

REVISED 10/08/10

AGENDA FOR THE WEST HAYMARKET

JOINT PUBLIC AGENCY(JPA)

TO BE HELD WEDNESDAY, OCTOBER 13, 2010 AT 3:30 P.M.

CITY-COUNTY BUILDING

555 S. 10TH STREET

CITY COUNCIL CHAMBERS ROOM 112

LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted By Door (Chair Snyder)
2. Approval of the minutes of JPA meeting September 23, 2010 (Chair Snyder)
 - (Staff recommendation is for the JPA Board to approve minutes as presented)
3. 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.

4. Approval of Payment Registers (Don Herz)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the payment registers)
5. Review of the September 2010 Expenditure Reports (Don Herz)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the September 2010 expenditure report)
6. Update on the next JPA bond issue including Economic Recovery Zone Bonds (ERZB's) and Build America Bonds (BAB's). (Don Herz and Scott Keene).
 - Public Comment
7. Bill No. WH 10-03A Resolution to Approve the Assignment and Assumption Agreement Between Burlington Northern Santa Fe Railroad, the City of Lincoln and West Haymarket Joint Public Agency (Rick Peo)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the assignment and assumption of the BNSF agreement with the City of Lincoln)
8. Bill No. WH 10-05 Resolution to Approve Amendment No. 1 to the Agreement Between the West Haymarket JPA and DLR Group, Inc. to Provide Architectural Services for the Design of the Arena and Other Arena Improvements for the West Haymarket Project (Rick Peo)
 - Public Comment

- (Staff recommendation is for the JPA Board to approve Amendment No. 1 to the original contract with DLR Group Inc.)
9. Bill No. WH 10-06 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for Benham Companies LLC to Perform Program Management Services (Rick Peo)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the Assignment Assumption Agreement program manager interim contract with Benham)
 10. Bill No. WH 10-07 Resolution to Approve the Purchase Agreement with Noohznick, L.P. and the West Haymarket Joint Public Agency (Rick Peo)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the purchase agreement with Noohznick)
 11. Bill No. WH 10-08 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for a Transfer and Exchange of Land with the Lower Platte South Natural Resource District (Rick Peo)
 - Public Comment
 - (Staff Recommendation is for the JPA Board to Approve the Assignment and Assumption Agreement)
 12. Bill No. WH 10-09 Resolution to Approve the Consultant Agreement with CSL Marketing Group for Professional Assistance in Providing Marketing Services for the West Haymarket Arena (Rick Peo)
 - Public Comment
 - (Staff Recommendation is for the JPA Board to Approve the Consultant Agreement with CSL Marketing Group)
 13. Bill No. WH 10-10 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for T.J. Osborn to Complete the West Haymarket Utility Relocation Project (Rick Peo)
 - Public Comment
 - (Staff Recommendation is for the JPA Board to Approve the Assignment and Assumption Agreement)
 14. Bill No. WH 10-11 Resolution to Approve the Purchase Agreement between Magdalen Franssen and the West Haymarket Joint Public Agency (Rick Peo)
 - Public Comment
 - (Staff Recommendation is for the JPA Board to Approve the Purchase Agreement with Magdalen Franssen)
 15. Bill No. WH 10-12 Resolution to Approve the Consultant Agreement between Thought District and the West Haymarket Joing Public Agency to Provide Website and Facebook Development Design Services (Rick Peo)
 - Public Comment

- (Staff Recommendation is for the JPA Board to Approve the Consultant Agreement with Thought District)

16. Bill No. WH 10-13 Resolution to Delegate to Dan Marvin the Power to Execute, Receive and Acknowledge Documents and Agreements on Behalf of the West Haymarket Joint Public Agency (Rick Peo)

- Public Comment
- (Staff Recommendation is for the JPA Board to Approve the Resolution)

17. Set next meeting date: Tuesday October 19, 2010 5:00 P.M. (Council Chambers Rm 112)

18. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
September 23, 2010

Meeting Began At: 3:04 P.M.

Meeting Ended At: 3:32 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 and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Approval of the Minutes of the JPA Meeting September 9, 2010

Snyder asked for any corrections or changes to the minutes from the JPA meeting on September 9, 2010. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. The motion passed 3-0.

Item 3 – Public Comment and Time Limit Notification

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

Dan Marvin came forward and reported that the JPA is in negotiations to enter into a contract with CSL Marketing. Ben Wrigley from CSL was in attendance and Marvin introduced him to the Board. Wrigley has been working in sports marketing for 16 years and has a lot of experience working with municipally owned facilities. The Board welcomed Wrigley to Nebraska.

Item 4 – Approval of Payment Registers (Herz)

Don Herz brought forward the payment registers for the weeks ending September 8, 2010 and September 15, 2010. Herz asked if the Board had questions on any specific payments in the registers.

Clare asked about the JPA laptop. Herz explained that it is anticipated that the Assistant City Controller will be doing field work in order to monitor the occupation tax payments. Rather than purchasing a desktop PC they wanted the ability to take it out into the field.

Clare observed that there is a payment to Benesch for survey work in the amount of \$6,500 and further on the agenda, the Board will be asked to approve a contract with Benesch. Clare asked if this work was for something different than that. Herz explained this payment was for architectural work done in June. Jim Martin informed the Board that Benesch, formerly known as HWS, has been doing geotechnical and architectural work since before the creation of the JPA.

Beutler moved for approval of the registers. Clare seconded the motion. Motion approved 3-0.

Item 5 – Review of the August 2010 Expenditure Reports

Herz created two reports for the Board, the Construction Expenditure Report and the Operating Expenditure Report. Herz will provide these reports to the Board on a monthly basis to show cumulative expenditures versus budgeted amounts. The operating budget will change from year to year but the capital construction budget will remain the same unless revised. As the project progresses Herz may make the reports more sophisticated, however, he wanted to start getting some interim reports to the Board right away.

Snyder asked if the \$242,109 number is the year to date construction total. Herz answered yes and explained that the total is for the period ending August 31, 2010. That is also the case for the operating report.

Beutler moved for approval of the expenditure reports. Clare seconded the motion. Motion approved 3-0.

Item 6 – Bill No. WH 10-03 Resolution to Approve the Third Assignment Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency

Rick Peo, City Law Department, explained that Bill Number WH 10-03 is a bill to approve the assignment and assumption of four different agreements. Three of these agreements are with Burlington Northern Santa Fe Railroad (BNSF) and the other is with DLR Group.

The three agreements with BNSF include (1) a master agreement, (2) a land exchange agreement and (3) a construction maintenance agreement. These agreements have not been finalized therefore Rick is not recommending approval of those three railroad agreements today. Bill Number WH 10-03 does also include the original city contract with DLR Group for preliminary design of the arena. This first city contract with DLR needs to be formally assigned to the JPA.

The assignment of the original DLR contract needs to be acted upon before the Board votes to approve agenda item 8, which is the first amendment to that original contract.

Due to the consolidation of the four agreements within Bill No. WH 10-03, three of which are were not ready for action, and in order to accomplish the dual purpose of delaying the vote on the BNSF agreements, and the approval of the assignment of the DLR original contract to the JPA, Peo has prepared a Motion to Amend which will divide Bill No. WH 10-03 into two parts.

(1). **WH 10-03A** would be a resolution to approve the assignment and assumption of the three BNSF agreements to the JPA.

(2). **WH 10-03B** would be a resolution to approve the assignment and assumption of the original City contract with DLR.

Peo recommended that the Board do the following: 1). approve the Motion to Amend, which splits WH 10-03 into two separate bills; 2). defer action on WH 10-03A, and 3). adopt WH 10-03B.

Beutler made a motion to adopt Amendment No. 1 to WH 10-03. Clare seconded the vote. Motion approved 3-0.

Peo recommended that Bill No. WH 10-03A be continued to the next meeting as the BNSF agreement has not been finalized.

Clare made a motion to continue Bill No. WH 10-03A to October 8, 2010. Beutler seconded the motion. Motion approved 3-0

Peo then asked that the Board consider adoption of Bill No. WH 10-03B, which is the assignment of the original DLR agreement.

Clare made a motion to adopt Bill No. WH 10-03B. Beutler seconded the motion. Motion approved 3-0.

Item 7 – Bill No. WH 10-04 Resolution to Approve an Agreement with Alfred Benesch & Company (Formerly HWS) to Provide Geotechnical Engineering Services for the Arena and Parking Garage Structures for the West Haymarket Project

Peo informed the Board that Bill No. WH 10-04 is a resolution to approve an agreement with Benesch, formerly HWS, to do geotechnical work associated with determining soil needs and stability for construction of the arena and parking garage.

Clare asked if the payment previously approved was for services related to this agreement. Peo explained that this is a new contract that will be entered into directly with the JPA.

Beutler made a motion to approve Bill No. WH 10-04. Clare seconded the motion. Motion approved 3-0

Item 8 – Bill No. WH 10-05 Resolution to Approve Amendment No. 1 to the Agreement Dated August 14, 2008, Between the City of Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group, Inc. to Provide Architectural Services for the Design of the Arena Improvements for the West Haymarket Project

Peo reported that Bill No. WH 10-05 is a resolution to approve the final agreement with DLR Group for the construction of the arena. The attachment that was originally provided to the

Board was a preliminary draft. Just this morning, Peo finalized the negotiated changes to this agreement. The changes to the document are not substantial; some details were filled in, some differences were resolved and the exhibits that show the basic services to be performed by DLR were included.

Peo prepared a Motion to Amend which will replace the draft version of Amendment No. 1 with the revised and final version. Peo apologized for the late presentation of the final document. Staff has been pushing hard to complete this agreement and DLR has been waiting a lengthy period of time for a final agreement.

Snyder noted that the total cost of the contract will be about \$8 million and if DLR does the garage work it would add an additional \$800,000. Dan Marvin explained that the contract states that DLR will provide basic design services at a fixed amount of \$8 million. Any additional services such as acoustics, lighting or other analysis would be subcontracted out for an additional \$915,000.

Marvin pointed out that Stan Meredith with DLR Group was present and available to answer questions. Mr. Meredith indicated that DLR will work with whatever the Board decides to do, whether it be to render a vote today or take some time to review the last minute changes and render a vote in a few weeks.

Beutler inquired as to what the nature of the amendments are and if the changes worked towards the City's advantage or the contractor's advantage. Marvin and Peo explained that Exhibit E was added which determines the number of bid specifications that will be prepared under basic services.

Another issue was the amount of insurance that was to be provided. The original proposal indicated that the City would purchase a policy, however it was agreed that the \$5 million professional liability insurance provided by DLR Group would be sufficient.

The Program Manager was identified as the scheduling and cost consultant in the agreement. Other changes filled in missing information and identified differences between Construction Manager at Risk type contracts and general contractor contracts. Peo felt that the changes were fair to both sides. Due to the size of this project, AIA documents are being used which the City doesn't typically work with. In order to incorporate some of the concerns and provisions from the City's standard documents the changes needed to be made.

Snyder asked when the decision would be made about the garages. Meredith stated that in working with Vince Mejer and Dan Marvin, they decided to focus on the arena. A number of the other pieces that were a part of the original agreement were removed; even the parking garage. The parking garage is very important to the design of this facility because it feeds directly into the club and suite level, so it was decided that it would be added at later date by amendment.

Beutler questioned if the amendment changed the total amount of the contract and if it would still be within the original budget. Herz had budgeted a 20% soft cost for the arena that included design, engineering and architectural services. The original contract with DLR was a fee based

percentage of the construction cost of the arena. The \$8 million fee is a reduction from the original contract and is within the budget.

Snyder inquired if work would be held up for two weeks if the Board decided to continue this item until the next meeting. Peo noted that DLR has been without a finalized agreement since the end of the election. Meredith added that they were selected in April of 2008 and they are committed to this project. They are working diligently with the Program Manager and the team that has been brought on board and will continue to do so regardless of whether the amendment is acted on today or not.

Clare made a motion to delay this item to October 8th. Beutler seconded the motion. Motion carried 3-0.

Item 9 – Set Next Meeting Date: Friday October 8, 2010 3:00 P.M.

The next JPA Board meeting is scheduled for October 8, 2010 at 3:00 P.M.

Item 10 – Motion to Adjourn

Beutler motioned to adjourn. Clare seconded the motion. Meeting adjourned at 3:32.

