations under the Continuing Disclosure Certificate. A default under the Continuing Disclosure Certificate shall not be deemed an event of default under the Bond Resolution, and the sole remedy under the Continuing Disclosure Certificate in the event of any failure of the Agency, the City or any dissemination agent to comply with the Continuing Disclosure Certificate shall be an action to compel performance.

Electronic Municipal Market Access System (EMMA)

All Annual Reports and notices of Material Events required to be filed by the Agency, the City or the dissemination agent pursuant to the Continuing Disclosure Certificate must be submitted to the MSRB through the MSRB’s Electronic Municipal Market Access system (“EMMA”). EMMA is an internet-based, online portal for free investor access to municipal bond information, including offering documents, material event notices, real-time municipal securities trade prices and MSRB education resources, available at www.emma.msrb.org. Nothing contained on EMMA relating to the Agency, the City, the Regents or the Bonds is incorporated by reference in this Official Statement.

MISCELLANEOUS

Ratings

Moody’s Investors Service, Inc. has assigned the Bonds a rating of “___” and Standard & Poor’s, a division of The McGraw-Hill Companies, has assigned the Bonds the rating of “___.” Such ratings reflect only the views of such organizations, and an explanation of the significance of such ratings may be obtained from Moody’s Investors Service, 7 World Trade Center, 350 Greenwich Street, 23rd Floor, New York, New York 10007, telephone (212) 553-0300, and Standard & Poor’s Ratings Services, 55 Water Street, New York, New York, 10041, telephone (212) 438-2124.

Generally, a rating agency bases its rating on such information and materials and investigations, studies and assumptions furnished to and obtained and made by the rating agency. The rating is not a recommendation to purchase, sell or hold a security, inasmuch as it does not comment as to market price or suitability for a particular
There is no assurance that the above rating will remain for any given period of time or that it may not be lowered, suspended or withdrawn entirely by such rating agency if it deems circumstances are appropriate. Any downward change in, suspension or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

Independent Auditors

The Agency was created on April 2, 2010. The first audited financial statements for the Agency are being prepared following the end of its first partial fiscal year on August 31, 2010.

The financial statements of the City, as of and for the year ended August 31, 2009, included in “APPENDIX B – THE CITY OF LINCOLN, NEBRASKA - ACCOUNTANT’S REPORT AND AUDITED FINANCIAL STATEMENTS” of this Official Statement have been audited by BKD, LLP, independent auditors, as stated in their report appearing herein.

Certification and Other Matters Regarding Official Statement

Information set forth in this Official Statement has been furnished or reviewed by certain officials of the Agency, the City, the Regents, certified public accountants, and other sources, as referred to herein, which are believed to be reliable. Any statements made in this Official Statement involving matters of opinion, estimates or projections, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates or projections will be realized.

Simultaneously with the delivery of the Bonds, each of the Agency and the City will furnish to the Underwriter a certificate which shall state, among other things, that to the best knowledge and belief of such officer, this Official Statement (and any amendment or supplement hereto) as of the date of sale and as of the date of delivery of the Bonds does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements herein, in light of the circumstances under which they were made, not misleading in any material respect.

The form of this Official Statement, and its distribution and use by the Underwriter, has been approved by the Agency. Neither the Agency nor any of its officers, directors or employees, in either their official or personal capacities, has made any warranties, representations or guarantees regarding the financial condition of the Agency or the Agency’s ability to make payments required of it; and further, neither the Agency nor its officers, directors or employees assumes any duties, responsibilities or obligations in relation to the issuance of the Bonds other than those either expressly or by fair implication imposed on the Agency by the Bond Resolution.

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APPENDIX A

THE CITY OF LINCOLN, NEBRASKA
GENERAL, ECONOMIC AND FINANCIAL INFORMATION
APPENDIX B

THE CITY OF LINCOLN, NEBRASKA
ACCOUNTANT’S REPORT AND AUDITED FINANCIAL STATEMENTS
APPENDIX C

SUMMARY OF PRINCIPAL DOCUMENTS
SUMMARY OF PRINCIPAL DOCUMENTS

The following is a summary of certain provisions and defined terms of the JPA Agreement, Facilities Agreement, Bond Resolution and MOU. This summary does not purport to be comprehensive or definitive and is subject to all of the terms and provisions of the JPA Agreement, Facilities Agreement, Bond Resolution, and MOU to each of which reference is hereby made, and copies of which are on file in the office of the Clerk of the City.

DEFINITIONS

The terms defined below are among those used in the summaries of the Facilities Agreement and the Bond Resolution. Except where otherwise indicated or provided, words in the singular include the plural and vice versa.

“Act” means the Joint Public Agency Act, Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended.

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

“Agency Bond Levy” means the authority of the City which is irrevocably allocated and assigned to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, to cause the levy of taxes within the taxing jurisdiction of the City, beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the Projects pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which will be sufficient to pay the principal or redemption price of and interest on the Bonds when and as the same become due.

“Arena” means the sports/entertainment arena to be constructed, equipped, furnished and financed by the Agency.

“Arena Improvements” means any improvements to the Arena Project as may be made from time to time as determined by the City to be necessary, desirable, or advisable.

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

“Arena Project” means, collectively, those Projects described on Exhibit A of the Facilities Agreement, as it may be amended from time to time, which collectively constitute the Arena and the related parking improvements consisting of the surface parking lot northwest of the BNSF tracks, the parking garage adjacent to the Arena and the surface parking lot on the Arena site.

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

“Authorized Officer” means the Chair and the Secretary, or in the event that either the Chair or the Secretary is unavailable for any reason, any other member of the Board or the Treasurer or any other officer of the Agency authorized by the Board to execute documents for and on behalf of the Agency.
“Available Revenues” means all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund.

“Beneficial Owner” means any Person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Board” means the board of representatives of the Agency.

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

“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

“Bond Resolution” means the resolution adopted by the Agency on July 22, 2010 authorizing the issuance of the Series 2010B Bonds.

“Bonds” means, with respect to the Facilities Agreement, any indebtedness issued by the Agency the proceeds of which are used to pay any of the costs of acquiring, constructing, equipping or furnishing any of the Projects, authorized to be issued by a Resolution of the Agency and any indebtedness of the Agency issued to refund, directly or indirectly, any Bonds; and means, with respect to the Resolution, the Series 2010B Bonds.

“Budget Act” means Sections 13-501 to 13-513, inclusive, Reissue Revised Statutes of Nebraska, as amended.

“Build America Bonds” means a series of Bonds issued as taxable “build America bonds” pursuant to Section 54AA of the Code.

“Business Day” means a day other than a Saturday, Sunday or holiday on which the Registrar is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.


“City” means The City of Lincoln, Nebraska.

“Clerk” means the Clerk of the City.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“Completion Date” means the date established pursuant to the Resolution on which construction of the Projects is complete.

“Compliance Procedure” means the Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds attached to the Facilities Agreement as Exhibit B, as it may be amended from time to time.
“Construction Fund” means any of the funds designated as such by a Resolution of the Agency and any accounts or subaccounts created therein into which the net proceeds from the sale of a series of Bonds issued by the Agency shall be deposited.

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

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate executed by the Agency and the City, dated the date of delivery of the Bonds, as originally executed and as amended from time to time in accordance with its terms.

“Costs of Construction” means, with respect to each Project:

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

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

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

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

(e) Costs of fidelity and indemnity bonds;

(f) Costs of fixed and moveable equipment;

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

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

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

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

“2010B Debt Service Account” means the account by that name in the Debt Service Fund, in which there shall be established such subaccounts as shall be determined by the Finance Director.

“Debt Service Fund” means any of the funds and any accounts or subaccounts created pursuant to a Resolution authorizing the issuance of Bonds into which money for the payment of such Bonds shall be deposited as provided by such Resolution and the Facilities Agreement.
“Defaulted Interest” means interest on any Bond which is payable but not paid on any Interest Payment Date.

