

RESOLUTION NO. A-\_\_\_\_\_

1 WHEREAS, Roger H. Schwisow has submitted an application designated as  
2 Special Permit No. 11013 for authority to conduct excavation on AG Agriculture District zoned  
3 property located northwest of N.W. 56th Street and West O Street, and legally described as:

4 Lot 25 I.T. in the Southwest Quarter of Section 24,  
5 Township 10 North, Range 5 East of the 6th P.M.,  
6 Lancaster County, Nebraska;

7 WHEREAS, the Lincoln City-Lancaster County Planning Commission has held a  
8 public hearing on said application and adopted Resolution No. PC-01237 conditionally  
9 approving the same; and

10 WHEREAS, Roger H. Schwisow has filed a Notice of Appeal appealing the  
11 action of the Planning Commission approving Special Permit No. 11013 and in particular the  
12 commencement date and hours of operation; and

13 WHEREAS, the community as a whole, the surrounding neighborhood, and the  
14 real property adjacent to the area included within the site plan for this excavation will not be  
15 adversely affected by granting such a permit; and

16 WHEREAS, said site plan together with the terms and conditions hereinafter set  
17 forth are consistent with the comprehensive plan of the City of Lincoln and with the intent and  
18 purpose of Title 27 of the Lincoln Municipal Code to promote the public health, safety, and  
19 general welfare.

20 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of  
21 Lincoln, Nebraska:

22 That the application of Roger H. Schwisow, hereinafter referred to as "Permittee,"  
23 to conduct excavation be and the same is hereby granted under the provisions of Section

1 27.63.160 of the Lincoln Municipal Code upon condition that the excavation be in substantial  
2 compliance with said application, the site plan, and the following additional express terms,  
3 conditions, and requirements:

4 1. This permit approves an excavation operation for a period of three (3)  
5 years commencing upon the expiration date of the existing Special Permit No. 08015 (which is  
6 October 8, 2011) or the date Roger H. Schwisow voluntarily terminates Special Permit No.  
7 08015, whichever is earlier.

8 2. Operating hours shall be limited to daylight hours, Monday through  
9 Saturday, except as follows: (1) daylight and night hours, Monday through Sunday, are  
10 permitted for contracts associated with the West Haymarket Joint Public Agency Arena Project;  
11 and (2) night hours, Monday through Friday, are permitted through October 8, 2011 for other  
12 governmental contracts.

13 3. Before beginning the excavation the Permittee shall have:

- 14 a. Received Federal NPDES and 404 review and permits if required.
- 15 b. Received required driveway permits for access onto West O  
16 Street/Highway 6 from the Department of Roads.
- 17 c. Revised the site plan to:
  - 18 i. Show the berming to remain along West O Street for  
19 screening purposes.
  - 20 ii. Add a note that land will be reclaimed in conformance with  
21 USDA "Farm Bill Compliance."
  - 22 iii. Make the revisions requested by Watershed Management  
23 delineating the minimum flood corridor on the west end per  
24 the drainage criteria manual.
  - 25 iv. Add a note stating there will be no grading in the minimum  
26 flood corridor.
  - 27 v. Revise the note regarding hours of operation to delete  
28 night operations for government contracts.

- 1 d. Posted and commenced maintaining a sign at the entrance to the  
2 site. The sign shall:
- 3 i. Be clearly visible from the adjacent road.
- 4 ii. Be at least 32 square feet in area.
- 5  
6 iii. Have lettering which is at least two inches in height, black  
7 on a white background.
- 8 iv. Have the following information listed:
- 9 (1) The approved Special Permit number.
- 10 (2) The name, contact phone, and email address for  
11 the land owner.
- 12 (3) The name, contact phone, and email address for  
13 the operator/contractor.
- 14 (4) The Building and Safety Department contact  
15 number.
- 16 e. Posted a \$19,142 performance bond or escrow agreement in a  
17 form acceptable to the City Attorney.

18 4. Obtain and test water samples from the two existing monitoring wells  
19 (installed per Special Permit 08015) at frequencies as recommended by LPSNRD, but not less  
20 than annually and not more than four times per year for contaminants likely to be generated by  
21 the soil mining operations under this Permit and submit the test results to LPSNRD and SID #6  
22 when tested and to the City as part of the annual administrative review.

