

MEMORANDUM OF UNDERSTANDING

1 This Memorandum of Understanding is made and entered into as of the ____ day of
2 _____, 2010, by and between the **City of Lincoln, Nebraska**, a municipal
3 corporation ("City"), and the **Board of Regents of the University of Nebraska**, a public body corporate
4 organized and existing under the laws of the State of Nebraska ("University") on behalf of the University
5 of Nebraska-Lincoln ("UNL") and its Department of Intercollegiate Athletics ("Athletics").

RECITALS

- 6 A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket
7 District and Downtown Lincoln, the City is proposing to construct an approximately 16,000-seat arena in
8 an irregular bounded tract of land located to the west of the U.S. Post Office in Downtown Lincoln.
- 9 B. In order to pay for site acquisition and related costs, including the cost of acquiring the BNSF Property
10 and constructing the Arena and necessary public improvements, it will be necessary for the City to issue
11 general obligation bonds of the City guaranteed by the authority to levy a tax for the payment thereof.
12 However, in order to avoid a property tax levy for repayment of the bonds, the City intends to repay the
13 bonds from other revenue sources including but not limited to revenues received from new Arena
14 signage, naming rights for the Arena, concourses, plaza, and club area, and the licensing of Premium
15 Seating and other sources that may be needed to fully fund the Arena and related West Haymarket
16 Improvements (defined below).
- 17 C. It is in the best interest of the City to present the question of the issuance of such bonds and the
18 levying of a tax to pay the same ("Bond Question") to the electors of the City at the primary election to
19 be held by the City on Tuesday, May 11, 2010, or at a special election to be held later in 2010.
- 20 D. UNL is a member of the National Collegiate Athletic Association ("NCAA") and UNL's Athletics
21 Department ("Athletics") currently has men's and women's varsity basketball teams ("Basketball
22 Teams"). The Basketball Teams currently play their home games in Lincoln ("Home Games") during each
23 basketball season in the Bob Devaney Sports Center.
- 24 E. If the City goes forward with the Arena, Athletics is willing to relocate the Home Games of the
25 Basketball Teams from UNL's Bob Devaney Sports Center to the Arena in order to provide its Basketball
26 Teams' fans with the best possible experience and venue for the Home Games provided the relocation
27 does not cause Athletics to lose the revenue needed to support its Basketball Teams.
- 28 F. The City and University have developed an estimated Uses and Sources summary (attached as Exhibit
29 A) including a cash flow assumption estimating that premium seating in the Arena will potentially
30 generate revenue for Athletics in excess of an amount that could be produced at the Bob Devaney
31 Sports Center.
- 32 G. The definitive agreements between the University and City are planned to include an interlocal
33 agreement and related provisions to create a Joint Public Agency (JPA) pursuant to the Joint Public

1 Agency Act (Neb. Rev. Stat. §§13-2501 - 13-2550) and a related lease and operating agreement,
2 including Athletics use of the Arena (Lease/Operating Agreement) as determined by the parties.

3 H. The JPA will function as a coordinating entity to finance and provide for the contracted design and
4 construction of the Arena as well as necessary land acquisitions/remediation and supporting
5 infrastructure and facilities for the larger scope of West Haymarket Improvements.

6 I. The JPA will allow the parties to track and account for costs and revenues related to the Leased
7 Improvements at the Arena at the same time allowing for the broader Arena Improvements to benefit
8 from pour-over revenue allocations when available. Other West Haymarket Improvements may also
9 derive the benefits of being included under the general financing authority or jurisdiction of the JPA but
10 are to be stand alone and separate from the debt service and revenue allocations related to the Arena
11 and Athletics. Athletics is to be a tenant in the Arena, the University is to be a party to the JPA, and the
12 University Board of Regents shall approve the Lease/Operating Agreement.

13 J. The City and University are executing and entering into this Memorandum of Understanding to set
14 forth the understandings of the City and University with respect to construction of the Arena on the
15 Arena Site utilizing the JPA for financing and other financial agreements related to Premium Seating, and
16 the subsequent lease of the Leased Improvements to Athletics for the use of its Basketball Teams.

17 NOW, THEREFORE, in consideration of the mutual obligations of this Agreement, the City and University
18 agree as follows:

19 **Definitions.**

20 **Arena** shall mean the approximately 16,000 seat facility proposed for the Arena Site to be constructed
21 as a multi-purpose sports and entertainment facility suitable for use by Athletics for Home Games of the
22 Basketball Teams, as well as to host other sporting events, family shows, concerts, circuses, and similar
23 entertainment and floor events.

24 **Arena Improvements** shall mean the Building, Utilities, Arena Site Acquisition/Preparation, Roads,
25 Pedestrian Ways, Surface Parking NW of Tracks, Surface Parking south of Ice Rink, and South Parking
26 Garage/s.

27 **Arena Parking Improvements** shall mean a new parking garage adjacent to the Arena ("Arena Parking
28 Garage"), surface parking on the Arena Site ("Arena Surface Parking"), and a surface parking lot
29 northwest of the Arena across the BNSF railroad tracks ("NW Arena Parking Lot").

30 **Arena Sources of Funds** shall include state aid, developer contributions, occupation tax, turn back tax,
31 Arena rent, concessions, premium seating, naming rights, signage, tickets, interest , TIF, parking
32 revenues, state and federal environmental funds and private donations as shown by categories in
33 estimated amounts on Exhibit A.

34 **Arena Site** shall mean the irregular bounded tract of land located to the west of the U.S. Post Office in
35 Downtown Lincoln as shown on Exhibit B.

1 **Basketball Space** shall mean the basketball court, training rooms, locker rooms, Fiber Optic Connection
2 to Husker Vision, and Seating as delineated in Sections 4, 5, 7, 11 and related signage, center-hung and
3 other scoreboards, concessions facilities, and operations facilities customarily associated with an NCAA
4 Division I basketball program.