Prepared by: Melissa Ramos-Lammler, Engineering Services

West Haymarket JPA Check Register
 9/16/10 through 9/22/10

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
27668	Baker Hardware Company Inc	Asst Purch Agent office	PV	1217514	3.23	09/16/10	00039521
38391	Lincoln Journal Star	JPA Budget Hearing	PV	1217494	33.92	09/16/10	00039538
85796	Office Depot Inc	Asst Controlle	PV	1217501	76.70	09/16/10	00039574
595487	American Institute of Architects	AIA Contract Software 1 yr	PV	1220125	979.00	09/17/10	00021106
107131	Standard & Poor's	WH Facility Bonds 2010A	PV	1220230	28,500.00	09/22/10	00428830
324566	Union Bank & Trust Company	WH Facility Bonds 2010A	PV	1220226	500.00	09/22/10	00428831
397124	Grant Street Group	WH Facility Bonds 2010A	PV	1220227	4,000.00	09/22/10	00428832
Grand total					34,092.85		

West Haymarket JPA Check Register
 9/23/10 through 9/29/10

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
406174	BKD LLP	WH Facility Bonds 2010A	PV	1220228	3,250.00	09/23/10	00039740
97885	Copy Services	Photocopies	PV	1221453	12.28	09/29/10	00429522
102154	Public Building Commission	Postage for 08	PV	1221454	355.26	09/29/10	00429523
108417	Citizen Information Center	JPA Bd meeting tapings	PV	1221452	280.00	09/29/10	00429524
308161	Midwest Right of Way Services Inc	Jaylynn	PV	1219582	578.00	09/29/10	00429525
366993	Gilmore & Bell PC	W Haymkt Facility Bonds 2010A	PV	1222097	300,000.00	09/29/10	00429526
422799	Ameritas Investment Corp	Fiscal Fee West Haymkt 2010A	PV	1222096	150,000.00	09/29/10	00429527
591846	Marvin Investment Management Co	Program Admin 7/16/10-8/15/10	PV	1221455	6,800.00	09/29/10	00429528
593714	McGrath North	Bond legal serv 7/12-7/27	PV	1221443	2,482.00	09/29/10	00429529
593714	McGrath North	Bond legal serv 7/28-8/27	PV	1221451	1,855.00	09/29/10	00429529
595471	Jaylynn LLC	Right-of-entry access	PV	1219584	1,000.00	09/29/10	00429530
Grand total					466,612.54		

City of Lincoln, NE
 West Haymarket
 Construction Expenditure Report
 As of September 30, 2010

	Total Budget	Expend.	Encumb.	Available Balance

00951 West Haymarket Capital Proj				
A95107 JPA - Debt Service				
870000 WH West Haymarket Park		251,310		251,310-
870100 WH Arena	168,895,600	23		168,895,577
870200 WH Parking	30,644,420			30,644,420
870300 WH Roads	18,181,680			18,181,680
870301 WH Sun Villy-Chrlston & Brdg		29,471		29,471-
870302 WH "M"&"N" St, 9th & 10th St		28,098		28,098-
870303 WH Arena Drive				
870304 WH Canopy Road				
870305 WH "P", "Q", & "R" Streets				
870306 WH Traffic Analysis				
870400 WH Pedestrian Ways	10,121,746			10,121,746
870500 WH Utilities	5,852,280			5,852,280
870501 WH Sanitary Sewer Relocation		1,102		1,102-
870600 WH Environmental	6,003,600	90		6,003,510
870601 WH NDEQ T-200				
870602 WH Voluntary Clean-up Progrm				
870603 WH Environmental Contngy Pln				
870604 WH Other/Miscellaneous				
870700 WH Dirt Moving	9,023,160			9,023,160
870800 WH TIF Improvements	5,515,693			5,515,693
870900 WH Site Purchase	57,873,400			57,873,400
870901 WH BNSF Land Acquistion		32,422		32,422-
870902 WH Alter Site Purchase		2,658		2,658-
870903 WH Jaylynn Site Purchase		3,940		3,940-
870904 WH UP Site Purchase		18,315		18,315-
870950 WH Other Costs	4,200,000			4,200,000
870975 WH Miscellaneous	5,160,000			5,160,000
870976 WH Line of Credit		52,500		52,500-
870977 WH Series 1 JPA Debt		486,250		486,250-
870978 WH Series 2 JPA Debt				
870979 WH Series 3 JPA Debt				

City of Lincoln, NE
West Haymarket
Construction Expenditure Report
As of September 30, 2010

	Total Budget	Expend.	Encumb.	Available Balance

00951 West Haymarket Capital Proj				
	321,471,579	906,179		320,565,400

00951 West Haymarket Capital Proj	321,471,579	906,179		320,565,400

City of Lincoln, NE
 West Haymarket JPA
 Operating Expenditure Report
 As of September 30, 2010

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					234	234-
5261 Postage	5,000			5,000	355	4,645
5323 Bldg Maint Supplies					125	125-
11 Materials & Supplies	5,000			5,000	714	4,286
12 Other Services & Charges						
5621 Misc Contractual Services	330,612			330,612		330,612
5624 Auditing Service	12,000			12,000		12,000
5632 System Develop - I.S.	20,000			20,000		20,000
5633 Software					979	979-
5642 Legal Services	20,000			20,000	4,337	15,663
5643 Management Services	92,043			92,043	6,800	85,243
5725 Mileage - Personal Vehicles	1,000			1,000		1,000
5762 Photocopying	1,000			1,000		1,000
5763 Printing					12	12-
5829 Telephone	1,000			1,000		1,000
5928 Rent of Co/City Bldg Space	1,900			1,900		1,900
5952 Advertising/Media Serv	1,500			1,500	335	1,165
12 Other Services & Charges	481,055			481,055	12,463	468,592
13 Capital Outlay - Equipment						
6069 Data Processing Equipment	4,500			4,500	2,461	2,039
6072 Furniture & Fixtures	11,000			11,000		8,242
13 Capital Outlay - Equipment	15,500			15,500	2,461	10,281
06095 W Haymarket O & M	501,555			501,555	15,638	483,159
00950 West Haymarket Revenue	501,555			501,555	15,638	483,159

THIRD ASSIGNMENT AND ASSUMPTION AGREEMENT

This Third Assignment and Assumption Agreement ("Assignment") is made and entered into as of the ____ day of _____, 2010, between the **City of Lincoln, Nebraska**, a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay

the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreements listed in Exhibit A (“Agreements”) attached hereto and incorporated herein by this reference which were originally entered into with the City, and Agency assume all obligations of the City under said Agreements.

NOW, THEREFORE, in consideration of the above Recitals, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City’s rights, title and interest in and to and under the Agreements as authorized under the agreements listed in Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreements. Agency shall fully and completely indemnify and hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreements.

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this _____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

Notary Public

LIST OF AGREEMENTS ASSIGNED TO AGENCY

1. Master Development Agreement between the City and BNSF to provide for a land exchange needed to create the new BNSF rail corridor and the site for the West Haymarket Project improvements; to provide for the removal of BNSF improvements on the property to be acquired by the City from BNSF; to provide for BNSF's construction of replacement tracks and related improvements; and to provide for BNSF's granting of certain license and easement rights to the City for Right of Entry Work related to the West Haymarket Project Improvements.
2. Land Exchange Agreement between the City and BNSF for acquisition of property from BNSF for the West Haymarket Project.
3. Construction and Maintenance Agreement between the City and BNSF to provide for terms and conditions regarding construction of the City's rights of entry work under the Master Development Agreement for the West Haymarket Project.

RESOLUTION NO. WH- _____

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

3 That the Consent to Assignment and Assumption Agreement, which is attached hereto
4 marked as Attachment "A" and incorporated herein by this reference, between the BNSF
5 Railway Company (BNSF), the City of Lincoln, Nebraska (City) and the West Haymarket Joint
6 Public Agency (Agency) providing for the City, as assignor, to assign and for the Agency, as
7 assignee, to assume all of the City's rights, interests, duties and obligations under the
8 Agreements listed in Exhibit "A" attached to the Consent to Assignment and Assumption
9 Agreement and providing for BNSF's consent to the assignment, is hereby accepted and
10 approved and the Board of Representatives have executed said Consent to Assignment and
11 Assumption Agreement on behalf of the West Haymarket Joint Public Agency.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

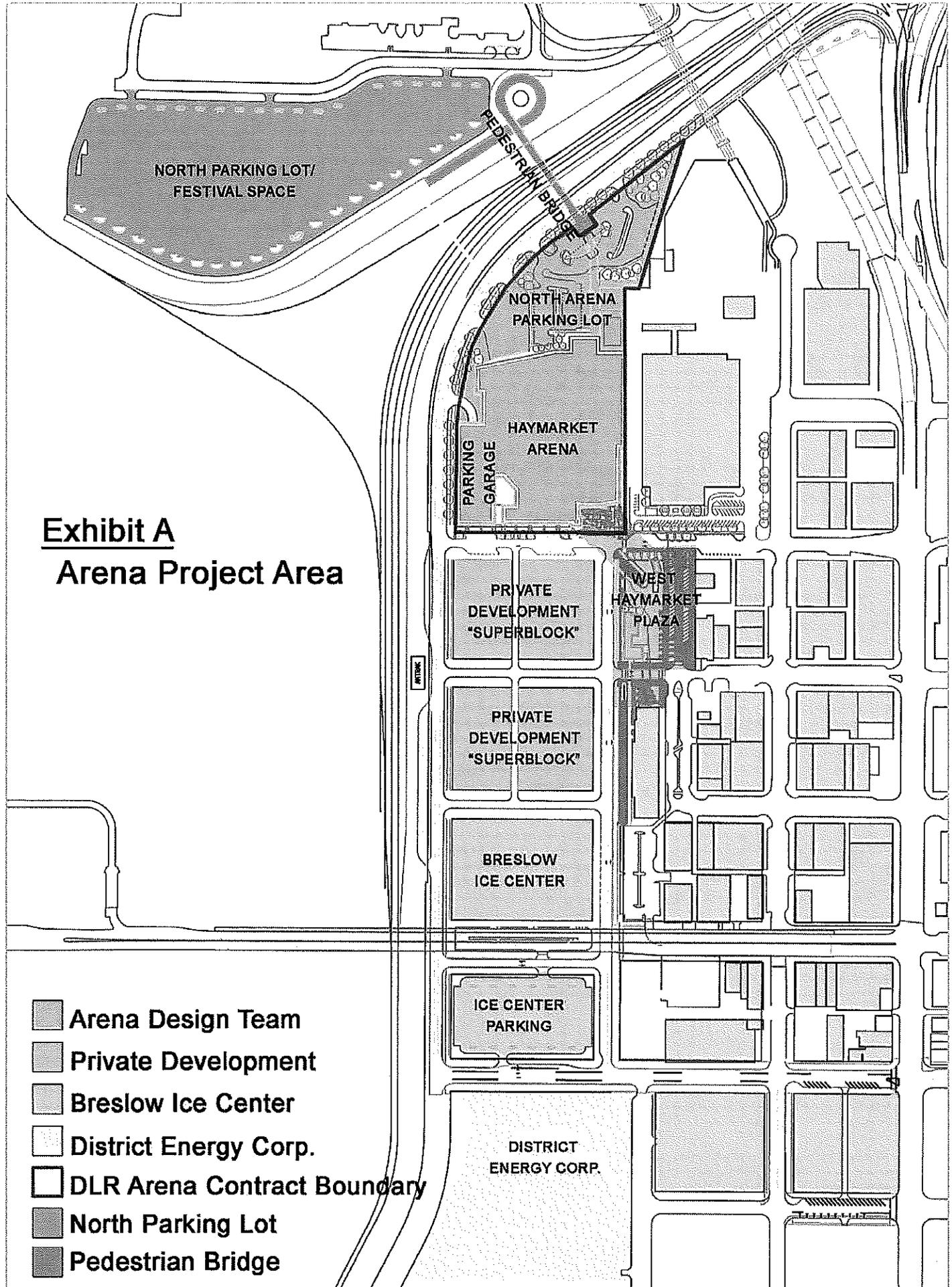
Legal Counsel for
West Haymarket Joint Public Agency

Jayne Snyder, Chair

Tim Clare

Chris Beutler

Exhibit A
Arena Project Area



- Arena Design Team
- Private Development
- Breslow Ice Center
- District Energy Corp.
- DLR Arena Contract Boundary
- North Parking Lot
- Pedestrian Bridge

