AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, October 4, 2013 AT 3:00 P.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
CITY COUNCIL CHAMBERS ROOM 112
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)

2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

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

3. Approval of the minutes from the JPA meeting held September 19, 2013 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. Election of JPA Secretary (Chair Beutler)

5. WH 13-85 Resolution to approve the Letter Agreement to engage BKD, LLC to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards as of and for the year ended August 31, 2013. (Steve Hubka)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

6. WH 13-86 Resolution to approve Amendment No. 015 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency for additional design services for a fee of $68,451.74. (Paula Yancey)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

7. WH 13-87 Resolution to approve an amendment to Article III of the Rules of Governance to revise the officers designated and the duties of those officers. (Rick Peo)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

8. WH 13-88 Resolution to approve Amendment to Pinnacle Bank Arena Private Suite Use Agreement between the West Haymarket Joint Public Agency and the Journal Star Printing Company to establish the value of trade credits for advertising and promotion of events. (Jeff Kirkpatrick)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

9. WH 13-89 Resolution to approve a Service Agreement between the City of Lincoln and Tom Otterness for Fabrication, Engineering, and Installation of Train Set Work at the Project Oscar property generally located at Canopy and P Streets. (Chris Connolly)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

10. Set Next Meeting Date: Thursday, November 14, 2013 at 3:00 p.m. in Room 112

11. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
September 19, 2013

Meeting Began At: 3:04 P.M.

Meeting Ended At: 3:26 P.M.

Members Present: Tim Clare, Chris Beutler, Doug Emery

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

Chair Beutler opened the meeting with introduction of the Board members. He advised that the open meetings law posted at the back of the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

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

Item 3 -- Approval of the minutes from the JPA meeting held August 22, 2013

Beutler asked for corrections or changes to the minutes of the JPA meeting of August 22, 2013. Being none, Emery moved approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 -- Approval of August 2013 Payment Registers

Steve Hubka, City Finance Director, presented the payment registers for August 2013 noting a total of $10,814,976. The review shows expenditures typical of those in recent months. Roughly, $6 million is to Mortenson. Those monthly bills are anticipated to drop off significantly soon. Responding to Clare, Hubka stated that the arena portion is on budget and that we are following necessary procedures from an audit perspective.

Being no public comment, Emery moved approval of the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 5 -- Review of August 2013 Expenditure Reports

Hubka presented the July Job Cost Reports for the Phase I, Phase II, and Operating Budgets. This happens to be the end of the year for the operating budget as well.

Item 6 -- Acceptance of the letter from Dan Marvin terminating Marvin Investment Management Company's contract to provide Project Management Services (including acting as Project Manager/Secretary for the JPA) for the West Haymarket Joint Public Agency effective October 15, 2013.

Rick Peo stated this was a notification item and no action is needed by the Board. This contract stated that Marvin could terminate the contract for any reason with 30 days notice. The notice given is beyond that requirement. The termination of those services would also terminate Dan Marvin's responsibilities as Secretary/Project Manager for the JPA. This would require the Board to take future action to fill that position.

Beutler asked Dan Marvin to come forward. Beutler hoped at some time in the not too distance future that we could have a ceremonial celebration of Marvin's time and efforts with the Haymarket project. Although it felt cold to thank Marvin from the podium today, Beutler wanted the people of the City to know that Marvin was a big part of this project, he kept things straight, and he presented many options giving pros and cons of different methods. All his efforts are appreciated, and Beutler hopes Marvin feels as good as they do about his efforts. Marvin responded that he did feel good about where they are, and that is one of the reasons he feels this is an appropriate end point. Beutler stated it had been a great partnership with Marvin individually.

Emery stated this feels bittersweet. It seems decades ago that they were out doing public information meetings – long before there was a JPA or approval for the arena. Thanks are wholly appropriate and insufficient for what Marvin has accomplished and how Marvin held this all together. Lincoln will probably really never know how much of an impact Marvin had here, but Emery remembers a few nights that were a little different. Marvin joked that Emery saved him a few times. Emery expressed his appreciation for all that Marvin did on this project.

Clare reiterated that this project would have had enormous hurdles to overcome without Marvin's leadership and guidance and overall help in keeping it all together. He did not know how Marvin juggled all the different things and people he had to bring together in somewhat difficult time periods. It was truly an extraordinary effort. He agreed with Emery that the City may not ever understand or appreciate what Marvin did, but those involved in the project understand that Marvin was a major player. Clare thanked Marvin personally for everything he did for him in keeping up to speed on things, as well as on behalf of the Board. Marvin thanked him saying it had been a great project.

Beutler wished Dan Marvin God-speed and best of luck on his next endeavor.

Item 7 -- WH 13-82 Resolution approving Change Order No. 2 to the Consultant Agreement for Professional Marketing Services between the West Haymarket Joint Public Agency and Legends Sales and Marketing LLC to adjust the contract sum to reflect the final reconciliation of the contract amount.

Paula Yancey, P.C. Sports, expressed thanks to Dan Marvin from all of their staff. They have greatly appreciated everything he has done and the humor he brought. This was a great project and will go down as one of the best in her record books.

Yancey explained that Item 7 was a deductive change order that closes out the original marketing, sales, and promotional aspects of the contract with Legends (formerly CSL). This is the final reconciliation of costs incurred versus contract amount. Previously there was a deductive change order for about

$385,000 and this one is for an additional $330,900.84; resulting in a final contract amount of $808,017.16.

Emery asked if we were within budget. Yancey explained the original estimate was $1.5 million. This was part of the original arena budget within the arena contingency line.

No one came forward for public comment.

Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

Item 8 -- WH 13-83 Resolution approving a Contract with General Excavating to remediate portions of the former JayLynn and Alter Properties near 6th and N Streets consisting of soil and debris excavation, off-site disposal of contaminated soils and debris, backfilling of the JayLynn excavation to design grade, and removal of construction/safety fencing, stormwater and erosion control materials and de-watering equipment from the site.

