

AMENDED AND RESTATED FACILITIES AGREEMENT

This **AMENDED AND RESTATED FACILITIES AGREEMENT**, dated as of _____, 2013 (the “**Facilities Agreement**”), is made by and between the **WEST HAYMARKET JOINT PUBLIC AGENCY** (the “**Agency**”), and **THE CITY OF LINCOLN, NEBRASKA** (the “**City**”).

RECITALS

1. The Agency is a joint public agency created pursuant to the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated in the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 10, 2011, (the “**JPA Agreement**”) executed and delivered by the Participants specified therein (the “**Participants**”) in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended, the “**Act**”).

2. The City is a city of the primary class, duly created and existing pursuant to the provisions of Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its Charter adopted by the electors of the City in accordance with the provisions of Article XI, Section 2 of the Nebraska Constitution.

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

4. The Agency and the City have determined that it is necessary, desirable, advisable and in the best interests of the Agency and the City that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes.

5. The Agency and the City have further determined that it is necessary, desirable, advisable and in the best interests of the Agency and the City that (a) the Arena Project be operated, maintained and managed by the City, and (b) that the Arena Project and parking garages constructed as Infrastructure Projects (“**Parking Garages**”) be owned by the Agency for so long as any Bonds are outstanding, and title to the other Infrastructure Projects transferred to the City as such Projects are completed.

6. The Agency and the City have agreed upon the terms pursuant to which the Agency will construct, equip, and furnish the Projects to advance the public health, safety and welfare of the City and its residents, and the City will operate, maintain and manage the Arena Project and that such agreement should be reduced to writing. The following words and phrases used in this Facilities Agreement shall have the following meanings, unless the context or use indicates another or different meaning or intent:

“**Agency**” means the West Haymarket Joint Public Agency, a joint public agency duly organized and validly existing under the laws of the State, and its successors and assigns.

“**Arena**” has the meaning assigned in the Recitals.

“**Arena Improvements**” has the meaning assigned in **Section 6(b)**.

“**Arena Manager**” means any entity with which the City contracts to manage the Arena.

“**Arena Project**” means, collectively, those Projects described on **Exhibit A** which collectively constitute the Arena and the related parking improvements consisting of the surface parking lot northwest of the BNSF tracks, the parking garage adjacent to the Arena and the surface parking lot on the Arena site.

“**Arena Sources of Funds**” means state aid, developer contributions, occupation taxes, the turn back tax, Arena rent, concessions, premium seating, naming rights, signage, tickets, interest, tax increment revenues, parking revenues, state and federal environmental funds and private donations.

“**Available Revenues**” means all cash receipts of the Agency, plus unrestricted amounts in the Surplus Fund, less all cash payments of the Agency, including, without limitation, debt service on Bonds, operation and maintenance expenses and deposits to the Depreciation and Replacement Fund.

“**Bond Counsel**” means Gilmore & Bell, P.C., or other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing selected by the Agency.

“**Bonds**” means any indebtedness issued by the Agency the proceeds of which are used to pay any of the costs of acquiring, constructing, equipping or furnishing any of the Projects, authorized to be issued by a Resolution of the Agency and any indebtedness of the Agency issued to refund, directly or indirectly, any Bonds.

“**City**” means The City of Lincoln, Nebraska.

“**Clerk**” means the Clerk of the City.

“**Compliance Procedure**” means the Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds attached hereto as **Exhibit B**, as it may be amended from time to time.

“**Construction Fund**” means any of the funds designated as such by a Resolution of the Agency and any accounts or subaccounts created therein into which the net proceeds from the sale of a series of Bonds issued by the Agency shall be deposited.

“**Consultant’s Report**” means a written report of an individual consultant or accountant or firm of consultants or accountants, selected by the Agency and acceptable to the City and the Agency, having

the skill and experience necessary to render the particular report, certification or service required by this Facilities Agreement and having a favorable reputation for such skill and experience, which individual or firm shall have no interest in the Agency or the City, and, in the case of an individual, shall not be a member, officer or employee of the Agency or any Participant, and, in the case of a firm, shall not have a partner, member, director, officer or employee who is a member, officer or employee of the Agency or any Participant.

“Costs of Construction” means, with respect to each Project:

(a) Obligations incurred for labor and material and to contractors, builders and materialmen in connection with such Project or any part thereof;

(b) The cost of acquiring rights, rights-of-way, easements or other interests in land as may be deemed necessary or convenient for the construction and operation of such Project;

(c) Taxes or other municipal or governmental charges lawfully levied or assessed against such Project or against any property acquired therefor, or payments required in lieu thereof, in each case during the period of construction, and premiums on insurance;

(d) Costs of installing utility services or connections thereto or relocation thereof;

(e) Costs of fidelity and indemnity bonds;

(f) Costs of fixed and moveable equipment;

(g) Expenses incurred in enforcing any remedy against a contractor or subcontractor in respect of default;

(h) Costs of site acquisition, preparation and landscaping;

(i) Fees and expenses of architects, engineers, consultants, surveyors, and inspectors and costs of issuance of the Bonds; and

(j) Any other costs, directly incurred in the acquisition, purchase, construction, equipping, furnishing and completion of such Project.

“Debt Service Fund” means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

“Depreciation and Replacement Fund” means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

“Depreciation Fund Requirement” means an amount equal to 2% of the original construction cost of the Arena Project, as determined by the Finance Director of the City.

“Facilities Agreement” means this Facilities Agreement and all amendments and supplements thereto.

“Infrastructure Project” means all of the Projects excluding the Arena Project.

“JPA Agreement” means the Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010, as amended and restated by the Amended and Restated Joint Public Agency Agreement of the West Haymarket Joint Public Agency dated as of January 20, 2011, between the Participants specified therein, as the same may be amended from time to time.

“Non-Qualified User” means any person or entity other than a Qualified User.

“Operation and Maintenance Fund” means the fund created hereunder and designated as such pursuant to **Section 11** hereof.

“Operational Increment” means, for any fiscal year, the amount negotiated between the City and the Arena Manager and budgeted to pay operation and maintenance expenses of the Arena to the extent revenues received by the Arena Manager are insufficient for such purposes.

“Project” and **“Projects”** have the meaning assigned in the Recitals as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

“Resolution” means any resolution or other authorizing document of the Agency pursuant to which a series of Bonds is issued to finance or refinance any portion of the costs of any Project.

“Revenue Fund” means the fund created hereunder and designated as such pursuant to **Section 11** hereof and in which there is established a General Account and a Private Account.

“Revenues” has the meaning set forth in **Exhibit B** attached hereto.

“Site” means the real estate indicated on **Exhibit A** attached hereto, as amended and supplemented from time to time, to be acquired by the Agency.

“Surplus Fund” means the fund created hereunder and designated as such pursuant to **Section 11** hereof, and in which there is established an Arena Account and an Infrastructure Account.

“West Haymarket Facilities” has the meaning as specified and identified in **Exhibit A**, attached hereto and made a part thereof by this reference as the same may be amended and supplemented from time to time.

NOW THEREFORE, the City and the Agency, in consideration of the mutual covenants and agreements contained herein, and contained in the JPA Agreement, do hereby covenant and agree as follows:

Section 1. Agency to Provide Projects. The Agency hereby agrees that it will acquire title to the Site and acquire, construct, equip and furnish all of the Projects for the City on the Site and in accordance with final plans and specifications to be approved by the City.

The Agency shall, upon completion of the plans and specifications and approval thereof by the City, proceed to take bids and award contracts in compliance with bidding procedures of the County Purchasing Act to the extent required to complete each Project. Contracts for the acquisition, construction, equipping and furnishing of each Project shall be entered into in the name of the Agency.

The City hereby acknowledges that the costs of constructing, equipping and furnishing any Project may exceed the amount of money to be deposited in the Construction Fund, which fund contains

and will contain money only from the proceeds of sale of the Bonds issued by the Agency. The City currently anticipates that it will have on hand funds sufficient to make up any difference between the cost for completing the acquisition, construction, equipping and furnishing of such Project and the money in the Construction Fund. The City agrees that it shall pay from its own funds any amounts necessary to make up any difference between the total amount of such estimated cost and the money in the Construction Fund.

The Agency agrees that any contractor which provides work on any Project shall provide performance and payment bonds and builders' risk insurance, all as specified in **Section 7** hereof.

The City agrees that the Agency shall not be obligated to pay for any work, whether by change order or otherwise, in excess of the amount of funds in the Construction Fund.

The ownership of, in and to the Arena Project acquired pursuant to this Agreement, including any and all improvements and other property, shall vest in the Agency for so long as any Bonds remain outstanding. The Agency shall not transfer, encumber or sell the Arena Project or any portion thereof without the approval of the City. At such time as no Bonds remain outstanding, the Agency shall convey the Arena Project to the City for the sum of \$1.00 and other good and valuable consideration.

The ownership of, in and to the tangible portions of the Infrastructure Project shall vest in the City as provided in **Section 5**.

Upon completion of the acquisition, construction, equipping and furnishing of each Project, the Agency shall furnish to the City a complete description of all property, both real and personal, covered by this Agreement.

Section 2. Payment of Costs of Construction. The City and the Agency agree that all Costs of Construction shall be paid out of the Construction Fund or other available funds of the City. Disbursement requisitions to any contractor or vendor to be paid from the appropriate accounts and/or subaccounts in the Construction Fund for Costs of Construction of each Project or to any provider of equipment and furnishings, including the final requisition, shall be approved by the City and the Agency, and such requisitions and evidence of approval thereof shall be submitted to the City Treasurer for payment as provided herein, and shall be accompanied by the Agency's Program Manager's or architect's certificate if the requisition is for a payment due to any contractor. Requisition approvals by the Agency shall be evidenced by the Chair of the Agency and the Agency Treasurer pursuant to Section 13-2527(1), Reissue Revised Statutes of Nebraska, as amended.

Money in any Account in the Construction Fund shall be used by the Agency solely for the purpose of paying the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's engineers or architects and on file in the office of the Clerk, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's engineers or architects.