5 **Drawings and Specifications and Construction Documents** shall mean the same as developed utilizing
6 the process in Section 4.

7 **Leased Improvements** shall mean the Basketball Space, and the basketball related parking spaces
8 provided in the Arena Parking Improvements

9 **Multi-Media Agreement** shall mean the University's Multi-Media Rights Agreement dated July 1, 2008
10 as amended and any successor agreement/s between the Board of Regents of the University of
11 Nebraska and IMG Communication, Inc. d/b/a IMG College or another multi-media agency, department
12 or firm ("MM-Agency")

13 **West Haymarket Improvements** shall mean the Lincoln Traction Phased Project, Ice Center, District
14 Energy Corporation, and any other related improvements coordinated through the JPA.

15 1. **Arena Site Acquisition.** The City will proceed with due diligence after the passage of the Bond
16 Question to acquire the Arena Site ("Arena Site Acquisition").

17 2. **Arena Site Preparation.** The City will proceed with due diligence after Arena Site Acquisition to
18 perform (1) all on-site work to prepare the Arena Site for construction; (2) all on-site and off-site work to
19 cause utilities to be available to the Arena Site, as necessary for the construction and operation of the
20 Arena; and (3) all other on-site and off-site work to be performed as part of the approved Construction
21 Documents (collectively "Site Preparation Work").

22 3. **Arena Construction.** The Arena will be constructed by the City or JPA and financed through the JPA.

23 4. **Process for Design and Construction of Arena; General Intent.** It is the intent of Athletics and the City
24 to work together in all aspects of the design, development and construction of the Arena and in
25 particular, the Basketball Space. Athletics will be given an opportunity to have representatives present
26 at meetings and briefings with the City's design and construction professionals with the intent being that
27 Athletics is entitled to full disclosure of and participation in the process for the design and construction
28 of the Arena. At a minimum, the Basketball Space shall consist of:

29 A. **Basketball Court.** The basketball court shall consist of a portable basketball playing surface with all
30 customary related items including, without limitation, state-of-the-art basketball goals, back-up
31 basketball goals, nets, lines and striping, timekeeper's tables, scorekeeper's tables, adequate signs and
32 markers, home and visiting team benches, tables and chairs, adequate lighting, communications
33 systems, telephone hook-up from each team's bench on floor level to coaches and assistant coaches,
34 radio and television booths;

1 B. Training room, provided that Athletics will outfit the room with needed equipment at Athletics' own
2 cost and expense;

3 C. Locker rooms. Two locker rooms for the exclusive use of the Men's and Women's Basketball Teams
4 shall be provided. Two additional locker rooms for Visitor Teams, one locker room for officials, and one
5 locker room for cheer squads shall be provided. Fit out in excess of that provided in the locker rooms for
6 visitor teams will be paid for by Athletics at its own cost and expense.

7 D. Fiber Optic Connection to Husker Vision as provided below in Section 7.

8 E. Seating. The details for seating are provided below in Section 11.

9 It is the intent of the City to keep the Athletics fully informed as part of the collaborative effort as the
10 Arena is designed and constructed. The City agrees to work together with Athletics to locate, design and
11 build the Arena seating, including the number of suites, loge seating, club seating, and floor seating;
12 media work area; the press box area; the studio and production area; interview room; hospitality rooms,
13 and any other area reasonably necessary to carry out the Home Games. The plans and specifications for
14 the Arena will be prepared at the direction of the City subject to approval of Athletics; such approval not
15 to be unreasonably withheld or delayed and to be limited in scope to confirming that the Arena will
16 fulfill Athletics' needs and that it can be constructed within the approved time schedule.

17 **5. Administration, Design and Construction.** The Arena will include the Basketball Space as designed
18 and constructed in accordance with the approved Drawings and Specifications and Construction
19 Documents.

20 **6. Arena Parking Improvements.** The Arena Parking Improvements to serve the Arena will be
21 constructed in accordance with the approved Drawings and Specifications and Construction Documents.
22 The Arena Parking Improvements are envisioned to contain approximately 550 parking spaces in the
23 Arena Parking Garage, approximately 60 parking spaces in the Arena Surface Parking, and approximately
24 1,500 parking spaces in the NW Arena Parking Lot. The City will provide or cause to be provided to
25 Athletics a reasonable number of up to 100 parking spaces in the Arena Parking Improvements,
26 approximately 40 of which will be in the Arena Surface Parking for student-athletes, coaching staff,
27 support staff, and officials for all Home Games, practice and other Athletics sponsored intercollegiate
28 athletic events at no cost in accordance with the applicable NCAA requirements.

29 **7. Fiber Optic Cable.** The City will install or cause to be installed a 48-strand fiber optic cable from the
30 new Arena to Memorial Stadium's Husker Vision control room.

31 **8. Completion Date.** It is the intent of the parties that the Arena and the Arena Parking Improvements
32 be completed and available for use by September 1, 2013. The parties agree that timely completion of
33 the Leased Improvements in the Arena is critically important and that any anticipated delays or other
34 circumstances jeopardizing the intended completion date shall be timely provided to the other party as
35 soon as practical so that any preventive or remedial measures can be reasonably deployed.

1 **9. Lease/Operating Agreement.** Athletics agrees to lease from the City the Leased Improvements for
2 Home Games and other incidental uses by the Basketball Teams on the terms set forth below:

3 A. Term. Athletics' Lease of the Leased Improvements will have an initial term of thirty (30) years which
4 is anticipated to begin on September 1, 2013, with the actual usage dates of the Leased Improvements
5 to be determined on an annual basis as set forth in C below. At the end of the initial term and each
6 successive extension, the University will have the right to extend the term for three (3) additional five-
7 year periods. The initial term together with any extensions is referred to herein as the "Lease Term." The
8 parties agree that the Lease/Operating Agreement shall include provisions for a funded capital
9 replacement/enhancement program.

