

REVISED
AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, July 15, 2011 AT 3:30 P.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
Room 112
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 June 24, 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 June 2011 Expenditure Reports (Don Herz)
 - Public Comment
7. Update on the next JPA bond issue (Don Herz and Scott Keene)
 - Public Comment
8. Bill No. WH 11-45 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (existing Watson Brickson site) (Marvin/Austin)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution.)
9. Bill No. WH 11-46 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (stormwater mitigation site/conservation easement) (Marvin/Austin)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution.)
10. Bill No. WH 11-48 Resolution delegating to the Project Manager/Secretary of the West Haymarket Joint Public Agency the power to execute Change Orders to contracts for the provision of services under certain conditions provided that the fiscal impact will be \$25,000.00 or less and delegating to the Chair of the West Haymarket Joint Public Agency the power to execute Change Orders to

contracts for the provision of services under certain conditions provided that the fiscal impact will be \$100,000.00 or less (Marvin)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the resolution.)

11. Bill No. WH 11-54 Resolution to approve the Management Services Agreement between the West Haymarket Joint Public Agency and Marvin Investment Management Co. to render professional assistance in management oversight of the West Haymarket Redevelopment Project for a one year term from June 15, 2011 through June 14, 2012, with the option to renew for one additional year (Peo)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the resolution.)

12. Bill No. WH 11-55 Resolution to approve cancellation of SAIC contract (Marvin)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the cancellation.)

13. Bill No. WH 11-56 Resolution to approve PC Sports agreement to provide interim services (Marvin)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the agreement.)

14. Bill No. WH 11-57 Resolution authorizing Jayne Snyder to execute on behalf of the West Haymarket Joint Public Agency the Corporation Warranty Deed and all closing documents associated with conveyance of City Parcel One and City Parcel Two to Star City Federal LLC and the Star City Parcel to the West Haymarket Joint Public Agency (Peo)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the resolution.)

15. Bill No. WH 11-58 Resolution approving Change Order No. 3 to the TCW Construction Inc. agreement regarding the 10th and Salt Creek Roadway Haymarket Infrastructure Improvement Project to reflect additional cost due to unforeseen conditions and delays resulting in a contract increase amount of \$24,522.82 (Blahak)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the resolution.)

16. Bill No. WH 11-59 Resolution approving Change Order No. 1 to the Judds Brothers Construction Company agreement regarding the Initial Haymarket Site Preparation Project and the USPS Parking Lot Reconstruction Project to reflect additional work and quantities resulting in a contract increase amount of \$589,410.79 (Blahak)

- Public Comment
- (Staff recommendation is for the JPA Board to approve the resolution.)

17. Set Next Meeting Date: **Friday, July 29, 3:30 P.M. (Room 112, City Council Chambers)**

18. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
June 24, 2011

Meeting Began At: 3:32 P.M.

Meeting Ended At: 5:34 P.M.

Members Present: Tim Clare, Jayne Snyder, Chris Beutler

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

Chair Snyder opened the meeting with introductions of the Board members. She 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 announced that public comment is welcome. Individuals from the audience wishing to speak will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should come forward, identify themselves for the official record and sign in, and comments need to be relative to the item on the agenda.

Item 3 – Approval of the minutes from the JPA meeting held June 2, 2011

Snyder asked for any corrections or changes to the meeting minutes of June 2, 2011. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Jim Martin, SAIC Program Manager, detailed the progress on the West Haymarket. Arena design development is on schedule. Mortenson-Hampton are in the process today of interviews for the critical building packages and subsystems. The local participation is excellent, and teaming with extremely top-notch contractors, so all good news. 10th and Salt Creek infrastructure project is ahead of schedule. There have been change orders, but that is to be expected on similar road projects. Initial site preparation is underway moving a lot of dirt as fast as possible. This is for Phase I from 'R' Street north -- which is the arena site. The target date is to turn that over by September 15 to start arena construction. Phase II work on the site preparation will start as soon as the contractor is able. That is from 'R' Street south to 'O' Street. We are moving a couple of utility lines. We obtained a temporary construction easement this last week for the USPS property that enables us to start on some of the work. The actual purchase needs to happen no later than August 1. Lincoln Electric will be bringing the arena temporary service along that line so that is on our critical path. Systematic design for Parking

#1, between 'R' and 'Q' Streets, has been reviewed. It is much better looking than anticipated, so we are very pleased. Parking #2, which has the foundation shared with District Energy, is on track to keep the District Energy plant on track. Not quite so concerned about the parking structure, but we have to have that foundation done so District Energy can provide the heating and cooling in the winter and spring of 2012-2013 for interior finish work to progress. Charleston Street Bridge and roadway design project work has been deferred. There are a number of factors influencing this hold. Our goal is not to move faster than the speed of accuracy. The plan is to wait as some projects contemplated by the State may be back on track, we need to look at parking capacity of the festival space, and we need to determine where this needs to meet the festival space. We will update you in a couple of months when we have further information. On the Amtrak Station the 90% final design was submitted to Amtrak and BNSF. Contractually they have 30 days to respond. We are expecting approval as we have been working with them as we progressed. LHIT, and in particular Sinclair Hille, has been leading that effort. Some of items Amtrak wants us to do were not contemplated in 2008. That work is scheduled to start in October of this year. An environmental remediation study is underway to categorize the soils between 'R' and 'O' Streets. And, very soon the same type of soils study will be done on the festival space north of the tracks so we know what to anticipate to plug into our schedule. We haven't found anything except what you would find in an old railroad yard. The remediation that we need to do so far is below budget. Remaining infrastructure projects are in various stages of progress. We will be kicking off a small study (about \$19,000 apiece) to see if we can provide some temporary or very inexpensive solutions at 1st and Salt Creek, West 'O' Street and Sun Valley Blvd. if case the State cannot proceed or if it is fifteen years out in the future. The entire team and program is being very diligent on time and budget. BNSF is slightly behind due to the flooding along the river, but they say they will be caught up by fall and report the 2012 target dates are anticipated to be met. These are critical dates to our success. Finalization of contracts with Watson Brickson and USPS are also critical as cannot start construction if not owned.

Item 5 – Approval of Payment Registers

Don Herz, City Finance Director, presented the May financial reports to the Board. There are two pages of payments totaling 1.73 million, in addition to the \$44,000 payment register for the Engineering costs. On the payment registers the first item is a payment to Building and Safety for impact fees. There may be a rebate on that amount as the building that is going to use this may be slightly smaller. The remainder of payments are typical payments, so will answer any questions on those. Clare asked for clarification on the five payments to Urban Development. Don responded that those payments are to pay Urban Development for the time spent on relocation work they do for the project, such as negotiations with property owners to the south of 'O' Street. Snyder clarified that the JPA does reimburse the City for work done on their behalf, such as the time spent by Law and Public Works staff on Haymarket activities. So you will see a transfer of money as the JPA is a separate entity from the City. Don confirmed that was correct. Some of the expenses are charged to the \$500,000 administrative budget. You will see those under the project number – anything with the number of 06095 gets charged to the operating budget. Anything else gets charged to the capital budget to specific projects. Clare asked for confirmation that May registers are within budget. Don stated that he can say that is true so far.

As we get into infrastructure bids, we'll be adjusting projects to stay within that budget and have a better idea of overall costs.

Jayne Kinsey came forward from the audience to ask about the \$35,000 to UP wondering if that was the same money mentioned a couple of weeks ago or extra money. Snyder responded she did not think it was the same. The amount to Burlington Northern Sante Fe Railroad is settled at \$3.4 million to be made in three payments. Rod Confer from Law stated that this is not the same monies, but part of original costs.

Snyder asked for any further 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 May 2011 Expenditure Reports

Don Herz noted that the first item on this job cost report is for \$8,700 which could be classified as administrative costs that are not allocated to specific projects. Right now \$2.2 million in expenses is primarily comprised of some payments for insurance, billings to SAIC, some overhead charges from a few staff at Engineering Services, and the LHIT contract. These are not specifically allocated to an infrastructure contract. One way to deal with this is to move dollars out of the capital budget for the fiscal year, which will be signed September 1, to this line item on an allocation process to cover those costs. This is a much more streamlined method than attempting to allocate charges to specific projects by journal entries for each of these expenses. Clare questioned if there would still be a description of what that money was used for and to whom it was paid. And, if this would just be a matter of how the expenditures are booked? Don assured the Board that this was the case. With the new capital budget we know that we need to increase or decrease certain items and this will be part of that process and this is all part of modifying the budget for the upcoming fiscal year. Looking at page 1 of the expenditure report, Snyder asked about the miscellaneous operating expense of \$336,312. Don explained that that is the operating budget. There will also be an operating budget come forward for the next fiscal year to cover essentially City staff costs. This line item is for the Assistant City Controller and Law Department staff. The JPA is treating those as miscellaneous contractual services and reimbursing for those expenses. Clare asked about legal services shown. Don confirmed these are to reimburse City Law Department.

Item 7 -- Bill No. WH 11-45 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (existing Watson Brickson site). (Marvin/Austin)

Item 8 -- Bill No. WH 11-46 Resolution to approve the Land Purchase Agreement with Jaylynn, L.L.C. (stormwater mitigation site/conservation easement). (Marvin/Austin)

Items 7 and 8 were called together. Dan Marvin requested a delay on these two items until the next JPA Board meeting on July 15. Dan explained that we have been in fairly congenial negotiations with Watson Brickson for a number of months. They helped us out with some of the timelines with Burlington Northern and signing off on agreements to allow removal of the rail spur serving their property. The transactions we are working on will find them a new home on the west side of the tracks. We would be purchasing their property and paying moving

expenses. The new location would have a conservation easement providing no net rise benefit. Additional acres will be available to use for flood storage. One remaining outstanding issue deals with racking. These are the places that the lumber is stacked on top of the racks. There seems to be some confusion on the lineal length of the racks, and we are revisiting the appraisal as the City's end may have been below where it needed to be. Dan is thinking we will be able to solve this amicably.

Clare made a motion to approve the delay WH 11-45 and WH 11-46 until July 15. Beutler seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 11-47 Resolution to approve the Executive and Founders West Haymarket Arena Private Suite Use Agreements as model private suite use agreements (“Model Agreements”) and authorizing the Chair to execute private suite use agreements utilizing the applicable Model Agreement on behalf of the Agency without further action of the Board of Representatives. (Kirkpatrick/Wrigley)

Dan Marvin opened stating he was stepping in for Jeff Kirkpatrick, but Ben Wrigley with CSL Marketing Group was here today. The general idea is to draft a template for suites and then to have a rolling renewal period so that not all of the suites were coming up for renewal at the same time. Once the template is approved, this approved resolution would allow the chair to sign off for the JPA to facilitate these documents as CSL Marketing finds suite holders to occupy the new arena.

Ben Wrigley explained that the Board was given three templates. Two were marked as Founders agreements and the third was marked as Executive agreement. One version of the Founders allows payment over a 10 year period for \$65,000 per year. The second version allows prepayment upfront for a total of \$550,000 prior to opening. That is not a discount, but is the time value of money on the \$65,000 annual amount. The third template marked Executive would work for the remaining suites – the two price classes of \$45,000 and \$55,000. These suites can be purchased on a 5, 7, or 10 year option and they can be amended by removing certain exhibits to match needs of buyers.

Snyder asked about an additional annual fee on the Founders suites. Ben explained that the \$65,000 is the annual fee and the \$550,000 is a substitute option to prepay (equivalent to \$65,000 for 10 years). There is no discount to prepay and either option is equivalent to the other. He expects nine out of ten holders would elect the \$65,000 annual option. Snyder wondered about how the security deposit of \$5,000 was selected as seems somewhat low. Ben said \$5,000 is comparable to what is being asked in comparable venues. This has changed somewhat over time. Also, the agreements do allow for ways to collect additional damages or costs if need be.

Beutler inquired as to whether we used best practice models to construct our model, or if we were deviating away. Ben would have to look at first drafts to answer that. There were somewhere in the neighborhood of nine drafts to get to what is being presented today. Overall, they reflect best practices, but then we looked at local information as well to see what worked in this local market. This included review of Memorial Stadium lease agreements. We thought about who would be operating the facility, and what they could live with as well. In this case,

SMG had a chance to review and weigh in with comments, so their input is reflected in final templates as well. Beutler queried as to whether football suite holders would be surprised or confounded by any provisions in these agreements. He also wondered about the pricing mechanism and if they are priced so as to meet anticipated revenues in our budget. Ben did not think any of the provisions would foster kickback or confusion. They are straight forward agreements. Also, they are set to meet or exceed the budget for suite revenues. The pricing might have been around \$55,000 and this is slightly higher. Once all are sold, revenue expectations will be met on a year one basis. Then, you will want to stagger those rollovers. Whoever is managing those suites would probably start with renewal around year 3.5 for the five year renewals. Based on suite marketing experience, Beutler asked if it was important to offer the same terms to each potential buyer within a suite type, or could each suite be modified to meet the nuisances of the market. Ben answered that the intent would be to be able to maximum revenues by meeting market demands. Beutler continued if it would be accurate to say that, if giving approval to the JPA Chair to approve these agreements, the chair would be approving arrangements that may vary. He was curious as to the intent on variation approval by the chair versus what would need reviewed by the entire JPA Board. Ben reiterated that there could be a couple of different variations within the models. Rick Peo, City Law Department, also explained that the intent is not to have the chair make modifications to the agreements. If there are model terms and conditions, those could be acted upon. If someone wants special provisions, that would need to come back before the Board.

Clare wanted to know about public reception thus far. He was glad to hear UNL was contacted and queried whether or not they had had a chance to review these proposed agreements as to form and content. Ben stated he had met with some prospective suite holders and had good meetings. Once the templates are ready, he will start providing the prospects with documents to review, allowing paperwork processing, and taking in of deposits and payments. The response to fixtures and furnishings have been very well received. They are better and more than expected by the potential suite holders. Although basketball is the main tenant, the event packages and possible events have also started to create a buzz. As far as UNL review of documents, they may not have reviewed the final proposed documents. However, they did sit down with the UNL staff to review the product, discuss the pricing structure, the differences in Founders and Executive Suites, the clauses and how they relate to the tickets, and discussions regarding primary targets. They reviewed the substance behind the agreements. They are very familiar as have maintained very open dialogue and were happy with where we were going.

Snyder notified everyone that UNL will be receiving four suites to utilize as part of our agreement with the University as a tenant.

Rick Peo commented that, for safety sake, we have been preparing administrative orders when a Board member is signing something that is not a resolution, or when Dan Marvin has needed to sign something for the JPA. He would propose the same for any of these licenses or use agreements – that they have an associated administrative order that is reviewed by Law Department on behalf of the JPA for signature. Then it also becomes part of the public record in the City Clerk's Office.

Snyder wondered how the public makes contact if interested in discussion of a suite agreement. Ben gave out his Lincoln phone number as 402-261-9154. His mobile number is 704-904-3955. After approval today, they are ready to start selling.

Joann Murphy, audience member, asked if the University will pay for the four suites and if the City pays for the lease of the two suites reserved for them. Dan Marvin stated that in the negotiated lease agreement with the University they would get control over four suites without payment. The two suites for the City were held back for several reasons. One might be included as part of the negotiations for the naming rights package. The other one might be used for economic development or promotion purposes, or used as a party suite that would be available for sale on a nightly rental. The taxpayers might be able to utilize one suite if available for a nightly rental.

Beutler asked if they were continuing to develop their visual suite model. Ben said they still intend to build a mock up of the suite for promotional purposes to understand the finishes as well as give an overall visual. That is anticipated to be available early fall.

Hearing no further comments or discussion, Clare made a motion to approve WH 11-47. Beutler seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-48 Resolution delegating to the Project Manager/Secretary of the West Haymarket Joint Public Agency the power to execute Change Orders to contracts for the provision of services under certain conditions provided that the fiscal impact will be \$25,000.00 or less and delegating to the Chair of the West Haymarket Joint Public Agency the power to execute Change Orders to contracts for the provision of services under certain conditions provided that the fiscal impact will be \$100,000.00 or less. (Marvin)

Dan Marvin explained that the intent was to create a threshold for review as discussed a few weeks ago. They wanted to borrow on the City process to expedite work by allowing project managers to make the call in the field if appropriate, or have the Chair approve larger dollar amounts under a certain threshold as established by the Board. They have been looking for a way to deal with the unknowns on a day-to-day basis. Beutler asked to hold this resolution until the July 15 meeting to give time for further review compared to current City processes, and be sure we are following similar processes.

Beutler made a motion to delay WH 11-48 until July 15 Board Meeting. Clare seconded the motion. Motion carried 3-0.

Item 11 – Bill No. WH 11-49 Resolution to approve Amendment No. 5 to the Agreement for Engineering Services with Olsson Associates for the Haymarket Infrastructure Design Project providing for completion of the work needed for the USPS Environmental Review and Watson Brickson Recordation, and the purchase of Supplemental Insurance to meet insurance requirements as required by the BNSF Agreement. (Martin)

Jim Martin explained this is part of the contract with the infrastructure team comprised of six of the best design firms in Lincoln. That consortium has provided additional services, similar to the change order needs on construction projects. The legal deal with the Post Office required an

environmental quick study. LHIT retained a specialty company to take a quick look for \$5,614. During negotiations with Watson Brickson our own City historian and State Historic Preservation Office said that the lumber yard needed to be documented for prosperity. That was a specialty possessed by Sinclair Hille, so as part of LHIT there was an \$8,528 study completed and presented. We found that in order to utilize a private crossing or set foot within 25 foot right-of-way of a railroad, BNSF requires a supplemental insurance policy called Railroad Protective Insurance. SAIC received their rider yesterday. The \$50,000 remainder is an allowance for all six LHIT companies to carry the insurance required contractually. It is based on contract value. Responding to Snyder's inquiring, Jim confirmed that the total cost is \$64,142.

Snyder asked for further comment. Being none, Beutler moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 12 – Bill No. WH 11-50 Resolution to approve Amendments Nos. 004, 005, 006, and 007 to the Agreement between DLR Group Inc. and the West Haymarket Joint Public Agency dated September 1, 2010 providing for smoke modeling to assist in the design of smoke control systems for smoke-protected egress paths in the Arena; payment of the customary costs to the design team for expenses identified in the original agreement; the design, coordination and specifications for furnishing and interior design of the specialty hospitality areas in the Arena; and construction services for the ramp and elevated plaza on the east side of the Arena, respectively. (Yancey)

Paula Yancey, PC Sports, summarized these amendments to the contract with DLR Group Inc. These services were all anticipated and provided for within the budget. This is just a final recommendation and agreement to the dollar value for these services.

Amendment 4 is for the smoke modeling. The smoke model for egress path was given to the Fire Marshall to confirm correct sizing of fans. By correctly sizing the fans up front it could potentially save \$600,000 to \$1 million. So the \$47,000 in services is well worth the additional savings on the construction side. Amendment 5 is to give us a budget cap on the amount of reimbursable expenses. Clare asked if we will cap that at a maximum amount per month for the life of the contract and what would happen if they had greater expenses in one month. Also, he thought it was a good idea if they were required to provide documentation on the expenses. Paula said it was capping the total amount and then dividing it for payment monthly. It would be a flat level fee billing to track cash flow. The money is in the budget. They have been asked to retain an audit trail so documentation can be requested if need. Beutler asked if, in Paula's experience, it is usual or unusual to have items in Amendment 006 and 007 not included in the original contract. Paula explained the work was known to be needed, but it was not included until the layout was known, the extension of the pedestrian bridge, and how best to integrate. Waiting allowed for definition of needs. The 006 item is typically an add service due to timing of the project. The 007 items can be options early on in the process or adds later. Here it was not part of the original agreement. As we moved forward, we have been able to quantify and classify the services needed and add to the contract in the appropriate amount. Snyder asked that Paula give a brief background on her company and expertise. Paula explained that PC Sports is a subsidiary company of a project management firm out of San Antonio, Texas, called Project

Control. They started in the sports business in 1999 with the San Antonio Spurs Arena. That is where she began her sports project. PC Sports was formed at that time and since that time she has worked on projects across the country. She recently obtained majority ownership of PC Sports, and is in the process of certification as a women-owned business enterprise.

Being no further discussion or questions, Clare made a motion to accept WH 11-50. Beutler seconded the motion. Motion carried 3-0.

Item 13 – Bill No. WH 11-51 Resolution to approve the Temporary License for Partial Removal of Platform and Canopy and the Temporary License for Arena Shoring and Initial Construction of Footings and Columns between BNSF Railway Company and the West Haymarket Joint Public Agency in order to allow planned construction activities to begin prior to acquisition of the work sites for BNSF. (Peo)

Rick Peo explained this was for two licenses that are under the standard agreement with BNSF. They were not identified as part of the master agreement, but have come up as we need to get onto the property earlier than the date of closing or purchase of those sites. It allows for removal of the platform and canopy in order to extend 'R' Street to the west. The other one allows for foundation work for the arena.

Beutler asked that Rick review if there were any costs associated with these licenses. Rick stated that the only costs are for the flagging services we need to have when doing the work. Otherwise, there are no costs associated with these licenses.

Being no further comments, Beutler made a motion to accept WH 11-51. Clare seconded the motion. Motion carried 3-0.

Item 14 – Bill No. WH 11-52 Resolution to approve Change Order No. 2 to the TCW Construction Inc. Agreement regarding the 10th and Salt Creek Roadway - Haymarket Infrastructure Improvement Project No. 870304 to reflect a number of items that need to be added or changed resulting in a net contract reduction in the amount of \$2,249.22. (Blahak)

Rod Confer, Lincoln City Attorney and counsel for the West Haymarket JPA, gave a prefatory comment that Regent Clare has a conflict of interest on items pertaining to TCW because his law firm represents them. His vote is not necessary on this item as not an arena related item. Clare stated he was going to waive that this time since it is a reduction in the contract.

Chad Blahak, Public Works Department, introduced this change order to the TCW 10th and Salt Creek roundabouts project. It results in a net reduction to the contract. He put up a map of the area (see Map 1). There was a large item that resulted in a decrease. The sidewalk that was originally shown on the plans to come down the east and the south side of the INS (CIS) Building was eliminated due to unsuccessful negotiations with the property owner, Star City Federal. That is where the reduction was realized. The other items with increases are frequently found on construction projects where you are working underground. Some of the larger items with additional costs included the need for additional crushed concrete materials to aid in

stabilization of the sub grade and an old building foundation removal below ground. Also, there was a discrepancy in the “as built” plans for some of the drainage structures associated with the 10th Street Bridge. Those had to be reworked to facilitate proper drainage. Showing on this change order are also the incentives for this project. Incentives were appropriate for this project due to scheduling sensitivity needs and the start of the football season. The contractor has so far officially hit two of the four phases ahead of schedule. On the 8th Street extension, they received the \$7,000 maximum incentive. On the Star City Federal or INS Building area, they received \$7,000 of the \$10,000 incentive possible. The other two phases have not come through yet. Assuming weather cooperates, they will be out on time. Beutler asked if this roadway will be able to be used as soon as it is built and continue to be used throughout the rest of the construction. Chad confirmed for the most part that is true. Substantial completion means open to the public. The two roundabouts will be open to the public. 8th Street opening is undecided as it does not facilitate a lot of traffic. 8th Street north of the driveway parking lot may remain closed to facilitate construction and materials to and from the arena pad site. Snyder asked about the concrete bikeway taken off for \$50,000 and then the \$15,000 added. Chad explained that there are two categories -- additional items for the change order and quantities adjustment. Quantities adjustment eliminates all of the quantity for what is labeled as a 5” bikeway. This is simply a 5’ sidewalk labeled as a bikeway to differentiate it from a standard sidewalk. It is not part of the trails system. It simply would have replaced a typical sidewalk with a wider pedestrian walkway. It decreased the quantity by 75%. With that large of an adjustment to quantity, it sometimes makes sense to adjust the unit price on a contract. In this case, the unit price was increased a small amount due to the decrease in quantity. On a future contract you will see the opposite happen where we negotiated a decreased a unit price. There is an existing 4’ wide sidewalk that will remain. The wider sidewalk would have accommodated the heavy football traffic on game days and fairly heavy school pedestrian traffic.

Being no further discussion or questions, Beutler made a motion to adopt the resolution. Clare seconded the motion. Motion carried 3-0.

Item 15 – Bill No. WH 11-53 Resolution to approve a Contract with T.J. Osborn Construction Inc. for the Haymarket Infrastructure Improvement – M & N Street Sanitary Sewer Project, JPA Project 87032, Bid No. 3565, for the sum of \$377,272.00 to be completed by August 26, 2011. (Blahak)

Chad Blahak explained that this project is a subset of the existing ‘M’ and ‘N’ Street Project. The attached Map 2 shows the area being discussed. The original project consisted of the main reconstruction of ‘N’ Street, ‘M’ Street, and 8th Street; and turn lane work to facilitate the increased lanes. It also included some sanitary work to the southwest. Due to the timing of the project, the needs from BNSF, and design needs; the project is being split into three phases. The first phase will include the sanitary sewer portion that needs to be completed to allow the BNSF contractor to proceed with their work. Bid Package 1 has been advertised for the paving of the turn lane in 10th Street and ‘N’ Street for construction this summer. Bid Package 2 will be bid later this fall and constructed in 2012. One benefit to waiting is that the dirt moving activities using ‘N’ Street will be completed. There were four responding contractors on the first phase, with T. J. Osborn being the low bidder by a substantial amount. It is a little bit higher than the estimate due to an increase in materials cost, which was consistent among the four contractors.

Beutler asked if all the procedures were in compliance with City and bidding requirements. Chad said yes that they had worked very closely with Vince Mejer, City Purchasing Agent. Clare also asked if these bids were within budget. Chad affirmed that they were part of the existing project and were within the budgeted amounts.

Being no further comments on this item, Clare made a motion to accept WH 11-53. Beutler seconded the motion. Motion carried 3-0.

Item 16 – Set Next Meeting Date

The next meeting will be held on Friday, July 15, 2011 3:30 P.M. in Room 112, City Council Chambers.