The City Treasurer shall make a withdrawal from an account or subaccount in the Construction Fund only upon a duly authorized and executed order of the City accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Facilities Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

Money in a costs of issuance account shall be disbursed upon a duly authorized and executed order of the City solely to pay the costs of issuance of the series of Bonds for which such costs of issuance account has been established. Nothing contained herein or in any Resolution shall prevent the payment out of any costs of issuance account of all costs and expenses incident to the issuance of a related series of Bonds without a certificate from the Agency's architects.

Section 3. Certificate of Acceptance. Upon completion of any Project and acceptance thereof by the Agency, the fact of such completion and acceptance shall be evidenced by a Certificate of Completion signed by the Chairperson of the Agency. Upon completion and acceptance of such Project together with all other Projects, the costs of which are to be paid from such account in the Construction Fund, any amount remaining in such account in the Construction Fund after payment of all costs of completion of such Project and all other Projects the costs of which are to be paid from such account in the Construction Fund, shall be transferred to the Debt Service Fund and applied to the payment of debt service on the applicable Bonds.

Section 4. Dispute Resolution. Any dispute with any contractor concerning the construction of any Project or interpretation of any contract shall not be adjusted and settled by the Agency in an amount in excess of the money in the Construction Fund without the City's approval, and in such event, the City shall be liable and make payment to such contractor and all other persons for any judgment, claim or liability in connection with such Project in excess of the money in the Construction Fund.

Section 5. Ownership and Management of Parking Garages; Transfer or Dedication of Infrastructure Project to the City.

(a) Parking Garages.

(1) Ownership. The ownership of and in the premises for the Parking Garages and the parking garage improvements constructed thereon pursuant to this Agreement shall vest in the Agency for so long as any of the Bonds remain outstanding. At such time as no Bonds remain outstanding, the Agency shall convey the Parking Garages to the City for the sum of One Dollar (\$1.00) and other good and valuable consideration.

(2) Management of Parking Garages. The City shall contract with the Agency for the City to undertake the maintenance, operation, and management of the Parking Garages on behalf of the Agency in the same manner as the City undertakes to maintain, operate and repair the City's downtown parking garages.

(b) Infrastructure Projects.

(1) Design and Construction. The Agency or City shall provide all necessary personnel to design, engineer, construct and complete each Infrastructure Project in the same manner as comparable City facilities. The Director of Public Works of the City is hereby designated as the chief official responsible for any design, engineering, construction and completion of the Infrastructure Project by the City. All City personnel assisting with the designing, engineering, construction or completion of the Infrastructure Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(2) Transfer or Dedication. The Agency, except as provided in (a) above, will in consideration of the City's transfer of all the net proceeds from the City's issuance of its general

obligation bonds after payment of costs of issuance thereof, in an aggregate original stated principal amount not to exceed \$25,000,000 pursuant to Ordinance No. 19843 adopted on March 4, 2013 by the City Council for the City of Lincoln, Nebraska, transfer or dedicate such portion of each Infrastructure Project which is of the type customarily publicly dedicated to the City. The Agency agrees that said proceeds shall be used by the Agency solely for the purpose of paying for the cost to acquire, construct, improve, or equip the Arena Project as an eligible facility under the Convention Center Facilities Financing Act (Neb. Rev. Stat. §§ 13-2601 to 13-2613 (Reissue 2012)). The transfer or dedication of such portion of the Infrastructure Project shall be made as and when completed to be maintained, operated and managed as City facilities and the Agency shall execute and deliver to the City any and all documents as may be requested by the City for such purpose. Prior to the City's acceptance of such transfer or dedication of any portion of any Infrastructure Project to the City, the Director of Public Works and Utilities of the City shall review and approve the design and construction of such Infrastructure Project as having been designed and constructed in substantially the same manner as comparable City facilities.

Section 6. City to Maintain, Operate and Manage the Arena Project. The City undertakes to maintain, operate and manage the Arena Project. In such connection the following terms shall apply:

(a) The City shall provide or contract for all necessary personnel, materials and supplies to maintain, operate and manage the Arena Project as an entertainment/sports arena and related facilities. Except for Qualified Use Agreements (as defined in **Exhibit B** hereto), the City will not enter into any lease or contract with respect to the use, operation or management of the Arena without first obtaining a Special Tax Opinion (as defined in **Exhibit B** hereto). All City personnel assisting with the operation of the Arena Project shall be and will remain employees of the City for purposes of all state and federal laws governing the conditions of their employment, including payment of wages, employment benefits, insurance, liability and taxation of income.

(b) Any improvements to the Arena Project may be made from time to time as determined by the City to be necessary, desirable or advisable (the "**Arena Improvements**"). The Agency shall contract for work on such Arena Improvements with contracts to be awarded and entered into pursuant to the County Purchasing Act, Section 23-3111, Reissue Revised Statutes of Nebraska, as amended. All costs of such Arena Improvements shall be paid by the Agency from Agency funds available for such purposes, including, without limitation, the Arena Account in the Surplus Fund established hereunder.

(c) The City shall establish rates, fees and charges which are to apply to the use of the Arena Project and shall adjust such rates, fees and charges from time to time as it deems appropriate, just and equitable. The City shall annually, or at such other intervals as the City deems appropriate, submit a report to the Agency detailing the proposed rates, projected revenues based on the same and the proposed expenses.

(d) The Agency shall pay to the City the fees and charges, based upon actual costs and budgeted annually, as the same shall be amended from time to time.

(e) In exercising its authority and carrying out its duties and functions the City shall not discriminate against any employee, applicant for employment, contractor, potential contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

Section 7. Insurance. The City or Agency shall maintain, or cause to be maintained, insurance upon the Arena Project and the operation thereof as follows:

(a) insurance against fire, theft and extended coverage risks (including vandalism and malicious mischief) in an amount not less than the full insurable value of the Arena Project;

(b) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about any of the Projects with limits of not less than one million dollars for any person for any number of claims arising out of a single occurrence, five million dollars for all claims arising from a single occurrence, and any greater limits of liability which may be established by Section 13-926, Reissue Revised Statutes of Nebraska, as amended, or any other applicable provision of the Nebraska Political Subdivision Tort Claims Act (the “Act”), and excess insurance with limits of not less than two million dollars for any liability which may not be limited by the Act. Such general public liability insurance may be subject to a deductible amount not in excess of \$500,000.00.

(c) workers’ compensation insurance coverage as required by the laws of the State of Nebraska;

(d) performance bond coverage and labor and materials payment bond coverage for the construction of the Improvements in the full amount of the contract or contracts for construction of the Improvements.

All such insurance shall show the City and the Agency as insureds as their respective interests may appear. Insurance required in (a) and (d) above shall be payable to the Agency. The cost of any and all such insurance shall be treated as a cost of operation and maintenance of the Projects.

Section 8. Utilities and Other Impositions. The City shall provide for the payment of all utility charges, taxes (if any) and other impositions related to the Projects or the operation thereof and all such charges or impositions shall be treated as a cost of operation and maintenance of the Arena Project and be paid from the Operation and Maintenance Fund established hereunder, or if the balance thereof is insufficient for such purposes, by the City. Because the Projects will be used for governmental purposes and not for financial gain or profit, under present law the Projects will not be subject to real estate or personal property taxes. It is understood and agreed, however, that the City agrees to pay any taxes and assessments, general and special, and all other impositions, ordinary and extraordinary, of every kind and nature which might be levied or assessed on the Projects and any improvements hereafter constructed.

Section 9. Use of Projects. As long as any Bonds remain outstanding, the proceeds of which were used to acquire, construct, equip, or furnish any of the Projects, the City and Agency shall not use any of the Projects, or allow the use thereof, in any manner inconsistent with use for the general municipal purposes of the Agency or the City.

Section 10. Issuance of Bonds; Debt Service. To pay the Costs of Construction of one or more Projects and the costs of issuance thereof, the Agency agrees to issue Bonds pursuant to one or more Resolutions and to deposit the proceeds thereof as provided in the Resolution authorizing such series of Bonds.

The City and the Agency covenant and agree that all payments of the principal or redemption price of and interest on the Bonds shall be made from Revenues, together with the proceeds of the tax levied by the Agency by authority granted to the Agency pursuant to the JPA Agreement and any other available funds of the Agency.

Section 11. Establishment of Funds. The City and the Agency hereby create and establish the following separate funds to be held by the City Treasurer as agent for the Agency to be known respectively as the:

(a) the West Haymarket Joint Public Agency Revenue Fund (the **“Revenue Fund”**) in which there is established (1) a General Account and (2) and Private Account.

(b) the West Haymarket Joint Public Agency Debt Service Fund (the **“Debt Service Fund”**) in which there shall be established an account for each series of Bonds.

(c) the West Haymarket Joint Public Agency Operation and Maintenance Fund (the **“Operation and Maintenance Fund”**).

(d) the West Haymarket Joint Public Agency Depreciation and Replacement Fund (the **“Depreciation and Replacement Fund”**).

(e) the West Haymarket Joint Public Agency Surplus Fund (the **“Surplus Fund”**) in which there is established (1) an Arena Account and (2) an Infrastructure Account.

The funds referred to in paragraphs (a) through (e) above shall be maintained and administered by the Agency and the City solely for the purposes and in the manner as provided in this Facilities Agreement so long as any Bonds remain outstanding within the meaning of the Resolution pursuant to which such Bonds were issued.

In addition, to the extent that proceeds of the Bonds authorized by a Resolution will be used to pay the Costs of Construction of any portion of any Project, such Resolution shall establish a Construction Fund and any necessary or desirable accounts and subaccount therein in accordance with the provisions of this Facilities Agreement.

Section 12. Collection and Application of Revenues.

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds, and continuing as long as any Bonds remain outstanding under the Resolution pursuant to which they were issued, all of the Revenues shall as and when received be paid and deposited into the Revenue Fund. The City and the Agency shall deposit Revenues into the General Account and the Private Account in accordance with **Exhibit B** attached hereto, as the same may be amended and supplemented from time to time. The Revenues shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the Agency and the City and shall not be commingled with any other moneys, revenues, funds and accounts of the Agency or the City. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Facilities Agreement.