“Defeasance Obligations” means any of the following obligations:

(a) Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (A) not subject to redemption prior to maturity or (B) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or Government Obligations that may be applied only to the principal or Redemption Price of and interest payments on such obligations;

(3) such cash and the principal of and interest on such Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) the obligations are rated in the highest rating category by Moody’s Investors Service, Inc. (presently “Aaa”) or Standard & Poor’s Ratings Group (presently “AAA”).

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

“Facilities” means the West Haymarket Facilities identified in Exhibit A to the Facilities Agreement, as it may be amended and supplemented from time to time, and at the date of the Official Statement includes the following: (a) the Arena, (b) roads, streets and sidewalks, (c) a pedestrian overpass, (d) public plaza space, (e) sanitary sewer mains, (f) water mains, (g) electric transmission lines, (h) drainage systems, (i) flood control, (j) parking garages and (k) surface parking lots.

“Facilities Agreement” means the Facilities Agreement, dated the date of its execution and delivery, and as amended from time to time in accordance with its terms, between the City and the Agency, governing the acquisition, construction, equipping, furnishing, operation and management of the Projects, and the collection, deposit and application of the Revenues.

“Finance Director” means the Finance Director of the City, as the chief financial officer of the Agency.

“Government Obligations” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and
unconditionally guaranteed as to full and timely payment by, the United States, including evidences of a
direct ownership interest in future interest or principal payments on obligations issued or guaranteed by the
United States (including the interest component of obligations of the Resolution Funding Corporation), or
securities which represent an undivided interest in such obligations, which obligations are rated in the highest
rating category by a nationally recognized rating service and such obligations are held in a custodial account
for the benefit of the Agency.

“Infrastructure Improvement” means any improvements to the Infrastructure Project as may be
made from time to time as determined by the City to be necessary, desirable, or advisable.

“Infrastructure Project” means all of the Projects excluding the Arena Project.

“Interest Payment Date” means June 15 and December 15 of each year beginning December 15,
2010.

“JPA Agreement” means the Joint Public Agency Agreement Creating the West Haymarket Joint
Public Agency, dated as of April 1, 2010, between the City and the Regents.

“Maturity” when used with respect to any Bond means the date on which the principal of such Bond
becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for
optional or mandatory redemption or otherwise.

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

“Operation and Maintenance Fund” means the fund by that name created by the Facilities
Agreement.

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

“Outstanding” means, when used with reference to the Bonds, as of any particular date of
determination, all Bonds theretofore authenticated and delivered under the Resolution, except the following
Bonds:

(a) Bonds theretofore cancelled by the Paying Agent or delivered to the Paying Agent
for cancellation;

(b) Bonds deemed to be paid in accordance with the defeasance provisions of the
Resolution; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and
delivered under the Resolution.

“Participants” means, for purposes of the JPA Agreement and Facilities Agreement, the City and the
Regents.

“Person” means any natural person, corporation, partnership, joint venture, association, firm,
joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision
thereof or other public body.
“Project” means any one of the Projects.

“Projects” means the projects identified in Exhibit A to the Facilities Agreement, as it may be amended and supplemented from time to time, and at the date of the Official Statement includes the following: the constructing, equipping, furnishing and financing of certain public facilities in the West Haymarket Redevelopment Area of the City identified in Exhibit A to the Facilities Agreement, as it may be amended and supplemented from time to time, and at the date of the Official Statement includes the following: (a) the Arena, (b) roads, streets and sidewalks, (c) a pedestrian overpass, (d) public plaza space, (e) sanitary sewer mains, (f) water mains, (g) electric transmission lines, (h) drainage systems, (i) flood control, (j) parking garages and (k) surface parking lots, and (l) (1) the acquisition of land and relocation of existing businesses, and (2) such environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities.

“Regents” means The Board of Regents of the University of Nebraska.

“Resolution” means, for purposes of the Facilities Agreement, any resolution or other authorizing document of the Agency pursuant to which a series of Bonds is issued to finance or refinance any portion of the costs of any Project; and means, for purposes of the Bond Resolution, the Bond Resolution.

“Revenue Fund” means the fund by that name created by the Facilities Agreement, and in which there is established a General Account and a Private Account.

“Revenues” means any revenues, receipts and income received by the Agency from any source, including, without limitation, amounts received from the following sources: interest subsidy payments received pursuant to the Code, state aid, developer contributions, occupation taxes, the turnback tax, Arena rent, concessions, premium seating, naming rights, signage and advertising, tickets, interest, tax increment revenues, parking revenues, state and federal environmental funds and private donations.

“Site” means the real estate indicated on Exhibit A of the Facilities Agreement, as amended and supplemented from time to time, to be acquired by the Agency.

“Surplus Fund” means the fund by that name created by the Facilities Agreement, and in which there is established an Arena Account and an Infrastructure Account.

“Tax Agreement” means the Tax Compliance Agreement dated the date of its execution and delivery by the Agency, the City and the Regents concerning the requirements of the Code with respect to the Bonds, as the same may be amended or supplemented in accordance with the provisions thereof.

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

“West Haymarket Facilities” means the Projects defined to include the West Haymarket Facilities in Exhibit A to the Facilities Agreement as it may be amended and supplemented from time to time, and at the date of the Official Statement includes the following: (a) the Arena, (b) roads, streets and sidewalks, (c) a pedestrian overpass, (d) public plaza space, (e) sanitary sewer mains, (f) water mains, (g) electric transmission lines, (h) drainage systems, (i) flood control, (j) parking garages and (k) surface parking lots.

“West Haymarket Redevelopment Area” means the area in the City generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior...
roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and “M” Street on the south, as the same may be amended from time to time by the City.

**JPA AGREEMENT**

**Creation**

Pursuant to the Act and the JPA Agreement, the Participants created a joint public agency named the West Haymarket Joint Public Agency (the “Agency”) which constitutes a separate political subdivision and a public body corporate and politic of the State of Nebraska under the provisions of the Act.

**Purpose**

The purposes of the Agency are as follows:

(a) To make the most efficient use of the taxing authority and other powers of the Participants and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of the Participants.

(b) To exercise any power, privilege or authority to facilitate land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing public facilities, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots and any other capital improvements or other projects pertaining to the redevelopment of the West Haymarket Redevelopment Area as shall be determined by the Board to be necessary, desirable, advisable or in the best interests of the Participants in the manner and as provided for by the Act. The West Haymarket Redevelopment Area is an area generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and “M” Street on the south.

(c) To issue bonds to finance the Projects, and to levy a tax as provided by the Act and the JPA Agreement to pay the principal or redemption price of and interest on such bonds, when and as the same shall become due, to own the Arena and parking garages for so long as any Agency Bonds (hereinafter defined) are outstanding, to enter into a lease with the City to operate the Arena and parking garages for so long as any Agency Bonds are outstanding and to convey the Arena and parking garages to the City at such time as no Agency Bonds are outstanding.

(d) To sell, lease or otherwise dispose of excess land not needed for the Projects to the City, Regents or private entities for redevelopment of the City’s West Haymarket Redevelopment Area and, in particular, a proposed mixed use redevelopment project consisting of a multi-story, 200-250 room hotel, including some first floor rental space and one or more buildings containing approximately 100,000 square feet of residential space, 100,000 square feet of office space, and 100,000 square feet of retail space.
Organization

_Governing Body._ The Board of the Agency consists of the following representatives: (a) Mayor of the City, (b) the member of the Board of Regents of the University of Nebraska from District No. 1, and (c) a member of the City Council of the City appointed by the Mayor.

_Term of Office._ Unless otherwise disqualified by the provisions of the Act, and except as provided in the JPA Agreement or any amendment thereto, each representative shall serve for so long as such representative holds the position set forth in the preceding paragraph, or, in the case of the member of the City Council, until a successor is appointed by the Mayor.