EXHIBIT B – PROJECT BUDGET

City of Lincoln
West Haymarket
Use of Funds Analysis

17-Nov-08

Item	Description	Ref	Construction Cost Estimate	20.00% Engr./Design	Total Const. Cost Estimate	Inflation Rate	Inflation Contingency	15.00% Contingency	Total
ARENA COSTS:									
Arena	465,163 sq ft @\$301	4-1	139,913,000	27,982,600	167,895,600	0.0%	-	-	167,895,600
	Preoccupancy expense		1,000,000	-	1,000,000	0.0%	-	-	1,000,000
	Total Arena		140,913,000	27,982,600	168,895,600				168,895,600
Parking	Surface - Northwest of Tracks	6-9	3,806,400	761,280	4,567,680	10.0%	456,768	753,667	5,778,115
	Surface -South of Ice Rink	6-7	1,362,200	272,440	1,634,640	10.0%	163,464	269,716	2,067,820
	Surface - Train Station		1,000,000	-	1,000,000	0.0%	-	150,000	1,150,000
	-Garages - South of Arena		11,900,000	1,190,000	13,090,000	10.0%	1,309,000	1,079,925	15,478,925
	Garage - Arena	4-22	9,411,000	941,100	10,352,100	5.0%	517,605	448,200	11,317,905
	Total Parking		27,479,600	3,164,820	30,644,420		2,445,837	2,701,508	35,792,765
Roads	Sun Valley - Charleston and Bridge	6-2	3,850,600	770,120	4,620,720	10.0%	462,072	762,419	5,845,211
	Sun Valley - ROW	6-1	614,500	122,900	737,400	10.0%	73,740	121,671	932,811
	Arena Drive	6-3	4,945,300	989,060	5,934,360	10.0%	593,436	979,169	7,506,965
	P, Q & R Streets	6-4	2,298,900	459,780	2,758,680	10.0%	275,868	455,182	3,489,730
	M & N Streets	6-5	1,708,400	341,680	2,050,080	10.0%	205,008	338,263	2,593,351
	Canopy Street & Ice Drop Off	6-6	1,733,700	346,740	2,080,440	10.0%	208,044	343,273	2,631,757
	Total Roads		15,151,400	3,030,280	18,181,680		1,818,168	2,999,977	22,999,825
Pedestrian Ways	Trails and sidewalks		500,000	100,000	600,000	10.0%	60,000	90,000	750,000
	Pedestrian Crossings over BNSF	4-23	6,934,788	1,386,958	8,321,746	10.0%	832,175	1,248,262	10,402,182
	Plaza		1,000,000	200,000	1,200,000	10.0%	120,000	180,000	1,500,000
	Total Pedestrian Ways		8,434,788	1,686,958	10,121,746		1,012,175	1,518,262	12,652,182
Utilities	Water	6-22	816,800	163,360	980,160	5.0%	49,008	147,024	1,176,192
	Wastewater	6-23	1,892,400	378,480	2,270,880	5.0%	113,544	340,652	2,725,056
	LES	6-24	385,000	77,000	462,000	5.0%	23,100	69,300	554,400
	Trunk storm sewer to Haymarket area	6-8	1,240,300	248,060	1,488,360	5.0%	74,418	223,254	1,786,032
	Communication and Other	6-25	542,400	108,480	650,880	5.0%	32,544	97,632	781,056
	Total Utilities		4,876,900	975,380	5,852,280		292,614	877,842	7,022,736
Environmental	North Area - R to Tracks (arena area)	6-17	815,000	163,000	978,000	10.0%	97,800	146,700	1,222,500
	South Area - R to O	6-18	1,750,000	350,000	2,100,000	10.0%	210,000	315,000	2,625,000
	South Area - O on South	6-18.5	2,000,000	400,000	2,400,000	10.0%	240,000	360,000	3,000,000
	West Area - Roundhouse	6-19	300,000	60,000	360,000	10.0%	36,000	54,000	450,000
	Wetlands, Seeding and Removals	6-21	138,000	27,600	165,600	10.0%	16,560	24,840	207,000
	Total Environmental		5,003,000	1,000,600	6,003,600		600,360	900,540	7,504,500
Dirt Moving	Pad site development - fill	6-11	1,931,100	386,220	2,317,320	5.0%	115,866	347,598	2,780,784
	Stormwater/Floodplain mitigation	6-20	5,588,200	1,117,640	6,705,840	5.0%	335,292	1,005,876	8,047,008
	Total Dirt Movement		7,519,300	1,503,860	9,023,160		451,158	1,353,474	10,827,792
TIF Improvements	Public Use of TIF Proceeds		5,515,693	-	5,515,693	0.0%	-	-	5,515,693

EXHIBIT B – PROJECT BUDGET

City of Lincoln
West Haymarket
Use of Funds Analysis

17-Nov-09

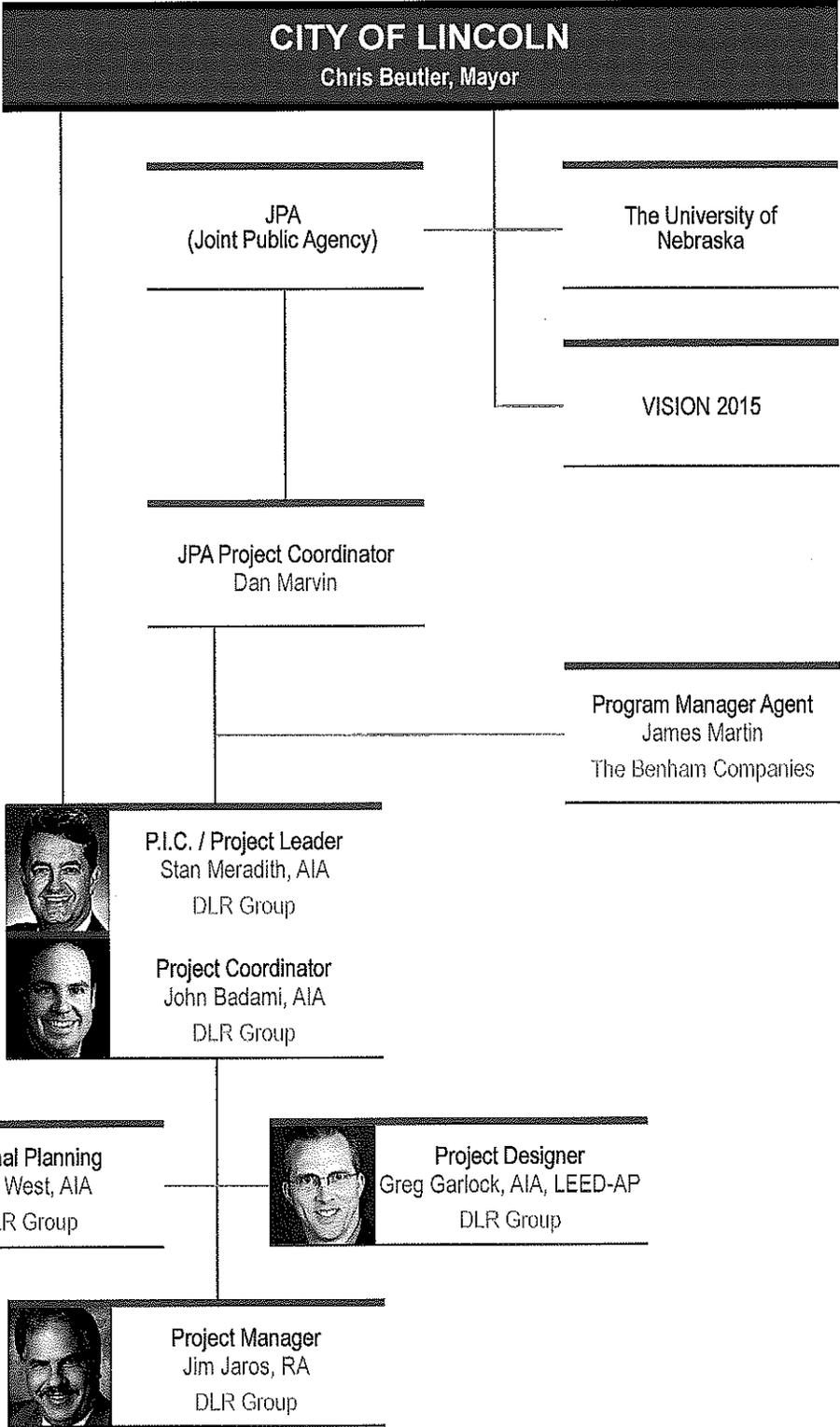
Item	Description	Ref	Construction Cost Estimate	20.00% Engr./Design	Total Const. Cost Estimate	Inflation Rate	Inflation	15.00% Contingency	Total
ARENA COSTS:									
Site Purchase									
	BNSF Land Acquisition	5-1	1,000,000		1,000,000	0.0%	-	-	1,000,000
	BNSF Construction, Rehab, & Reloc.	5-2	44,000,000		44,000,000	0.0%	-	-	44,000,000
	Canopy Rehabilitation	6-12	177,000	35,400	212,400	10.0%	21,240	31,860	265,500
	Amtrak Building	6-14	1,200,000	240,000	1,440,000	0.0%	-	-	1,440,000
	UP Land Acquisition		1,000,000		1,000,000	0.0%	-	150,000	1,150,000
	UP Wetland Enhancement		1,000,000	200,000	1,200,000	10.0%	120,000	180,000	1,500,000
	UP Track Modifications W of Bridge	6-16	1,030,000	206,000	1,236,000	10.0%	123,600	185,400	1,545,000
	Subtotal Railroad Site Purchase		49,407,000	681,400	50,088,400		264,840	547,260	50,900,500
	Subtotal Other Land Acquisition		7,585,000	200,000	7,785,000		150,000	1,167,750	9,102,750
	Total Site Purchase		56,992,000	881,400	57,873,400		414,840	1,715,010	60,003,250
Other Costs	Dynamic Message Signage	6-10	2,250,000	450,000	2,700,000	10.0%	270,000	405,000	3,375,000
	Other		-	-	-	5.0%	-	-	-
	Total Other		2,250,000	450,000	2,700,000		270,000	405,000	3,375,000
	SUBTOTAL		274,135,681	40,675,898	314,811,579		7,306,152	12,471,613	334,589,343
Other Adj.	PLUS: Additional Contingencies		5,160,000		5,160,000	0.0%	-	-	5,160,000
	PLUS: Cost of Bond Issuance, 1.50%		5,160,000		5,160,000		-	-	5,160,000
	TOTAL ARENA COSTS		279,295,681	40,675,898	319,971,579		7,306,152	12,471,613	339,749,343

Inflation Assumptions:
 Payments made in 2010 0.0%
 Payments span 2010 to 2011 5.0%
 Payments span 2010 to 2013 10.0%