(b) The City’s occupation tax revenues generated under Ordinance Nos. 19407, 19408, and 19409 (the “Occupation Tax Revenues”) have been and shall be expended by the City through the JPA in part to acquire, construct, improve, and equip the Arena as a sports arena facility (as defined in Section 13-2603). Any state assistance provided under the Convention Center Facility Financing Assistance Act (the “Turn Back Tax”) in excess of the amounts necessary for a period of thirteen months from the date of receipt to pay principal of and interest on the City’s \$25,000,000 in principal amount of general obligation bonds issued pursuant to Ordinance No. 19843 adopted on March 4, 2013, by the City Council for the City, and proceeds of any bonds issued to refund such bonds, (the “Turn Back Tax Bonds”) shall be used to pay the City back amounts for capital expenditures on the Arena so expended from the City’s Occupation Tax Revenues through the JPA. To the extent Turn Back Tax receipts held by the City are insufficient to pay amounts next falling due on the City’s Turn Back Tax Bonds, the JPA shall provide funds in an amount necessary for the City to make such debt service payment on the Turn Back Tax Bonds.

Section 13. Application of Money in Funds.

(a) The City and the Agency covenant and agree that from and after the delivery of any Bonds and continuing so long as any Bonds shall remain outstanding under the Resolution pursuant to which such Bonds were issued, it will on the first day of each month administer and allocate all of the money then held in the General Account in the Revenue Fund as follows:

(1) **Debt Service Fund.** There shall first be paid and credited monthly to each account established pursuant to a Resolution in the Debt Service Fund, all Revenues collected in the preceding month until the balance in each such account is equal to all principal and interest payments becoming due through the following December 15 on all Bonds then outstanding under such Resolution payable from such account.

(2) **Operation and Maintenance Fund.** There shall next be paid and credited to the Operation and Maintenance Fund an amount equal to the Operational Increment for the current fiscal year of the Agency. All amounts paid and credited to the Operation and Maintenance Fund shall be expended and used by the City, as agent for the Agency, solely for the purpose of paying the operating expenses of the Arena Project to the extent revenues received by the Arena Manager are insufficient for such purposes.

(3) **Depreciation and Replacement Fund.** After all payments and credits required at the time to be made under the provisions of paragraphs (1) and (2) of this **Section 13(a)** have been made, there shall next be paid and credited to the Depreciation and Replacement Fund all amounts remaining in the General Account in the Revenue Fund until such Fund aggregates the Depreciation Fund Requirement so long as any of the Bonds remain Outstanding.

Money in the Depreciation and Replacement Fund shall be expended and used by the Agency and the City, if no other funds are available therefor, (A) for the purpose of making emergency replacements and repairs in and to the Arena Project as may be necessary to keep the Arena Project in good repair and working order and to assure the continued effective and efficient operation thereof and (B) to pay the Operational Increment, to the extent that Revenues are insufficient for such purpose. After the Depreciation and Replacement Fund aggregates the Depreciation Fund Requirement, no further payments into said Fund shall be required, but if the Agency or the City is ever required to expend a part of the money in the Depreciation and Replacement Fund for its authorized purposes and such expenditure reduces the amount of such Fund below the Depreciation Fund Requirement, then monthly payments into the Depreciation and Replacement Funds shall resume and continue until said Fund again aggregates the Depreciation Fund Requirement

(4) **Surplus Fund.** After all payments and credits required at the time to be made under the provisions of paragraphs (1), (2) and (3) of this **Section 13(a)** have been made, all moneys remaining in the General Account in the Revenue Fund shall be paid and credited to either the Arena Account or the Infrastructure Account in the Surplus Fund, as determined by the City and the Agency. Money in the Arena Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects which constitute the Arena Project in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and

specifications deemed advisable by the Agency's architects and approved by the City and the Agency.

The Treasurer shall make a withdrawal from the Arena Account in the Surplus Fund for such purpose only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

(B) Paying the cost of the operation, maintenance and repair of the Arena Project to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;

(C) Paying the cost of extending, enlarging or improving the Arena Project;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any; or

(E) Any other lawful purpose in connection with the operation of the Arena Project and benefiting the Arena Project.

Money in the Infrastructure Account of the Surplus Fund may be expended and used for the following purposes as determined by the City and the Agency:

(A) Paying all or a portion of the costs of one or more Projects in accordance with the plans and specifications therefor prepared by the Agency's architects approved by the City and the Agency and on file in the office of the Secretary, including any alterations in or amendments to such plans and specifications deemed advisable by the Agency's architects and approved by the City and the Agency.

The Treasurer shall make a withdrawal from the Infrastructure Account in the Surplus Fund for such purpose only upon a duly authorized and executed order of the Agency accompanied by a certificate executed by the Agency's architects stating that such payment is being made for a purpose within the scope of this Agreement and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof.

(B) Paying the cost of the operation, maintenance and repair of any of the Projects to the extent that may be necessary after the application of the moneys held in the Operation and Maintenance Fund under the provisions of **Section 13(a)(3)**;

(C) Paying the cost of extending, enlarging or improving any of the Projects;

(D) Paying the principal of and interest on the Bonds or calling, redeeming and paying prior to the maturity thereof, or, at the option of the Agency, purchasing in the open market at the best price obtainable not exceeding the redemption price (if any bonds are callable) any outstanding Bonds including principal, interest and redemption premium, if any;

(E) Any other lawful purpose in connection with the operation of any of the Projects and benefiting any of the Projects.

(b) In the event that 30 days prior to the payment date of any principal or interest on Bonds, amounts in the Debt Service Fund are insufficient to fully pay the principal of or interest on all outstanding Bonds, the City shall loan to the Agency the full amount of any such deficiency not later than such date of payment. Such loan shall bear interest at a rate equal to the rate received by the City on its investment pool (computed on the basis of a 360-day year consisting of twelve 30-day months) from the date such amounts are loaned to the Agency until all such amounts are repaid by the Agency. Any such loan, together with interest accrued thereon as provided herein, shall be repaid to the City (a) first, from the first receipts of Revenues, and (b) second, from taxes levied and collected by the Agency pursuant to the provisions of **Section 15**.

Section 14. Transfer of Funds to Paying Agent. The Treasurer of the Agency is hereby authorized and directed to withdraw from the Debt Service Fund sums sufficient to pay the principal of and interest on the Bonds as and when the same become due on any principal or interest payment date, and to forward such sums to the respective paying agents for each series of Bonds in a manner which ensures such paying agent will have available funds in such amounts on or before the business day immediately preceding each such payment date. All money deposited with any paying agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Facilities Agreement and the applicable Resolution.

Section 15. Annual Budget; Levy of Taxes. Prior to the commencement of each fiscal year, the Agency will cause to be prepared and filed with its Secretary and the Clerk a budget setting forth the estimated receipts and expenditures for each month in the next succeeding fiscal year. Such annual budget shall be prepared in accordance with the requirements of the laws of Nebraska and shall contain all information that is required by such laws.

The Treasurer shall, not later than the last day of each month, prepare, file with the Secretary and the City Clerk, and forward to each member of the governing body, a financial report which includes the financial statements for the preceding month and the results for the fiscal year through the end of the preceding month. If, at the end of any fiscal quarter, such financial statements show that the budgeted Available Revenues would exceed the projected actual Available Revenues at the end of the fiscal year by more than \$500,000, the Agency covenants and agrees that within 60 days of such determination it will deliver a Consultant's Report to the Participants setting forth recommendations for increasing the Available Revenues to the budgeted levels; provided, however, that in the event that such Consultant's Report shall state that federal, state or other applicable governmental laws or regulations (or interpretations thereof) placing restrictions and limitations on the rates, fees and charges to be fixed, charged and collected for the use of or the services furnished by the Arena Project do not permit or by their application make it impracticable for the Agency to produce the required Available Revenues, then the budgeted Available Revenues shall be reduced to the highest practicable level permitted, as set forth in such Consultant's Report, by such laws and regulations then in effect. The Agency agrees that it will, to the extent feasible, follow the recommendations of the Consultant's Report.

The Agency covenants and agrees that for so long as any Bonds are outstanding under the Resolution pursuant to which such Bonds were issued, it will deliver to the Participants a Consultant's Report regarding the operation, maintenance and financial performance of the Arena Project for the fiscal years ending August 31, 2017, and every fifth fiscal year thereafter.

In the event that the budgeted Available Revenues for the fiscal year exceeds the projected actual Available Revenues for such fiscal year by \$1,000,000 or more, the Agency covenants and agrees that it shall in its next annual budget prepared pursuant to this **Section 15**, include an amount to be levied upon all of the taxable property within the City and for deposit to the Debt Service Fund of Section 13(a) sufficient in rate and amount to produce the amounts necessary to make up such deficiency in the actual Available Revenues, together with any anticipated additional deficiency in the actual Available Revenues through the end of the next fiscal year.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Agency or the City are levied and collected. The proceeds derived from such taxes shall be used to repay any and all amounts advanced by the City pursuant to the provisions of **Section 13(b)**, shall be kept separate and apart from all other funds of the Agency and shall be used solely for the payment of amounts advanced by the City and for deposit to the Debt Service Fund of Section 13(a).

Section 16. Annual Financial Audit. Annually, promptly after the end of the fiscal year, the Agency will cause a financial audit to be made of the Arena Project for the preceding fiscal year by a nationally recognized independent certified public accountant or firm of nationally recognized independent certified public accountants to be employed for that purpose and paid from the Revenues.

Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Secretary, and a duplicate copy of the audit shall be mailed to the City Clerk. Such audits shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, the registered owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or registered owner.

As soon as possible after the completion of the annual audit, the governing body of the Agency shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Facilities Agreement or any Resolution, the Agency will promptly cure such deficiency and the City and the Agency will promptly proceed to take such action as may be necessary to adequately provide for such requirements.

Section 17. Term of Agreement. This Facilities Agreement shall not terminate so long as Bonds remain outstanding under the terms of any Resolution. Either the City or the Agency may terminate this Agreement at any time after no Bonds are outstanding under the terms of any Resolution.

Section 18. Governing Law. This Facilities Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

Section 19. Severability. If for any reason any provision hereof shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof.

Section 20. Assigns. The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 21. Counterparts. This Facilities Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 23. Section Headings. The headings or titles of the several sections hereof shall be solely for the convenience of reference and shall not affect the meaning or construction, interpretation or effect of this Agreement.

Section 23. Amendment. This Facilities Agreement may be amended in writing upon the approval of both parties.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the City and the Agency have caused this Facilities Agreement to be executed on their behalf by their respective officers thereunto duly authorized.