_Voting._ Unless the Board unanimously adopts different rules relating to voting by representatives, each representative shall have one vote on matters before the Board. Except as may otherwise be provided in the JPA Agreement, or in any agreement to which the Agency is a party, all actions of the Agency may be taken with the concurrence of a majority of the representatives entitled to vote. All actions of the Agency related to the Arena (as opposed to the West Haymarket Facilities as a whole) may only be taken by a unanimous vote of all the representatives entitled to vote.

The Board shall adopt rules of governance that will include at a minimum, the following:

(a) _Quorum._ A majority of the representatives shall constitute a quorum for the transaction of any Agency business.

(b) _Officers._ The Board shall elect a chair and vice-chair from among the representatives. The Board shall elect a secretary as provided for in Section 13-2516 of the Act and appoint a treasurer who each shall serve at the pleasure of the Board and until their respective successors shall be appointed or elected as the case may be.

_Duration_

The duration of the Agency shall be perpetual, commencing with the date of issuance of the Certificate of Creation, and shall continue in effect until terminated as provided in the JPA Agreement.

_Powers_

The Agency shall have such powers as are allowed by the Act, and any amendments thereto including, but not limited to, the powers:

(a) to incur debts, liability, or obligations, including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Act;

(b) to borrow money or accept contributions, grants, or other financial assistance from a public agency and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indenture, leases, or agreements as may be necessary, convenient, or desirable;

(c) subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the Board shall deem proper;
(d) to contract with and compensate consultants for professional services including, but not limited to, architects, engineers, planners, lawyers, accountants, financial advisors and others found necessary or useful and convenient to the stated purposes of the Agency;

(e) to levy taxes upon the taxable property in the City pursuant to Sections 13-2507 and 77-3443, Reissue Revised Statutes of Nebraska, as amended, to the extent that the authority to levy taxes is expressly and specifically assigned and allocated to the Agency by a Participant in the JPA Agreement; and

(f) to exercise any other powers which are deemed necessary and convenient to carry out the Act.

Issuance of Bonds

The Agency, by resolution of the Board, may from time to time issue bonds or other evidences of indebtedness (the “Agency Bonds”) payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, or leases made by the Agency with any person, including any Participant, or from its revenue generally which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the Agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

The Agency may from time to time also issue bonds in such principal amounts as the Board shall determine to be necessary to provide sufficient funds to carry out any of the Agency’s purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the Board may determine, and the payment of all other costs or expenses of the Agency incident to and necessary or convenient to carry out its purposes and powers.

Notwithstanding any other terms of the JPA Agreement to the contrary, the Agency shall not issue any bonds or other form of indebtedness without the question of said bonds or indebtedness being first presented to, and approved by, the Mayor and Council of the City.

Levy Authority

Pursuant to the provisions of Section 13-2507, Reissue Revised Statutes of Nebraska, as amended, pursuant to the JPA Agreement:

The City irrevocably allocates and assigns to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Agency Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, its authority to cause the levy of taxes within the taxing district of the City, beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the Projects pursuant to Section 15-502, Reissue Revised Statutes of Nebraska, as amended, in any amount which will be sufficient to pay the principal or redemption price of and interest on the Agency Bonds when and as the same become due (the “Agency Bond Levy”), solely for the purpose of paying the principal or redemption price of and interest on the Agency Bonds.

The Agency Bond Levy shall be certified to The County of Lancaster, Nebraska as provided by law for levy and collection in such amounts, if any, as may be required to pay the principal or redemption price of and interest on the Agency Bonds as the same become due.
All taxes collected under the Agency Bond Levy shall be collected as provided by law and shall be credited to the Agency as soon as practicable.

**Acquiring and Holding Property**

The Board may lease, purchase or acquire by any means, from a Participant or from any other source, such real and personal property as is required for the operation of the Agency and for carrying out the purposes hereof. The title to all such property, personal or real, needed for the West Haymarket Facilities shall be held in the name of the Agency for so long as any Agency Bonds shall remain outstanding. The Agency shall convey all of its interest in the Projects to the City at such time as no Agency Bonds remain outstanding. The Agency shall comply with the applicable bidding procedures of the County Purchasing Act, Section 23-3111, Reissue Revised Statutes of Nebraska, as amended. The City shall perform the functions of the purchasing agent designated therein.

All conveyances of real property owned or held in the name of the Agency shall be authorized by resolution of the Board and executed by the Chair.

**Budget**

The Board shall prepare a budget based on a fiscal year coinciding with the fiscal year of the City, for the operation of the Agency. The budget of the Agency shall be established as provided in the Nebraska Budget Act (Chapter 13, Article 5, Reissue Revised Statutes of Nebraska, as amended) and presented to the City Council prior to the Agency’s levy certification. The Agency shall cause to be conducted annually an audit conducted by a private qualified auditing business. The resulting audit report shall be delivered to the Agency and the governing body of each Participant.

**Withdrawal**

If the governing body of a Participant adopts a resolution setting forth the determination that the need for the Agency no longer exists, the Participant shall be permitted to withdraw from participation in the Agency, but withdrawal shall not affect the obligations of the withdrawing Participant pursuant to the JPA Agreement or any other agreements with the Agency. Withdrawal shall not impair or adversely affect the levy of taxes by the Agency or receipt of revenues for, or the payment of, any outstanding bonds or indebtedness or the interest thereon.

**Dissolution**

The Agency shall not be dissolved so long as any Agency Bonds are outstanding under the instrument pursuant to which they were issued. Upon dissolution of the Agency, provided the City continues to have the responsibility for the Projects, all interest in the land, capital improvements, personal property and all other assets of the Agency used in the operation of the Projects financed by the Agency Bonds remaining in the Agency shall be transferred to the City.

**Amendment**

The JPA Agreement may be amended in writing signed by all the Participants, provided however, that no amendment may be made limiting the duty of the Agency or the Participants created herein to levy and collect taxes for the payment of any Agency Bonds. Any amendment to the JPA Agreement must first be approved by resolution of the governing body of each Participant. The amended and restated Agreement shall be filed with the Nebraska Secretary of State.
FACILITIES AGREEMENT

Provision of Facilities

The Agency agrees that it will acquire title to the Site and acquire, construct, equip and furnish all of the Projects for the City on the Site and in accordance with final plans and specifications to be approved by the City.

The Agency appoints the City as its agent for purposes of acquiring, constructing, equipping and furnishing each Project. The City shall, upon completion of the final plans and specifications, proceed to take bids and award contracts in compliance with the bidding procedures of the County Purchasing Act to the extent required to complete each Project. Contracts for the acquisition, construction, equipping and furnishing of each Project shall be entered into in the name of the Agency.

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

The City agrees that any contractor which provides work on any Project shall provide performance and payment bonds and builders’ risk insurance, all as specified in the Facilities Agreement.

The City, acting as the Agency’s agent, is hereby granted the right to make change orders in the work contemplated by any construction contract, but the Agency shall not be obligated to pay for any work, whether by change order or otherwise, in excess of the amount of funds in the Construction Fund.

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

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

Payment of Costs of Construction

The City and the Agency agree that all Costs of Construction shall be paid out of the Construction Fund or other available funds of the City. Disbursement requisitions to any contractor or vendor to be paid from the appropriate accounts and/or subaccounts in the Construction Fund for Costs of Construction of each Project or to any provider of equipment and furnishings, including the final requisition, shall be approved by the City and the Agency. Requisition approvals by the Agency shall be evidenced by the Chair of the Agency and the Agency Treasurer pursuant to Section 13-2527(1), Reissue Revised Statutes of Nebraska, as amended.
Certificate of Acceptance

Upon completion of any Project and acceptance thereof by the City, the fact of such completion and acceptance shall be evidenced by a Certificate of Completion signed by the Mayor of the City. Upon completion and acceptance of such Project together with all other Projects, the costs of which are to be paid from such account in the Construction Fund, any amount remaining in such account in the Construction Fund after payment of all costs of completion of such Project and all other Projects the costs of which are to be paid from such account in the Construction Fund, shall be transferred to the Debt Service Fund and applied to the payment of debt service on the applicable Bonds.