10 B. Use by Athletics. During the Lease Term, the Basketball Teams shall be considered the Arena's
11 primary tenant and as such Athletics shall be accorded the privilege of securing the dates it needs for all
12 pre-season and regular season Home Games of the Basketball Teams between October 1 and March 15
13 ("Basketball Season") of each year of the Lease Term before any dates within the Basketball Season are
14 offered to any other entity. Athletics shall also be accorded the privilege of securing the date before
15 each Home Game for practice by the Basketball Teams and visiting teams. In order to secure the
16 foregoing privileges, Athletics shall inform the City as early as possible, but no later than by September 1
17 of each year during the Lease Term of the day before practice dates and dates for Home Games of the
18 Basketball Teams. During each Basketball Season, Athletics shall play in the Arena all of the "Home
19 Games" of both Basketball Teams (excluding any game played outside of Lincoln, Nebraska in a facility
20 which is neutral for both playing teams but where one of the two playing teams nevertheless must be
21 determined as the "home team"). Athletics will use its best efforts to play a minimum of 30 Home
22 Games (15 men's and 15 women's) in the Arena during each Basketball Season. During the Basketball
23 Season, Athletics shall have the right to use the Arena for practice on any other dates the Arena is not
24 scheduled or being prepared for another event subject to City approval which shall not unreasonably be
25 withheld. Athletics shall quit and surrender the Basketball Space to the City at the end of each practice
26 and/or Home Game in the same condition as at the date and time of the commencement of the practice
27 and/or Home Games, ordinary wear and tear excepted. The City will have the right to lease the Arena to
28 other entities on the dates when the Basketball Teams are not scheduled to practice or play Home
29 Games in the Arena provided that at the end of such other event the Arena is again set up for use by the
30 Basketball Teams for practice or Home Games. Notwithstanding the above, the City will use
31 commercially reasonable efforts to work with Athletics to hold use of the Arena open during the last two
32 weeks of March for basketball post-season play at a mutually agreed upon rental rate. Athletics agrees
33 to make reasonable efforts to comply with the City's request that Athletics not schedule day before
34 practices and Home Games on certain dates ("Black Out Dates"). The City will attempt to give Athletics
35 at least ninety (90) days advance notice of the City's requested Black Out Dates.

36 C. Rent. Athletics agrees to pay the City an annual rental ("Rent") of Seven Hundred Fifty Thousand and
37 00/100th Dollars (\$750,000.00). The Rent shall be increased for inflation on an annual basis beginning in
38 September of 2014 and in each succeeding year utilizing the Consumer Price Index for All Urban
39 Consumers (CPI-U) over the last 12 months before seasonal adjustment as reported for the month the
40 adjustment is made by the U.S. Bureau of Labor Statistics (or its successor). The Rent shall be payable in

1 one installment following the Basketball Season but not later than May 1 of each year of the Lease
2 Term. The Rent includes all costs of utilities, janitorial services and routine maintenance incurred and
3 attributable to Athletics' exclusive use of the Leased Improvements but excludes home game expenses
4 as agreed in the Lease/Operating Agreement. Upon reasonable notice to the City, the University may
5 schedule use of the Arena for other University events up to fifteen days per year without paying
6 additional rent. Such use shall be restricted to dates the Arena is not scheduled or being prepared for
7 another event and shall be subject to the University paying the City an amount intended to approximate
8 all actual and direct costs and expenses incurred or paid by or on behalf of the City to provide
9 incremental costs not included in rent related to the event for customary utilities, janitorial, police,
10 traffic control, fire prevention, directional signage, and other similar services for the event not to exceed
11 the lowest rates customarily charged for other Arena users for similar events. University, at its own cost
12 and expense, shall employ all other support staff needed by the University in order to hold the event.

13 D. Credit Against Rent. An annual amount equal to: all turnback sales tax receipts the City receives from
14 the sale of basketball tickets for Home Games (includes 70% of the state sales tax), pursuant to the
15 Convention Center Facility Financing Assistance Act (Neb. Rev. Stat. §§13-2601 to 13-2612); the first
16 dollar of all City imposed ticket surcharges on basketball tickets sold for Home Games during each
17 Basketball Season; and a make-whole provision for lost concessions revenues in an amount of \$300,000
18 shall first be applied as a credit toward Athletics Rent and then to other Athletics Home Game expenses.
19 The City agrees to renegotiate the make-whole provision for concessions in the event University
20 eliminates or modifies its restrictions on the sale of alcohol at Home Games and other University events
21 held in the Arena. The concessions make whole annual amount shall be increased for inflation on an
22 annual basis beginning in September of 2014 and in each succeeding year utilizing the Consumer Price
23 Index for All Urban Consumers (CPI-U) over the last 12 months before seasonal adjustment as reported
24 for the month the adjustment is made by the U.S. Bureau of Labor Statistics (or its successor).

25 **10. Home Games.**

26 A. City Home Game Staffing. Consistent with the terms of (10) B below and the Lease/Operating
27 Agreement for the Basketball Space, the City will be responsible for providing, customary utilities,
28 janitorial, police, traffic control, fire prevention, directional signage and other similar services for events
29 at the Arena. Athletics will retain operational control of the Home Games for purposes of NCAA
30 compliance and otherwise. Home Game related services for concessions and otherwise will be provided
31 and staffed according to the Operating Agreement. The City and Athletics will meet annually to discuss
32 and evaluate the required staffing for Home Games.