**WEST HAYMARKET JOINT PUBLIC
AGENCY**

By: _____
Chair

THE CITY OF LINCOLN, NEBRASKA

By: _____
Mayor

EXHIBIT A

MAP OF SITE

See Attachment 1

PROJECTS

West Haymarket Facilities (consisting of the following Projects)

- (1) a sports/entertainment arena (the “**Arena**”)
- (2) roads, streets and sidewalks
- (3) a pedestrian overpass
- (4) public plaza space
- (5) sanitary sewer mains
- (6) water mains
- (7) electric transmission lines
- (8) drainage systems
- (9) flood control
- (10) parking garages
- (11) surface parking lots

Related Projects (consisting of the following Projects)

- (1) acquisition of land and relocation of existing businesses
- (2) environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities

EXHIBIT B

**COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS**

**COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS**

September 8, 2010

EXHIBIT B

**CITY OF LINCOLN, NEBRASKA
COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS**

TABLE OF CONTENTS

	Page
 <u>I. Definitions</u> 	
1.1 Definitions.....	2
 <u>II. General Matters</u> 	
2.1 Bond Compliance Officer Duties.....	6
2.2 Amending Compliance Procedure	7
2.3 Conflicts Between Compliance Procedure and Bond Counsel’s Instructions	7
2.4 Training and Education.....	7
2.5 Costs and Fees.....	7
2.6 Authority of Bond Compliance Officer	7
 <u>III. Compliance Procedure for Tax Advantaged Bond Issues Prior to Date Development Facilities Are Placed in Service</u> 	
3.1 Application of Compliance Procedure.....	7
3.2 Description of General Plan for Tax Compliance with Restrictions on Private Business Use..	7
3.3 Preparation for Issuance of Tax Advantaged Bonds.....	8
3.4 Accounting for Costs of the Development Facilities; Investment and Arbitrage	9
3.5 Fair Market Value	10
 <u>IV. Operational Policies and Procedures for All Tax Advantaged Bonds</u> 	
4.1 Annual Tax Advantaged Bond Compliance Review	12
4.2 Private Business Use.....	12
 Exhibit A – Development Budget Exhibit B – Interim Financing Sources Allocation Exhibit C – Interim Private Use Allocation Exhibit D – Substantiation Documents Exhibit E – Annual Tax Compliance Questionnaire Exhibit F – Annual Tax Advantaged Bond Review Form	

September 8, 2010

**CITY OF LINCOLN, NEBRASKA
COMPLIANCE PLAN AND PROCEDURE
FOR
WEST HAYMARKET JOINT PUBLIC AGENCY
TAX ADVANTAGED BONDS**

This **COMPLIANCE PLAN AND PROCEDURE FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY TAX ADVANTAGED BONDS** (the “**Compliance Procedure**”) has been prepared in connection with the execution and delivery of the Facilities Agreement, dated September 8, 2010 (the “**Facilities Agreement**”) between The City of Lincoln Nebraska (the “**City**”) and the West Haymarket Joint Public Agency (the “**Agency**”). This Compliance Procedure is applicable to all Tax Advantaged Bonds (as defined below) that are issued by the Agency after the date hereof to finance costs of the Projects (as defined below).

The Agency plans to finance the cost of the Projects by issuing one or more series of bond secured as provided in the Facilities Agreement. In order to reduce interest expense, the Agency wishes to maximize the use of Tax Advantaged Bonds. Tax Advantaged Bonds must satisfy certain restrictions imposed by the Internal Revenue Code of 1986 (the “**Code**”) and United States Treasury Regulations (“**Regulations**”) related to use of financing proceeds, use of assets financed by the debt and investment of financing proceeds and related funds.

The Facilities Agreement provides that the City is responsible for the construction and operation of the public facilities and infrastructure improvements in the West Haymarket area of the City. The City intends to use and invest proceeds of the Tax Advantaged Bonds and related funds to pay costs of acquisition, construction and improvement, and has agreed to operate the Projects in compliance with the requirements of the Code and Regulations applicable to Tax Advantaged Bonds.

This Compliance Procedure:

- (1) Provides guidance regarding procedures to capture and retain data relating to all costs of the Projects;
- (2) Describes the documentation procedure to be followed to identify what portions of the West Haymarket Project will be treated as financed by Tax Advantaged Bonds;
- (3) Describes procedures to track investments of proceeds of Tax Advantaged Bonds and related funds in order to meet investment restrictions contained in the Code and Regulations;
- (4) Establishes a general document retention procedure for each issue of Tax Advantaged Bonds to substantiate compliance with the Code and Regulations; and
- (5) Identifies the City officer responsible for monitoring compliance with the provisions of the Code and Regulations related to Tax Advantaged Bonds.

I. Definitions

1.1 **Definitions.** Capitalized words and terms used in this Compliance Procedure, unless otherwise defined below, have the meaning set out in the Facilities Agreement. Other terms have the meaning set forth below:

“**Accounting Department**” means the Finance Department of the City and any other entity assigned by state law or City ordinance or agreement to account for the custody, investment, administration or expenditures of any proceeds of Tax Advantaged Bonds.

“**Agency**” means the West Haymarket Joint Public Agency, a joint public agency created pursuant to a Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency, dated as of April 1, 2010 executed and delivered by the City and The Board of Regents of the University of Nebraska in accordance with the Nebraska Joint Public Agency Act (Chapter 13, Article 23, Reissue Revised Statutes of Nebraska, as amended).

“**Ancillary Costs**” means Costs related to the construction, acquisition or equipping of a Development Facility that are not External Costs, such as a percentage of costs of salary for City personnel and City expenses determined to be attributable to activities related to the construction, acquisition or equipping of the Development Facility.

“**Annual Tax Compliance Questionnaire**” means one or more questionnaires in the form attached as **Exhibit E** that may be completed annually for certain Development Facilities following the date they are Placed in Service.

“**Arena**” has the meaning assigned in the recitals of the Facilities Agreement.

“**Available Equity Sources**” means Revenues available to pay for the costs of the Projects. Available Equity Sources do not include any earnings derived from the investment of Tax Advantaged Bonds or Revenues used to pay debt service on Tax Advantaged Bonds or costs of operating or maintaining the Projects.

“**Bond Compliance Officer**” means the Finance Director of the City or, if the position of Finance Director is vacant, the person appointed to perform the duties of the Finance Director on an interim basis by the Mayor. The Bond Compliance Officer is expected to employ members of the City staff and independent contractors to assist in the performance of the obligations assigned in this Compliance Procedure.

“**Bond Compliance Plan**” means the written plan prepared by the Bond Compliance Officer in consultation with Bond Counsel prior to the issue date of each issue of Tax Advantaged Bonds. A form of Compliance Plan is attached as **Exhibit D**.

“**Bond Counsel**” means a firm of nationally recognized bond counsel selected by the City to issue a legal opinion regarding the validity and enforceability of Tax Advantaged Bonds and the tax treatment of interest on Tax Advantaged Bonds.

“**Bond Proceeds**” means proceeds received from the sale of Tax Advantaged Bonds and any money received from the investment of those sale proceeds.

“**Bond Restricted Funds**” means Bond Proceeds together with any other funds, accounts, investments, cash or portions of funds, accounts or investments that are subject to arbitrage rebate and/or yield restriction rules under the Code and Regulations.

“**City**” means The City of Lincoln, Nebraska.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Compliance Period**” means with respect to each Development Facility the period that begins on the date on which the Development Facility is Placed in Service and which ends on the date all Tax Advantaged Bonds that were allocated to Costs of the Development Facility pursuant to the Final Allocation of Bond Proceeds have been retired.

“**Compliance Procedure**” means this Compliance Plan and Procedure for West Haymarket Joint Public Agency Tax Advantaged Bonds.

“**Cost**” means all expenses or charges of any kind related to the Projects and, in relation to each Development Facility, all External Costs and Ancillary Costs incurred in connection with the acquisition, construction, reconstruction, improvement and equipping of the asset, including but not limited to costs of real property acquisition and site work, engineering, architectural costs and related soft costs of the physical asset.

“**Development Budget**” means the budget for the Projects dated September 8, 2010, attached as **Exhibit A** as amended and supplemented from time to time.

“**Development Facility**” means real or tangible personal property that is separately identified in an Interim Financing Sources Allocation or the Final Financing Sources Allocation as part of the Projects. Each Development Facility includes only physical assets, that are (1) functionally related or integrated in use, (2) located on the same physical site or proximate sites, and (3) expected to be Placed in Service at approximately the same time (within a one-year period).

“**External Costs**” means all Costs of the Projects (including but not limited to interest expense prior to the Placed in Service date for a specific Development Facility) paid to independent contractors that are not Related to the City, the Regents or the Agency that will be capitalized by the City on its financial records or that could be capitalized for federal income tax purposes if the City were required to pay federal income taxes.

“**Final Financing Sources Allocation**” means the written allocation of Bond Proceeds prepared by the Bond Compliance Officer that reflects, as of the date the relevant Development Facility is Placed in Service, the allocation of all funding sources (Tax Advantaged Bonds and Available Equity Sources) to all Costs of the Development Facilities, all Financing Costs and all Start-up Costs for the Projects.

“**Final Private Use Allocation**” means the spreadsheet prepared in conjunction with the Final Financing Sources Allocation that shows the estimated percentage of the Cost of each Development Facility expected to be used in a Private Business Use.

“**Financed Assets**” means any Development Facility or part of a Development Facility financed by Bond Proceeds as reflected in a Final Financing Sources Allocation.

“**Financing Costs**” means all expenses of issuing the Tax Advantaged Bonds.

“**Guaranteed Investment Contract**” is any investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply investments on two or more future dates (*e.g.*, a forward supply contract).

“**Interim Financing Sources Allocation**” means an allocation of all estimated funding sources (Tax Advantaged Bonds and Available Equity Sources) to all Costs of Development Facilities, all Financing Costs and all Start-up Costs prepared by the City in consultation with the Program Manager and Bond Counsel. Each Interim Financing Sources Allocation must, in the opinion of Bond Counsel, result in all Tax Advantaged Bonds meeting the use of proceeds and Financed Assets requirements set out in the Tax Compliance Agreement for the respective financing. The initial Interim Financing Sources Allocation is attached as **Exhibit B**. Each subsequent Interim Financing Sources Allocation will be consecutively designated as **Exhibit B-1, B-2, B-3**, etc., and attached to this Compliance Procedure.