Frank Uhlarik, Public Works & Utilities Department, thanked Dan Marvin for his leadership throughout this project. It is not often you have a project manager of that caliber who takes into account all the environmental elements you have to consider on a project like this. His efforts to coordinate with the environmental team at every twist and turn on this project are very much appreciated.

Regarding the resolution before the Board, Uhlarik explained that this is a competitively procured and awarded contract to General Excavating for approximately $470,000 for cleanup of the Alter north scrap property, as well as portions of the former manufacturing gas plant under Watson Brickson's former operation. The next lowest bid was well above this at nearly $640,000. They have worked with General Excavating in the past, and they have done a great job on other projects in the Haymarket area.

As far as coordination with DEQ and the public, this remedial action plan for the Alter North is yet in the public comment period. Until October 8, the documents are available for public review and comment at DEQ offices and at Bennett Martin Library. Any public consideration and comments are encouraged.

Emery asked if this cost was within the budget and covers what we planned to have done. Uhlarik responded affirmatively and stated that $200,000 will be reimbursed under the EPA Brownfields Grant.

Beutler asked who the project manager and main principle were for General Excavating. Ken Imig is the project manager who Uhlarik stated oversaw the "Big Dig" in this area in 2011. Uhlarik was unsure as to the principle of General Excavating, but he has worked with Imig on a variety of other projects.

Jane Kinsey, Watchdogs of Lincoln Government, asked for the totals again. Uhlarik responded that amount was for $470,257.10. He also confirmed that $200,000 will be reimbursed by EPA Brownfields Grant. Kinsey asked when the reimbursement would occur, to which Uhlarik explained it is usually within 30-60 days of paid invoices being submitted to them by the JPA. Kinsey asked about the remaining total from what was budgeted - $7.5 million. Uhlarik did not have the figure available and will need to check with Yancey, but it may be around $2 million. They can make that total available.

Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

Item 9 -- WH 13-84 Resolution to approve Change Order No. 1 to the Final Guaranteed Maximum Price Amendment to the Construction Manager at Risk Agreement with Hausmann/Dunn to establish a new contract sum which shall not be exceeded for Precast Parking Decks Nos. 2 and 3.

Yancey detailed that this resolution is for the Phase II guaranteed maximum price (GMP) for Hausmann and Dunn on Parking Garages 2 and 3. This change order and amendment solidifies the Deck 2 cost at $10,750,896 and sets the final Deck 3 GMP at $13,241,774. Both are within the budget within the ranges we expected. Deck 2 is a little less and Deck 3 is a little more, so they average out within the budget. Hausmann/Dunn has done a great job working on the bid packages, procurement of the items, and working through these estimates to finalize this GMP.

Clare asked for a reminder on number of stalls in each parking facility listed here, as well as Deck 1 and the garage attached to the arena. Yancey listed approximate numbers for Deck 2 at 740 and Deck 3 at 947, with Deck 1 at 947 and arena garage at 280 stalls. Clare thought parking went really well this past week, and the additional spots will certainly make parking available for future events as well. Yancey added that the City Lumberworks Garage is expected to open this fall with an additional 500 plus stalls. Responding to Beutler's inquiry, Yancey relayed that the expectations are that Deck 3 would be finished by early summer of 2014 and Deck 2 by the end of the year.

Kinsey asked if Decks 2 and 3 were out of Phase II Budget work. Clare and Yancey confirmed that was the case. Kinsey asked about the amount in that total budget. Yancey responded that the entire budget is $27,717,598 with contingencies that bring the total budget up to $30 million. Yancey confirmed that, when they say they are on budget, it is the $27 million Phase II Budget to which they are referring. Kinsey then responded that the Phase II Budget was added onto the Phase I Budget. She continued that the public needed to know that, as it was more than they bargained for when they voted.

Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 -- Set Next Meeting Date

The next meeting date is set for Friday, October 4, 2013 at 3:00 p.m. in City Council Chambers Room 112.

Item 11 -- Motion to Adjourn

Clare made a motion to adjourn the meeting. Emery seconded the motion. The meeting adjourned at 3:26 p.m.

Prepared by: Pam Gadeken, Public Works & Utilities

West Haymarket JPA Meeting

Date 9/19/13

Page 1

Name (Please Print)	Address	Phone/E-Mail
Jane Tinsley, Waterkeeper		

WH 13-85 Introduce: 10-4-13

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the Letter Agreement to engage BKD, LLC to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards as of and for the year ended August 31, 2013 is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said engagement letter on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return one fully executed original Engagement Letter Agreement and a copy of this Resolution to Steve Hubka, Finance Director, for transmittal to BKD.

Adopted this _____ day of October, 2013.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

BKD LLP
CPAs & Advisors

1248 "O" Street, Suite 1040
Lincoln, NE 68508-1461
402.473.7600 Fax 402.473.7698 www.bkd.com

September 9, 2013

Board of Representatives
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, Nebraska 68508

We are pleased to confirm the arrangements of our engagement and the nature of the services we will provide to the West Haymarket Joint Public Agency ("West Haymarket JPA").

ENGAGEMENT OBJECTIVES AND SCOPE

We will audit the basic financial statements of the West Haymarket JPA as of and for the year ended August 31, 2013, and the related notes to the financial statements.

Our audit will be conducted with the objectives of:

- ✓ Expressing an opinion on the financial statements
- ✓ Issuing a report on your compliance based on the audit of your financial statements.
- ✓ Issuing a report on your internal control over financial reporting based on the audit of your financial statements.

OUR RESPONSIBILITIES

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by fraud or error. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error or fraud. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance having a direct and material effect may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system.

We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate letter to be signed by you and BKD.

Chris Lindner is responsible for supervising the engagement and authorizing the signing of the report or reports.