Item 17 – Closed Executive Session: Discussion of Work Performance

Beutler moved that the Board go into closed session to prevent needless injury to reputation for the purpose of discussing work performance. Clare seconded the motion. Motion carried 3-0.

Time into Executive Session: 4:50 p.m.
Time out of Executive Session: 5:32 p.m.

Item 18 – Motion to Adjourn

Beutler made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0.

Meeting adjourned at 5:34 P.M.

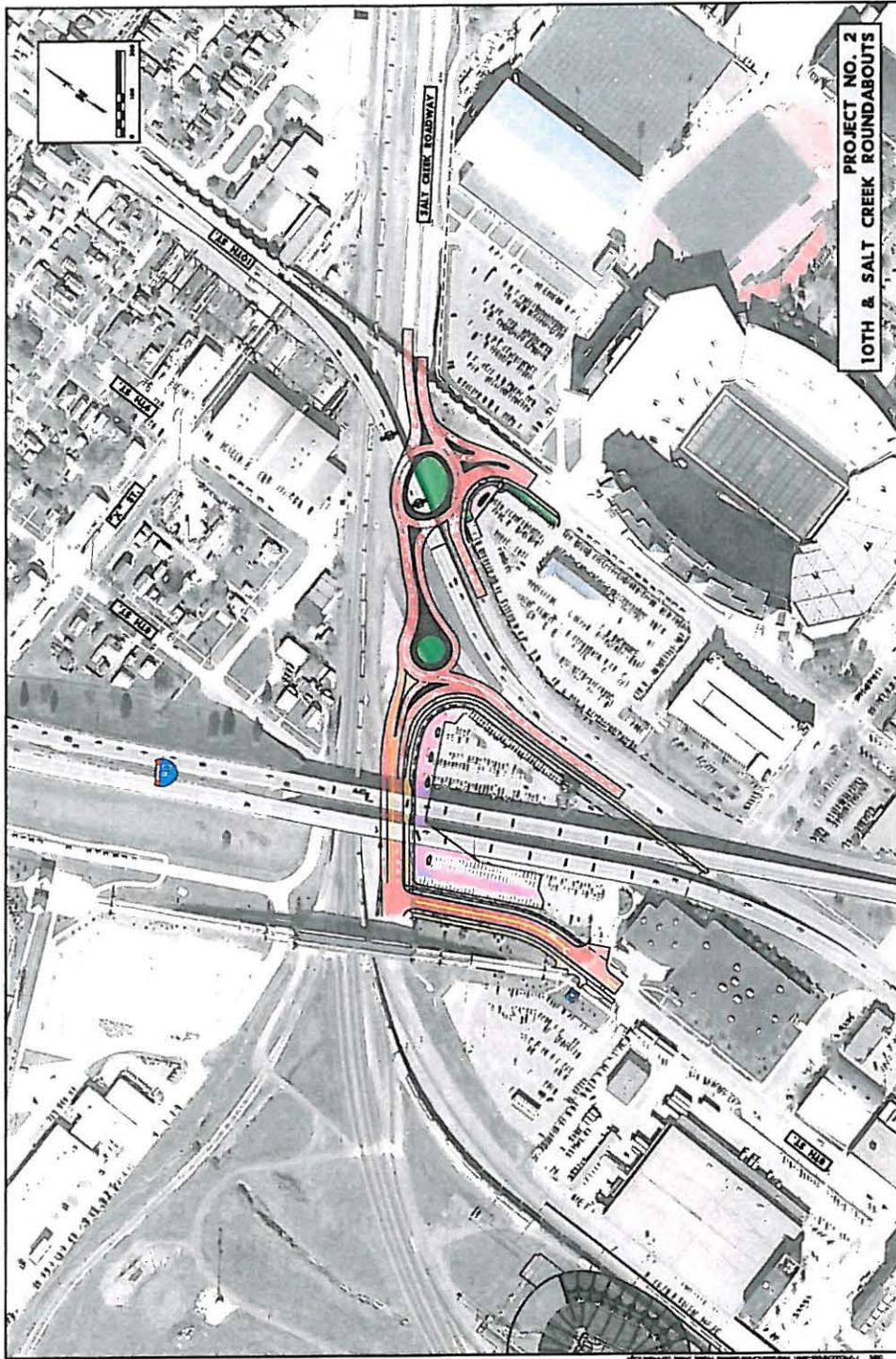
Prepared by: Pam Gadeken, Public Works and Utilities

West Haymarket JPA Meeting

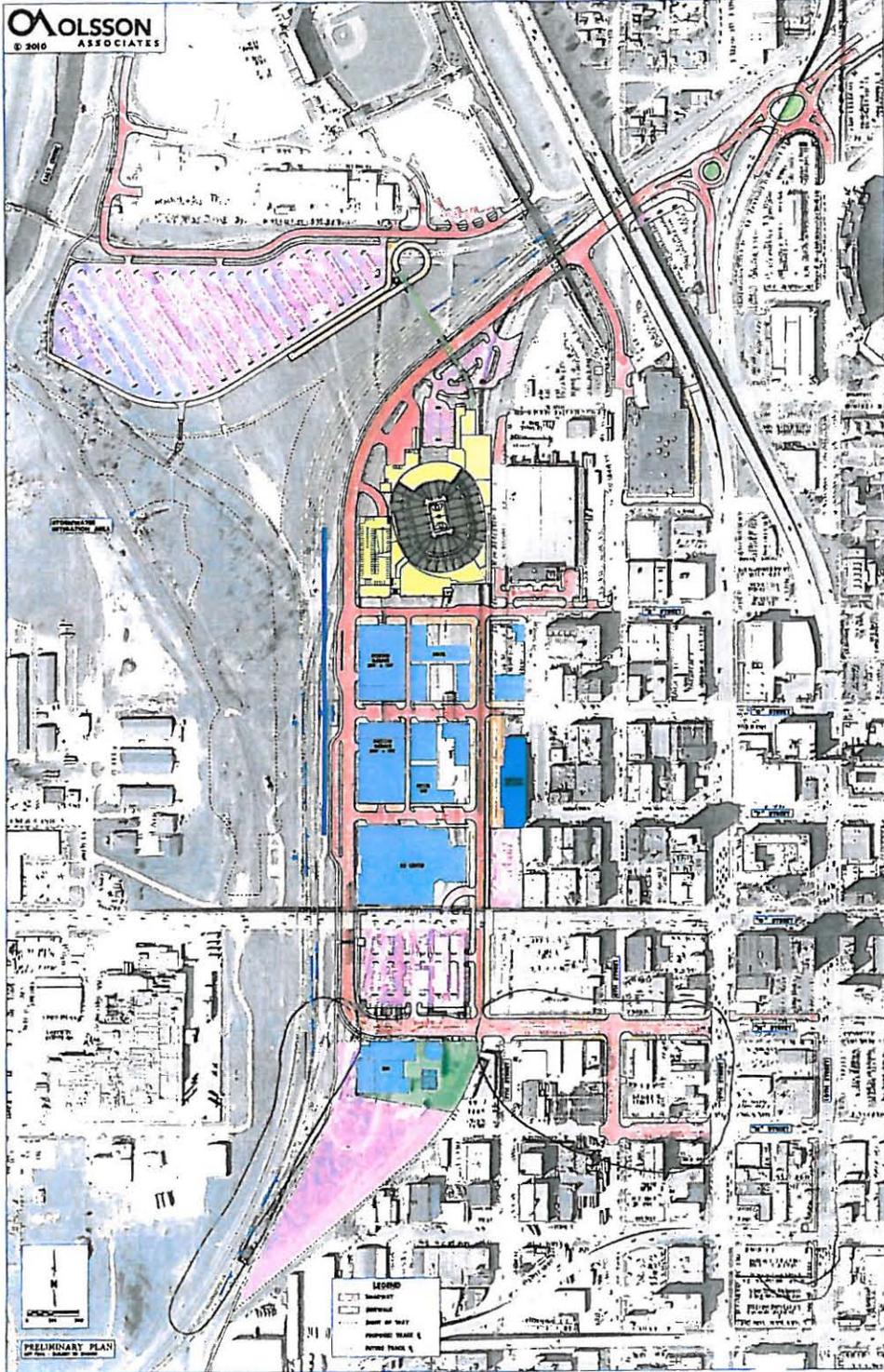
Date 6/24/11

Page 1

Name (Please Print)	Address	Phone/E-Mail
JANE KINSEY		
JOANN MURPHY		



Map 1



Map 2

West Haymarket JPA Payment Register
6/1/2011 through 6/30/2011

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
82368	State of Nebraska	#10620 - April, 2011 costs	870602	WH Voluntary Clean-up Program	PV	1280221	3,407.07	06/01/11	446874
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2010A	195011	JPA 2010A Debt Service	PV	1280477	2,325,755.00	06/01/11	446875
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2010B	195021	JPA 2010B/C Debt Service	PV	1280478	2,000,334.00	06/01/11	446875
324566	Union Bank & Trust Company	West Haymrkt Bds, Series 2010C	195021	JPA 2010B/C Debt Service	PV	1280479	1,165,273.13	06/01/11	446875
456171	Qwest Communications Company LLC	Relocate fiber	870502	WH Fiber Optic Comm & Other	OV	1280146	84,357.36	06/01/11	446876
594773	Alfred Benesch & Company	Proj#00110237.00	870204	WH Parking Garage #2	PV	1280223	11,394.00	06/01/11	446877
594773	Alfred Benesch & Company	Proj#00110130.00	870902	WH Alter Site Purchase	PV	1280226	2,000.00	06/01/11	446877
596579	SMG	Cust#00839	870100	WH Arena	PV	1280231	6,387.99	06/01/11	446878
98642	Information Services	04/11 Data Processing	06095	W Haymarket O & M	PV	1281351	270.53	06/08/11	447374
120272	City of Lincoln - Accounting Dept	Reimb Sal/Ben 2/3/11-5/11/11	06095	W Haymarket O & M	PV	1281337	72,232.17	06/08/11	447375
131561	Lincoln Federal Savings Bank	Temporary easement	870302	WH "M"&"N" St,7th to 10th St	PV	1282235	2,380.00	06/08/11	447376
139758	Union Pacific Railroad	Cont#W004367,Cust#62517, #8	870907	WH UP Track Mod West of Bridge	PV	1282236	32,366.83	06/08/11	447377
590334	Lonnie L and Carolyn R Simpson	Temporary easement	870302	WH "M"&"N" St,7th to 10th St	PV	1282232	1,203.00	06/08/11	447378
596579	SMG	June'2011 consulting	870100	WH Arena	OV	1280958	5,000.00	06/08/11	447379
53356	Lincoln Electric System	Cust#104940, Relocate pole	870701	WH Stmwtr Mtgtn-Sth&WstOf BNSF	PV	1280978	1,922.00	06/09/11	45013
185050	TCW Construction Inc	Deduct for below spec. pvmt	870304	WH 10th & Salt Creek Road Impr	OV	1281125	4,166.99	06/09/11	45089
185050	TCW Construction Inc	#870304, 5/2-5/15/11 work	870304	WH 10th & Salt Creek Road Impr	OV	1281125	453,107.37	06/09/11	45089
249308	DLR Group Inc	Apr'2011 Prkg Garage	870203	WH Arena Parking Garage	OV	1280938	12,422.51	06/09/11	45098
249308	DLR Group Inc	Reallocate to Prkg Garage	870100	WH Arena	OV	1280939	59,250.05	06/09/11	45098
249308	DLR Group Inc	Feb'2011 Prkg Garage	870203	WH Arena Parking Garage	OV	1280940	59,250.05	06/09/11	45098
249308	DLR Group Inc	Reallocate to Prkg Garage	870100	WH Arena	OV	1280941	40,300.45	06/09/11	45098
249308	DLR Group Inc	Mar'2011 Prkg Garage	870203	WH Arena Parking Garage	OV	1280942	40,300.45	06/09/11	45098
249308	DLR Group Inc	Apr'2011 Food serv consult	870100	WH Arena	OV	1280943	27,500.00	06/09/11	45098
249308	DLR Group Inc	Apr'2011 Arena	870100	WH Arena	OV	1280953	235,920.00	06/09/11	45098
249308	DLR Group Inc	Apr'2011 Wrk Area LNC	870100	WH Arena	OV	1280956	1,502.19	06/09/11	45098
588846	District Energy Corp	Oct'10-Mar'11 design work	870102	WH DEC Advance	OV	1280970	73,731.79	06/09/11	45149
596743	SAIC Energy, Environ & Infrast LLC	Apr'2011 PC Sports service	870100	WH Arena	OV	1282433	30,450.00	06/09/11	45170
596743	SAIC Energy, Environ & Infrast LLC	Apr'2011 service, 3.45%	870000	WH General Coordination	OV	1282433	119,913.00	06/09/11	45170
594773	Alfred Benesch & Company	Services from 4/4-5/1/11	870603	WH Environmental Contngy Pln	OV	1283824	3,100.00	06/15/11	447931
594773	Alfred Benesch & Company	Services from 4/4-5/1/11	870602	WH Voluntary Clean-up Program	OV	1283824	6,763.18	06/15/11	447931
594773	Alfred Benesch & Company	Services from 4/4-5/1/11	870604	WH Other/Miscellaneous	OV	1283824	14,650.61	06/15/11	447931
324304	BNSF Railway Company	Second Amendment add'l funds	870905	WH BNSF Const, Rehab, Reloc	PV	1286587	3,379,913.00	06/17/11	22051
97885	Copy Services	JPA Customer 595381	06095	W Haymarket O & M	PV	1286826	.74	06/22/11	448543
97885	Copy Services	JPA Customer 595381	06095	W Haymarket O & M	PV	1286827	1.97	06/22/11	448543
98642	Information Services	05/11 Data Processing	06095	W Haymarket O & M	PV	1286825	94.18	06/22/11	448544
102154	Public Building Commission	Account 10011 06/11	06095	W Haymarket O & M	PV	1286835	8.75	06/22/11	448545
102154	Public Building Commission	Account 10011 06/11	06095	W Haymarket O & M	PV	1286835	80.50	06/22/11	448545
108417	Citizen Information Center	JPA Arena 5-5-11 videotaping	06095	W Haymarket O & M	PV	1286829	180.00	06/22/11	448546
162801	City Law Department	Filing fees,Doc#2011025973	870304	WH 10th & Salt Creek Road Impr	PV	1287064	34.00	06/22/11	448547
36863	General Excavating	5/6-6/6/11 work on #870601	870601	WH NDEQ T-200	OV	1285881	216,340.32	06/23/11	45375
37233	Olsson Associates	OA#008-0645,4/10-5/7/11 work	870000	WH General Coordination	PV	1285961	1,886.33	06/23/11	45376
37233	Olsson Associates	#008-0645, 1/2-2/5/11 work	870000	WH General Coordination	PV	1285962	25,536.46	06/23/11	45376
37233	Olsson Associates	TEUP, 3/13-4/9/11 work	870000	WH General Coordination	PV	1286579	316.25	06/23/11	45376
37233	Olsson Associates	TEUP, 2/6-3/12/11 work	870000	WH General Coordination	PV	1286582	3,995.49	06/23/11	45376
308161	Midwest Right of Way Services Inc	May, 2011 relocation servs	870903	WH Jaylynn Site Purchase	PV	1285958	680.00	06/23/11	45468
588846	District Energy Corp	April, 2011 design work	870102	WH DEC Advance	OV	1285885	36,018.95	06/23/11	45506
591846	Marvin Investment Management Co	Program Admin 4/16/11-5/15/11	06095	W Haymarket O & M	PV	1286838	6,800.00	06/23/11	45517
591846	Marvin Investment Management Co	Expense Reimbursement	06095	W Haymarket O & M	PV	1286839	127.80	06/23/11	45517
593485	Thought District Inc	10-JPA-0007 Ongoing Management	06095	W Haymarket O & M	PV	1286832	2,000.00	06/23/11	45521
595872	CSL Marketing Group	June,2011 ret + rent share	870100	WH Arena	OV	1285907	17,404.00	06/23/11	45530
595872	CSL Marketing Group	2nd brochure pay - Thought	870100	WH Arena	OV	1285908	7,000.00	06/23/11	45530
596608	M A Mortenson Company	May,2011 billing,scheduling	870000	WH General Coordination	OV	1285882	16,666.00	06/23/11	45533
596608	M A Mortenson Company	May, 2011 billing,preconstr	870100	WH Arena	OV	1285883	15,555.56	06/23/11	45533

West Haymarket JPA Payment Register
6/1/2011 through 6/30/2011

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
127319	Urban Development	Reimb hrs 3/3-5/25/11	870903	WH Jaylynn Site Purchase	PV	1287734	1,143.85	06/29/11	449015
127319	Urban Development	Reimb hrs. 3/3-5/25/11	870902	WH Alter Site Purchase	PV	1287735	1,011.40	06/29/11	449015
127319	Urban Development	Reimb hrs. 3/3-5/25/11	870304	WH 10th & Salt Creek Road Impr	PV	1287744	1,026.41	06/29/11	449015
127319	Urban Development	Reimb hrs. 3/3-5/25/11	870303	WH USPS Parking Lot Reconstctn	PV	1287746	1,059.56	06/29/11	449015
127319	Urban Development	Reimb hrs. 3/3-5/25/11	870302	WH "M"&"N" St,7th to 10th St	PV	1287747	3,495.69	06/29/11	449015
131570	Erickson & Sederstrom PC	File#27354 055859	870903	WH Jaylynn Site Purchase	PV	1287730	2,755.04	06/29/11	449016
131570	Erickson & Sederstrom PC	File#27354 055859	870902	WH Alter Site Purchase	PV	1287730	3,649.06	06/29/11	449016
594773	Alfred Benesch & Company	May, 2011 remediation work	870601	WH NDEQ T-200	OV	1287808	2,059.43	06/29/11	449017
594773	Alfred Benesch & Company	April,2011 remediation work	870601	WH NDEQ T-200	OV	1287811	12,931.30	06/29/11	449017
594773	Alfred Benesch & Company	May, 2011 remediation work	870603	WH Environmental Contngy Pln	OV	1287812	4,828.50	06/29/11	449017
594773	Alfred Benesch & Company	May, 2011 remediation work	870604	WH Other/Miscellaneous	OV	1287812	21,127.83	06/29/11	449017
594773	Alfred Benesch & Company	May, 2011 remediation work	870602	WH Voluntary Clean-up Program	OV	1287812	9,155.31	06/29/11	449017
594773	Alfred Benesch & Company	Geotech serv, 3/28-4/24/11	870703	WH Initial Haymarket Site Prep	OV	1287813	11,178.00	06/29/11	449017
594773	Alfred Benesch & Company	Geotech serv, 4/25-5/22/11	870703	WH Initial Haymarket Site Prep	OV	1287814	2,829.00	06/29/11	449017
597820	Eagle Eye Enterprises	Pallets for Lumber yard	870903	WH Jaylynn Site Purchase	PV	1287782	400.00	06/29/11	449018
597853	D'Leons Mexican Food Inc	Refund overpayment of OCC Tax	06094	W Haymarket Revenue	PV	1288623	584.80	06/29/11	449019
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1251697	25,718.18	06/30/11	45610
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1251981	5,972.05	06/30/11	45610
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1258220	4,304.15	06/30/11	45610
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1258291	10,661.00	06/30/11	45610
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1260177	3,633.21	06/30/11	45610
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1266425	8,637.23	06/30/11	45610
88022	T J Osborn Construction	Retainage	870501	WH Sanitary Sewer Relocation	OV	1287912	58,925.82	06/30/11	45610
88022	T J Osborn Construction	Final on Utility Relocation	870501	WH Sanitary Sewer Relocation	OV	1287912	275,944.87	06/30/11	45610
185050	TCW Construction Inc	Roadway, 5/16-6/1/11	870304	WH 10th & Salt Creek Road Impr	OV	1287815	228,299.87	06/30/11	45634
185050	TCW Construction Inc	Roadway work 6/2-6/15/11	870304	WH 10th & Salt Creek Road Impr	OV	1287914	274,541.99	06/30/11	45634
596743	SAIC Energy, Environ & Infrast LLC	Consulting, Jan.2011	870000	WH General Coordination	OV	1287816	132,310.28	06/30/11	45673
Grand total							11,410,149.23		

7/5/2011

**Public Works WHJPA Engineering Costs
6/1/11 through 6/30/11**

<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>
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	316685	00951	870302	6153	130	1,064.07	6/2/2011
Design Engineering	WH Charleston Bridge/Roadway	EU	316685	00951	870301	6153	130	538.07	6/2/2011
Design Engineering	WH Core Area Roadway & Utility	EU	316685	00951	870305	6153	130	1,489.70	6/2/2011
Design Engineering	WH General Coordination	EU	316685	00951	870000	6153	130	2,304.49	6/2/2011
Design Engineering	WH Initial Haymarket Site Prep	EU	316685	00951	870703	6153	130	1,702.50	6/2/2011
Design Engineering	WH USPS Parking Lot Reconstctn	EU	316685	00951	870303	6153	130	478.82	6/2/2011
Design Engineering	WH 10th & Salt Creek Road Impr	EU	316685	00951	870304	6153	130	14,303.78	6/2/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	317635	00951	870302	6153	130	1,489.70	6/16/2011
Design Engineering	WH Charleston Bridge/Roadway	EU	317635	00951	870301	6153	130	443.41	6/16/2011
Design Engineering	WH Core Area Roadway & Utility	EU	317635	00951	870305	6153	130	798.05	6/16/2011
Design Engineering	WH General Coordination	EU	317635	00951	870000	6153	130	1,414.48	6/16/2011
Design Engineering	WH HymktPkLot,FestSp&PedGrdStr	EU	317635	00951	870201	6153	130	53.22	6/16/2011
Design Engineering	WH Initial Haymarket Site Prep	EU	317635	00951	870703	6153	130	1,383.30	6/16/2011
Design Engineering	WH USPS Parking Lot Reconstctn	EU	317635	00951	870303	6153	130	425.63	6/16/2011
Design Engineering	WH 10th & Salt Creek Road Impr	EU	317635	00951	870304	6153	130	11,399.52	6/16/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	318923	00951	870302	6153	130	1,478.83	6/30/2011
Design Engineering	WH Core Area Roadway & Utility	EU	318923	00951	870305	6153	130	798.05	6/30/2011
Design Engineering	WH General Coordination	EU	318923	00951	870000	6153	130	2,126.48	6/30/2011
Design Engineering	WH HymktPkLot,FestSp&PedGrdStr	EU	318923	00951	870201	6153	130	425.63	6/30/2011
Design Engineering	WH Initial Haymarket Site Prep	EU	318923	00951	870703	6153	130	827.05	6/30/2011
Design Engineering	WH NDEQ T-200	EU	318923	00951	870601	6153	130	58.03	6/30/2011
Design Engineering	WH Sanitary Sewer Relocation	EU	318923	00951	870501	6153	130	58.03	6/30/2011
Design Engineering	WH USPS Parking Lot Reconstctn	EU	318923	00951	870303	6153	130	188.62	6/30/2011
Design Engineering	WH 10th & Salt Creek Road Impr	EU	318923	00951	870304	6153	130	12,056.83	6/30/2011
								<u>57,306.29</u>	

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal

00951	West Haymarket Capital Proj						
70090	West Haymarket Park						
	870000 WH General Coordination		2,505,990	3,856,631	6,362,621-		6,362,621-

70090	West Haymarket Park		2,505,990	3,856,631	6,362,621-		6,362,621-

70091	Arena						
	870100 WH Arena	161,899,950	3,274,854	9,196,862	149,428,234		149,428,234
	870101 WH Arena Contingency	6,995,650			6,995,650		6,995,650
	870102 WH DEC Advance		109,751	1,890,249	2,000,000-	2,000,000	
	870203 WH Arena Parking Garage	10,352,100	111,973	586,626	9,653,501		9,653,501

70091	Arena	179,247,700	3,496,578	11,673,737	164,077,385	2,000,000	166,077,385

70092	Parking						
	870201 WH HymktPkLot,FestSp&PedGrdStr	14,089,426	157,611	1,881,794	12,050,021		12,050,021
	870202 WH Parking Garage #1	13,090,000	103,334	1,204,215	11,782,451		11,782,451
	870204 WH Parking Garage #2		20,268	505,188	525,456-		525,456-

70092	Parking	27,179,426	281,213	3,591,197	23,307,016		23,307,016

70093	Roads						
	870301 WH Charleston Bridge/Roadway	4,835,720	233,898	573,309	4,028,513		4,028,513
	870302 WH "M"&"N" St,7th to 10th St	2,280,000	314,061	561,160	1,404,779		1,404,779
	870303 WH USPS Parking Lot Reconstctn	885,000	108,409	606,316	170,275		170,275
	870304 WH 10th & Salt Creek Road Impr	3,412,000	1,876,659	1,467,796	67,545		67,545
	870305 WH Core Area Roadway & Utility	14,668,960	92,294	1,091,899	13,484,767		13,484,767
	870306 WH Traffic Analysis		55,592	94,054	149,646-		149,646-
	870307 WH Streetscape		59,748	462,143	521,891-		521,891-
	870308 WH Sun Valley Blvd & West "O"	737,400			737,400		737,400

