

AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD THURSDAY MARCH 10, 2011 AT 9:00 A.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
Council Chambers
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Snyder)
2. Public Comment and Time Limit Notification Announcement (Chair Snyder)

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 February 16, 2011 (Chair Snyder)
 - (Staff recommendation is for the JPA Board to approve the minutes as presented)
4. West Haymarket Progress Report (Jim Martin)
 - Public Comment
5. Approval of Payment Registers (Don Herz)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the payment registers)
6. Review of the February 2011 Expenditure Reports (Don Herz)
 - Public Comment
7. Bill No. WH 11-19 Resolution to approve the financial audit and management letter from BDK CPA's for the period ending August 31, 2010. (Don Herz and BKD)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Resolution)
8. Bill No. WH 11-20 Resolution to approve Memorandum of Understanding with N Street Company LLC (Alter Scrap Metal) regarding the purchase of property for the West Haymarket Project. (Dan Marvin)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Resolution)
9. Bill No. WH 11-21 Resolution to approve NPDES/NPP Signatory Authorization Form naming Jayne Snyder, Chair, and Dan Marvin, Project Administrator, as Authorized Representatives to sign on behalf of the JPA. (Miki Esposito)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Resolution)

10. Bill No. WH 11-22 Resolution to approve the Notice of Intent for Requesting Dewatering Discharges Authorization under the General NPDES Permit NEG671000. (Miki Esposito)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Resolution)

11. Bill No. WH 11-23 Resolution to approve Change Order No. 1 to the Agreement with General Excavating, Inc. for additional work associated with diesel plume remediation. (Miki Esposito)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Resolution)

12. Bill No. WH 11-24 Resolution to approve Amendment No. 4 to Consultant Agreement between the JPA and SAIC to provide professional services in connection with the design and construction of multiple facilities near downtown Lincoln otherwise known as the West Haymarket Redevelopment Project. (Vince Mejer)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Resolution)

13. Set Next Meeting Date: Wednesday March 30, 2011 3:30 P.M. (Council Chambers)

14. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
February 16, 2011

Meeting Began At: 3:32 P.M.

Meeting Ended At: 4:30 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

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

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

Snyder 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 January 26, 2011

Snyder asked for any corrections or changes to the minutes from January 26, 2011. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Jim Martin, Program Manager with SAIC, came forward and informed the Board that he will present a more formal report at the second meeting of each month. Martin stated that the arena is on schedule and the preliminary schematic design should be delivered on February 25th with a final delivery to the JPA prior to the March 24th meeting. The infrastructure projects are on schedule which includes: The Post Office, 10th and Salt Creek, M and N Streets and the hole in the donut. There has been a Kick-Off meeting for the Charleston Street Bridge and a couple of others but they are just beginning.

Item 5 – Approval of Payment Registers

Don Herz presented the January Check Register and Public Works Engineering Costs to the Board. The check register totals \$1,957,135 with the most significant item being a payment to Burlington Northern for just over \$1 million, which is in conformance with the budgeted amount.

Clare inquired about Union Pacific track work #4 and #5 shown in the register. Dan Marvin explained that there are two bridges near Salt Creek, one being the Burlington Northern Bridge which is active. That bridge will be deactivated and a bridge to the south, the Union Pacific Bridge, will be activated to carry all rail traffic to the northwest. This will open up a pocket where the surface parking lot south of the Haymarket ball field is located. The JPA will be able to reclaim the old Burlington Northern Bridge and turn it into a pedestrian bridge at some point in the future.

Clare asked what insurance coverage is provided with the payments made to Aon. Marvin noted that the \$81,800 was for the second layer of the \$25/\$25 million insurance and the payments for \$228,866 and \$130,037 are for the first layer of \$25/\$25 general liability insurance. The JPA obtained \$50/\$50 million general liability insurance because it was cheaper than buying a \$25/\$50 million policy and it is a requirement of the Burlington Northern agreement to have a minimum coverage policy of \$25/\$50 million.

Clare inquired as to why \$46 million was paid to Burlington Northern when only \$44 million was budgeted in the construction expenditure report. Marvin pointed out that some of those dollars will eventually be moved into the stormwater mitigation line item. Burlington Northern hired a contractor, Riley, to build their rail track but at this stage they are doing the grading work necessary for stormwater mitigation on the west side of the tracks. They will also be building areas where water can flow under the tracks. During early negotiations, it was decided that it would not be wise to have two crews in close quarters which could cause coordination and insurance issues. It was more efficient to have Riley do some of the stormwater work which is what the additional dollars are for. When all of the numbers are in Herz will transfer those dollars to the stormwater line item.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 6 – Review of the January 2011 Expenditure Reports

Don Herz noted that the Construction Expenditure Report has been updated to include the payments that the Board just approved which brings the total to \$55,577,623. Herz plans to have encumbrances included on the next report. He pointed out to the Board that the Miscellaneous Contractual Services line in the Operating Expenditure Report is what the three City positions are being paid out of. Those expenditures have been made but the City has not yet been reimbursed. Herz plans to get that completed soon.

Snyder asked about the JPA debt shown on the Construction Expenditure Report, lines 870976 to 870979. Herz indicated that those are a break out of 870975, which is the \$5.16 million cost of issuance budget. He decided to show those as separate line items. The cost of issuance is less than what was budgeted however there will be one more significant bond issue brought to the Board in about 18 months.

Clare informed those present that in follow-up to previous discussions, the Board asked Marvin and Herz to put together a listing of the contracts that have been awarded so far. This chart will

contain the name of the company that won the contract, the amount of the contract and whether the company is local or out of state. This project was billed as one that would utilize local labor and local talent, so this information will be available for the public to view on the website. Excluding the contracts that will be awarded today, over \$24 million in services has been contracted so far of which \$21 million was awarded to companies with a local presence. That doesn't necessarily mean the company's office is exclusively local, for instance, DLR has offices in Lincoln and Omaha. This information will be kept up to date through the entire construction process and will be up on the website by the end of the week.

Snyder added that two of the out of state contracts were awarded to Aon Insurance. Although that company is not local, it was important for the JPA to secure reliable liability insurance for this project.

Item 7 – Bill No. WH 11-15 Resolution to approve Agreement with Alfred Benesch and Company to provide Comprehensive Geotechnical Engineering Services for (1) West Haymarket hole in the donut area fill assessment; (2) preliminary subsurface exploration – multistory structure sites located south of Arena and A-17 parking garage sites; and (3) flood storage area excavated soils characterization and assessment of suitability (w/o manipulation) as building fill. Benesch's fee for performing the Comprehensive Geotechnical Engineering Services is \$57,000 as more particularly set forth in the fee estimate on page 5 of Exhibit C to the Agreement.

Jim Martin stated that this contract is with Alfred Benesch for three new tasks. Their first task will be to test the soils in the donut. The tests will determine if those soils are suitable for use as fill beneath the arena, garages and other buildings. In order to be conservative, the original Transportation Environmental and Utilities Plan (TEUP) estimate budgeted for all fill to be imported. There will be a savings if the soil that is there or adjacent can be used for fill or deep fill.

Their second task will be to test the area south of the arena and north of O Street. There has already been some comprehensive geotechnical exploration under the arena and now the same testing needs to be done for the parking garages and to prepare pad sites for any other buildings. The testing will also serve a dual purpose as Benesch will be looking at the soil as the drill brings it up so the limits of any contamination will be known for certain.

Their third task will be to test the soils west of the donut where TJ Osborn is currently digging to determine if those soils are suitable for deep fill inside the donut. Some of the soil has been excavated and it is very wet and contains some rubble. The total cost of the three tasks is \$56,637 with a total contract amount not to exceed \$57,000. The period of performance is three weeks for task 1, two and a half weeks for task two and three weeks for task 3. SAIC recommends approval of this contract modification.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 – Bill No. WH 11-16 Resolution to approve Amendment No. 4 to the Agreement with DLR Group Inc. to add a table listing Additional Specialty Consultants Services as part of Section 4.1 of the Agreement.

Jim Martin informed the Board that this amendment has no cost impact and is a housekeeping issue. These pages were left out of the original DLR amendment which was approved by the Board months ago. The omission was caught during final review of the documents and the amendment simply adds this table as part of the original amendment. SAIC recommends approval of this resolution.

Beutler noted that the document has a marked up change on 4.1.27. Rick Peo advised that there was a typo but the original document has been corrected.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 11-17 Amendment No. 3 to the Consultant Agreement between the JPA and Benham (now known as SAIC Energy, Environment & Infrastructure LLC) to extend the term for completion of all obligations of the Agreement to March 24, 2011.

Rick Peo explained that this is another extension of the interim contract with Jim Martin. They have been trying to find time to negotiate the final draft of the complete agreement. The last agreement was extended to the end of February but the end of February meeting has since been canceled. Peo is requesting to extend the interim contract to the end of March.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-18 Resolution to approve the acquisition of the N Street Company LLC property (i.e. Alter Scrap Metal Site) and JayLynn property (i.e. lumber yard site) needed for the West Haymarket Project by purchase if possible and by condemnation if necessary.

Snyder announced that the Board would be moving into Executive Session for protection of the public interest to discuss the negotiations for the acquisition of the N Street Company LLC property (i.e. Alter Scrap Metal Site) and JayLynn property (i.e. lumber yard). At the end of Executive Session, the meeting will be reopened and the Board will then vote on Bill No. WH 11-18. Beutler made a motion to move into Executive Session. Clare seconded the motion. Motion carried 3-0. The JPA Board entered into executive session at 4:00 P.M. The JPA Board exited Executive Session after a motion made by Beutler and seconded by Clare at 4:22 P.M.

Rick Peo explained that the two properties in question, Alter Scrap and the lumber yard have always been identified as being necessary for the West Haymarket project. There are two purposes in acquiring the properties. First, both properties are currently served by a rail spur and with the Burlington Northern track relocation, that rail spur will have to be closed. The other purpose is to have the properties available for redevelopment activities in the West Haymarket

project. Negotiations with the two properties have been ongoing for several months. Negotiations have been amicable but the relocation of two large business of this nature is very complex and finding alternate location sites is taking a long period of time. As they work through those details, they have been coming toward an impasse with the railroad track work to begin this summer. They also need to obtain Surface Transportation Board approval for the track relocation, so the properties either need to be acquired or they need consent to terminate rail service. The termination doesn't have to happen this year, but the agreement to terminate has to be in effect by May to keep on target. Peo expects that the property owners will have the option of remaining in operation for several months until the property is needed for environmental cleanup and staging. There is still plenty of time to work out a voluntary purchase but the possibility of condemnation is needed to get effective legal title in order to have the track work done on time.

Snyder thanked the legal staff for working so amicably with these two businesses. Clare agreed and noted that in the due diligence he has conducted, the players involved with negotiations were very complimentary and said this has been going well and they understand this is a timing issue not a hostile situation.

Snyder asked for any comments from the public. Deena Winter came forward and asked if the Board was giving authority to use eminent domain if necessary. Snyder stated that staff are running against the May 8th final closing with Burlington Northern so it would only be used if necessary. Peo added that if a condemnation petition is filed a hearing date would be set, the Board of Appraisers would appraise the property and they would award damages. The JPA would then deposit that money in County Court and at that time the JPA would be deemed to have received legal title to the property. That doesn't mean the award is conclusive or that negotiations won't continue, it is basically the mechanism to get the title. Peo envisions that voluntary negotiations would be ongoing and would not be hostile, it would just buy time. Winter then asked what the problem is that has caused the impasse. Dan Marvin answered that it is a timing issue and negotiations are continuing.

Hearing no other comments, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 11 – Set Next Meeting Date

The meeting scheduled for Thursday February 24th has been canceled. The next meeting will be held on Wednesday March 9, 2011 at 3:30 in Room 303.

Meeting adjourned at 4:30 P.M.

Prepared by: Melissa Ramos-Lamml, Engineering Services

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
37233	Olsson Associates	OA Proj#008-0645	PV	1251699	73,655.06	02/03/11	42286
88022	T J Osborn Construction	Proj 870501	OV	1251697	44,208.79	02/03/11	42329
324304	BNSF Railway Company	NC20022821, 11/1-11/30/10	PV	1251700	720.57	02/03/11	42367
81357	Great Plains Appraisal Inc	Cust#369	PV	1251994	7,700.00	02/09/11	438993
93323	Lincoln-Lancaster County Health Dept	Copies, environ assmt	PV	1252043	17.22	02/09/11	438994
98642	Information Services	Dec Wk/Jan Bill	PV	1253680	64.18	02/09/11	438995
102154	Public Building Commission	Account 10011 02/11	PV	1253684	157.50	02/09/11	438996
591846	Marvin Investment Management Co	Program Admin 12/16/10-1/15/11	PV	1253672	6,800.00	02/09/11	438997
594773	Alfred Benesch & Company	Proj#00110099.00	PV	1251995	14,746.70	02/09/11	438998
596579	SMG	Travel exp, Michael Godoy	PV	1252047	548.83	02/09/11	438999
36863	General Excavating		PV	1251991	2,250.00	02/10/11	42416
37233	Olsson Associates	OA#008-0645	PV	1251996	28,677.16	02/10/11	42417
40521	A to Z Printing	Job Number 2935H	PV	1253676	88.00	02/10/11	42422
88022	T J Osborn Construction	Proj 870501	OV	1251981	109,248.87	02/10/11	42456
249308	DLR Group Inc	Proj#10-10124-00	PV	1251997	131,850.00	02/10/11	42487
249308	DLR Group Inc	Proj#10-10124-00	PV	1252027	168,150.00	02/10/11	42487
324304	BNSF Railway Company	Con#NC20022821, 10/1-10/31/10	PV	1251993	9,056.67	02/10/11	42493
324304	BNSF Railway Company	Cont#NC20023114, 11/1-11/30/10	PV	1251992	1,445.08	02/10/11	42493
81357	Great Plains Appraisal Inc	Cust#369	PV	1255349	2,500.00	02/16/11	439555
139758	Union Pacific Railroad	Cust#62517, Cont#WO04367	PV	1255343	8,745.80	02/16/11	439556
170384	Thomas E Stevens & Associates	Appraisal review	PV	1255346	1,750.00	02/16/11	439557
595872	CSL Marketing Group	Feb'11 ret + Jan, Feb rent	PV	1255339	1,404.00	02/16/11	439558
595872	CSL Marketing Group	Feb'11 ret + Jan, Feb rent	PV	1255339	1,404.00	02/16/11	439558
595872	CSL Marketing Group	Dec'10 retainer	PV	1255378	16,000.00	02/16/11	439558
595872	CSL Marketing Group	Jan'11 retainer	PV	1255379	16,000.00	02/16/11	439558
595872	CSL Marketing Group	Feb'11 ret + Jan, Feb rent	PV	1255339	16,000.00	02/16/11	439558
596608	M A Mortenson Company	Preconstruction, Dec'10+Jan'11	PV	1255857	15,555.56	02/16/11	439559
596608	M A Mortenson Company	Preconstruction, Dec'10+Jan'11	PV	1255857	15,555.56	02/16/11	439559
343450	Fred W Briggs Real Estate PC	RE: Haymarket	PV	1255352	1,000.00	02/17/11	42684
343450	Fred W Briggs Real Estate PC	RE: Haymarket	PV	1255352	1,200.00	02/17/11	42684
343450	Fred W Briggs Real Estate PC	545 West O St.	PV	1255354	1,800.00	02/17/11	42684
97885	Copy Services	Customer 595381	PV	1256849	39.21	02/23/11	440007
98642	Information Services	Dan Marvin email Oct-Dec 2010	PV	1256857	30.00	02/23/11	440008
98642	Information Services	Jan Wk/Feb Bill	PV	1256853	94.18	02/23/11	440008
108417	Citizen Information Center	JPA Mtg video 1/7/11, 1/26/11	PV	1256850	270.00	02/23/11	440009
120272	City of Lincoln - Accounting Dept	Reimb Sal/Ben 9/16/10-2/2/11	PV	1257727	92,028.30	02/23/11	440010
137630	Public Works - Business Office	Nov'10 plotting charges	PV	1257222	4.00	02/23/11	440011
594773	Alfred Benesch & Company	7/12-9/19/10	PV	1257407	19,450.18	02/23/11	440012
594773	Alfred Benesch & Company	7/12-9/19/10	PV	1257407	4,950.00	02/23/11	440012
594773	Alfred Benesch & Company	7/12-9/19/10	PV	1257407	48,691.20	02/23/11	440012
594773	Alfred Benesch & Company	9/20-10/17/10	PD	1257408	14,012.91-	02/23/11	440012
594773	Alfred Benesch & Company	9/20-10/17/10	PD	1257408	6,422.25-	02/23/11	440012
594773	Alfred Benesch & Company	9/20-10/17/10	PV	1257409	1,138.76	02/23/11	440012
594773	Alfred Benesch & Company	9/20-10/17/10	PV	1257409	6,422.25	02/23/11	440012
594773	Alfred Benesch & Company	9/20-10/17/10	PV	1257409	12,874.15	02/23/11	440012
594773	Alfred Benesch & Company	10/18-11/14/10	PD	1257410	18,209.89-	02/23/11	440012
594773	Alfred Benesch & Company	10/18-11/14/10	PD	1257410	5,320.43-	02/23/11	440012
594773	Alfred Benesch & Company	10/18-11/14/10	PV	1257411	4,438.83	02/23/11	440012
594773	Alfred Benesch & Company	10/18-11/14/10	PV	1257411	5,320.43	02/23/11	440012
594773	Alfred Benesch & Company	10/18-11/14/10	PV	1257411	13,771.06	02/23/11	440012
594773	Alfred Benesch & Company	11/15-1/9/11	PV	1257412	34,965.99	02/23/11	440012
594773	Alfred Benesch & Company	11/15-1/9/11	PV	1257412	7,139.54	02/23/11	440012
594773	Alfred Benesch & Company	11/15-1/9/11	PV	1257412	11,603.59	02/23/11	440012

West Haymarket JPA Check Register
2/1/11 through 2/28/11

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
594773	Alfred Benesch & Company	11/15-1/9/11	PV	1257413	4,627.50	02/23/11	440012
594773	Alfred Benesch & Company		PD	1257406	4,950.00-	02/23/11	440012
594773	Alfred Benesch & Company		PD	1257406	68,141.38-	02/23/11	440012
596579	SMG	Sept 15,2010-Jan 31,2011	PV	1257223	22,500.00	02/23/11	440013
596579	SMG	Cust#000839	PV	1257369	5,000.00	02/23/11	440013
37233	Olsson Associates	Proj 010-2431	PV	1257491	28,172.00	02/24/11	42760
37233	Olsson Associates	Proj 010-2431	PV	1257491	18,562.00	02/24/11	42760
37233	Olsson Associates	Proj 010-2431	PV	1257491	18,541.50	02/24/11	42760
37233	Olsson Associates	Proj 010-2431	PV	1257491	29,145.50	02/24/11	42760
406174	BKD LLP	Client #60387	PV	1256847	5,000.00	02/24/11	42828
593485	Thought District Inc	10-JPA-007 On-Going Management	PV	1256848	2,000.00	02/24/11	42849
Grand total					978,022.86		