Source: Olsson & Associates, DLR, ISG, City of Lincoln

Yellow area is a city estimate

WEST HAYMARKET CIVIC ARENA DLR GROUP MANAGEMENT TEAM



Submittal of Organization | Spring 2010
 by DLR Group

**ORGANIZATIONAL CHART
(AS OF 7/12/2010)**

EXHIBIT C

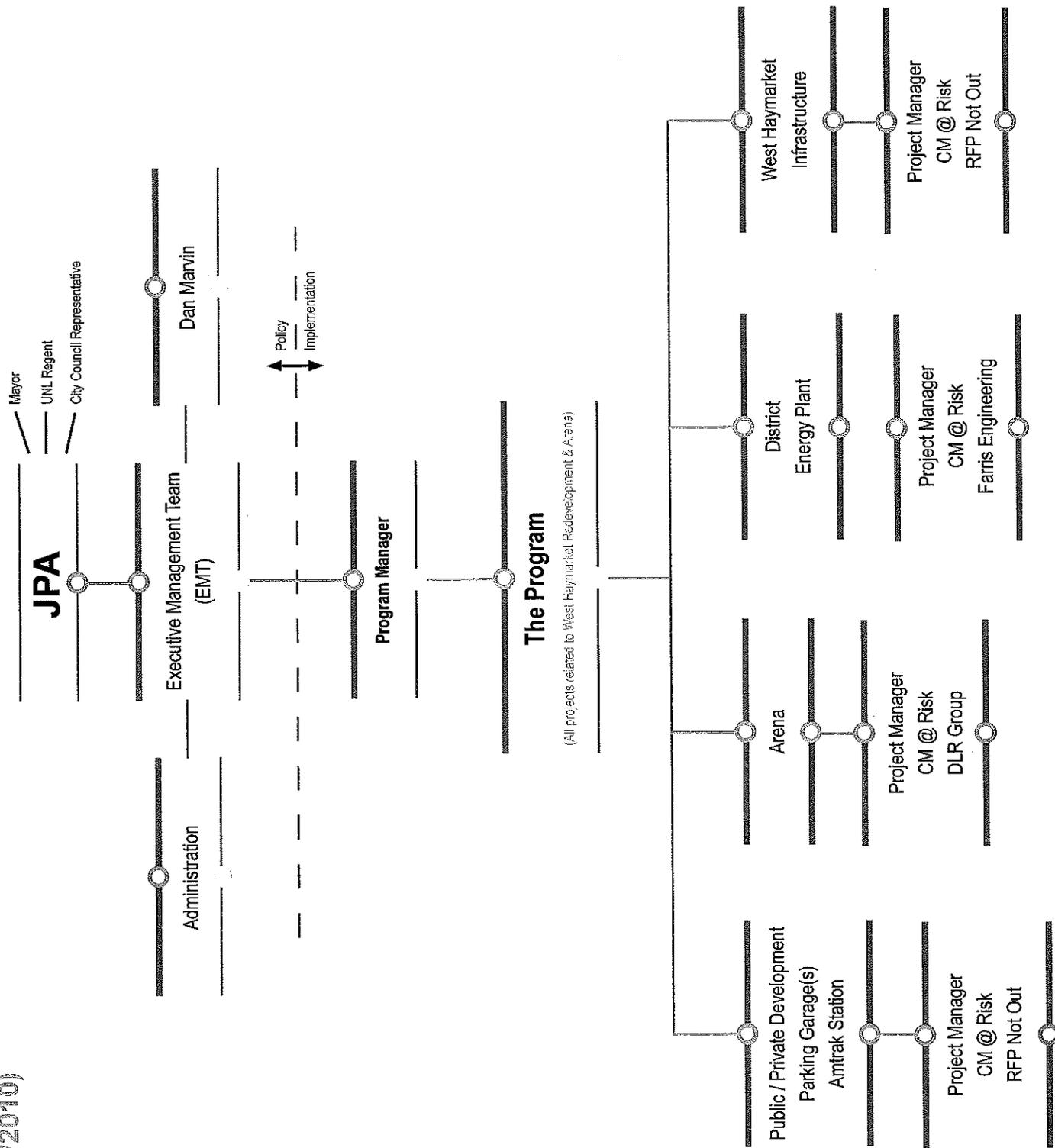


EXHIBIT D - HOURLY RATES

CATEGORY NUMBER/TITLE	HOURLY RATES	DESCRIPTION OF CATEGORY
6. PRINCIPAL	\$250	<ul style="list-style-type: none"> • Principals who lead offices, disciplines and Project Teams
5. SENIOR PROFESSIONAL	\$150	<ul style="list-style-type: none"> • All registered or licensed Professionals with 10 years or more experience since registration. • All personnel in equivalent roles in related professional disciplines in which there is no registration, but who have 15 years experience in their field including 10 years experience in leadership roles in those related disciplines. Examples of these disciplines are: Accounting, Office Management, Business Development, Construction Administration, Design, Technology or similar areas of expertise.
4. PROFESSIONAL	\$125	<ul style="list-style-type: none"> • New registrants and all registered professionals with less than 10 years since registration. • Nonregistered Architectural, Engineering or Design personnel who have more than 15 years experience in their professional discipline and are in direct professional leadership roles in their field. • All personnel in equivalent roles in related professional disciplines in which there is no registration, but who have 15 years experience and are in direct leadership roles in their field. Examples of these disciplines are: Accounting, Office Management, Business Development, Construction Administration, Design, Technology or similar areas of expertise.
3. PROFESSIONAL SUPPORT	\$100	<ul style="list-style-type: none"> • New professional degreed graduates and interns who are not yet registered. • Nonregistered Architectural, Engineering or Design personnel who have 10 years experience in their professional discipline under the supervision of registered professionals or related discipline professionals. • All personnel in related professional disciplines in which there is no registration, but have 10 years experience in their field. Examples of these disciplines are: Accounting, Office Management, Business Development, Construction Administration, Design, technology or similar areas of expertise and work under the supervision of others in their field. • Drafters, CADD technicians, Designers and similar technicians without registration, but with 10 years experience in their professional support field.
2. TECHNICAL	\$75	<ul style="list-style-type: none"> • Nonregistered Architectural, Engineering, or Design personnel who have less than 10 years experience in their professional discipline. • All personnel in related professional disciplines in which there is no registration, but have less than 10 years experience in their field. • Drafters, CADD technicians, Designers and similar technicians without registration, but with less than 10 years experience in their professional support field. • All Administrative support, clerical and word processing personnel with 10 years experience.
1. CLERICAL	\$50	<ul style="list-style-type: none"> • All Administrative support, clerical and word processing personnel with less than 10 years experience.

EXHIBIT E: Lincoln Arena Architectural and Engineering Design Services Summary

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS	LUMP SUM FEE
TOTAL - BASIC SERVICES	808	16,818	18,113	4,132	6,179	5,121	2,492	10,609	64,272	\$8,000,000
PHASE 1 - PRE-DESIGN	80	320	520	80	0	0	0	0	1,000	\$150,000
PHASE 2 - SITE ANALYSIS	0	0	0	0	0	0	0	0	0	\$0
PHASE 3 - SCHEMATIC DESIGN (16 weeks)	162	2,334	2,084	684	928	698	632	2,344	9,866	\$1,200,000
PHASE 4 - DESIGN DEVELOPMENT (28 WEEKS)	160	3,784	5,241	232	1,336	1,184	632	2,400	14,969	\$2,000,000
PHASE 5 - CONSTRUCTION DOCUMENTS (20 WEEKS)	256	2,560	5,646	208	2,752	2,152	656	4,008	18,238	\$2,250,000
PHASE 6 - BID/NEGOTIATIONS (10 weeks)	14	1,016	52	120	53	25	58	37	1,375	\$150,000
PHASE 7 - CONSTRUCTION ADMINISTRATION (104 weeks)	136	6,804	4,570	2,808	1,110	1,062	514	1,820	18,824	\$2,250,000
PHASE 8 - TRANSITION / COMMISSIONING	0	0	0	0	0	0	0	0	0	\$0
SPECIALTY CONSULTANTS ALLOWANCE										\$915,000
TOTAL - ARCHITECTURAL & ENGINEERING DESIGN SERVICES										\$8,915,000

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE I - PREDESIGN	TOTAL	80	320	520	80	0	0	0	0	1,000
A. Administration	Subtotal	80	80	0	80	0	0	0	0	240
01. In-House Management		80								80
02. Initial consultation			40							40
03. Project schedule development										0
04. Progress Reports					40					40
05. Owner Reviews										0
06. Bond referendum assistance										0
07. Financial advisor coordination										0
08. Owner consultant coordination			40							40
09. Develop project directory										0
10. Meeting minutes					40					40
11. Family Visits										
B. Programming	Subtotal	0	160	0	0	0	0	0	0	160
01. Project Manager			160							
02. Project Designer			160							160
C. Space Schematics	Subtotal	0	0	120	0	0	0	0	0	120
01. Operation / Functions narrative				20						20
02. Adjacency / Flow patterns				20						20
03. Flexibility/Expansion considerations/plans				40						40
04. Staffing analysis				40						40

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 1 - PRE-DESIGN	80	320	520	80	0	0	0	0	1,000
Hours									
A. Administration	80	80	0	80	0	0	0	0	240
Hours									
B. Programming	0	160	0	0	0	0	0	0	160
Hours									
C. Space Schematics	0	0	120	0	0	0	0	0	120
Hours									
D. Program Review	0	0	400	0	0	0	0	0	400
Hours									
E. Budget	0	0	0	0	0	0	0	0	0
Hours									
F. Presentations	0	0	0	0	0	0	0	0	0
Hours									

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 2-SITE ANALYSIS									
	Hours	0	0	0	0	0	0	0	0
A. Administration	Hours	0	0	0	0	0	0	0	0
B. Site Planning	Hours	0	0	0	0	0	0	0	0
C. Off-Site Studies	Hours	0	0	0	0	0	0	0	0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

PHASE 3-SCHEMATIC DESIGN (16 weeks)	Qty	hrs	Description										
				PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS	
TOTAL				162	2,334	2,084	684	928	698	632	2,344	9,866	
A. Administration	Subtotal			24	1256	40	136	32	32	32	32	1584	
01. A/E Project Representative		14	40 Full time		560							560	
02. A/E Project Manager		14	40 Full time		560							560	
03. Quality Control Review					40	40	24	16	16	16	16	168	
04. Progress Reports		14	4		56		112					56	
05. Clerical		14	8	24	40			16	16	16	16	112	
06. Budget Review												128	
B. Program Review/Development	Subtotal			42	36	64	108	0	8	4	68	330	
01. Design objectives		8	2		2							10	
02. Space requirements - Confirm/modify		16	4		4							20	
03. Flexibility evaluation		2										2	
04. Site requirements		4										4	
05. Master Plan review.					4	4						8	
06. Codes/Standards Review		4	2		16							22	
07. Room Finish Requirements		4	8		16							28	
08. Equipment Requirements		4	8		16		8		8	4	4	52	
09. Engineering Criteria/Goals					4							4	
10. Off-site utility impact					8	8						16	
11. Budget Review						8	100					100	
12. Data Entry/Processing													
C. Seating Bowl/Grid/Section Development	Subtotal			10	164	40	0	12	0	0	32	258	
01. Seating Bowl Focus (Basketball/Hockey)		4	2		2							6	
02. Seating Type -Locations		2	2		80			12			32	124	
03. Seating Bowl/Grid/Section Options					40	40						40	
04. Capacity Verification		4	40		40	40						84	
05. Select/Refine Finalize													
D. Space Schematics	Subtotal			6	18	0	0	4	2	8	4	42	
01. Space allocation/program testing		2	2		2							4	
02. Operation / Functions analysis												0	
03. Adjacency/Intra-relationships/Flow Patterns		2	2		2							4	

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
04. Flexibility/Expansion					4	2		2	8
05. Technology Assessment		2							2
06. Site Demolition Assessment	2	4					8	2	16
07. Security Systems		8							8
E. Agency Review									
01. City/County Agency consultation	0	60	44	0	0	0	0	0	104
02. Code research/documentation		8	8						16
03. Health department		24	24						48
04. Building department		4	4						4
05. Fire Marshall		8	4						12
06. Rail/Road Coordination		8	4						12
		8	4						12
F. Architectural Design									
01. Project Designer	0	576	1824	280	0	0	0	0	2680
02. Building plans (2D)		560							560
03. Building sections			720						720
04. Building Skin			200	240					440
05. Elevations			200	40					200
06. Outline Specifications/Room Data Sheets			160						160
07. 3D study models			80						80
08. BIM Management			200						200
09. ADA assessment/Code research		16	40						224
									56
G. Site Planning/Design									
01. Phasing - Site Development	0	0	0	0	0	0	560	0	560
02. Traffic/Site/Roadways							40		40
03. Permits							8		8
04. Landscaping							32		32
05. Electrical service							32		32
06. Gas service							16		16
07. Water service							16		16
08. Sanitary sewers							40		40
09. Storm sewers							40		40
10. Fire Protection							24		24
11. Emergency systems							16		16
12. Utility coordination/planning							24		24

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

				PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
03.	Communications/IT concepts								16			16
04.	Fire protection analysis								16			16
05.	Security systems analysis								16			16
06.	Special systems Coordination								40			40
07.	Codes/standards								16			16
08.	Plan Documentation	14	24						336			336
09.	Mechanical Coordination								40			40
10.	Concession/Food Service								24			24
11.	AFE coordination	14	2						28			28
12.	Daylighting analysis								8			8
13.	Mechanical Coordination								40			40
K.	Specialized Consultants											
	Subtotal			0	0	0	0	0	0	0	0	0
L.	Interior Design											
01.	Material research								0			0
02.	Color Boards								0			0
03.	FF&E coordination								0			0
04.	Budget analysis								0			0
M.	Outline Specifications											
01.	Material selection			0	48	16	120	24	24	16	16	264
02.	Documentation				24		80	24	24	16	16	184
03.	Consultant coordination				24	16	40					40
N.	Project Budget											
01.	Quantity take-offs			0	0	0	0	0	0	0	0	0
02.	Data entry/processing											0
03.	Project costs development											0
04.	Construction research											0
05.	Program Budget Verification											0
06.	Cost report											0
O.	Presentations											
01.	JPA meetings			80	176	56	40	12	12	12	12	400
	Subtotal			32	64							96
						Monthly						