“**Interim Private Use Allocation**” means the spreadsheet showing the estimated percentage of the Cost of each Development Facility that is expected to be used in a Private Business Use. The initial Interim Financing Sources Allocation is attached as **Exhibit C**. Each subsequent Interim Financing Sources Allocation will be consecutively designated as **Exhibit C-1, C-2, C-3**, etc., and attached to this Compliance Procedure.

“**Investment**” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Bond Proceeds or Bond Restricted Funds..

“**Naming Right Agreement**” means the long-term right to name the Arena facility and accompanying privilege to have the name used in connection with the operation of the Arena.

“**Non-Qualified Users**” means any person or entity that is not a Qualified User and uses a Development Facility in connection with a trade or business.

“**Permitted Private Use**” means any use that otherwise would constitute Private Business Use that is specifically authorized in a Tax Compliance Agreement or which is the subject of a Special Tax Opinion.

“**Placed in Service**” means that date (as determined by the Bond Compliance Officer) when a Development Facility is completed, has commenced operation and is operating at its intended capacity.

“**Pre-Issuance Costs**” means External Costs or Ancillary Costs of a Development Facility paid by the City from other sources of funds prior to the issue date of an issue of Tax Advantaged Bonds for which the City is seeking reimbursement from the proceeds of an issue of Tax-Advantaged Bonds.

“**Private Business Use**” means use of Financed Assets during the Compliance Period in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether the Financed Assets are “used” in a trade or business. The ownership of a Financed Asset by a Non-Qualified User is Private Business Use. Any other special legal right to possession of the Financed Asset or to control the operation of a Financed Asset that is granted to a Non-Qualified User is Private Business Use unless the legal arrangement is a Qualified Use Agreement or an arrangement approved in a Special Tax Opinion. Generally Private Business Use includes use of Financed Assets by a Non-Qualified User pursuant to a Naming Right Agreement, a lease, a management agreement, an operation agreement, or other similar legal arrangement. Private Business Use can result from any legal agreement entered into by the Agency, the City, the Regents or any other Qualified User.

“Program Manager” means The Benham Companies, L.L.C or such other firm of engineers or architects assigned by the City to monitor the acquisition, construction and equipping of Development Facilities.

“Projects” means land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing of public facilities, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots and any other capital improvements or other projects pertaining to the redevelopment of an area in the City generally bounded by BNSF and Union Pacific railroad lines on the west, approximately North 7th Street on the east, the south interior roadway of Haymarket Park and Bereuter Pedestrian Bridge on the north and “M” Street on the south, as amended from time to time. A general description of the assets expected to constitute the Projects, the anticipated cost and financing source is included on the Development Budget attached as **Exhibit A** to this Tax Agreement.

“Qualified Use Agreement” means any of the following:

(1) A lease or other short-term use by members of the general public who occupy a Development Facility on a short-term basis as members of the general public in the ordinary course of the operation of the Development Facility.

(2) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of a Development Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Non-Qualified User using all or any portion of a Development Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (c) a Development Facility was not constructed for a principal purpose of providing the property for use by that Non-Qualified User. Any Non-Qualified User using all or any portion of a Development Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Non-Qualified Users to use all or a portion of a Development Facility for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Development Facility was not constructed for a principal purpose of providing the property for use by that person.

“Qualified User” means the City, the Regents, the Agency or the State of Nebraska, any other political subdivision of the State or Nebraska, or any agency or instrumentality of the foregoing.

“Rebate Analyst” means the firm selected by the Bond Compliance Officer to calculate arbitrage rebate.

“**Regents**” means The Board of Regents of the University of Nebraska.

“**Reimbursement Resolution**” means Resolution No. WH00011 adopted by the Agency on August 13, 2010, pursuant to which the Agency evidenced its “official intent” (within the meaning of Regulations § 1.150-2) to issue up to \$340,000,000 of debt obligations from time to time to finance the Projects and reimburse expenditures previously made from other sources with proceeds of the financing.

“**Related**” means, with respect to the City, the Regents or the Agency, any relationship involving a related party within the meaning of Regulations Section 1.150-1(b).

“**Revenues**” means any revenues, receipts and incomereceived by the Agency from any source, including, without limitation, property taxes and private donations.

“**Special Tax Opinion**” means a written opinion of Bond Counsel addressed to the City and the Agency that concludes that a particular action or failure to act, contractual agreement or other arrangement will not result in Private Business Use or result in a Tax Advantaged Bond being an arbitrage bond or otherwise result in a Tax Advantaged Bond no longer qualifying as such.

“**Start-up Costs**” means Costs of supplies and other start-up operation expenses for any Development Facility.

“**Substantiation Documents**” means the documents and records listed on **Exhibit D** that will be maintained for each issue of Tax Advantaged Bonds. Substantiation Documents may be stored on a digital electronic medium (e.g., a PDF file) so long as the Bond Compliance Officer determines that the information can be retrieved, reviewed and printed as a paper document if needed.

“**Tax Advantaged Bond(s)**” means any bond, note, lease, certificate or other instrument that is a debt obligation for federal income tax purposes issued by the Agency or issued by another political subdivision, agency or public corporation and loaned or made available to the City for purposes of funding any portion of the Projects. The term Tax Advantaged Bonds includes bonds or notes issued by the City as well as obligations issued by the Agency if the proceeds of that debt are loaned or made available to the City. In either case (1) the interest on the obligation must be excluded from gross income for federal income tax purposes, (2) the holder of the obligation must be entitled to claim a federal income tax credit on account of its ownership of the obligation or (3) the Agency must be entitled to receive payments from the United States measured as a percentage of the interest paid on the obligation.

“**Tax Advantaged Bond File**” means all Substantiation Documents for a single issue of Tax Advantaged Bonds.

“**Tax Compliance Agreement**” means a written agreement between the Agency and the City executed as of the issue date of each issue of Tax Advantaged Bonds which amends this Compliance Procedure to include a new Interim Financing Sources Allocation and includes any specific instructions regarding the investment of Bond Restricted Funds, the use of proceeds of the issue of Tax Advantaged Bonds, or the use of Financed Assets necessary in the opinion of Bond Counsel.

II. General Matters

2.1 ***Bond Compliance Officer Duties.*** The Bond Compliance Officer is responsible for implementing this Compliance Procedure. The Bond Compliance Officer will work with other officials,

departments and administrators that use a Development Facility to carry out the obligations imposed by this Compliance Procedure. The Bond Compliance Officer will consult with Bond Counsel, legal counsel, the Rebate Analyst and other outside experts as necessary to carry out the overall goals of this Compliance Procedure.

2.2 *Amending Compliance Procedure.* This Compliance Procedure may be amended from time-to-time by the Bond Compliance Officer. Copies of any amendment to this Compliance Procedure will be provided to the Agency and shall be accompanied by a Special Tax Opinion. No such amendment will become effective until the Agency receives the Special Tax Opinion.

2.3 *Conflicts between Compliance Procedure and Bond Counsel's Instructions.* If the requirements of this Compliance Procedure conflict with any Tax Compliance Agreement or with any specific written instructions of Bond Counsel that relate to a Tax Advantaged Bond, the Tax Compliance Agreement or specific written instructions of Bond Counsel shall supersede and govern that issue of Tax Advantaged Bonds. Any exceptions to this Compliance Procedure mandated by Bond Counsel instructions will be noted in the Tax Compliance Agreement for the issue of Tax Advantaged Bonds.

2.4 *Training and Education.* The Bond Compliance Officer may arrange for periodic training of officers and staff regarding the requirements imposed by the federal income tax rules and regulations applicable to the City's Tax Advantaged Bonds and this Compliance Procedure.

2.5 *Costs and Fees.* The Bond Compliance Officer annually will request an amount of Revenues necessary to pay costs related to the implementation and administration of this Compliance Procedure.

2.6 *Authority of Bond Compliance Officer.* The Bond Compliance Officer shall retain control over the administration, investment and expenditure of all proceeds of Tax Advantaged Bonds and the use and operation of all Financed Assets to the extent the Bond Compliance Officer believes is necessary to account for the funds and to ensure compliance with the terms of this Compliance Procedure and any Tax Compliance Agreement.

III. Compliance Procedure for Tax Advantaged Bond Issues Prior to Date Development Facilities Are Placed in Service

3.1 *Application of Compliance Procedure.* This Compliance Procedure applies generally to the accounting for the use and investment of proceeds of Tax Advantaged Bonds and Available Equity Sources to Costs of the Projects and specifically to the ownership and operation of all Development Facilities financed in whole or in part with proceeds of Tax Advantaged Bonds(as reflected in the Final Financing Sources Allocation).