70093	Roads	26,819,080	2,740,661	4,856,677	19,221,742		19,221,742

70094	Pedestrian Ways						

	Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
870401 WH Plaza	1,200,000			1,200,000		1,200,000
870402 WH Canopy Phase II						
70094 Pedestrian Ways	1,200,000			1,200,000		1,200,000
70095 Utilities						
870501 WH Sanitary Sewer Relocation	1,440,000	1,477,905		37,905-		37,905-
870502 WH Fiber Optic Comm & Other	650,880	357,628	138,786	154,466		154,466
70095 Utilities	2,090,880	1,835,533	138,786	116,561		116,561
70096 Environmental						
870601 WH NDEQ T-200	978,000	1,504,790	44,880	571,670-	809,449	237,779
870602 WH Voluntary Clean-up Program	2,100,000	192,426	174,022	1,733,552		1,733,552
870603 WH Environmental Contngy Pln	2,400,000	53,973	184,289	2,161,738		2,161,738
870604 WH Other/Miscellaneous	525,600	184,343	129,823	211,434		211,434
870605 WH Canopy Phase I-Lead Abatemt						
70096 Environmental	6,003,600	1,935,532	533,014	3,535,054	809,449	4,344,503
70097 Dirt Moving						
870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF	2,400,000			2,400,000		2,400,000
870703 WH Initial Haymarket Site Prep	2,088,360	1,414,779	4,656,703	3,983,122-		3,983,122-
870704 WH Other Stormwater Mitigation	3,105,840			3,105,840		3,105,840
70097 Dirt Moving	7,594,200	1,414,779	4,656,703	1,522,718		1,522,718
70098 TIF Improvements						
870800 WH TIF Improvements	5,515,693			5,515,693		5,515,693
70098 TIF Improvements	5,515,693			5,515,693		5,515,693
70099 Site Purchase						
870901 WH BNSF Land Acquisition	1,000,000	1,051,054		51,054-		51,054-

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal

00951	West Haymarket Capital Proj						
70099	Site Purchase						
	870902 WH Alter Site Purchase	4,080,000	35,881		4,044,119		4,044,119
	870903 WH Jaylynn Site Purchase	3,080,000	32,652	8,310	3,039,038		3,039,038
	870904 WH UP Site Purchase	1,000,000	1,326,248		326,248-		326,248-
	870905 WH BNSF Const. Rehab. Reloc	44,000,000	49,697,850		5,697,850-		5,697,850-
	870906 WH Amtrak Station	1,440,000	64,346	239,103	1,136,551		1,136,551
	870907 WH UP Track Mod West of Bridge	1,236,000	105,114		1,130,886		1,130,886
	870908 WH Other Private Prop Acqstns	625,000			625,000		625,000

70099	Site Purchase	56,461,000	52,313,145	247,413	3,900,442		3,900,442
70100	Other Costs						
	870951 WH ITS & Dynamic Message Signs	2,700,000	45,009	14,788	2,640,203		2,640,203
	870952 WH Community Space & Civic Art	1,500,000			1,500,000		1,500,000

70100	Other Costs	4,200,000	45,009	14,788	4,140,203		4,140,203
70105	Bond Related Costs						
	870975 WH Miscellaneous	5,160,000			5,160,000		5,160,000
	870976 WH Line of Credit		52,500		52,500-		52,500-
	870977 WH Series 1 JPA Debt		1,535,168		1,535,168-		1,535,168-
	870978 WH Series 2 JPA Debt		1,221,802		1,221,802-		1,221,802-
	870979 WH Series 3 JPA Debt		577,661		577,661-		577,661-

70105	Bond Related Costs	5,160,000	3,387,131		1,772,869		1,772,869

00951	West Haymarket Capital Proj	321,471,579	69,955,571	29,568,946	221,947,062	2,809,449	224,756,511

City of Lincoln, NE
 West Haymarket JPA
 Operating Expenditure Report
 As of June 30, 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	6,162	1,162-
5323 Bldg Maint Supplies					125	125-
11 Materials & Supplies	5,000			5,000	6,527	1,527-
12 Other Services & Charges						
5621 Misc Contractual Services	330,612			330,612	211,977	118,635
5624 Auditing Service	12,000			12,000	12,000	
5631 Data Processing Service					1,008	1,008-
5632 System Develop - I.S.	20,000			20,000		20,000
5633 Software					979	979-
5642 Legal Services	20,000			20,000	36,092	16,092-
5643 Management Services	92,043			92,043	77,155	14,888
5725 Mileage - Personal Vehicles	1,000			1,000		1,000
5762 Photocopying	1,000			1,000	483	517
5763 Printing					588	588-
5829 Telephone	1,000			1,000		1,000
5928 Rent of Co/City Bldg Space	1,900			1,900	805	1,095
5931 Parking Rent Bldg Comm					88	88-
5952 Advertising/Media Serv	1,500			1,500	1,608	108-
12 Other Services & Charges	481,055			481,055	342,783	138,272
13 Capital Outlay - Equipment						
6069 Data Processing Equipment	4,500			4,500	2,461	2,039
6072 Furniture & Fixtures	11,000			11,000	3,031	7,969
13 Capital Outlay - Equipment	15,500			15,500	5,492	10,008
06095 W Haymarket O & M	501,555			501,555	354,802	146,753

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket JPA
Operating Expenditure Report
As of June 30, 2011

2
07/05/11
10:25:35

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	3,579,079	
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	5,581,476	
-----	-----	-----	-----	-----	-----	-----
195011 JPA 2010A Debt Servic			5,581,476	5,581,476	5,581,476	

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket JPA
Operating Expenditure Report
As of June 30, 2011

3
07/05/11
10:25:35

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	9,101,885	146,753

West Haymarket Project, T.C. _____

PURCHASE AGREEMENT

(Jaylynn Existing Site)

THIS AGREEMENT is made and entered into on this _____ day of _____, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company, (“Seller”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (“JPA”).

RECITALS

I.

Seller is the owner of certain real estate (as defined in Neb. Rev. Stat. § 76-201) and improvements commonly known as 660 N Street in Lincoln, Lancaster County, Nebraska, and more fully described hereinafter (the “Property”); and

II.

Seller is agreeable to selling and JPA desires to acquire the Property in fee simple, subject to the terms and conditions as set forth hereinafter.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Conveyance.

1.1. Sale and Conveyance. Seller agrees to sell and convey to the JPA and JPA agrees to buy and take from the Seller, upon the terms and conditions hereinafter set forth, the real property owned by Seller legally described as:

All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 51 in the City of Lincoln, Lancaster County, Nebraska, and the West 25.0 feet of Lot 16 of said Block 51, excepting therefrom, a 17.0 foot wide corridor, being 8.5 feet wide on each side of the Burlington Northern and Santa Fe Railway Company’s (formerly Chicago, Burlington & Quincy Railroad Company) spur track centerline, as now located and constructed upon, over and across said Lots 7, 8 and 15, in Lincoln, Lancaster County, Nebraska, together with and including all buildings, improvements, fixtures, rights, privileges and

appurtenances thereunto belonging, if any, (hereinafter referred to as the "Property").

Seller represents and warrants that it has good, valid, and marketable title, in fee simple, and agrees at closing (as hereinafter defined) to convey title to the Property to JPA by warranty deed free and clear of all liens, encumbrances, or special taxes levied or assessed, or other restrictions, except the Permitted Exceptions as hereinafter defined.

1.2. Compensation. JPA shall pay to Seller Four Hundred Forty-One Thousand Dollars (\$441,000.00), ("Purchase Price"), payable at Closing, subject to adjustments and prorations as herein provided.

1.3. Date of Closing. Seller and JPA agree to close and complete this sale in accordance herewith on or before the _____ day of June, 2011, ("Closing").

1.4. Evidence of Title. Within thirty (30) days from the date of this Agreement, JPA shall obtain a title commitment (the "Title Commitment") for an ALTA owner's title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the "Title Company") covering title to the Property and showing the condition of title to the Property. For purposes hereof, "Permitted Exceptions" shall mean (i) covenants, conditions and restrictions of record which shall be approved by JPA if they do not interfere with JPA's intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by JPA, and which do not interfere with JPA's intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which Seller is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of JPA, specifically including the Declaration of Restrictive Covenant by and between Jaylynn, LLC, and BNSF Railway Company requested by the JPA; (vi) easements and use restrictions to be granted under this Agreement; (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by JPA; and (viii) the rights, if any, of Lamar Outdoor Advertising under that certain lease filed in the office of the Register of Deeds of Lancaster County, Nebraska, as Instrument No. 2004-071992. The cost of the owner's title insurance policy shall be paid by the JPA. Within fourteen (14) days of JPA's receipt of the title commitment, the JPA shall notify Seller of any objections to the title to the Property disclosed by the title commitment. Seller shall have a reasonable period to cure or correct JPA's objections to the title and deliver an amended title commitment; otherwise, JPA may, at its option, either terminate this Agreement or waive the objection and proceed to Closing.

1.5. Survey. JPA may, at its option, obtain an ALTA/ASCM survey with minimum standard detail requirements showing area dimensions and location of the real property, the nearest monument streets, adjoining streets, roadways and properties, location of all buildings, improvements, and encroachments, if any, the location of all recorded easements, square footage, together with all current floodplain zoning designations of the Property.

1.6. Title and Possession. Seller agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to JPA free and clear of all adverse mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or adverse claims of any kind or character whatsoever, except for Permitted Exceptions. Seller shall deliver possession of the Property to JPA on or before September 30, 2011, and shall occupy the Property up until that time pursuant to the provisions of the Lease, attached hereto and marked as Attachment "A."

1.7. Environmental; Tests. Prior to Closing, JPA and its agents or representatives shall have the right to have access to the Property to perform any type of environmental studies, including without limitation, Phase I and Phase 2 environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively "Tests"). In the event JPA determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then JPA's sole remedy shall be the right to terminate this Agreement. A copy of the Tests together with related documents, reports and test reports shall be delivered to the Seller. JPA shall have until the Closing Date to complete the Tests and to provide notice of termination to the Seller.

JPA and its agents or representatives shall be responsible for and hereby agree to indemnify and hold Seller harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by JPA or its representatives. JPA and its representatives shall take all reasonable efforts to maintain the security of the premises Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property.

1.8. Taxes, Assessments and Other Costs. All taxes related to the Property for 2010, and all prior years, shall be paid by Seller at or prior to closing. Any tax related to the Property for 2011, shall be the responsibility of JPA. Any special assessment arising out of any improvement completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Seller. Rents, if any, are to be adjusted on and as of the date of closing and completion of the sale. JPA shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from Seller to JPA. JPA shall pay its own costs of the preparation of all documents and other related expenses in connection with the sale of the Property. The closing of the sale shall be paid by JPA.

2. Representations and Warranties.

2.1. Representations and Warranties of Seller. Seller represents and warrants to JPA as follows:

2.1.1. Organization; Power; Good Standing. Seller is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.1.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. Seller is the owner of the Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

2.1.3. Effect of Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Seller and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Seller, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which the Property may be bound.

2.1.4. Brokers. Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of JPA to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Seller is not aware of any claim or basis for any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

2.1.5. "Non-Foreign Person." Seller is not prohibited from consummating the transactions contemplated hereby and is not a "foreign person" as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

2.2. Representations and Warranties of JPA.

2.2.1. Organization; Power; Good Standing. JPA is a political subdivision and body corporate and politic organized under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.2.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA, enforceable against JPA in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

2.2.3. Effect of Agreement. The execution, delivery and performance of this Agreement by JPA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by JPA and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of JPA to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to JPA, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which JPA is a party or by which the Property may be bound.

3. Indemnification.

3.1. Indemnification by Seller. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Seller agrees to indemnify and hold JPA harmless against, and will reimburse JPA upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against JPA in respect of any and all damages or deficiencies resulting from: (a) any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Seller contained in this Agreement; and (b) any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished to JPA pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.2. Indemnification by JPA. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, JPA agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made

or incurred by or asserted against Seller in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.3. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections 3.1 or 3.2 hereof:

3.3.1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

3.3.2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party's sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party's inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

3.4. Inspection and Testing. At any time after the date of this Agreement, JPA and its employees and agents shall have the right to enter upon the Property and perform such tests and inspections as it deems necessary to determine suitability of the Property for its intended use. JPA shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. Conditions of Closing.

4.1. JPA's Conditions of Closing. Unless waived by JPA in writing, the obligations of JPA to close under this Agreement are subject to fulfillment of the following conditions:

4.1.1. Executed Instruments. JPA shall receive at Closing:

4.1.1.1. The executed warranty deed and easements, if any, in accordance with this Agreement; and

4.1.1.2. A “non-foreign person” affidavit reasonably acceptable to JPA, signed and sworn to by Seller.

4.1.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of Seller and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.2. Seller’s Conditions of Closing. Unless waived by Seller in writing, the obligations of Seller to close under this Agreement are subject to fulfillment of the following conditions:

4.2.1. Payment. At Closing, Seller shall receive the Purchase Price in Good Funds from JPA.

4.2.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of JPA and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.3. Termination. If the conditions of Closing for a party have not been materially complied with or performed and such noncompliance or nonperformance shall not have been waived by the other, such other party may terminate this Agreement and upon such termination neither JPA nor Seller shall have any liability one to the other.

4.4. Risk of Loss. All risk of loss or damage to the Property by fire or other casualty until the delivery of the executed instruments as provided in this Agreement is assumed by the Seller, and in such event, JPA shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.

5. Relocation Costs. Seller and JPA understand and agree that Seller is entitled, under the Relocation Assistance Act (Neb. Rev. Stat. § 76-1214, et seq.) and regulations promulgated thereunder, to relocation assistance as a result of the acquisition of the Property by the JPA. Further, Seller and JPA agree that existing lumber racking within the buildings currently located on the Property shall be considered personal property to be relocated under the provisions of the Relocation Assistance Act and regulations promulgated thereunder.

The parties understand and agree that the amount of relocation assistance is presently estimated at One Hundred Twenty-One Thousand Four Hundred Forty-Six Dollars (\$121,446.00) for the racking and at Three Hundred Fourteen Thousand Dollars (\$314,000.00) for moving costs, but the final amount of relocation assistance is subject to the actual eligible costs related to Seller’s relocation to its new site pursuant to the Act and the regulations promulgated thereunder. JPA shall pay to Seller, at Closing, an amount equal to one-half (1/2) of the relocation costs described above in

With a Copy to: Peter W. Katt, Esq.
Baylor, Evnen, Curtiss
Grimit & Witt, LLP
Wells Fargo Center
1248 O Street, Suite 600
Lincoln, NE 68508

6.6. Severability. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

6.7. Survival and Nonmerger. All terms, conditions, representations, and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.

6.8. Time of Essence. The parties agree that time is of the essence in the performance of their respective obligations hereunder.

6.9. Waiver. Either JPA or Seller may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

6.10. Construction. The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

EXECUTED by Seller this ____ day of _____, 2011.

JAYLYNN, L.L.C., a Nebraska limited liability company

ATTACHMENT “A”
LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on this ____ day of _____, 2011, by and between the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the state of Nebraska created under the Joint Public Agency Act (“Lessor”), and Jaylynn, L.L.C., a Nebraska limited liability company (“Lessee”).

RECITALS

I.

Lessee is selling to Lessor the property hereinafter described as the premises, but finds it necessary to retain possession thereof for a period of time after the closing in order to proceed with orderly removal of its business to a new location.

II.

Lessor is agreeable to leasing the premises back to Lessee for the term set forth below so as to allow Lessee to make an orderly transfer of its business to its new location, upon the terms and conditions as herein set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained here, the parties agree as follows:

1. Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the premises located at 660 N Street, Lincoln, Nebraska, and legally described as:

All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 51, in the City of Lincoln, Lancaster County, Nebraska, and the West 25.0 feet of Lot 16 of said Block 51, excepting therefrom a 17 foot wide corridor, being 8.5 feet wide on each side of the Burlington Northern and Santa Fe Railway Company’s (formerly Chicago Burlington and Quincy Railroad Company) spur track center line, as now located and

constructed upon, over and across said Lots 7, 8 and 15, in Lincoln, Lancaster County, Nebraska (the "Premises").

2. Term. The term of this Lease shall commence on June ____, 2011, and shall terminate upon the earlier of (i) Lessee's notification that it has vacated the Premises, or (ii) September 30, 2011.

3. Rent. Lessee shall pay to Lessor the sum of One Dollar (\$1.00) as rent for the full term of this Lease, receipt of which is hereby acknowledged.

4. Use of Premises. The Premises described herein shall be used by Lessee for the purpose of conducting the business of a lumber yard and for no other purpose without the written consent of the Lessor. Notwithstanding Lessee's right to use the Premises as hereinabove described, Lessee agrees that Lessor shall, with reasonable notice to Lessee and no material disruption to the lumber yard business, be entitled to enter upon the Premises as may be necessary to conduct such tests, engage in surveys, or other inspections as may be necessary in furtherance of the West Haymarket Arena Project. In addition thereto, it is specifically understood and agreed that Lessor shall be entitled to remove the fence along the west property line and widen the existing 6th Street roadway to within three (3) feet, more or less, of the west exterior wall of the westernmost existing building and, two (2) months after the commencement date of this Lease, to remove all or a portion of the existing office structure located at 6th and N, all for the purpose of operating two-way truck traffic and other vehicular traffic over and across that portion of the Premises during the term of this Lease.

5. Utilities. Lessee shall pay the cost and charges of all utilities and any other services which may be furnished to the Premises and shall indemnify and hold Lessor harmless for the same. Lessor shall not be liable for interruptions to the telephone, plumbing, heating, ventilating, air conditioning, electrical or other mechanical or utility systems or cleaning services, by reason of

accident, emergency, or repairs, alterations, improvements, or shortages or lack of availability of materials or services.

6. Maintenance and Repairs. Lessee shall, at its sole expense, maintain and make repairs and replacements as needed to the improvements on the Premises, including, but not limited to, interior maintenance (including heating, ventilation and air conditioning systems), exterior maintenance, snow removal, lawn care and parking maintenance. Lessee shall maintain the Premises in clean, safe, and good condition and keep and return the Premises in at least as good condition as they currently exist, ordinary wear and tear excepted.

7. Alterations or Improvements. Lessee shall not make any improvements or alterations to the Premises during the term of this Lease.

8. Americans with Disabilities Act; Compliance. Lessee shall be solely responsible for any expenses necessary to comply with the American with Disabilities Act and similar state statutes or requirements triggered solely by a disability of one or more of Lessee's employees.

9. Signs. Lessee shall have the right to maintain that signage existing on the Premises at the time of execution of this Lease and no other signage.

10. Insurance.

(a) Lessee shall insure the Premises against fire and other casualty for not less than the full replacement value thereof with proceeds to be payable to Lessor and Lessee as their interest may appear.

(b) Lessee, at its own cost and expense, shall procure and maintain, at all times, comprehensive commercial liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence with respect to personal injury or death and damage to property. Said policy shall name Lessor as an additional insured, contain a wavier of

subrogation in favor of Lessor, and provide that said insurance cannot be cancelled or modified unless thirty (30) days prior written notice has been given to the Lessor.

Said policies or certificates thereof shall be delivered to Lessor by Lessee upon the commencement of the term of this Lease and upon each renewal of said insurance.

11. Indemnification. Lessee hereby agrees to indemnify and hold harmless Lessor, its agents and employees from and against any and all claims or demands for the loss, theft, or damage to property or for injury or death to any person from any cause whatsoever while in, upon, or about the Premises, during the term of this Lease, except to the extent that such claim is compensated by insurance and except further that Lessee's indemnification shall not include an indemnification for liability for the gross negligence or willful misconduct of Lessor, its agents or employees. Each party agrees to indemnify and hold the other harmless from any and all claims and demands of third parties arising from any breach or default of such indemnifying party in the performance of any obligation of such indemnifying party under this Lease or arising from or based upon any alleged act, omission, or negligence of such indemnifying party, or any of its agents, employees, licensees, servants, invitees, or employees.

12. Mutual Waiver of Subrogation. Without limiting the obligation of Lessee to maintain insurance which permits waiver of subrogation (unless otherwise approved in writing by Lessor), and notwithstanding the indemnification provision set forth above or anything else to the contrary set forth herein, Lessor and Lessee hereby waive all causes of action and rights of recovery against each other for any loss occurring to the property of Lessor or Lessee resulting from any of the perils insured against under any and all fire or other extended casualty insurance policies in effect at the time of any such loss, regardless of cause or origin of such loss.

13. Destruction of Premises. If the Premises are damaged by fire or other casualty or peril so as to become untenable, this Lease shall automatically terminate.

14. Environmental Provisions. Lessee shall not allow any hazardous materials as defined by the Environmental Protection Agencies of the state or federal government to come upon the Premises or be used thereon and shall not allow any obnoxious odors or vapors to be omitted from the Premises.

15. Holding Over. Should Lessee hold possession hereunder after the expiration of the term of this Lease, Lessee shall be deemed to be a tenant at sufferance and subject to removal pursuant to the Forcible Entry and Detainer statutes of the state of Nebraska (Neb. Rev. Stat. § 25-21,219 et seq.).

16. Notices. Notices under this Lease shall be given in writing and may be served personally by facsimile transmittal or by mail if addressed as follows:

To Lessor: West Haymarket Joint Public Agency
 Attention: Dan Marvin
 555 S. 10th Street
 Lincoln, NE 68508
 Fax: (402) _____

To Lessee: Jaylynn, LLC
 Attention: Brad Devall
 660 N Street
 Lincoln, NE 68508
 Fax: (402) _____

Each party reserves the right to change the name, address, and/or telephone and fax numbers with respect to which notices are to be sent by giving written notice of such change to the other party at any time.

17. Time is of the Essence. It is hereby agreed that time is of the essence of this Lease.

18. Entire Agreement. This Lease represents all agreements between Lessor and Lessee as regards this subject and can only be amended in writing signed and agreed to by both parties.

19. Successors and Assigns. Lessee shall not assign, sublease or otherwise transfer, by operation of law or otherwise, this Lease or the Premises or any interest herein or portion thereof without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion. This Lease is for the benefit and shall be binding upon the successors and assigns of each party.

20. Security. Lessee shall be solely responsible for the security of the Premises and for the security of Lessee's employees, agents, guest, and invitees on the Premises. Lessee shall be responsible to lock and secure all doors, windows and entrances to the Premises and to take all other reasonable security measures to protect persons and properties upon the Premises.

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

JAYLYNN, L.L.C., a Nebraska limited liability company

By: _____
Brad Devall, Managing Member

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

By: _____
_____, Chairman

WH 11-45

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-45 by accepting the attached Purchase Agreement to replace the Purchase Agreement previously attached to Bill No. WH 11-45.

Introduced by:

Approved as to Form & Legality:

City Attorney

Requested by: Bill Austin

WH 11-45

MOTION TO AMEND NO. 2

I hereby move to amend Bill No. WH 11-45 in the following manner:

1. Substitute the attached Purchase Agreement for the Purchase Agreement attached to Bill No. WH 11-45.

2. After line 7 insert a new paragraph to read as follows:

BE IT FURTHER RESOLVED that Dan Marvin, Secretary/Project Manager of the West Haymarket Joint Public Agency, is hereby authorized to execute the Lease Agreement, all closing documents and other related documents to implement the Purchase Agreement (Jaylynn Existing Site).

Introduced by:

Approved as to Form & Legality:

Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Bill Austin

PURCHASE AGREEMENT

(Jaylynn Existing Site)

THIS AGREEMENT is made and entered into on this _____ day of _____, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company, (“Seller”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (“JPA”).

RECITALS

I.

Seller is the owner of certain real estate (as defined in Neb. Rev. Stat. § 76-201) and improvements commonly known as 660 N Street in Lincoln, Lancaster County, Nebraska, and more fully described hereinafter (the “Property”); and

II.

Seller is agreeable to selling and JPA desires to acquire the Property in fee simple, subject to the terms and conditions as set forth hereinafter.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Conveyance.

1.1. Sale and Conveyance. Seller agrees to sell and convey to the JPA and JPA agrees to buy and take from the Seller, upon the terms and conditions hereinafter set forth, the real property owned by Seller legally described as:

All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 51 in the City of Lincoln, Lancaster County, Nebraska, and the West 25.0 feet of Lot 16 of said Block 51, excepting therefrom, a 17.0 foot wide corridor, being 8.5 feet wide on each side of the Burlington Northern and Santa Fe Railway Company’s (formerly Chicago, Burlington & Quincy Railroad Company) spur track centerline, as now located and constructed upon, over and across said Lots 7, 8 and 15, in Lincoln, Lancaster County, Nebraska, together with and including all buildings, improvements, fixtures, rights, privileges and appurtenances thereunto belonging, if any, (hereinafter referred to as the “Property”).

Seller represents and warrants that it has good, valid, and marketable title, in fee simple, and agrees at closing (as hereinafter defined) to convey title to the Property to JPA by warranty deed free and clear of all liens, encumbrances, or special taxes levied or assessed, or other restrictions, except the Permitted Exceptions as hereinafter defined.

1.2. Compensation. JPA shall pay to Seller Four Hundred Forty-One Thousand Dollars (\$441,000.00), (“Purchase Price”), payable at Closing, subject to adjustments and prorations as herein provided.

1.3. Date of Closing. Seller and JPA agree to close and complete this sale in accordance herewith on or before the 19th day of July, 2011, (“Closing”).

1.4. Evidence of Title. Within thirty (30) days from the date of this Agreement, JPA shall obtain a title commitment (the “Title Commitment”) for an ALTA owner’s title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the “Title Company”) covering title to the Property and showing the condition of title to the Property. For purposes hereof, “Permitted Exceptions” shall mean (i) covenants, conditions and restrictions of record which shall be approved by JPA if they do not interfere with JPA’s intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by JPA, and which do not interfere with JPA’s intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which Seller is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of JPA, specifically including the Declaration of Restrictive Covenant by and between Jaylynn, LLC, and BNSF Railway Company requested by the JPA; (vi) easements and use restrictions to be granted under this Agreement; (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by JPA; and (viii) the rights, if any, of Lamar Outdoor Advertising under that certain lease filed in the office of the Register of Deeds of Lancaster County, Nebraska, as Instrument No. 2004-071992. The cost of the owner’s title insurance policy shall be paid by the JPA. Within fourteen (14) days of JPA’s receipt of the title commitment, the JPA shall notify Seller of any objections to the title to the Property disclosed by the title commitment. Seller shall have a reasonable period to cure or correct JPA’s objections to the title and deliver an amended title commitment; otherwise, JPA may, at its option, either terminate this Agreement or waive the objection and proceed to Closing.