We will issue a written report upon completion of our audit of the West Haymarket JPA's financial statements. Our report will be addressed to the board of representatives of the West Haymarket JPA. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis of matter or other matter paragraph(s), or withdraw from the engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YOUR RESPONSIBILITIES

Our audit will be conducted on the basis that management acknowledge and understand that they have responsibility:

a. for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;

b. for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;

c. for identifying and ensuring compliance with the laws, regulations, contracts and grants applicable to your activities; and

d. to provide us with

i. access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;

ii. additional information that we may request from management for the purpose of the audit; and

iii. unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management written confirmation acknowledging certain responsibilities outlined in this engagement letter and confirming:

- The availability of this information
- Certain representations made during the audits for all periods presented
- The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures or other engagements that satisfy relevant legal, regulatory or contractual requirements or fully meet other reasonable user needs.

OTHER SERVICES

In addition to the services outlined in the engagement objectives section, we will also:

- Review bond offering documents, for the inclusion of our financial statements, for a fee of $2,750 per offering document, as outlined in our 2011 audit proposal.

In addition, we may perform other services for you not covered by this engagement letter. You agree to assume full responsibility for the substantive outcomes of the services described above and for any other services that we may provide, including any findings that may result. You also acknowledge that those services are adequate for your purposes and that you will establish and monitor the performance of those services to ensure that they meet management's objectives. Any and all decisions involving management functions related to those services will be made by you, and you accept full responsibility for such decisions. We understand that you will designate a management-level individual to be responsible and accountable for overseeing the performance of those services, and that you will have determined this individual is qualified to conduct such oversight.

ENGAGEMENT FEES

The fee for our services will be $16,000, in accordance with our 2011 audit proposal, which includes an administrative fee of 4% to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

Our fees are based upon the understanding that your personnel will be available to assist us. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
- Preparing audit confirmation and other letters
- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted

We will provide you with a detailed list of assistance and schedules required and the date such assistance and schedules are to be provided before the audit begins. All schedules should be provided in electronic form unless indicated otherwise.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material, or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase. If these circumstances occur, we will promptly notify you to discuss alternative solutions and the impact on our fees.

Our pricing for this engagement and our fee structure are based upon the expectation that our invoices will be paid promptly. We will issue progress billings during the course of our engagement, and payment of our invoices is due upon receipt. Interest will be charged on any unpaid balance after 30 days at the rate of 10% per annum.

Our engagement fee does not include any time for post-engagement consultation with your personnel or third parties, consent letters and related procedures for the use of our reports in offering documents, inquiries from regulators or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

Our fees may also increase if our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. We will consult with you in the event any other regulations or standards are issued that may impact our fees.

If our invoices for this or any other engagement you may have with BKD are not paid within 30 days, we may suspend or terminate our services for this or any other engagement. In the event our work is suspended or terminated as a result of nonpayment, you agree we will not be responsible for any consequences to you.

OTHER ENGAGEMENT MATTERS AND LIMITATIONS

Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, we may be requested by regulatory or enforcement bodies to make certain workpapers available to them pursuant to authority granted by law or regulation. You agree that we have no legal responsibility to you in the event we provide such documents or information.

You agree to indemnify and hold harmless BKD and its personnel from any claims, liabilities, costs and expenses relating to our services under this agreement attributable to false or incomplete representations by management, except to the extent determined to have resulted from the intentional or deliberate misconduct of BKD personnel.

You agree that any dispute regarding this engagement will, prior to resorting to litigation, be submitted to mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. The American Arbitration Association will administer any such mediation in accordance with its Commercial Mediation Rules. The results of the mediation proceeding shall be binding only if each of us agrees to be bound. We will share any costs of mediation proceedings equally.

Either of us may terminate these services at any time. Both of us must agree, in writing, to any future modifications or extensions. If services are terminated, you agree to pay us for time expended to date, as well as an administrative fee of 4% to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as computer processing, software licensing, research and library databases and similar expense items.

If any provision of this agreement is declared invalid or unenforceable, no other provision of this agreement is affected and all other provisions remain in full force and effect.

This engagement letter represents the entire agreement regarding the services described herein and supersedes all prior negotiations, proposals, representations or agreements, written or oral, regarding these services. It shall be binding on heirs, successors and assigns of you and BKD.

We may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about you to third-party service providers in serving your account. We remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information. In the event we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider.

We will, at our discretion or upon your request, deliver financial or other confidential information to you electronically via email or other mechanism. You recognize and accept the risk involved, particularly in email delivery as the Internet is not necessarily a secure medium of communication as messages can be intercepted and read by those determined to do so.

You agree you will not modify these documents for internal use or for distribution to third parties. You also understand that we may on occasion send you documents marked as draft and understand that those are for your review purpose only, should not be distributed in any way and should be destroyed as soon as possible.

If you intend to include these financial statements and our report in an offering document at some future date, you agree to seek our permission to do so at that time. You agree to provide reasonable notice to allow sufficient time for us to perform certain additional procedures. Any time you intend to publish or otherwise reproduce these financial statements and our report and make reference to our firm name in any manner in connection therewith, you agree to provide us with printers' proofs or masters for our review and approval before printing or other reproduction. You will also provide us with a copy of the final reproduced material for our approval before it is distributed. Our fees for such services are in addition to those discussed elsewhere in this letter.

You agree to notify us if you desire to place these financial statements or our report thereon on an electronic site. You recognize that we have no responsibility as auditors to review information contained in electronic sites.

Any time you intend to reference our firm name in any manner in any published materials, including on an electronic site, you agree to provide us with draft materials for our review and approval before publishing or posting such information.

BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD, LLP** have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, unlike the partners in a general partnership, the partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract or otherwise.

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our audit of the financial statements including our respective responsibilities. If the signed copy you return to us is in electronic form, you agree that such copy shall be legally treated as a "duplicate original" of this agreement.