23 Should the execution activities authorized under this Permit result in the water  
24 wells of the Lancaster County SID #6 Public Water System running dry or becoming  
25 contaminated beyond their current condition, then Permittee shall immediately (i.e. within 24  
26 hours) at its expense, provide an alternate water source for SID #6 in accordance with all  
27 applicable City and County ordinances and/or other state or federal laws or rules or regulations.  
28 The alternate water source may be provided as bottled water, trucked or any other means to the  
29 Public Water System for SID #6. Permittee understands that City of Lincoln will not provide  
30 such alternate water source.

1                   Permittee agrees that LPSNRD in consultation with both an expert selected by  
2 the Permittee and the State of Nebraska Department of Health and Human Services and/or the  
3 Lancaster County Health Department shall be the entity to make a preliminary assessment  
4 whether Permittee's soil mining activities are the likely cause of the SID #6 wells running dry or  
5 becoming contaminated. Currently static water levels in SID #6 wells are at 18 and 20 feet.  
6 Should the level drop to 25 feet or below, then an investigation shall begin immediately to  
7 determine the cause of such reduced levels and all mining operations shall cease until the  
8 cause of the decline is determined.

9                   Permittee agrees that the preliminary assessment by LPSNRD, after consultation  
10 as noted previously shall be binding for purposes of Permittee's initial obligation to provide an  
11 alternate water supply for SID #6. Should the preliminary assessment by LPSNRD prove to be  
12 incorrect, Permittee shall be reimbursed by SID #6 only for those costs and expenses SID #6  
13 would have incurred in providing the alternate water supply absent Permittee's initial obligation.  
14 Permittee agrees that LPSNRD, the Department of Health and Human Services and the  
15 Lancaster County Health Department incur no liability and are held harmless as to any claims of  
16 Permittee for the performance of this service.

17                   Permittee further agrees that if SID #6's wells become contaminated or run dry  
18 as specified herein, then Permittee shall cease its excavation operation until the determination  
19 is made by the LPSNRD of the cause of such contamination or the wells running dry.

20                   5.       Upon completion of all terms, conditions and requirements of the special  
21 permit that are to be completed before beginning operations, the Permittee shall request the  
22 Director of Building and Safety to issue a certificate of operation. Permittee shall not begin  
23 operations until it has received said certificate of operation.

1           6.       Excavation shall commence within one year from the date the special  
2 permit is approved or the special permit will automatically terminate and be considered null and  
3 void. All existing certificates of operation shall automatically terminate on the same date.

4           7.       Within nine months after the completion of excavation on any portion of  
5 the site, all cuts shall be returned to a slope of less than three to one, the topography and soils  
6 shall be restored and stabilized, and the land shall be graded, seeded, and sodded so as to  
7 prevent erosion and siltation, and to protect the health, safety, and general welfare of the public.

8           8.       Permittee shall prepare and submit an annual report to the Director of  
9 Building and Safety addressing the status and extent of excavation and each condition of the  
10 special permit. Failure to submit the annual report shall constitute just cause for the City  
11 Council to revoke the special permit. Permittee shall be subject to an annual site inspection by  
12 the Director of Building and Safety. The cost of such inspection shall be paid for by the  
13 Permittee. Cost shall be based upon the Department of Building and Safety's hourly rate in  
14 effect on the date of the application.

15           9.       The construction plans shall generally comply with the approved plans.

16           10.      The Permittee shall meet all conditions of 27.63.160 except as specifically  
17 amended by this permit.

18           11.      All privately-owned improvements shall be permanently maintained by the  
19 Permittee.

20           12.      The terms, conditions, and requirements of this resolution shall run with  
21 the land and be binding upon the Permittee, its successors and assigns.

22           13.      The site plan accompanying this permit shall be the basis for all  
23 interpretations of setbacks, yards, locations of buildings, location of parking and circulation  
24 elements, and similar matters.

1                   14.     The Permittee shall sign and return the required letter of acceptance to  
2 the City Clerk within 60 days following the approval of the special permit, provided, however,  
3 said 60-day period may be extended up to six months by administrative amendment. The City  
4 Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance  
5 with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2011:

\_\_\_\_\_  
Mayor