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 3-SCHEMATIC DESIGN	162	2,334	2,084	684	928	698	632	2,344	9,866
Hours									
A. Administration	24	1256	40	136	32	32	32	32	1,584
Hours									
B. Program Review/Development	42	36	36	36	36	36	36	36	294
Hours									
C. Seating Bowl/Grid/Section Development	10	164	40	0	12	0	0	32	258
Hours									
D. Space Schematics	6	18	0	0	4	2	8	4	42
Hours									
E. Agency Review	0	60	44	0	0	0	0	0	104
Hours									
F. Architectural Design	0	576	1824	280	0	0	0	0	2,680
Hours									
G. Site Planning	0	0	0	0	0	0	560	0	560
Hours									
H. Structural Design	0	0	0	0	0	0	0	2212	2,212
Hours									
I. Mechanical Design	0	0	0	0	844	0	0	0	844
Hours									
J. Electrical Design									
Hours									

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
Hours	0	0	0	0	0	620	0	0	620
K. Specialized Consultants	0	0	0	0	0	0	0	0	0
L. Interior Design	0	0	0	0	0	0	0	0	0
M. Outline Specifications	0	48	16	120	24	24	16	16	264
N. Project Budget	0	0	0	0	0	0	0	0	0
O. Presentations	80	176	56	40	12	12	12	12	400

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 4-DESIGN DEVELOPMENT									
Hours	160	3,784	5,241	232	1,336	1,184	632	2,400	14,969
A. Administration	24	1800	120	112	32	32	32	32	2,184
B. Agency Review	0	8	60	16	0	0	0	0	84
C. Architectural Design	0	1760	4981	0	0	0	0	0	6,741
D. Site Design	0	0	0	0	0	0	560	0	560
E. Interiors	0	0	80	0	0	0	0	0	80
F. Structural Design	0	0	0	0	0	0	0	2328	2,328
G. Mechanical Design	0	0	0	0	1264	0	0	0	1,264
H. Electrical Design	0	0	0	0	0	1112	0	0	1,112
I. Specialized Consultants	0	0	0	0	0	0	0	0	0
J. Specifications	0	160	0	80	40	40	40	40	400

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

PHASE 4-DESIGN DEVELOPMENT (28 weeks)		TOTAL	Qty	hrs Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
A. Administration		Subtotal			24	1800	120	112	32	32	32	32	2184
01.	A/E Project Representative		28	20 Half Time		560							560
02.	A/E Project Manager		28	40 Full Time		1120							1120
03.	BIM Management				8	40			16	16	16	16	112
04.	Quality Control Review		7	Monthly Reports	8	40		112					48
05.	Progress Reports		28	4 1/4 hours each week	8	40			16	16	16	16	112
06.	Clerical												
07.	Budget Review												
B. Agency Review		Subtotal			0	8	60	16	0	0	0	0	84
01.	Agency consultation					8							8
02.	Code check						24						24
03.	Agency submittals						4						4
04.	ADA Compliance							16					16
05.	Building Department							8					8
06.	Fire Marshall							8					8
07.	Health department							8					8
C. Architectural Design		Subtotal			0	1760	4981	0	0	0	0	0	6741
01.	Project Architect			Full Time		1280							1280
02.	Orientation Plans		6	15			90						90
03.	Code Plans		7	30			210						210
04.	Architectural Plans		29	60			1740						1740
05.	Reflected Ceiling Plans		29	25			725						725
06.	Roof Plans		4	25			100						100
07.	Building Elevations		4	25			100						100
08.	Door and Frame Sheets		3	32			96						96
09.	Wall Sections		8	40			320						320
10.	Elevator Plans and Sections		10	40			400						400
11.	Seating Configuration Diagrams		3	30			90						90
12.	Seating Plans		18	25			450						450
13.	Interior Elevations		6	40			240						240
14.	Wall Types		1	60			60						60
15.	Case Work		3	40			120						120
16.	Food Service						0						0
17.	Specifications (First Draft)					80	40						120

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	18	BIM Models	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
				400	200						600
D. Site Design		Subtotal	0	0	0	0	0	0	560	0	560
01. Site layout									80		80
02. Grading plan									80		80
03. Utility distribution plans									120		120
04. Roadway/parking									80		80
05. Composite utility plan									40		40
06. Details									40		40
07. Fire protection									40		40
08. Sanitary Sewer									40		40
09. Parking/Parking Garage									80		80
									0		0
E. Interiors		Subtotal	0	0	80	0	0	0	0	0	80
01. Equip./Furnishing selection					0						0
02. Finish/color selection					40						40
03. Color boards					40						40
F. Structural Design		Subtotal	0	0	0	0	0	0	0	2328	2328
01. System analysis										40	40
02. Framing Plans	35									840	840
03. Foundation plan	17									408	408
04. Calculations	24									40	40
05. Soils investigation										24	24
06. Column analysis										40	40
07. Truss Plans and Details										80	80
08. Beams/Joist										80	80
09. Seating Bowl Plans/Sections	25									400	400
10. Curtain Wall	16									80	80
11. Special details										40	40
12. Material selection										24	24
13. Staging										40	40
14. Alternate systems										40	40
15. A/E coordination/Clash Detection	28									112	112
16. Quality control review	4									40	40
G. Mechanical Design		Subtotal	0	0	0	0	1264	0	0	0	1264

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
18. Communication system						0			0
19. Ice Floor						40			40
20. Audio/Visual						0			0
21. IT/Communications						0			0
22. Concessions/Food Service						80			80
23. Budget Review						40			40
24. Special Systems Plans						0			0
I. Specialized Consultants									
		0	0	0	0	0	0	0	0
Subtotal		0	0	0	0	0	0	0	0
J. Specifications									
		0	160	0	80	40	40	40	400
Subtotal		0	160	0	80	40	40	40	400
01. General/Supplementary Conditions		120							120
02. Architecture					40				40
03. Mechanical						40			40
04. Electrical								40	40
05. Structural								40	40
06. Civil							40		40
07. Special Consultants			40						40
08. Bid Packages/Coordination				80					80
09. Clerical									
K. Project Budget									
		0	0	0	0	0	0	0	0
01. Quantity take-off									
02. Data entry									
03. Cost report									
04. Life-Cycle Cost Analysis									
05. Alternatives Assessment									
06. Budget Review									
Subtotal		0	0	0	0	0	0	0	0
Tasks performed by CM									
01. Quantity take-off									
02. Data entry									
03. Cost report									
04. Life-Cycle Cost Analysis									
05. Alternatives Assessment									
06. Budget Review									
L. Presentations									
		136	56	0	24	0	0	0	216
01. Design Development Presentation		16	40		24				80
02. JPA Meetings	7	56							56
03. Public Meetings	1	8	16						24
04. City/County Meetings	7	56							56
05. Other									0
Subtotal		136	56	0	24	0	0	0	216
M. Project Delivery									
		0	0	0	0	0	0	0	0
01. Bid packaging assessment									
Subtotal		0	0	0	0	0	0	0	0
Tasks performed by CM									
01. Bid packaging assessment									

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
02. Contractor solicitation									0
03. Phasing									0
04. Owner Review	Tasks performed by CM								0
05. Temporary construction plan	Tasks performed by CM								0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 4-DESIGN DEVELOPMENT									
Hours	160	3,784	5,241	232	1,336	1,184	632	2,400	14,969
A. Administration	24	1800	120	112	32	32	32	32	2,184
B. Agency Review	0	8	60	16	0	0	0	0	84
C. Architectural Design	0	1760	4981	0	0	0	0	0	6,741
D. Site Design	0	0	0	0	0	0	560	0	560
E. Interiors	0	0	80	0	0	0	0	0	80
F. Structural Design	0	0	0	0	0	0	0	2328	2,328
G. Mechanical Design	0	0	0	0	1264	0	0	0	1,264
H. Electrical Design	0	0	0	0	0	1112	0	0	1,112
I. Specialized Consultants	0	0	0	0	0	0	0	0	0
J. Specifications	0	160	0	80	40	40	40	40	400

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
K. Project Budget	0	0	0	0	0	0	0	0	0
	Hours								
L. Presentations	136	56	0	24	0	0	0	0	216
	Hours								
M. Project Delivery	0	0	0	0	0	0	0	0	0
	Hours								

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

PHASE 5-CONSTRUCTION DOCUMENTS (20 weeks)		TOTAL	Qty	hrs Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
A. Administration		Subtotal			104	1368	200	128	8	8	8	8	1832
01.	A/E Project Representative		20	20 Half Time		400							400
02.	A/E Project Manager		20	40 Full Time		800							800
03.	BIM Management/Modeling		20	8	40		160						160
04.	Quality Control Review					40							40
05.	Agency Consultation					40	24						64
06.	Code Check					40	16						40
07.	Agency Submittals					40							40
08.	ADA Compliance					16							16
09.	Building Department					8							8
10.	Fire Marshal					8							8
11.	Health Department				48			48					96
12.	Progress Reports			Monthly Reports				80					80
13.	Clerical		20	4 4 hours each week	16	16			8	8	8	8	64
14.	Budget Review												
B. Architectural Production		Subtotal			40	880	5406	0	0	0	0	0	6326
01.	Project Architect		20	40 Full Time		800							800
02.	Orientation Plans		7	10			70						70
03.	Code Plans		14	10			140						140
04.	Architectural Floor Plans		29	36			1044						1044
05.	Architectural Large Scale Plans		5	24			120						120
06.	Reflected ceiling plans and details		31	24			744						744
07.	Roof Plans and Details		6	16			96						96
08.	Building Elevations		4	24			96						96
09.	Door and Frame Sheets		6	40			240						240
10.	Wall Sections		14	40			560						560
11.	Elevator Plans and Sections		22	16			352						352
12.	Seating Configuration Diagrams		3	8			24						24
13.	Seating Plans		18	8			144						144
14.	Interior Floor Finish Plans		16	24			384						384
15.	Interior Elevations		10	24			240						240
16.	Acoustic Baffle System Plan		1	60			60						60
17.	Wall Types		1	12			12						12
18.	Railing Details		2	40			80						80
19.	Casework Plans and Details		3	40			120						120

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

					PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
L.	Project Delivery		Subtotal		0	0	0	0	0	0	0	0	0
01.	Bid Packaging			Tasks performed by CM									0
02.	Contractor solicitation			Tasks performed by CM									0
03.	Schedule/Phasing Plan			Tasks performed by CM									0
M.	Presentations		Subtotal		112	144	0	0	8	8	8	8	288
01.	Design Development Presentation				16	40			8	8	8	8	88
02.	JPA Meetings	5		Monthly Meetings	40								40
03.	Public Meetings	1			16	24							40
04.	City/County Meetings	5		Monthly Meetings	40	80							120
05.	Other												0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 5-CONSTRUCTION DOCUMENTS									
	Hours	256	2,560	5,646	208	2,152	656	4,008	18,238
A. Administration	Hours	104	1368	200	128	8	8	8	1,832
B. Architectural Production	Hours	40	880	5406	0	0	0	0	6,326
C. Structural Production	Hours	0	0	0	0	0	0	3912	3,912
D. Mechanical Production	Hours	0	0	0	0	2656	0	0	2,656
E. Electrical Production	Hours	0	0	0	0	0	2056	0	2,056
F. Site/Civil Production	Hours	0	0	0	0	0	600	0	600
G. Specialized Consultants	Hours	0	0	0	0	0	0	0	0
H. Interior Design	Hours	0	0	0	0	0	0	0	0
I. Equipment	Hours	0	0	0	0	0	0	0	0
J. Specifications	Hours	0	168	40	80	80	40	80	568

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
K. Budget/Cost Input	0	0	0	0	0	0	0	0	0
L. Project Delivery	0	0	0	0	0	0	0	0	0
M. Presentations	112	144	0	0	8	8	8	8	288
Hours									