BKD, LLP

RAD/NRH/dkm

Acknowledged and agreed to on behalf of

WEST HAYMARKET JOINT PUBLIC AGENCY

BY _____
Chris Beutler, Board Chairman

TITLE _____

DATE _____

BY Steve Hubka
Member of Management

TITLE JPA Treasurer

DATE 9/13/13

WH 13-86 Introduce: 10-4-13

RESOLUTION NO. WH - _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Amendment No. 015 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency dated September 1, 2010 is hereby approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract Amendment on behalf of the West Haymarket Joint Public Agency. Amendment No. 015 provides for the design and other services needed to update the RM Design Studio model and video to match the current design for the Haymarket District for a fee of $68,451.74.

Adopted this ___ day of October, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

AIA® Document G802™ – 2007

Amendment to the Professional Services Agreement

Amendment Number: 015

TO: Ms. Paula Yancey
(Owner or Owner's Representative)

Project Modeling for Arena and LHIT

In accordance with the Agreement dated: September 01, 2010

BETWEEN the Owner:
(Name and address)
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

and the Architect:
(Name and address)
DLR Group, inc. (a Nebraska corporation)
1111 Lincoln Mall
Suite 201
Lincoln, NE 68508

for the Project:
(Name and address)
Pinnacle Bank Arena
Lincoln, Nebraska

Authorization is requested
☐ to proceed with Additional Services.
☒ to incur additional Reimbursable Expenses.

As follows:
Video production, coordination and rendering for West Haymarket District and Pinnacle Bank Arena to aid in the design and development of the West Haymarket for the sales of sponsorships, development opportunities, advertising, arena bookings, and overall investment in the District. Video and renderings used in marketing, promotional opportunities and for public information for all Stakeholders.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:

RM Design Studio	$62,228.74
Architectural Direction/Coordination (10%)	$6,223.00
Total Additional Compensation	$68,451.74

Time:
No impact to design or construction schedule.

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User Notes: (959726426)

SUBMITTED BY:	AGREED TO:
(Signature)	*(Signature)*
Stan Meradith, AIA Principal	Mayor Chris Beutler Chair
(Printed name and title)	*(Printed name and title)*
September 16, 2013	
(Date)	*(Date)*

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User Notes: (959726426)

DLR Group
Architecture Engineering Planning Interiors

6457 Frances Street
Suite 200
Omaha, NE 68106

o: 402/393-4100
f: 402/393-8747

Contract Amendment 015– Project Modeling for Arena and LHIT

Scope:

1. Update the model and video to match current design for the Haymarket district.

Costs:

RM Design: $62,228.74

Architectural Coordination (10% markup per Contract: $6,223.00

Total: $68,451.74

WH 13-87 Introduce: 10-4-13

RESOLUTION NO. WH- _____

WHEREAS, the West Haymarket Joint Public Agency has previously adopted Rules of Governance, West Haymarket Joint Public Agency, filed of record with the City Clerk for the City of Lincoln, Nebraska and placed on file in the Office of the City Clerk as Document No. WH 00005; and

WHEREAS, an amendment to Article III of the Rules of Governance is necessary to revise the officers designated and the duties of those officers.

NOW, THEREFORE, BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That Article III of the Rules of Governance West Haymarket Joint Public Agency be and the same is hereby amended as shown on Attachment "A" which is attached hereto and incorporated herein by reference.

Adopted this _____ day of October, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

ARTICLE III

OFFICERS

1. Officers Designated: The JPA officers shall be a Chairperson, Vice Chairperson and Secretary~~-Treasurer~~, elected by the Board as provided in Neb. Rev. Stat. § 13-2516. Their terms of office shall be until a successor is duly appointed or elected or until the Officer shall no longer hold his or her office on the governing body of the Public Agency by which they were appointed. Successive terms of office are permitted.

2. Recall of Officers: Any officer may be recalled from the position of "officer" by a majority vote of the Board Representatives at any meeting. The vacancy thereby created shall be filled by a majority vote of JPA members present.

3. Resignation, Death, or Disability of Officers: If an officer resigns, dies, or becomes unable to perform his or her duties, such event will automatically create a vacancy in that office. The vacancy shall be filled in the manner provided in Neb. Rev. Stat. § 13-2516.

4. Duties of Officers:

(a) Chairperson:

a. The Chairperson shall preside at all meetings of the JPA, plan, lead, and direct the work of the JPA, appoint committee members, require reports, and perform such other duties as are normally associated with the office of Chairperson; and

b. The Chairperson shall co-sign, with the Treasurer or other person properly designated by the Treasurer, all checks, drafts, warrants or other instruments for paying out or expending money by the JPA; and

c. The Chairperson shall serve as the executive director of the JPA and carry out its day-to-day responsibilities, subject to the control of the Board.

(b) Vice Chairperson: The Vice Chairperson shall perform such duties as are assigned by the Chairperson and shall, in the absence of the Chairperson, perform all of the duties assigned to the Chairperson, except for co-signing checks, drafts or warrants, or other duties assigned by law exclusively to the Chairperson.

(c) ~~Project Manager/~~Secretary. ~~The Project Manager/Secretary shall serve as the executive director of the JPA and carry out its day-to-day responsibilities, subject to the control of the Board.~~ The ~~Project Manager/~~Secretary ~~shall have the responsibility of Secretary and~~ shall have charge of such books, documents, and papers as the Board may determine. The ~~Project Manager/~~Secretary shall be responsible for giving the required public notice regarding each meeting of the Board and shall be responsible for maintaining a record of all votes taken by

the Board. He or she shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting in according with the Open Meetings Law, Neb. Rev. Stat. § 84-1411 (4) (~~2009~~ 2011 Supp.).

a. Administrative Assistant. The ~~Project Manager/Secretary may appoint~~ City shall provide an administrative assistant to physically take the minutes, record the meetings of the Board, give the required notices, record the votes, and perform ~~such~~ other ministerial duties on behalf of the Secretary~~as the Project Manager/Secretary shall from time to time assign~~. ~~The Project Manager/Secretary shall have such other powers as the Administrative Board may determine, and shall perform such other duties as may be assigned by the Administrative Board.~~

b. Official Records. The minutes of the Board and all resolutions and other official documents of the ~~Administrative~~ Board shall be kept on file in the City Clerk's office of the City of Lincoln, Nebraska, and the City Clerk is hereby designated the official record keeper of the ~~Administrative~~ Board. As a political subdivision the JPA is subject to the requirements of the Nebraska Public Records Act, Neb. Rev. Stat. §§ 84-712 et seq. (Reissue 2008).