1.5. Survey. JPA may, at its option, obtain an ALTA/ASCM survey with minimum standard detail requirements showing area dimensions and location of the real property, the nearest monument streets, adjoining streets, roadways and properties, location of all buildings, improvements, and encroachments, if any, the location of all recorded easements, square footage, together with all current floodplain zoning designations of the Property.

1.6. Title and Possession. Seller agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to JPA free and clear of all adverse mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or

adverse claims of any kind or character whatsoever, except for Permitted Exceptions. Seller shall deliver possession of the Property to JPA on or before November 30, 2011, and shall occupy the Property up until that time pursuant to the provisions of the Lease, attached hereto and marked as Attachment "A."

1.7. Environmental; Tests. Prior to Closing, JPA and its agents or representatives shall have the right to have access to the Property to perform any type of environmental studies, including without limitation, Phase I and Phase 2 environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively "Tests"). In the event JPA determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then JPA's sole remedy shall be the right to terminate this Agreement. A copy of the Tests together with related documents, reports and test reports shall be delivered to the Seller. JPA shall have until the Closing Date to complete the Tests and to provide notice of termination to the Seller.

JPA and its agents or representatives shall be responsible for and hereby agree to indemnify and hold Seller harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by JPA or its representatives. JPA and its representatives shall take all reasonable efforts to maintain the security of the premises Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property.

1.8. Taxes, Assessments and Other Costs. All taxes related to the Property for 2010, and all prior years, shall be paid by Seller at or prior to closing. Any tax related to the Property for 2011, shall be the responsibility of JPA. Any special assessment arising out of any improvement completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Seller. Rents, if any, are to be adjusted on and as of the date of closing and completion of the sale. JPA shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from Seller to JPA. JPA shall pay its own costs of the preparation of all documents and other related expenses in connection with the sale of the Property. The closing of the sale shall be paid by JPA.

2. Representations and Warranties.

2.1. Representations and Warranties of Seller. Seller represents and warrants to JPA as follows:

2.1.1. Organization; Power; Good Standing. Seller is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its

property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.1.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. Seller is the owner of the Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

2.1.3. Effect of Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Seller and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Seller, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which the Property may be bound.

2.1.4. Brokers. Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of JPA to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Seller is not aware of any claim or basis for any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

2.1.5. "Non-Foreign Person." Seller is not prohibited from consummating the transactions contemplated hereby and is not a "foreign person" as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

2.2. Representations and Warranties of JPA.

2.2.1. Organization; Power; Good Standing. JPA is a political subdivision and body corporate and politic organized under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.2.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA, enforceable against JPA in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

2.2.3. Effect of Agreement. The execution, delivery and performance of this Agreement by JPA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by JPA and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of JPA to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to JPA, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which JPA is a party or by which the Property may be bound.

3. Indemnification.

3.1. Indemnification by Seller. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Seller agrees to indemnify and hold JPA harmless against, and will reimburse JPA upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against JPA in respect of any and all damages or deficiencies resulting from: (a) any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Seller contained in this Agreement; and (b) any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished to JPA pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.2. Indemnification by JPA. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, JPA agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against Seller in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.3. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections 3.1 or 3.2 hereof:

3.3.1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

3.3.2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party's sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party's inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

3.4. Inspection and Testing. At any time after the date of this Agreement, JPA and its employees and agents shall have the right to enter upon the Property and perform such tests and inspections as it deems necessary to determine suitability of the Property for its intended use. JPA shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. Conditions of Closing.

4.1. JPA's Conditions of Closing. Unless waived by JPA in writing, the obligations of JPA to close under this Agreement are subject to fulfillment of the following conditions:

4.1.1. Executed Instruments. JPA shall receive at Closing:

4.1.1.1. The executed warranty deed and easements, if any, in accordance with this Agreement; and

4.1.1.2. A "non-foreign person" affidavit reasonably acceptable to JPA, signed and sworn to by Seller.

4.1.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of Seller and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.2. Seller's Conditions of Closing. Unless waived by Seller in writing, the obligations of Seller to close under this Agreement are subject to fulfillment of the following conditions:

4.2.1. Payment. At Closing, Seller shall receive the Purchase Price in Good Funds from JPA.

4.2.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of JPA and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.3. Termination. If the conditions of Closing for a party have not been materially complied with or performed and such noncompliance or nonperformance shall not have been waived by the other, such other party may terminate this Agreement and upon such termination neither JPA nor Seller shall have any liability one to the other.

4.4. Risk of Loss. All risk of loss or damage to the Property by fire or other casualty until the delivery of the executed instruments as provided in this Agreement is assumed by the Seller, and in such event, JPA shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.

5. Relocation Costs. Seller and JPA understand and agree that Seller is entitled, under the Relocation Assistance Act (Neb. Rev. Stat. § 76-1214, et seq.) and regulations promulgated thereunder, to relocation assistance as a result of the acquisition of the Property by the JPA. Further, Seller and JPA agree that existing lumber racking within the buildings currently located on the Property shall be considered personal property to be relocated or replaced under the provisions of the Relocation Assistance Act and regulations promulgated thereunder.

The parties understand and agree that the amount of relocation assistance is presently estimated by JPA as follows:

5.1. Three Hundred Fourteen Thousand Dollars (\$314,000.00) for moving costs;

5.2. Two Hundred One Thousand Four Hundred Forty-Six Dollars (\$201,446.00) to replace the existing lumber racking. The parties agree that this estimated amount for racking is the total amount to which Seller shall be entitled for replacement racking and installation thereof, and that the same reflects the JPA's determination of the reasonable expenses that would have been required to replace and reinstall such property. Seller agrees to this maximum amount and shall not be entitled to any further or additional amount even if the costs incurred by Seller exceed such agreed upon amount. As part of the consideration for this Agreement, Seller waives any right to appeal this determination by the JPA.

5.3. In order for Seller to have sufficient funds to begin the relocation process, the JPA shall pay to Seller, at Closing, an amount equal to one-half (1/2) of the total relocation costs of Five Hundred Fifteen Thousand Four Hundred Forty-Six Dollars (\$515,446.00) described above in partial satisfaction of its obligations under the Relocation Assistance Act and regulations promulgated thereunder.

6. Miscellaneous.

6.1. Binding Effect - Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

6.2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.3. Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

6.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

6.5. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following addresses or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to JPA: West Haymarket Joint Public Agency
 c/o City Attorney's Office
 555 S. 10th Street, Suite 300
 Lincoln, NE 68508

With a Copy to: Dan Marvin
 555 S. 10th Street
 Lincoln, NE 68508

If to Seller: Jaylynn, L.L.C.
Attention: Brad Devall
660 N Street
Lincoln, NE 68508

With a Copy to: Peter W. Katt, Esq.
Baylor, Evnen, Curtiss
Grimit & Witt, LLP
Wells Fargo Center
1248 O Street, Suite 600
Lincoln, NE 68508

6.6. Severability. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

6.7. Survival and Nonmerger. All terms, conditions, representations, and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.

6.8. Time of Essence. The parties agree that time is of the essence in the performance of their respective obligations hereunder.

6.9. Salvage. The Seller shall have the right to salvage those specific items listed on Attachment "B." Such salvage shall be completed prior to the date that Seller delivers possession of the Property to the JPA pursuant to paragraph 1.6 hereof.

6.10. Waiver. Either JPA or Seller may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

6.11. Construction. The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by

ATTACHMENT “A”
LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into on this _____ day of _____, 2011, by and between the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the state of Nebraska created under the Joint Public Agency Act (“Lessor”), and Jaylynn, L.L.C., a Nebraska limited liability company (“Lessee”).

RECITALS

I.

Lessee is selling to Lessor the property hereinafter described as the premises, but finds it necessary to retain possession thereof for a period of time after the closing in order to proceed with orderly removal of its business to a new location.

II.

Lessor is agreeable to leasing the premises back to Lessee for the term set forth below so as to allow Lessee to make an orderly transfer of its business to its new location, (“New Location”) upon the terms and conditions as herein set forth.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained here, the parties agree as follows:

1. Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the premises located at 660 N Street, Lincoln, Nebraska, and legally described as:

All of Lots 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 51, in the City of Lincoln, Lancaster County, Nebraska, and the West 25.0 feet of Lot 16 of said Block 51, excepting therefrom a 17 foot wide corridor, being 8.5 feet wide on each side of the Burlington Northern and Santa Fe Railway Company’s (formerly Chicago Burlington and Quincy Railroad Company) spur track center line, as now located and constructed upon, over and across said Lots 7, 8 and 15, in Lincoln, Lancaster County, Nebraska (the “Premises”).

2. Term. The term of this Lease shall commence on July ____, 2011, and shall terminate upon the earlier of (i) Lessee's notification that it has vacated the Premises, or (ii) November 30, 2011.

3. Rent. Lessee shall pay to Lessor the sum of One Dollar (\$1.00) as rent for the full term of this Lease, receipt of which is hereby acknowledged.

4. Use of Premises. The Premises described herein shall be used by Lessee for the purpose of conducting the business of a lumber yard and for no other purpose without the written consent of the Lessor. Notwithstanding Lessee's right to use the Premises as hereinabove described, Lessee agrees that Lessor shall, with reasonable notice to Lessee and no material disruption to the lumber yard business, be entitled to enter upon the Premises as may be necessary to conduct such tests, engage in surveys, or other inspections as may be necessary in furtherance of the West Haymarket Arena Project. In addition thereto, it is specifically understood and agreed that Lessor shall be entitled to remove the fence along the west property line and widen the existing 6th Street roadway to within three (3) feet, more or less, of the west exterior wall of the westernmost existing building. If JPA finds it necessary to remove some portion of the existing office structure located at 6th and N, all for the purpose of operating two-way truck traffic and other vehicular traffic over and across that portion of the Premises during the term of this Lease, then Lessor and Lessee shall negotiate on a reasonable amount to be paid to lessee for disruption cause by early relocation resulting therefrom.

5. Utilities. Lessee shall pay the cost and charges of all utilities and any other services which may be furnished to the Premises and shall indemnify and hold Lessor harmless for the same. Lessor shall not be liable for interruptions to the telephone, plumbing, heating, ventilating, air conditioning, electrical or other mechanical or utility systems or cleaning services, by reason of

accident, emergency, or repairs, alterations, improvements, or shortages or lack of availability of materials or services.

6. Maintenance and Repairs. Lessee shall, at its sole expense, maintain and make repairs and replacements as needed to the improvements on the Premises, including, but not limited to, interior maintenance (including heating, ventilation and air conditioning systems), exterior maintenance, snow removal, lawn care and parking maintenance. Lessee shall maintain the Premises in clean, safe, and good condition and keep and return the Premises in at least as good condition as they currently exist, ordinary wear and tear excepted.

7. Alterations or Improvements. Lessee shall not make any improvements or alterations to the Premises during the term of this Lease.

8. Americans with Disabilities Act; Compliance. Lessee shall be solely responsible for any expenses necessary to comply with the American with Disabilities Act and similar state statutes or requirements triggered solely by a disability of one or more of Lessee's employees.

9. Signs. Lessee shall have the right to maintain that signage existing on the Premises at the time of execution of this Lease and no other signage.

10. Insurance.

(a) Lessee shall insure the Premises against fire and other casualty for not less than the full replacement value thereof with proceeds to be payable to Lessor and Lessee as their interest may appear.

(b) Lessee, at its own cost and expense, shall procure and maintain, at all times, comprehensive commercial liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence with respect to personal injury or death and damage to property. Said policy shall name Lessor as an additional insured, contain a waiver of

subrogation in favor of Lessor, and provide that said insurance cannot be cancelled or modified unless thirty (30) days prior written notice has been given to the Lessor.

Said policies or certificates thereof shall be delivered to Lessor by Lessee upon the commencement of the term of this Lease and upon each renewal of said insurance.

11. Indemnification. Lessee hereby agrees to indemnify and hold harmless Lessor, its agents and employees from and against any and all claims or demands for the loss, theft, or damage to property or for injury or death to any person from any cause whatsoever while in, upon, or about the Premises, during the term of this Lease, except to the extent that such claim is compensated by insurance and except further that Lessee's indemnification shall not include an indemnification for liability for the gross negligence or willful misconduct of Lessor, its agents or employees. Each party agrees to indemnify and hold the other harmless from any and all claims and demands of third parties arising from any breach or default of such indemnifying party in the performance of any obligation of such indemnifying party under this Lease or arising from or based upon any alleged act, omission, or negligence of such indemnifying party, or any of its agents, employees, licensees, servants, invitees, or employees.

12. Mutual Waiver of Subrogation. Without limiting the obligation of Lessee to maintain insurance which permits waiver of subrogation (unless otherwise approved in writing by Lessor), and notwithstanding the indemnification provision set forth above or anything else to the contrary set forth herein, Lessor and Lessee hereby waive all causes of action and rights of recovery against each other for any loss occurring to the property of Lessor or Lessee resulting from any of the perils insured against under any and all fire or other extended casualty insurance policies in effect at the time of any such loss, regardless of cause or origin of such loss.

13. Destruction of Premises. If the Premises are damaged by fire or other casualty or peril so as to become untenable, this Lease shall automatically terminate.

14. Environmental Provisions. Lessee shall not allow any hazardous materials as defined by the Environmental Protection Agencies of the state or federal government to come upon the Premises or be used thereon and shall not allow any obnoxious odors or vapors to be omitted from the Premises.

15. Holding Over. Should Lessee hold possession hereunder after the expiration of the term of this Lease, Lessee shall be deemed to be a tenant at sufferance and subject to removal pursuant to the Forcible Entry and Detainer statutes of the state of Nebraska (Neb. Rev. Stat. § 25-21,219 et seq.).

16. Notices. Notices under this Lease shall be given in writing and may be served personally by facsimile transmittal or by mail if addressed as follows:

To Lessor: West Haymarket Joint Public Agency
 Attention: Dan Marvin
 555 S. 10th Street
 Lincoln, NE 68508
 Fax: (402) _____

To Lessee: Jaylynn, LLC
 Attention: Brad Devall
 660 N Street
 Lincoln, NE 68508
 Fax: (402) _____

Each party reserves the right to change the name, address, and/or telephone and fax numbers with respect to which notices are to be sent by giving written notice of such change to the other party at any time.

17. Time is of the Essence. It is hereby agreed that time is of the essence of this Lease.

18. Entire Agreement. This Lease represents all agreements between Lessor and Lessee as regards this subject and can only be amended in writing signed and agreed to by both parties.

19. Successors and Assigns. Lessee shall not assign, sublease or otherwise transfer, by operation of law or otherwise, this Lease or the Premises or any interest herein or portion thereof without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion. This Lease is for the benefit and shall be binding upon the successors and assigns of each party.

20. Security. Lessee shall be solely responsible for the security of the Premises and for the security of Lessee's employees, agents, guest, and invitees on the Premises. Lessee shall be responsible to lock and secure all doors, windows and entrances to the Premises and to take all other reasonable security measures to protect persons and properties upon the Premises.

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

JAYLYNN, L.L.C., a Nebraska limited liability company

By: _____
Brad Devall, Managing Member

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

By: _____
_____, Chairman

ATTACHMENT "B"

ITEMS TO BE SALVAGED BY SELLER

West Haymarket Project, T.C. _____

PURCHASE AGREEMENT

(Jaylynn New Site)

THIS AGREEMENT is made and entered into on this _____ day of _____, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company, (“Seller”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (“JPA”).

RECITALS

I.

Seller has agreed to sell and convey to the JPA certain real estate located at 660 N Street, which real estate presently serves as the business location of the Watson Brickson Lumber Company owned by Seller.

II.

Seller has contracted to purchase certain real estate located at 335 P Street and legally described in the attached Exhibit “A” from First Street Properties, a Nebraska general partnership, to provide a new location at which to reestablish the Watson Brickson Lumber Company.

III.

For purposes of storm water mitigation requirements, the JPA is desirous of acquiring a portion of the real estate being acquired by the Seller from First Street Properties, which portion is legally described on the attached Exhibit “B” (the “Property”), with the remainder of the real estate to serve as Seller’s new site (the “New Site”).

IV.

Seller desires to sell and JPA desires to acquire the Property in fee simple, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Conveyance.

1.1. Sale and Conveyance. Seller agrees to sell and convey to the JPA and JPA agrees to buy and take from the Seller, upon the terms and conditions hereinafter set forth, the real property owned by Seller legally described on Exhibit "B" (the "Property").

Seller represents and warrants that it has good, valid, and marketable title, in fee simple and agrees at closing (as hereinafter defined) to convey title to the Property to JPA by warranty deed free and clear of all liens, encumbrances or special taxes levied or assessed or other restrictions, except the Permitted Exceptions as hereinafter defined.

1.2. Compensation.

1.2.1. JPA shall pay to Seller Five Hundred Twelve Thousand Nine Hundred Dollars (\$512,900.00), ("Property Purchase Price") for the Property, payable at Closing, subject to adjustments and prorations as herein provided.

1.2.2. JPA shall pay to the Seller Eighty Thousand Dollars (\$80,000.00) ("Conservation Easement Purchase Price") for the Conservation Easement, as more particularly described in paragraph 5.4 hereof, payable at Closing, subject to the terms and provisions hereof.

The Property Purchase Price and the Conservation Easement Purchase Price shall collectively be referred to hereinafter as the "Purchase Price."

1.3. Date of Closing. Seller and JPA agree to close and complete this sale in accordance herewith on or before the _____ day of June, 2011, ("Closing").

1.4. Evidence of Title. Within thirty (30) days from the date of this Agreement, JPA shall obtain a title commitment (the "Title Commitment") for an ALTA owner's title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the "Title Company") covering title to the Property and showing the condition of title to the Property. For purposes hereof, "Permitted Exceptions" shall mean (i) covenants, conditions and restrictions of record which shall be approved by JPA if they do not interfere with JPA's intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by JPA, and which do not interfere with JPA's intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which Seller is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of JPA; (vi) easements and use restrictions to be granted under this Agreement; and (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by JPA. The cost of the owner's title insurance policy shall be paid by the JPA. Within fourteen (14) days of JPA's receipt of the title commitment, the JPA shall notify Seller of any objections to the title to the Property disclosed by the title commitment. Seller shall have a reasonable period to cure or correct JPA's objections to the title and deliver an amended title commitment; otherwise,

JPA may, at its option, either terminate this Agreement or waive the objection and proceed to Closing.

1.5. Survey. JPA may, at its option, obtain an ALTA/ASCM survey with minimum standard detail requirements showing area dimensions and location of the real property, the nearest monument streets, adjoining streets, roadways and properties, location of all buildings, improvements, and encroachments, if any, the location of all recorded easements, square footage, together with all current floodplain zoning designations of the Property.

1.6. Title and Possession. Seller agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to JPA free and clear of all adverse mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or adverse claims of any kind or character whatsoever, except for Permitted Exceptions. Seller shall deliver possession of the Property to JPA at the time of Closing.

1.7. Environmental; Tests. Prior to Closing, JPA and its agents or representatives shall have the right to have access to the Property to perform any type of environmental studies, including without limitation, Phase I and Phase 2 environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively "Tests"). In the event JPA determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then JPA's sole remedy shall be the right to terminate this Agreement. A copy of the Tests together with related documents, reports and test reports shall be delivered to the Seller. JPA shall have until the Closing Date to complete the Tests and to provide notice of termination to the Seller.

JPA and its agents or representatives shall be responsible for and hereby agree to indemnify and hold Seller harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by JPA or its representatives. JPA and its representatives shall take all reasonable efforts to maintain the security of the premises Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property.

1.8. Taxes, Assessments and Other Costs. All taxes related to the Property for 2010, and all prior years, shall be paid by Seller at or prior to closing. Any tax related to the Property for 2011, shall be the responsibility of the JPA. Any special assessment arising out of any improvement completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Seller. Rents, if any, are to be adjusted on and as of the date of closing and completion of the sale. JPA shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from Seller to JPA. JPA shall pay its own costs of the preparation of all documents and

other related expenses in connection with the sale of the Property. The closing of the sale shall be paid by JPA.

2. Representations and Warranties.

2.1. Representations and Warranties of Seller. Seller represents and warrants to JPA as follows:

2.1.1. Organization; Power; Good Standing. Seller is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.1.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. Seller is the owner of the Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

2.1.3. Effect of Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Seller and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Seller, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which the Property may be bound.

2.1.4. Brokers. Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of JPA to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Seller is not aware of any claim or basis for any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

2.1.5. “Non-Foreign Person.” Seller is not prohibited from consummating the transactions contemplated hereby and is not a “foreign person” as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

2.2. Representations and Warranties of JPA.

2.2.1. Organization; Power; Good Standing. JPA is a political subdivision and body corporate and politic organized under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.2.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by JPA and constitutes a legal, valid, and binding obligation of JPA, enforceable against JPA in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies.

2.2.3. Effect of Agreement. The execution, delivery and performance of this Agreement by JPA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by JPA and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of JPA to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to JPA, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which JPA is a party or by which the Property may be bound.

3. Indemnification.

3.1. Indemnification by Seller. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Seller agrees to indemnify and hold JPA harmless against, and will reimburse JPA upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against JPA in respect of any and all damages or deficiencies resulting from: (a) any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Seller contained in this Agreement; and (b) any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished to JPA pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.2. Indemnification by JPA. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, JPA agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against Seller in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.3. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections 3.1 or 3.2 hereof:

3.3.1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

3.3.2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party's sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party's inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

3.4. Inspection and Testing. At any time after the date of this Agreement, JPA and its employees and agents shall have the right to enter upon the Property and perform such tests and inspections as it deems necessary to determine suitability of the Property for its intended use. JPA shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. Conditions of Closing.

4.1. JPA's Conditions of Closing. Unless waived by JPA in writing, the obligations of JPA to close under this Agreement are subject to fulfillment of the following conditions:

4.1.1. Executed Instruments. JPA shall receive at Closing:

4.1.1.1. The executed warranty deed;

4.1.1.2. The Conservation Easement;

4.1.1.3. A "non-foreign person" affidavit reasonably acceptable to JPA, signed and sworn to by Seller.

4.1.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of Seller and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.2. Seller's Conditions of Closing. Unless waived by Seller in writing, the obligations of Seller to close under this Agreement are subject to fulfillment of the following conditions:

4.2.1. Payment. At Closing, Seller shall receive the Purchase Price in Good Funds from JPA.

4.2.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of JPA and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.3. Termination. If the conditions of Closing for a party have not been materially complied with or performed and such noncompliance or nonperformance shall not have been waived by the other, such other party may terminate this Agreement and upon such termination neither JPA nor Seller shall have any liability one to the other.

4.4. Risk of Loss. All risk of loss or damage to the Property by fire or other casualty until the delivery of the executed instruments as provided in this Agreement is assumed by the Seller, and in such event, JPA shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.

5. Special Provisions.

5.1. Subdivision Approval. In the event that subdivision approval is needed to authorize the conveyance of the Property to the JPA, then and in that event the JPA shall be

responsible, at its own cost and expense, for making application and obtaining approval from the City for any necessary subdivision or plat.

5.2. Fill. The JPA agrees that, at the option of the Seller, the JPA shall deposit upon Seller's New Site, at such location as Seller may designate, such fill as the JPA intends to remove from the Property in furtherance of its intended use of the site as a storm water mitigation facility. JPA in no way warrants the suitability of such soil for fill purposes, and upon deposit upon Seller's new site, such fill shall for all purposes become the property of the Seller. The deposit of such fill upon the New Site shall be conditional upon and subject to receipt by Seller of a proper and authorizing fill permit for any amount of fill to be deposited on the New Site.

5.3. Vehicular Access. The JPA agrees to obtain approval (if necessary) for a driveway access on Seller's New Site providing access from Seller's New Site onto North 2nd Street. Such driveway access shall be located generally south of the common property line between the Property and Seller's New Site as shown on Exhibit "C."

5.4. Grant of Conservation Easement to JPA. Seller shall, at the time of Closing, deliver to the JPA an easement over those portions of the Seller's New Site, more specifically set forth in the Conservation Easement, a copy of which is attached hereto as Exhibit "D," relinquishing Seller's right to a portion of the otherwise allowable fill assigned to the area covered by the Conservation Easement as otherwise permitted under Chapter 27.52 of the Lincoln Municipal Code. The acceptance of such Conservation Easement by the JPA shall be conditioned upon the prior referral to and comment thereon by the Lincoln-Lancaster County Planning Commission.

6. Miscellaneous.

6.1. Binding Effect - Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

6.2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.3. Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

6.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

6.5. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following addresses or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to JPA: West Haymarket Joint Public Agency
c/o City Attorney's Office
555 S. 10th Street, Suite 300
Lincoln, NE 68508

With a Copy to: Dan Marvin
555 S. 10th Street
Lincoln, NE 68508

If to Seller: Jaylynn, L.L.C.
Attention: Brad Devall
660 N Street
Lincoln, NE 68508

With a Copy to: Peter W. Katt, Esq.
Baylor, Evnen, Curtiss
Grimit & Witt, LLP
Wells Fargo Center
1248 O Street, Suite 600
Lincoln, NE 68508

6.6. Severability. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

6.7. Survival and Nonmerger. All terms, conditions, representations, and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.

6.8. Time of Essence. The parties agree that time is of the essence in the performance of their respective obligations hereunder.

6.9. Waiver. Either JPA or Seller may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c)

waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

6.10. Construction. The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

EXECUTED by Seller this _____ day of _____, 2011.

JAYLYNN, L.L.C., a Nebraska limited liability company

By: _____

Title: _____

Fed. Id. No. or Social Security No.