3/2/2011

**Public Works WHJPA Engineering Costs
2/1/11 through 2/28/11**

<u>Description</u>	<u>Explanation</u>	<u>Type</u>	<u>Doc Num</u>	<u>Fund</u>	<u>Business Unit</u>	<u>Object</u>	<u>Sub</u>	<u>Amount</u>	<u>G/L Date</u>
Construction Engineering	WH Sanitary Sewer Relocation	EU	309693	00951	870501	6153	320	1,461.92	2/10/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	309693	00951	870302	6153	130	404.58	2/10/2011
Design Engineering	WH Charleston Bridge/Roadway	EU	309693	00951	870301	6153	130	271.79	2/10/2011
Design Engineering	WH Core Area Roadways & Utility	EU	309693	00951	870305	6153	130	309.92	2/10/2011
Design Engineering	WH Environmental Contngy Pln	EU	309693	00951	870603	6153	130	104.95	2/10/2011
Design Engineering	WH ITS & Dynamic Message Sgns	EU	309693	00951	870951	6153	130	337.01	2/10/2011
Design Engineering	WH NDEQ T-200	EU	309693	00951	870601	6153	130	314.85	2/10/2011
Design Engineering	WH Other/Miscellaneous	EU	309693	00951	870604	6153	130	314.85	2/10/2011
Design Engineering	WH Sanitary Sewer Relocation	EU	309693	00951	870501	6153	130	682.20	2/10/2011
Design Engineering	WH Traffic Analysis	EU	309693	00951	870306	6153	130	168.49	2/10/2011
Design Engineering	WH USPS Parking Lot Reconstct	EU	309693	00951	870303	6153	130	361.57	2/10/2011
Design Engineering	WH West Haymarket Park	EU	309693	00951	870000	6153	130	6,032.67	2/10/2011
Laboratory & Testing	WH Sanitary Sewer Relocation	EU	309693	00951	870501	6153	350	78.10	2/10/2011
Observer/Inspections	WH Sanitary Sewer Relocation	EU	309693	00951	870501	6153	325	4,779.75	2/10/2011
Construction Engineering	WH Sanitary Sewer Relocation	EU	310523	00951	870501	6153	320	2,586.28	2/24/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	310523	00951	870302	6153	130	1,000.38	2/24/2011
Design Engineering	WH Charleston Bridge/Roadway	EU	310523	00951	870301	6153	130	660.45	2/24/2011
Design Engineering	WH Core Area Roadways & Utility	EU	310523	00951	870305	6153	130	619.85	2/24/2011
Design Engineering	WH Environmental Contngy Pln	EU	310523	00951	870603	6153	130	52.49	2/24/2011
Design Engineering	WH Initial Haymrket Site Prep	EU	310523	00951	870703	6153	130	309.92	2/24/2011
Design Engineering	WH NDEQ T-200	EU	310523	00951	870601	6153	130	262.39	2/24/2011
Design Engineering	WH Other/Miscellaneous	EU	310523	00951	870604	6153	130	309.92	2/24/2011
Design Engineering	WH Sanitary Sewer Relocation	EU	310523	00951	870501	6153	130	261.55	2/24/2011
Design Engineering	WH Voluntary Clean-up Progrm	EU	310523	00951	870602	6153	130	51.65	2/24/2011
Design Engineering	WH West Haymarket Park	EU	310523	00951	870000	6153	130	6,127.30	2/24/2011
Design Engineering	WH 10th & Salt Ck Road Impr	EU	310523	00951	870304	6153	130	505.50	2/24/2011
Laboratory & Testing	WH Sanitary Sewer Relocation	EU	310523	00951	870501	6153	350	234.26	2/24/2011
Observer/Inspections	WH Sanitary Sewer Relocation	EU	310523	00951	870501	6153	325	5,876.49	2/24/2011
								<u>34,481.08</u>	

City of Lincoln, NE
West Haymarket
Construction Expenditure Report
As of March 03, 2011

	Total Budget	Expend.	Encumb.	Available Balance

00951 West Haymarket Capital Proj				
870000 WH West Haymarket Park		1,876,785	321,854	2,198,639-
870100 WH Arena	168,895,600	1,769,668	12,475,402	154,650,530
870201 WH HymktPkLot,FestSp&PedGrdStr	14,089,426	286	2,059,729	12,029,411
870202 WH South Parking Garage	13,090,000	131	1,321,160	11,768,709
870203 WH Arena Parking Garage	10,352,100			10,352,100
870301 WH Charleston Bridge/Roadway	4,835,720	32,717	783,336	4,019,667
870302 WH "M"&"N" St.7th to 10th St	2,280,000	31,637	344,725	1,903,638
870303 WH USPS Parking Lot Reconstct	885,000	35,654	125,984	723,362
870304 WH 10th & Salt Ck Road Impr	3,412,000	32,046	509,254	2,870,700
870305 WH Core Area Roadways & Utilty	14,668,960	1,466	1,190,351	13,477,143
870306 WH Traffic Analysis		168	110,691	110,859-
870307 WH Streetscape			530,043	530,043-
870308 WH Sun Valley Blvd & West "O"	737,400			737,400
870401 WH Plaza	1,200,000			1,200,000
870501 WH Sanitary Sewer Relocation	1,440,000	993,974	241,215	204,811
870502 WH Fiber Optic Comm & Other	650,880		492,414	158,466
870601 WH NDEQ T-200	978,000	40,541	919,035	18,424
870602 WH Voluntary Clean-up Progrm	2,100,000	84,062	259,181	1,756,757
870603 WH Environmental Contngy Pln	2,400,000	30,691	34,122	2,335,187
870604 WH Other/Miscellaneous	525,600	113,771	154,675	257,154
870701 WH Strmwtr Mtgtn-Sth&WstOfBNSF	2,400,000			2,400,000
870703 WH Initial Haymrket Site Prep	2,088,360	19,049	261,699	1,807,612
870704 WH Other Strmwtr Mitigation	3,105,840			3,105,840
870800 WH TIF Improvements	5,515,693			5,515,693
870901 WH BNSF Land Acquisition	1,000,000	1,042,795		42,795-
870902 WH Alter Site Purchase	4,080,000	13,695	41,750	4,024,555
870903 WH Jaylynn Site Purchase	3,080,000	11,173	8,310	3,060,517
870904 WH UP Site Purchase	1,000,000	1,326,248		326,248-
870905 WH BNSF Const. Rehab. Reloc	44,000,000	46,305,770		2,305,770-
870906 WH Amtrak Station	1,440,000		309,458	1,130,542
870907 WH UP Track Mods West of Brdg	1,236,000	36,772		1,199,228
870908 WH Other Private Prop Acqstns	625,000			625,000

	Total Budget	Expend.	Encumb.	Available Balance

00951 West Haymarket Capital Proj				
870951 WH ITS & Dynamic Message Sgns	2,700,000	337		2,699,663
870952 WH Community Space& Civic Art	1,500,000			1,500,000
870975 WH Miscellaneous	5,160,000			5,160,000
870976 WH Line of Credit		52,500		52,500-
870977 WH Series 1 JPA Debt		1,535,168		1,535,168-
870978 WH Series 2 JPA Debt		1,102,864		1,102,864-
870979 WH Series 3 JPA Debt		521,600		521,600-
	-----	-----	-----	-----
	321,471,579	57,011,568	22,494,388	241,965,623
	-----	-----	-----	-----
00951 West Haymarket Capital Proj	321,471,579	57,011,568	22,494,388	241,965,623

City of Lincoln, NE
 West Haymarket JPA
 Operating Expenditure Report
 As of February 28, 2011

00950 West Haymarket Reven
 06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies					240	240-
5261 Postage	5,000			5,000	5,682	682-
5323 Bldg Maint Supplies					125	125-
11 Materials & Supplies	5,000			5,000	6,047	1,047-
12 Other Services & Charges						
5621 Misc Contractual Services	330,612			330,612	131,744	198,868
5624 Auditing Service	12,000			12,000	10,000	2,000
5631 Data Processing Service					455	455-
5632 System Develop - I.S.	20,000			20,000		20,000
5633 Software					979	979-
5642 Legal Services	20,000			20,000	4,337	15,663
5643 Management Services	92,043			92,043	40,800	51,243
5725 Mileage - Personal Vehicles	1,000			1,000		1,000
5762 Photocopying	1,000			1,000	472	528
5763 Printing					529	529-
5829 Telephone	1,000			1,000		1,000
5928 Rent of Co/City Bldg Space	1,900			1,900	945	955
5952 Advertising/Media Serv	1,500			1,500	1,029	471
12 Other Services & Charges	481,055			481,055	191,290	289,765
13 Capital Outlay - Equipment						
6069 Data Processing Equipment	4,500			4,500	2,461	2,039
6072 Furniture & Fixtures	11,000			11,000	2,757	8,243
13 Capital Outlay - Equipment	15,500			15,500	5,218	10,282
06095 W Haymarket O & M	501,555			501,555	202,555	299,000

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket JPA
Operating Expenditure Report
As of February 28, 2011

2
03/03/11
08:44:02

00950 West Haymarket Reven
195011 JPA 2010A Debt Servi

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195011 JPA 2010A Debt Servic						
15 Debt Service						
6235 Bd Trustee Pmt-Interest			3,579,079	3,579,079	1,253,324	2,325,755
6236 Note Principal			2,000,000	2,000,000	2,000,000	
6237 Note Interest			2,397	2,397	2,397	
15 Debt Service			5,581,476	5,581,476	3,255,721	2,325,755
195011 JPA 2010A Debt Servic			5,581,476	5,581,476	3,255,721	2,325,755

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket JPA
Operating Expenditure Report
As of February 28, 2011

3
03/03/11
08:44:02

00950 West Haymarket Reven
195021 JPA 2010B/C Debt Ser

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6235 Bd Trustee Pmt-Interest			3,165,607	3,165,607		3,165,607
15 Debt Service			3,165,607	3,165,607		3,165,607
195021 JPA 2010B/C Debt Serv			3,165,607	3,165,607		3,165,607
00950 West Haymarket Revenue	501,555		8,747,083	9,248,638	3,458,276	5,790,362

RESOLUTION NO. WH- _____

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

3 That the attached February 23, 2011 Audit Report of the West Haymarket Joint Public
4 Agency’s Financial Statements of its governmental actions and major fund of the agency from its
5 inception through August 31, 2010, performed by BKD, LLP and accompanying February 23,
6 2011 management letter regarding the Audit Scope and Results are hereby accepted and
7 approved.

8 Adopted this _____ day of March, 2011.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler

West Haymarket Joint Public Agency

(A Component Unit of the City of Lincoln, Nebraska)
Accountants' Report and Financial Statements

August 31, 2010



West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
August 31, 2010

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Independent Accountants' Report on Financial Statements and Supplementary Information

Board of Representatives
West Haymarket Joint Public Agency
City of Lincoln, Nebraska

We have audited the accompanying financial statements of the governmental activities and the major fund of the West Haymarket Joint Public Agency (the Agency) (a component unit of the City of Lincoln, Nebraska) as of and for the period from inception through August 31, 2010, which collectively comprise the Agency's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the Agency's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America 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 assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of West Haymarket Joint Public Agency, as of August 31, 2010, and the respective changes in financial position thereof for the period from inception through August 31, 2010, in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 23, 2011 on our consideration of the Agency's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

The accompanying management's discussion and analysis as listed in the table of contents is not a required part of the basic financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

BKD, LLP

February 23, 2011

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Management's Discussion and Analysis
As of and for the Period from Inception through August 31, 2010

As management of the West Haymarket Joint Public Agency (the Agency), we offer readers of the Agency's basic financial statements this narrative and analysis of the financial activities of the Agency as of and for the period from inception through August 31, 2010. We encourage readers to consider the information presented here in conjunction with additional information provided in the basic financial statements.

The West Haymarket Joint Public Agency was organized as a joint public agency on April 2, 2010, created by a Joint Public Agency Agreement entered into between the City of Lincoln, Nebraska and the Board of Regents of the University of Nebraska. The Agency is a component unit of the City of Lincoln, Nebraska.

Overview of Basic Financial Statements

This discussion and analysis is intended to serve as an introduction to the Agency's basic financial statements. These basic financial statements are comprised of three components: 1) government-wide financial statements, 2) fund financial statements and 3) notes to the financial statements.

Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the Agency's finances in a manner similar to a private-sector business.

The statement of net assets presents information on all of the Agency's assets and liabilities, with the difference between the two reported as net assets. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the Agency is improving or deteriorating.

The statement of activities presents information showing how the Agency's net assets changed during the year. All changes in net assets are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will result in cash flow changes only in future fiscal periods.

Fund Financial Statements

A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Agency, like other local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. The Agency maintains one governmental fund - the Project Fund.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Management's Discussion and Analysis
As of and for the Period from Inception through August 31, 2010

Fund Financial Statements - Continued

The Agency is not required by the Nebraska State Budget Act to adopt an annual budget, therefore, a budgetary comparison has not been provided in the basic financial statements. The significant expenditures to be made by the Agency will be for capital purposes, which are not appropriated on an annual basis.

Notes to Basic Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the basic financial statements.

Government-Wide Financial Analysis

As noted earlier, net assets may serve over time as a useful indicator of the Agency's financial position. In the case of the West Haymarket Joint Public Agency, as of August 31, 2010, net assets were \$1,595,744.

	August 31, 2010
Assets	
Equity in pooled cash and investments	\$ 2,710,908
Interest receivable	1,302
Deferred charges	523,750
Capital assets	3,546,525
Total assets	\$ 6,782,485
Liabilities	
Accounts payable	\$ 2,182,907
Tax anticipation note	2,000,000
Interest payable	1,093
Due to other funds	2,741
Bond security deposit	1,000,000
Total liabilities	\$ 5,186,741
Net Assets	
Invested in capital assets, net of related debt	\$ 1,621,876
Unrestricted	(26,132)
Total net assets	\$ 1,595,744

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Management's Discussion and Analysis
As of and for the Period from Inception through August 31, 2010

The tax anticipation note as of August 31, 2010, of \$2,000,000 is the result of short-term borrowings in anticipation of the issuance of long-term bonds. The bond security deposit of \$1,000,000 was a bid requirement of the September 2010 bond issue as disclosed in the notes to the financial statements.

	Period from Inception Through August 31, 2010
Revenues and transfers	
Interest income	\$ 1,824
Transfers in	<u>1,712,581</u>
Total revenues and transfers	<u>1,714,405</u>
Expenses	
General government	65,068
Debt service	<u>53,593</u>
Total expenses	<u>118,661</u>
Change in Net Assets	1,595,744
Net Assets	
Beginning of period	<u>-</u>
End of period	<u><u>\$ 1,595,744</u></u>

The amount of assets related to the West Haymarket project capitalized by the City of Lincoln prior to organization of the Agency totaled \$1,712,581. These assets were subsequently transferred to the Agency upon its creation and are reported as transfers in during the period ended August 31, 2010.

Financial Analysis of the Agency's Funds

The Agency has one governmental fund, the Project Fund. The Project Fund is considered a major fund and is used to account for the Agency's general operations, construction, and debt activities. Activity during the period of operations from inception through August 31, 2010, resulted in a fund deficit of (\$2,474,531), which is the result of financing costs and an initial short-term borrowing.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Management's Discussion and Analysis
As of and for the Period from Inception through August 31, 2010

Debt Administration

At August 31, 2010, the Agency had a tax anticipation note outstanding in the amount of \$2,000,000. Prior to year-end the Agency had sold, but not settled, \$100,000,000 of bonds to be used to repay the short-term borrowing and to fund a portion of the Agency's construction costs. Additional information on the Agency's debt can be found in the notes to the financial statements.

Economic Factors and Next Year's Budget

Beginning January 1, 2011, occupation taxes will be imposed within the City of Lincoln at a rate of 2% on bar and restaurant revenues and a rate of 4% on car rental and hotel revenues. This tax revenue is generated to finance the activities of the Agency and is pledged to repayment of any outstanding Agency bonds.

Request for Information

This financial report is designed to provide a general overview of the Agency's finances for all those with an interest in the Agency. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the City of Lincoln Finance Department, 555 South 10th Street, Lincoln, NE 68508.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Governmental Fund Balance Sheet / Statement of Net Assets
August 31, 2010

	Project Fund	Adjustments (Note 1)	Statement of Net Assets
Assets			
Equity in pooled cash and investments	\$ 2,710,908	\$ -	\$ 2,710,908
Interest receivable	1,302	-	1,302
Deferred charges	-	523,750	523,750
Capital assets	-	3,546,525	3,546,525
Total assets	2,712,210	4,070,275	6,782,485
Liabilities			
Accounts payable	2,182,907	-	2,182,907
Tax anticipation note	2,000,000	-	2,000,000
Interest payable	1,093	-	1,093
Due to other funds	2,741	-	2,741
Bond security deposit	1,000,000	-	1,000,000
Total liabilities	5,186,741	-	5,186,741
Fund Deficit/Net Assets			
Unreserved fund deficit	(2,474,531)		
Total liabilities and fund deficit	\$ 2,712,210		
Invested in capital assets, net of related debt Unrestricted			1,621,876 (26,132)
Total net assets		\$ 4,070,275	\$ 1,595,744

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Statement of Governmental Fund Revenues, Expenditures and
Changes in Fund Balance / Statement of Activities
Period from Inception through August 31, 2010

	Project Fund	Adjustments (Note 1)	Statement of Activities
Expenditures/Expenses			
General government	\$ 65,068	\$ -	\$ 65,068
Debt service	577,343	(523,750)	53,593
Capital outlay	1,833,944	(1,833,944)	-
	<u>2,476,355</u>	<u>(2,357,694)</u>	<u>118,661</u>
Total expenditures/expenses			
General Revenues and Transfers			
Interest income	1,824	-	1,824
Transfers in	-	1,712,581	1,712,581
	<u>1,824</u>	<u>1,712,581</u>	<u>1,714,405</u>
Total general revenues and transfers			
Excess of expenditures over revenues	(2,474,531)		
Change in Net Assets			1,595,744
Fund Deficit/Net Assets			
Beginning of Period	<u>-</u>	<u>-</u>	<u>-</u>
End of Period	<u><u>\$ (2,474,531)</u></u>	<u><u>\$ 4,070,275</u></u>	<u><u>\$ 1,595,744</u></u>

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 1: Nature of Operations and Summary of Significant Accounting Policies

Nature of Operations

The West Haymarket Joint Public Agency (the Agency) was organized as a joint public agency under the Nebraska Joint Public Agency Act on April 2, 2010, to facilitate 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, a pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (collectively considered the West Haymarket Development Project or Project) for the benefit of residents of the City of Lincoln, Nebraska (the City). The Agency was created pursuant to a Joint Public Agency Agreement entered into between the City and the Board of Regents of the University of Nebraska.