Dispute Resolution

Any dispute with any contractor concerning the construction of a Project or interpretation of any contract shall be adjusted and settled by the City, and the City shall be liable and make payment to such contractor and all other persons for any judgment, claim or liability in connection with a Project in excess of the money in the Construction Fund.

Issuance of Bonds; Debt Service

To pay the Costs of Construction of one or more Projects and the costs of issuance thereof, the Agency agrees to issue Bonds pursuant to one or more Resolutions and to deposit the proceeds thereof as provided in the Resolution authorizing such series of Bonds.

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

Dedication of Infrastructure Project to the City; Improvements

The Agency will transfer or dedicate each tangible portion of each Infrastructure Project to the City as and when completed to be maintained, operated and managed as City facilities and the Agency shall execute and delivery to the City any and all documents as may be requested by the City for such purpose. Prior to the completion of construction of any portion of any Infrastructure Project, the City shall provide all necessary personnel to design, engineer, construct and complete such Infrastructure Project in the same manner as comparable City facilities. The Director of Public Works of the City is hereby designated as the chief official responsible for the design, engineering, construction and completion of the Infrastructure Project. All City personnel assisting with the designing, engineering, construction or completion of the Infrastructure Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

Any improvements to the Infrastructure Project may be made from time to time as determined by the City to be necessary, desirable or advisable (the “Infrastructure Improvements”) and which are included as a part of the capital improvement program included in the City’s capital improvement budget and approved by the City. The City shall contract for work on such Infrastructure Improvements with contracts to be awarded and entered into pursuant to City bidding procedures. All costs of such Infrastructure Improvements may be paid by the City or, with the agreement of the Agency, may be paid by the Agency from Agency funds available for such purposes, including, without limitation, the Infrastructure Account in the Surplus Fund established under the Facilities Agreement.
City to Maintain, Operate and Manage the Arena Project

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

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

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

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

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

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

Insurance

The City, on behalf of the Agency, shall maintain, or cause to be maintained, insurance upon the Facilities and the operation thereof as follows:

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

(b) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Facilities with limits of not less than $1,000,000 for any person for any number of claims arising out of a single occurrence, $5,000,000 for all claims arising from a single occurrence, and any greater limits of liability which may be established by Section 13-926, Reissue Revised Statutes of Nebraska, as amended, or any other applicable provision of the Nebraska Political Subdivision Tort Claims Act (the “Tort Claims Act”), and excess insurance with limits of not less than $2,000,000 dollars for any liability which may not be limited by the Act. Such general public liability insurance may be subject to a deductible amount not in excess of $500,000.
(c) workers’ compensation insurance coverage as required by the laws of the State of Nebraska.

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

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

Utilities and Other Impositions

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

Use of Projects

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

Issuance of Bonds; Debt Service

To pay the Costs of Construction of one or more Projects and the costs of issuance thereof, the Agency agrees to issue Bonds pursuant to one or more Resolutions and to deposit the proceeds thereof as provided in the Resolution authorizing such series of Bonds.

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

Establishment of Funds

The Facilities Agreement establishes the following separate funds to be held by the City Treasurer as agent for the Agency:

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

(b) the West Haymarket Joint Public Agency Operation and Maintenance Fund (the “Operation and Maintenance Fund”).
(c) the West Haymarket Joint Public Agency Depreciation and Replacement Fund (the “Depreciation and Replacement Fund”).

(d) the West Haymarket Joint Public Agency Surplus Fund (the “Surplus Fund”) in which there is established (1) an Arena Account and (2) an Infrastructure Account.

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

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

Collection and Application of Revenues

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

Application of Money in Funds

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

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

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

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

Money in the Depreciation and Replacement Fund shall be expended and used by the Agency and the City, if no other funds are available therefor, (A) for the purpose of making emergency replacements and repairs in and to the Arena Project as may be necessary to keep the Arena Project in good repair and working order and to assure the continued effective and efficient operation thereof and (B) to pay the Operational Increment, to the extent that Revenues are insufficient for such purpose. After the Depreciation and Replacement Fund aggregates the Depreciation Fund Requirement, no further payments into said Fund shall be required, but if the Agency or the City is ever required to expend a part of the money in the Depreciation and Replacement Fund for its authorized purposes and such expenditure reduces the amount of such Fund below the Depreciation Fund Requirement, then monthly payments into the Depreciation and Replacement Funds shall resume and continue until said Fund again aggregates the Depreciation Fund Requirement.

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

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

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

(B) Paying the cost of the operation, maintenance and repair of any of the Projects to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund;

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

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

(E) Any other lawful purpose in connection with the operation of any of the Projects and benefiting any of the Projects.
(b) In the event that 45 days prior to the payment date of any principal or interest on Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest at a rate equal to the rate received by the City on its investment pool (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon as provided herein, shall be repaid to the City (i) first, from the first receipts of Revenues, and (ii) second, from taxes levied and collected by the Agency.

Transfer of Funds to Paying Agent

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

Annual Budget; Levy of Taxes

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

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

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

In the event that the budgeted Available Revenues for the fiscal year exceeds the projected actual Available Revenues for such fiscal year by $1,000,000 or more, the Agency covenants and agrees that it shall in its next annual budget prepared pursuant to the Facilities Agreement, include an amount to be levied upon all of the taxable property within the City sufficient in rate and amount to produce the amounts necessary to
make up such deficiency in the actual net income, together with any anticipated additional deficiency in the actual net income through the end of the next fiscal year.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Agency or the City are levied and collected. The proceeds derived from such taxes shall be used to repay any and all amounts advanced by the City pursuant to its obligation under the Facilities Agreement to loan to the Agency the full amount of any deficiency in the Debt Service Fund, shall be kept separate and apart from all other funds of the Agency and shall be used solely for the payment of amounts advanced by the City.

Annual Financial Audit

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

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

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

Term of Agreement

The Facilities Agreement shall not terminate so long as Bonds remain outstanding under the terms of the Resolution authorizing their issuance. Either the City or the Agency may terminate the Facilities Agreement at any time after all of Bonds are no longer outstanding under the terms of the Resolution authorizing their issuance.

Amendment

The Facilities Agreement may be amended in writing upon the approval of both parties.

BOND RESOLUTION

Security for and Payment of Bonds

The Bonds shall be general obligations of the Agency payable as to both principal and interest from the General Account in the Revenue Fund, and to the extent such revenues are insufficient, from ad valorem taxes which may be levied upon all the taxable property in the City as provided in the following paragraph. The full faith, credit and resources of the Agency are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.
Pursuant to the JPA Agreement, the City has assigned and allocated to the Agency its authority to levy ad valorem property taxes for the purposes of paying the principal or redemption price of and interest on the Bonds. Pursuant to the Facilities Agreement, the Agency shall (a) collect all Revenues and (b) if an Agency Bond Levy is to be made for the following tax year, include in its next “proposed budget statement” (as defined in Section 13-504 of the Budget Act) the amount required by the Facilities Agreement to be raised from the Agency Bond Levy for the following tax year and shall levy upon all of the taxable property within the City the Agency Bond Levy, in addition to all other taxes, sufficient in rate and amount to reimburse the City all amounts advanced by the City pursuant to the Facilities Agreement, the Agency hereby pledging such levy of taxes for such purpose.

The taxes referred to above shall be budgeted by the Agency in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as ad valorem taxes of the City are levied and collected. The proceeds derived from such taxes shall be used to reimburse the City for any loan to the Agency by the City under the Facilities Agreement.

Establishment of Funds; Deposit and Application of Money

The Resolution establishes a 2010B Construction Account in the Construction Fund created in the Facilities Agreement; a 2010B Debt Service Account, and the 2010B Capitalized Interest Account therein; and the Rebate Fund.

The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

(a) All accrued interest received from the sale of the Bonds shall be deposited in the 2010B Debt Service Account.

(b) An amount sufficient to pay the interest accruing and falling due on the Bonds through and including June 15, 2011 shall be deposited in the 2010B Capitalized Interest Account.