EXECUTED by JPA this _____ day of _____, 2011.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

EXHIBIT "A"

1st Street Properties

Lots 1 through 6, inclusive, Block 253, and the North 1/2 of the vacated alley adjacent to the South lot line of said lots; and all of Block 262 and the vacated portion of the East-West alley that bisects Block 262 and the vacated portion of Q Street that is adjacent to the South lot line of Lots 7-12, inclusive, Block 262; and all of the West 1/2 portion of vacated 3rd Street starting at the extension of the South lot line of Lot 1, Block 253 and extending North to the point where 3rd Street intersects with the Union Pacific Railroad right-of-way, Original Plat of Lincoln, Lancaster County, Nebraska, all located upon the Southwest Quarter (SW ¼) of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska;

AND

That portion of Lots 3 through 12, inclusive, Block 274, that lies west and south of the Union Pacific Railroad right-of-way, including the vacated East-West alley bisecting Block 274 and the vacated portion of S Street that lies between Block 274 and Block 265; and all of Block 265, including the vacated East-West alley bisecting Block 265 and the vacated portion of R Street that lies between Block 265 and Block 262, Original Plat of Lincoln, Lancaster County, Nebraska, all located upon the Southwest Quarter of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

EXHIBIT "B"

A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL, A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'04"E, A DISTANCE OF 592.04' TO A POINT; THENCE N00°15'16"E ALONG A LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 50.02' TO THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN ORIGINAL, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "R" STREET; THENCE S89°45'39"E ALONG THE NORTH LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 359.78' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG THE EAST LINE OF THE WEST HALF OF SAID RIGHT-OF-WAY, A DISTANCE OF 642.39' TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE EASTERLY EXTENSION OF THE EAST-WEST ALLEY, BLOCK 253, LINCOLN ORIGINAL; THENCE N89°42'25"W ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID ALLEY, AND THE NORTH LINE OF SAID ALLEY, A DISTANCE OF 360.08' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 231,153.73 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.

EXHIBIT "C"

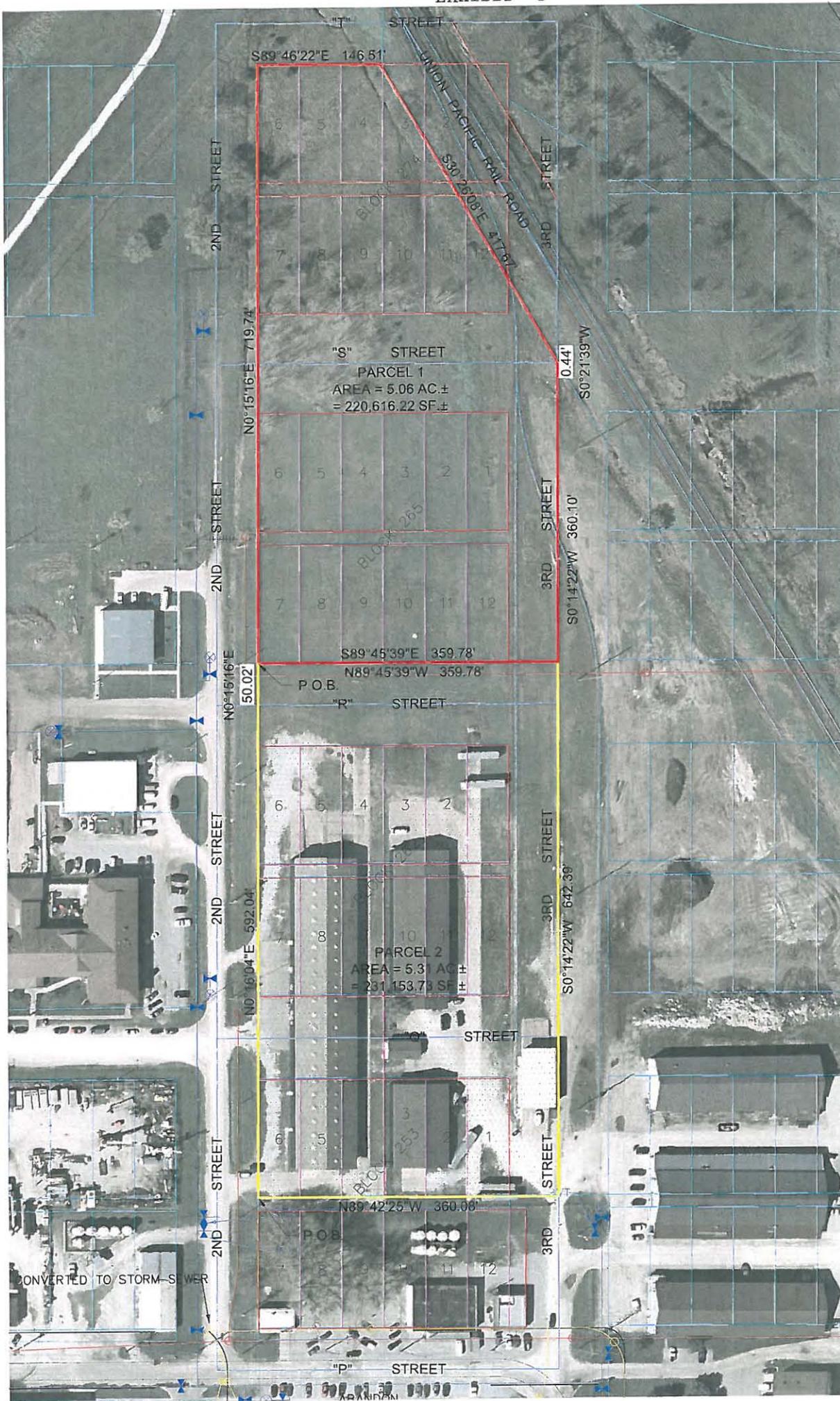


EXHIBIT "D"

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into on this _____ day of _____, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company ("Owner"), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the state of Nebraska created under the Joint Public Agency Act ("JPA").

RECITALS

I.

Owner is the owner in fee simple of a tract of land, Lincoln, Lancaster County, Nebraska, legally described as follows:

A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL, A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'04"E, A DISTANCE OF 592.04' TO A POINT; THENCE N00°15'16"E ALONG A LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 50.02' TO THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN

ORIGINAL, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "R" STREET; THENCE S89°45'39"E ALONG THE NORTH LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 359.78' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG THE EAST LINE OF THE WEST HALF OF SAID RIGHT-OF-WAY, A DISTANCE OF 642.39' TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE EASTERLY EXTENSION OF THE EAST-WEST ALLEY, BLOCK 253, LINCOLN ORIGINAL; THENCE N89°42'25"W ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID ALLEY, AND THE NORTH LINE OF SAID ALLEY, A DISTANCE OF 360.08' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 231,153.73 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.

(hereinafter referred to as the "Easement Area"). Owner agrees to convey and JPA desires to accept a permanent conservation easement to preserve a portion of the flood storage capacity on and within the Easement Area.

II.

The Easement Area is located within the Salt Creek Flood Storage Area No. 9 and has been assigned an allowable fill, for flood storage purposes, of no more than forty percent (40%) on a volumetric basis, all in accordance with the "Standards for Salt Creek Flood Storage Area" (LMC 27.52.035) adopted by the City of Lincoln.

III.

The Owner is agreeable to granting and conveying to the JPA a permanent conservation easement relinquishing to the JPA fifty percent (50%) of the allowable fill otherwise assigned to the Easement Area as described above representing 10,390 cubic yards of fill, which the JPA may, or may not, at its option, assign to another location within Storage Area No. 9 as contemplated by LMC 27.52.035.

IV.

The JPA is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act (Neb. Rev. Stat. § 76-2,111 et seq.).

V.

This Agreement has been submitted to the Lincoln City-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

VI.

The Board of Representatives of the JPA has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Chairman to execute this Agreement on behalf of the JPA.

NOW, THEREFORE, in consideration of the mutual value to the Owner and JPA and to encourage and preserve wetlands, the Owner and JPA agree as follows:

1. Grant of Conservation Easement. Owner hereby creates, establishes, grants and conveys to the JPA for its benefit and the benefit of the public, a conservation easement over the Easement Area relinquishing its right to place upon or within the Easement Area the fifty percent (50%) of the otherwise allowable fill by volume assigned to the Easement Area pursuant to the Standards for Salt Creek Flood Storage Area as adopted by the City of Lincoln (LMC 27.52.035). The amount of allowable fill being assigned to JPA by Owner, as calculated based on the 2004 Aerial Topographical Survey information provided by the City of Lincoln

Geographic Information System with the base flood elevation of 1,151.7 feet at the north end of the Easement Area and 1,152.0 feet at the south end of the Easement Area, is 10,390 cubic yards.

A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area;

- i. Construction or placement of fill material, cement, buildings, fences, signs, or any other structure except to the extent of allowable fill remaining to Owner under this Conservation Easement;
- ii. Any other use or practice that would adversely impact the flood storage capacity.
- iii. Existing buildings shall not be flood-proofed in such a manner as to reduce the flood storage capacity of the Easement Area beyond the amount of allowable fill remaining to Owner under this Conservation Easement.

B. The term of this Conservation Easement shall be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the JPA pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

C. The Owner understands and agrees that the JPA may, at its option, transfer a portion or the total amount of the allowable fill capacity assigned to the Easement Area pursuant to the “Standards for Salt Creek Flood Storage Area” adopted by the City of Lincoln to another location within the same storage area.

2. Condition of the Easement Area at Time of Grant. The conditions of the Easement Area at the time of this grant shall mean the flood storage capacity of the Easement Area existing at the time of this grant as shown on the attached Attachment “A.”

3. Protection and Maintenance of the Easement Area.

A. Owner agrees at Owner’s own cost and expense to protect and maintain the flood storage capacity of the Easement Area in the same condition existing at the time of this grant except as otherwise authorized by this Conservation Easement.

B. Owner agrees to pay any real estate taxes, or assessments levied by competent authorities on the Easement Area, including, but not limited to, any tax or assessment affecting the easement granted herein. Owner further agrees to obtain, pay for, and continuously maintain liability and property insurance covering the Easement Area.

C. Owner shall cooperate with and assist the JPA at JPA’s cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications

which the JPA deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

4. Inspection and Access by City. The JPA shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, or protecting the flood storage capacity of the Easement Area as the JPA may deem necessary or desirable.

5. Enforcement. Owner agrees that the JPA may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including, but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that the JPA may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the JPA may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the JPA does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should Owner undertake any activity requiring the approval of the JPA without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that JPA shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the JPA's cost of suit, including reasonable attorney fees, shall be paid by Owner.

6. Title to Easement Area. Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. Binding Affect. The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner and JPA.

8. Recordation. The parties agree that this Agreement shall be duly filed by the JPA with the Lancaster County Register of Deeds upon execution and acceptance by the JPA. Filing fees shall be paid in advance by the Owner.

9. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

JAYLYNN, L.L.C., a Nebraska limited liability company, Owner

By: _____
Brad Devall, Managing Member

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

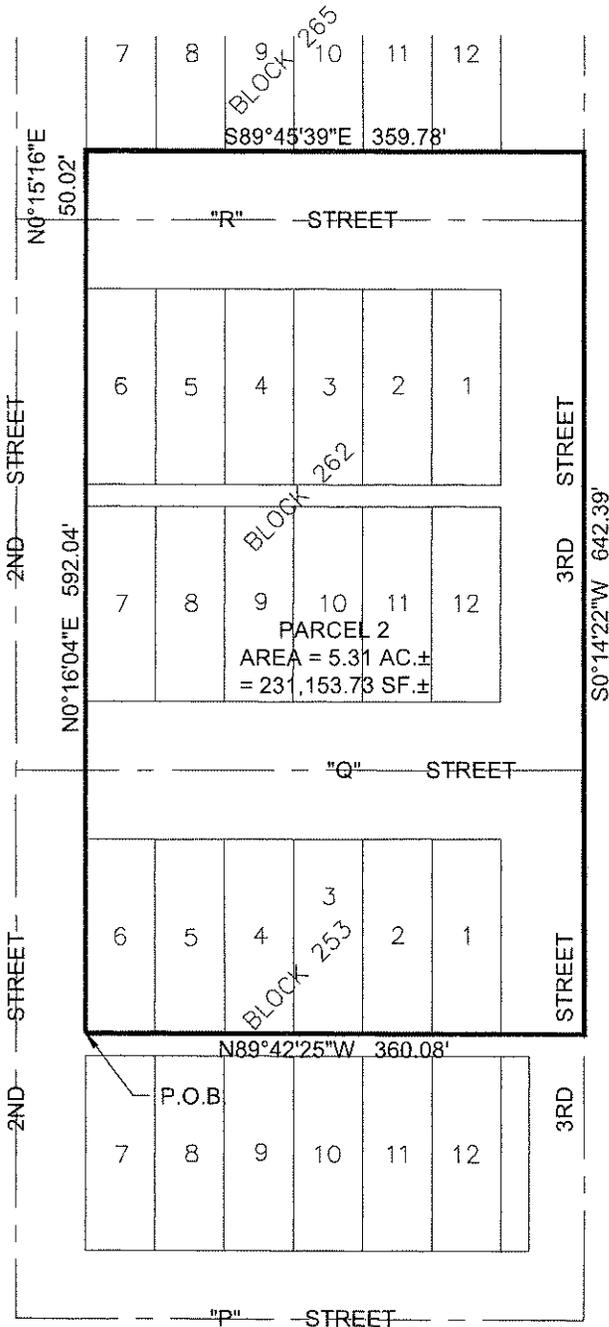
By: _____
_____, Chairman

ATTACHMENT "A"

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL, A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG A EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'04"E, A DISTANCE OF 592.04' TO A POINT; THENCE N00°15'16"E ALONG A LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 50.02' TO THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN ORIGINAL, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "R" STREET; THENCE S89°45'39"E ALONG THE NORTH LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 359.78' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG THE EAST LINE OF THE WEST HALF OF SAID RIGHT-OF-WAY, A DISTANCE OF 642.39' TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE EASTERLY EXTENSION OF THE EAST-WEST ALLEY, BLOCK 253, LINCOLN ORIGINAL; THENCE N89°42'25"W ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID ALLEY, AND THE NORTH LINE OF SAID ALLEY, A DISTANCE OF 360.08' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 231,153.73 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.

Wednesday, May 25, 2011
 P:\1ST ST PROP\PARCEL-2-LEGAL.doc



TOTAL FLOOD STORAGE = 51,940 CY
 40% ALLOWABLE FILL = 20,780 CY
 50% ASSIGNED TO JPA = 10,390 CY

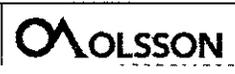
AREA OF PARCEL = 231,304 SF
 AVERAGE DEPTH OF FLOODPLAIN = 6.06 FT



DWG: F:\Projects\010-2431\Survey\Master\Krels\Plot\EXHIBIT.dwg
 DATE: Jun 14, 2011 4:08pm
 USER: tgergen
 XREFS:

PROJECT NO:	XXXX-XXXX
DRAWN BY:	MRJ

1ST STREET PROPERTIES
 PARCEL 2



1111 Lincoln Mall, Suite 111
 P.O. Box 84808
 Lincoln, NE 68501-4608
 TEL 402.474.6311

EXHIBIT	2
---------	---

WH 11-46

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-46 by accepting the attached Purchase Agreement to replace the Purchase Agreement previously attached to Bill No. WH 11-46.

Introduced by:

Approved as to Form & Legality:

City Attorney

Requested by: Bill Austin

WH 11-46

MOTION TO AMEND NO. 2

I hereby move to amend Bill No. WH 11-46 in the following manner:

1. Substitute the attached Purchase Agreement for the Purchase Agreement attached to Bill No. WH 11-46.

2. After line 8 insert a new paragraph to read as follows:

BE IT FURTHER RESOLVED that Dan Marvin, Secretary/Project Manager of the West Haymarket Joint Public Agency is hereby authorized to execute the Conservation Easement Agreement, all closing documents and other related documents to implement the Purchase Agreement (Jaylynn New Site).

Introduced by:

Approved as to Form & Legality:

Legal Counsel for
West Haymarket Joint Public Agency

Requested by: Bill Austin

PURCHASE AGREEMENT

(Jaylynn New Site)

THIS AGREEMENT is made and entered into on this _____ day of _____, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company, (“Seller”), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (“JPA”).

RECITALS

I.

Seller has agreed to sell and convey to the JPA certain real estate located at 660 N Street, which real estate presently serves as the business location of the Watson Brickson Lumber Company owned by Seller.

II.

Seller has contracted to purchase certain real estate located at 335 P Street and legally described in the attached Exhibit “A” from First Street Properties, a Nebraska general partnership, to provide a new location at which to reestablish the Watson Brickson Lumber Company.

III.

For purposes of storm water mitigation requirements, the JPA is desirous of acquiring a portion of the real estate being acquired by the Seller from First Street Properties, which portion is legally described on the attached Exhibit “B” (the “Property”), with the remainder of the real estate to serve as Seller’s new site (the “New Site”).

IV.

Seller desires to sell and JPA desires to acquire the Property in fee simple, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Conveyance.

1.1. Sale and Conveyance. Seller agrees to sell and convey to the JPA and JPA agrees to buy and take from the Seller, upon the terms and conditions hereinafter set forth, the real property owned by Seller legally described on Exhibit "B" (the "Property").

Seller represents and warrants that it has good, valid, and marketable title, in fee simple and agrees at closing (as hereinafter defined) to convey title to the Property to JPA by warranty deed free and clear of all liens, encumbrances or special taxes levied or assessed or other restrictions, except the Permitted Exceptions as hereinafter defined.

1.2. Compensation.

1.2.1. JPA shall pay to Seller Five Hundred Twelve Thousand Nine Hundred Dollars (\$512,900.00), ("Property Purchase Price") for the Property, payable at Closing, subject to adjustments and prorations as herein provided.

1.2.2. JPA shall pay to the Seller Eighty Thousand Dollars (\$80,000.00) ("Conservation Easement Purchase Price") for the Conservation Easement, as more particularly described in paragraph 5.4 hereof, payable at Closing, subject to the terms and provisions hereof.

The Property Purchase Price and the Conservation Easement Purchase Price shall collectively be referred to hereinafter as the "Purchase Price."

1.3. Date of Closing. Seller and JPA agree to close and complete this sale in accordance herewith on or before the 20th day of July, 2011, ("Closing").

1.4. Evidence of Title. Within thirty (30) days from the date of this Agreement, JPA shall obtain a title commitment (the "Title Commitment") for an ALTA owner's title insurance policy issued by a title insurance company duly authorized to do business in Nebraska (the "Title Company") covering title to the Property and showing the condition of title to the Property. For purposes hereof, "Permitted Exceptions" shall mean (i) covenants, conditions and restrictions of record which shall be approved by JPA if they do not interfere with JPA's intended use of the Property; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by JPA, and which do not interfere with JPA's intended use of the Property; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which Seller is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of JPA; (vi) easements and use restrictions to be granted under this Agreement; and (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by JPA. The cost of the owner's title insurance policy shall be paid by the JPA. Within fourteen (14) days of JPA's receipt of the title commitment, the JPA shall notify Seller of any objections to the title to the Property disclosed by the title commitment. Seller shall have a reasonable period to cure or correct JPA's objections to the title and deliver an amended title commitment; otherwise,

JPA may, at its option, either terminate this Agreement or waive the objection and proceed to Closing.

1.5. Survey. JPA may, at its option, obtain an ALTA/ASCM survey with minimum standard detail requirements showing area dimensions and location of the real property, the nearest monument streets, adjoining streets, roadways and properties, location of all buildings, improvements, and encroachments, if any, the location of all recorded easements, square footage, together with all current floodplain zoning designations of the Property.

1.6. Title and Possession. Seller agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to JPA free and clear of all adverse mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights, assessments, covenants, charges or adverse claims of any kind or character whatsoever, except for Permitted Exceptions. Seller shall deliver possession of the Property to JPA at the time of Closing.

1.7. Environmental; Tests. Prior to Closing, JPA and its agents or representatives shall have the right to have access to the Property to perform any type of environmental studies, including without limitation, Phase I and Phase 2 environmental site assessments and/or full site characterizations to identify the vertical and horizontal extent of any environmental contamination that exists on the Property (collectively "Tests"). In the event JPA determines to its reasonable satisfaction based upon the Tests that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then JPA's sole remedy shall be the right to terminate this Agreement. A copy of the Tests together with related documents, reports and test reports shall be delivered to the Seller. JPA shall have until the Closing Date to complete the Tests and to provide notice of termination to the Seller.

JPA and its agents or representatives shall be responsible for and hereby agree to indemnify and hold Seller harmless from any damages, loss, or expenses as a result of any damages arising out of any entry or use of the Property as a result of the due diligence or Tests undertaken by JPA or its representatives. JPA and its representatives shall take all reasonable efforts to maintain the security of the premises Property while performing any due diligence or survey Tests activities on the site, and shall, in the event of any termination of this Agreement, promptly repair any damage to the Property, including fill in of any holes bored on the Property.

1.8. Taxes, Assessments and Other Costs. All taxes related to the Property for 2010, and all prior years, shall be paid by Seller at or prior to closing. Any tax related to the Property for 2011, shall be the responsibility of the JPA. Any special assessment arising out of any improvement completed or under construction prior to Closing, whether then levied or unlevied, assessed or unassessed, shall be borne by Seller. Rents, if any, are to be adjusted on and as of the date of closing and completion of the sale. JPA shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from Seller to JPA. JPA shall pay its own costs of the preparation of all documents and

other related expenses in connection with the sale of the Property. The closing of the sale shall be paid by JPA.

2. Representations and Warranties.

2.1. Representations and Warranties of Seller. Seller represents and warrants to JPA as follows:

2.1.1. Organization; Power; Good Standing. Seller is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.1.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies. Seller is the owner of the Property and no other persons have any interest in such real estate, except as set forth in this Agreement.

2.1.3. Effect of Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Seller and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Seller to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to Seller, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which Seller is a party or by which the Property may be bound.

2.1.4. Brokers. Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of JPA to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, and Seller is not aware of any claim or basis for any claim for payment of any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

2.1.5. “Non-Foreign Person.” Seller is not prohibited from consummating the transactions contemplated hereby and is not a “foreign person” as defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended.

2.2. Representations and Warranties of JPA.

2.2.1. Organization; Power; Good Standing. JPA is a political subdivision and body corporate and politic organized under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

2.2.2. Authority Relative to Agreement. This Agreement has been duly executed and delivered by JPA and constitutes a legal, valid, and binding obligation of JPA, enforceable against JPA in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor’s rights generally, or by judicial discretion in connection with the application of equitable remedies.

2.2.3. Effect of Agreement. The execution, delivery and performance of this Agreement by JPA and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by JPA and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of JPA to be obtained; and will not violate, with or without the giving of notice and/or the passage of time, any provision of law applicable to JPA, and will not conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any adverse lien, charge or encumbrance upon the Property pursuant to any mortgage, deed of trust, indenture or other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or character whatsoever, to which JPA is a party or by which the Property may be bound.

3. Indemnification.

3.1. Indemnification by Seller. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Seller agrees to indemnify and hold JPA harmless against, and will reimburse JPA upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against JPA in respect of any and all damages or deficiencies resulting from: (a) any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Seller contained in this Agreement; and (b) any deed, exhibit, certificate, instrument or other agreement furnished or to be furnished to JPA pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.2. Indemnification by JPA. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, JPA agrees to indemnify and hold Seller harmless against, and will reimburse Seller upon demand for, any payment, loss, cost or expense (including reasonable professional fees and reasonable costs of investigation incurred in defending against such payment, loss, cost or expense or claim therefore) made or incurred by or asserted against Seller in respect of any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement or any exhibit, certificate, instrument, or other agreement furnished or to be furnished to Seller pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.3. Conditions of Indemnification. With respect to any actual or potential claim, any written demand, commencement of any action, or the occurrence of any other event which involves any matter or related series of matters (Claim) against which a party hereto is indemnified (Indemnified Party) by another party (Indemnifying Party) under Sections 3.1 or 3.2 hereof:

3.3.1. Promptly after the Indemnified Party first receives written documents pertaining to the Claim, or if such Claim does not involve a third party Claim, promptly after the Indemnified Party first has actual knowledge of such Claim, the Indemnified Party shall give notice to the Indemnifying Party of such Claim in reasonable detail and stating the amount involved, if known, together with copies of any such written documents; and

3.3.2. If the Claim involves a third party Claim, then the Indemnifying Party shall have the right, at its sole cost, expense and ultimate liability regardless of outcome, through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim, except that the Indemnified Party may elect, at any time and at the Indemnified Party's sole cost, expense and ultimate liability, regardless of outcome, and through counsel of its choice, to litigate, defend, settle, or otherwise attempt to resolve such Claim. If the Indemnified Party so elects (for reasons other than the Indemnifying Party's inability, failure, or refusal to provide a defense to such Claim), then the Indemnifying Party shall have no obligation to indemnify the Indemnified Party with respect to such Claim. In any event, all parties hereto shall fully cooperate with any other party and their respective counsel in connection with any such litigation, defense, settlement, or other attempt at resolution.

3.4. Inspection and Testing. At any time after the date of this Agreement, JPA and its employees and agents shall have the right to enter upon the Property and perform such tests and inspections as it deems necessary to determine suitability of the Property for its intended use. JPA shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. Conditions of Closing.

4.1. JPA's Conditions of Closing. Unless waived by JPA in writing, the obligations of JPA to close under this Agreement are subject to fulfillment of the following conditions:

4.1.1. Executed Instruments. JPA shall receive at Closing:

4.1.1.1. The executed warranty deed;

4.1.1.2. The Conservation Easement;

4.1.1.3. A "non-foreign person" affidavit reasonably acceptable to JPA, signed and sworn to by Seller.

4.1.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of Seller and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.2. Seller's Conditions of Closing. Unless waived by Seller in writing, the obligations of Seller to close under this Agreement are subject to fulfillment of the following conditions:

4.2.1. Payment. At Closing, Seller shall receive the Purchase Price in Good Funds from JPA.

4.2.2. Representations and Warranties. There have been no material inaccuracies in the representations and warranties of JPA and such representations and warranties shall be true as of Closing as though made on and as of such date.

4.3. Termination. If the conditions of Closing for a party have not been materially complied with or performed and such noncompliance or nonperformance shall not have been waived by the other, such other party may terminate this Agreement and upon such termination neither JPA nor Seller shall have any liability one to the other.