(d) Treasurer. The City Finance Director shall serve as a non-voting ex officio treasurer of the Commission. All taxes, other receipts, income, revenue, profits and money of the Commission shall be paid to the Treasurer who shall invest such funds as provided under Section 13-1305 R.R.S. Neb. 1943, as amended, and who shall not commingle such money with any other money under his or her control.

a. All taxes, other receipts, income, revenue, profits and money of the JPA shall be paid to the Treasurer who shall invest such funds in accordance with applicable provisions of the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made. The Treasurer shall not commingle such money with any other money under his or her control.

b. The Treasurer, or such other officer, employee or agent of the JPA authorized by the Treasurer, shall co-sign, with the Chairperson, all checks, drafts, warrants or other instruments for paying out or expending money by the JPA. Any such authorization by the Treasurer shall be in writing and filed with the ~~Project Manager/~~ Secretary of the JPA.

c. The Treasurer shall in general perform all other duties incident to the office of treasurer and such other duties as shall be assigned by the Board.

d. In the event that there is no treasurer's bond that expressly insures the JPA against loss resulting from fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the ~~Project Manager/~~Secretary of the JPA, together with the written authorization filed with the ~~Project Manager/~~Secretary, a surety bond, effective for protection against the loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the JPA other than the Treasurer. The ~~Project Manager/~~Secretary shall report to the Board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the Board.

WH 13-88 Introduce: 10-4-13

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the Amendment to Pinnacle Bank Arena Private Suite Use Agreement between the West Haymarket Joint Public Agency and the Journal Star Printing Company to establish the value of trade credits for advertising and promotion of events is hereby adopted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment to Agreement on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return a copy of this Resolution and the Amendment to Pinnacle Bank Arena Private Suite Use Agreement to Jeff Kirkpatrick, City Attorney's Office, for transmittal to the parties.

Adopted this _____ day of _____, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

AMENDMENT TO PINNACLE BANK ARENA
PRIVATE SUITE USE AGREEMENT

This Agreement is made this ____ day of September, 2013, by and between the West Haymarket Joint Public Agency (hereinafter referred to as the "JPA") and the Journal Star Printing Company, a Nebraska company (hereinafter referred to as the "LJS").

WITNESSETH:

WHEREAS, the JPA and the LJS entered into a Private Suite Use Agreement (hereinafter referred to as the "Suite Agreement") in 2012 and;

WHEREAS, some questions have emerged as to how the exchange of values established in the Agreement should be determined;

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties hereto agree to the following:

1. Amendments to the Suite Agreement. The parties hereto agree to amend the Suite Agreement as follows:

a. Advertising space used on a trade basis under the Suite Agreement cannot be applied to the portion of the advertising expense that goes to the payment of any third party vendor, including third party vendors used by the Lincoln Journal Star. Advertising rates for items not specifically outlined in the Suite Agreement and/or advertising provided by third party vendors will be controlled by the advertising rate card in use by the Lincoln Journal Star at the time of placement.

b. The JPA shall have the right to use LJS advertising space to promote events and activities in the Arena, the North Festival Space, Pershing Auditorium, or Pinewood Bowl and to sell LJS advertising space that it receives under this Suite Agreement to third parties, including acts, exhibits, shows, and promoters using the Arena, the North Festival Space, Pershing Auditorium, or Pinewood Bowl. LJS agrees to allow the JPA to sell space to others for specific promotional purposes related to City of Lincoln or SMG sponsored activities in the Pinnacle Bank Arena, the North Festival Space, the Haymarket District, Pershing Auditorium, and Pinewood Bowl.

c. Advertising space used on a trade basis under the Suite Agreement can include LJS websites such as JournalStar.com and HusketExtra.com. Digital or website advertising that is managed by LJS, but provided by third party vendors is not available for use on a trade basis. Advertising rates for website or digital advertising shall be controlled by the current rate card at the time of placement.

d. LJS may enter into separate sponsorship arrangements with the JPA or with acts, exhibits, shows, or events using the Arena, the North Festival Space, Pershing Auditorium, or Pinewood Bowl which shall not be affected or altered by this Suite Agreement or the trade credits created by this Agreement.

e. The Exhibit C referenced in the Suite Agreement is replaced by the Exhibit C attached to this Amendment.

f. Due to the trade credits being made available to the JPA upon the signing of the original Suite Agreement, the contract years for the Suite Agreement will run as follows:

Year 1	July 1, 2012 - August 31, 2014
Year 2	September 1, 2014 - August 31, 2015
Year 3	September 1, 2015 - August 31, 2016
Year 4	September 1, 2016 - August 31, 2017
Year 5	September 1, 2017 - August 31, 2018

2. Remainder of Suite Agreement. Except for the amendments and modifications described herein, the Suite Agreement remains in full force and effect.

3. Contingency. This Amendment is contingent upon approval by the JPA Board and it shall not become effective unless said Amendment is approved by the JPA Board.

4. Effective Date. The effective date of this Amendment herein shall be on the date of approval by the JPA Board.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the dates set forth below to be effective on the date of execution by the JPA.