Reporting Entity

As required by accounting principles generally accepted in the United States of America, these basic financial statements present the financial activities of the Agency. The Agency follows the Governmental Accounting Standards Board (GASB) accounting pronouncements, which provide guidance for determining the governmental activities, organizations, and functions that should be included within the financial reporting entity. GASB pronouncements set forth the financial accountability of a governmental organization's governing body as the basic criterion for including a possible component governmental organization in a primary government's legal entity. Financial accountability includes, but is not limited to, appointment of a voting majority of the organization's governing body, ability to impose its will on the organization, a potential for the organization to provide specific financial benefits or burdens and fiscal dependency.

The Agency is not financially accountable for any other organization. Under current GASB pronouncements, the Agency has been determined to be a component unit of the City of Lincoln, Nebraska – the primary government. As such, the Agency's financial results are included in the City of Lincoln, Nebraska's Comprehensive Annual Financial Report.

Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements (*i.e.*, the statement of net assets and the statement of activities) report information on all of the Agency's financial activities. Governmental activities are normally supported by taxes and intergovernmental revenue which are reported as general revenues.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Measurement Focus, Basis of Accounting, and Financial Statement Presentation - Continued

The accounting and financial reporting treatment applied to a fund is determined by its measurement focus. The government-wide financial statements are presented using the total economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recognized when a liability is incurred, regardless of the timing of the related cash flows.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. With this measurement focus, the operating statement presents increases and decreases in net current assets and unreserved fund balance is a measure of available spendable resources. This means that only current liabilities are generally included on the governmental fund balance sheet.

The statement of net assets does not equal the governmental funds balance sheet at August 31, 2010, due to net capital assets, and debt issuance costs that are not payable from available spendable resources in the statement of net assets.

Under the modified accrual basis of accounting, revenues are recognized as soon as they are both measurable and available. Measurable means the amount of the transaction can be determined; available means collectible within the current period, or soon enough thereafter, to pay liabilities of the current period. Revenues are considered to be available if collected within 60 days after year end. Expenditures are recorded when the related fund liability is incurred and is expected to be paid from available spendable resources.

Fund Accounting

The accounts of the Agency are organized on the basis of funds. The operations of the Project Fund are accounted for with a set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues and expenditures. Resources are allocated to and accounted for in the Project Fund based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

The major fund presented in the accompanying basic financial statements is the Project Fund. The Project Fund is used to account for the Agency's general operational governmental activities.

Private sector standards of accounting and financial reporting issued prior to November 30, 1989, generally are followed in the government-wide financial statements to the extent that those standards do not conflict with or contradict guidance of the Governmental Accounting Standards Board. The Agency has elected not to follow private-sector guidance issued after November 30, 1989.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Fund Accounting - Continued

When both restricted and unrestricted resources are available for use, it is the Agency's policy to use restricted resources first, then unrestricted resources as they are needed.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues, expenses and other changes in net assets during the reporting period. Actual results could differ from those estimates.

Deposits and Investments

The Agency participates in a cash management pool managed by the City. The pool consists of bank deposits and investments. Cash balances in excess of current requirements are invested along with cash from other City funds and interest earned on these investments is allocated monthly to the various funds by the City Treasurer on a pro rata basis of using aggregate quarterly balances. The Agency's interest in the pool is shown as equity in pooled cash and investments in the statement of net assets. Fair value of the equity in the pool is the same as the value of the pool shares determined using the fair value of the pool's underlying investment portfolio.

State statutes require banks either to provide a bond or to pledge government securities to the City Treasurer in the amount of the City's deposits. The Agency has been allocated a portion of the City's pooled cash and investments. One or more of the financial institutions holding the City's cash accounts are participating in the Federal Deposit Insurance Corporation's (FDIC) Transaction Account Guarantee Program. Under the program, through December 31, 2010, all noninterest-bearing transaction accounts at these institutions are fully guaranteed by the FDIC for the entire amount in the account. Pursuant to legislation enacted in 2010, the FDIC will fully insure all noninterest-bearing transaction accounts beginning December 31, 2010 through December 31, 2012, at all FDIC institutions. For interest-bearing cash accounts, the City's cash deposits, including certificates of deposit, are insured up to \$250,000 by the FDIC. Any cash deposits or certificates of deposit in excess of FDIC limits, are covered by collateral held in a Federal Reserve pledge account or by an agent for the City and thus no custodial credit risk exists. No legal opinion has been obtained regarding the enforceability of any of the collateral arrangements.

Deferred Charges

Deferred charges are comprised of debt issuance costs.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Capital Assets

Arena and infrastructure planning, design and construction costs are capitalized on the government-wide financial statements. At August 31, 2010, all costs incurred are considered construction in progress and are not depreciable.

Net Assets

Net assets are required to be classified into three components - invested in capital assets, net of related debt, restricted and unrestricted. These classifications are defined as follows:

Invested in capital assets, net of related debt - This component of net assets consists of capital assets, net of accumulated depreciation reduced by the outstanding balances of any bonds, mortgages, notes or other borrowings that are attributable to the acquisition, construction or improvements of those assets. If there are significant unspent related debt proceeds at year-end, the portion of debt attributable to the unspent proceeds is not included in the calculation of invested capital assets, net of related debt.

Restricted - This component of net assets consists of restrictions placed on net assets use through external constraints imposed by creditors (such as through debt covenants), contributors or law or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

Unrestricted - This component of net assets consists of net assets that do not meet the definition of "restricted" or "invested in capital assets, net of related debt."

Adjustments Column

The adjustments column on the governmental fund balance sheet/statement of net assets represents the recording of capital assets and certain liabilities as required by GASB Statement No. 34.

The adjustments on the governmental fund balance sheet/statement of net assets is comprised of the following as of August 31, 2010:

Amounts reported for the Project Fund are different from the statement of net assets because of:

Deferred charges	\$ 523,750
Capital assets	<u>3,546,525</u>
Total adjustment amount	<u><u>\$ 4,070,275</u></u>

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 1: Nature of Operations and Summary of Significant Accounting Policies - Continued

Adjustments Column - Continued

The adjustments column on the statement of governmental fund revenues, expenditures and changes in fund balance/statement of activities is comprised of the following for the period from inception through August 31, 2010:

Amounts reported for the Project Fund are different from the statement of activities because of:

Debt issuance costs	\$ 523,750
Capital outlay	1,833,944
Transfers in	<u>1,712,581</u>
Total adjustment amount	<u><u>\$ 4,070,275</u></u>

Note 2: Capital Assets

As of August 31, 2010, the Agency has incurred planning and design costs related to infrastructure and the arena of \$3,546,525. The current estimated project construction costs to be funded by the Agency are \$340,000,000, with a fall of 2013 completion timeline.

Note 3: Tax and Bond Anticipation Notes

As of August 31, 2010, the Agency had outstanding debt issued through the City of Lincoln of \$2,000,000, in the form of a General Obligation Tax Anticipation Note Series 2010A. The Note was due December 6, 2010 with interest at 0.60% plus 70% of LIBOR. The full faith and credit and the taxing powers of the City have been pledged for the payment of principal and interest on the note. The note was paid off with proceeds from a September 2010 bond issue as described in Note 6. The bond security deposit liability of \$1,000,000 reflected on the fund balance sheet and statement of net assets, was a bid deposit requirement of the September 2010 bond issue.

At August 31, 2010, the Agency and City had a commitment from a national financial institution for interim construction financing through the issuance of up to \$50,000,000 in a combination of General Obligation Tax and Bond Anticipation Notes. The commitment expired subsequent to year end and was not renewed.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 4: Risk Management

The Agency is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; injuries to employees; and natural disasters. The Agency carries commercial insurance for risks of loss, including liability, property, errors and omissions, and workers' compensation.

Note 5: Related Party Transactions

The City provides certain administrative services to the Agency for which the Agency pays fees to the City. These fees amounted to approximately \$13,000 for the period ended August 31, 2010. These charges are recorded as general government expenses in the statement of governmental fund revenues, expenditures and changes in fund balance and statement of activities.

Note 6: Subsequent Events

In September 2010, the Agency issued \$100,000,000 in General Obligation Facility Bonds, Taxable Series 2010A, to provide a portion of the funds necessary to pay the costs of constructing, equipping, furnishing, and financing the development of the West Haymarket facilities. The full faith and credit and the taxing powers of the City are pledged for the payment of the principal of and interest on the bonds. Debt service interest payments begin December 2010. Debt service principal payments are scheduled annually beginning in 2020 at amounts that range from \$2,440,000 to \$5,855,000 with the final maturity December 2045. The bonds are Build America Bonds and, as such, the Agency has elected to receive a federal subsidy of 35 percent from the United States Department of the Treasury for a portion of the interest payable on the bonds. The interest rates on the bonds range from 3.50 to 5.00 percent prior to the federal subsidy. The federal subsidy reduces the true interest cost to 3.20 percent.

In December 2010, the Agency issued an additional \$100,000,000 in General Obligation Facility Bonds, Series 2010B and C to provide a portion of the funds necessary to pay the costs of constructing, equipping, furnishing, and financing the development of the West Haymarket facilities. The full faith and credit and the taxing powers of the City are pledged for the payment of the principal of and interest on the bonds. The first series was \$67,965,000 of taxable Build America Bonds, with the federal government providing a 35 percent subsidy for a portion of the interest payable on the bonds. The second series was \$32,035,000 of taxable Economic Development Bonds, which have a federal subsidy of 45 percent for a portion of the interest payable on the bonds. Debt service interest payments begin June 2011. Debt service principal payments are scheduled annually beginning in 2020 at amounts that range from \$2,440,000 to \$5,855,000 with the final maturity December 2045. The two series have interest rates ranging from 4.00 to 6.75 percent prior to the federal subsidy. The federal subsidy reduces the true interest cost to 3.75 percent.

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Notes to Financial Statements
August 31, 2010

Note 6: Subsequent Events - Continued

Through January 31, 2011, the Agency has completed various land acquisitions of \$2.3 million and entered into commitments under major design and construction contracts of approximately \$21.9 million for the West Haymarket Development Project. Approximately \$46 million has been placed by the Agency with an escrow agent for scheduled disbursements to BNSF railroad for relocation and construction activities.

**Independent Accountants' Report on Internal Control Over
Financial Reporting and on Compliance and Other Matters
Based on an Audit of the Financial Statements Performed
In Accordance with *Government Auditing Standards***

Board of Representatives
West Haymarket Joint Public Agency
City of Lincoln, Nebraska

We have audited the financial statements of the governmental activities and each major fund of the West Haymarket Joint Public Agency (the Agency) (a component unit of the City of Lincoln, Nebraska) as of and for the period from inception through August 31, 2010, which collectively comprise the Agency's basic financial statements and have issued our report thereon dated February 23, 2011. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Agency's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Agency's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Agency's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Agency's financial statements will not be prevented or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

We noted certain matters that we reported to the Agency's management in a separate letter dated February 23, 2011.

This report is intended solely for the information and use of the Board of Representatives, management and others within the Agency and is not intended to be and should not be used by anyone other than these specified parties.

BKD, LLP

February 23, 2011

West Haymarket Joint Public Agency
(A Component Unit of the City of Lincoln, Nebraska)
Schedule of Findings and Responses
August 31, 2010

Reference Number	Finding	Questioned Costs
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No matters are reportable

Board of Representatives and Management
West Haymarket Joint Public Agency
Lincoln, Nebraska

As part of our audit of the financial statements of West Haymarket Joint Public Agency (herein referred to as the "Agency") as of and for the period from inception through August 31, 2010, we wish to communicate the following to you.

AUDIT SCOPE AND RESULTS

Auditor's Responsibility Under Auditing Standards Generally Accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States

An audit performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, is designed to obtain reasonable, rather than absolute, assurance about the financial statements. In performing auditing procedures, we establish scopes of audit tests in relation to the financial statements taken as a whole. Our engagement does not include a detailed audit of every transaction. Our engagement letter more specifically describes our responsibilities.

These standards require communication of significant matters related to the financial statement audit that are relevant to the responsibilities of those charged with governance in overseeing the financial reporting process. Such matters are communicated in the remainder of this letter or have previously been communicated during other phases of the audit. The standards do not require the auditor to design procedures for the purpose of identifying other matters to be communicated with those charged with governance.

An audit of the financial statements does not relieve management or those charged with governance of their responsibilities. Our engagement letter more specifically describes your responsibilities.

Qualitative Aspects of Significant Accounting Policies and Practices

Significant Accounting Policies

The Agency's significant accounting policies are described in Note 1 of the audited financial statements.

Alternative Accounting Treatments

No matters are reportable.

Management Judgments and Accounting Estimates

Accounting estimates are an integral part of financial statement preparation by management, based on its judgments. The following areas involve significant areas of such estimates for which we are prepared to discuss management's estimation process and our procedures for testing the reasonableness of those estimates:

- *Determination of financial reporting entity in accordance with GASB Statement Nos. 14 and 39*

Financial Statement Disclosures

The following areas involve particularly sensitive financial statement disclosures for which we are prepared to discuss the issues involved and related judgments made in formulating those disclosures:

- *Related party transactions*
- *Subsequent events*

Audit Adjustments

No audit adjustments were proposed.

Auditor's Judgments About the Quality of the Entity's Accounting Principles

No matters are reportable.

Disagreements with Management

No matters are reportable.

Difficulties Encountered in Performing the Audit

No matters are reportable.

Other Material Written Communications

Listed below are other material written communications between management and us related to the audit:

- *Management representation letter (attached)*

OTHER MATTERS

We observed the following matters and offer these comments and suggestions with respect to matters which came to our attention during the course of the audit of the financial statements. Our audit procedures are designed primarily to enable us to form an opinion on the financial statements and, therefore, may not bring to light all weaknesses in policies and procedures that may exist. However, these matters are offered as constructive suggestions for the consideration of management as part of the ongoing process of modifying and improving financial and administrative practices and procedures. We can discuss these matters further at your convenience and may provide implementation assistance for changes or improvements if you require.

Procurement Policies

We recommend management review current procurement policies and practices and consider changes, where necessary, to ensure these policies comply with the applicable laws and regulations.

New Accounting and Auditing Standards

Governmental Accounting Standards Board Statement No. 54

The Governmental Accounting Standards Board has issued Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, to enhance the usefulness of fund balance information by providing clearer fund balance classifications that can be more consistently applied and by clarifying the existing governmental fund type definitions.

Statement 54 is effective for the fiscal year ending August 31, 2011.

Governmental Accounting Standards Board Statement No. 59

The Governmental Accounting Standards Board has issued Statement No. 59, *Financial Instruments Omnibus*, to improve existing standards regarding financial reporting and disclosure requirements of certain financial instruments and external investment pools for which significant issues have been identified in practice.

Statement 59 is effective for the fiscal year ending August 31, 2011.

Governmental Accounting Standards Board Statement No. 60

The Governmental Accounting Standards Board has issued Statement No. 60, *Accounting and Financial Reporting for Service Concession Arrangements*, to improve financial reporting by addressing issues related to service concession arrangements (SCAs), which are a type of public-private or public-public partnership. As used in this Statement, an SCA is an arrangement between a transferor (a government) and an operator (governmental or nongovernmental entity) in which (1) the transferor conveys to an operator the right and related obligation to provide services through the use of infrastructure or another public asset in exchange for significant consideration and (2) the operator collects and is compensated by fees from third parties.

Statement 60 is effective for the fiscal year ending August 31, 2013.

Governmental Accounting Standards Board Statement No. 61

The Governmental Accounting Standards Board has issued Statement No. 61, *The Financial Reporting Entity-Omnibus – An Amendment of GASB Statements No. 14 and No. 34*, to improve financial reporting for a governmental financial reporting entity. The requirements of GASB Statements No. 14 and No. 34 were amended to better meet user needs and to address reporting entity issues that have arisen since the issuance of those Statements.

Statement 61 is effective for the fiscal year ending August 31, 2013.

Governmental Accounting Standards Board Statement No. 62

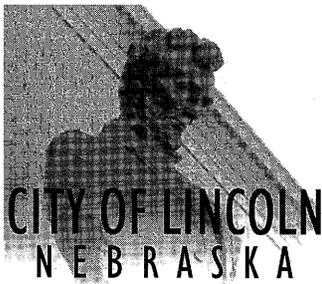
The Governmental Accounting Standards Board has issued Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*, to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in pre-November 30, 1989 FASB and AICPA pronouncements, which does not conflict with or contradict GASB pronouncements. This Statement also supersedes Statement No. 20, *Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities That Use Proprietary Fund Accounting*, thereby eliminating the election provided in paragraph 7 of that Statement for enterprise funds and business-type activities to apply post-November 30, 1989, FASB Statements and Interpretations that do not conflict with or contradict GASB pronouncements.

Statement 62 is effective for the fiscal year ending August 31, 2013.

This communication is intended solely for the information and use of management, Board of Representatives and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

BKD, LLP

February 23, 2011



Finance Department
Don Herz, Director
555 South 10th Street
Suite 103
Lincoln, Nebraska 68508

402-441-7411
fax: 402-441-8325



MAYOR CHRIS BEUTLER

lincoln.ne.gov

City of Lincoln, Nebraska
West Haymarket Joint Public Agency Fund
555 South 10th Street
Lincoln, Nebraska 68508

February 23, 2011

BKD, LLP
Certified Public Accountants
1248 O Street, Suite 1040
Lincoln, Nebraska 68508

We are providing this letter in connection with your audit of our financial statements as of and for the period from inception through August 31, 2010. We confirm that we are responsible for the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control over financial reporting, operations and compliance, and preventing and detecting fraud.

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

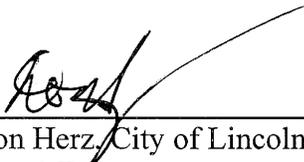
We confirm, to the best of our knowledge and belief, the following:

1. The financial statements referred to above are fairly presented in conformity with accounting principles generally accepted in the United States of America.
2. We have reviewed and approved a draft of the financial statements and related notes referred to above, which you prepared in connection with your audit of our financial statements. We acknowledge that we are responsible for the fair presentation of the financial statements and related notes.
3. We have made available to you:
 - (a) All financial records and related data.

- (b) All minutes of meetings of the governing body held through the date of this letter.
 - (c) All significant contracts and grants.
- 4. We have informed you of all current risks of a material amount that are not adequately prevented or detected by entity procedures with respect to:
 - (a) Misappropriation of assets.
 - (b) Misrepresented or misstated assets, liabilities or net assets.
- 5. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.
- 6. We have no knowledge of any known or suspected:
 - (a) Fraudulent financial reporting or misappropriation of assets involving management or employees who have significant roles in internal control.
 - (b) Fraudulent financial reporting or misappropriation of assets involving others that could have a material effect on the financial statements.
- 7. We have no knowledge of any allegations of fraud or suspected fraud affecting the Fund received in communications from employees, customers, regulators, suppliers or others.
- 8. Except as reflected in the financial statements, there are no:
 - (a) Plans or intentions that may materially affect carrying values or classifications of assets and liabilities.
 - (b) Material transactions omitted or improperly recorded in the financial statements.
 - (c) Material gain/loss contingencies requiring accrual or disclosure, including those arising from environmental remediation obligations.
 - (d) Events occurring subsequent to the balance sheet date requiring adjustment or disclosure in the financial statements.