4.4. Risk of Loss. All risk of loss or damage to the Property by fire or other casualty until the delivery of the executed instruments as provided in this Agreement is assumed by the Seller, and in such event, JPA shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.

5. Special Provisions.

5.1. Subdivision Approval. In the event that subdivision approval is needed to authorize the conveyance of the Property to the JPA, then and in that event the JPA shall be responsible, at its own cost and expense, for making application and obtaining approval from the City for any necessary subdivision or plat.

5.2. Fill. The JPA agrees that, at the option of the Seller, the JPA shall deposit upon Seller's New Site, at the location Seller has designated and as generally shown and designed in the attached Berm Fill Exhibit (Exhibit "C"), containing approximately 8,016 cu. yds. of fill, or such lesser amount as the JPA intends to remove from the Property in furtherance of its intended use of the site as a storm water mitigation facility. JPA in no way warrants the suitability of such soil for fill purposes, and upon deposit upon Seller's new site, such fill shall for all purposes become the property of the Seller. The deposit of such fill upon the New Site shall be placed by JPA only after JPA obtains, at its sole cost and expense, a proper and authorizing fill permit for the Berm Fill Exhibit fill to be lawfully deposited on the New Site.

5.3. Vehicular Access. The JPA agrees to obtain all approvals from the City of Lincoln, at JPA's sole cost and expense, (if necessary) for a driveway access on Seller's New Site providing access from Seller's New Site onto North 2nd Street. Such driveway access shall be located generally south of the common property line between the Property and Seller's New Site as shown on Exhibit "C-1."

5.4. Grant of Conservation Easement to JPA. Seller shall, at the time of Closing, deliver to the JPA an easement over those portions of the Seller's New Site, more specifically set forth in the Conservation Easement, a copy of which is attached hereto as Exhibit "D," relinquishing Seller's right to a portion of the otherwise allowable fill assigned to the area covered by the Conservation Easement as otherwise permitted under Chapter 27.52 of the Lincoln Municipal Code. The acceptance of such Conservation Easement by the JPA shall be conditioned upon the prior referral to and comment thereon by the Lincoln-Lancaster County Planning Commission.

6. Miscellaneous.

6.1. Binding Effect - Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any right, remedy, obligation, or liability under or by reason of this Agreement.

6.2. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

6.3. Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

6.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

6.5. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following addresses or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to JPA: West Haymarket Joint Public Agency
c/o City Attorney's Office
555 S. 10th Street, Suite 300
Lincoln, NE 68508

With a Copy to: Dan Marvin
555 S. 10th Street
Lincoln, NE 68508

If to Seller: Jaylynn, L.L.C.
Attention: Brad Devall
660 N Street
Lincoln, NE 68508

With a Copy to: Peter W. Katt, Esq.
Baylor, Evnen, Curtiss
Grimit & Witt, LLP
Wells Fargo Center
1248 O Street, Suite 600
Lincoln, NE 68508

6.6. Severability. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

6.7. Survival and Nonmerger. All terms, conditions, representations, and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder, and shall not merge into any deed.

6.8. Time of Essence. The parties agree that time is of the essence in the performance of their respective obligations hereunder.

6.9. Waiver. Either JPA or Seller may, by written notice to the other, (a) extend the time for the performance of any of the obligations or other actions of the other under this Agreement; (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement; (c)

waive compliance with any of the conditions or covenants of the other contained in this Agreement; or (d) waive performance of any of the obligations of the other under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

6.10. Construction. The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not apply to the interpretation of this Agreement. No inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

EXECUTED by Seller this _____ day of _____, 2011.

JAYLYNN, L.L.C., a Nebraska limited liability company

By: _____

Title: _____

Fed. Id. No. or Social Security No.

EXECUTED by JPA this _____ day of _____, 2011.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate and politic

EXHIBIT "A"

1st Street Properties

Lots 1 through 6, inclusive, Block 253, and the North 1/2 of the vacated alley adjacent to the South lot line of said lots; and all of Block 262 and the vacated portion of the East-West alley that bisects Block 262 and the vacated portion of Q Street that is adjacent to the South lot line of Lots 7-12, inclusive, Block 262; and all of the West 1/2 portion of vacated 3rd Street starting at the extension of the South lot line of Lot 1, Block 253 and extending North to the point where 3rd Street intersects with the Union Pacific Railroad right-of-way, Original Plat of Lincoln, Lancaster County, Nebraska, all located upon the Southwest Quarter (SW ¼) of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska;

AND

That portion of Lots 3 through 12, inclusive, Block 274, that lies west and south of the Union Pacific Railroad right-of-way, including the vacated East-West alley bisecting Block 274 and the vacated portion of S Street that lies between Block 274 and Block 265; and all of Block 265, including the vacated East-West alley bisecting Block 265 and the vacated portion of R Street that lies between Block 265 and Block 262, Original Plat of Lincoln, Lancaster County, Nebraska, all located upon the Southwest Quarter of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

EXHIBIT "B"

**LEGAL DESCRIPTION
PARCEL 1**

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOTS 5 THROUGH 10, BLOCK 274, LINCOLN ORIGINAL, A PORTION OF LOTS 1 THROUGH 4, AND A PORTION OF LOTS 11 AND 12, BLOCK 274, LINCOLN ORIGINAL, A PORTION OF VACATED ALLEY, BLOCK 274, LINCOLN ORIGINAL, LOTS 1 THROUGH 12, BLOCK 265, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 265, LINCOLN ORIGINAL, A PORTION OF VACATED "S" STREET RIGHT-OF-WAY, AND A PORTION OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°15'16"E, A DISTANCE OF 719.74' TO THE NORTHWEST CORNER OF LOT 6, BLOCK 274, LINCOLN ORIGINAL, SAID POINT BEING ON THE SOUTH RIGHT-OF-WAY LINE OF "T" STREET; THENCE S89°46'22"E ALONG THE SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 146.51' TO A POINT OF INTERSECTION WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAIL ROAD; THENCE S30°26'08"E ALONG THE SOUTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 417.67' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET; THENCE S00°21'39"W ALONG A EAST LINE OF THE WEST HALF OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 0.44' TO A POINT; THENCE S00°14'22"W ALONG A EAST LINE OF THE WEST HALF OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 360.10' TO A POINT OF INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF "R" STREET; THENCE N89°45'39"W ALONG THE NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 359.78' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 220,616.22 SQUARE FEET OR 5.06 ACRES, MORE OR LESS.

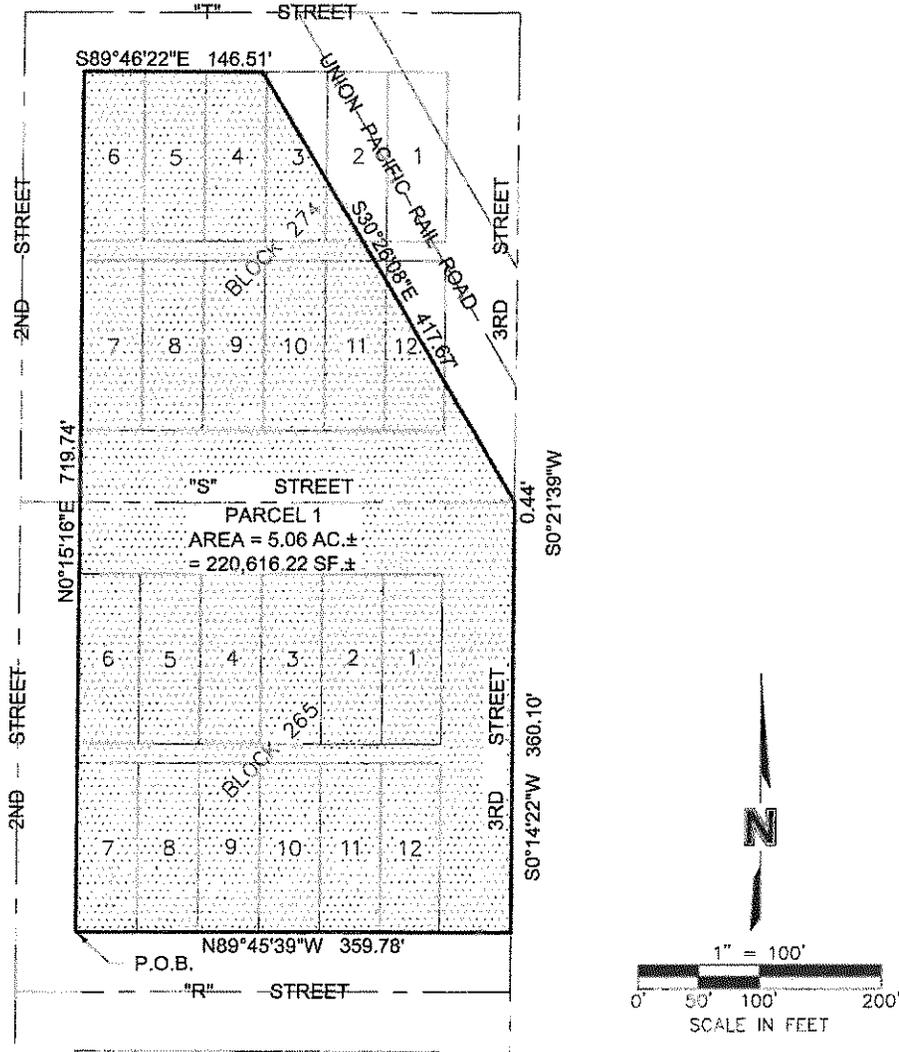
Wednesday, May 25, 2011
P:\1ST ST PROP\PARCEL-1-LEGAL.doc

**LEGAL DESCRIPTION
PARCEL 1**

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOTS 5 THROUGH 10, BLOCK 274, LINCOLN ORIGINAL, A PORTION OF LOTS 1 THROUGH 4, AND A PORTION OF LOTS 11 AND 12, BLOCK 274, LINCOLN ORIGINAL, A PORTION OF VACATED ALLEY, BLOCK 274, LINCOLN ORIGINAL, LOTS 1 THROUGH 12, BLOCK 265, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 265, LINCOLN ORIGINAL, A PORTION OF VACATED "S" STREET RIGHT-OF-WAY, AND A PORTION OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°15'16"E, A DISTANCE OF 719.74' TO THE NORTHWEST CORNER OF LOT 6, BLOCK 274, LINCOLN ORIGINAL, SAID POINT BEING ON THE SOUTH RIGHT-OF-WAY LINE OF "T" STREET; THENCE S89°46'22"E ALONG THE SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 146.51' TO A POINT OF INTERSECTION WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAIL ROAD; THENCE S30°26'08"E ALONG THE SOUTHWEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 417.67' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET; THENCE S00°21'39"W ALONG A EAST LINE OF THE WEST HALF OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 0.44' TO A POINT; THENCE S00°14'22"W ALONG A EAST LINE OF THE WEST HALF OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 360.10' TO A POINT OF INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF "R" STREET; THENCE N89°45'39"W ALONG THE NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 359.78' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 220,616.22 SQUARE FEET OR 5.06 ACRES, MORE OR LESS.

Wednesday, May 25, 2011
PA1ST ST PROP\PARCEL-1-LEGAL.doc



DWS: PA1ST ST PROP\PA1ST ST PROP\PA1ST ST PROP\PA1ST ST PROP
 DATE: May 25, 2011 11:02am
 USER: arjensen
 ARCF5

PROJECT NO: XXXX-XXXX
 DRAWN BY: MRJ
 DATE: 05/25/11

**1ST STREET PROPERTIES
PARCEL 1**

MOLSSON ASSOCIATES

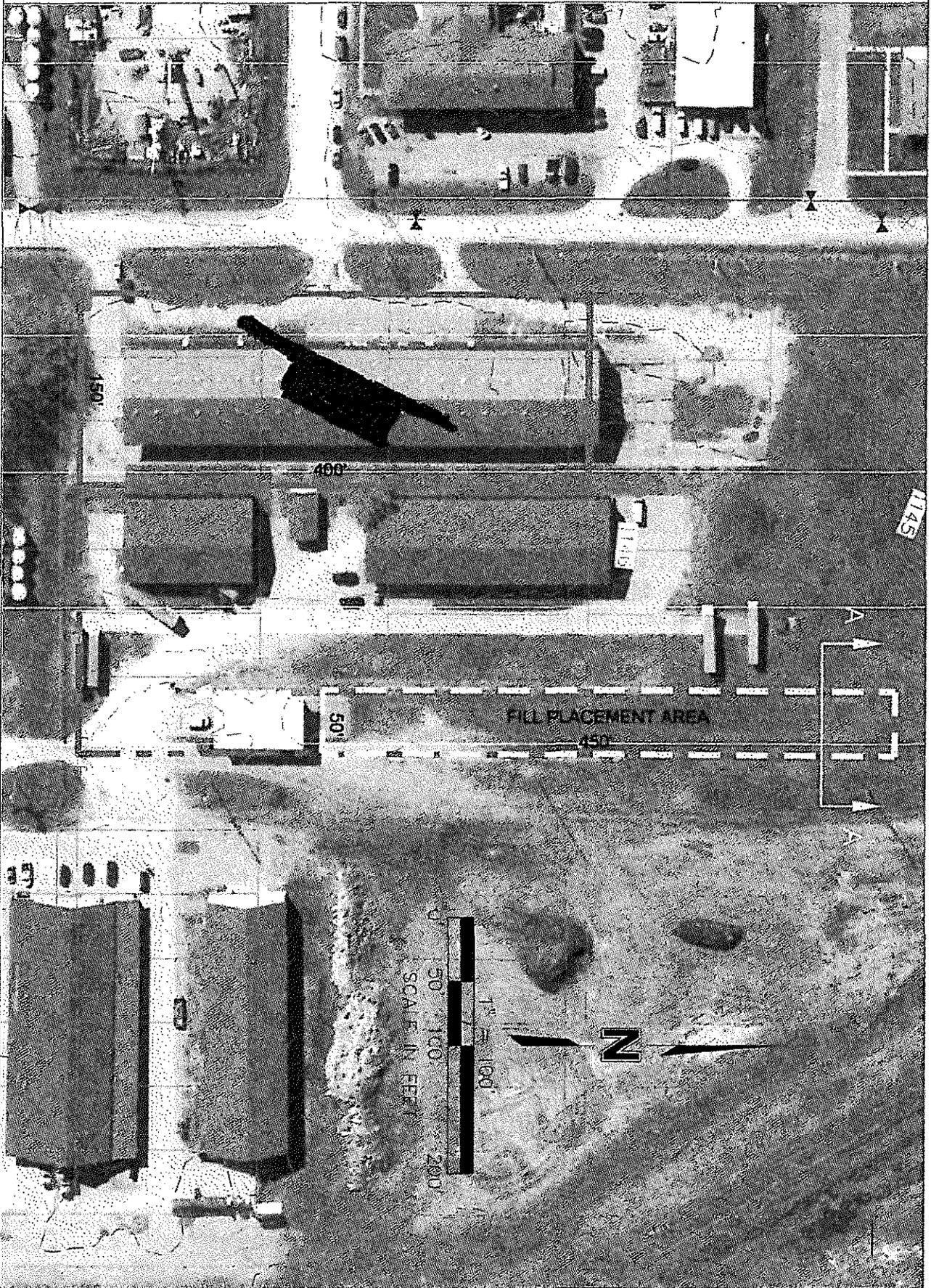
1111 Lincoln Mall, Suite 111
 P.O. Box 24608
 Lincoln, NE 68501-4608
 TEL 402.474.6311
 FAX 402.474.5100

EXHIBIT
1

EXHIBIT "C"

DWG: F:\Projects\C08-1600\LDVP\Exhibits\81600_EXH_335-P St2.dwg USER: sosterhaus
DATE: May 19, 2011 2:54pm XREFS: 81600_AERIAL 81600_XBASE 81600_GIS-LAND 81600_GIS-PAV 81600_GIS-

PROJECT NO: 008-1700
DRAWN BY: SO
DATE: 5-18-11

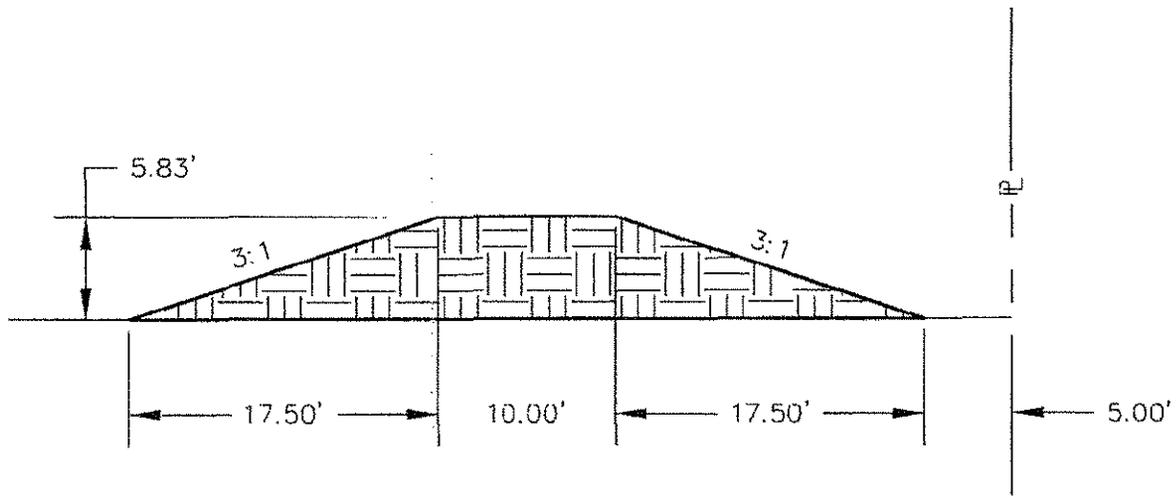


BERM FILL EXHIBIT

OLSSON
ASSOCIATES
1111 Lincoln Mall, Suite 111
P.O. Box 89026
Lincoln, NE 68501-8908
TEL: 402.474.6311
FAX: 402.474.3180

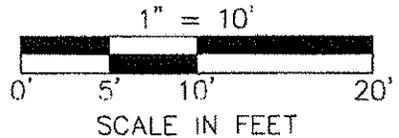
EXHIBIT
1 of 2

DWG: F:\Projects\008-1600\LDVP\Exhibits\81600_EXH_335-P_Si2.dwg
 DATE: May 19, 2011 2:53pm
 USER: sosterhaus
 XREFS: 81600_AERIAL 81600_XEASE 81600_GIS-LAND 81600_GIS-PAV 81600_GIS-



CROSS SECTION A-A

Berm Fill Calculation:
 $27.50' \times 5.83' \times 450' = 72,146.25 \text{ cu. ft.}$
 $\div 27 = 2,672 \text{ CY}$



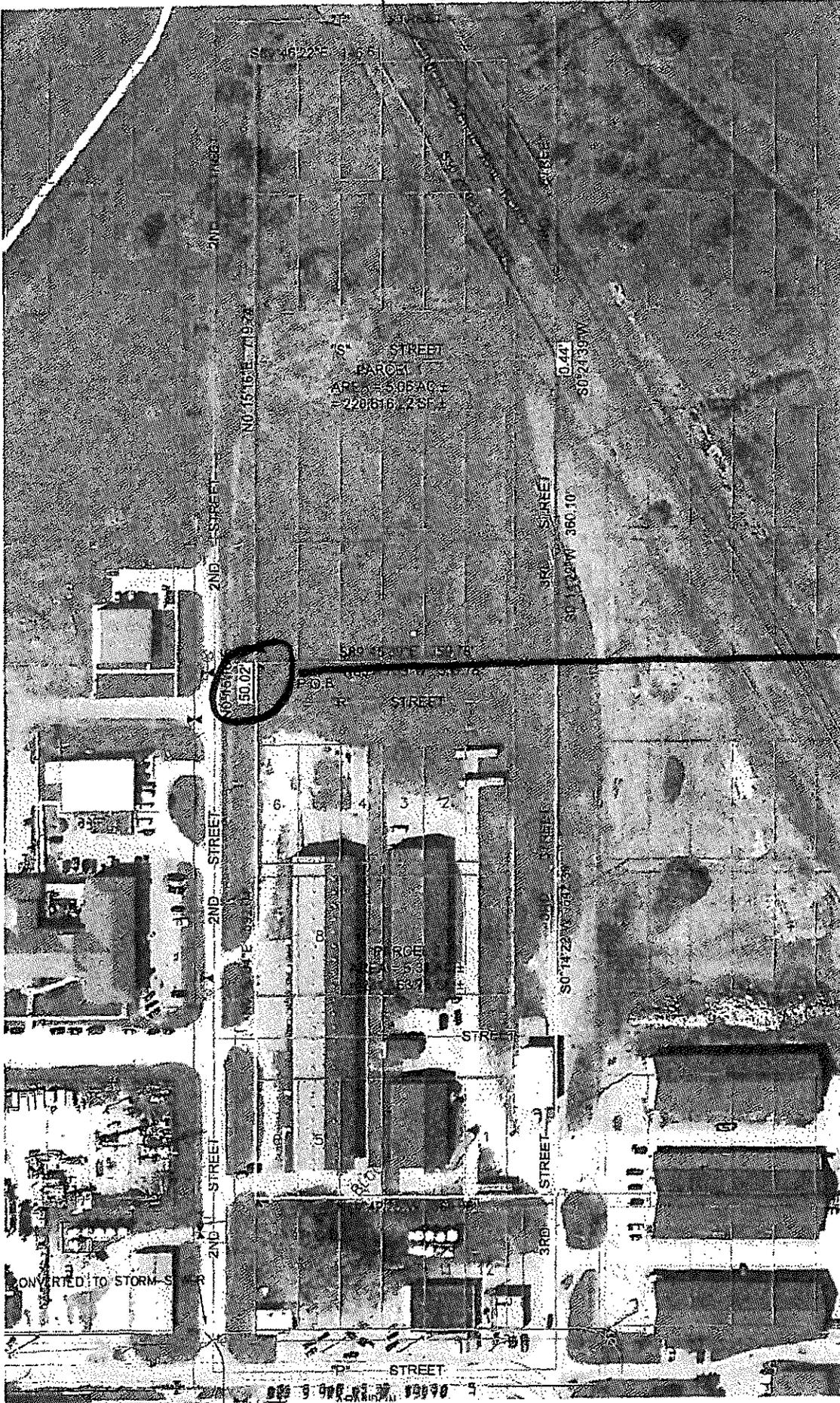
PROJECT NO:	008-1700
DRAWN BY:	SO
DATE:	5-18-11

BERM & NO FILL EXHIBIT



1111 Lincoln Mall, Suite 111
 P.O. Box 84508
 Lincoln, NE 68501-4608
 TEL 402.474.8311
 FAX 402.474.5160

EXHIBIT "C-1"



Need to
show
new
Driveway
access

EXHIBIT "D"

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into on this _____ day of July, 2011, by and between Jaylynn, L.L.C., a Nebraska limited liability company ("Owner"), and the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic of the state of Nebraska created under the Joint Public Agency Act ("JPA").

RECITALS

I.

Owner is the owner in fee simple of a tract of land, Lincoln, Lancaster County, Nebraska, legally described as follows:

A TRACT OF LAND COMPOSED OF LOTS 1 THROUGH 12, BLOCK 262, LINCOLN ORIGINAL, VACATED ALLEY, BLOCK 262 LINCOLN ORIGINAL, LOTS 1 THROUGH 6, BLOCK 253, LINCOLN ORIGINAL, A PORTION OF VACATED "R" STREET AND "Q" STREET RIGHT-OF-WAY, AND THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, LINCOLN ORIGINAL, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE NORTHERLY ALONG THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'04"E, A DISTANCE OF 592.04' TO A POINT; THENCE N00°15'16"E ALONG A LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 50.02' TO THE SOUTHWEST CORNER OF LOT 7, BLOCK 265, LINCOLN

ORIGINAL, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF VACATED "R" STREET; THENCE S89°45'39"E ALONG THE NORTH LINE OF SAID VACATED RIGHT-OF-WAY, A DISTANCE OF 359.78' TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE WEST HALF OF VACATED 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG THE EAST LINE OF THE WEST HALF OF SAID RIGHT-OF-WAY, A DISTANCE OF 642.39' TO A POINT OF INTERSECTION WITH THE NORTH LINE OF THE EASTERLY EXTENSION OF THE EAST-WEST ALLEY, BLOCK 253, LINCOLN ORIGINAL; THENCE N89°42'25"W ALONG THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID ALLEY, AND THE NORTH LINE OF SAID ALLEY, A DISTANCE OF 360.08' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 231,153.73 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.

(hereinafter referred to as the "Property"). Owner agrees to convey and JPA desires to accept a permanent conservation easement to preserve a portion of the flood storage capacity on and within that portion of the Property legally described as:

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF LOTS 1 THROUGH 6, BLOCK 253, ORIGINAL LINCOLN, A PORTION OF VACATED "Q" STREET RIGHT-OF-WAY, A PORTION OF LOTS 1 THROUGH 7, BLOCK 262, ORIGINAL LINCOLN, ALL OF LOTS 8 THROUGH 12, BLOCK 262, ORIGINAL LINCOLN, VACATED EAST-WEST ALLEY, BLOCK 262, ORIGINAL LINCOLN, AND A PORTION OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, ORIGINAL LINCOLN, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 6, SAID LINE BEING THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'00"E, A DISTANCE OF 34.98' TO A POINT; THENCE S89°44'00"E ALONG A LINE PERPENDICULAR FROM THE WEST LINE OF SAID LOT 6, A DISTANCE OF 35.00' TO **THE TRUE POINT OF BEGINNING**; THENCE N00°16'00"E ALONG A LINE 35.00' EAST OF AND PARALLEL WITH THE EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 420.20' TO A POINT, SAID POINT BEING 186.88' SOUTH OF THE NORTH RIGHT-OF-WAY LINE OF "R" STREET; THENCE S89°45'39"E ALONG A LINE 186.88' SOUTH OF AND PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF SAID "R" STREET, A DISTANCE OF 274.87' TO A POINT 50.00' WEST OF THE

CENTER LINE OF 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG A LINE 50.00' WEST OF AND PARALLEL WITH THE CENTER LINE OF 3RD STREET, A DISTANCE OF 420.46' TO A POINT 35.00' NORTH OF THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST ALLY, BLOCK 253, ORIGINAL LINCOLN; THENCE N89°42'25"W ALONG A LINE 35.00' NORTH OF AND PARALLEL WITH THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST ALLY, BLOCK 253, ORIGINAL LINCOLN AND 35.00' NORTH OF AND PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST ALLY, BLOCK 253, ORIGINAL LINCOLN, A DISTANCE OF 275.07' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 115,578.57 SQUARE FEET OR 2.65 ACRES, MORE OR LESS.

and shown on the attached Exhibit "A" and referred to in this Conservation Easement as "Easement Area".