USER

JOURNAL STAR PRINTING COMPANY

Date:_____

By: _____

Name
Printed:_____

Title: _____

Address: _____

_____
_____
_____

JPA

Date:_____

By: _____

Chair of JPA

Address: 555 South 10th Street, Room 103
Lincoln, NE 68508

APPROVED:

_____
JPA Attorney

EXHIBIT C

$55,000 Suite

5 year Use Agreement

1. ANNUAL USE FEE. The "Use Fee" payable by User to the JPA in respect of each year of the Agreement is as set forth below:

Trade Value to JPA	Trade Value Available for City of Lincoln
· $80,000 in trade for Year 1	$40,000
· $80,000 in trade for Year 2	$40,000
· $83,200 in trade for Year 3	$40,000
· $86,528 in trade for Year 4	$40,000
· $89,989 in trade for Year 5	$40,000

_____

User Signature

WH 13-89 Introduce: 10-4-13

RESOLUTION NO. WH- _____

BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public Agency:

That the attached Service Agreement between the West Haymarket Joint Public Agency and Tom Otterness for Fabrication, Engineering, and Installation of Train Set Work at the Project Oscar property generally located at Canopy and P Streets is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Service Agreement on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return one fully executed copy of the Service Agreement to Chris Connolly, Assistant City Attorney, for transmittal to Tom Otterness.

Adopted this _____ day of October, 2013.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Doug Emery

SERVICE AGREEMENT BETWEEN THE CITY OF LINCOLN AND TOM OTTERNESS FOR FABRICATION, ENGINEERING, AND INSTALLATION OF TRAIN SET ART WORK AT PROJECT OSCAR

1. **Introduction.** This Agreement is between the West Haymarket Joint Public Agency, a Nebraska Joint Public Agency, located in Lincoln, Nebraska ("JPA") and Tom Otterness ("Artist") to perform the following services on the following terms. Artist is being engaged to perform final design, engineering, fabrication, and installation services for an approved design for a work of art to be known as the "Train Set" or such other title as Artist shall determine (sometimes referred to herein as "the Art"). Said work of art shall be installed at a mutually determined location in the courtyard area of a project known as "Project Oscar", Canopy and P Streets, Lincoln, Nebraska (hereinafter referred to as the "Space").

2. **Services.** Artist has heretofore produced an artistic design for the Art and the Space previously accepted by JPA (the "Design," attached as Exhibit 1 hereto). Artist is hereby engaged by JPA, and Artist hereby agrees, to provide the following final design, engineering, fabrication and installation services in connection with the Art and the Space:
   a. Train Set.

      i. Design; Fabrication – Artist shall be responsible for developing the final design of the Train Set and procuring all materials and third party services required for the fabrication of the Train Set. Artist shall also be responsible for monitoring the progress of the Train Set fabrication process and performing such inspections during fabrication of the Train Set as may be necessary to ensure that the Train Set substantially conforms to the Design, all of the foregoing as determined by the Artist in his sole discretion. Artist shall notify JPA in writing within ten (10) days of the beginning of the fabrication of the Train Set and the expected deadline for completion. In the event of an issue with financing of the Art by the JPA, JPA and Artist agree that the Train Set may be placed in storage by Artist for safekeeping and later installation once the funds are available. The Artist shall arrange reasonably priced and adequate storage of the Art during this time and the JPA shall be responsible for payment of the storage fees.

      ii. Delivery; Shipping; Insurance – Artist agrees to deliver the Train Set to the Space on a best efforts basis not later than such day (the "Delivery Date") which shall be the later of (A) nine (9) calendar months following execution of this Agreement and (B) forty-five (45) calendar days following completion of the Space for the Train Set. Artist shall provide photo documentation to JPA with its notification of completion. Artist shall be solely responsible for preparing the Train Set for shipment and arranging for transportation to the Space. Shipment shall be FOB destination, and Artist shall be responsible for all costs for materials and labor in connection with preparation and packing of the Train Set for shipment and all costs of transportation to the Space. Artist shall bear the risk of loss (A) during the fabrication phase of the Train Set and (B) during transportation and installation of the Train Set to the Space. Artist agrees to obtain insurance in an amount not less than the replacement value of the Train Set (or portion thereof relating to work in process) naming JPA as an additional insured for any amounts paid, the costs of which will be borne by Artist, and shall provide a certificate to JPA within thirty (30) days of execution of this Agreement. Artist shall take such necessary and reasonable measures to protect the Train Set during fabrication, storage, transportation, and

installation. Upon completion of installation, JPA shall bear all risk of loss for the Train Set.

iii. Interface Design; Inspection; Installation – Not later than ninety (90) days following execution of this Agreement, Artist shall provide to JPA drawings and/or sketches in sufficient detail to define the Train Set and such structures as may be needed for support or mounting of the Train Set, including all site preparation. Site preparation shall be the responsibility of the JPA and support and mounting of the Train Set shall be the responsibility of the Artist. Following shipment of the Train Set to the Space, Artist shall inspect the Train Set prior to installation. Installation of the Train Set at the Space, including the cost of all labor, materials and equipment necessary for such installation, shall be the responsibility of Artist. The JPA shall provide to the Artist such drawings, surveys, plats and other site related materials as may reasonably be necessary for the Artist to develop and install the Art.

b. Ancillary Services By Artist – Artist agrees to meet with JPA, including JPA's agents, subcontractors, and professional consultants, at reasonable times and with reasonable frequency as shall be mutually agreeable between Artist and JPA in order to (a) assist JPA with the coordination of the final design and fabrication of the Art for which Artist is responsible, and; (b) the engineering and construction of the Space for which JPA is responsible. Artist shall, at JPA's request, provide documentation of the progress of the Art. Artist shall provide documentation for JPA's determination of completion of the various phases in the schedule prior to compensation for each phase as provided herein.

3. **Term.** The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, except as set forth herein..