- (e) Related party transactions, balances, arrangements or guarantees.
 - (f) Agreements to purchase assets previously sold.
 - (g) Violations of law, regulations, contracts, grants or requirements of regulatory agencies for which losses should be accrued or matters disclosed in the financial statements.
 - (h) Unasserted claims or assessments that our attorneys have advised us are probable of assertion.
 - (i) Restrictions on cash balances or compensating balance agreements.
 - (j) Guarantees, whether written or oral, under which the Agency is contingently liable.
9. Except as disclosed in the financial statements, we have:
- (a) Satisfactory title to all recorded assets, and they are not subject to any liens, pledges or other encumbrances.
 - (b) Complied with all aspects of contractual and grant agreements, for which noncompliance would materially affect the financial statements.
10. We have not been designated as a potentially responsible party (PRP or equivalent status) by the Environmental Protection Agency (EPA) or other cognizant regulatory agency with authority to enforce environmental laws and regulations.
11. With regard to deposit and investment activities:
- (a) All deposit, repurchase and reverse repurchase agreements and investment transactions have been made in accordance with legal and contractual requirements.
 - (b) Disclosures of deposit and investment balances and risks in the financial statements are consistent with our understanding of the applicable laws regarding enforceability of any pledges of collateral.
 - (c) We understand that your audit does not represent an opinion regarding the enforceability of any collateral pledges.

12. We acknowledge that we are responsible for compliance with applicable laws, regulations and provisions of contracts and grant agreements.
13. We have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that have a direct and material effect on the determination of amounts in our financial statements or other financial data significant to the audit objectives.
14. We have identified and disclosed to you any violations or possible violations of laws, regulations and provisions of contracts and grant agreements whose effects should be considered for recognition and/or disclosure in the financial statements or for your reporting on noncompliance.
15. We have taken or will take timely and appropriate steps to remedy any fraud, abuse, illegal acts or violations of provisions of contracts or grant agreements that you or other auditors report.
16. We have a process to track the status of audit findings and recommendations.
17. We have identified to you any previous financial audits, attestation engagements, performance audits or other studies related to the objectives of your audit and the corrective actions taken to address any significant findings and recommendations made in such audits, attestation engagements or other studies.
18. The supplementary information required by the Governmental Accounting Standards Board, consisting of management's discussion and analysis, has been prepared and is presented in conformity with the applicable GASB pronouncements. The information contained therein is based on all facts, decisions and conditions currently known to us and is measured using the same methods and assumptions as were used in the preparation of the financial statements. There has been no change from the preceding period in the methods of measurement and presentation.



Don Herz, City of Lincoln Finance Director and
Board Treasurer

RESOLUTION NO. WH- _____

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

3 That the attached Memorandum of Understanding between N Street Company, LLC and
4 the West Haymarket Joint Public Agency is hereby approved and the Chairperson of the West
5 Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said
6 Memorandum of Understanding on behalf of the JPA. This Memorandum of Understanding
7 commits the JPA to acquire the N Street Property by no later than October 1, 2011 and to lease
8 the N Street Company, LLC Property back to N Street for nominal consideration through March
9 31, 2012. In return, N Street Company, LLC agrees to sign the covenant with BNSF Railway
10 Company agreeing that rail service will be discontinued to the N Street Property as set forth in
11 said covenant.

12 Adopted this _____ day of March, 2011.

Introduced by:

Approved as to Form & Legality:

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

Jayne Snyder, Chair

Tim Clare

Chris Beutler

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into between N Street Company, LLC, (“N Street”), and the West Haymarket Joint Public Agency (“JPA”) on this 2nd day of March, 2011.

WHEREAS, N Street and the JPA have been engaged in negotiations for the sale of N Street’s property, commonly known as 601 N Street in Lincoln, Lancaster County, Nebraska, and currently used as a scrap processing yard (the “N Street Property”) to the JPA as part of the West Haymarket Arena Project; and

WHEREAS, the N Street Property is currently served by a railroad spur track operated by the Burlington Northern Santa Fe Railroad (the “Spur Track”); and

WHEREAS, the Spur Track must be officially abandoned and physically removed as part of the railroad track relocation necessitated by the West Haymarket Arena Project. Such official abandonment must be approved by the Surface Transportation Board on or before April 30, 2011, in order to permit the JPA to complete its second phase closing with Burlington Northern Santa Fe Railroad (“BNSF”); and

WHEREAS, in order to obtain approval of its application to abandon the Spur Track, BNSF has stated that it needs formal consent to the abandonment of the Spur Track by shippers served thereby; and

WHEREAS, unless N Street presently consents to the abandonment or unless the JPA acquires present title to the N Street Property, the application for abandonment will not be timely approved; and

WHEREAS, N Street is seeking replacement property with rail access so that it can relocate its business from the N Street Property; and

WHEREAS, N Street and the JPA are desirous of reaching an accommodation that would allow the application for the abandonment to proceed and be timely approved while, at the same time, protecting the legitimate interests and addressing the legitimate concerns of N Street; and

WHEREAS, the JPA has advised N Street that it intends to acquire the N Street Property by eminent domain if the parties do not agree upon a sale of the N Street Property to the JPA.

NOW, THEREFORE, the parties memorialize their understandings as follows:

1. The JPA will acquire title to the N Street Property by no later than October 1, 2011 either by voluntary conveyance or by eminent domain. If JPA finds it necessary to acquire title to the "sliver" (as shown on Olsson maps) by May 1, 2011, N Street will voluntarily quitclaim such "sliver" to JPA in its "as is" condition, provided that the value of the N Street Property upon purchase or condemnation, will be determined as if the "sliver" remained titled in N Street. Further, abandonment of the spur track would not be considered by the JPA in valuing the site in any purchase or condemnation.

2. The JPA further commits to leasing the N Street Property (except the sliver) back to N Street for continuation of its business operations for nominal consideration from and after its acquisition of title to the N Street Property through March 31, 2012. The JPA further agrees that if progress upon the West Haymarket Arena Project and BNSF rail relocation work permits, such lease for nominal consideration will be mutually extended after March 31, 2012, from month to month, but in no event shall N Street be entitled to occupy the N Street property beyond June 30, 2012.

3. N Street and the JPA shall proceed, in good faith, to negotiate on the acquisition of the N Street Property by the JPA until a mutually satisfactory agreement is executed or an impasse is reached. The JPA will simultaneously use its best efforts to assist N Street in its

efforts to purchase replacement property for its scrap processing operations, including negotiating with the owner of the replacement property for the purchase of other property by such owner. N Street shall be entitled to relocation benefits as allowed by law for acquisition of the N Street Property by JPA and the relocation of N Street to the replacement property. The JPA will use its best efforts to assist N Street in acquiring necessary special permits, flood plain approvals, and necessary ordinance changes or waivers from the City of Lincoln to allow the replacement property to be utilized as a scrap processing operation. The JPA agrees to support all such applications and requests as may be necessary to effectuate that purpose.

4. The JPA will obtain, as a precondition to N Street signing the covenant referenced in Paragraph 6 below, an e-mail from BNSF confirming that the covenant, as revised to assure that rail service shall be maintained to the N Street Property until at least March 31, is acceptable to BNSF.

5. A spur track presently serves the currently preferred replacement property for N Street. The JPA agrees that, to the extent that such spur track requires service, realignment or repair to bring it up to standards required by BNSF to allow it to provide rail service to the preferred replacement property, the JPA agrees to pay the costs (not to exceed \$300,000) of such servicing, realignment and repair, provided that N Street acquires that replacement property.

6. In consideration of the above and upon fulfillment of the preconditions in paragraph 4 and this paragraph, N Street shall sign the attached covenant with BNSF agreeing that rail service will be discontinued to the N Street Property as set forth in said covenant. As a precondition to signing the covenant, the JPA shall obtain from the BNSF a confirmation by e-mail acceptable to N Street that rail service on the existing spur can and will be provided to the preferred replacement property. The JPA will also seek from BNSF (but not as a pre-condition)

7. Also, in consideration of the above, JPA agrees not to initiate eminent domain proceedings to acquire the N Street Property prior to July 1, 2011.

8. This Memorandum of Understanding shall be binding on the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year first written above.

WEST HAYMARKET JOINT
PUBLIC AGENCY

By: Its: _____

N STREET COMPANY, LLC, a Nebraska
Limited Liability Company

By: Its _____

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("**Declaration**") is made to be effective as of the ___ day of _____, 2011 (the "**Effective Date**"), by N-Street Company LLC, a Nebraska limited liability company ("**Owner**") and BNSF Railway Company ("**BNSF**"), a Delaware corporation.

RECITALS

A. Owner owns certain real property located in the City of Lincoln, Lancaster County, Nebraska, legally described on Exhibit A attached hereto (the "**Property**"). The Property currently includes a rail spur owned by Owner, which spur is connected to a rail line owned or controlled by BNSF.

B. In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, the City of Lincoln, acting through the West Haymarket Joint Public Agency ("**JPA**"), has proposed certain development in the vicinity of the Property, including construction of an approximately 16,000-seat arena, a privately owned and operated hotel of approximately 200 rooms, surface and garage parking, space for intercity passenger rail service, retail, office and service businesses, recreational facilities and other complementary uses (collectively "**West Haymarket Project**").

C. In order for the JPA to construct the West Haymarket Project, it is necessary that portions of BNSF's existing rail operations in the Project Area, including the track serving the Property, be relocated further to the west.

D. As a result of such track relocation, BNSF will no longer be able to provide rail service to the Property.

E. Owner currently receives rail service at the Property, but is in the process of relocating its business to another site in connection with the West Haymarket Project construction.

F. The parties desire to place a restrictive covenant on the Property setting forth the date of termination of rail service to the Property, and confirming that following such termination date no new rail service will be requested or available to or from the Property.

AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Owner expressly covenants and agrees, on behalf of itself and its successors and assigns, that rail service will not be requested or available to or from the Property after completion

of the track relocation, currently anticipated to occur on or about June 30, 2012, but such service will be continuously maintained to the Property until at least March 31, 2012, unless Owner consents to service being discontinued at an earlier date.

2. All existing agreements, if any, between BNSF and Owner relating to maintenance and/or operation of the rail spur and rail service to the Property (referred to hereinafter collectively as the "**Track Agreements**") will be terminated effective as of June 30, 2012. Owner acknowledges and agrees to the termination of rail service to the Property and Owner's adjacent property, if any, and termination of the Track Agreements on the terms described herein. Owner agrees that it shall not seek any compensation from or recourse against BNSF as a result of the removal of any switch connection, termination of rail service to the Property or termination of the Track Agreements. Owner hereby waives and releases any and all claims, rights and causes of action that it has, may have, or may assert, whether known or unknown, against BNSF as a result of removal of any switch connection, termination of rail service to the Property and Owner's adjacent property, if any, or termination of the Track Agreements. Notwithstanding anything to the contrary contained herein, Owner agrees and affirms that any liabilities or obligations of Owner accrued but not satisfied prior to the termination date of the Track Agreements, if any, shall survive such termination, including but not limited to any repair or restoration obligations and payment of any liens for construction or repairs done, suffered or permitted by Owner in connection with its operations under the Track Agreements.

3. Upon completion of the track relocation and termination of the Track Agreements, but in any event no later than June 30, 2012, and no earlier than March 31, 2012, BNSF has the right to remove the switch connection and trackage between Owner's rail spur and BNSF's rail line. Owner hereby consents and agrees to the removal of such switch connection and trackage as set forth in this Agreement.

4. The terms and conditions of this Declaration shall apply in perpetuity and shall touch, concern and run with and burden the Property and shall inure to the benefit of and be enforceable by BNSF and its successors and assigns. No delay in enforcing the provisions of the terms and conditions of this Declaration with respect to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. Each contract for sale, deed, deed of trust, or other instrument which may hereafter be executed with respect to any property situated within the Property shall be deemed to have been executed, delivered, and accepted subject to all of the provisions contained herein and all such provisions shall, without further action, be incorporated by reference therein, regardless of whether any such instrument specifically refers to or recites all or any part of the terms and conditions of this Declaration. The parties further agree to execute such further documents and take such further actions as may be reasonably necessary or desirable to carry out the parties' intentions under this Declaration.

This Declaration shall be recorded in the real property records of Lancaster County, Nebraska, and shall run with the land and be binding upon and inure to the benefit of the successors and assigns of the respective parties.

IN WITNESS WHEREOF, each party has executed this Declaration to be effective as of the Effective Date set forth above.

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Patricia Zbichorski

Its: Assistant Secretary

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on _____, 2011 by _____ and Patricia Zbichorski, as the _____ and Assistant Secretary, respectively, of **BNSF Railway Company**, a Delaware corporation, on behalf of said corporation.

N-STREET COMPANY, LLC

By: _____

Name: _____

Title: _____

STATE OF _____

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on _____, 2011 by _____, _____, of N-Street Company LLC, a Nebraska limited liability company, on behalf of said limited liability company.

RESOLUTION NO. WH- _____

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

3 That the attached NPDES/NPP Signatory Authorization Form for the West Haymarket
4 Redevelopment Area to be submitted to the Nebraska Department of Environmental Quality
5 naming Jayne Snyder, West Haymarket JPA Chair, as the Cognizant Official and Dan Marvin,
6 West Haymarket Project Administrator, as the Authorized Representative is hereby accepted and
7 approved. The Chair is hereby authorized to execute said NPDES/NPP Signatory Authorization
8 Form on behalf of the Agency.

9 Adopted this _____ day of March, 2011.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler

Nebraska Department of Environmental Quality

NPDES/NPP SIGNATORY AUTHORIZATION FORM

This form is to be used to identify or update information pertaining to the facility. This form must be signed by the "Cognizant Official. The Cognizant Official" and "Authorized Representative" may be the same person.

Facility Name: West Haymarket Redevelopment Area Permit No. NE G 6 7 1 0 0 0

Address: n/a City Lincoln Zip _____

Location (Street/Directions to) See attached Exhibit 1 (map)

Phone n/a

PERMITTEE

List the *NAME* of the company, business, governmental entity, or person that owns the facility and that will be responsible for the permit compliance: West Haymarket Joint Public Agency

COGNIZANT OFFICIAL

This person is responsible for the permit, signing reapplications, signing DMRs or designating someone to sign DMRs (Authorized Representative) and other correspondence. For a municipal, only the mayor, chairperson or city manager may sign as the Cognizant Official. *See page two for requirements.*

Name Jayne Snyder Title Chair

*Mailing Address 555 S. 10th Street, Room 111 City Lincoln

State NE Zip 68508 Phone 402-441-7515 Home Ph (optional) n/a

AUTHORIZED REPRESENTATIVE (Do not complete if same as Cognizant Official)

This person is designated by the Cognizant Official and is responsible for receiving, completing and signing DMRs, and receiving other correspondence (i.e., city clerk, plant operator). *See page two for requirements.*

Name Dan Marvin Title Project Administrator

*Mailing Address 555 S. 10th Street City Lincoln

State NE Zip 68058 Phone 402-310-7110 Home Ph (optional) n/a

If You Represent this Facility as/for a Contractor, list: Contractor's Name n/a

Contractor's Address _____ Phone _____

OPERATOR This person is responsible for the operation and maintenance of the plant. *See page two for requirements.*

Name n/a Title _____

Mailing Address _____ Phone _____

If You Represent this Facility as/for a Contractor, list: Contractor's Name _____

Contractor's Address _____ Phone _____

***Mailing Address:** DMRs will be mailed to this address. *DO NOT* use home or personal address unless necessary. Please use city/village office address or facility/corporate address, etc. This address should remain the same, even with changes in the facility's Cognizant Official or Authorized Representative.

(COMPLETE AND SIGN PAGE 2)

Facility Name: West Haymarket Redevelopment Area Permit No. NE G 6 7 1 0 0 0

COMMENTS

COGNIZANT OFFICIAL SIGNATURE _____ DATE _____

PRINTED NAME OF COGNIZANT OFFICIAL Jayne Snyder, Chair

SIGNATORY AUTHORIZATION FORM REQUIREMENTS

Cognizant Official. Nebraska Department of Environmental Quality, Title 119, Chapter 10 and Title 127, Chapter 29

- 001.01 in the case of a corporation, by a principal executive officer of at least the level of vice-president;
- 001.02 in the case of a partnership, by a general partner;
- 001.03 in the case of a sole proprietorship, by the proprietor; and
- 001.04 in the case of a municipal, state or other public facility, by either a principal executive officer or ranking elected official.

Authorized Representative. Nebraska Department of Environmental Quality, Title 119, Chapter 10 and Chapter 127, Chapter 29

002 All other correspondence, reports and DMRs shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such a representative is responsible for all the overall operation of the facility from which the discharge originates; the authorization is made, in writing, by the person designated under 001.01 through 001.04 above; and the written authorization is submitted to the Director. Any change in the signatures shall be submitted to the Director. Any change in the signatures shall be submitted to the Department, in writing, within 30 days after the change.

Operator. Nebraska Department of Environmental Quality, Title 123, Chapter 15

001 A competent operator familiar with the principles of wastewater treatment and disposal and skilled in the operation of the plant equipment, shall be in charge of each wastewater works. The operator shall make such operations tests as may be specified by the Department.

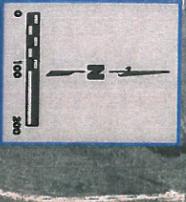
The operator may be required to be certified according the NDEQ Title 197.