33 B. Athletics Home Game Staffing. Athletics, at its cost and expense, shall employ the officials and all
34 event support staff, including but not limited to statisticians, timekeepers, scorekeepers, public address
35 announcers, runners and other event and operations related staffing.

36 C. Basketball Space. The City shall provide or cause to be provided for each Home Game the leased
37 Basketball Space in a first class condition.

1 11. **Seating.** The uses and sources for the Arena at the time of this agreement anticipate the following
2 levels of premium seating: A) Suites, B) Loge C) Club and Floor.

3 A. Suites Seating. It is anticipated the Arena will initially have 36 out of a possible 48 suites of which four
4 (4) will be designated as UNL Suites, two (2) will be designated as City Suites, and the remaining 30
5 suites will be designated as Private Suites all as approved in the Construction Documents. No license fee
6 will be charged for the UNL Suites or City Suites. The City will market and sell all of the Private Suites,
7 retaining the related Suite revenues, provided that Athletics will be provided and retain sole control of
8 the 4 UNL Suites from the initial phase of construction to market, sell or use as determined by Athletics.
9 In the event the City decides to increase the number of suites in excess of 36, the City shall offer the
10 University the option to build up to one-half of the increased number of suites and to market, sell or use
11 such suites as determined by Athletics. If the University does not exercise its option within 180 days
12 from receipt of the same, unless otherwise agreed by the Parties, the City may proceed to construct the
13 suites and market, sell or use such suites as determined by the City. Subject to the terms and conditions
14 of subparagraph D below, University grants City the exclusive right to market, license and assign the
15 Private Suites to individuals and entities in connection therewith.

16 B. Loge Seating. The City will market and sell all of the Loge Seating, retaining the related Loge Seating
17 revenues provided that Athletics will be provided an amount in return 50% of the total net revenues for
18 the Loge Seating. Subject to the terms and conditions of subparagraph D below, University grants City
19 the exclusive right to market, license and assign the Loge Seating to individuals and entities in
20 connection therewith.

21 C. Club and Floor Seating. The Arena will have Club Seating and Floor Seating (front row or courtside) as
22 approved in the Construction Documents consisting of approximately 1,500 seats. The parties
23 understand and agree that the number of Club Seats and Floor Seats will be determined by mutual
24 agreement as provided in the Lease/Operating Agreement between the Parties. Athletics will market
25 and sell all of the Club and Floor Seating for Home Games, retaining the related Club and Floor Seating
26 revenues, provided that the City will market and sell all of the Club and Floor Seating for non-university
27 events and retain the related Club and Floor Seating revenue. Combined sales for both Home Games
28 and non-university events shall be split pro-rata unless otherwise agreed in the Lease/Operating
29 Agreement. Subject to the terms and conditions of subparagraph D below, University and City grant to
30 each other a reciprocal right to market license and assign Club and Floor seats to individuals and entities
31 for non-university events in combination with Home Games.

32 D. Premium Seating.

33 Notwithstanding the City's exclusive right to market, license and assign Suites Seating and Loge Seating,
34 the City agrees to consult with Athletics on assignment of all seats to Home Games. Athletics has
35 exclusive rights to assign seating for the Club Seating, Floor Seating and non-premium seats available to
36 its students and fans for Home Games.

37 Both parties shall cooperate with one another in bundling packages for combined seating at all Arena
38 events. Athletics agrees to allow City to sell suites and loges at a market rate to be determined by City

1 and its consultants. Athletics agrees to allow an appropriate debt related pledge of Athletics portion of
2 the Loge Seating revenues subject to reimbursement, should such pledge be required by bondholders as
3 approved by bond counsel for the University and then only as a special limited obligation not
4 constituting a debt or liability of the University.

5 E. The Parties agree that Arena Sources of Funds shall be expended only as follows: First toward
6 payment of the principal, redemption price and interest due in connection with bonded indebtedness
7 related to the Leased Improvements. The parties agree that any Arena revenues not needed for
8 payment of principal or redemption price and interest shall be segregated and dedicated to pay for
9 operation and maintenance costs of the Leased Improvements and Arena in accordance with the
10 attached West Haymarket Flow of Funds diagram (Exhibit C) indicating the priority of draws on Arena
11 Sources of Funds. University shall have no other responsibility or liability for repayment of the bonds.

12 **12. University Ticket Sales.**

13 A. Sales. Athletics shall have the right to set ticket prices for all Basketball Team "Home Games" and
14 other Athletics sponsored intercollegiate events held in the Arena. Athletics shall, at its own cost and
15 expense, perform all duties for the sale of tickets, including operation of a box office at the Arena for the
16 sale of single game tickets. In operating the ticket office, Athletics may use the City's ticket system or
17 use remote access to its own ticketing system. City will provide Athletics with access to the City's box
18 office and equipment. Athletics shall be entitled to receive and retain all revenues from all season and
19 single game ticket sales. City reserves the right to fix the prices for non-University ticket sales and sell
20 such tickets for all other uses of the Arena. City shall be entitled to receive and retain all revenues from
21 the other uses of the Arena. Athletics and City agree to work together to resolve any problems which
22 may arise regarding the joint use of the City's box office and equipment.