(c) Proceeds of the Bonds shall be deposited into such accounts or subaccounts as may be established by the Finance Director under the Resolution in the amounts determined by the Finance Director.

(d) The proceeds of the Bonds which remain after the deposits required by the paragraphs described above have been made shall be deposited in the 2010B Construction Account.

The Revenues shall be deposited, held and applied as provided in the Facilities Agreement.

Money in the 2010B Construction Account shall be used by the Agency solely for the purpose of (1) paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency’s architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency’s architects and approved by the City and the Agency, and (2) if appropriate, paying the costs and expenses of issuing the Bonds.

The Treasurer shall make a withdrawal from the 2010B Construction Account only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency’s architects stating that such payment is being made for a purpose within the scope of the Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or
service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Nothing in the Resolution shall prevent the payment out of the 2010B Construction Account or another subaccount in the 2010B Construction Account of all costs and expenses incident to the issuance of the Bonds without a certificate from the Agency’s architects.

On the date on which the construction of all of the Projects all or a portion of the costs of which have been paid from the proceeds of the Bonds has been completed (the “Completion Date”) as certified by the Agency’s architects, any surplus remaining in any fund or account in the 2010B Construction Account shall be transferred to and deposited in the 2010B Debt Service Account in the Debt Service Fund.

The Agency shall make deposits into the 2010B Debt Service Account in the Debt Service Fund as provided in the Facilities Agreement.

Any money or investments remaining in the Debt Service Fund after the retirement of the indebtedness for which the Bonds were issued and all other indebtedness of the Agency shall be transferred and paid to the City.

All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the requirements of the Code, for payment to the United States of America, and neither the Agency nor the Registered Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this and the Tax Agreement. Any money remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be released to the Agency.

Miscellaneous Provisions

The Agency’s obligations under the Resolution as to any Bond shall be discharged if such Bond has been paid or if there has been deposited with the Paying Agent, or other commercial bank or trust company having full trust powers, at or prior to the Stated Maturity or Redemption Date of such Bonds, in trust for and irrevocably appropriated thereto, money and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of such Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments, provided, however, that if any such Bonds are to be redeemed prior to their Stated Maturity, (a) the Agency has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the Agency has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Paying Agent to give such notice of redemption.

The Resolution provides that it may be amended by the Agency without the consent of any Registered Owners for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Registered Owners. It may also be amended in any respect by the Registered Owners of a majority in aggregate principal amount of the Bonds then Outstanding, except that amendments as to extension of maturity of principal or interest, reductions in the amount of principal or interest which the Agency is required to pay, permitting preference or priority of any Bond over any other Bond, or reducing the percentage in principal amount of Bonds required to consent to modification of the Resolution must be approved by the Registered Owners of all Bonds then Outstanding.

In the event that any provisions of the Resolution are inconsistent with the Facilities Agreement, the provisions of the Facilities Agreement shall govern.
MEMORANDUM OF UNDERSTANDING

General

The City and University executed the MOU to set forth the understandings of the City and University with respect to construction of the Arena on the Arena Site utilizing the JPA for financing and other financial agreements related to premium seating, and the subsequent lease of the Leased Improvements to Athletics for the use of its Basketball Teams. For purposes of the MOU, the following terms have the meanings set forth below.

“Athletics” means the University of Nebraska- Lincoln Department of Intercollegiate Athletics.

“Basketball Space” means the basketball court, training rooms, locker rooms, fiber optic connection to the Husker Vision control room in Memorial Stadium, seating, Arena signage, center-hung and other scoreboards, concessions facilities, and operations facilities customarily associated with an NCAA Division I basketball program.

“Basketball Teams” means the UNL men’s and women’s varsity basketball teams.

“Home Games” means the home games of the Basketball Teams.

“Leased Improvements” shall mean the Basketball Space and the basketball related parking spaces provided in the Arena parking improvements.

“Lease/Operating Agreement” or, alternately, “Operating Agreement” means the lease and operating agreement governing Athletics’ use of the Arena.

“NCAA” means the National Collegiate Athletic Association.

“University” means the Regents.

Arena Site Acquisition, Design, and Construction

The City will proceed with due diligence after the May 2010 election to acquire the Arena site and to perform site preparation work. The Arena will be constructed by the City or JPA and financed through the JPA.

Athletics and the City intend to work together in all aspects of the design, development and construction of the Arena and in particular, the Basketball Space. Athletics will be given an opportunity to have representatives present at meetings and briefings with the City’s design and construction professionals with the intent being that Athletics is entitled to full disclosure of and participation in the process for the design and construction of the Arena. At a minimum, the Basketball Space shall consist of the following:

Basketball Court. The basketball court shall consist of a portable basketball playing surface with all customary related items including, without limitation, state-of-the-art basketball goals, back-up basketball goals, nets, lines and striping, timekeeper’s tables, scorekeeper’s tables, adequate signs and markers, home and visiting team benches, tables and chairs, adequate lighting, communications systems, telephone hook-up from each team’s bench on floor level to coaches and assistant coaches, radio and television booths;
Training room. provided that Athletics will outfit the room with needed equipment at Athletics’ own cost and expense;

Locker rooms. Two locker rooms for the exclusive use of the Men’s and Women’s Basketball Teams shall be provided. Two additional locker rooms for Visitor Teams, one locker room for officials, and one locker room for cheer squads shall be provided. Fit out in excess of that provided in the locker rooms for visitor teams will be paid for by Athletics at its own cost and expense;

Fiber Optic Connection to Husker Vision. The City will install or cause to be installed a 48-strand fiber optic cable from the new Arena to Memorial Stadium’s Husker Vision control room; and

Seating. The seating shall include suites, loge seating, club seating and floor seating.

The City agrees to work together with Athletics to locate, design and build the Arena seating, including the number of suites, loge seating, club seating, and floor seating; media work area; the press box area; the studio and production area; interview room; hospitality rooms, and any other area reasonably necessary to carry out the Home Games. The plans and specifications for the Arena will be prepared at the direction of the City subject to approval of Athletics; such approval not to be unreasonably withheld or delayed and to be limited in scope to confirming that the Arena will fulfill Athletics’ needs and that it can be constructed within the approved time schedule.

Parking

The Arena Parking Improvements will be constructed in accordance with the approved drawings and specifications and construction documents. The Arena parking improvements are envisioned to contain approximately 550 parking spaces in the Arena parking garage, approximately 60 parking spaces in the Arena surface parking, and approximately 1,500 parking spaces in the northwest Arena parking lot. The City will provide or cause to be provided to Athletics a reasonable number of up to 100 parking spaces in the Arena parking improvements, approximately 40 of which will be in the Arena surface parking for student-athletes, coaching staff, support staff, and officials for all Home Games, practice and other Athletics sponsored intercollegiate athletic events at no cost in accordance with the applicable NCAA requirements.

Completion Date

It is the intent of the City and University that the Arena and the Arena Parking Improvements be completed and available for use by September 1, 2013. The parties agree that timely completion of the Leased Improvements in the Arena is critically important and that any anticipated delays or other circumstances jeopardizing the intended completion date shall be timely provided to the other party as soon as practical so that any preventive or remedial measures can be reasonably deployed.

Lease/Operating Agreement

Athletics agrees to lease from the City the Leased Improvements for Home Games and other incidental uses by the Basketball Teams on the terms set forth below:

Term. Athletics’ Lease of the Leased Improvements will have an initial term of thirty (30) years which is anticipated to begin on September 1, 2013, with the actual usage dates of the Leased Improvements to be determined on an annual basis. At the end of the initial term and each successive extension, the University will have the right to extend the term for three (3) additional five-year
periods. The initial term together with any extensions is referred to in the MOU as the “Lease Term.” The parties agree that the Lease/Operating Agreement shall include provisions for a funded capital replacement/enhancement program.