II.

The Easement Area is located within the Salt Creek Flood Storage Area No. 9 and has been assigned an allowable fill, for flood storage purposes, of no more than forty percent (40%) on a volumetric basis, all in accordance with the "Standards for Salt Creek Flood Storage Area" (LMC 27.52.035) adopted by the City of Lincoln.

III.

The Owner is agreeable to granting and conveying to the JPA a permanent conservation easement relinquishing to the JPA one hundred percent (100%) of the allowable fill otherwise assigned to the Easement Area as described above representing 10,390 cubic yards of fill, which the JPA may, or may not, at its option, assign to another location within Storage Area No. 9 as contemplated by LMC 27.52.035.

IV.

The JPA is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act (Neb. Rev. Stat. § 76-2,111 et seq.).

V.

This Agreement has been submitted to the Lincoln City-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan (CPC11006).

VI.

The Board of Representatives of the JPA has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Chairman to execute this Agreement on behalf of the JPA.

NOW, THEREFORE, in consideration of the mutual value to the Owner and JPA and to encourage and preserve wetlands, the Owner and JPA agree as follows:

1. Grant of Conservation Easement. Owner hereby creates, establishes, grants and conveys to the JPA, a conservation easement over the Easement Area relinquishing its right to place upon or within the Easement Area one hundred percent (100%) of the otherwise allowable fill by volume assigned to the Easement Area pursuant to the Standards for Salt Creek Flood Storage Area as adopted by the City of Lincoln (LMC 27.52.035). The amount of allowable fill being assigned to JPA by Owner, is calculated based on the 2004 Aerial Topographical Survey information provided by the City of Lincoln Geographic Information System with the base flood

elevation of 1,151.7 feet at the north end of the Easement Area and 1,152.0 feet at the south end of the Easement Area, is 10,390 cubic yards. The existing buildings and structures on the site have been assumed to have no or a de minimis volume and provided they are not floodproofed, shall be excluded from any future volumetric calculations of flood storage capacity in the Easement Area.

A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area;

- i. Construction or placement of fill material, cement, buildings, fences or any other structure;
- ii. Existing buildings shall not be flood-proofed in such a manner as to reduce the flood storage capacity of the Easement Area.

B. The term of this Conservation Easement shall be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the JPA pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

C. The Owner understands and agrees that the JPA may, at its option, transfer a portion of, or the total amount of, the allowable fill capacity assigned to the Easement

Area pursuant to the “Standards for Salt Creek Flood Storage Area” adopted by the City of Lincoln to another location within the same storage area.

2. Condition of the Easement Area at Time of Grant. The conditions of the Easement Area at the time of this grant shall mean the flood storage capacity of the Easement Area existing at the time of this grant.

3. Protection and Maintenance of the Easement Area.

A. Owner agrees at Owner’s own cost and expense to protect and maintain the flood storage capacity of the Easement Area in substantially the same condition existing at the time of this grant except for naturally occurring changes or as otherwise authorized by this Conservation Easement.

B. Owner agrees to pay any real estate taxes, or assessments lawfully levied by governmental authorities on the Easement Area.

4. Inspection and Access by JPA and the City of Lincoln. The JPA and the City of Lincoln shall, with 24 hour notice have the right of reasonable ingress and egress to and from the Easement Area from and through the Property and public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, or protecting the flood storage capacity of the Easement Area as the JPA may deem necessary or desirable.

5. Enforcement. Owner agrees that the JPA may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including, but not limited to, the right to require restoration of the functional equivalent of the flood storage capacity of the Easement Area to the condition at the time of this grant either within the Property or by the Owner, anywhere within Salt Creek Flood Storage Area No. 9. The restoration by Owner of the

functional equivalent of the flood storage capacity outside of the Easement Area shall require that it be made subject to the terms and conditions of a conservation easement that are reasonably satisfactory to the JPA and the City of Lincoln. Owner further agrees that the JPA does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should Owner undertake any activity requiring the approval of the JPA without or in advance of securing such approval by JPA or the City of Lincoln as provided below, or undertake any activity in violation of the terms of this Conservation Easement that JPA shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the JPA's cost of suit, including reasonable attorney fees, shall be paid by Owner. JPA agrees that any building, construction, fill or other similar type permit issued by the City of Lincoln for any improvements or alterations within the Easement Area shall be deemed to be in full compliance with any requirements of this Conservation Easement relating to approval.

6. Title to Easement Area. Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. Binding Affect. The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner and JPA.

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On the _____ day of _____, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came _____, known to me to be the _____ of Jaylynn, L.L.C., a Nebraska limited liability company, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Notary Public

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

On the _____ day of _____, 2011, before me, the undersigned, a Notary Public duly commissioned for and qualified in said County, personally came _____, known to me to be the _____ of the West Haymarket Joint Public Agency, a political subdivision and body corporate and politic, and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed as such officer and the voluntary act and deed of said agency by its authority.

Witness my hand and notarial seal the day and year last above written.

Notary Public

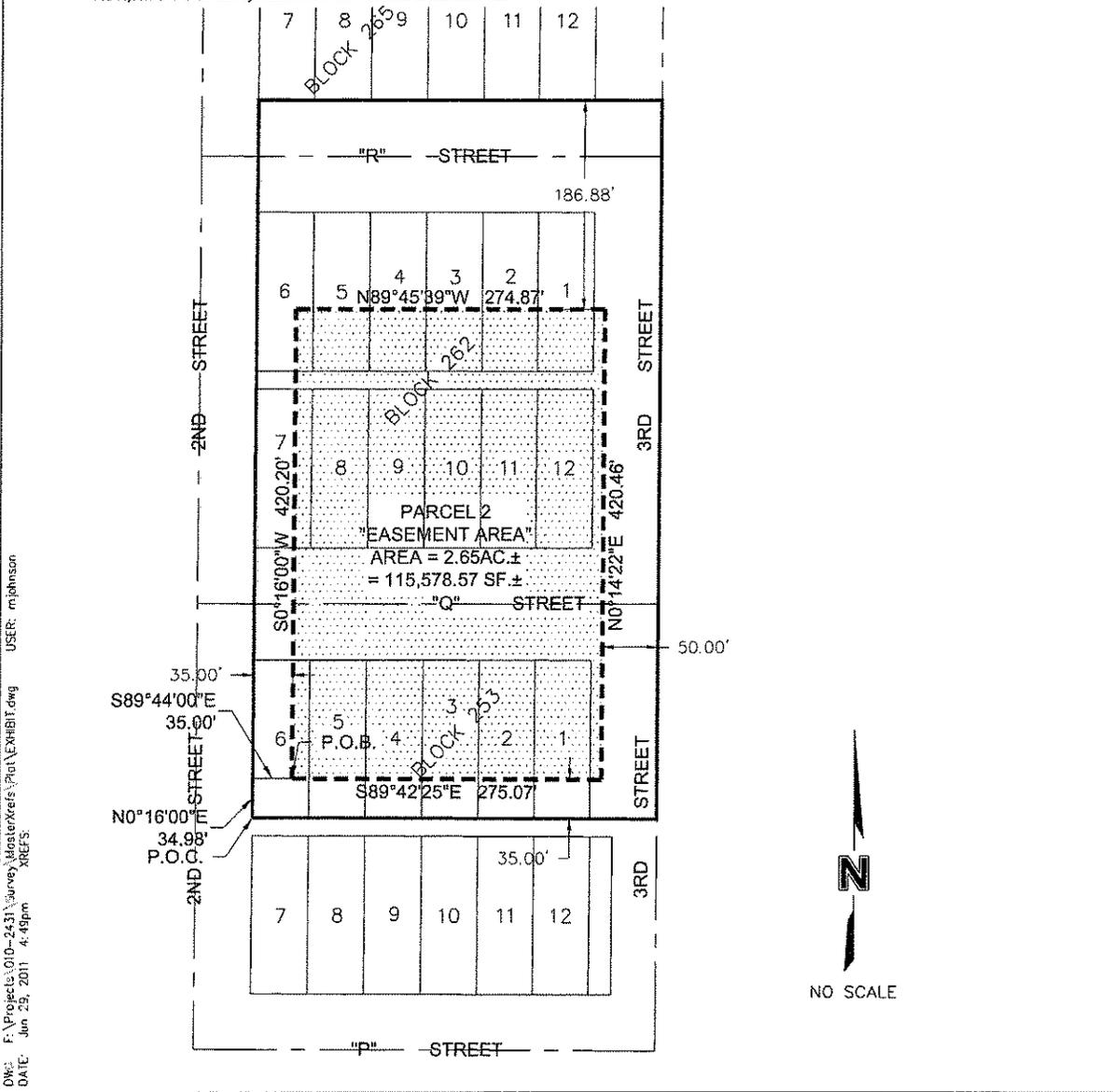
EXHIBIT "A"
(CONSERVATION EASEMENT)

**LEGAL DESCRIPTION
PARCEL 2, "EASEMENT AREA"**

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF LOTS 1 THROUGH 6, BLOCK 253, ORIGINAL LINCOLN, A PORTION OF VACATED "Q" STREET RIGHT-OF-WAY, A PORTION OF LOTS 1 THROUGH 7, BLOCK 262, ORIGINAL LINCOLN, ALL OF LOTS 8 THROUGH 12, BLOCK 262, ORIGINAL LINCOLN, VACATED EAST-WEST ALLY, BLOCK 262, ORIGINAL LINCOLN, AND A PORTION OF VACATED 3RD STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 253, ORIGINAL LINCOLN, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF 2ND STREET; THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 6, SAID LINE BEING THE EAST LINE OF SAID RIGHT-OF-WAY ON AN ASSUMED BEARING OF N00°16'00"E, A DISTANCE OF 34.98' TO A POINT; THENCE S89°44'00"E ALONG A LINE PERPENDICULAR FROM THE WEST LINE OF SAID LOT 6, A DISTANCE OF 35.00' TO THE TRUE POINT OF BEGINNING; THENCE N00°16'00"E ALONG A LINE 35.00' EAST OF AND PARALLEL WITH THE EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 420.20' TO A POINT, SAID POINT BEING 186.88' SOUTH OF THE NORTH RIGHT-OF-WAY LINE OF "R" STREET; THENCE S89°45'39"E ALONG A LINE 186.88' SOUTH OF AND PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF SAID "R" STREET, A DISTANCE OF 274.87' TO A POINT 50.00' WEST OF THE CENTER LINE OF 3RD STREET RIGHT-OF-WAY; THENCE S00°14'22"W ALONG A LINE 50.00' WEST OF AND PARALLEL WITH THE CENTER LINE OF 3RD STREET, A DISTANCE OF 420.46' TO A POINT 35.00' NORTH OF THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST ALLY, BLOCK 253, ORIGINAL LINCOLN; THENCE N89°42'25"W ALONG A LINE 35.00' NORTH OF AND PARALLEL WITH THE EASTERLY EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST ALLY, BLOCK 253, ORIGINAL LINCOLN AND 35.00' NORTH OF AND PARALLEL WITH THE NORTH RIGHT-OF-WAY LINE OF THE EAST-WEST ALLY, BLOCK 253, ORIGINAL LINCOLN, A DISTANCE OF 275.07' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 115,578.57 SQUARE FEET OR 2.65 ACRES, MORE OR LESS.

Wednesday, June 29, 2011
F:\Projects\1010-2431\Survey\MasterXrefs\Plat\PARCEL2-EASEMENT.doc



DWG: F:\Projects\1010-2431\Survey\MasterXrefs\Plat\EXHIBIT.dwg
 DATE: Jun 29, 2011 4:49pm
 USER: mjohnson
 XREFS:

PROJECT NO:	010-2431
DRAWN BY:	MRJ
DATE:	05/25/11

**1ST STREET PROPERTIES
PARCEL 2, "EASEMENT AREA"**


 1111 Lincoln Mall, Suite 111
 P.O. Box 84698
 Lincoln, NE 68501-4908
 TEL 402.474.8311
 FAX 402.474.5160

EXHIBIT	A
---------	---

RESOLUTION NO. WH - _____

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

3 Pursuant to Article IV, Section 4 of the Rules of Governance of the West Haymarket
4 Joint Public Agency, the Board of Representatives does hereby delegate to the Project
5 Manager/Secretary of the West Haymarket Joint Public Agency, the power to execute on behalf
6 of the West Haymarket Joint Public Agency, any and all Change Orders to contracts for the
7 provision of services subject to the following requirements:

8 1. The Change Order shall have a fiscal impact of \$25,000.00 or less;

9 2. A Change Order is not to be used for the purpose of entering into a new contract
10 for services not directly related to the contract being amended in order to avoid complying with
11 all bidding requirements of the County Purchasing Act and/or the JPA's Rules of Governance.

12 3. The Change Order shall be executed by an Administrative Order

13 4. The Administrative Order (and attached Change Order) shall be initiated by the
14 JPA's contracted Program Manager for the West Haymarket Project or the City Public Works
15 staff representing the JPA management of the contract proposed to be amended by the Change
16 Order. The Administrative Order shall be signed as to approval by the Program Manager or the
17 City Public Works staff representing the JPA (as applicable) and then submitted to the Finance
18 Director for approval as to availability of funds. If approved by the Finance Director, the
19 Administrative Order may then be executed by the Project Manager/Secretary. Following
20 execution the Administrative Order shall then be submitted to the City Attorney's office for

1 approval as to form and legality. If so approved, the City Attorney's office shall immediately
2 file the Administrative Order with the City Clerk. Such Administrative Order shall not become
3 effective until filed with the City Clerk.

4 BE IT FURTHER RESOLVED that the Board of Representative does hereby delegate to
5 the Chair of the Board of Representatives the power to execute, on behalf of the West Haymarket
6 Joint Public Agency any and all Change Orders to contracts for the provision of services subject
7 to the following requirements:

8 1. The Change Order shall have a fiscal impact of \$100,000.00 or less.

9 2. A Change Order is not to be used for the purpose of entering into a new contract
10 for services not directly related to the contract being amended in order to avoid complying with
11 all bidding requirements of the County Purchasing Act and/or the JPA's Rules of Governance.

12 3. The Change Order shall be executed by an Administrative Order

13 4. The Administrative Order (and attached Change Order) shall be initiated by the
14 JPA's contracted Program Manager for the West Haymarket Project or the City Public Works
15 staff representing the JPA management of the contract proposed to be amended by the Change
16 Order. The Administrative Order shall be signed as to approval by the Program Manager or the
17 City Public Works staff representing the JPA (as applicable) and then submitted to the Finance
18 Director for approval as to availability of funds. If approved by the Finance Director the
19 Administrative Order may then be executed by the Chair. Following execution the
20 Administrative Order shall then be submitted to the City Attorney's office for approval as to
21 form and legality. If so approved, the City Attorney's office shall immediately file the

1 Administrative Order with the City Clerk. Such Administrative Order shall not become effective
2 until filed with the City Clerk.

3 Sample Administrative Orders are attached for guidance in preparing such
4 Administrative Orders.

5 Adopted this ____ day of June, 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
ADMINISTRATIVE ORDER NO. 11-__

By virtue of the authority vested in me by the Board of Representatives of the Joint Public Agency, pursuant to the delegation of authority under Resolution No. WH ____, I hereby execute and approve on behalf of the West Haymarket Joint Public Agency the attached Change Order to the contract with _____ (name) for _____ (description of services). The purpose of this Change Order is to amend the contract to provide for additional services consisting of _____.

Dated this ____ day of _____, 2011.

Dan Marvin, Project Manager/Secretary
West Haymarket Joint Public Agency

Approved as to scope of work:

Approved as to availability of funds:

Public Works & Utilities Department

Finance Director

Approved as to form and legality:

City Attorney

WEST HAYMARKET JOINT PUBLIC AGENCY
ADMINISTRATIVE ORDER NO. 11-__

By virtue of the authority vested in me by the Board of Representatives of the Joint Public Agency, pursuant to the delegation of authority under Resolution No. WH ____, I hereby execute and approve on behalf of the West Haymarket Joint Public Agency the attached Change Order to the contract with _____ (name) for _____ (description of services). The purpose of this Change Order is to amend the contract to provide for additional services consisting of _____.

Dated this ____ day of _____, 2011.

Jayne Snyder, Chair
Board of Representatives
West Haymarket Joint Public Agency

Approved as to scope of work:

Approved as to availability of funds:

Public Works & Utilities Department

Finance Director

Approved as to form and legality:

City Attorney

RESOLUTION NO. WH- _____

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

3 That the attached Management Services Agreement between the West Haymarket Joint
4 Public Agency (“JPA”) and Marvin Investment Management Co. to render professional assistance
5 in management oversight of the West Haymarket Redevelopment Project for a one year term from
6 June 15, 2011 through June 14, 2012, with the option to renew for one additional year, upon the
7 terms and conditions set out in said Agreement, is hereby accepted and approved and the
8 Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby
9 authorized to execute said Agreement on behalf of the JPA.

10 The City Clerk is directed to transmit one fully executed original of said Agreement to
11 Marvin Investment Management, Attention: Daniel K. Marvin, 2523 Woods Boulevard, Lincoln,
12 NE 68502.

13 Adopted this _____ day of June, 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

MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of July, 2011, effective June 15, 2011, by and between the West Haymarket Joint Public Agency, a municipal corporation, hereinafter referred to as “JPA” and Marvin Investment Management Co., a Nebraska corporation, hereinafter referred to as “Project Manager.”

RECITALS

A.

The JPA proposes to engage Project Manager, in accordance with the terms and conditions set forth herein, to render professional assistance in management oversight of the West Haymarket Redevelopment Project (“Project Manager Services”).

B.

Project Manager possesses certain skills, experience, education and competency to perform the Project Manager Services on behalf of the JPA.

C.

The City of Lincoln (City) and the Regents of the University of Nebraska have created the West Haymarket Joint Public Agency (“JPA”), a joint public agency of the State of Nebraska under Neb. Rev. Stat. §§ 13-2501 et seq., to facilitate construction and financing of the West Haymarket Redevelopment Project and Project Manager has been selected by the City and the JPA to serve as the Project Manager and Secretary of the JPA.

D.

Project Manager hereby represents that Project Manager is willing and able to perform Project Manager Services in accordance with the Scope of Services attached to this Agreement as Attachment A and incorporated herein by this reference.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree as follows:

I.

SERVICES OF PROJECT MANAGER

The JPA hereby agrees to hire, and Project Manager hereby agrees to perform, Project Manager Services under the terms and conditions provided herein.

II.

SCOPE OF SERVICES

Project Manager agrees to perform the Project Manager Services set forth in Attachment A in accordance with accepted business practices and with the full commitment to achieve the goals and objectives set forth by the JPA. Project Manager agrees to fully support the JPA and the City as they participate in the planning activities for the West Haymarket Redevelopment Project. Project Manager agrees to perform its obligations under this Agreement to the best of its abilities. However, the Project Manager in no way guarantees, nor can it be held liable or accountable for, the ultimate success of the West Haymarket Redevelopment Project.

The JPA agrees to cause the City to provide Project Manager with: appropriate on-site City workspace; PC; access to City IS; telephone; FAX; file space; copier; etc. in order to carry out the Project Manager Services. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III.

TERMS OF AGREEMENT

The term of this Agreement shall commence June 15, 2011 and shall expire on June 14, 2012; provided however, that the parties hereto may have the option to renew this agreement upon the terms and conditions herein for one additional one-year term.

IV.
COMPENSATION

The City agrees to pay Project Manager for the services set forth in Attachment "A" a lump sum of Eighty-four Thousand Seven Hundred Sixty and no/100 Dollars (\$84,760.00), plus expenses of Ten Thousand and no/100 Dollars (\$10,000.00). Payments shall be payable monthly upon receipt of supporting documentation acceptable to the JPA that Project Manager has devoted at least 35 hours per week in performance of said services, and the expenses incurred. All payments will be made to the Project Manager.

In the event the parties agree to Project Manager's performance of Project Manager Services for an additional one-year term pursuant to the option in Section IV of this agreement, Project Manager's compensation for the additional term shall be increased by four per cent (4%), for a total sum of Eighty-eight Thousand One Hundred Fifty and no/100 Dollars (\$88,150.00), plus expenses of Ten Thousand and no/100 Dollars (\$10,000.00), other terms and conditions remaining the same.

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

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.

VI.

NON-RAIDING CLAUSE

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

VII.

TERMINATION OF AGREEMENT

A. This Agreement may be terminated by either party for substantial breach by the other party upon at least ten days' written notice.

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 Project Manager.

C. The Project Manager may terminate this Agreement, in whole or part, for any reason for the Project Manager's own convenience upon at least thirty days' written notice to the JPA.

If the Agreement is terminated by either the JPA or Project Manager as provided in A, B or C above, Project Manager 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.

Project Manager 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.

In the event of such termination, Project Manager agrees that all work performed and all information provided by Project Manager to the JPA or by the JPA to the Project Manager shall remain confidential and shall not be provided to any person, firm, association or corporation without the consent of the JPA. Further, Project Manager 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 III, or interested in the decisional process relating to the

application of such findings as may result from the tasks performed as defined in Article III 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 Project Manager 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 Project Manager shall be effective when incorporated in written amendments to this Agreement.

IX.

EQUAL EMPLOYMENT AND FAIR LABOR PRACTICES

In connection with the performance of work under this Agreement, Project Manager agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age or marital status. In the employment of persons, Project Manager shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, national origin, age or marital status. Project Manager shall maintain fair labor standards in the performance of this Agreement as required by Chapter 73, Nebraska Reissue Revised Statutes of 1943 (as amended).

X.

ASSIGNABILITY

The Project Manager shall not assign any interest in this Agreement, 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 Project Manager from JPA under this Agreement maybe

assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

XI.

INTEREST OF PROJECT MANAGER

Project Manager covenants that Project Manager 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. Project Manager further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by Project Manager under this Agreement.

XII.

OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Project Manager 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 Project Manager 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 JPA deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.

XIII.

COPYRIGHTS, ROYALTIES & PATENTS

Without exception, Project Manager represents the consideration for this Agreement includes Project Manager'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, Project Manager shall pay all related royalties, license fees, or other similar fees for any such intangible rights. Project Manager shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights that Project Manager has used in the course of performing this Agreement.

XIV.

COPYRIGHT; PROJECT MANAGER'S WARRANTY

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

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

XV.

GENERAL LIABILITY

INSURANCE AND HOLD HARMLESS

To the fullest extent permitted by law, not to exceed the extent and the amount of the general liability insurance coverage required herein, Project Manager shall indemnify and hold harmless JPA, its elected official, officers, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting

from the performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting there from that is caused in whole or in part by the wrongful act or negligence of the Project Manager or anyone directly or indirectly employed by Project Manager or anyone for whose acts any of them may be liable. This section will not require Project Manager to indemnify or hold harmless the JPA for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the JPA. This section survives any termination of this Agreement.

The minimum acceptable limits of liability to be provided by such insurance shall be as follows: (1) all acts or omissions, \$500,000 each occurrence; and (2) bodily injury/property damage, \$500,000 each occurrence; and (3) personal injury liability, \$500,000 each occurrence; and (4) contractual liability, \$500,000 each occurrence; and (5) medical expenses (any one person), \$10,000. The required general liability insurance shall include contractual liability coverage for the above-described indemnification and hold harmless agreement clause.

The obligations of indemnification herein shall not include or extend to any claims arising out of the negligence of the JPA to the extent the same is the sole and proximate cause of the injury or damage so claimed. This section survives any termination of this Agreement.

To the fullest extent permitted by law, the JPA shall indemnify and hold harmless the Project Manager, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney fees arising out of or resulting from performance of this Agreement that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death or any injury to or construction of tangible or intangible property, including any loss of use resulting there from that is caused in whole or part by the JPA or anyone directly or indirectly employed by the JPA, or anyone whose acts any of them may be liable or for claims made by the public against the Project Manager in the performance of its duties

under this Agreement. This section shall not require the JPA to indemnify or hold harmless the Project Manager for any losses, claims, damages, expenses, arising out of or resulting from the willful wrongful act or negligence of the Project Manager. This section survives any termination of the Agreement.

XVI.

WORKERS' COMPENSATION

Project Manager shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Project Manager or any such employees of Project Manager as may be engaged in the performance of this Agreement.

XVII.

AUTOMOBILE LIABILITY INSURANCE

The Project Manager shall take out and maintain during the life of the contract such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by a such Automobile Liability Insurance shall be as follows:

- | | |
|----------------------------|---|
| I. Bodily Injury Limit | \$500,000 Each Person/\$1,000,000 Each Occurrence |
| II. Property Damage Limit | \$500,000 Each Occurrence |
| III. Combined Single Limit | \$1,000,000 Each Occurrence |

XIII.

MINIMUM SCOPE OF INSURANCE

All liability insurance policies shall be written on an “occurrence” basis only. All insurance coverages are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best’s Rating of not less than A:VIII unless specific approval has been granted by the JPA.

XIX.

CERTIFICATE OF INSURANCE

All Certificates of Insurance shall be filed with the JPA on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA is an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the JPA thirty days notice of cancellation or non-renewal of insurance coverage.

XX.