23 B. Surcharge. City will initially assess the \$1.00 surcharge per ticket sold on all events in the arena
24 including Home Games subject to the provisions of Paragraph 9D. In the case of season tickets, the
25 \$1.00 surcharge will be assessed separately on each Home Game during the season. If the City
26 determines that the finances of the Arena make it necessary to increase the ticket surcharge to all
27 events in the arena, Athletics agrees to permit a temporary additional surcharge to apply to tickets for
28 Home Games with the following limitations: only for so long as financially required and not to exceed
29 \$0.50 in any 3 year period with a total of 4 incremental increases permitted over the term of the lease,
30 up to a maximum of \$3.00/ticket inclusive of the first dollar subject to the provisions of Paragraph 9D.
31 The Lease/Operating Agreement shall provide the process for determining financial need and the basis
32 for allocating, beginning and ending any temporary additional surcharge. All amounts collected from any
33 City surcharge will be remitted to the City, and except as provided in Paragraph 9D, shall be applied
34 toward payment of the principal, redemption price and interest due in connection with the Debt Service
35 Fund. Athletics will collect such surcharge and any other ticket surcharge or user fee imposed by
36 another governmental agency from the Home Game ticket purchaser and pay the entire amount of such
37 surcharge to the City or other assessing governmental agency as required by applicable law. Except as it
38 relates to the Surcharge, Athletics shall be responsible for all sales tax, use tax, or other tax associated
39 with the sale of tickets or use of the Arena for all Home Games or other Athletics use of the Arena.

1 **13. Naming Rights.**

2 A. Naming Rights. The City reserves and shall have the exclusive right to sell, license, or grant the right to
3 name the Arena and identifying such name on the Arena concourses, the entrances to the Arena, the
4 exterior Arena roof, the exterior of the Arena or any other areas on, in, upon or immediately around the
5 Arena except for the basketball court floor and specific areas leased for the exclusive use of Athletics
6 (e.g., Husker Vision space and locker rooms for the Basketball Teams). The University is hereby granted
7 the exclusive right to sell, license or grant the right to name the basketball court floor and the locker
8 rooms for the Basketball Teams. The City and University will retain all revenue arising from the sale,
9 lease, or licensing of their respective Naming Rights. The parties agree to support and cooperate with
10 each other in the sale and promotion of Naming Rights, and both parties grant a reciprocal right of
11 reasonable consent and approval to the exercise and modification of naming rights taking into
12 consideration the co-existing naming and related terms and conditions in existing and proposed naming
13 agreements. Either party may propose removing any established naming subject to the reasonable
14 consent and approval of the other party if such action is reasonably determined to be necessary for (i)
15 the protection of the reputation and stature of either party, (ii) failure to fulfill agreed upon obligations
16 associated with the naming, or (iii) other changes in circumstances materially impacting either party.
17 Before taking any such action, bond counsel for the JPA and respective legal counsel for the parties shall
18 be consulted in regard to any legal obligations the parties may have under any pre-existing agreement
19 related to naming or in regard to any other matter that may have legal bearing upon a proposed change
20 in name.

21 B. Mutual License. City hereby grants and shall cause to be included in any Naming Rights agreement for
22 the Arena a grant to the University for the term of the lease, of a non-exclusive, royalty free, worldwide,
23 right and license to use the Arena name and identification, solely for the purpose of promoting the
24 University and its athletic programs or functions that use the Arena during the term. University grants to
25 the City, for the term of the lease, a non-exclusive royalty free, worldwide, right and license to use the
26 name of the University, the name of UNL, the name of the Athletic Department, and the names of the
27 Basketball Teams solely for the purpose of promoting the Arena, including but not limited to the sale of
28 Naming Rights and advertisements, during the Lease Term.

29 **14. Arena Signage.** Consistent with the Multi-Media Agreement, the City reserves and shall have the
30 exclusive right to seek, negotiate and obtain agreements regarding the right to temporary and/or
31 permanent signage inside or outside the Arena for non-University events and to retain the revenue
32 therefrom. The City further reserves the right to advertise and promote future City events during Home
33 Games and other University events consistent with the Multi-Media Agreement. Athletics will provide
34 reasonable exposure via electronic means and PA announcements for non-University events before
35 Home Games and once during half-time of Home Games. Athletics will prohibit its MM-Agency from
36 selling sponsorships that include food or drink give-aways at Home Games except as coordinated and
37 agreed with the City and their concessionaire.

38 **15. Concessions.** The City itself, or through its concessionaires, shall operate all food and beverage sales
39 at the Arena including Home Games and shall be entitled to retain all net revenues received therefrom.

1 City agrees that no alcohol sales shall be allowed during UNL Basketball Games and other UNL events.
2 City agrees to include as part of its concessions during Home Games, an assortment of affordable foods.
3 The City agrees to provide, at cost, concession basic food and beverage service to the locker rooms of
4 the Basketball Teams and visiting teams at Home Games.

5 **16. University Broadcast Rights.** University will have the exclusive right to sell or license the television,
6 radio, motion picture, internet or other rights to the broadcasting, filming or other recording
7 (“Broadcast Rights”) of all Home Games held in the Arena and to retain all revenue from such sale or
8 license of Broadcast Rights. University understands that the City may require payment by such
9 broadcasters to City of reasonable and customary hookup or other fees as a condition of their use of the
10 Arena for broadcasting purposes; all such amounts received by City shall be the exclusive property of the
11 City.

12 **17. Branding.** The Arena will provide appropriate locations for the University to identify the Basketball
13 Teams (“Branding”). City will not take any action that is inconsistent with the Branding of the Arena for
14 the Basketball Teams. City will permit University to display historical banners in the Arena that recognize
15 the historical accomplishments of the Basketball Teams, individuals and conference affiliation. The
16 historical banners will not be required to be displayed at events other than Basketball Team games.
17 University agrees that all copyright, trademark and service mark material used by University will be duly
18 licensed or authorized by the copyright, trademark, or service mark’s owner or their representative.

19 **18. Sale of University Merchandise.** The University, at its expense, shall have the exclusive rights to sell
20 or at its option, contract with a third party to sell University merchandise in and around the Arena
21 during Home Games in a manner similar to the Halo policy for memorial stadium. The cost of all
22 merchandise inventory and merchandise sold shall be at the University’s expense. The University shall
23 determine the kind, quality, quantity, and pricing of the merchandise to be sold. The City shall provide
24 suitable locations in each concourse for the sale of merchandise.