4. **Compensation.**

A. For the services provided pursuant to this Agreement, JPA agrees to pay Artist a total of $500,000.00, consisting of the following cost elements (the "Artist Compensation"):

i.	Train Set Fabrication	$215,000.00
ii.	Artist Fees and Expenses	$255,000.00
iii.	Engineering Fees and Expenses	$ 30,000.00
	Total	$500,000.00

B. JPA agrees to pay to Artist the Artist Compensation in accordance with the following schedule for the various phases of work:

Within thirty (10) days of execution of the Agreement, the sum of $150,000.00 representing the sum of 30% of the compensation relating to the Train Set.

i. Within thirty (30) days following notice by Artist to JPA that the clay models of the Train Set are complete, the sum of $150,000.00 representing the sum of 30% of the compensation relating to the Train Set.

ii. Within thirty days following notice by Artist to JPA of completion of the bronzes at the foundry, the sum of $150,000.00

iii. Within fourteen (14) days following notice by Artist to JPA that the Train Set

has been unpacked at the Space, inspected by Artist, and has been installed at the Space, the sum of $50,000.00 representing the remaining balance of the compensation relating to the Train Set unless JPA, upon receipt of such notice, and prior to the expiration of the 14-day period, gives Artist written notice specifying and describing any services which it contends have not been completed.

C. Notwithstanding anything in this Agreement to the contrary, in no way shall this Agreement be construed as creating any rights of "works made for hire" for the benefit of the JPA under U.S. and international copyright laws, and all copyright and similar intellectual property interests arising hereunder, and the Art is expressly reserved to the Artist and shall remain intellectual property belonging solely of the Artist.

D. Artist shall be responsible for all applicable taxes, including sales/use and excise taxes, local and federal taxes, which may be due from it as a result of this Agreement.

E. Upon final payment for the Art, JPA becomes the legal owner of the Art, with the exceptions noted herein.

5. **Artist's Donation.** The Artist agrees to donate the sum of $25,000.00 to the Capital Humane Society of Lincoln. Said donation shall be paid before the final payment has been made by JPA to the Artist.

6. **Copyrights, Royalties & Patents.**

A. Without exception, Artist represents that the consideration for this Agreement includes Artist's payment, if any, for any and all royalties or costs due any third party arising from patents, trademarks, copyrights, and other similar intangible rights claimed by any such third party in any way involved with or related to the services provided herein by Artist pursuant to this Agreement. Further, Artist shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Artist represents that all materials, processes, or other protected rights, if any, to be used in the creation and fabrication of the Art have been duly licensed or authorized by the appropriate parties for such use. Artist agrees to furnish the JPA upon demand written documentation of such license or authorization and if unable to do so, Artist agrees that the JPA may withhold a reasonable amount from Artist's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

B. Artist shall indemnify the JPA, its sucessors and assigns, and defend suits or claims for infringement for damages, including but not limited to attorney's fees, of any patent, copyright, trademark, or other intangible rights that Artist has used in the course of performing this Agreement.

C. Artist represents and warrants to JPA that he is free to enter into this Agreement and that performance thereunder will not conflict with any other Agreement to which Artist may be a party. Artist represents and warrants to JPA that the Train Set is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties. Artist shall not make any additional exact duplicate additions of the Train Set, nor shall the Artist grant permission for others to do so without written permission of the JPA.

D. Upon final payment to the Artist by JPA, the Artist grants to JPA an irrevocable license to make and use graphic reproductions of the Art for non-commercial purposes, including reproductions used in brochures, media publicity, or other similar publications, including by computer and internet, and that such rights are royalty-free and unrestricted, but shall always credit the Artist. It is understood that the Art may be photographed by the

public. **JPA shall not perform any substantial repairs, modifications, or other changes to the Art without the consent of the Artist, whose consent shall not be unreasonably withheld.**

7. **Termination.** Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice. JPA also has the right to terminate this Agreement for any reason for its own convenience with thirty (30) days written notice of the termination. JPA may terminate this Agreement immediately, without penalty or expense, in whole or in part, when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of JPA. Upon termination, JPA shall pay Artist for any approved and documented services completed up to the date of termination according to the Artist Compensation schedule above, but not to exceed the maximum amount allowed by this Agreement, and all finished and unfinished drawings, sketches, molds, models, and other work product prepared by Artist under this Agreement shall remain Artist's property.

8. **General Duties.** Artist agrees as follows: (a) To timely and professionally complete the services as described above, and to furnish labor and pay all his own costs, including any taxes, required to complete the services; (b) To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement; (c) To apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the work; (d) To conduct all activities related to the services in a lawful manner; (e) To provide and perform the work in a professional and workmanlike manner and in accordance with the provisions of this Agreement.

9. **Independent Contractor.** JPA is interested only in the results produced by this Agreement. Artist has sole and exclusive charge and control of the manner and means of performance. Artist shall perform as an independent contractor and it is expressly understood that neither Artist nor any of its staff or subcontractors are employees of JPA and, thus they are not entitled to any JPA benefits including, but not limited to, overtime, retirement benefits, workers compensation, sick leave, or injury leave. Artist is responsible for payment of all costs related to the Art fabrication and installation of the Train Set, including but not limited to subcontractors, materials, supplies, travel expenses, equipment, transportation, shipment, and documentation.

10. **Insurance.**

A. Artist shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Artist and JPA, its officials, employees and agents, including officials, employees, and agents of the JPA as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Artist and Artist's employees, or those directly or indirectly employed by Artist. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - $1,000,000 each Occurrence; $2,000,000 Aggregate;

2. Bodily Injury/Property Damage - $1,000,000 each Occurrence; $2,000,000 Aggregate;
3. Personal Injury Damage - $1,000,000 each Occurrence;
4. Contractual Liability - $1,000,000 each Occurrence;
5. Products Liability and Completed Operations - $1,000,000 each Occurrence;
6. Medical Expenses (any one person) - $10,000; and
7. Fire Damage (any one fire) - $100,000.

B. The following shall be provided and attached to this Agreement by Artist:
   1. A Certificate of Insurance for its General Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance.
   2. Proof of Workers Compensation Insurance, where appropriate.