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

PHASE 6-BID/NEGOTIATIONS (10 weeks)		Qty	Hrs	Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
TOTAL					14	1,016	52	120	53	25	58	37	1,375
A. Administration		Subtotal											
01.	A/E Project Representative	10	20	Half time	0	720	0	80	0	0	0	0	800
02.	A/E Project Manager	10	40	Full time		400							200
03.	Document Distribution			Tasks performed by CM									0
04.	Pre-Bid Pkg #1 - Site					24							24
05.	Pre-Bid Pkg #2 - Structure					24							24
06.	Pre-Bid Pkg #3 - MEP					24							24
07.	Pre-Bid Pkg #4 - Bldg. Enclosure					24							24
08.	Pre-Bid Pkg #5 - Interiors/Specialties					24							24
09.	Clerical	10	8					80					80
B. Bid Solicitation		Subtotal			0	200	0	0	0	0	0	0	200
01.	CM Coordination					200							200
02.	Pre-Bid Pkg #1 - Site			Tasks performed by CM									0
03.	Pre-Bid Pkg #2 - Structure			Tasks performed by CM									0
04.	Pre-Bid Pkg #3 - MEP			Tasks performed by CM									0
05.	Pre-Bid Pkg #4 - Bldg. Enclosure			Tasks performed by CM									0
06.	Pre-Bid Pkg #5 - Interiors/Specialties			Tasks performed by CM									0
C. Documentation/Addenda		Subtotal			0	56	44	40	48	20	40	32	280
01.	Bid Pkg. #1 - Site					16							16
02.	Civil/Site										24		24
03.	Utilities								8		16		24
04.	Bid Pkg. #2 - Structure					16						24	40
05.	Framing											4	4
06.	Foundations											4	4
07.	Roofing						4						4
08.	Bid Pkg. 3 - MEP					16							16
09.	Mechanical								24				24
10.	Electrical									16			16
11.	Plumbing								8				8
12.	Fire Alarm/Fire Protection								8	4			12
13.	Bid Pkg. #4 - Bldg. Enclosure					16							16
14.	Architectural					8	40	40					88
15.	Security / IT/Communications												0
16.	Food Service												0
17.	Audio/Visual												0
18.	Curtain Wall												0
19.	Graphics/Signage												0
20.	Vertical Transportation												0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 6-BID/NEGOTIATIONS									
Hours	14	1,016	52	120	53	25	58	37	1,375
A. Administration	0	720	0	80	0	0	0	0	800
B. Bid Solicitation	0	200	0	0	0	0	0	0	200
C. Documentation/Addenda	0	56	44	40	48	20	40	32	280
D. Bid Evaluation	28	40	16	0	10	10	18	10	132

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

PHASE 7 - CONSTRUCTION ADMINISTRATION (104 weeks)		Qty	hrs Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
TOTAL				136	6,804	4,570	2,808	1,110	1,062	514	1,820	18,824
A.	Administration	Subtotal										
01.	A/E Project Representative	104	20 Half Time		6,240	768	936	104	104	56	48	8,256
02.	A/E Project Manager	104	40 Full Time		2080							2080
08.	Application for Payment Review		Tasks performed by CM		4160							4160
09.	Bid Packages coordination/overview							24	24	16	8	72
10.	Value Engineering Responses											0
11.	Field Reports						416	80	80	40	40	656
12.	Proposal Request/Scope Change/Contingency Items	24	8 one each month		192							192
13.	Construction Change Directives	48	8 two each month		384							384
14.	Change Order Review/Contingency overview	24	8 one each month		192							192
15.	Construction Record Keeping	104	5 one hour each day				520					520
B.	Shop Drawing Review/Processing	Subtotal										
01.	Storm sewers/Sanitary			88	16	258	360	150	158	92	284	1,406
02.	Site utilities									6		6
03.	Site grading									24		24
04.	Underground conduits/plumbing lines									16		16
05.	Roadways/walks/ADA Access review							8		16		24
06.	Landscaping								24	4		28
07.	Reinforcement										40	40
08.	Concrete (grade slabs, elevated slabs, joint layout, finish)			40		40	16				40	136
09.	Precast concrete					40	16				40	96
10.	Structural steel (rebar, slabs, walls, joist, lintels, stairs)			2		4					40	40
11.	Architectural Precast			2		2	2				24	30
12.	Special Materials (CMU, brick, stone, EFIS)			2		2					24	26
13.	Metal decking										24	24
14.	Metal fabrications										2	2
15.	Millwork										2	2
16.	Metal roofing (panels, wall, soffits)					4					4	4
17.	Membrane roofing/insulation system					2					2	2
18.	Flashing					2					2	2
19.	Roof accessories					2					2	2
20.	Skylights					16	18				34	34
21.	Doors and frames (colling, storefront, glazing)					8	16			8	24	24
22.	Hardware/Keying											8
23.	Audio (CCTV Cabling)											0
24.	Visual			2		4					24	30
25.	Curtain Wall											0
26.	Staging (curtains, rigging, sound control)					8					8	8
27.	Ice Flooring					8						8
28.	Vertical Transportation/Code/state inspector coordination)											4
29.	Security/Access Control					4						4

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
30.				4	4				8
31.				4	4				8
32.				8			8		16
33.									0
34.			2		2				4
35.									0
36.				4					4
37.				8					8
38.			40	24					64
39.				8	4	4	2		18
40.				16	8	8	8		40
41.					2				2
42.					4				4
43.									2
44.					2				2
45.					4				4
46.					8				8
47.					2				2
48.			4		4			2	8
49.					4				4
50.					4				4
51.					8				8
52.					4				4
53.					8				8
54.					2				2
55.					4				4
56.				8	4	4	4		20
57.									4
58.					4			4	4
59.				4	4	8	8	4	28
60.				8	4	4	4		16
61.				8					12
62.									2
63.									8
64.									8
65.					4				6
66.									4
67.				4					12
68.					2				8
69.									4
70.									4
71.									0
72.				2	2				2
73.									4
74.									0
75.				4					4

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
08.		16	24	24			40		16
10.									88
11.		8							8
13.									0
14.									0
15.									0
16.									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 7 - CONSTRUCTION ADMINISTRATION									
Hours	136	6,804	4,570	2,808	1,110	1,062	514	1,820	18,824
A. Administration	0	6240	768	936	104	104	56	48	8,256
B. Shop Drawing Review/Processing	88	16	258	360	150	158	92	284	1,406
C. Testing Evaluation	0	0	56	8	32	32	14	136	278
D. RFI/Interpretations	0	0	3168	520	320	320	80	640	5,048
E. Field Observations	8	324	120	840	440	376	208	648	2,964
F. Project Close-Out	40	224	200	144	64	72	64	64	872

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 8-TRANSITION/COMMISSIONING									
	TOTAL	0	0	0	0	0	0	0	0
A.	Administration Subtotal	0	0	0	0	0	0	0	0
01.	In-House Management								
02.	Program Manager Interface								
03.	Construction Manager Interface								
04.	Owner Meetings								
B.	Systems Commissioning Subtotal	0	0	0	0	0	0	0	0
01.	Central Building Mgmt System: Linkages to Remote Monitoring/ Control Sites								
02.	HVAC Systems								
03.	Line Safety/Fire Alarm								
04.	Line Safety/Smoke Control								
05.	Line Safety/Fire Protection								
06.	Domestic/Process Water Pumping								
07.	Emergency Power Systems								
08.	Lighting Control Systems								
09.	Telephone Control Systems								
10.	Telephone/Data/Televsiting								
11.	Evac System								
12.	Detention Security System								
13.	Roofing Systems								
C.	Start-Up/Transition/Training Subtotal	0	0	0	0	0	0	0	0
01.	Functional Performance Testing								
02.	Test/Balancing								

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 8 -TRANSITION/COMMISSIONING	0	0	0	0	0	0	0	0	0
Hours									
A. Administration	0	0	0	0	0	0	0	0	0
Hours									
B. Systems Commissioning	0	0	0	0	0	0	0	0	0
Hours									
C. Start-Up/Transition/Training	0	0	0	0	0	0	0	0	0
Hours									
D. Warranty Review	0	0	0	0	0	0	0	0	0
Hours									

EXHIBIT E: Lincoln Arena Specialty Design Consultants

SPECIALTY CONSULTANTS ALLOWANCE		\$915,000
01. ADA		\$35,000
02. Audio Visual / Acoustics		\$210,000
03. Communications		\$50,000
04. Curtain Wall		\$35,000
05. Fire Protection / codes		\$75,000
06. Graphics / Signage		\$135,000
07. Ice Flooring		\$50,000
08. Security		\$65,000
09. Sports Lighting		\$30,000
10. Stage Rigging		\$110,000
11. Vertical Transportation		\$30,000
12. Wind Tunnel		\$90,000

RESOLUTION NO. WH- _____

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

3 That the Amendment No. 1 to the Agreement dated August 14, 2008 between the City of
4 Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group, Inc. to provide
5 architectural services for the design of the Arena and other Arena improvements for the West
6 Haymarket Project, attached hereto as Attachment "A" and incorporated herein by this reference,
7 is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of
8 Representatives is hereby authorized to execute said Amendment No. 1 on behalf of the West
9 Haymarket Joint Public Agency.

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

AGREEMENT made as of the 1st day of September in the year 2010
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

West Haymarket Joint Public Agency

and the Architect:
(Name, address and other information)

DLR Group, inc. (a Nebraska corporation)

for the following Project:
(Name, location and detailed description)

Lincoln Arena – Amendment No. 1 to the Agreement dated August 14, 2008.

The Owner and Architect agree as follows.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

As defined in the Agreement dated August 14, 2008.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project scope shall include: (1) an arena not to exceed 16,000 seats and 450,000 square feet, (2) a 500-stall parking structure, and (3) a surface parking all located within the project boundaries as defined in Exhibit A – Arena Project Area. The Owner shall provide a buildable site pad including all design and construction services necessary to prepare the site as defined in Exhibit A, for construction of the arena, parking structure, and surface parking. Design Services under this Amendment specifically excludes: Incorporation of Central Utilities Systems or any sub-systems on the Arena site; any coordination or incorporation into the arena instruments of service for pedestrian connector, plaza connection or hotel/convention center.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1: See Exhibit B – Project Budget.

(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction schedule: To be determined by the Owner's Project Design and Construction Team consisting of members to be designated by Owner at a later date.

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

.3 Substantial Completion date or milestone dates:

.4 Other:

« »

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:

(Identify method such as competitive bid, negotiated contract or construction management.)

Construction Manager at Risk. See Exhibit C - Lincoln Arena Organization Chart.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

The Architect shall prepare bid packages for the project as defined in Exhibit E – Lincoln Arena Architectural and Engineering Design Services.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

(List name, address and other information.)

Program Manager: James Martin, Program Manager, The Benham Companies LLC, 622 Emerson Road, Suite 600, St. Louis, MO 63141-6728; (402) 417-2239.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address and other information.)

.3 Electrical Engineer:

« »« »« »« »« »

§ 1.1.12.2 Consultants retained under Additional Services:

To be selected by the Architect and Owner.

§ 1.1.13 Other Initial Information on which the Agreement is based:

« »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall procure and maintain the following insurance coverage from A-rated insurance carriers for the duration of this Agreement. The Owner shall be named as an additional insured on the Commercial General Liability, Automobile Liability and any umbrella or excess Commercial General Liability and Automobile Liability policies. Additional insured coverage shall be primary and not contributory to any such coverage maintained by Owner. The policies shall contain a severability of interests' provision in favor of the additional insureds. The insurance policies shall contain a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. All deductibles and premiums associated with the below coverages shall be the responsibility of the Architect.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars (\$2,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies and follows the form of the additional insured provisions as included in the underlying policies.

§ 2.5.4 Workers' Compensation as statutorily required and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000).

§ 2.5.5 Professional liability covering the Architect's negligent acts, errors, and omissions in its performance of professional services with policy limits not less than Five Million Dollars (\$5,000,000) per claim and in the aggregate.

§ 2.5.6 The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project in the reasonable discretion of the Architect. Architect shall utilize all reasonable efforts to require its Consultants and Contractors to maintain professional liability insurance with policy limits of Five Million Dollars (\$5,000,000) per claim and in the aggregate provided however nothing herein shall obligate Architect to incur additional costs to its Consultants or Contractors to obtain an increase in policy limits from Two Million Dollars (\$2,000,000) to Five Million Dollars (\$5,000,000).