Nebraska Department of Environmental Quality
ATTN: NPDES Permits & Compliance Units
Suite 400, 1200 N Street, The Atrium
PO Box 98922
Lincoln, Nebraska 68509-8922
Telephone (402) 471-4220
Fax (402) 471-2909

SALT CREEK

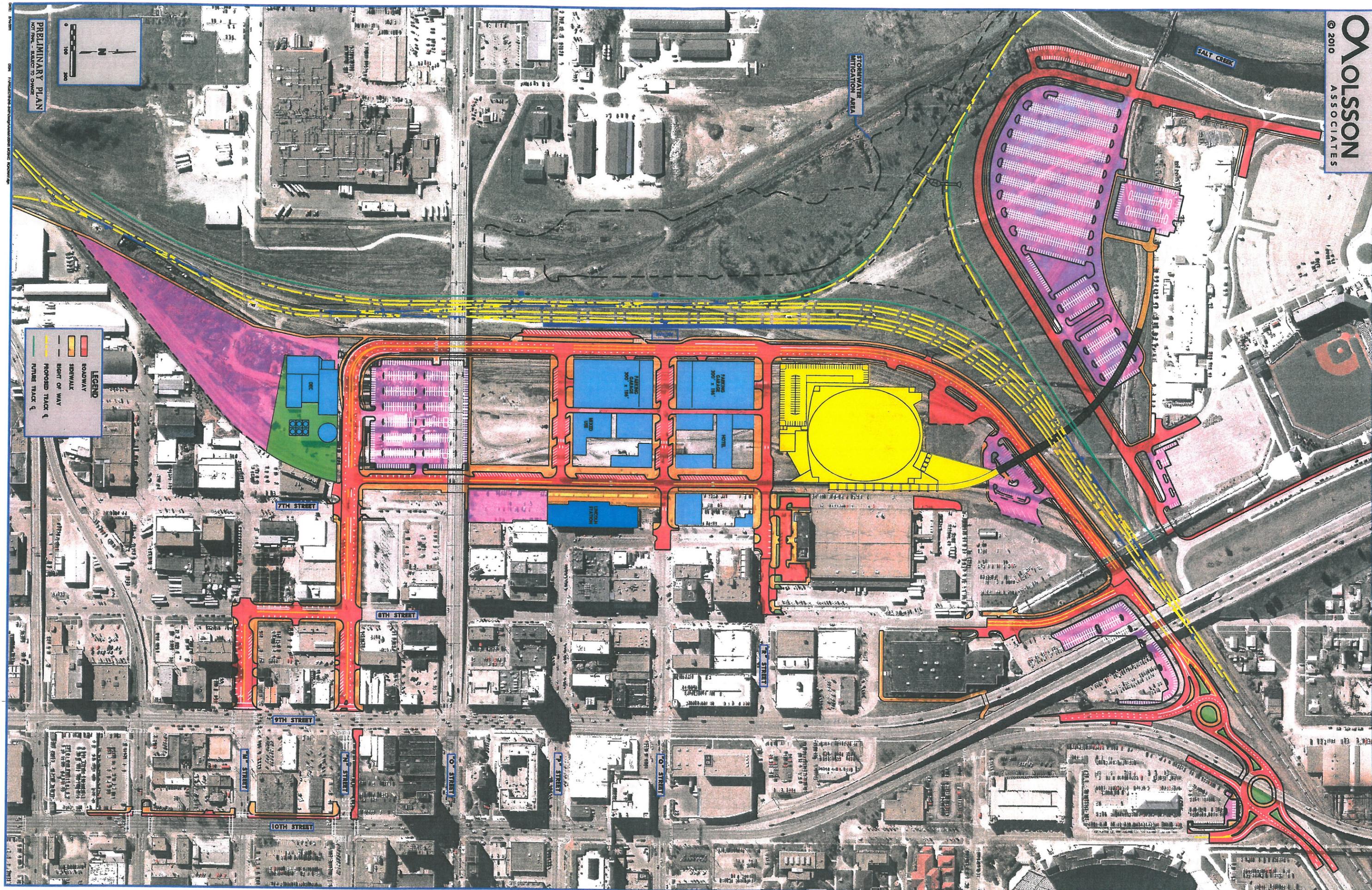
STORMWATER
MITIGATION AREA

PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE



LEGEND

- ROADWAY
- SEWERWALK
- RIGHT OF WAY
- PROPOSED TRACK 4
- FUTURE TRACK 5



RESOLUTION NO. WH- _____

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

3 That the attached Notice of Intent for Requesting Dewatering Discharges Authorization
4 Under the General NPDES Permit NEG671000 for the West Haymarket Redevelopment Area to
5 be submitted to the Nebraska Department of Environmental Quality is hereby accepted and
6 approved. The Chair is hereby authorized to execute said Notice of Intent on behalf of the
7 Agency.

8 Adopted this _____ day of March, 2011.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler



Nebraska Department of Environmental Quality

Wastewater Section

1200 'N' Street, Suite 400, The Atrium
PO Box 98922
Lincoln, NE 68509-8922
Tel. 402/471-4220
Fax 402/471-2909

DW-NOI

Notice of Intent (NOI) for Requesting Dewatering Discharges Authorization Under the General NPDES Permit NEG671000

Submission of this Notice of Intent fulfills the requirements set forth in Section B of NPDES General Permit Number NEG671000. By submission of this Notice of Intent the applicant is requesting authorization to discharge under the terms and conditions of said permit, and is agreeing to meet all of the terms and conditions set forth in said permit.

Once authorization to discharge is granted violations of the terms and conditions of the permit may result in the initiation of enforcement proceedings pursuant to sections 81-1508 through 81-1508.02 of the Nebraska Environmental Protection Act (Reissue 1987 and Cum. Supp. 1994). Among the enforcement options authorized by the Act are civil penalties of up to \$10,000 per day per violation.

The permit should be consulted for additional information on the completion of this NOI. Questions concerning the NOI or the permit should be directed to the Wastewater Section at (402) 471-4220. Written requests and submittals should be sent to the Wastewater Section at the address set forth on page 4 of this NOI.

1. Facility Owner or Operator

If both the owner and the operator are to be jointly responsible for permit compliance, then both must be identified. If not, only the owner or the operator, whichever is responsible for permit compliance should be identified.

Owner or Operator Name: West Haymarket Joint Public Agency

Cognizant Official: Jayne Snyder, Chair

2. Identification and Location Of Sources

a. Facility Name: West Haymarket Redevelopment Area

b. Facility Location: (location description, not mail address):

See attached Exhibit 1 (Map of Area)

c. Legal Description:

 Quarter of the SW Quarter, Section 23, Township 10 N, Range 6 (E) or W),

County Lancaster

d. Receiving Stream or Waterbody: Salt Creek

- e. Is the Receiving Stream listed in Appendix B of the permit? Yes No
(If yes, submit a site specific NPDES permit application)
- f. Is this a direct discharge into a waterbody listed in NDEQ Title 117, Chapter 6? Yes No
- g. Is the dewatering discharge to a Municipal Separate Storm Sewer System? Yes No
- h. Have you notified the Municipal Separate Storm Sewer System operator? Yes No
- i. After contacting the Nebraska Game and Parks Commission, did the Commission have any concerns about impact(s) to the listed endangered or threatened species or their critical habitat(s)? If yes, submit a site specific NPDES permit application. Yes No

Explain: See attached "Threatened & Endangered Species Guidance Checklist".

- j. After contacting the Nebraska Historical Society, did the Society have any concerns about impact(s) to historical site(s) If yes, submit a site specific NPDES permit application. Yes No

Explain: SHPO has asked for continuing communication & coordination throughout the project.

3. Owner or Operator and Authorized Representative

The responsibilities and requirements of the "Owner or Operator" and the "Authorized Representative" are set forth on page 4 of this NOI. If both the owner and the operator are to be jointly responsible for permit compliance, then a cognizant official for both must be identified. Only one Authorized Representative can be specified. An Authorized Representative need not be identified if a Cognizant Official wishes to be the sole contact for the Department.

a. Owner or Operator

Name: West Haymarket Joint Public Agency Title: Chair
 Cognizant Official: Jayne Snyder
 Mail Address: 555 S. 10th Street, Room 111
 City: Lincoln State: NE Zip Code: 68508
 Telephone: 402-441-7515

b. Authorized Representative

Name: Dan Marvin Title: Project Administrator
 Mail Address: 555 S. 10th Street
 City: Lincoln State: NE Zip Code: 68508
 Telephone: 402-310-7110

4. Discharge Information

a. How many discharge outfalls are present? One; Salt Creek

For each outfall, identify the following information:

b. Outfall 1:

1) What is the source of the discharge? (i.e. chlorinated municipal water, storm water, surface water or ground water):

ground water

2) Anticipated Start-Up Date: 2011 Anticipated Completion Date: 2014

3) Anticipated Discharge Flow Rate: variable Anticipated Discharge Frequency variable

c. Outfall 2:

1) What is the source of the discharge? (i.e. chlorinated municipal water, storm water, surface water or ground water):

n/a

2) Anticipated Start-Up Date: _____ Anticipated Completion Date: _____

3) Anticipated Discharge Flow Rate: _____ Anticipated Discharge Frequency _____

d. Outfall 3:

1) What is the source of the discharge? (i.e. chlorinated municipal water, storm water, surface water or ground water):

n/a

2) Anticipated Start-Up Date: _____ Anticipated Completion Date: _____

3) Anticipated Discharge Flow Rate: _____ Anticipated Discharge Frequency _____

5. Identification of Potential Pollutants in the Discharge

Identify any pollutants that you know may be potentially present in the discharge or any materials stored in the vicinity that if spilled could contaminate the discharge. Also identify any ground water contamination plumes, previous spills or other events that you know have occurred and that may contribute pollutants to the discharge.

Please refer to attached letter from NDEQ dated February 18, 2011.

6. Certification

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

I further certify that:

I, or qualified members of my staff, have reviewed and understand the terms and conditions of NPDES General Permit Number NEG671000;

The facility identified in Section 1 of this NOI meets the "Eligibility" requirements and is not excluded by the "Limitation of Coverage" requirements, set forth in Section B of the permit; and

I understand that the submission of this NOI obligates the facility identified in Section 1 of this NOI to comply with the terms and conditions of the Permit NEG671000, provided authorization to discharge is obtained.

Owner's or Operator's Signature

Date Signed

Owner's or Operator's Signature

Chair, West Haymarket JPA

Title

Qualifications and Responsibilities of the "Owner or Operator" and the "Authorized Representative"
The qualifications and responsibilities of the "Owner or Operator" are set forth in NDEQ Title 119 Chapter 13 002:

All permit applications submitted to the Department shall be signed:

002.01 – For a corporation by a responsible corporate officer;

002.02 - For a partnership or in the case of a sole proprietorship by a general partner or the proprietor; and

002.03 - For a municipal, State, Federal, or other public facility by either a principal executive officer or ranking elected official."

The qualifications and responsibilities for the "authorized representative" are set forth in NDEQ Title 119 Chapter 13 003:

"All other correspondence, reports and DW-DMR's shall be signed by a person designated in 002.01 through 002.03 or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 002.01 through 002.03 and the written authorization is submitted to the Director. "The authorized representative may also sign DW-NOIs, if the Cognizant Official has specifically authorized them to perform this task in a previous DW-NOI or in other written documentation as set forth in permit Section C.2.g.

Submit the completed NOI to:

U.S. Postal Service Address:

Wastewater Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922
Telephone: (402) 471-4220

Alternate Carrier Address:

Wastewater Section
Nebraska Department of Environmental Quality
1200 'N' Street, The Atrium, Suite 400
Lincoln, NE 68509



Reserved for NDEQ use only

THREATENED & ENDANGERED SPECIES
Guidance Checklist for
NPDES Construction Storm Water General Permit
#NER110000

*** Disclaimer: This checklist was developed for guidance purposes only in an effort to assist Construction Storm Water permit applicants to identify potential locations of threatened and endangered species. Completion of this checklist is not a requirement for permit authorization and is not intended to be used as a substitute for a professional environmental review. The use of this form does not relieve the permittee from further review or enforcement action by the Department of Environmental Quality (NDEQ) or Nebraska Game and Parks Commission (NG&PC).

Section I

- 1. For projects not located in Lancaster County: Is the project located outside of designated city limits? [X] No [] Yes
2. For projects located in Lancaster County: Does the project discharge storm water to Salt Creek, Little Salt Creek or Rock Creek? [] No [X] Yes
3. For all projects: Is this project located in mature oak woodlands within 5 miles of the Missouri River in the area stretching from the Kansas border to Ponca? [X] No [] Yes
4. For all projects: Is this project within 0.25 miles of a stream of concern or does it discharge to an stream of concern? [X] No [] Yes
5. For projects located within the distribution of the American Burying Beetle: Is the project located on potential habitat? [X] No [] Yes

* Potential habitat constitutes land which has not been previously disturbed, typically by crop agriculture, and land not located within city limits.

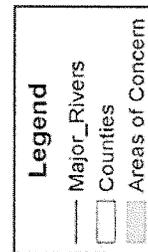
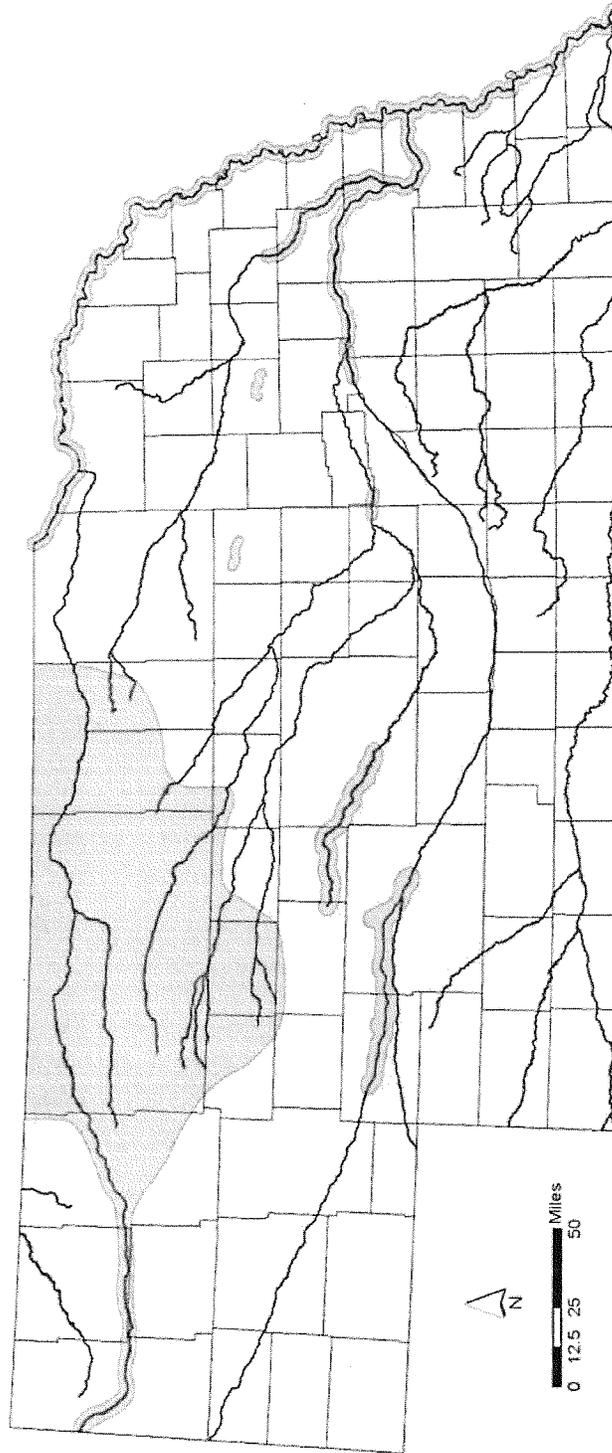
- If you answered No to all questions in Section I, a NDEQ and NG&PC review may not be needed (see disclaimer above). Include this form with your SWPPP documentation.
If you answered YES to only question 1, complete Section II.
If you answered YES to any of questions 2 thru 5 in Section I, consultation with NDEQ & NG&PC is necessary (Section III).

Section II

1. Will project construction take place between April 1 and May 10 or October 1 and November 15 in the following locations? No Yes
- In non-urban areas within 3 miles of the Platte, Loup, Middle Loup, North Loup or Niobrara Rivers; or
 - In non-urban areas within 1 mile of a wetland within the Primary Whooping Crane Use area.
2. Will project construction take place between April 1 and June 15 in the following locations? No Yes
- A wheat field or heavily grazed prairie in
 - Kimball County; or
 - Banner County (south of Harrisburg); or
 - Cheyenne County (west of Sidney).
3. Will project construction take place between April 15 and September 15 within 0.25 miles of rivers at the following locations? No Yes
- The Lower Platte River from Columbus to Plattsmouth; or
 - The Missouri River from where it joins the Nebraska/South Dakota state border to Ponca; or
 - The Loup River between St. Paul and Columbus; or
 - The Niobrara River between Springview and where the Missouri and Niobrara Rivers converge.
4. Will project construction take place between April 15 and September 15 in the following locations? No Yes
- An active or recently active sand and gravel operation with bare sand substrate located within 5 miles of the Platte, Loup, South Loup, Middle Loup, North Loup, Niobrara, Elkhorn, or Missouri Rivers.
5. Is the project construction on a non-crop, non-urban site in Pawnee County (west of Pawnee City), Johnson County or Gage County (south of Beatrice)? No Yes
6. Is the project construction within 1 mile of the North Platte, Platte, Little Nemaha, Cedar, Loup, South Loup, North Loup, Calamus, Niobrara, Elkhorn Rivers, or Lodgepole Creek from Kimball to the Wyoming State line? No Yes
7. Is the project construction on a non-crop, non-urban site in the Swift Fox distribution area? (See *Attached Distribution Map*) No Yes
8. Will the project construction impact open active sandy blowouts in Cherry County, the south east quarter of Sheridan County, or the north half of Thomas, Hooker or Grant Counties? No Yes
9. Is the project construction within 0.5 miles of the Niobrara River from Highway 29 to the Wyoming state line? No Yes
10. Will the project construction impact wet meadows in the Orchid distribution area? (See *Attached Distribution Map*) No Yes

- ◆ If you answered **No** to all questions in Section II, a NDEQ and NG&PC review may not be needed (see disclaimer above). Include this form with your SWPPP documentation.

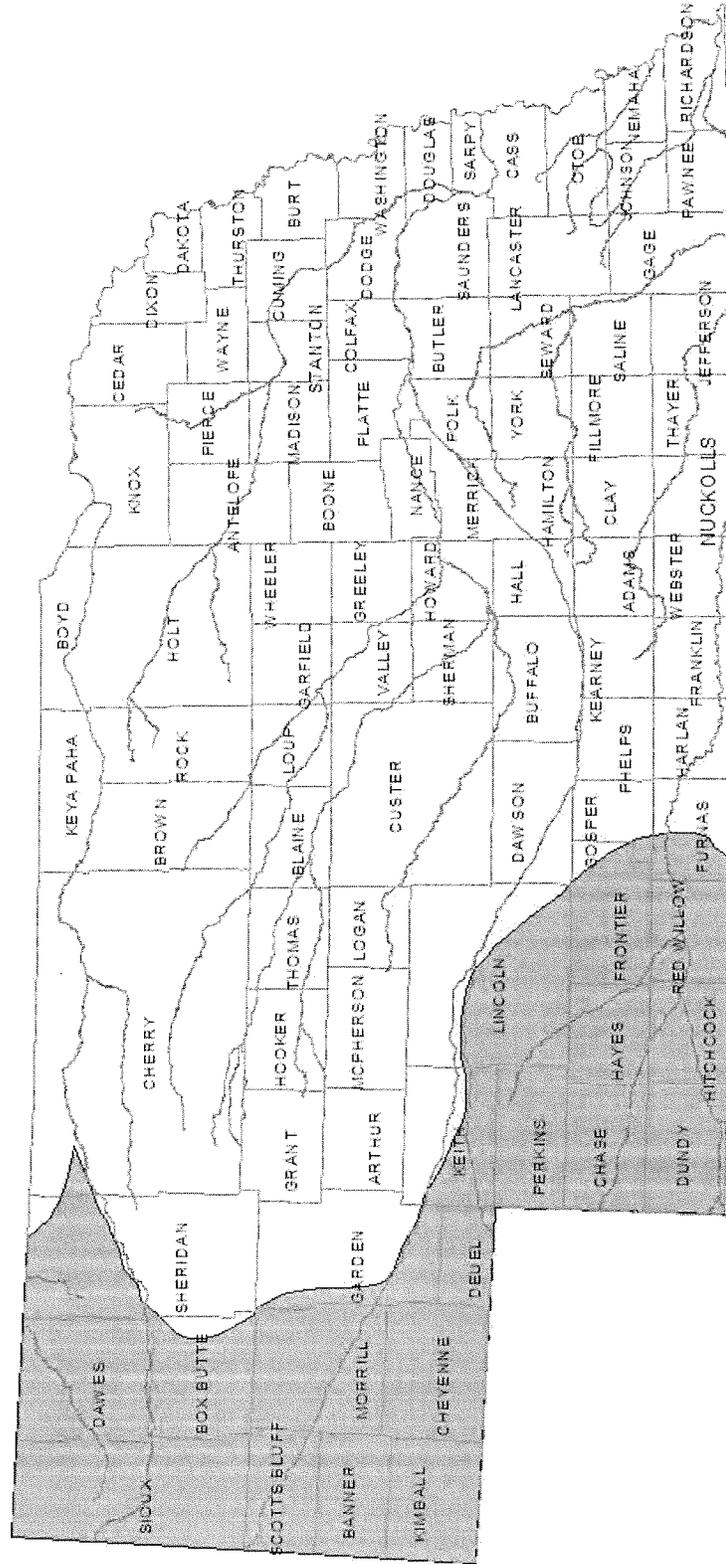
Stream and River Reaches of Concern for Nebraska Fish Species



Map produced by the Nebraska Game and Parks Commission
February 19, 2008

Streams and rivers within shaded areas are of concern for at-risk fish species.