Use by Athletics. During the Lease Term, the Basketball Teams shall be considered the Arena’s primary tenant and as such Athletics shall be accorded the privilege of securing the dates it needs for all pre-season and regular season Home Games of the Basketball Teams between October 1 and March 15 (“Basketball Season”) of each year of the Lease Term before any dates within the Basketball Season are offered to any other entity. Athletics shall also be accorded the privilege of securing the date before each Home Game for practice by the Basketball Teams and visiting teams. Athletics will use its best efforts to play a minimum of 30 Home Games (15 men’s and 15 women’s) in the Arena during each Basketball Season. During the Basketball Season, Athletics shall have the right to use the Arena for practice on any other dates the Arena is not scheduled or being prepared for another event subject to City approval which shall not unreasonably be withheld. Athletics shall quit and surrender the Basketball Space to the City at the end of each practice and/or Home Game in the same condition as at the date and time of the commencement of the practice and/or Home Games, ordinary wear and tear excepted. The City will have the right to lease the Arena to other entities on the dates when the Basketball Teams are not scheduled to practice or play Home Games in the Arena provided that at the end of such other event the Arena is again set up for use by the Basketball Teams for practice or Home Games. Notwithstanding the above, the City will use commercially reasonable efforts to work with Athletics to hold use of the Arena open during the last two weeks of March for basketball post-season play at a mutually agreed upon rental rate.

Rent. Athletics agrees to pay the City an annual rental (“Rent”) of Seven Hundred Fifty Thousand and 00/100 Dollars ($750,000.00). The Rent shall be increased for inflation on an annual basis beginning in September of 2014 and in each succeeding year utilizing the Consumer Price Index for All Urban Consumers (“CPI-U”) over the last 12 months before seasonal adjustment as reported for the month the adjustment is made by the U.S. Bureau of Labor Statistics (or its successor). The Rent shall be payable in one installment following the Basketball Season but not later than May 1 of each year of the Lease Term. The Rent includes all costs of utilities, janitorial services and routine maintenance incurred and attributable to Athletics’ exclusive use of the Leased Improvements but excludes home game expenses as agreed in the Lease/Operating Agreement. Upon reasonable notice to the City, the University may schedule use of the Arena for other University events up to fifteen days per year without paying additional rent. Such use shall be restricted to dates the Arena is not scheduled or being prepared for another event and shall be subject to the University paying the City an amount intended to approximate all actual and direct costs and expenses incurred or paid by or on behalf of the City to provide incremental costs not included in rent related to the event for customary utilities, janitorial, police, traffic control, fire prevention, directional signage, and other similar services for the event not to exceed the lowest rates customarily charged for other Arena users for similar events. University, at its own cost and expense, shall employ all other support staff needed by the University in order to hold the event.

Credit Against Rent. An annual amount equal to: all turnback sales tax receipts the City receives from the sale of basketball tickets for Home Games (includes 70% of the state sales tax), pursuant to the Convention Center Facility Financing Assistance Act (Neb. Rev. Stat. §§13-2601 to 13-2612); the first dollar of all City imposed ticket surcharges on basketball tickets sold for Home Games during each Basketball Season; and a make-whole provision for lost concessions revenues in an amount of $300,000 shall first be applied as a credit toward Athletics Rent and then to other Athletics Home Game expenses. The City agrees to renegotiate the make-whole provision for
concessions in the event University eliminates or modifies its restrictions on the sale of alcohol at Home Games and other University events held in the Arena. The concessions make whole annual amount shall be increased for inflation on an annual basis beginning in September of 2014 and in each succeeding year utilizing the CPI-U over the last 12 months before seasonal adjustment as reported for the month the adjustment is made by the U.S. Bureau of Labor Statistics (or its successor).

**Home Games**

*City Home Game Staffing.* The City will be responsible for providing customary utilities, janitorial, police, traffic control, fire prevention, directional signage and other similar services for events at the Arena. Athletics will retain operational control of the Home Games for purposes of NCAA compliance and otherwise. Home Game related services for concessions and otherwise will be provided and staffed according to the Operating Agreement.

*Athletics Home Game Staffing.* Athletics, at its cost and expense, shall employ the officials and all event support staff, including but not limited to statisticians, timekeepers, scorekeepers, public address announcers, runners and other event and operations related staffing.

*Basketball Space.* The City shall provide or cause to be provided for each Home Game the leased Basketball Space in a first class condition.

**Seating**

There will be suites, loge, club and floor seating. Suites and loge seating constitutes “Premium Seating.”

*Suites Seating.* It is anticipated the Arena will initially have 36 out of a possible 48 suites of which four (4) will be designated as UNL Suites, two (2) will be designated as City Suites, and the remaining 30 suites will be designated as Private Suites all as approved in the construction documents. No license fee will be charged for the UNL Suites or City Suites. The City will market and sell all of the Private Suites, retaining the related Suite revenues, provided that Athletics will be provided and retain sole control of the 4 UNL Suites from the initial phase of construction to market, sell or use as determined by Athletics. In the event the City decides to increase the number of suites in excess of 36, the City shall offer the University the option to build up to one-half of the increased number of suites and to market, sell or use such suites as determined by Athletics. If the University does not exercise its option within 180 days from receipt of the same, unless otherwise agreed by the Parties, the City may proceed to construct the suites and market, sell or use such suites as determined by the City. Subject to certain terms and conditions, University grants City the exclusive right to market, license and assign the Private Suites to individuals and entities in connection therewith.

*Loge Seating.* The City will market and sell all of the Loge Seating, retaining the related Loge Seating revenues provided that Athletics will be provided an amount in return equal to 50% of the total net revenues for the Loge Seating. Subject to certain limitations, University grants City the exclusive right to market, license and assign the Loge Seating to individuals and entities in connection therewith.

*Club and Floor Seating.* The Arena will have Club Seating and Floor Seating (front row or courtside) as approved in the Construction Documents consisting of approximately 1,500 seats. The parties understand and agree that the number of Club Seats and Floor Seats will be determined by mutual agreement as provided in the Lease/Operating Agreement between the Parties. Athletics will market and sell all of the Club and Floor Seating for Home Games, retaining the related Club and Floor Seating revenues, provided that the City
will market and sell all of the Club and Floor Seating for non-university events and retain the related Club and Floor Seating revenue. Combined sales for both Home Games and non-University events shall be split pro-rata unless otherwise agreed in the Lease/Operating Agreement. Subject to certain terms and conditions, University and City grant to each other a reciprocal right to market, license and assign Club and Floor seats to individuals and entities for non-University events in combination with Home Games.

Seating Assignments. Notwithstanding the City’s exclusive right to market, license and assign Suites Seating and Loge Seating, the City agrees to consult with Athletics on assignment of all seats to Home Games. Athletics has exclusive rights to assign seating for the Club Seating, Floor Seating and non-premium seats available to its students and fans for Home Games. Both parties shall cooperate with one another in bundling packages for combined seating at all Arena events. Athletics agrees to allow City to sell suites and loges at a market rate to be determined by City and its consultants.

University Ticket Sales

Sales. Athletics shall have the right to set ticket prices for all Home Games and other Athletics-sponsored intercollegiate events held in the Arena. Athletics shall, at its own cost and expense, perform all duties for the sale of tickets, including operation of a box office at the Arena for the sale of single game tickets. City will provide Athletics with access to the City’s box office and equipment. Athletics shall be entitled to receive and retain all revenues from all season and single game ticket sales. City reserves the right to fix the prices for non-University ticket sales and sell such tickets for all other uses of the Arena. City shall be entitled to receive and retain all revenues from the other uses of the Arena. Athletics and City agree to work together to resolve any problems which may arise regarding the joint use of the City’s box office and equipment.