3.2 *Description of General Plan for Tax Compliance with Restrictions on Private Business Use.*

a. The City and the Agency expect to issue the following categories of Tax Advantaged Bonds:

- Tax Exempt Governmental Bonds (TEBS)
- Build America Bonds (BABS)
- Recovery Zone Economic Development Bonds (RZEDBS)

The estimated amount of each category of Tax Advantaged Bonds is contained in the Interim Financing Sources Allocation (the initial form of which is attached as **Exhibit B**). The City anticipates that Available Equity Sources will pay the remaining cost of the Projects.

b. The Interim Financing Sources Allocation attached as **Exhibit B** lists the expected Cost of each Development Facility and the expected Financing Costs and Start-up Costs.

c. The City and the Agency expect that portions of the Projects will be used by Non-Qualified Users in a private use as follows:

Arena

Naming Rights Agreement
Long-Term Premium Seating and Suites
Concession Area

Arena Parking Facilities

Long-Term Premium Suite Parking

The City expects that the Arena and certain other Development Facilities may be managed and/or operated by Non-Qualified Users pursuant to written agreements. These agreements are not expected to result in Private Business Use in an amount greater than Permitted Private Use, because the City intends to structure the arrangements in a manner so that a Special Tax Opinion can be obtained. The expected percentage of use that would otherwise constitute Private Business Use (absent the allocation discussed in subsection 3.1(d) below) with respect to each Development Facility is shown on **Exhibit C**.

d. As of the date the Facilities Agreement is executed, based on the calculations of expected Private Business Use in **Exhibit C**, and as reflected by the allocation of expected funding sources (Tax Advantaged Bonds and Available Equity Sources) to Costs contained in **Exhibit B**, the City expects to be able to allocate the entire Cost of Development Facilities expected to be used in a Private Business Use and all Start-up Costs to Available Equity Sources. Based on the foregoing, as of the date the Facilities Agreement is executed the City does not expect that any Financed Assets will be used in a Private Business Use.

e. The City expects to update **Exhibit B** and **Exhibit C** in connection with each issue of Tax Advantaged Bonds to account for changes in estimated funding sources, estimated Costs of Development Facilities, and any changes in the amount or nature of Private Business Use. Each Interim Financing Sources Allocation and Interim Private Use Calculation must (1) show that no Financed Assets will be used in a Private Business Use or (2) otherwise be approved by a Special Tax Opinion.

f. Not later than 18 months following the date a Development Facility is Placed in Service (and in no event later than 60 days after the fifth anniversary of the issue date of the Tax Advantaged Bonds that financed said Development Facility), the Bond Compliance Officer will make a Final Financing Sources Allocation in consultation with Bond Counsel and the Program Manager. The Final Financing Sources Allocation will be accompanied by a Special Tax Opinion and will be the final allocation of the proceeds of the relevant issue of Tax Advantaged Bonds for purposes of determining and quantifying Private Business Use of that Development Facility.

3.3 *Preparation for Issuance of Tax Advantaged Bonds*

a. The Bond Compliance Officer will work with Bond Counsel and other City officials and employees to ensure that the representations of the City contained in each Tax Compliance Agreement are

accurate. The Bond Compliance Officer will confer with Bond Counsel and City's counsel regarding the meaning and scope of the covenants contained in the Tax Compliance Agreement. The Bond Compliance Officer will review the Tax Compliance Agreement prior to execution by the City.

b. In consultation and with the advice of Bond Counsel and the Program Manager, the Bond Compliance Officer will update and to the extent necessary revise the Interim Finance Sources Allocation to account for changes to the Development Facilities, their Costs or expected use or changes to the expected amount of Tax Advantaged Bonds or Available Equity Sources allocated to the Costs of the Development Facilities.

c. Prior to each issue of Tax Advantaged Bonds the Bond Compliance Officer will consult with Bond Counsel regarding the applicability of special rules with respect to the investment of proceeds and other funds not otherwise described in Sections 3.4 and 3.5

3.4 *Accounting for Costs of the Development Facilities; Investment and Arbitrage.*

a. The Accounting Department will follow the directions of the Bond Compliance Officer regarding the administration, investment, accounting and expenditure of Bond Proceeds, Available Equity Sources, and any other Bond Restricted Funds.

b. For each Cost paid, the accounting system shall record: (1) identity of person or business paid, (2) date of payment, (3) amount paid, (4) if determined, the specific Development Facility to which the cost relates, and (5) invoice number or other identifying reference. Each expenditure should further be identified as (1) a hard cost of acquisition or construction, (2) a soft cost (e.g. architects, engineering or consultants) or (3) a "financing cost" (e.g. interest and related remarketing charges, credit facility charges, the cost of bond insurance and other costs of issuing the Tax Advantaged Bonds).

c. Accounting, investment and expenditure records that are to be included as Substantiation Documents with respect to each issue of Tax Advantaged Bonds (which represent the Tax Advantaged Bond File for such issue) are listed on **Exhibit D**.

d. Unless otherwise directed in a Tax Compliance Agreement the Bond Compliance Officer will not segregate proceeds of Tax Advantaged Bonds and other Available Equity Sources either for purposes of investment or expenditure.

e. Unless otherwise directed in a Tax Compliance Agreement, for purposes of accounting for the investment and expenditure of Bond Proceeds and other Bond Restricted Funds in connection with the arbitrage and rebate rules described in each Tax Compliance Agreement, Bond Proceeds will be treated as spent first, and if more than one issue of outstanding Tax Advantaged Bonds has unspent Bond Proceeds at a given time, then all expenditures will be allocated to the earliest issued Tax Advantaged Bonds. All allocations of Tax Advantaged Bond proceeds described in this subsection 3.4(e) apply solely for purposes of arbitrage and rebate compliance. Any allocation of Tax Advantaged Bond Proceeds to Development Facilities shall be done in accordance with Section 3.2.

f. At the time the Final Financing Sources Allocation is completed, the Bond Compliance Officer will determine whether it is possible to complete a final arbitrage rebate computation for the Tax Advantaged Bonds in the event all Bond Proceeds thereof have been spent or whether such a computation is advisable. The Bond Compliance Officer will also schedule any upcoming arbitrage rebate computations required for the Tax Advantaged Bonds as part of the annual ongoing compliance procedures.

3.5 *Fair Market Value.*

a. No Investment may be acquired for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

b. Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

c. The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

d. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. A bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all "material" terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City, the Agency, or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the City, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are "commercially reasonable." A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the City's reasonably expected deposit and draw-down schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker’s fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The City and the Agency retain the following records with the bond documents until three years after the last outstanding Bond is redeemed:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the City or the Agency, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

e. **Other Investments.** If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

IV. Operational Policies and Procedures for All Tax Advantaged Bonds

4.1 **Annual Tax Advantaged Bond Compliance Review.** Annually the Bond Compliance Officer will complete an Annual Tax Advantaged Bond Review Form (**Exhibit F**) for each outstanding issue of Tax Advantaged Bonds. In the event the Bond Compliance Officer determines that additional information is needed from the individuals actually supervising the use of a Financed Asset, the Bond Compliance Officer will cause an Annual Tax Compliance Questionnaire to be prepared to gather information regarding the use of the Financed Asset. If necessary, the Bond Compliance Officer will consult with Bond Counsel regarding any changes in the use or status of any Financed Asset.

4.2. **Private Business Use.** Subject to the special requirements, conditions or procedures set out in any Tax Compliance Agreement, the Bond Compliance Officer will not permit any Private Business Use of any Financed Asset without obtaining a Special Tax Opinion. If the Bond Compliance Officer has reason to believe that there exists Private Business Use of any Financed Asset, then the Bond Compliance Officer will consult with and heed the advice of Bond Counsel, which could result in the Agency taking “remedial action” in accordance with Regulations Section 1.141-12 (which may involve the redemption or defeasance of some or all of the Tax Advantaged Bonds) as necessary to maintain the status of the Tax Advantaged Bonds as such.

**Exhibit A
Development Budget**

September 8, 2010

EXHIBIT B

West Haymarket Joint Public Agency Adopted Project Budget

<u>Item</u>	<u>Description</u>	<u>Construction Cost Estimate</u>	<u>20% Engr./Design</u>	<u>Total Const. Cost Estimate</u>	<u>Inflation plus Contingency</u>	<u>Total</u>
USE OF FUNDS:						
Arena	Construction costs	\$139,913,000	\$27,982,600	\$167,895,600		\$167,895,600
	Preoccupancy expense	1,000,000	-	1,000,000		1,000,000
	Total Arena	140,913,000	27,982,600	168,895,600		168,895,600
Parking	Surface - Northwest of Tracks	3,806,400	761,280	4,567,680	1,116,679	5,684,359
	Surface -South of Ice Rink	1,362,200	272,440	1,634,640	399,627	2,034,267
	Surface - Train Station	1,000,000	-	1,000,000	131,340	1,131,340
	Garages - South of Arena	11,900,000	1,190,000	13,090,000	2,254,582	15,344,582
	Garage - Arena	9,411,000	941,100	10,352,100	965,805	11,317,905
	Total Parking	27,479,600	3,164,820	30,644,420	4,868,033	35,512,453
Roads	Sun Valley - Charleston and Bridge	3,850,600	770,120	4,620,720	1,129,646	5,750,366
	Sun Valley - ROW	614,500	122,900	737,400	180,275	917,675
	Arena Drive	4,945,300	989,060	5,934,360	1,450,797	7,385,157
	P, Q & R Streets	2,298,900	459,780	2,758,680	674,426	3,433,106
	M & N Streets	1,708,400	341,680	2,050,080	501,191	2,551,271
	Canopy Street & Ice Drop Off	1,733,700	346,740	2,080,440	508,613	2,589,053
	Total Roads	15,151,400	3,030,280	18,181,680	4,444,948	22,626,628
Pedestrian Ways	Trails and sidewalks	500,000	100,000	600,000	138,804	738,804
	Pedestrian Crossings over BNSF	6,934,788	1,386,958	8,321,746	1,925,153	10,246,898
	Plaza	1,000,000	200,000	1,200,000	277,608	1,477,608
	Total Pedestrian Ways	8,434,788	1,686,958	10,121,746	2,341,565	12,463,310
Utilities	Water	816,800	163,360	980,160	177,742	1,157,902
	Wastewater	1,892,400	378,480	2,270,880	411,801	2,682,681
	LES	385,000	77,000	462,000	83,779	545,779
	Trunk storm sewer to Haymarket area	1,240,300	248,060	1,488,360	269,899	1,758,259
	Communication and Other	542,400	108,480	650,880	118,031	768,911
	Total Utilities	4,876,900	975,380	5,852,280	1,061,252	6,913,532
Environmental	North Area - R to Tracks (arena area)	815,000	163,000	978,000	226,251	1,204,251