C. Artist is required to provide City with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

11. **Indemnification of JPA by Artist.** To the fullest extent permitted by law, Artist shall indemnify, defend and hold harmless JPA, its officers, agents (including officials, employees and agents of the JPA), and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional misconduct or negligent act or omission of Artist, or anyone for whose acts Artist may be liable. This section will not require Artist to indemnify or hold harmless JPA for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence or intentional misconduct of JPA. JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

12. **Indemnification of Artist by JPA.** To the fullest extent permitted by law, JPA shall indemnify, defend and hold harmless the Artist, his successors and assigns from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement or, after installation of the Art, relating in any way to the Art or the Space (including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional misconduct or negligent act or omission of JPA, or anyone for whose acts JPA may be liable). This section will not require JPA to indemnify or hold harmless Artist for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence or intentional misconduct of the Artist. JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

13. **Audit.** Artist shall be subject to audit per Lincoln Municipal Code Chapter 4.66 and shall make available to a contract auditor copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

14. **Fair Employment.** Artist shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended.

15. **Fair Labor Standards.** Artist shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended and shall provide all required notices.

16. **Integration, Amendment, Assignment, Severability, Waiver.** This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. This Agreement shall be governed and interpreted by the laws of the State of Nebraska without reference to the principles of conflicts of law.

17. **E-Verify.** In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Artist agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Artist shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. § 1324b. Artist shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

18. **Capacity.** The undersigned person representing Artist does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Artist to this Agreement.

19. **Assignment.** The JPA shall not assign this Agreement to any other entity, except the City of Lincoln, Nebraska, without the consent of the Artist.

20. **Nebraska Law.** This Agreement shall be interpreted and construed pursuant to the laws of the State of Nebraska and venue for any litigation herein shall be in Nebraska. This section shall survive termination of this Agreement.

IN WITNESS WHEREOF, Artist and JPA do hereby execute this Agreement.

Artist's Signature:

Tom Otterness
96 4th Street
Brooklyn, NY 11231

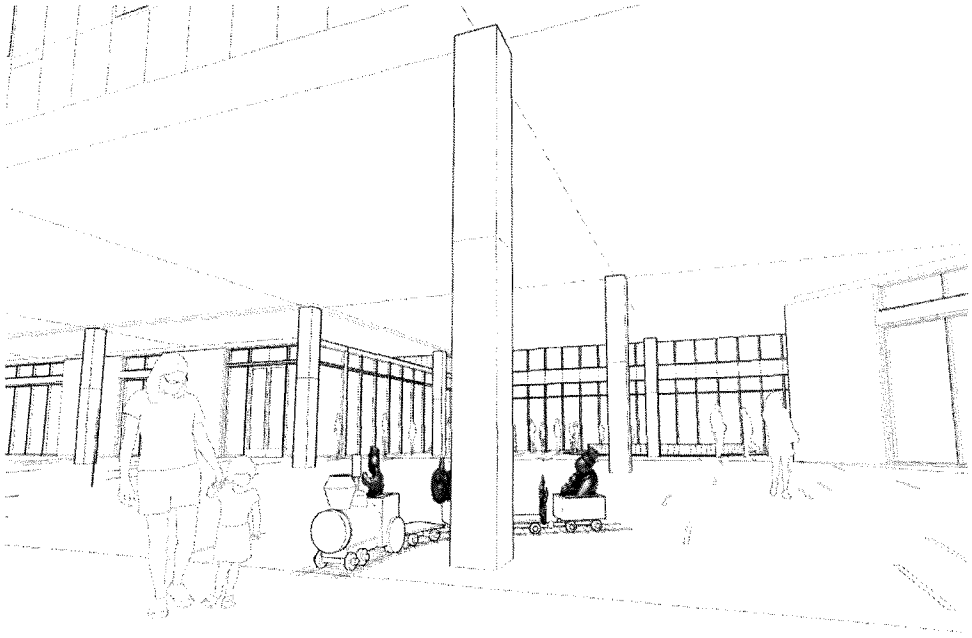
By:_____
Tom Otterness

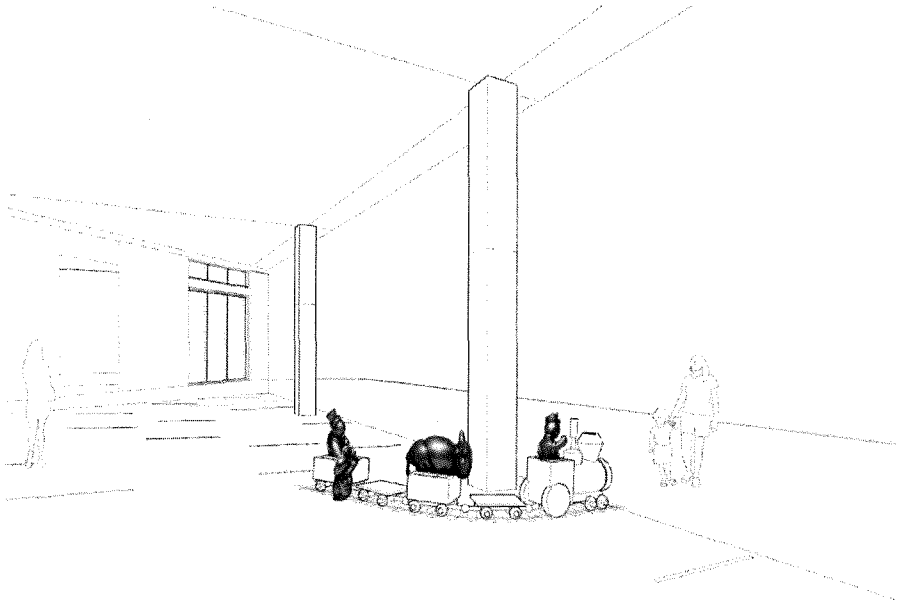
JPA Signature: _____
Chris Beutler, Mayor, JPA Board Chair

Date of Execution: _____

Attachment

Tom Otterness – Design for Art Work at Project Oscar





The Art Work is a single work of art composed of multiple elements, including, in addition to those depicted herein, 18 six inch bronze figures, the exact location of which shall be mutually decided upon during installation