§ 2.5.7 Prior to commencing work under this Agreement, the Architect and Consultants shall submit acceptable proof of such insurance to the Owner and the provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary **civil**, structural, mechanical, and electrical engineering services as defined in Exhibit E. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Program Manager a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Program Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager at Risk and Program Manager. The Architect shall meet with the Construction Manager at Risk and Program Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Program Manager's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner and the Program Manager and Construction Manager at Risk. The Architect shall meet with the Program Manager and Construction Manager at Risk to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Program Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager at Risk will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall, if requested, assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Program Manager and Construction Manager at Risk. The

Architect shall meet with the Program Manager and Construction Manager at Risk to review the Construction Documents.

§ 3.4.5 Upon receipt of the Program Manager's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner and Construction Manager at Risk in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager at Risk in (1) obtaining either competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk in bidding the Project by

1. facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
2. participating in a pre-bid conference for prospective bidders, if any, and
3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk in obtaining proposals by

1. facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
2. participating in selection interviews with prospective contractors; and
3. participating in negotiations with prospective contractors.

3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager at Risk modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Program Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Program Manager only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner/Program Manager reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the Owner/Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall advise the Owner/Program Manager in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall act as the Owner’s representative in interpreting the requirements of the Contract Documents and in judging the performance of the Construction Manager at Risk thereunder. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 In any dispute between the Owner/Program Manager and Construction Manager at Risk, the Architect shall, upon request by Owner/Program Manager, advise the Owner/Program Manager on issues concerning performance under the Contract Documents. Architect may decide any such performance

issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner/Program Manager and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall, if requested by Owner, review and certify the amounts due the Construction Manager at Risk and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner/Program Manager, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner/Program Manager to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall, if requested, maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Construction Manager at Risk submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager at Risk submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager at Risk that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely

upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager at Risk in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's/Program Manager's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager at Risk and forward to the Owner/Program Manager, for the Owner's/Program Manager's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner/Program Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner/Program Manager about the balance of the amount remaining to be paid the Construction Manager at Risk, including the amount to be retained by the Owner under the agreement with the Construction Manager at Risk, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner/Program Manager the following information received from the Construction Manager at Risk: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager at Risk under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner/Program Manager, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner/Program Manager to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SPECIALTY CONSULTANT SERVICES

§ 4.1 Additional Specialty Consultant Services listed below, except as otherwise noted, are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Specialty Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.4.

(Designate the Additional Specialty Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Table in 4.1 – No Revisions

§ 4.2 Insert a description of each Additional Specialty Consultant Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

The scope of work and description of additional specialty consultant services shall be determined by the Owner and Architect prior to solicitation and negotiation of the specialty consultant agreements.

§ 4.3 Additional Specialty Consultant Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Specialty Consultant Services provided by Architect in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Specialty Consultant Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;
- .13 Providing services made necessary by the default or termination of Construction Manager at Risk, by defects or deficiencies in the construction of the Project or by the failure of the Owner, any contractor or others performing services or Work in connection with the Project; or
- .14 Providing services in connection with building commissioning.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Specialty Consultant Services, notify the Owner/Program Manager with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect through the Program Manager, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager at Risk from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Construction Manager at Risk and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.
- .7 Services as may be requested by the Owner in connection with the failure of performance of Owner's consultants and contractors, including insolvency.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Specialty Consultant Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 **Two** (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 One (1) onsite project representative of the Architect
- .3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed by October 31, 2013, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall furnish the services of a Program Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Program Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager at Risk and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before accepting the Construction Manager at Risk's guaranteed maximum price (GMP) and giving the Construction Manager at Risk Notice to Proceed with the Construction Phase of Contract, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work (Guaranteed Maximum Price) shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include Construction Manager at Risk's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget (see Exhibit B - Project Budget) for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Program Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work, including a five percent (5%) design and construction contingency as defined in Paragraph 12.1.1. The

Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Program Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Program Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Program Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Program Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Program Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 Ownership, not including the copyright, of Architect's and Architect's Consultant's Instruments of Service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use subject to Owner's approval which will not be unreasonably withheld. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for an against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that the Architect will be named as an additional insured under the Commercial General Liability Insurance obtained by the Construction Manager at Risk for the Project.

§ 8.1.3 The Architect shall and shall cause Architect's consultants to indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's and/or Architect's consultants' negligent acts, errors or omissions in the performance of any services performed by Architect or Architect's consultants under this Agreement and for patent, copyright or trademark infringement attributable to Architect's services under this Agreement. Notwithstanding the above, Owner agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement, except for gross negligence or intentional acts of misconduct.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or Construction Manager at Risk (collectively for this indemnity "Owner Entity").

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.5 Direct Negotiation, as defined below, will be the initial process utilized by the parties to resolve Claims and disputes or other matters arising out of this Agreement.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.

Rick-If direct negotiations fail since the City has eliminated the obligation to mediate assume that litigation is next? DLR would prefer to still have the mediation step as part of the dispute resolution process.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through direct negotiation and/or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (*Specify*)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or

damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. If the Project is resumed after more than thirty (30) days of suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services and the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include demobilization expenses including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Nebraska.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, except that the term Contractor shall mean Construction Manager at Risk.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the West Haymarket Joint Public Agency (JPA) or to a lender providing financing for the Project if the JPA or lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this

Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services for the arena and surface parking only, described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

A lump sum fee of Eight Million Dollars (\$8,000,000.00) as defined in Exhibit E – Lincoln Arena Architectural and Engineering Design Services. An additional lump sum fee for basic services described under Article 3, the 500-stall parking structure shall be negotiated by the Architect and Owner and a contract amendment shall be executed prior to commencement of any services by the Architect.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Paragraph 11.4.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: Services shall be a negotiated amount based upon work effort to be expended.

(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Architect’s specialty consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%):

« »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Predesign Phase	\$ 150,000
Schematic Design Phase	\$1,200,000
Design Development Phase	\$2,000,000
Construction Documents Phase	\$2,250,000
Bidding or Negotiation Phase	\$ 150,000
Construction Phase	\$2,250,000
Total Basic Compensation	\$8,000,000

§ 11.6 If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Rick-What is the thinking re the deletions of negotiated proposal?

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be reviewed annually and are subject to adjustment by the Architect on or after agreement anniversary date.

(If applicable, attach an exhibit of hourly billing rates or insert them below.) (See Exhibit D - Hourly Rates)

« »

Employee or Category	Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence outside of the State of Nebraska;
- .2 Dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;

- .5 Postage, handling and delivery;
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 1.10 times the expenses incurred.

§ 11.9 « »

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of \$0.00 shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice. Amounts unpaid forty-five (45) days after receipt of the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

9% per annum

§ 11.10.3 Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of off setting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

§ 12.1.1 The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

Owner agrees to establish a Design and Construction Contingency of five percent (5%) of the Cost of the Work for changes in the construction of the project due to omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes for construction modifications or adjustments necessary to complete the project in accordance with the original design intent.

§ 12.1.2 Each Party agrees that the other Party is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural

disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.1.3 If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 12.1.4 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 12.1.5 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services provided Architect requires all such subcontractors to maintain professional liability insurance coverage covering the subcontractor's negligent acts, errors and omissions in its performance of the laboratory testing services with policy limits appropriate to the Project in the reasonable discretion of the Architect. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 12.1.6 A copy of the agreement between the Owner and the Construction Manager at Risk will be provided to the Architect defining the duties, responsibilities and authority of the Construction Manager at Risk.

§ 12.1.7 Notwithstanding anything else contained in this Agreement to the contrary, Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its

claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.8 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the state of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.9 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contractor is that of independent contractor to the City.

§ 12.1.10 Architect shall comply with applicable Federal and State laws and City ordinances applicable to the work.

§ 12.1.11 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of section 48-1122, Nebraska Reissue Revised Statutes (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).

§ 12.1.12 If the compensation for services provided pursuant to this Agreement is equal to or exceeds \$25,000.00, this Agreement is subject to the Living Wage Ordinance of Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, the service provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under this provision of Lincoln's Living Wage Ordinance, the City shall have the authority to terminate this Agreement to seek other remedies for violation of the ordinance.

§ 12.1.13 Architect 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 above, copies of all financial and performance related records and materials at no cost to the City germane to this Agreement, as allowed by law.

§ 12.1.14 **Services to be Confidential.** Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of the Arena and the work product generated by third parties regarding costs, performance, and potential tenants of other elements to be integrated into Owner's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent

with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

- (i) was in the possession of Architect before receipt from Owner; or
- (ii) is or becomes a matter of public knowledge through no fault of Architect; or
- (iii) is rightfully received by Architect from a third party without a duty of confidentiality; or
- (iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party, or is independently developed by Architect and shown by documentation; or
- (v) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors, or employees with a specific need to know / Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from any disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Agreement.

Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

§ 12.1.15 In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Architect 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. The Architect 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 Architect 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.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B103TM-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201TM-2007, Digital Data Protocol Exhibit, if completed, AIA Document C106TM-2007, Digital Data Licensing Agreement, or the following:

« »

- .3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

AIA Document B103 – 2007 Standard Form of Agreement Between City of Lincoln, NE and DLR Group, inc. (a Nebraska corporation), dated August 14, 2008.

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

« »« »

(Printed name and title)

(Signature)

« »« »

(Printed name and title)

WH 10-05

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 10-05 as follows:

Substitute the Amendment No 1 to the Owner-Architect Agreement dated August 14, 2008 between the City of Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group attached hereto as Attachment A for the existing Attachment A attached to Bill No. WH 10-05.

Introduced by:

Approved as to Form & Legality:

City Attorney

Requested by: Law Department

Reason for Request: The Substitute Amendment No. 1 adds contractual details including Exhibits A-E which are missing from Amendment No. 1 attached to Bill No. WH 10-05.

RESOLUTION NO. WH- _____

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

3 That the Benham Assignment and Assumption Agreement, which is attached hereto
4 marked as Attachment “1” and incorporated herein by this reference, between the City of
5 Lincoln, Nebraska (City) and the West Haymarket Joint Public Agency (Agency) providing for
6 the City, as assignor, to assign and for the Agency, as assignee, to assume all of the City’s rights,
7 interests, duties and obligations under the Agreement between the City of Lincoln, Nebraska and
8 Benham Companies LLC (Exhibit “A” to Attachment “1”) which Agreement provides for
9 Benham Company LLC to perform program management services and architectural and
10 engineering consulting services for the West Haymarket Project, is hereby accepted and
11 approved and the Board of Representatives have executed said Benham Assignment and
12 Assumption Agreement on behalf of the West Haymarket Joint Public Agency.

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

BENHAM ASSIGNMENT AND ASSUMPTION AGREEMENT

This Benham Assignment and Assumption Agreement ("Assignment") is made and entered into as of the ____ day of _____, 2010, between the **City of Lincoln, Nebraska**, a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay

the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreement with Benham Companies LLC to provide program management services and architectural and engineering consulting services, attached hereto as Exhibit A and incorporated herein by this reference which was originally entered into with the City, and Agency assume all obligations of the City under said Agreement.

NOW, THEREFORE, in consideration of the above Recitals, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City's rights, title and interest in and to and under the Agreement attached hereto as Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreement. Agency shall fully and completely indemnify and

hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreement.

3. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreement if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Benham Assignment and Assumption Agreement as of the ____ day of _____, 2010.

ATTEST:

City of Lincoln, Nebraska
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Benham Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Benham Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

Notary Public



83437

smart # 10090053

9/9/10/law/sb

CITY OF LINCOLN
EXECUTIVE ORDER

CITY OF LINCOLN
MAYOR CHRIS BEUTLER

NO. 083437

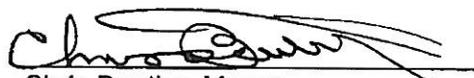
a/s

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, Nebraska:

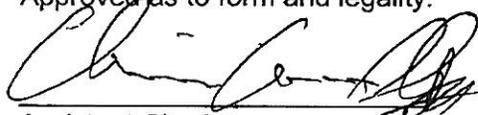
I hereby execute on behalf of the City of Lincoln the attached Consultant Agreement between the City of Lincoln and Benham Companies, LLC for professional services in connection with the design and construction of multiple facilities near downtown Lincoln, Nebraska, otherwise known as the West Haymarket Redevelopment Project.

The City Clerk is hereby directed to return one fully executed copy of this Executive Order and Consultant Agreement to Christopher Connolly, Law Department.

Dated this 14th day of Sept, 2010.