<u>Item</u>	<u>Description</u>	<u>Construction Cost Estimate</u>	<u>20% Engr./Design</u>	<u>Total Const. Cost Estimate</u>	<u>Inflation plus Contingency</u>	<u>Total</u>
	South Area - R to O	1,750,000	350,000	2,100,000	485,814	2,585,814
	South Area - O on South	2,000,000	400,000	2,400,000	555,216	2,955,216
	West Area - Roundhouse	300,000	60,000	360,000	83,282	443,282
	Wetlands, Seeding and Removals	138,000	27,600	165,600	38,310	203,910
	Total Environmental	5,003,000	1,000,600	6,003,600	1,388,873	7,392,473
Dirt Moving	Pad site development - fill	1,931,100	386,220	2,317,320	420,223	2,737,543
	Stormwater/Floodplain mitigation	5,588,200	1,117,640	6,705,840	1,216,037	7,921,877
	Total Dirt Movement	7,519,300	1,503,860	9,023,160	1,636,260	10,659,420
TIF Improvements	Public Use of TIF Proceeds	5,515,693	-	5,515,693		5,515,693
Site Purchase	BNSF Land Acquisition	1,000,000		1,000,000		1,000,000
	BNSF Construction, Rehab, & Relloc.	44,000,000	-	44,000,000		44,000,000
	Canopy Rehabilitation	177,000	35,400	212,400	49,137	261,537
	Amtrak Building	1,200,000	240,000	1,440,000		1,440,000
	UP Land Acquisition	1,000,000		1,000,000	131,340	1,131,340
	UP Wetland Enhancement	1,000,000	200,000	1,200,000	277,608	1,477,608
	UP Track Modifications W of Bridge	1,030,000	206,000	1,236,000	285,936	1,521,936
	Subtotal Railroad Site Purchase	49,407,000	681,400	50,088,400	744,021	50,832,421
	Other Land Acquisition	7,585,000	200,000	7,785,000	1,172,482	8,957,482
	Total Site Purchase	56,992,000	881,400	57,873,400	1,916,503	59,789,903
Other Costs	Dynamic Message Signage	2,250,000	450,000	2,700,000	624,618	3,324,618
	Public Art	1,500,000		1,500,000		1,500,000
	Total Other	3,750,000	450,000	4,200,000	624,618	4,824,618
	SUBTOTAL	275,635,681	40,675,898	316,311,579	18,282,052	334,593,630
Miscellaneous Costs	PLUS: Additional Contingencies	-		-		-
	PLUS: Cost of Bond Issuance, 1.50%	5,160,000		5,160,000		5,160,000
		5,160,000	-	5,160,000		5,160,000
	TOTAL ARENA COSTS	\$280,795,681	\$40,675,898	\$321,471,579	\$18,282,052	\$339,753,630
SOURCE OF FUNDS:						
	Bonded Debt	\$316,953,630				
	Private Donations	22,000,000				
	Federal Grants	800,000				
		<u>\$339,753,630</u>				

Exhibit B
Interim Financing Sources Allocation

September 8, 2010

EXHIBIT B

Exhibit B

Development Category	Sht #	Est Sq Feet	Total Cost	Tax Advantaged Range					Total	Available Equity Sources			Total	Gross	Land Area (sq ft)	Subtotal	32007851 5160000
				1st	2nd	3rd	4th	5th		1st	2nd	3rd					
Area																	
Land Acquisition		102,500	2,974,322	401,983	1,605,453	2,295,466	5,121,751	4,810,228	158,523	884,239	593,202	3,772,801	204,448	8,127,873	858,312	261,710	2,776,321.60
Construction			139,931,022	10,320,914	41,200,687	43,320,797	13,187,090	106,013,999	10,639,154	15,955,796	15,955,796	10,639,154	10,639,154	41,881,159	43,282,710	13,127,971	139,931,022.00
Architecture/Engineering			20,388,350	1,545,718	6,182,874	6,500,574	1,978,520	16,207,685	1,958,875	2,334,617	-	4,396,092	20,488,377	1,544,293	6,197,174	4,498,157	1,978,966
Site Work			363,358	70,766	300,316	481,962	1,978,520	1,405,210	255,760	-	-	1,405,210	363,358	70,766	300,316	481,962	1,978,966
Environmental			348,866	56,191	202,543	288,196	64,500	605,050	32,813	37,161	-	724,724	23,871	102,683	129,816	32,859	348,866.00
Inflation/Contingency			7,995,150	148,244	1,233,392	2,427,233	750,085	6,237,459	745,213	886,449	-	7,669,072	508,340	1,333,392	2,472,633	750,085	7,995,150.00
Financing Costs			1,700,122	100,312	402,070	461,073	202,138	1,521,118	152,118	208,766	-	1,521,118	152,118	796,237	816,601	254,602	1,700,122.00
Subtotal - Area			175,231,878	13,161,173	45,163,973	51,163,713	16,851,142	138,934,743	16,320,700	20,000,000	-	143,316,441	175,231,878	175,231,878	175,231,878	175,231,878	175,231,878.00
Garage South of Arena																	
Land Acquisition		60,000	823,251	86,583	242,313	199,338	77,346	129,677	129,677	246,831	246,831	816,691	-	-	-	-	816,691.00
Construction			11,900,000	871,640	3,924,375	2,482,048	1,122,874	8,381,037	3,987,590	11,948,633	11,948,633	3,987,590	11,948,633	11,948,633	11,948,633	11,948,633	11,900,000.00
Architecture/Engineering			1,100,000	87,364	300,211	285,283	112,082	1,194,858	136,760	-	-	1,194,858	1,100,000	87,364	300,211	285,283	1,100,000.00
Site Work			169,143	10,878	43,886	36,120	14,047	105,040	44,713	-	-	105,040	169,143	10,878	43,886	36,120	169,143.00
Environmental			83,363	7,004	30,145	23,034	7,734	72,800	30,289	-	-	72,800	83,363	7,004	23,034	7,734	83,363.00
Inflation/Contingency			2,254,162	165,800	643,620	546,012	212,352	1,847,881	675,919	-	-	2,254,162	2,254,162	165,800	643,620	546,012	2,254,162.00
Financing Costs			257,478	18,846	76,785	62,358	24,251	283,240	77,192	-	-	283,240	257,478	18,846	76,785	62,358	257,478.00
Subtotal - Garage South of Arena			16,637,896	1,227,118	4,508,913	4,039,154	1,576,839	11,746,584	5,000,000	-	-	16,637,896	16,637,896	1,227,118	4,508,913	4,039,154	16,637,896.00
Garage Area																	
Land Acquisition		22,500	309,747	27,719	90,473	36,733	29,280	37,967	129,670	328,636	328,636	401,263.31	1,606,453.23	2,218,166.07	513,745.01	-	401,263.31
Construction			9,411,000	697,494	2,769,978	1,106,270	896,193	5,455,135	3,923,495	9,407,630	9,407,630	1,545,718	6,182,874	6,500,574	1,978,519	-	9,411,000.00
Architecture/Engineering			841,100	19,400	276,988	116,877	88,530	395,269	395,269	907,763	907,763	72,709	290,826	416,997	370,636	-	841,100.00
Site Work			133,978	4,215	14,462	4,294	5,248	23,489	5,509	-	-	26,300.63	201,663.33	188,588.63	64,500.29	-	133,978.00
Environmental			39,743	3,152	11,609	1,357	23,449	16,240	18,749	-	-	18,240	38,749	23,532.02	2,472,633.05	750,085.45	39,743.00
Inflation/Contingency			953,103	72,607	1,042,169	393,966	159,244	459,615	595,834	-	-	283,232.45	1,232,929	487,072.20	2,261,937.38	-	953,103.00
Financing Costs			163,795	12,314	54,097	21,603	17,312	183,719	77,192	-	-	183,719	163,795	12,314	54,097	21,603	163,795.00
Subtotal - Garage Area			11,904,139	876,012	3,504,088	1,399,648	1,121,109	6,900,876	5,000,000	-	-	11,904,139	11,904,139	876,012	3,504,088	1,399,648	11,904,139.00
Uncle Traction Development Blocks																	
Land Acquisition		199,000	2,672,265	267,226	896,823	1,164,049	486,212	2,672,265	2,672,265	2,672,265	186,895.23	787,580.83	1,439,353.93	252,025.87	-	-	2,672,265.00
Construction			19,364	19,400	276,988	116,877	88,530	395,269	395,269	907,763	907,763	72,709	290,826	416,997	370,636	-	19,364.00
Architecture/Engineering			1,100,000	87,364	300,211	285,283	112,082	1,194,858	136,760	-	-	1,194,858	1,100,000	87,364	300,211	285,283	1,100,000.00
Site Work			169,143	10,878	43,886	36,120	14,047	105,040	44,713	-	-	105,040	169,143	10,878	43,886	36,120	169,143.00
Environmental			83,363	7,004	30,145	23,034	7,734	72,800	30,289	-	-	72,800	83,363	7,004	23,034	7,734	83,363.00
Inflation/Contingency			2,254,162	165,800	643,620	546,012	212,352	1,847,881	675,919	-	-	2,254,162	2,254,162	165,800	643,620	546,012	2,254,162.00
Financing Costs			257,478	18,846	76,785	62,358	24,251	283,240	77,192	-	-	283,240	257,478	18,846	76,785	62,358	257,478.00
Subtotal - Uncle Traction			11,904,139	876,012	3,504,088	1,399,648	1,121,109	6,900,876	5,000,000	-	-	11,904,139	11,904,139	876,012	3,504,088	1,399,648	11,904,139.00
Surface Parking - Northwest of Frads																	
Land Acquisition		740,510	10,161,476	747,717	2,899,866	5,846,022	957,078	10,161,465	-	-	-	10,161,465	-	-	-	-	10,161,465.00
Construction			1,004,400	200,608	1,120,553	2,841,548	358,513	3,606,211	3,606,211	3,606,211	1,004,400	3,606,211	1,004,400	3,606,211	3,606,211	3,606,211	1,004,400.00
Architecture/Engineering			76,286	60,280	226,401	96,569	71,293	362,284	362,284	362,284	76,286	362,284	76,286	362,284	362,284	362,284	76,286.00
Site Work			1,840,755	135,147	541,748	990,151	173,172	1,840,755	1,840,755	1,840,755	1,840,755	1,840,755	1,840,755	1,840,755	1,840,755	1,840,755	1,840,755.00
Environmental			1,217,768	93,675	315,501	448,235	127,390	1,217,768	1,217,768	1,217,768	1,217,768	1,217,768	1,217,768	1,217,768	1,217,768	1,217,768	1,217,768.00
Inflation/Contingency			1,116,879	82,169	338,677	606,877	105,277	1,116,760	-	-	-	1,116,760	1,116,879	82,169	338,677	606,877	1,116,879.00
Financing Costs			299,236	21,879	87,516	150,941	29,705	297,942	297,942	297,942	299,236	299,236	299,236	299,236	299,236	299,236	299,236.00
Subtotal - Surface Parking Northwest of Frads			19,255,861	1,419,184	5,689,714	10,366,044	1,818,008	19,255,861	-	-	19,255,861	19,255,861	1,419,184	5,689,714	10,366,044	1,818,008	19,255,861.00
Surface Parking - South of Ice Bank																	
Land Acquisition		157,500	2,161,228	159,031	636,123	1,161,355	203,559	2,161,228	-	-	-	2,161,228	-	-	-	-	2,161,228.00
Construction			1,362,100	100,135	409,942	731,747	128,191	1,362,125	1,362,125	1,362,125	1,362,125	1,362,125	1,362,125	1,362,125	1,362,125	1,362,125	1,362,100.00
Architecture/Engineering			273,146	10,987	101,148	148,349	25,660	272,445	272,445	272,445	273,146	273,146	273,146	273,146	273,146	273,146	273,146.00
Site Work			391,361	28,008	115,211	210,934	36,874	391,508	391,508	391,508	391,361	391,361	391,361	391,361	391,361	391,361	391,361.00
Environmental			271,240	19,966	198,665	149,938	29,297	271,240	271,240	271,240	271,240	271,240	271,240	271,240	271,240	271,240	271,240.00
Inflation/Contingency			399,627	29,668	117,614	214,963	37,640	399,627	399,627	399,627	399,627	399,627	399,627	399,627	399,627	399,627	399,627.00
Financing Costs			76,181	5,605	22,423	40,979	7,125	76,181	76,181	76,181	76,181	76,181	76,181	76,181	76,181	76,181	76,181.00
Subtotal - Surface Parking South of Ice Bank			4,934,517	363,879	1,452,796	2,654,246	444,767	4,934,517	-	-	4,934,517	4,934,517	363,879	1,452,796	2,654,246	444,767	4,934,517.00
Surface Parking - Train Station																	
Land Acquisition		11,000	150,243	11,107	46,427	81,104	14,217	150,246	-	-	-	150,246	-	-	-	-	150,246.00
Construction			1,800,000	73,154	288,234	597,936	94,817	1,800,019	1,800,019	1,800,019	1,800,019	1,800,019	1,800,019	1,800,019	1,800,019	1,800,019	1,800,000.00
Architecture/Engineering			27,343	2,011	8,046	16,708	2,175	27,343	-	-	-	27,343	-	-	-	-	27,343.00
Site Work																	