25 **19. Operation.** The City, or its designee, will operate and maintain the Arena, Basketball Space and
26 Arena Parking Improvements in a manner consistent with arenas and parking improvements of similar
27 age, size and design, ordinary wear and tear excepted. The City will be entitled to establish reasonable
28 parking fees for the parking garage and parking lot provided that such parking fees established for Arena
29 events will be commercially reasonable. Provisions for VIP parking and other parking arrangements for
30 Home Games will be detailed in the Operating/Lease agreement.

31 **20. Maintenance.** In consideration of the rent paid in 9c above, the City will operate and maintain the
32 Arena and Leased Improvements so as to cause it to remain in a condition comparable to that of other
33 multipurpose sports and entertainment facilities of similar size, design and age, ordinary wear and tear
34 excepted. The City will be responsible for all operating, maintenance, and capital repair expenses related
35 to the Arena and it will be operated in a manner substantially similar to and consistent with other
36 similarly situated multipurpose sports and entertainment arenas suitable for Division I basketball
37 programs.

38 **21. Contingencies.** The performance of this MOU is contingent upon the following:

1 A. The City Council for the City approving the necessary agreements, resolutions and ordinances for the
2 implementation of the West Haymarket Project, including placing the applicable ballot proposition(s) for
3 the necessary financing and implementation by the City of West Haymarket Project (collectively “Ballot
4 Proposition”) for voter approval at a Primary Election on Tuesday, May 11, 2010 (“Ballot Election”); and

5 B. The approval of the Ballot Proposition at the Ballot Election;

6 C. Execution of a Joint Facilities Agreement between Union Pacific Railroad Company (UP) and BNSF
7 Railway Company (BNSF) with terms and conditions acceptable to the City;

8 D. Execution of a definitive agreement between UP and the City for the West Haymarket Project.

9 E. Execution of a definitive agreement between BNSF and the City for the West Haymarket Project.

10 F. Execution of a definitive Lease/Operating Agreement between University and City for lease of the
11 Leased Improvements.

12 **22. Definitive Final Agreement.** The parties acknowledge that the above described terms have been
13 agreed to as the principal terms for the design, development and construction of the Arena and lease of
14 the Basketball Space to University. Based upon this MOU, the parties shall in good faith proceed with
15 expedience to negotiate and enter into a definitive final agreement/s after the Ballot Proposition which
16 shall conform to the provisions set forth herein and provide such other matters as are consistent with
17 and customary for a transaction of this type.

18 **23. Mutual Cooperation.** The successful design, development and construction of the Arena and related
19 activities are dependent upon the continued cooperation and good faith of the University and City.
20 Every covenant, agreement, or restriction herein stated shall be construed in recognition of this
21 interdependence and need for continued mutual cooperation. Athletics retains general responsibility for
22 event management related to Athletics use of the Leased Improvements in recognition of applicable
23 NCAA requirements and that Home Games are part of the Branding and larger mission of the University
24 related to intercollegiate athletics. Athletics and the City or the City’s contractor specifically agree to
25 mutual cooperation in Branding, and other marketing including cooperative efforts to sell sponsorships,
26 naming rights, ticketing, premium seating and advertising to optimize revenues and avoid unintended
27 consequences for all parties.

28 **24. Best and Reasonable Efforts.** University and City will use their best and reasonable efforts to
29 successfully implement this MOU.

30 **25. Termination of Memorandum of Understanding.** This Memorandum of Understanding will
31 automatically terminate on May 31, 2010 in the event the Bond Question is not submitted to or
32 approved by the electors of the city at the primary election on May 11, 2010, unless by May 31, 2010 it
33 is mutually determined by the City and University to submit the Bond Question to the electors of the
34 City at a later special election. In addition, either party may terminate this Memorandum of
35 Understanding prior to the City’s entering into a definitive agreement with BNSF for acquisition of the
36 Arena Site.

1 **26. Nondiscrimination.** University and City shall not discriminate against any person because of race,
2 color, sex, creed, religion, ancestry, national origin, age, marital status or disability, to fail or refuse to
3 hire, or discharge, an employee, or to accord adverse, unlawful, or unequal treatment to any person or
4 employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading,
5 compensation, layoff, discharge, or any other term or condition of employment pursuant to the
6 requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. §48-1122 (Reiss. 2004 as
7 amended).

8 **27. Authorization.** University and City represent and warranty to the other that it has the power and
9 authority to enter into this Memorandum of Understanding and perform its obligations hereunder.
10 University specifically warrants that University has the authority to pledge Loge Seating revenues as
11 provided in Paragraph 11.D.

12 **28. Remedies.** In the event of any default in performance of this MOU by the City or University, the
13 party in default shall, upon written notice from the others, proceed immediately to cure or remedy such
14 default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of
15 reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts
16 to cure and shall diligently continue to cure the default. If the default is not cured, the non-defaulting
17 parties may institute any proceedings at law or in equity which may be necessary to cure and remedy
18 the default.

19 **29. Indemnification.** University and City ("Indemnifying Party" as applicable) shall to the extent lawfully
20 permitted, each defend, indemnify and hold the other harmless from a breach of any of the
21 Indemnifying Party's obligations hereunder.

22 IN WITNESS WHEREOF the parties have caused this Memorandum of Understanding to be executed as
23 of the day and year first written above.