Swift Fox Distribution



Nebraska Game and Parks Commission 2008



Dave Heineman
Governor

Mr. Chad Blahak
City of Lincoln
Public Works/ Engineering Services
555 South 10th Street
Lincoln, NE 68508

FEB 18 2011

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Michael J. Linder

Director

Suite 400, The Atrium
1200 'N' Street
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Phone (402) 471-2186
FAX (402) 471-2909
website: www.deq.state.ne.us

RE: Dewatering Authorization Restrictions Under General National Pollutant Discharge Elimination System (NPDES) NEG671000 for Lincoln Haymarket/Arena Construction (Area bounded by 2nd Street, Salt Creek Street, 8th Street, and J Street, Lincoln, NE)

Dear Mr. Blahak,

This letter provides requirements for continued authorization under the Department of Environmental Quality's General NPDES Permit for Construction Dewatering (NEG671000). Due to the known pollutants present in groundwater and soils in this area, additional restrictions will be required in order to protect surface water.

The general permit cannot authorize discharge that in accordance with Part I. C of the permit may create potential water quality impacts on the receiving stream. In addition, in accordance with Part IV.B, the permit prohibits toxic discharges. Known toxics have been determined to be present on this site, and therefore, unless there is further analysis of the dewatering water, it cannot be authorized by this permit to discharge. In order to determine whether or not an authorized discharge can take place, the water must be analyzed prior to discharge. Therefore, to continue authorization under NPDES General Permit NEG67100, all work requiring dewatering discharges **must**:

1. Containerize the dewatering water.
2. Test each container for the constituents found in Table 1, 2, and 3.
3. Test results must be completed and compared to maximum discharge levels found in Table 1, 2, and 3.
4. If all test results are **below** maximum discharge levels found in Table 1, 2, and 3 discharge authorization is continued under the NPDES General Permit NEG671000. All other terms and conditions of the permit continue to apply.
5. If any test result is **above** maximum discharge levels found in Table 1, 2, and 3, the discharge is no longer authorized under the NPDES General Permit NEG671000 and is prohibited from direct discharge. Alternate disposition and /or treatment are required.
 - a. Approval from a municipal wastewater treatment facility (WWTF) is required prior to discharging to the WWTF. Please be advised that some of the pollutants found on this site may adversely affect the quality of biosolids from the WWTF.
 - b. Any type of treatment on site will require a site-specific NPDES permit applicable to the type of treatment and the pollutants treated. A site specific application for this permit will be required. (Form 1 and 2C)
 - c. Treatment can be performed by an off-site facility that is designed, permitted, and approved to treat the pollutants present.

6. Test results shall be recorded on the attached Discharge Monitoring Reports (DMR) and submitted to the Department on a quarterly basis. Reports can be sent to the address at the end of the DMR form.

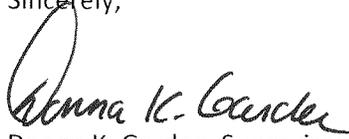
Table 1: Requirements for Dieldrin, PCBs, and TPH					
Parameters	Storet #	Units	Maximum Discharge Levels	Frequency	Sample Type
Dieldrin	39380	µg/L	0.00144	Once/batch	Grab
Polychlorinated Biphenyls	39516	µg/L	0.0017	Once/batch	Grab
Total Petroleum Hydrocarbons	82180	mg/L	10	Once/batch	Grab

Table 2: Requirements for Metals					
Parameters	Storet #	Units	Maximum Discharge Levels	Monitoring Frequency	Sample Type
Arsenic, Total Recoverable	00978	µg/L	16.7	Once/batch	Grab
Cadmium, Total Recoverable	01113	µg/L	0.527	Once/batch	Grab
Chromium (III), Total Recoverable	04262	µg/L	189.5	Once/batch	Grab
Chromium (VI), Total Recoverable	78247	µg/L	11.0	Once/batch	Grab
Lead, Total Recoverable	01114	µg/L	8.1	Once/batch	Grab
Mercury, Total Recoverable	71901	µg/L	0.77	Once/batch	Grab
Selenium, Total Recoverable	00981	µg/L	5.0	Once/batch	Grab

Table 3: Requirements for Polycyclic Aromatic Hydrocarbons					
Parameters	Storet #	Units	Maximum Discharge Levels	Monitoring Frequency	Sample Type
Benzo(a)anthracene	34526	µg/L	0.49	Once/batch	Grab
Benzo(a)pyrene	34247	µg/L	0.49	Once/batch	Grab
Benzo(b)fluoranthene	34230	µg/L	0.49	Once/batch	Grab
Benzo(k)fluoranthene	34242	µg/L	0.49	Once/batch	Grab
Chrysene	34320	µg/L	0.49	Once/batch	Grab
Dibenzo(a,h)anthracene	34556	µg/L	0.49	Once/batch	Grab
Indeno(1,2,3-cd)pyrene	34403	µg/L	0.49	Once/batch	Grab
Naphthalene	34696	µg/L	620	Once/batch	Grab

These additional restrictions must be satisfied to qualify for authorization under the NPDES General Dewatering Permit NEG 671000 for construction dewatering activity in the area bounded by 2nd Street, Salt Creek Street, 8th Street and J Street, Lincoln, NE and are effective immediately. Please contact me if you have questions.

Sincerely,


 Donna K. Garden, Supervisor
 NPDES Permits and Compliance Unit
 Wastewater Section
 402-471-1367
donna.garden@nebraska.gov

cc: T. J. Osborn Construction, 5801 Johanna Road, Lincoln, Nebraska 68507 (402-464-4235)
 Frank Uhlarik , Alfred Benesch and Co., 825 J Street, PO Box 80358, Lincoln, Nebraska 68501
 Miki Esposito, City of Lincoln, 555 South 10th Street, Lincoln, NE 68508



Nebraska Department of Environmental Quality

Wastewater Section

1200 'N' Street, Suite 400, The Atrium
PO Box 98922
Lincoln, NE 68509-8922
Tel. 402/471-4220
(a) Fax 402/471-2909

DW-DMR

Dewater Discharges Discharge Monitoring Report (DMR) Authorized Under NPDES General Permit NEG671000

This DW-DMR is to be submitted monthly (i.e., within 28 days after the end of each calendar month), unless alternative submittal arrangements are approved. Any pH, Oil & Grease, or Total Suspended Solids monitoring results that are not in compliance with the permit effluent limits shall be reported to the Department within 24 hours (Telephone 402/471-4220) and a written non-compliance report must be submitted within 7 days (See Appendix A, Sections D.2 and D.3 in the permit). If the appropriate information is included on this form, it may be used as a non-compliance report form and to provide notification of project completion. Be sure to fill in all of the appropriate blanks below and sign on the back of this form.

NPDES Tracking Number: NEG671 _____ - R

Project Owner or Operator: _____

Project Name & Location: _____

When is the discharge anticipated to begin? (mo/day/yr) _____

What is the Outfall Designations: _____

What is the Source of the outfall? (i.e. well, pit, foundation pump, etc.) _____

Site _____

Parameter	Discharge Limit	Unit	Monitoring Result	Unit	Sample Type
Volume Discharged	Report	Gallons			
Dieldrin	0.00144	µg/L			
Polychlorinated Biphenyls	0.0017	µg/L			
Total Petroleum Hydrocarbons	10.0	mg/L			

Parameter	Discharge Limit	Unit	Monitoring Result	Unit	Sample Type
Arsenic, Total Recoverable	16.7	µg/L			
Cadmium, Total Recoverable	0.527	µg/L			
Chromium (III), Total Recoverable	189.0	µg/L			
Chromium (VI), Total Recoverable	11.0	µg/L			
Lead, Total Recoverable	8.1	µg/L			
Mercury, Total Recoverable	0.77	µg/L			
Selenium, Total Recoverable	5.0	µg/L			

Parameter	Discharge Limit	Unit	Monitoring Result	Unit	Sample Type
Benzo(a)anthracene	0.49	µg/L			
Benzo(a)pyrene	0.49	µg/L			
Benzo(f)fluoranthene	0.49	µg/L			
Benzo(k)fluoranthene	0.49	µg/L			
Chrysene	0.49	µg/L			
Dibenzo(a,h)anthracene	0.49	µg/L			
Indeno(1,2,3-cd)pyrene	0.49	µg/L			
Naphthalene	620	µg/L			

Certification

I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Owner or Operator Signature or Authorized Representative**

Date Signed

Print Name

Title

For Information on the submittal of the DW-DMR see page 4.

The qualifications and responsibilities of the authorized representative are described on page 4.

Requirements for and Responsibilities of Owner/Operator and Authorized Representative

The "**owner or operator**" is responsible for signing all permit applications and must meet the requirements set forth in NDEQ Title 119 Chapter, 13 002:

"All permit applications submitted to the Department shall be signed:

002.01 – For a corporation, by a responsible corporate officer;

002.02 - For a partnership or a sole proprietorship by a general partner or the proprietor; and

002.03 - For a municipal, State, Federal, or other public facility by either a principal executive officer or ranking elected official."

The "**authorized representative**" is the primary facility contact for correspondence and monitor reporting, and must meet the requirements set forth in NDEQ Title 119, Chapter 13 003:

"All other correspondence, reports and DMR's shall be signed by a person designated in 001.01 through 001.04 above or a duly authorized representative if such representative is responsible for the overall operation of the facility from which the discharge originates; the authorization is made in writing by the person designated under 001.01 through 001.03 above; and the written authorization is submitted to the Director."

Submit the completed DW-DMR form to one of the following addresses:

US Postal Service Address

Wastewater Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

Alternate Carrier Address

Wastewater Section
Nebraska Department of Environmental Quality
The Atrium, 1200 N Street, Suite 400
Lincoln, NE 68509

RESOLUTION NO. WH- _____

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

2 Agency:

3 That the attached Change Order No. 1 to the Contract Agreement between the West
4 Haymarket Joint Public Agency and General Excavating, Inc. for additional work associated
5 with diesel plume remediation is hereby accepted and approved. The Chair is hereby authorized
6 to execute said Change Order on behalf of the Agency.

7 Adopted this _____ day of March, 2011.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler

CHANGE ORDER NO. 1
West Haymarket Diesel Fuel Plume Remediation
Bid No. 10-230

PROJECT DESCRIPTION: West Haymarket Diesel Plume Remediation

CONTRACTOR Ken Imig, Project Manager
ADDRESS: General Excavating
 6701 Cornhusker Hwy
 Lincoln, NE 68507-3313

ANTICIPATED NOTICE TO PROCEED: December 22, 2010
ANTICIPATED COMPLETION DATE: February 15, 2011

ACTUAL NOTICE TO PROCEED: January 13, 2011
SUBSTANTIAL COMPLETION DATE: March 9, 2011

NEW SUBSTANTIAL COMPLETION DATE: May 10, 2011

CHANGE ORDER: The West Haymarket Joint Public Agency (JPA), City of Lincoln, Nebraska and General Excavating, Inc. agree to the following revisions to the above-mentioned contract:

- 1) Disposal of clean overburden soil:
 - a. Soil hauling and disposal to G&P Landfill in Milford, NE - \$10.89/ton
- 2) Reroute of the existing sewer line (instead of bypass pumping). JPA will pay no more than the original bid price associated with bypass pumping.
- 3) Unit rate is established in the bid proposal documents for well abandonment as a unit rate.
- 4) Rates proposed on the placement of granular material and fabric for the excavation stabilization:
 - a. Granular Material – Placed \$34.78/ton
 - b. Geo-Textile Fabric – Placed \$4.59/square yard
- 5) Weather Delay – 7 calendar day extension due to weather to account for the blizzard-like conditions in the first week of February.
- 6) Overhead Power Line Delay – 25 calendar day extension due to BNSF's delay in completing the overhead power line relocation and absent temporary power to conduct the work. This work was actually conducted by General Excavating and not contemplated in the original bid documents.
- 7) The cost to complete the underground construction of relocated power line of \$8500.00.
- 8) Demolition of Remediation Building – 2 calendar day extension to demo the remediation shed as this work was not contemplated in the bid documents.
- 9) The cost to complete the demolition and disposal of the existing remediation shed of \$2425.00.
- 10) Sheet Piling Shoring – An increase of 28 days to the contract to accommodate approximately 6,954 additional SF of sheet piling for shoring activities (14 days to install and 14 days to remove the sheet piling).

As a result of delays beyond the Contractors control, the new substantial completion date to complete this project is **May 10, 2011**. All other provisions of this contract shall remain the same. The changes included in this change order are to be accomplished in accordance with the terms, stipulations, and conditions of the original contract as though included therein.

ACCEPTED BY THE CONTRACTOR ON 3/3/2011.

By: Jim Miller

Title: PROJECT MANAGER

Company: GENERAL EXCAVATING



March 2, 2011

Ken Imig, Project Manager
General Excavating
6701 Cornhusker Hwy
Lincoln, NE 68507-3313

CITY OF LINCOLN
NEBRASKA

MAYOR CHRIS BEUTLER
lincoln.ne.gov

Urban Development Department
David Landis, Director
555 S. 10th Street
Suite 205
Lincoln, Nebraska 68508
402-441-7606
fax: 402-441-8711

RE: West Haymarket Diesel Plume Remediation

Dear Mr. Imig,

This letter is in response to your request dated January 26, 2011, as well as your request dated February 25, 2011 for approval of a new proposed schedule for the Diesel Plume Remediation project on the West Haymarket site.

With respect to your specific requests on January 25, 2011 and review by Holly Lionberger on January 28, 2011, we agree to the following:

- 1) The two (2) options for disposal of the clean overburden soil:
 - a. Soil hauling only (no disposal fee) to C& D Landfill located at 48th & Superior - \$7.48/ton
 - b. Soil hauling and disposal to G&P Landfill in Milford, NE - \$10.89/ton
- 2) Payment of \$8500.00 for the cost of underground construction of the relocated power line.
- 3) We approve your proposal to reroute the existing sewer line instead of the bypass pumping earlier proposed (due to the difficulty associated with winter conditions). However, we will only pay up to the original bid price associated with bypass pumping; no higher.
- 4) We approve up to the unit rate in the proposal documents for well abandonment.
- 5) We approve the rates proposed on the placement of granular material and fabric for the excavation stabilization:
 - a. Granular Material – Placed \$34.78/ton
 - b. Geo-Textile Fabric – Placed \$4.59/square yard
- 6) Payment of a lump sum price of \$2425.00 to complete the demolition and disposal of the existing remediation shed.

With respect to your specific requests on February 25, 2011 we approve the following:

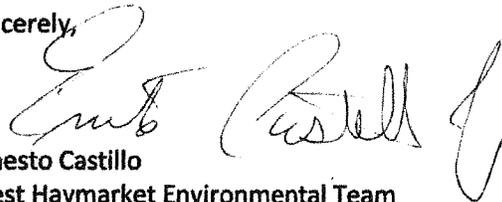
- 1) Contract Approval Clarification - We agree that the original Special Provisions bid documents called for an anticipated Notice to Proceed of December 22, 2010 and a final completion date of February 15, 2011, or 55 Calendar Days for completion of the project. Due to the delay of approval of the contract, the Notice to Proceed for this project was issued January 13. We consider this to be the actual start date for the project.
- 2) Weather Delays – We strongly believe that any weather delays should have been taken into account at the time you submitted your proposal since the

work, as described in the solicitation, was to occur during winter months (December through February). It is also worth noting that, with the exception of the first week in February, we've had unseasonably favorable conditions for construction. At this time therefore, we will only grant a 7-day extension due to weather to account for the blizzard-like conditions in the first week of February.

- 3) Overhead Power Line Delay – The Special Provisions made clear that the Contractor was to coordinate with BNSF and to clarify measures to be taken to temporarily relocate the overhead power pole located on site prior to excavation. We understand that the process for doing so was anticipated to occur in early February and that the line actually needed to be constructed underground to satisfy BNSF requirements. Due to BNSF's delay and reluctance in completing the overhead power line relocation and without temporary power to conduct the work, mobilization efforts were futile. Therefore, we agree to the requested 25-day extension.
- 4) Demolition of Remediation Building – The additional 2-days needed to demo the building is granted since this work was not contemplated in the Special Provisions.
- 5) Sheet Piling Shoring – We understand that the actual design for the shoring resulted in an increase of approximately 6,954 SF to the project adding 14 days to install and 14 days to remove the sheet piling. Therefore, the request for additional time to install and remove the sheet piling is granted.

In conclusion, we agree to pursue a Change Order for a substantial completion date of **May 10, 2011**. However, understand that your request for the extension and our response indicated above are subject to the formal review and approval of the JPA Board which we will seek at the March 10, 2011 JPA Board Meeting. While the West Haymarket Redevelopment Project is on a very aggressive timeline, we understand that there may be additional requests for extensions of time due to unforeseen circumstances. Nevertheless, we strongly believe that the granted extension of time is more than adequate to substantially complete this remediation project and we look forward to seeing a new proposed schedule reflecting these changes. If you have any questions, you can reach me at (402) 441-7855 or via email at ecastillo@lincoln.ne.gov.