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:

West Haymarket Joint Public
Agency
Law Department
Attention: Rod Confer
555 South 10th Street, Suite 300
Lincoln NE 68508

Marvin Investment Management Co.
Attention: Daniel K. Marvin
2523 Woods Boulevard
Lincoln, NE 68502

XXI.

INDEPENDENT CONTRACTOR

The JPA is interested only in the results produced by this Agreement. Project Manager has sole and exclusive charge and control of the manner and means of performance. Project Manager shall perform as an independent contractor and it is expressly understood and agreed that Project Manager 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.

XXII.

NEBRASKA LAW

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

XXIII.

INTEGRATION

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

XXIV.

AMENDMENT

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

XXV.

CAPACITY

The undersigned person representing Project Manager does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Project Manager to this Agreement.

XXVI.

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.

XXVII.

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.

XXVIII.

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.

XXIX.

AUDIT AND REVIEW

The Project Manager 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.

XXX.

LIVING WAGE

If the compensation for services provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Project Manager shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, the JPA shall have authority to terminate this Agreement and to seek other remedies for violations of this Ordinance.

IN WITNESS WHEREOF, Project Manager and the JPA do hereby execute this Agreement.

**WEST HAYMARKET JOINT PUBLIC
AGENCY,**

Attest:

City Clerk

By: _____
Jayne Snyder, Chair
Board of Representatives

**MARVIN INVESTMENT
MANAGEMENT CO.**
a Nebraska corporation,

By: _____
Daniel K. Marvin, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Jayne Snyder, Chair of the Board of Representatives of the West Haymarket Joint Public Agency.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Daniel K. Marvin, President of Marvin Investment Management Co, a Nebraska corporation.

Notary Public

Scope of Services

Project Manager will provide the following Project Manager Services:

- Act as the JPA’s designated West Haymarket Project Manager with respect to Property acquisition, Project Financing Agreement negotiations and Redevelopment Agreement negotiations.
- Act as the JPA’s primary staff support for committees WHAT and WHC.
- Act as the JPA’s primary contact with ISG.
- Act as Infrastructure Project Manager for street layout, traffic management, bridges, Sun Valley Blvd., parking, pedestrians, public transit, railroads, water, wastewater, trails, wetlands, floodplain, and environmental reviews.
- Provide project management oversight for the following activities:
 - West Haymarket Contracts;
 - Community outreach;
 - Community space – definition and design;
 - Web site management;
 - Lincoln hotels outreach;
 - Preparation of economic impact analysis study;
 - Property acquisition assistance;
 - Recreational field design assistance;
 - Zoning and related permitting;
 - Breslow Ice Center development;
 - Regulatory permitting;

- Relocation assistance;
- Design guidelines;
- Act as the JPA's liaison with the U.S. Post Office, District Energy Corporation, FAA, Historic Preservation Commission, Urban Design Committee, and UNL on the arena complex.

RESOLUTION NO. WH- _____

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

3 That the Consultant Agreement (as amended) between the West Haymarket Joint Public
4 Agency (“JPA”) and SAIC Energy, Environment and Infrastructure LLC (“SAIC”) which engaged
5 SAIC to provide West Haymarket Redevelopment Program Management Services and Project
6 Management Services for the New Arena be and the same is hereby cancelled for the convenience
7 of the JPA. Said cancellation shall be effective on the date which is ten days from the date of
8 SAIC’s receipt of the attached Notice of Cancellation.

9 BE IT FURTHER RESOLVED that the Chairperson of the West Haymarket Joint Public
10 Agency Board of Representatives is hereby authorized to execute said Notice of Cancellation on
11 behalf of the JPA.

12 The City Attorney is directed to either personally serve SAIC with a copy of the Notice of
13 Cancellation or transmit one fully executed copy of this Resolution and the original Notice of
14 Cancellation by certified mail, postage prepaid, return receipt requested, to SAIC, Attn: James W.
15 Martin, 220 The Apothecary, 140 N. 8th Street, Lincoln, NE 68508.

16 Adopted this _____ day of July, 2011.

Introduced by:

West Haymarket Joint Public Agency
Board of Representatives

Approved as to Form & Legality:

Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler

WEST HAYMARKET JOINT PUBLIC AGENCY
555 South 10th Street
Lincoln, Nebraska 68508
(402) 421-2024

July 15, 2011

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

SAIC

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

Re: Consultant Agreement between the West Haymarket Joint Public Agency (JPA) and SAIC Energy, Environment and Infrastructure LLC (SAIC) providing for SAIC to perform Program Management Services and Arena Project Services
Notice of Cancellation

Dear Mr. Martin:

I am writing to provide SAIC ten days prior written notice of the JPA's intent to cancel the above referenced Consultant Agreement.

Please be advised that cancellation of the Consultant Agreement will be effective on the date which is ten days from the date of SAIC's receipt of this Notice of Cancellation.

Sincerely,

Jayne Snyder, Chair
West Haymarket Joint Public Agency

JS/ERP/tb

RESOLUTION NO. WH- _____

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

3 That the attached PC Sports Consultant Agreement between the West Haymarket Joint
4 Public Agency (“JPA”) and PC Sports, LLC to provide West Haymarket Redevelopment Interim
5 Program Management Services and Interim Project Management Services for the New Arena
6 (collectively “Interim Services”) upon the terms and conditions set out in said Agreement, for a
7 term commencing July 15, 2011 and continuing on a month-to month basis until otherwise
8 terminated or modified, is hereby accepted and approved and the Chairperson of the West
9 Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said
10 Agreement on behalf of the JPA.

11 The City Clerk is directed to transmit one fully executed copy of said Agreement to PC
12 Sports, Attn: Paula Yancey, 27300 Henderson Pass, Suite 110, San Antonio, TX 78232.

13 Adopted this _____ day of July, 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

**PC SPORTS
CONSULTANT AGREEMENT**

This PC Sports Consultant Agreement (“Agreement”) is entered into this 15th day of July, 2011, by and between the **West Haymarket Joint Public Agency**, hereinafter referred to as “JPA” and **PC Sports, LLC**, a _____ limited liability company, hereinafter referred to as “Consultant.”

RECITALS

A.

The JPA desires to engage the Consultant in accordance with the terms and conditions set forth herein to provide West Haymarket Redevelopment Interim Program Management Services (“Interim Program Management Services”) and Interim Project Management Services for the New Arena (“Interim 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 the Scopes of Services attached hereto as Exhibit A (“Scope of Services”). The use of the term “Owner” in the Scope of Services is deemed to refer to the JPA. The use of the term “PCS” is deemed to refer to Consultant.

B.

Consultant hereby represents that Consultant is willing and able to perform the Interim Program Management Services and the Interim Arena Project Services (collectively the “Interim Services”) in accordance with the Scope of Services.

C.

Since a portion of the Interim 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 as follows:

**SECTION 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. Paula L. Yancey will supervise the Interim Services and be in charge of performance of the Interim Services as set forth in this Agreement.

**SECTION II.
SCOPE OF SERVICES**

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the Interim 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.

**SECTION III.
TERM OF AGREEMENT**

The term of this Agreement shall commence on July 15, 2011, and said term shall continue on a month-to-month basis until otherwise terminated or modified as provided in this Agreement.

**SECTION IV.
COMPENSATION**

The Interim Services shall be provided on a month-to-month basis. The total and only amount of compensation for each month of Interim Services shall be the monthly fee set forth in Consultant's letter dated July 5, 2011 attached hereto as Exhibit B. Consultant acknowledges and agrees that Consultant is responsible, at Consultant's own cost and expense, to pay for all expenses incurred by Consultant to perform the Interim Services.

Unless otherwise agreed, the monthly payment for Services is due and payable thirty (30) days from the date of receipt of the Consultant's invoice. Any amounts unpaid forty-five (45) days after receipt of the invoice date shall bear interest at the rate of nine percent (9%) per annum.

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.

**SECTION 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.

**SECTION 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.

**SECTION 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 the monthly fee for all Interim Services performed up until the date of termination. The monthly fee will be prorated for the month of termination if termination occurs prior to the end of the billable month.

Consultant hereby expressly waives any and all claims for damages or compensation, including out-of-pocket reimbursable expenses, expenses for demobilization and all other costs incurred by Consultant by reason of such termination 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.

**SECTION VIII.
EXPANSION OF SERVICES**

The JPA and Consultant agree to promptly meet and use their best efforts to reach mutual agreement regarding the termination of Interim Services and engagement of Consultant to provide West Haymarket Redevelopment Program Management Services and/or Project Management Services for the New Arena. Such expansion of services, including the amount of compensation for such services, which are mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

**SECTION 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.

**SECTION 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.

**SECTION XI.
ASSIGNABILITY**

The Consultant shall not assign or subcontract any interest in this Agreement, 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.

**SECTION 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.

**SECTION 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.

**SECTION 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.

**SECTION XV.
COPYRIGHT; CONSULTANT'S WARRANTY**

A. Consultant represents that all materials, processes, or other protected rights to be used in the Interim 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.

**SECTION XVI.
INDEMNIFICATION**

A. General 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 Parties in, on, or about BNSF's property or right-of-way and/or the work area;

(iii) Except as provided in subsection B below, 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. HAZARDOUS SUBSTANCE INDEMNIFICATION OF CONSULTANT. The Consultant's work under this Agreement does not include a duty to identify, examine for, remediate or otherwise deal with materials containing any Hazardous Substance encountered at the Site except that the Consultant shall immediately notify the JPA and its Contractor of any known release, spill, unlawful disposal or handling of a Hazardous Substance. The JPA shall thereafter promptly determine the necessity for the JPA or its Contractor to retain a qualified expert to evaluate such Hazardous Substance or take corrective action, if any. Notwithstanding the above, the Consultant shall be responsible for any Hazardous Substance brought to the site by the Consultant and any of

its Subcontractors, or any sub-subcontractors or suppliers unless such Hazardous Substance was required by the Contract Documents.

To the fullest extent permitted by law, the JPA shall indemnify and hold harmless the Consultant and its Subcontractors, sub-subcontractors, and agents, officers, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to judgments, fines, penalties, civil sanctions, the cost of remediation, and attorneys' fees, arising out of or resulting from any release, spill, disposal or other handling of any Hazardous Substance in the performance of the Work if in fact the material is a Hazardous Substance, except to the extent that such damages, loss or expense is due to the negligence or willful misconduct of a party seeking indemnity.

For the purposes of this subsection B, "hazardous substances" shall mean all substances, materials, and waste that are or become regulated or classified in the handling, storage, remediation, or disposal as hazardous or toxic under any Environmental Law, including but not limited to any hazardous, ignitable, corrosive, caustic, reactive, toxic, or polluting waste or substance; a "hazardous waste" (as defined in the regulations adopted under the Resource Conservation and Recovery Act of 1976); oil or petroleum products; asbestos; polychlorinated biphenyls; formaldehyde compounds, explosives, and radioactive materials. "Environmental Laws" shall mean any federal, state, or local statute, ordinance, rule, regulation, order, decree or guideline (or that of any quasi-governmental entity having jurisdiction over the Project or the Project site) pertaining to health, industrial hygiene or the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation, and Liability Act.

C. 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.

D. 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.

SECTION XVII. 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. 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 have been 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.

**SECTION 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

PC Sports
Attention: Paula L. Yancey
27300 Henderson Pass, Suite 110
San Antonio, TX 78232
FAX: (210) 545-5450

**SECTION 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.

**SECTION XX.
NEBRASKA LAW**

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

**SECTION XXI.
INTEGRATION**

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

**SECTION XXII.
AMENDMENT**

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

**SECTION 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.

**SECTION 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.

**SECTION 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.

**SECTION 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 C.

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 D. 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.

**SECTION 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

PC SPORTS, LLC

By: _____
Title: _____

**PC Sports
Scope of Services
Lincoln Arena**

Interim Program Management / Arena Project Management

General Services

1. Review and evaluate Owner's expectations, needs and objectives. Based on this review and evaluation, assist the Owner in developing criteria for the 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 Program 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. Develop and update; an overall Program and Arena Project Budget. Advise and assist the Owner with Project cash flow and financial management
5. Develop and implement Program and Arena Project communications and reporting procedures and formats.
6. Develop and implement Program and Arena Project document control and technology systems.
7. Assist with development and implementation of Program and Arena 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, as required or requested by Owner.
10. Oversee development and implementation of Owner's Insurance/Bonding Program. Review insurance and bonding submissions by Project Participants for contract compliance.
11. Implement the overall Procurement Plan for the Program and the Arena Project which shall include the predetermined procedures for prequalification, selection, procurement, management and payment of designers, contractors, suppliers and consultants and other Project Participants in coordination with the City of Lincoln Purchasing Department.
12. Organize service, construction and vendor packages when required; act as the Owner's representative in soliciting interest and bids for such packages and in bidding and negotiations in coordination with and direction by the City of Lincoln Purchasing Department.
13. Act as the Owner's representative in managing contracts with designers, engineers, contractors, suppliers, consultants and other Participants.
14. Review applications for payment and recommend adjustments and payment.

15. Provide updates and monthly reports to the West Haymarket Joint Public Agency.
16. Develop a risk register for the program.
17. Provide observation of Program and Arena Project Construction.

Design Phase Services

1. Develop the procedures to be followed by Project Participants for establishing design standards and criteria based on the overall Program and Arena Project Plan.
2. Develop the procedures to be followed by Project Participants for establishing Program 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 sustainability 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 Program and Arena Project construction schedules and updates; monitor implementation, compliance with overall Program Milestone Schedule, construction schedules and long lead items. Advise the Owner concerning scheduling changes and questions.
3. Cause to be developed and updated the Program and Arena 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 Program and Arena Project closeout procedures.
9. Monitor coordination of design, construction and procurement and advise the Owner concerning coordination questions. All procurement activities will be coordinated with City of Lincoln Purchasing Department.
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 to be coordinated with Owner.

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 Program and Arena 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.



July 5, 2011

Mr. Dan K. Marvin
Secretary/Project Manager
West Haymarket Joint Public Agency
555 S. 10th Street
Lincoln, NE 68508

Re: Proposal to Provide West Haymarket Redevelopment Interim Program
Management Services and Interim Project Management Services for the New
Arena (collectively "Interim Services")

Dear Ms. Owen:

PC Sports is pleased to present this proposal to provide interim services for the West Haymarket Redevelopment Project in Lincoln, Nebraska. PC Sports has successfully completed several similar community arena projects and associated program projects in the past ten years and we are proposing a leadership team that was involved in all of those projects. 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 the program.

We have attached an organization chart depicting our proposed personnel for the interim program. Billing, estimating and any additional support will be provided out of our San Antonio office and is included in the fee. We propose to provide these interim services starting July 15th. We would propose to bill our services for July at our current arena rate of \$30,450, plus an additional \$34,025 for the partial month interim program management services for a total July billing of \$64,475. Beginning August 1, additional months will be billed month-to-month at \$98,500 until otherwise notified by the City of Lincoln. Our out-of-pocket reimbursable expenses are included in the fixed fee. This proposal assumes that Public Works personnel will continue in their current roles.

We are open to discussing and tailoring services to provide the optimum support required to make this program a success. We look forward to working with you on this exciting project.

Very truly yours,

Paula L. Yancey

Paula L. Yancey

**UNITED STATES CITIZENSHIP ATTESTATION FORM
FOR INDIVIDUAL CONSULTANT
(to be used pursuant to Section XXVI.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 XXVI.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: _____

RESOLUTION NO. WH- _____

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

3 That Jayne Snyder, Chair of the West Haymarket Joint Public Agency Board of
4 Representatives, is hereby authorized to execute on behalf of the West Haymarket Joint Public
5 Agency the Corporation Warranty Deed and all closing documents associated with conveyance of
6 City Parcel One and City Parcel Two to Star City Federal LLC and the Star City Parcel to the West
7 Haymarket Joint Public Agency. City Parcel One, City Parcel Two and the Star City Parcel are
8 defined in the Land Exchange Agreement between the City of Lincoln, Nebraska, the West
9 Haymarket Joint Public Agency and Star City Federal LLC approved by Resolution No. WH
10 00110 adopted by the Board of Representatives on April 14, 2011. Said Land Exchange
11 Agreement authorized the conveyance of City Parcel One and City Parcel Two to Star City Federal
12 LLC and the acceptance of the Star City Parcel but failed to specifically provide that Jayne Snyder,
13 as Chair, could sign the Corporation Warranty Deed and other closing documents on behalf of the
14 West Haymarket Joint Public Agency.

15 Adopted this _____ day of June, 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

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. 3 to the TCW Construction Inc. agreement regarding
4 the 10th and Salt Creek Roadway Haymarket Infrastructure Improvement, Project No. 870304, to
5 reflect a number of items that need to be added or changed due to unforeseen conditions and delays
6 resulting in a net contract increase in the amount of \$24,522.82, is hereby accepted and approved
7 and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is
8 hereby authorized to execute said Change Order No. 3 on behalf of the JPA.

9 Adopted this _____ day of July, 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

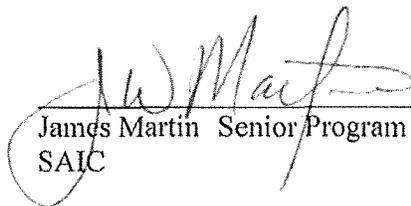
Chris Beutler



Executive Summary

WH 11-58 – This resolution is for the approval of Change Order #3 to the Haymarket Infrastructure Project at 10th & Salt Creek Roadway (Project # 870304 [Bid # 11-053]). This Change Order is for unforeseen delays and problems that occurred when a concrete structure was unearthed during construction. The cost is \$24,522.82.

SAIC recommends approval of this resolution.


James Martin Senior Program Manager
SAIC

7 July 2011
Date

CHANGE ORDER NO. 3
West Haymarket Joint Public Agency
Haymarket Infrastructure Improvements
10th & Salt Creek Roadway
Project 870304

PROJECT DESCRIPTION: Haymarket Infrastructure Improvements 10th & Salt Creek Roadway

CONTRACTOR: TCW Construction
ADDRESS: 141 M Street
Lincoln NE

BID DATE: March 23, 2011

ORIGINAL COMPLETION DATE: November 4, 2011

REASON FOR CHANGE ORDER: See Attached Change Order No. 3 - Unforeseen conditions and delays.

The West Haymarket Joint Public Agency, and TCW Construction agree to the following revisions to the above-mentioned contract.

I. QUANTITY REVISIONS

Contract Change Order No. 3 \$0.00

SubTotal Quantity Revision Costs \$0.00

II. ADDITIONAL BID ITEMS

Contract Change Order No. 3 \$24,522.82

SubTotal Additional Bid Items Cost \$24,522.82

Total of Both Quantity Revisions and Additional Bid Items Cost: \$24,522.82

III. REVISED CONTRACT COST

The estimated contract construction cost is revised as follows:

Original Bid Estimated Construction Cost =		\$2,787,464.22
Change Order No. 1 =		\$14,469.00
Change Order No. 2 =		\$(2,249.22)
Change Order No. 3 =		\$24,522.82
Revised Estimated Construction Cost =		\$2,824,206.82



CONTRACT CHANGE ORDER

Contract : 5725, Haymarket Infrastructure Imp - 10th & Salt Creek Roadway
Change Order No. : 3
Change Order Date : 06/27/2011
Approved Date :

Owner : Contractor :
TCW CONSTRUCTION, INC
141 'M' STREET

SUMMARY OF CHANGES

ORIGINAL CONTRACT AMOUNT	\$2,787,464.22
CURRENT CONTRACT AMOUNT	\$2,799,684.00
NET CHANGE THIS ORDER	\$24,522.82
AMOUNT AFTER CHANGE	\$2,824,206.82

SHORT DESCRIPTION

Extra work due to unforeseen conditions

DESCRIPTION OF CHANGES

A concrete structure was unearthed at Approx. Sta. 32+25 during the water main construction and 2 delays were caused to the contractor due to existing utilities and as built records.

INCREASE/DECREASE

Line No.	Pay Item No.	Description	Unit	Proposed Qty	Unit Price	Total
--	--	No Contract Items modified.	--	--	--	--
Total						\$0.00

NEW ITEMS

Line No.	Pay Item No.	Description	Unit	Proposed Qty	Unit Price	Total
	50.0015	Conc. Found Removal	LS	1.0000	1134.9500	\$1,134.95
	50.0015	Delay & Fittings - May 16, 2011	LS	1.0000	7699.1800	\$7,699.18
	50.0015	Delay & Fittings - May 31, 2011	LS	1.0000	8688.6900	\$8,688.69
	50.0001	Incentives for Phase D	EA	7.0000	1000.0000	\$7,000.00
Total						\$24,522.82

CONTRACT TIME

Contract Begin Date	Original Contract Days	Current Contract Days	Additional Contract Days
04/05/2011	144.00	144.00	0.00

IV. COMPLETION DATE

The completion date for this contract shall remain the same

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 OWNER ON June 28, 2011.

By: Joseph M. Delgado
President

APPROVED BY THE CITY OF LINCOLN ON _____, 20____.

By: _____
JPA Chair

Resolution No. _____

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 Judds Brothers Construction Company
4 agreement regarding the Initial Haymarket Site Preparation Project No. 870703 and the USPS
5 Parking Lot Reconstruction Project No. 870303 to reflect modifications supported by Work
6 Change Directives resulting in a net contract increase in the amount of \$589,410.79, is hereby
7 accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of
8 Representatives is hereby authorized to execute said Change Order No. 1 on behalf of the JPA.

9 Adopted this _____ day of July, 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



Executive Summary

WH 11-~~59~~ – This Change Order is for the work on JPA Project # 870703 for the Initial Site Preparation as part of the Haymarket Infrastructure Improvement. The two largest line items that make-up this Change Order are the cost of importing “borrowed fill” in lieu of using the soils stockpiled on another part of the site (\$350,000) and the disposal of more petroleum contaminated soils than allowed for in the original contract price (\$179,750). The stockpiled soil was not accessible due to construction of railroad track beds. While temporary crossings could have been built, they would have taken approximately a month to construct and would have delayed work on the project. The contaminated soils were anticipated, but, of course, exact quantities were unknown. Together, these two line items total \$529,750. The remaining \$59,660.79 consists of several line items. They are summarized on the two pages of detail immediately following. The Project Manager, the City’s Engineering Services Department and SAIC have carefully reviewed the backup detail for this entire change order and all concur that they are legitimate costs to the project.

SAIC recommends approval of this resolution.


James Martin Senior Program Manager
SAIC

7 July 2011
Date



CONTRACT CHANGE ORDER

Contract : 870703 Initial Haymarket Site, 870703 Initial Haymarket Site Preparation
Change Order Date : 07/05/2011

Owner :

Contractor :

JUDDS BROTHERS CONSTRUCTION COMPANY
3815 NO. 68TH STREET

SUMMARY OF CHANGES

ORIGINAL CONTRACT AMOUNT	\$5,120,645.70
CURRENT CONTRACT AMOUNT	\$5,120,645.70
NET CHANGE THIS ORDER	\$589,410.79
AMOUNT AFTER CHANGE	\$5,710,056.49

SHORT DESCRIPTION

Project modifications supported by Work Change Directives

DESCRIPTION OF CHANGES

Change PVC water main to DIP with Nitrile gaskets. Use of Nitrile gaskets for sanitary sewers. Provide portable toilets and hand wash stations for BNSF personnel. Extend storm sewer at the north end of USPS to connect to existing USPS storm drain system. Relocate fire hydrant and the intersection of 6th and "N" St. Re-negotiated unit price of removal of petroleum contaminated soil in excess of the original plan quantity. Provide labor and vacuum truck service to clean out manholes in the "N" St. corridor where mains are to receive flowable fill. Add to the quantity for flowable fill for abandonment of lines near Sta 2114+50 and deduct from the unit price for not totally removing the these lines. Add embankment quantity to compensate for loss of use of the north stockpile

INCREASE/DECREASE

Line No.	Pay Item No.	Description	Unit	Proposed Qty	Unit Price	Total
064	23.0006	Water Main, 12"	LF	-602.00	\$45.00	-\$27,090.00
030	21.0090	RCP Storm Sewer, CI III, 24"	LF	110.00	\$55.00	\$6,050.00
005	01.0210	Sawing, Type "A"	LF	190.00	\$4.50	\$855.00
003	01.0100	Pavt & Sidewalk Rem	CY	34.00	\$13.50	\$459.00
164	50.0035	A.C. Surface Course, Type 2P	TON	61.00	\$70.00	\$4,270.00
020	11.0700	FLOWABLE FILL	CY	14.00	\$160.00	\$2,240.00
136	50.0005	Remove Sanitary Sewer Pipe	LF	-443.00	\$30.00	-\$13,290.00
012	02.0601	Earthwork Measured in Embankment	CY	50,000.00	\$7.50	\$375,000.00
Total						\$348,494.00

NEW ITEMS

Line No.	Pay Item No.	Description	Unit	Proposed Qty	Unit Price	Total
	23.0006	WCD #001 Water Main, 12"	LF	602.00	\$70.78	\$42,609.56
	50.0015	WCD #004 Rental of Portable Restrooms	LS	1.00	\$494.00	\$494.00

Line No.	Pay Item No.	Description	Unit	Proposed Qty	Unit Price	Total
	50.0015	WCD #005 Storm Sewer connection to USPS	LS	1.00	\$9,486.00	\$9,486.00
	50.0035	WCD #007 Disposal of Petroleum Contaminated Soils	TON	5,000.00	\$35.95	\$179,750.00
	50.0015	WCD #008 Provide services of vacuum truck	LS	1.00	\$1,314.82	\$1,314.82
	50.0015	WCD #006 Relocate Fire Hydrant	LS	1.00	\$7,262.41	\$7,262.41
Total						\$240,916.79

CONTRACT TIME

Contract Begin Date	Original Contract Days	Current Contract Days	Additional Contract Days	Contract Completion Date
05/11/2011	212.00	212.04	0.00	

Prepared by Project Manager

 (Signature) (Date)

Recommended by Construction Engineer

 (Signature) (Date)

Contractor

 (Signature) (Date)

Authorized by Engineer

 (Signature) (Date)