Attest:

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA**

Corporation Secretary

By:

James B. Milliken
President

Approved as to Form:

General Counsel

THE CITY OF LINCOLN, NEBRASKA

Attest:

City Clerk

By:

Chris Beutler, Mayor of Lincoln

Approved as to Form:

City Attorney

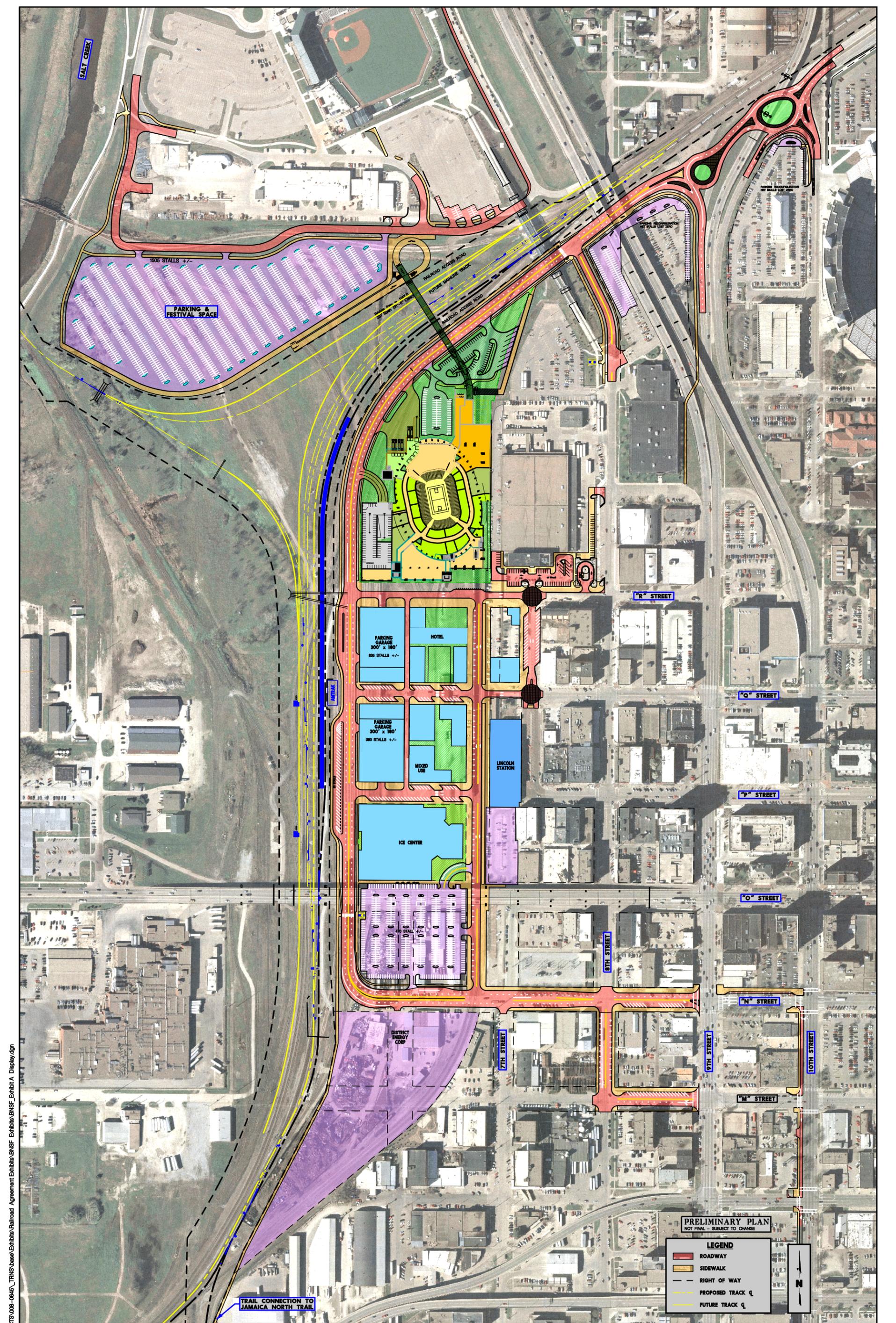
City of Lincoln
West Haymarket
Build Period Cash Flows
12/30/2009

	2010	2011	2012	2013	Total
Uses					
Deposit to the Project Construction Fund	20,000,000	104,863,114	104,863,114	104,863,114	334,589,343
1.50% Cost of Issuance	3,000,000	-	1,745,625	360,000	5,105,625
7.00% ISG Fee	-	-	-	-	-
Debt Service Reserve Fund - JPA Debt	14,190,491	-	-	-	14,190,491
5.00% Debt Service - JPA Debt	-	10,000,000	10,000,000	15,818,750	35,818,750
Debt Service Reserve Fund - ISG Debt	-	-	-	-	-
6.50% Debt Service - ISG Debt	-	-	-	-	-
Total	37,190,491	114,863,114	116,608,739	121,041,864	389,704,209
Sources					
State Aid (Turn back tax) debt				24,000,000	24,000,000
JPA debt Series #2			116,375,000		116,375,000
JPA debt Series #1	200,000,000				200,000,000
Private Debt (ISG)	-				-
Brownfield and Title 200 Funds	800,000				800,000
Private Donations	22,000,000				22,000,000
Net Occupation taxes etc	-	9,911,999	10,110,239	10,312,444	30,334,682
Arena, pre-opening	-	-	-	2,300,593	2,300,593
2.00% Interest on cash	-	2,947,369	907,294	1,122,970	4,977,633
Total	222,800,000	12,859,368	127,392,533	37,736,006	400,787,907
Net Cash Flow	185,609,509	(102,003,747)	10,783,793	(83,305,858)	
Beginning of Year Cash	-	185,609,509	83,605,762	94,389,555	
Cash at End of Year	<u>185,609,509</u>	<u>83,605,762</u>	<u>94,389,555</u>	<u>11,083,697</u>	
Cumulative Reserve Accounts	14,190,491	14,190,491	14,190,491	14,190,491	