Sincerely,



Ernesto Castillo
West Haymarket Environmental Team
City of Lincoln Urban Development Department

Cc: Miki Esposito

February 25, 2011

Ernesto Castillo
City of Lincoln
531 Westgate Blvd. #100
Lincoln, NE 68528

RE: West Haymarket Arena Remediation

Dear Mr. Castillo,

This letter is in response to our meeting held at the Benesch office on February 25, 2011. Present at the meeting were Miki Esposito and Ernesto Castillo (City of Lincoln), Frank Uhlarik (Benesch), Joe Giesler and myself from General Excavating.

As we discussed the original Special Provisions bid documents called for a Notice to Proceed on December 22, 2010 and a final completion on February 15, 2011. This is 55 Calendar Days. Per our discussions today, we agreed on a Notice to Proceed date of January 13, 2011 and a substantial completion date of May 9, 2011. This is 117 Calendar Days.

We all know that weather conditions and unforeseeable delays will occur going forward. Per our discussions GE has outlined below the change in schedule agreed upon in the meeting:

- 1) Sheet Piling Shoring has increased by an approximate quantity of 6,954 SF. This will take an additional 14 Calendar days to install and an additional 14 Calendar days to remove - total of 28 Calendar days.
- 2) Relocation of existing overhead power line. Additional time incurred for meetings with BNSF, utility locates, mobilization of equipment, BNSF acquiring the direct burial wire, scheduling of work and removing the overhead line and power poles.
 - GE was informed by BNSF on the removal of Pole #1 on January 17, 2011.
 - The pole was removed by BNSF on January 20, 2011.
 - Following discussions with Benesch, City of Lincoln and BNSF, the power line was agreed to be relocated underground. GE was given approval for the underground construction on January 28, 2011.
 - On February 11, 2011 GE bores in new direct burial cable provided by BNSF.
 - On February 16, 2011 BNSF energizes new line.
 - On February 17, 2011 BNSF removing overhead power and additional poles. Work required an additional 25 Calendar days.

- 3) Demolition of existing remediation building – 2 Calendar days.
- 4) Weather delay granted by City of Lincoln (1st week of February) – 7 Calendar days.

As we discussed in the meeting, GE's understanding for a start date was based on discussions GE had with Holly Lionberger at the January 5, 2011 preconstruction meeting and in a follow up meeting on January 18, 2011 meeting held at GE's office. At these meeting it was agreed the start date would be the day we began onsite work. Going forward GE has agreed with all parties (City of Lincoln and Benesch) and accepts the Notice to Proceed date of January 13, 2011, with a mutual understanding that unforeseen conditions may occur that will require GE to request additional days to complete substantial work on the project. General Excavating will do all we can to complete the project in a timely manner.

Please review and complete a change order with an additional 62 Calendar Days agreed upon and the outstanding items to be added to the contract as unit rates which are addressed in GE's letter dated January 26, 2011.

Sincerely,

General Excavating



Ken Imig
Project Manager

Ken Imig

From: Holly S. Lionberger [hlionberger@lincoln.ne.gov]
Sent: Friday, January 28, 2011 1:46 PM
To: Ken Imig
Cc: Uhlarik, Frank; Ernesto Castillo; Miki Esposito
Subject: RE: West Haymarket Arena

Ken,

Frank and I have reviewed your list of items and have the following questions/comments:

For item #1, we would like confirmation that the occupation tax on the disposal has been addressed in your bid and that you understand this is a contractor cost and not something the JPA will be covering as a separate cost. For item #3, we are willing to pay up to the original bid price for bypass pumping, but not higher than that. For item #4, at this time it looks like the number of well abandonments should be close to the bid quantity, maybe a couple less. Please make sure you are coordinating with Benesch prior to any abandonments as there are a couple of wells noted for abandonment that we may want to keep in place for monitoring.

We are in agreement with the other items you had listed. Thank-you for your responses, and please let me know if you have any questions.

Holly Lionberger, P.E.
City of Lincoln
Public Works/Engineering Services
531 Westgate Blvd., Suite 100
Lincoln, NE 68528
phone: (402) 441-8400
fax: (402) 441-6576
email: hlionberger@lincoln.ne.gov

From: Ken Imig [mailto:Kimig@generalexexcavating.com]
Sent: Wednesday, January 26, 2011 3:07 PM
To: Holly S. Lionberger
Cc: Uhlarik, Frank
Subject: West Haymarket Arena

Holly: Attached is a letter addressing the outstanding issues.

This message has been scanned for malware by SurfControl plc. www.surfcontrol.com

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Click [here](#) to report this email as spam.

January 26, 2011

Holly Lionberger
City of Lincoln
Public Works/Engineering Services
531 Westgate Blvd. #100
Lincoln, NE 68528

RE: West Haymarket Arena Remediation

Dear Holly,

This letter is in response to the answers that General Excavating (GE) received on January 25, 2011 regarding the outstanding issues or clarifications.

- 1) GE has included (2) options for review of the clean overburden soil:
 - a. Soil hauling only (no disposal fee) to C&D Landfill located at 48th & Superior – \$7.48/ton
 - b. Soil hauling and disposal to G&P Landfill located in Milford, NE - \$10.89/ton
- 2) The existing overhead power lines and poles will need to be relocated prior to start of construction. GE has proposed a cost of \$8500.00 to the City of Lincoln for the underground construction only. BNSF will submit their labor and materials cost to the City of Lincoln for approval.
- 3) Due to the difficulty associated with bypass pumping in winter conditions, GE is proposing a reroute of the existing sewer lines instead of the bypassing pumping unit. To accomplish this there will have to be 168 LF of 10" PVC sewer pipe and 252 LF of 18" PVC sewer pipe installed. We are also proposing a temporary 48" manhole at the 3 way junction outside of MH #62. The cost for the sewer relocation scope of work could be treated as a lump sum item in the amount of \$21,724.00.

During our utility one call meet it was brought to our attention that one of the sewer lines that was shown on Figure 3 in the bid documents as a 10" PVC line is actually a 20" VCP line. Bid item #10 calls for replacing sanitary sewer pipe in 10" PVC. This bid item will have to be negotiated in the future if the city sewer map that GE was given by the locator is correct.

- 4) Well Abandonments – Unit looks like it will increase. GE has a unit rate in the proposal documents which should satisfy the final numbers.

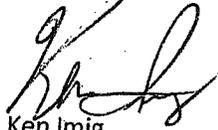
5) GE has included the following rates for approval on the placement of granular material and fabric for the excavation stabilization. The following rates are based on details and specs provided by Benesch and Company

- a. Granular Material — Placed \$34.78/ton
- b. Geo-Textile Fabric — Placed \$4.59/square yard.

6) GE will complete the demolition and disposal of the existing remediation shed for a lump sum price of \$2425.00. Existing power service to be disconnected by BNSF.

In closing, General Excavating needs answers to the above outstanding issues by 12:00 PM on Friday January 28, 2011. GE will then submit a new proposed schedule and ask for an extension of calendar days to complete the project based on a new start date.

Sincerely,
General Excavating



Ken Imig
Project Manager

RESOLUTION NO. WH- _____

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

3 That the attached Amendment No. 4 to Consultant Agreement between SAIC Energy
4 Environment and Infrastructure LLC and the West Haymarket Joint Public Agency to provide
5 professional services in connection with the design and construction of multiple facilities in the
6 West Haymarket Redevelopment Project is hereby approved and the Chairperson of the West
7 Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said
8 Amendment No. 4 on behalf of the JPA. Amendment No. 4 terminates the interim program
9 management services effective March 24, 2011 and commences extended Program Management
10 Services effective March 25, 2011 and commences Arena Project Services effective March 1,
11 2011.

12 Adopted this _____ day of March, 2011.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler

**AMENDMENT NO. 4 TO
CONSULTANT AGREEMENT**

THIS AMENDMENT NO. 4 is entered into this 10th day of March, 2011, by and between the **West Haymarket Joint Public Agency**, hereinafter referred to as “JPA” and **SAIC Energy Environment and Infrastructure**, hereinafter referred to as “Consultant.”

RECITALS

A.

The JPA and Consultant desire to amend and restate the Consultant Agreement dated September 14, 2010 as amended by Amendment Nos. 1-3 to terminate interim program management services and to engage the Consultant in accordance with the terms and conditions set forth herein to provide West Haymarket Redevelopment Program Management Services (“Program Management Services”) and Project Management Services for the New Arena (“Arena Project Services”) in connection with the design and construction of multiple facilities including the Arena near downtown Lincoln, Nebraska as more fully set forth in Exhibit A attached hereto.

B.

Consultant hereby represents that Consultant is willing and able to perform the Program Management Services and is willing and able to perform the Arena Project Services through a subcontract with PC Sports in accordance with the PC Sports Scope of Services attached to Exhibit A.

C.

Since a portion of the Scope of Services will in part be carried out on BNSF Railway Company (“BNSF”) property pursuant to various temporary licenses (“Licenses”) granted or to be granted by BNSF to the JPA as set forth in the Master Development Agreement (“Master Agreement”) between the JPA and BNSF, such work is subject to the terms and conditions of the

Master Agreement, the Licenses and the Construction and Maintenance Agreement (“C&M Agreement”) between BNSF and the JPA.

D.

Consultant hereby acknowledges that Consultant is deemed to be the JPA’s agent under the Licenses and, as such, is required to comply with the restrictions imposed on the JPA as licensee in the Licenses.

E.

The use of the term “City of Lincoln” in the Master Agreement, the Licenses, the C&M Agreement are deemed to refer to the JPA as the Assignee of the City of Lincoln.

F.

The Master Agreement, the C&M Agreement and the form of the various Licenses to be granted to the JPA are on file in the office of the City Clerk for the City of Lincoln, Nebraska.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree that this Amendment No. 4 terminates the interim program management services as of March 24, 2011, and amends and restates the Consultant Agreement to read as follows:

I. ADMINISTRATOR OF AGREEMENT

Dan Marvin shall be the JPA’s representative for the purposes of administering this Agreement and shall have authority on behalf of the JPA to give approvals under this Agreement. James Martin will supervise all services and be in charge of performance of the Consultant’s Services as set forth in this Agreement.

II. SCOPE OF SERVICES

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the Program Management Services and the Arena Project Services as set forth

in Exhibit A. In the event there is a conflict between the terms of Exhibit A and this Agreement, the terms of this Agreement shall control.

III. TERM OF AGREEMENT

The term of this Agreement for the Program Management Services and the Arena Project Services shall commence on March 25, 2011 and March 1, 2011, respectively, and said terms shall continue until completion of all obligations of this Agreement, but in no event later than August 31, 2013.

IV. COMPENSATION

The JPA agrees to pay Consultant for the Program Management Services, the Arena Project Services, and the additional Consultant services set forth in Consultant's March 3, 2011 letter attached to Exhibit A, a total fixed fee of \$4,390,977.00. The method of payment and any increase and/or reduction in said fixed fee are governed by the provisions set forth in the March 3, 2011 letter.

Failure of the JPA to accept the recommendations or work of the Consultant on the basis of differences of professional opinion shall not be the basis for rejection of the work performed by the Consultant or for nonpayment of the Consultant.

V. SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval of the JPA or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

VI. NON-RAIDING CLAUSE

Consultant shall not engage the services of any person or persons presently in the employ of the JPA or the City of Lincoln for work covered by this Agreement without the written consent of the JPA.

VII. TERMINATION OF AGREEMENT

A. This Agreement may be terminated by the Consultant if the JPA fails to adequately perform any material obligation required by this Agreement (“Default”). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from the Consultant specifying the nature of the Default.

B. The JPA may terminate this Agreement, in whole or part, for any reason for the JPA’s own convenience upon at least ten days written notice to the Consultant.

If the Agreement is terminated by either the JPA or Consultant as provided in VII. A or B above, Consultant shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

Consultant hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this paragraph in the event of termination.

Further, Consultant agrees that, upon termination as provided in this paragraph, it shall not be employed by any developer or other party who is or may be interested in the work effort as defined in Article II, or interested in the decisional process relating to the application of such findings as may result from the tasks performed as defined in Article II for a period of one (1) year after such termination, without prior approval of the JPA.

VIII. ADDITIONAL SERVICES

The JPA may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are

mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

IX. FAIR EMPLOYMENT

In connection with the performance of work under this Agreement, Consultant agrees that it 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 in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and *Neb. Rev. Stat.* § 48-1122, as amended.

X. FAIR LABOR STANDARDS

The Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statutes, as amended.

XI. ASSIGNABILITY

The Consultant shall not assign or subcontract any interest in this Agreement, except for the work to be subcontracted with PC Sports, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the JPA thereto; provided, however, that claims for money due or to become due to the Consultant from JPA under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

XII. INTEREST OF CONSULTANT

Consultant covenants that Consultant presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Consultant further covenants that in the performance of this

Agreement, no person having any such interest shall be employed or retained by Consultant under this Agreement.

XIII. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Consultant agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without the express written consent of JPA.

JPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the City deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.

XIV. COPYRIGHTS, ROYALTIES & PATENTS

Without exception, Consultant represents the consideration for this Agreement includes Consultant's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement. Further, Consultant shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Consultant shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights that Consultant has used in the course of performing this Agreement.

XV. COPYRIGHT; CONSULTANT'S WARRANTY

A. Consultant represents that all materials, processes, or other protected rights to be used in the Consultant Services have been duly licensed or authorized by the appropriate parties for such use.

B. Consultant agrees to furnish the JPA upon demand written documentation of such license or authorization. If unable to do so, Consultant agrees that the JPA may withhold a reasonable amount from Consultant's compensation herein to defray any associated costs to secure such license or authorization or defend any infringement claim.

XV. INDEMNIFICATION

A. Indemnification of JPA.

To the fullest extent permitted by law, Consultant shall release, indemnify, defend and hold harmless JPA and JPA's members, successors, assigns, legal representatives, officers, employees and agents for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs and attorneys' fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity directly or indirectly (collectively, "Liabilities") arising out of, resulting from or causally related to (in whole or in part):

(i) Any rights or interests granted to Consultant pursuant to this agreement;

(ii) The use, occupancy or presence of Consultant and Consultant parties (defined below) and/or any work performed by Consultant and Consultant's contractor parties in, on, or about BNSF's property or right-of-way and/or the work area;

(iii) Any environmental matters arising from Consultant and/or Consultant parties' use and occupancy of BNSF's right-of-way or other BNSF property, including without limitation use and occupancy of BNSF's right-of-way or other BNSF property in connection with performance of the work;

(iv) Any damage to or destruction of any telecommunication lines in connection with the work by Consultant and/or Consultant parties, including but not limited to (a) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees as a result of such damage or destruction, and/or (b) any claim

or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies) as a result of such damage or destruction;

(v) Consultant's breach of the terms and conditions of this agreement; or

(vi) Any act or omission of Consultant or its officers, agents, invitees, employees or subcontractors (such officers, agents, invitees, employees and subcontractors being referred to herein individually as a "Consultant Party" and collectively, "Consultant Parties"), or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.

The liability assumed by Consultant will not be affected by the fact, if it is a fact, that any damage, destruction, injury or death was occasioned by or contributed to by the negligence of JPA, its agents, servants, employees or otherwise, but excluding claims wholly caused by JPA's sole negligence and excluding claims to the extent that such claims are caused by the willful misconduct or gross negligence of JPA.

B. INDEMNIFICATION OF BNSF. Consultant understands and acknowledges that the Indemnification requirements of BNSF found in the Master Agreement, C&M Agreement and Licenses are in addition to, and not in lieu of, the above obligations of Consultant to indemnify and hold harmless the JPA.

C. CONSEQUENTIAL DAMAGES. Consultant shall not be liable for any indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income of revenue, reputation, or any other consequential damages occurred from any cause of action whatsoever arising under, in connection with or out of this Agreement.

XVI. INSURANCE

Insurance Coverage. At all times during the term of this Agreement, Consultant shall maintain insurance coverage as follows:

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000.00 per occurrence,

and \$10,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by Consultant. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Professional Liability Insurance. Professional Liability Insurance, naming and protecting Consultant against claims for damages resulting from the Consultant's errors, omissions,

or negligent acts. Such policy shall contain a limit of liability not less than Two Million Dollars (\$2,000,000.00) per claims and aggregate.

E. Memorandum of Insurance. All Memoranda of Insurance shall be filed with the JPA showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA, BNSF, the City of Lincoln, and University of Nebraska as additional insureds for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. Such memorandum shall specifically state that insurance policies are to be endorsed to require the Consultant to provide the JPA thirty (30) days notice of reduction in amount, increase in deductibles, or non-renewal of insurance coverage and ten (10) days notice for cancellation for non-payment of premium.

VIII. NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

Joint Public Agency
Attention: Dan Marvin
555 South 10th St., Ste 301
Lincoln NE 68508
(402) 441-7511

SAIC
Attention: James W. Martin
Senior Program Manager
220 The Apothecary
140 N. 8th Street
Lincoln, NE 68508

XIX. INDEPENDENT CONTRACTOR

The JPA is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor and it is expressly understood and agreed that Consultant is not an employee of the JPA and is not entitled to any benefits to which JPA employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or and injury leave.

XX. NEBRASKA LAW

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

XXI. INTEGRATION

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

XXII. AMENDMENT

This Agreement may be amended or modified only in writing signed by both the JPA and Consultant.

XXIII. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XXIV. WAIVER OF CONTRACTUAL RIGHT

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.

XXV. AUDIT AND REVIEW

The Consultant shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

XXVI. FEDERAL IMMIGRATION VERIFICATION

A. If the Consultant is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant 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 USC 1324 a, 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. The Consultant 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. The Consultant 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.

B. If the Consultant is an individual or sole proprietor, the Consultant agrees to complete the United States Citizenship Attestation Form attached hereto as Exhibit B.

C. Public Benefits Eligibility Status Check. If the Consultant is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached hereto as Exhibit C. The Consultant agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, the Consultant shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at the JPA's request. For information on the SAVE program, go to www.uscis.gov/SAVE.

XXVII. REPRESENTATIONS

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, Consultant and the City do hereby execute this Agreement as of the Execution Date set forth above.

**WEST HAYMARKET
JOINT PUBLIC AGENCY**

By: _____
Chair

SAIC

By: _____
Title: _____



March 3, 2011

Mr. Vince Mejer
Director of Purchasing
440 S. 8th Street, Suite 200, SW Wing
Lincoln, Nebraska, 68508-2830

Subject: SAIC (SAIC Energy, Environment & Infrastructure, LLC) Scope of Services and Fee Proposal for West Haymarket Redevelopment Program Management Services and Project Management Services for the New Arena

Dear: Mr. Mejer

Again we thank you for the opportunity to work on such an exciting program. We are pleased to submit a revised proposal to provide Program Management Services for the overall West Haymarket Redevelopment and Project Management Services for the New Arena. SAIC will staff the overall Program Management part of the contract and as directed by the JPA we will subcontract the New Arena Project Management Services to PC Sports. In addition to the program management services outlined in the Revised Attachment A dated March 3, 2011 we have been asked by the JPA to provide design peer reviews on the New Arena as the design is progressed plus 300 hours of engineer of additional support as requested by the JPA.