Surcharge. City will initially assess the $1.00 surcharge per ticket sold on all events in the Arena including Home Games. In the case of season tickets, the $1.00 surcharge will be assessed separately on each Home Game during the season. If the City determines that the finances of the Arena make it necessary to increase the ticket surcharge to all events in the Arena, Athletics agrees to permit a temporary additional surcharge to apply to tickets for Home Games with limitations set forth in the MOU. The Lease/Operating Agreement shall provide the process for determining financial need and the basis for allocating, beginning and ending any temporary additional surcharge. All amounts collected from any City surcharge will be remitted to the City, and except for the first doll of City-imposed surcharges on Home Games, shall be applied toward payment of the principal, redemption price and interest due in connection with the Debt Service Fund. Athletics will collect such surcharge and any other ticket surcharge or user fee imposed by another governmental agency from the Home Game ticket purchaser and pay the entire amount of such surcharge to the City or other assessing governmental agency as required by applicable law. Except as it relates to the Surcharge, Athletics shall be responsible for all sales tax, use tax, or other tax associated with the sale of tickets or use of the Arena for all Home Games or other Athletics use of the Arena.

Naming Rights

The City reserves and shall have the exclusive right to sell, license, or grant the right to name the Arena and identify such name on the Arena concourses, the entrances to the Arena, the exterior Arena roof, the exterior of the Arena or any other areas on, in, upon or immediately around the Arena except for the basketball court floor and specific areas leased for the exclusive use of Athletics (e.g., Husker Vision space and locker rooms for the Basketball Teams). The University is hereby granted the exclusive right to sell, license or grant the right to name the basketball court floor and the locker rooms for the Basketball Teams. The City and University will retain all revenue arising from the sale, lease, or licensing of their respective
naming rights. The parties agree to support and cooperate with each other in the sale and promotion of naming rights, and both parties grant a reciprocal right of reasonable consent and approval to the exercise and modification of naming rights taking into consideration the co-existing naming and related terms and conditions in existing and proposed naming agreements.

**Arena Signage**

Consistent with the Multi-Media Agreement, the City reserves and shall have the exclusive right to seek, negotiate and obtain agreements regarding the right to temporary and/or permanent signage inside or outside the Arena for non-University events and to retain the revenue therefrom. The City further reserves the right to advertise and promote future City events during Home Games and other University events consistent with the Multi-Media Agreement. Athletics will provide reasonable exposure via electronic means and PA announcements for non-University events before Home Games and once during half-time of Home Games. Athletics will prohibit its MM-Agency from selling sponsorships that include food or drink give-aways at Home Games except as coordinated and agreed with the City and their concessionaire.

**Concessions**

The City itself, or through its concessionaires, shall operate all food and beverage sales at the Arena including Home Games and shall be entitled to retain all net revenues received therefrom. City agrees that no alcohol sales shall be allowed during UNL Basketball Games and other UNL events. City agrees to include as part of its concessions during Home Games, an assortment of affordable foods. The City agrees to provide, at cost, concession basic food and beverage service to the locker rooms of the Basketball Teams and visiting teams at Home Games.

**University Broadcast Rights**

University will have the exclusive right to sell or license the television, radio, motion picture, internet or other rights to the broadcasting, filming or other recording (“Broadcast Rights”) of all Home Games held in the Arena and to retain all revenue from such sale or license of Broadcast Rights.

**Branding**

The Arena will provide appropriate locations for the University to identify the Basketball Teams (“Branding”). City will not take any action that is inconsistent with the Branding of the Arena for the Basketball Teams. City will permit University to display historical banners in the Arena that recognize the historical accomplishments of the Basketball Teams, individuals and conference affiliation.

**Sale of University Merchandise**

The University, at its expense, shall have the exclusive rights to sell or at its option, contract with a third party to sell University merchandise in and around the Arena during Home Games in a manner similar to the halo policy for University football games at Memorial Stadium. The cost of all merchandise inventory and merchandise sold shall be at the University’s expense.

**Operation**

The City, or its designee, will operate and maintain the Arena, Basketball Space and Arena Parking Improvements in a manner consistent with arenas and parking improvements of similar age, size and design, ordinary wear and tear excepted. The City will be entitled to establish reasonable parking fees for the parking
garage and parking lot provided that such parking fees established for Arena events will be commercially reasonable.

Maintenance

In consideration of the Rent, the City will operate and maintain the Arena and Leased Improvements so as to cause it to remain in a condition comparable to that of other multipurpose sports and entertainment facilities of similar size, design and age, ordinary wear and tear excepted. The City will be responsible for all operating, maintenance, and capital repair expenses related to the Arena and it will be operated in a manner substantially similar to and consistent with other similarly situated multipurpose sports and entertainment arenas suitable for Division I basketball programs.

Contingencies

The performance of the MOU is contingent upon the following:

a. Execution of a Joint Facilities Agreement between Union Pacific Railroad Company (UP) and BNSF Railway Company (BNSF) with terms and conditions acceptable to the City;

b. Execution of a definitive agreement between UP and the City for the West Haymarket Project;

c. Execution of a definitive agreement between BNSF and the City for the West Haymarket Project; and

d. Execution of a definitive Lease/Operating Agreement between University and City for lease of the Leased Improvements.

Definitive Final Agreement

The parties acknowledge that the terms of the MOU have been agreed to as the principal terms for the design, development and construction of the Arena and lease of the Basketball Space to University. Based upon the MOU, the parties shall in good faith proceed with expedition to negotiate and enter into a definitive final agreement after the affirmative vote of the voters of the City on the May, 2010 ballot proposition relating to the Arena, which shall conform to the provisions set forth in the MOU and provide such other matters as are consistent with and customary for a transaction of this type.

Mutual Cooperation

The successful design, development and construction of the Arena and related activities are dependent upon the continued cooperation and good faith of the University and City. Every covenant, agreement, or restriction in the MOU stated shall be construed in recognition of this interdependence and need for continued mutual cooperation. Athletics retains general responsibility for event management related to Athletics use of the Leased Improvements in recognition of applicable NCAA requirements and that Home Games are part of the Branding and larger mission of the University related to intercollegiate athletics. Athletics and the City or the City’s contractor specifically agree to mutual cooperation in Branding, and other marketing including cooperative efforts to sell sponsorships, naming rights, ticketing, premium seating and advertising to optimize revenues and avoid unintended consequences for all parties.
Termination of MOU

In addition, either party may terminate the MOU prior to the City’s entering into a definitive agreement with BNSF for acquisition of the Arena Site.

* * * * *
APPENDIX D

PROJECTED CASH FLOWS
WEST HAYMARKET JOINT PUBLIC AGENCY-BASIS OF PROJECTIONS

The Agency does not as a matter of course make public projections as to future revenues and expenses, operating income, or other results. However, the City’s management has prepared the projected financial information set in this APPENDIX D to present the projected revenues and expenses related to the Projects. The accompanying projected financial information was not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to projected financial information, but, in the view of the City’s management, was prepared on a reasonable basis, reflects the best currently available estimates and judgments and presents, to the best of management’s knowledge and belief, the expected course of action and the expected future financial performance of the Projects. However, this information is not fact and should not be relied upon as necessarily indicative of future results, and readers of this Official Statement are cautioned not to place undue reliance on the projected financial information.

Neither the City’s independent auditors, nor any other independent accountants, have compiled, examined, or performed any procedures with respect to the projected financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the projected financial information.

The assumptions and estimates underlying the projected financial information are inherently uncertain and, while considered reasonable by the management of the City as of the date hereof, are subject to a wide variety of significant business, economic, and competitive risks and uncertainties that could cause actual results to differ materially from those contained in the prospective financial information. Accordingly, there can be no assurance that the projected results are indicative of the future performance of the operations of the Projects or that actual results will not differ materially from those presented in the projected financial information. The inclusion of projected financial information in this Official Statement should not be regarded as a representation by any person that the results contained in the projected financial information will be achieved.