West Haymarket
Operations Period Cash Flows

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Uses												
Debt Service - JPA Debt Series #1	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	14,190,491	14,190,491	14,190,491	14,190,491	14,190,491
Debt Service - JPA Debt Series #2	5,818,750	5,818,750	5,818,750	5,818,750	5,818,750	5,818,750	5,818,750	8,257,092	8,257,092	8,257,092	8,257,092	8,257,092
Debt Service - General Obligation	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859
Debt Service - ISG Debt	-	-	-	-	-	-	-	-	-	-	-	-
3.00% University Reimb for F&B	300,000	309,000	318,270	327,818	337,653	347,782	358,216	368,962	380,031	391,432	403,175	415,270
3.00% Arena Make Whole Payment	750,000	772,500	795,675	819,545	844,132	869,456	895,539	922,405	950,078	978,580	1,007,937	1,038,175
2.00% Arena Marketing Fees	308,764	314,939	321,238	327,663	334,216	340,900	347,718	354,673	361,766	369,001	376,381	383,909
3.00% City Administrative Expenses	200,000	206,000	212,180	218,545	225,102	231,855	238,810	245,975	253,354	260,955	268,783	276,847
Total	19,080,373	19,124,048	19,168,972	19,215,180	19,262,711	19,311,602	19,361,893	26,042,458	26,095,671	26,150,410	26,206,719	26,264,644
Sources:												
2.00% Turn back tax	1,690,933	1,724,752	1,759,247	1,794,431	1,830,320	1,866,927	1,904,265	1,942,350	1,981,197	2,020,821	2,061,238	2,102,462
2.00% Occupation taxes	10,518,693	10,729,066	10,943,648	11,162,521	11,385,771	11,613,487	11,845,756	12,082,671	12,324,325	12,570,811	12,822,228	13,078,672
Developer contributions	88,350	178,467	270,386	364,144	459,777	468,973	478,352	487,919	497,677	507,631	517,784	528,139
2.00% Arena revenues	6,175,275	6,298,781	6,424,757	6,553,252	6,684,317	6,818,003	6,954,363	7,093,450	7,235,319	7,380,026	7,527,626	7,678,179
Parking Revenues	1,160,479	1,230,901	1,303,629	1,378,727	1,456,258	1,480,164	1,504,391	1,528,942	1,553,818	1,579,020	1,604,550	1,630,409
0.00% TIF		320,000	652,800	979,200	1,305,600	1,632,000	1,664,640	1,697,933	1,731,891	1,766,529	1,801,860	1,837,897
3.00% Interest on debt reserve funds	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715
2.00% Interest on cash balances	231,465	263,721	312,944	379,743	464,616	566,696	682,122	742,086	745,635	758,092	779,798	811,106
Total	20,290,909	21,171,402	22,093,125	23,037,732	24,012,374	24,871,963	25,459,605	26,001,067	26,495,579	27,008,646	27,540,798	28,092,579
Net Cash Flow	1,210,536	2,047,354	2,924,153	3,822,552	4,749,663	5,560,361	6,097,712	(41,391)	399,907	858,236	1,334,079	1,827,935
Beginning of Year Cash	11,083,697	12,294,234	14,341,588	17,265,741	21,088,293	25,837,956	31,398,317	37,496,029	37,454,638	37,854,546	38,712,781	40,046,861
Cash at End of Year	<u>12,294,234</u>	<u>14,341,588</u>	<u>17,265,741</u>	<u>21,088,293</u>	<u>25,837,956</u>	<u>31,398,317</u>	<u>37,496,029</u>	<u>37,454,638</u>	<u>37,854,546</u>	<u>38,712,781</u>	<u>40,046,861</u>	<u>41,874,796</u>
Coverage	1.16	1.21	1.26	1.31	1.37	1.42	1.45	1.08	1.10	1.12	1.14	1.16

Source: City of Lincoln, Don Herz



PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE

LEGEND	
	ROADWAY
	SIDEWALK
	RIGHT OF WAY
	PROPOSED TRACK
	FUTURE TRACK



DATE: 8/27/2009
 DGN: F:\PROJECTS\008-0645_TRANS\base\Exhibits\Railroad_Agreement\Exhibits\BNSF_Exhibit A_Display.dgn

PROJECT NO:	008-0645
DRAWN BY:	JGO
DATE:	8/27/2009

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

**West Haymarket Flow of Funds
2014 Projected**

Turnback	Developer	Car Rental	Hotel Occ.	Hotel Lodging	Bar & Rest	Arena Naming *	Arena Adv. *	Arena Seating *	Arena Rent	TIF	Parking
1,690,933	88,350	213,971	2,139,709	267,463	7,897,550	2,303,416	1,249,397	2,056,621	257,078		1,160,479

Interest Inc.	West Haymarket Distribution Fund
657,179	14,115,634 5,866,512

Debt Service Fund		
Arena Debt Service Tranche	Other Debt Service Tranche	Surplus & Other Accounts
-		11,083,697
5,866,512		-
14,115,634		
(9,856,743)	(7,664,866)	-
10,125,403	(7,664,866)	11,083,697
		2,460,537
(10,125,403)	10,125,403	
	(2,460,537)	
(10,125,403)	7,664,866	2,460,537
-	-	13,544,234

Beginning Balance
 Amount Available - Arena Sources
 Amount Available - All Other Sources
 Less: Payment
 Balance before transfers

 Transfer in from Debt Service Fund
 Transfer In Arena Debt ServiceTranche
 Transfer out to Other Debt Service Tranche
 Transfer out to Surplus
 Net Transfers
 Ending Balance

* Arena revenues are net of a 5% fee.