Revised Attachment A, Scope of Services includes any clarifications regarding the individual tasks (as defined by the City of Lincoln) as it relates to our proposed fee and if no clarifications were necessary we noted the task as being agreed by us. Item 1.28 was added to the Attachment to address the JPA's request for on-site observation of construction activities for both the Program level projects and for the New Arena. Our proposed fee includes 2500 hours of construction observation.

Also attached is a copy of the Scope of Services and fee from PC Sports. It is our understanding that their Scope of Services and fee have been preapproved by the JPA. Their proposed fixed price fee is \$913,500.00 which includes \$88,500.00 of out-of-pocket expenses including travel, per diem, office supplies, cell phone, parking and other misc project expenses as defined in their letter to SAIC and Mr. Dan Marvin dated February 7, 2011. Please disregard the fee amount included in PC Sports addressed dated February that was only addressed to Mr. Dan Marvin. In addition, SAIC will be providing PC Sports with free office space, document control/management support and administrative support. We will also be providing administrative support to Mr. Dan Marvin and the JPA.

We propose a fixed priced fee of \$3,477,477.00 including \$108,000.00 of expenses for services provided by SAIC to accomplish the tasks outlined in Revised Attachment A plus the design peer reviews plus a maximum of 300 hours of additional engineering support as requested by the JPA. If at the end of our contract we have not provided at least 300 hours of additional

engineering support we will modify our contract fee downward to reflect the hours not utilized. Expenses include reproduction of construction documents (1 set for each project submittal plus updated documents during the construction phase of each project) and reproduction of bi-weekly reports and ten round trips in support of the peer reviews and additional engineering support.

SAIC's fee is based on services provided from March 25, 2011 through August 31, 2013 and PC Sports' fee is based on services provided from March 1, 2011 through August 31, 2013. Any services beyond August 31, 2013 will be provided as an additional service at a fee negotiated at the time an extension is requested.

SAIC's fee is based on the following staffing:

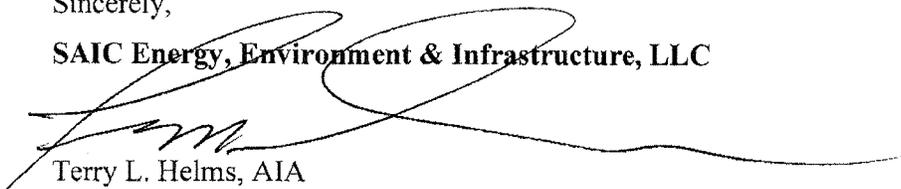
- Full time Program Manager
- Full time Infrastructure Manager
- 2500 Hours of On-site Construction Observation (provided by either local part-time personnel or supported by another SAIC office)
- Full time Documents Control Person to support the SAIC team and PC Sports
- Full Time Administration person to support the SAIC team
- Full time Administration person to support PC Sports and the JPA point of contact
- Architectural and Engineering reach back staff with experience on arena projects from our Oklahoma City office (includes 3 peer reviews during the design phase of the arena plus 300 hours of as requested support)
- Share Point weekly and monthly support staff for an average of 15 hours per month for 29 months.

The SAIC portion of our proposed fee is based on the staffing outlined above. If any additional staffing is required based on additional services requested by the JPA and/or City of Lincoln those services will be provided at an agreed upon hourly rate or fixed price for the additional service. Likewise, if the JPA and/or City of Lincoln request a reduction in our services we will modify the contract fee to account for the reduced scope of services.

Our total proposed fixed price fee of \$4,390,977.00 (including SAIC and PC Sports) is to be paid in 1 payment of \$30,450.00 for services rendered by PC Sports for March 2011 and 29 equal monthly payments of \$150,363.00 for services rendered by both SAIC and PS Sports for April 1, 2011 through August 31, 2013..

Sincerely,

SAIC Energy, Environment & Infrastructure, LLC



Terry L. Helms, AIA
Corporate Vice President

REVISED ATTACHMENT A
March 3, 2011

1. SCOPE OF SERVICES

- 1.1 All work necessary to *coordinate the progress and budget controls for the Arena* opening in the fall of 2013, on time and within budget.

We agree to use our best efforts to coordinate the progress and budget controls for the arena opening in the fall of 2013, assuming that the Arena Project Manager reports directly to SAIC.

- 1.2 Continue to meet with the JPA project team to review the scope of required services and expectations, obtain background information, and establish a sequence leading to program completion.

We agree.

- 1.3 Prepare a strategic plan that defines in detail the Consultant's and JPA's mutually agreed understanding of project scope, objectives and schedule, including budgetary information and meet with the program team to review the memorandum.

We submitted this plan as part of our report submitted on January 20, 2011.

- 1.4 Must obtain sufficient understanding of all program project site design teams' scopes of work in order to properly track the status and to coordinate timing and cost schedules, review and approvals, permits, issuance of contract documents for bidding, award schedules and all elements necessary for the transition from designs into construction.

We agree to track the status and coordinate the timing of the above tasks and to assist the program team, including the JPA and city staff, in their execution. It is our understanding that Mortenson has been retained to prepare and track the Master Schedule for the entire Program as well as the New Arena.

- 1.5 Establish a timely mechanism emphasizing communications of critical progress issues (cost, time, and materials) and change orders between projects and communication to the JPA.

We agree to issue a detailed report at the end of each month, a summary-level mid-month report and to deliver an oral report to the JPA meeting on a schedule of their choosing.

- 1.6 Coordination with each of the program construction activities and general

site logistics as needed for the complete program list and submit and record your findings to Dan Marvin.

We will work with the general contractor for each project as well as the City of Lincoln staff to coordinate general construction activities.

- 1.7 Establish a Documents Management System that shall emphasize electronic based systems and possess searchable features. This shall be a central depository.

We have already established an electronic Documents Management System that is searchable by document title or date created, but is not searchable with the body of the document for an individual word.

- 1.8 Shall provided oversight of the program to assure *daily progress reports*; modifications and updates; analysis of the full impacts of scheduling decisions on budget; *financial records are in compliance with City, State and Federal requirements*; and coordinate access and emergency response to Lincoln Fire and Police with the JPA's manager.

We agree to acquire and post to the West Haymarket SharePoint site any and all reports from all of the design teams and contractors, whether daily or otherwise. We agree to publish our own reports per Item 1.5 above. We agree to coordinate with the Lincoln Fire and Police Departments. We will assist the City's Finance Department to keep accurate financial records for the design and construction of the program projects, but cannot ensure that the City of Lincoln's record keeping policies are in compliance with any particular authority having jurisdiction.

- 1.9 Prepare and distribute, in a timely manner to all parties involved, a detailed project procedures manual to provide orientation, guidance and directives for all key representatives of the publicly and privately funded contracts working with the program.

This document was created and published on January 20, 2011.

- 1.10 Prepare and insert in the project procedures manual protocols for coordinating site traffic, deliveries, demolitions and construction of the program tasks.

See 1.9 above. As new information is received, it will be updated in the Manual.

- 1.11 Coordination of Project Site construction activities, construction access, circulation, staging, sequencing, and general site logistics.

We agree.

- 1.12 Identification of priorities and activities required by all participants in concert with the activities of the various contractors.

We agree.

- 1.13 Provide *value engineering services* during the design and construction phases.

We agree to lead the team's efforts at value engineering during design and constructions. Any formal value engineering services performed by SAIC's architects or engineers will be billed as an additional service at the hourly rates agreed upon for such services.

- 1.14 Coordination and tracking of program schedules with the assigned scheduler, approved by the JPA.

We agree.

- 1.15 Provide arena project manager oversight as approved by the JPA.

We agree, this service will be provided by our sub-consultant PC Sports.

- 1.15.1 This includes scope of services and costs

We agree, this service will be provided by our sub-consultant PC Sports.

- 1.16 Develop a concise budget/cost model and meet with the appropriate parties to discuss and refine them as project progresses.

We submitted this as part of our report on January 20, 2011.

- 1.17 Review responsibilities and compliance with safety programs of each contractor.

We agree.

- 1.18 Maintain and keep updated a centralized master record of all insurance policies.

We agree to keep a record of all insurance policies obtained from the City's Purchasing, Law and/or Risk Management Departments.

- 1.19 Within the procedures manual record and maintain the safety procedures to be followed by each contractor.

We agree.

- 1.20 Prepare and record general housekeeping duties and responsibilities.

This task is not included in our fee since this is an open end service request that cannot be defined, thus a fee cannot be identified.

- 1.21 Interface weekly with the Public via website, media and weekly and reports to the Mayor, and JPA as requested.

We agree.

- 1.22 Coordination with the project managers of each project to ensure the timely, fiscally restrained completion of the individual projects in a safe and efficient working environment for construction workers, other employees, neighborhood residents, businesses and visitors.

We agree to use our best efforts to assist the project managers, understanding that the actual schedule of work performed and the safety of the working environment is the direct responsibility of the individual contractors.

- 1.23 Work closely with the JPA and City's representatives of various Departments and other interested parties on operations issues.

We agree.

- 1.24 Establish a physical presence including adequate office space for records and staff oversight.

We agree.

- 1.25 Shall establish a full and complete data and records management

This is the same at 1.7 above.

- 1.25.1 Information in this system shall be able to be retrieved by more than one option.

See Item 1.7 above.

- 1.26 Work with the City in developing any additional RFP's and help negotiate any additional contracts and/or amendments as requested.

We agree.

- 1.27 Other services not mentioned herein for assisting with implementation of these projects will be at the JPA's discretion and may include technical, financial, operations, and support activities.

We agree.

- 1.27.1 Continuation of any of these services will be dependent upon the need and the working relationship of the performance and willingness to negotiate a fair and reasonable contract for additional work.

We agree.

- 1.28 Provide on-site observation of construction activities for Program level projects and for the New Arena as requested.

We agree to provide 2500 hours of observation of construction activities for Program projects and for the New Arena. Additional hours will be provided on an hourly fee.



February 7, 2011
Revised February 21, 2011

Mr. Daniel K. Marvin
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

Mr. Terry Helms
SAIC Energy, Environment & Infrastructure, LLC
9400 N. Broadway, Suite 300
Oklahoma City, OK 73114

Re: Proposal to Provide Project Management Services
New West Haymarket Arena, Lincoln, Nebraska

Dear Mr. Marvin and Mr. Helms:

PC Sports is pleased to present this proposal to provide project management services in support of the Benham Group for a new community arena to be located in Lincoln, Nebraska. Paula Yancey, PMP, LEED AP, will be PCS's officer-in-charge for this project and will represent PCS in all matters of coordination, decision and policy pertaining to our services on the project. Paula Yancey will be stationed on site throughout design and construction of the project and will be furnished office and administrative support by the Benham Group. Paula recently became the majority owner of PCS and is in the process of registering the company as a Woman Owned Business Enterprise (WBE).

We propose to provide the services as outlined in the attached scope document for a fixed fee of \$913,500 based on commencing work March 1, 2011 and completing our services on August 31, 2013, a total of 30 months. Our fee for personnel services will be billed monthly at the rate of \$30,450 per month. Any out-of-pocket reimbursable expenses are included in the fixed fee. It is assumed that office space and administrative personnel are provided by the Benham Group.

Attached to this proposal is a general Scope of Services we would provide to Benham and the City on this project. We are open to tailoring these services to provide the optimum support required to make this project a success. We look forward to working with you on this exciting project.

Very truly yours,

Paula L. Yancey

Paula L. Yancey

Attachment: Scope of Project Management Services



February 7, 2011

Mr. Daniel K. Marvin
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

Re: Proposal to Provide Project Management Services
New West Haymarket Arena, Lincoln, Nebraska

Dear Mr. Marvin:

PC Sports is pleased to present this proposal to provide project management services in support of the Benham Group for a new community arena to be located in Lincoln, Nebraska. Paula Yancey, PMP, LEED AP, will be PCS's officer-in-charge for this project and will represent PCS in all matters of coordination, decision and policy pertaining to our services on the project. Paula Yancey will be stationed on site throughout design and construction of the project and will be furnished office and administrative support by the Benham Group. Paula recently became the majority owner of PCS and is in the process of registering the company as a Woman Owned Business Enterprise (WBE).

We propose to provide the services as outlined in the attached scope document for a fixed fee of \$935,000 based on commencing work March 1, 2011 and completing our services on December 31, 2013, a total of 34 months. Our fee for personnel services would be billed monthly at the rate of \$27,500 per month. In addition to the fee for services, we would bill for out-of-pocket expenses at cost. If office space and administrative support is provided at no cost to PC Sports by the Benham Group, we estimate our reimbursable expenses at less than \$100,000.

Attached to this proposal is a general Scope of Services we would provide to Benham and the City on this project. We are open to tailoring these services to provide the optimum support required to make this project a success. We look forward to working with you on this exciting project.

Very truly yours,

A handwritten signature in cursive script that reads "Paula L. Yancey". The signature is written in black ink and is positioned above the printed name.

Paula L. Yancey

Attachment: Scope of Project Management Services

**PC Sports
Scope of Services
Lincoln Arena**

General Services

1. Review and evaluate Owner's expectations, needs and objectives. Based on this review and evaluation, assist the Owner in developing Project criteria and program. Confirm that the Owner's needs and objectives are fully documented and determine who is responsible for updating the criteria and program.
2. Develop an overall Project Plan, including organizational charts, lines of authority and control, descriptions of decision-making procedures, identify responsibilities among the Owner and other Project Participants.
3. Assist the Owner in determining government and agency requirements applicable to the Project and assist the Owner in obtaining necessary approvals.
4. Estimate Project costs. Develop and update; an overall Project Budget. Advise and assist the Owner with Project cash flow and financial management
5. Develop and implement Project communications and reporting procedures and formats.
6. Develop and implement Project document control and technology systems.
7. Assist with development and implementation of Project public and community relations procedures and controls. Be accessible to the Owner's public relations representatives; participate in briefings and public events.
8. Oversee implementation of quality assurance and control systems and procedures. Monitor compliance with systems and procedures and act on the Owner's behalf in correcting noncompliance as requested by Owner.
9. Assist with development of claims avoidance and claims resolution procedures. Investigate claims and make recommendations. Monitor claims resolution and advise the Owner. Assist the Owner with prosecution and defense of claims (including fact and/or expert witness testimony).
10. Oversee development and implementation of Owner's Insurance/Bonding Program. Review insurance and bonding submissions by Project Participants for contract compliance.
11. Develop and implement an overall Procurement Plan for the Project which shall include procedures for prequalification, selection, procurement, management and payment of designers, contractors, suppliers and consultants and other Project Participants.
12. Organize service, construction and vendor packages; act as the Owner's representative in soliciting interest and bids for such packages and in bidding and negotiations; issue contracts following Owner's approval.
13. Act as the Owner's representative in managing contracts with designers, contractors, suppliers, consultants and other Participants.
14. Review applications for payment and recommend adjustments and payment in this, and subsequent, Project phases.

Design Phase Services

1. Develop the procedures to be followed by Project Participants for establishing design standards and criteria based on the overall Project Plan.
2. Develop the procedures to be followed by Project Participants for establishing Project design schedules based on the overall Project Milestone Schedule.
3. Advise the Owner concerning prequalification and selection of professional consultants.
4. Advise the Owner concerning deviation by any Project Participant from applicable governmental codes, requirements and approvals for Project to the extent PCS becomes aware of such noncompliance, it being understood PCS has no responsibility for making any such investigation or determining compliance.
5. Coordinate the activities of designers, consultants and other Project Participants; organize and lead regular progress and design development meetings.
6. Coordinate the insurance professionals advising the Owner concerning implementation of adequate professional insurance coverage, including coverage for professional errors and omissions.
7. Develop and implement a design procurement and payment plan; negotiate any future design contracts; assist in preparation of those contracts.
8. Oversee implementation and management by Project Participants of reviews for constructability and environmental enhancements.
9. Implement, manage and advise the Owner, designers and others concerning value engineering and cost savings.
10. Assist the Owner in identifying, in consultation with Project Participants long lead procurements.
11. Advise the Owner in the development of health, safety, environmental and technology criteria established by Project Participants consistent with the overall Project Plan.

Construction Phase Services

1. Oversee development of construction standards and criteria established by Lead Design/Construction Professional based on the overall Project Plan and monitor implementation.
2. Evaluate Project construction schedules and updates; monitor implementation, compliance with overall Project Milestone Schedule, construction schedules and long lead items. Advise the Owner concerning scheduling changes and questions.
3. Cause to be developed and updated the Project construction budgets.
4. Monitor procurement of all required construction phase governmental permits and approvals.
5. Oversee development and implementation of Project inspection and testing plans; monitor Project quality assurance and control; advise the Owner as to quality compliance and corrective action.

6. Oversee implementation of insurance coverages for liability, contractual indemnification, builder's risk and other necessary insurance as recommended by Owner's insurance professionals.
7. Except with respect to subcontractors of Lead Design/Construction Professionals, implement Project procurement and payment plans including prequalification and selection; manage the bidding and Contract negotiation processes; negotiate construction contracts on the Owner's behalf; assist in preparation of construction contracts; examine contracts for compliance with Project Insurance, bonding and other Owner requirements.
8. Develop, implement and monitor Project closeout procedures.
9. Monitor coordination of design, construction and procurement and advise the Owner concerning coordination questions.
10. Oversee the processing and evaluation of requests for information, change requests, submittals, notices, claims and other communications between designers, contractors, suppliers and consultants. Act as the Owner's representative for responses to same and managing change orders.
11. Implement and manage document control and retention practices for Project communications.
12. Review and provide oversight of work performed in the field.

Post-Construction Phase Services

1. Participate in, and advise Owner concerning, Substantial Completion and Final Completion.
2. Monitor and follow-up on punch list and warranty obligations; advise the Owner concerning compliance and assure that documentation is in proper order.
3. Monitor and assist with Project acceptance, start-up, and commissioning.
4. Assist in obtaining and evaluating record drawings.
5. Assist in developing and implementing a maintenance program prepared by others.
6. Assist in obtaining operating and maintenance manuals. Advise Owner on compliance by construction Participants in the delivery of such manuals, It is understood and agreed that PCS has no obligation to review or evaluate the contents of such manuals for Substantive compliance as to their terms and provisions, but if PCS becomes aware of any material non-compliance, PCS will so advise the Owner.
7. Monitor and advise the Owner concerning facilities orientation, training and turnover.
8. Monitor the procedures necessary to obtain, and advise the Owner concerning, certificates of temporary and final occupancy.

**UNITED STATES CITIZENSHIP ATTESTATION FORM
FOR INDIVIDUAL CONSULTANT
(to be used pursuant to Section XXVII.B)**

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

OR

I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of the USCIS (United States Citizenship and Immigration Services) documentation upon request required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States. I understand and agree that lawful presence in the United States is required and the consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

**UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT
(to be used pursuant to Section XXVII.C)**

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

OR

I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I
agree to provide a copy of my USCIS (United States Citizenship and
Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____