

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.

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

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

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

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

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

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

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

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Construction and Contractor Requirements.

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

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

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

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

3.3.4 Safety/Security.

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

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

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

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

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

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

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

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

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

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

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

3.4 Environmental Compliance and Notification.

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

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

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

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

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

3.5 Timing.

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

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

3.6 Indemnifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8 Insurance Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8.1.5 Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV – MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature page follows]

Signature Page - C&M Agreement

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

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

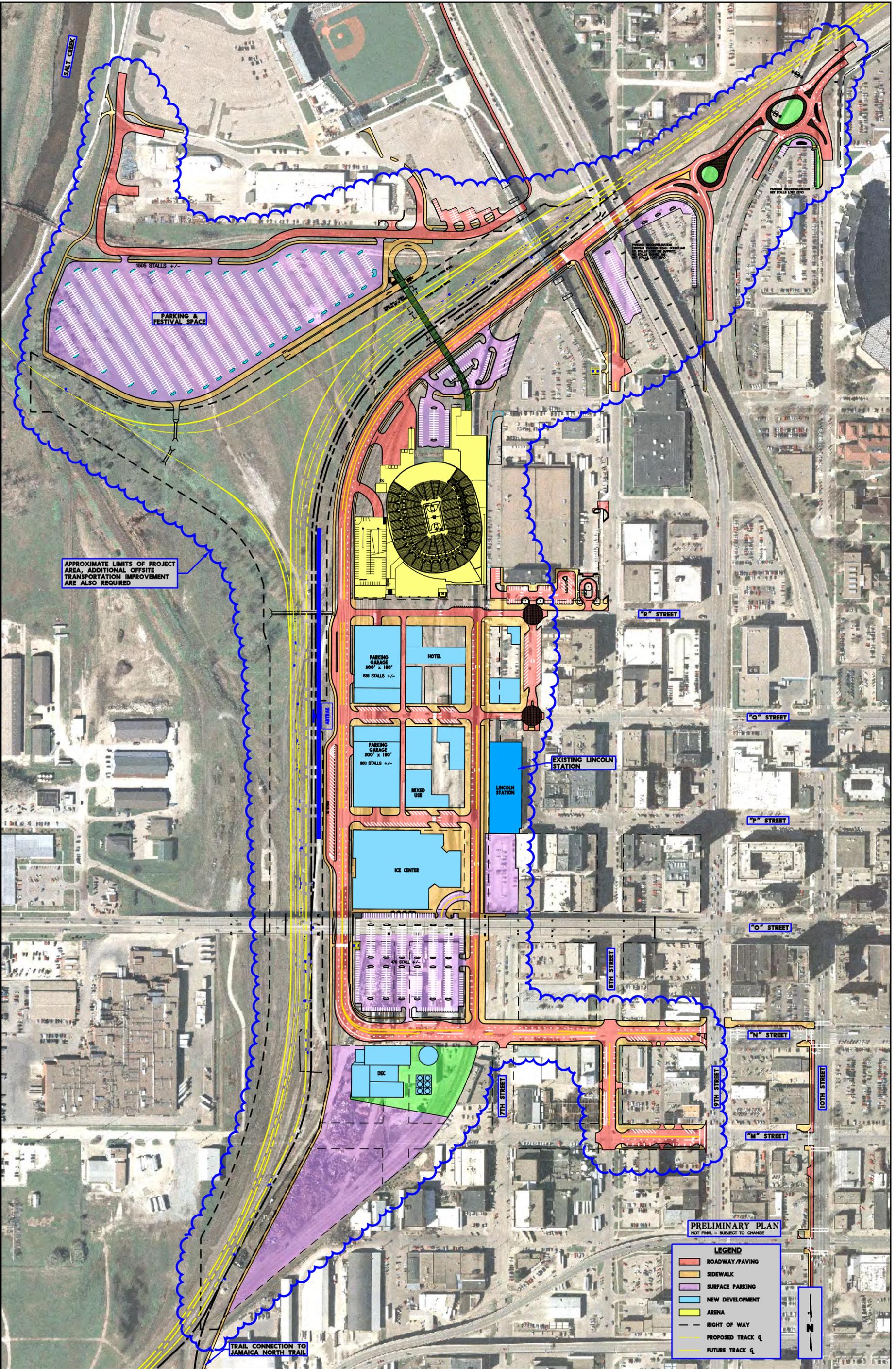
By: _____
David L. Freeman, Vice President – Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]



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

TRAIL CONNECTION TO JAMAICA NORTH TRAIL

PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE

LEGEND

- ROADWAY/PAVING
- SIDEWALK
- SURFACE PARKING
- NEW DEVELOPMENT
- ARENA
- RIGHT OF WAY
- PROPOSED TRACK
- FUTURE TRACK



DATE: 8/23/2010
 DGN: f:\projects\008-0645\m_base\exhibits\allroad_agreement\exhibits\BNSF_Exhibit A_Display.dgn

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

WEST HAYMARKET REDEVELOPMENT AREA



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

EXHIBIT
A

EXHIBIT B

Form of BNSF Plan Approval



Gerald Maczuga
Project Engineer

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

Date: _____

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

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

Dear Mr. Peo:

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

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

EXHIBIT C

Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

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

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

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

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

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

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

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.
- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.
- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

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

1.02 Contractor Safety Orientation

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

1.03 Railway Requirements

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

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

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
 - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

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

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

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

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

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

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

1.06 Contractor General Safety Requirements

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

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

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF

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

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

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

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

1.08 Hazardous Waste, Substances and Material Reporting

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

1.09 Personal Injury Reporting

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

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

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

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

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

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

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

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

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

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired

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

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

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

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

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

- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - Endorsed to include the Limited Seepage and Pollution Endorsement.

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

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

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

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

[Signature page follows]

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

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: ____
Fax: _____
Phone: _____
E-mail: _____

EXHIBIT C-1(B)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

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

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

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

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

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

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- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - Endorsed to include the Limited Seepage and Pollution Endorsement.

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

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Other Requirements:

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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.

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

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

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

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

[Signature page follows]

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

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ____ Zip: ____
Fax: _____
Phone: _____
E-mail: _____

EXHIBIT D

Final Clearances

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

EXHIBIT E

Soil Management Plan

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

Proper Management of Impacted Media

1. Access

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

2. Management Practices

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

2.1 Impacted Soil and Debris Management

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

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.
2. Title 132, Chapter 1, Section 041 defines fill as: *“solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material”*.
3. The *“use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment”*.
4. From pg. 2 of NDEQ GD 05-161: *“Activity not related to investigation or remediation is not considered “active management” under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation.”*
5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

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

2.2 Grading/Excavation

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

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.***
5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.
7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

2.3 Utility Work

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

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all related utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

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

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.
7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.
8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:

**Frank Uhlarik – Alfred Benesch & Company: 402-333-5792
Cell: 402-669-0546**

Alternate:

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

Alternate:

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

Agencies/Railroad Authorities:

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

After Hours, Weekends and Holidays:

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

ALL OTHER INCIDENTS

Fire and Police: Dial 911

LIST OF ACRONYMS

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