The City does not generally publish its business plans and strategies or make external disclosures of its anticipated financial position or results of operations. Accordingly, the projections include only projects approved by both the City and the Agency. Neither the City nor the Agency intends to update or otherwise revise the projected financial information to reflect circumstances existing since their preparation or to reflect the occurrence of unanticipated events, even in the event that any or all of the underlying assumptions are shown to be in error. Furthermore, neither the City nor the Agency intends to update or revise the projected financial information to reflect changes in general economic or industry conditions.
APPENDIX E

FORM OF OPINION OF BOND COUNSEL
September __, 2010

West Haymarket Joint Public Agency
Lincoln, Nebraska

[Underwriter]
[Underwriter address]

Re: $100,000,000 Lincoln, Nebraska West Haymarket Joint Public Agency General Obligation Facility Bonds, Taxable Series 2010B (Build America Bonds – Direct Pay)

Ladies and Gentlemen:

We have acted as bond counsel to the West Haymarket Joint Public Agency (the “Agency”) in connection with the issuance of the above-captioned bonds (the “Bonds”). In this capacity, we have examined the law and the certified proceedings, certifications and other documents as we deem necessary to render this opinion.

The Bonds are issued pursuant to the provisions of: (a) the Nebraska Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the “Act”) (b) the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency dated as of April 1, 2010 (the “JPA Agreement”) between The City of Lincoln, Nebraska (the “City”) and The Board of Regents of the University of Nebraska (the “Regents”), (c) the Bond Resolution adopted July 22, 2010 (the “Resolution”) by the Agency and (d) the Facilities Agreement dated September __, 2010 (the “Facilities Agreement”) between the City and the Agency. Capitalized terms used and not otherwise defined in this opinion have the meanings assigned in the Resolution and the Facilities Agreement.

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based on and subject to the foregoing, we are of the opinion, under existing law, as follows:

1. The Agency is duly created and validly existing under the Act as a joint public agency and a political subdivision of the State of Nebraska (the “State”) with the corporate power to adopt the Resolution and execute and deliver the Facilities Agreement, perform the agreements on its part contained therein, and issue the Bonds.
2. The Resolution has been duly adopted by the Agency and the Facilities Agreement has been duly authorized, executed and delivered by the Agency and each constitutes a valid and legally binding obligation of the Agency enforceable upon the Agency to the extent permitted by law.

3. The Bonds have been duly authorized, executed, and delivered by the Agency and are valid and binding obligations of the Agency payable from the sources provided therefor in the Resolution and the Facilities Agreement, including, but not limited to, the proceeds of taxes levied by the Agency pursuant to the provisions of the Act and the JPA Agreement.

4. The interest on the Bonds is exempt from Nebraska income taxation.

We express no opinion regarding (a) the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds (except to the extent, if any, stated in the Official Statement), or (b) federal or state tax consequences arising with respect to the Bonds, other than as expressly set forth in this opinion.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Resolution and the Facilities Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights generally and by equitable principles, whether considered at law or in equity.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

Very truly yours,
BOOK ENTRY SYSTEM

General. The Bonds are available in book-entry only form. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Ownership interests in the Bonds will be available to purchasers only through a book-entry system (the “Book-Entry System”) maintained by The Depository Trust Company (“DTC”), New York, New York.

The following information concerning DTC and DTC’s book-entry system has been obtained from DTC. The Agency takes no responsibility as to the accuracy or completeness thereof and neither the Indirect Participants nor the Beneficial Owners should rely on the following information with respect to such matters, but should instead confirm the same with DTC or the Direct Participants, as the case may be. There can be no assurance that DTC will abide by its procedures or that such procedures will not be changed from time to time.

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of that maturity, and will be deposited with DTC.

DTC and its Participants. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org.

Purchases of Ownership Interests. Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Bonds is discontinued.
Transfers. To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Notices. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices will be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Voting. Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Agency as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of Principal, Redemption Price and Interest. Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the Agency or the Registrar, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC, the Registrar or the Agency, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

Discontinuation of Book-Entry System. DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Agency or the Registrar. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Agency may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed, registered in the name of
DTC’s partnership nominee, Cede & Co. (or such other name as may be requested by an authorized representative of DTC), and delivered to DTC (or a successor securities depository), to be held by it as securities depository for Direct Participants. If, however, the system of book-entry-only transfers has been discontinued and a Direct Participant has elected to withdraw its Bonds from DTC (or such successor securities depository), Bond certificates may be delivered to Beneficial Owners in the manner described in the Resolution.
RESOLUTION NO. WH- ________

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

That the attached Engagement Letter dated October 13, 2010 with BKD, LLC (BKD), to conduct an audit of the basic financial statements of the West Haymarket Joint Public Agency as of and for the period from inception through August 31, 2010 as described in the Letter for a fee not to exceed $12,000.00 without further authorization from the West Haymarket Joint Public Agency, is hereby accepted and approved.

BE IT FURTHER RESOLVED that the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Engagement Letter on behalf of the West Haymarket Joint Public Agency.

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
October 13, 2010

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

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the West Haymarket Joint Public Agency ("West Haymarket JPA").

ENGAGEMENT OBJECTIVES

We will audit the basic financial statements of West Haymarket JPA as of and for the period from inception through August 31, 2010 in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.

The objectives of our audit are:

✓ Expression of an opinion on the conformity of your financial statements, in all material respects, with accounting principles generally accepted in the United States of America.

✓ Issuance of a report on your compliance based on the audit of your financial statements.

✓ Issuance of a report on your internal control over financial reporting based on the audit of your financial statements.

OUR RESPONSIBILITIES

Auditing standards generally accepted in the United States of America and Government Auditing Standards require that we plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Accordingly, a material misstatement may remain undetected. Our audit is designed to detect misstatements that, in our judgment, could have a material effect on the financial statements taken as a whole. Consequently, our audit will not necessarily detect errors or fraud resulting in an immaterial misstatement of the financial statements.

An audit also includes obtaining an understanding of the entity and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing and extent of further audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify material weaknesses or significant deficiencies. However, we will inform you of any such matters that come to our attention. Because of the limits of internal control, errors, fraud, illegal acts or instances of noncompliance may occur and not be detected. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override...
the system. We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

Jamie Johnson is responsible for supervising the engagement and authorizing the signing of the report or reports.

If, for any reason, we are unable to complete our audit or are unable to form or have not formed an opinion, we may decline to express an opinion or decline to issue a report as a result of this engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

To facilitate our audit, management is responsible for making all financial records documentation and other financial and compliance related information available to us. At the conclusion of our engagement, management will provide to us a letter acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audit for all periods presented
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

Management is responsible for fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, for adjusting the financial statements to correct material misstatements and for identifying and ensuring compliance with the laws and regulations applicable to your activities. Management is also responsible for establishing and maintaining effective internal control over financial reporting and compliance and setting the proper tone; creating and maintaining a culture of honesty and high ethical standards; and establishing appropriate controls to prevent, deter and detect fraud, illegal acts and instances of noncompliance.

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

OTHER SERVICES

In addition to the services outlined in the engagement objectives, we will also:

- Review bond offering documents, and the inclusion of our financial statements for a fee of $3,250 per offering document
In addition, we may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of the services described above and for any other services that we may provide, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management’s objectives. Any and all decisions involving management functions related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

We have estimated the time required by our engagement and expect our fee to range between $11,000 and $12,000. Our pricing for this engagement and our fee structure is based upon the expectation that our invoices will be paid promptly. We will issue progress billings during the course of our engagement, and payment of our invoices is due upon receipt. Interest will be charged on any unpaid balance after 30 days at the rate of 10% per annum.

Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts,
- Responding to auditor inquiries,
- Preparing confirmation and other letters,
- Pulling selected invoices and other documents from files, and
- Helping to resolve any differences and exceptions noted.

We will provide you with a detailed list of assistance needed before the audit begins.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.
OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date plus expenses incurred.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time utilize third-party service providers, e.g., domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.
If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers’ proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

Any time you intend to reference our firm name in any manner in any published materials, including on an electronic site, you agree to provide us with draft materials for our review and approval before publishing or posting such information.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of BKD, LLP have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

If the above arrangements are acceptable to you, please sign the enclosed copy of this letter and return it to us.

BKD, LLP

RJW/NRH/amw

The services and arrangements described in this letter are in accordance with our understanding and are acceptable to us.

WEST HAYMARKET JOINT PUBLIC AGENCY

BY________________________________________

TITLE_____________________________________

DATE_______________________________________