better allocate the actual cost of environmental remediation on a parcel by parcel basis

BAR 2 to complete Arena	54,189,957
BAR 2 to complete Arena Garage	1,395,658
BAR 2 to complete Garage	4,038,154
BAR 2 to complete all else	75,322,447
Total City of Lincoln CD bond	135,000,000
Total JB issued BAR Debt	100,000,000
Total to cover CD bond	35,000,000
Total face amount	10,000,000
Total Fiscal Contributions	25,000,000
Total	338,750,026
Present value less arena and two garages	138,935,183

2,524,500	Cost of environmental
4,354,500	North of O Street
3,000,000	South of O Street
1,723	environmental cleanup per sq foot
236,859	

	236,859
Land Acquisition	40,373,517.85
Construction	139,202,051.15
Architecture/Engineering	29,377,260.62
Site Work	3,864,796.85
Environmental	45,181,764.36
	1,357,735.64

Exhibit C

Development Facilities Used in Non-Qualified Use	Physical Space			Time			Revenues	Non-Qualified Use %	Total	Total
	Square Footage	Cost per Square Foot	Allocation Cost	Total Time Available	Time in Non-Qualified Use	% Private Use	Non-Qualified Use Revenues		Development Facility Cost	Non-Qualified Use Facility Cost
Arena										
Concession Area	10,000	389	3,894,282				N/A			
Private Luxury Boxes	24,100	389	9,385,219				N/A			
Naming Rights	N/A	N/A	N/A	N/A	N/A	N/A				
Long-Term Seating Contracts	N/A	N/A	N/A	N/A	N/A	N/A				
Long-Term Advertising	N/A	N/A	N/A	N/A	N/A	N/A				
Arena Total										
Parking Garage -- Arena										
Suite Parking	200	22,049	4,409,757				N/A			
Parking Garage -- Arena Total										
Parking Garages-- South of Arena										
Hotel Parking	200	18,686	3,737,236				N/A			
Parking Garages -- South of Arena Total										

**Exhibit D
Substantiation Documents**

Item Number	Description	Required for All Tax Advantaged Bonds	Required for Tax Advantaged Bonds Issued After ____ , 20__
1	Reimbursement Resolution	X – Only if Pre-Issuance Costs are reimbursed	
2	Transcript of proceedings	X	
3	Records of expenditure of Tax Advantaged Bond Proceeds	X – Expenditure records should at least show date of payment, person paid, amount paid and general purpose. Copies of journal entries, invoices and/or requisitions may satisfy this requirement	
4	All rebate calculations and all investment records provided to Rebate Analyst to prepare calculations	X – For any Tax Advantaged Bond issue exempt from rebate, only records of investment are required	
5	Forms 8038-T together with proof of filing and payment of rebate	X	
6	Investment agreement bid documents including: I. Bid solicitation II. Bids III. Certificate of broker IV. Written summary of reasons for deviations from the terms of the solicitation that are incorporated into the investment agreement V. Copies of the investment agreement and any amendments	X	
7	Any item listed in Tax Compliance Agreement (Specify)	X	
8	Final Financing Sources Allocation		X – Also complete for Tax Advantaged Bonds issued prior to above date if Development Facility not Placed in Service
9	Financed Assets List	X	

September 8, 2010

EXHIBIT B

Item Number	Description	Required for All Tax Advantaged Bonds	Required for Tax Advantaged Bonds Issued After _____, 20__
10	Completed Annual Tax Advantaged Bond Review Form and Annual Tax Compliance Questionnaire	X	
11	Opinions of bond counsel or legal counsel regarding tax compliance, together with copy of agreement on which advice was sought, if applicable	X	
12	Amendments, modifications or substitute agreements to any agreement contained in the Transcript of Proceedings	X	
13	Any correspondence with the IRS relating to the Tax Advantaged Bonds	X	

September 8, 2010

EXHIBIT B

Exhibit E
Annual Tax Compliance Questionnaire

Part I *(Complete Prior to Giving to Reporting Party)*

Development Facility description ("Asset"):	_____
Aggregate cost of Asset:	_____
Name of Tax Advantaged Bonds ("Bonds") financing Asset:	_____
Percentage of Asset financed by Bonds (Financed Asset):	_____
Issue date of Bonds:	_____
Placed in service date of Asset:	_____
End of measurement period:	_____
Name of person completing checklist:	_____
Title:	_____
Email address:	_____
Telephone number:	_____
Period covered by request (Annual Period):	_____

You have been identified as the person who is primarily responsible for the management and day-to-day operation of the Asset identified above. We have determined that all or a portion of the Asset was financed with Tax Advantaged Bonds. Because the Asset was financed with Tax Advantaged Bonds there are a number of rules restricting how the Asset can be used. Generally, these rules limit the use of the Asset by entities other than a State or local government. We need your cooperation to accurately report on the bond issue(s) described above. Please return your completed questionnaire as soon as possible, but in all events no later than _____, 20_____.

If you have any questions please contact _____ at _____.

September 8, 2010

EXHIBIT B

Part II (Completed by Reporting Party)

Item	Question	Response
<p>1 Ownership</p>	<p>Was the Asset owned by the Agency during the entire Annual Period?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If No: Was the Asset (or any portion of the Asset) sold or otherwise disposed of solely because it was determined that the property was inadequate, obsolete or worn out?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If No: What is the legal name of the new owner?</p>	
	<p>Date new owner acquired the Asset:</p>	
	<p>Is the new owner a state or local government or controlled by a state or local government (a "Qualified User")?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p>
	<p>Did the new owner agree in writing to comply with the Tax Advantaged Bond Compliance Procedure and the Compliance Plan?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p>
<p>2 Leases</p>	<p>During the Annual Period was any part of the Asset leased at any time pursuant to an agreement for <i>more than 50 days</i> by another nonaffiliated corporation, association, firm, or other entity? (<i>Do Not Include Qualified Use Agreements – See Item 3.</i>)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If Yes: What is the legal name of the Tenant?</p>	
	<p>Is the Tenant a Qualified User?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p>
	<p>Attach a copy of the lease if not previously provided in a prior report.</p>	
	<p>List approximate percentage of Asset leased by Tenant (e.g., 30% of the square feet in the building).</p>	
<p>3 Qualified Use Agreements</p>	<p>Is any part of the Asset leased or reserved for use by individuals or businesses pursuant to a "rate scale" use agreement (e.g., quarterly parking permits in a garage)?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>If Yes: Attach the form(s) of the agreement(s) and the current applicable published rates that apply.</p>	

September 8, 2010

4 Management or Service Agreements	During the Annual Period has the management of all or any part of the operations of the Asset been assumed by or transferred to another entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes: Attach a copy of the agreement(s).	

5 Other	Was any other agreement entered into with an individual or entity (other than a Qualified User) that grants special legal rights to the Asset?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes: Attach a copy of the agreement(s).	

Signature, Name and Title of Person Completing Questionnaire:

Printed Name: _____
Title:
Date Completed:

September 8, 2010

EXHIBIT B

Exhibit F
Annual Tax Advantaged Bond Review Form

1. Bond Issue Name
2. Intent Resolution Date (include Resolution of Intent in Substantiation Documents)
3. Bond Issue Date
4. All Financed Assets used in manner provided in Compliance Plan? Yes No
(If no, describe steps taken determine change in use does not create tax issue. Attach opinion of Bond Counsel, if applicable.)
5. Date of last scheduled rebate calculation/payment or date opinion received from Bond Counsel or Rebate Analyst that no further calculations are required.
6. Verify no events have occurred requiring Bond Counsel review/opinion or reference any opinion received, if "Yes".
 - A) Transfer of ownership of any Financed Asset to any person prior to the end of the Financed Asset's useful life. Yes No
 - B) Leases of any Financed Asset to another State or local government (a "Qualified User") with a term in excess of one year. Yes No
 - C) Leases or use agreements with any person or entity other than a Qualified User (including the United States or its agencies) for a term greater than 50 days (including options to renew). Yes No

September 8, 2010

EXHIBIT B