Chris Beutler, Mayor

Approved as to form and legality:


Assistant City Attorney

CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this 14th day of September, 2010, by and between the City of Lincoln, a municipal corporation, hereinafter referred to as "City", and the Benham Companies, LLC, a wholly owned subsidiary of Science Applications International Corporation, hereinafter referred to as "Consultant."

RECITALS**A.**

The City proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance by providing program management services, and architectural and engineering consulting services, as more fully set forth in Attachment "A", in connection with the design and construction of multiple facilities near downtown Lincoln, Nebraska otherwise known as the "West Haymarket Redevelopment Project" (hereinafter referred to as "Consultant Services").

B.

Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the City, and the City desires to engage Consultant for such Consultant Services on the terms herein provided.

C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

D.

The City of Lincoln, Nebraska, a municipal corporation and member of the City, shall provide support and administrative services under this Agreement with the Lincoln Municipal Code as the source of several clauses in this Agreement.

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

I. ADMINISTRATOR OF AGREEMENT

The Project Manager of the City shall be the City's representative for the purposes of administering this Agreement and shall have authority on behalf of the City to give approvals under this Agreement. James Martin, the Program Manager designated by the Consultant, will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

II. SCOPE OF SERVICES

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Attachment A on behalf of the City. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until completion of all obligations of this agreement, but in no event longer than Ninety (90) days.

IV. COMPENSATION

The City agrees to pay Consultant for the services set forth in Attachment "A" at the rates and for the personnel set forth in Attachment "B". The City shall also reimburse the Consultant for all reasonable expenses, including, but not limited to, airfares, rental cars, lodging, meals, office supplies, and media materials. The Consultant shall submit an invoice to the City and, after approval by the City, each invoice shall be paid. Each invoice shall contain detail of hours worked for each day of work performed, the work performed for the time reported, and categorization of expenses incurred.

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

V. SERVICES TO BE CONFIDENTIAL

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

VI. NON-RAIDING CLAUSE

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

VII. TERMINATION OF AGREEMENT

A. This Agreement may be terminated by the Consultant if the City fails to adequately perform any material obligation required by this Agreement ("Default"). Termination rights under

this paragraph may be exercised only if the City 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 City may terminate this Agreement, in whole or part, for any reason for the City's own convenience upon at least ten days written notice to the Consultant.

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

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

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

VIII. ADDITIONAL SERVICES

The City may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the City and Consultant shall be effective when incorporated in written amendments to this Agreement.

IX. FAIR EMPLOYMENT

In connection with the performance of work under this Agreement, Consultant agrees that it shall not discriminate against any employee or applicant for employment with respect to

compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and *Neb. Rev. Stat. § 48-1122*, as amended.

X. FAIR LABOR STANDARDS

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

XI. ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified 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 City thereto; provided, however, that claims for money due or to become due to the Consultant from City under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City. The City may assign this Agreement to the West Haymarket Joint Public Agency (JPA).

XII. INTEREST OF CONSULTANT

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

XIII. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

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

The City 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 City shall also retain all such rights for any derivative works based on such works or materials.

XIV. COPYRIGHTS, ROYALTIES & PATENTS

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

XV. COPYRIGHT; CONSULTANT'S WARRANTY

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

B. Consultant agrees to furnish the City upon demand written documentation of such license or authorization. If unable to do so, Consultant agrees that the City 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.

XVI. INDEMNIFICATION

A. Consultant's Duty. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City, its members, representatives of the members, officers, agents, and employees, as indemnitees, 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 therefrom, that is caused in whole or in part by the negligence, gross negligence, or intentional tort of the Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable. This section will not require Consultant to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

B. Total Liability. The total liability of the Consultant arising under, in connection with or out of this Agreement, whether in contract, tort, or any legal or equitable theory of recovery, shall not exceed \$2,000,000.00 (Two Million Dollars).

C. Consequential Damages. Consultant shall not be liable for any indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income or revenue, reputation, or any other consequential damages incurred from any cause of action whatsoever.

XVII. INSURANCE

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

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Consultant and the City from any and all claims under any Worker's Compensation Act or Employer's Liability Law. Consultant shall exonerate, indemnify and hold harmless the City from and against, and 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 Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

Coverage	Listing	Min. Amt.	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by Accident	\$500,000	Each Accident
	Bodily Injury by Disease	\$500,000	Each Employee
	Bodily Injury	\$500,000	Policy Limit

2. Automobile Liability Insurance. For all of the Consultant's automobiles, including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect 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 an 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

3. General Liability Insurance. General Liability Insurance, naming and protecting Consultant and the JPA, the City of Lincoln, and the University of Nebraska, their officials, employees, agents and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Consultant and Consultant's employees, students, or those directly or indirectly employed by Consultant. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

- i. All Acts or Omissions - \$1,000,000 Each Occurrence/\$2,000,000 Aggregate;
- ii. Bodily Injury/Property Damage - \$1,000,000 Each Occurrence/\$2,000,000 Aggregate;
- iii. Personal Injury Damage - \$1,000,000 Each Occurrence;
- iv. Contractual Liability - \$1,000,000 Each Occurrence;
- v. Products Liability and Completed Operations - \$1,000,000 Each Occurrence;
- vi. Medical Expenses (Any One Person) - \$10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. 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) per claim and aggregate.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an “occurrence” basis only, except for professional liability insurance which may be based upon a “claims-made” basis. 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 City.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the City at the time the evidence of insurance is provided.

D. Memorandum of Insurance. All Memoranda of Insurance shall be filed with the City showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA, 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. The Consultant may present evidence of equivalent self-insurance, satisfactory to the City, in place of a certificate of insurance for General Liability Insurance. The City shall be treated as an additional insured as if the Consultant possessed General Liability Insurance. Such memorandum shall specifically state that insurance policies are to be endorsed to require the Consultant to provide the City thirty (30) days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

XVIII. 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:

City of Lincoln
Attention: Dan Marvin
555 S. 10th St. Suite 301
Lincoln, NE 68508
(402) 441-7511

James Martin
The Benham Companies, LLC
622 Emerson Rd. Suite 600
St. Louis, MO 63141-6728
(314) 821-7017

XIX. INDEPENDENT CONTRACTOR

The City 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 City and is not entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or and injury leave.

XX. NEBRASKA LAW

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

XXI. INTEGRATION

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

XXII. AMENDMENT

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

XXIII. SEVERABILITY

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

XXIV. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XXV. AUDIT AND REVIEW

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

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.

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.

XXVIII. FUTURE AGREEMENT

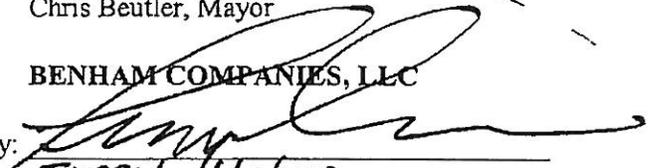
The parties hereto acknowledge that this Agreement is limited to ninety (90) days. A new agreement covering the balance of Program Management Services needed for completion of the West Haymarket Redevelopment Project will be negotiated during the course of this Agreement. No terms or conditions of this Agreement shall automatically be carried forward into the future agreement, nor shall this Agreement extend beyond ninety (90) days after execution unless otherwise agreed to by the parties in a written amendment attached hereto.

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

CITY OF LINCOLN

By: 
Chris Beutler, Mayor

BENHAM COMPANIES, LLC

By: 
Terry L. Helms
Title: Corp. V.P.

Attachment A - Scope of Services

1	PHASE I - START UP (Aug 12 - Oct 1, 2010)
1.1	Meetings with Lincoln Team/JPA
1.2	Gather existing information
1.2.1	Who has what and where is it?
1.2.2	Get copies, go through it, file it, disseminate it to other team members
1.2.3	Determine what we know and what we don't know
1.2.4	Find out who's who, what they have to do with the program, and meet them
1.3	Develop Standard Operating Procedures Manuals
1.3.1	Coordinate with Existing Lincoln Procedures
1.4	Develop and/or evaluate existing budgets
1.4.1	Arena
1.4.2	Hotel, retail and commercial (private developer)
1.4.3	Public art, festival space and aesthetics features
1.4.4	Parking, (three parking garages and surface lots)
1.4.5	Site – Environment and watershed issues
1.4.6	Railroad relocation
1.4.7	Archeological issues
1.4.8	District energy plant and distribution
1.4.9	Infrastructure, streets and utilities
1.4.10	Ice rinks
1.5	Develop and/or evaluate existing schedules
1.5.1	Arena
1.5.2	Hotel, retail and commercial (private developer)
1.5.3	Public art, festival space and aesthetics features
1.5.4	Parking, (three parking garages and surface lots)
1.5.5	Site – Environment and watershed issues
1.5.6	Railroad relocation
1.5.7	Archeological issues
1.5.8	District energy plant and distribution
1.5.9	Infrastructure, streets and utilities
1.5.10	Ice rinks
1.6	Meet with Lincoln and JPA to Discuss Audit Procedures
1.6.1	Determine Goals and Scope for Audit including internal controls and audit standards
1.6.2	Identify reporting structure for sources of funds matched with projects
1.6.3	Review policies and procedures regarding finances (State, JPA, Lincoln)
	Establish Audit reporting structures (Project budgets, proposals, bid procedures, payment applications, payments)
1.6.4	Identify point of contact within JPA and Lincoln for all audits issues
1.7	Assist with RFP development and contract negotiations for program components
1.7.1	Arena
1.7.2	Hotel, retail and commercial (private developer)
1.7.3	Public art, festival space and aesthetics features
1.7.4	Parking, (three parking garages and surface lots)
1.7.5	Site – Environment and watershed issues
1.7.6	Railroad relocation
1.7.7	Archeological issues
1.7.8	District energy plant and distribution
1.7.9	Infrastructure, streets and utilities
1.7.10	Ice rinks
1.8	Consolidate and Organize Information and Data Gathered
1.90	Develop responsibility matrix
1.9.1	JPA
1.9.2	City
1.9.3	University
1.9.4	Program Manager
1.9.5	Project Managers
1.9.6	A/E Design Teams
1.9.7	CM-at-Risk and/or GC's
1.10	Negotiate Benham contract with JPA

ATTACHMENT B - FEES

<u>Position</u>	<u>Rate</u>
Principal	215.60
Program Manager	190.76
Deputy Program Manager I	137.76
Deputy Program Manager II	137.76
Architect / Planner	114.29
Landscape Arch / Planner	104.08
Project Auditor	120.00
Project Cost Accountant	93.57
Scheduler	98.33
Clerical	54.70

RESOLUTION NO. WH- _____

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

3 That the Purchase Agreement between Noohznik, L.P. and the West Haymarket Joint
4 Public Agency for the acquisition of Lot 7, Block 260, Original Lincoln, commonly known as
5 325 North 5th Street, Lincoln, Nebraska, upon the terms and conditions set out in said
6 Agreement attached hereto as Attachment "A" and incorporated herein by this reference, is
7 hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of
8 Representatives is hereby authorized to execute said Agreement on behalf of the West
9 Haymarket Joint Public Agency.

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

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (Agreement) is made and entered into this ____ day of _____, 2010, by and between **Noohznik, L.P.** a Nebraska limited partnership, (“*Seller*”), and the **West Haymarket Joint Public Agency**, (“*Agency*”) a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (Neb. Rev. Stat. §§13-2501 to 13-2550).

RECITALS

- A. *Seller* is the owner of certain real estate (as defined in Neb. Rev. Stat. § 76-201) and improvements commonly known as 325 North 5th Street in Lincoln, Lancaster County, Nebraska, and legally described as Lot 7, Block 260, Original Lincoln, Lancaster County, Nebraska (“*Property*”); and
- B. *Seller* desires to sell and *Agency* 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. Transfer of Property.
 - 1.1 Sale and Transfer. At Closing (as hereinafter defined), *Seller* shall sell to *Agency*, and *Agency* shall acquire the fee simple right, title, and interest in the *Property*.
 - 1.2 Compensation. *Agency* shall pay to *Seller* **EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$18,000.00)** (“*Purchase Price*”), payable at Closing, subject to adjustments and prorations as herein provided.
 - 1.3 Date of Closing. *Seller* and *Agency* agree to close and complete this sale in accordance herewith on or before the 30th day of September, 2010 (“*Closing*”).
 - 1.4 Evidence of Title. Prior to Closing, *Agency* 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 *Agency* if they do not interfere with *Agency*’s intended use of the *Property*; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by *Agency*, and which do not interfere with *Agency*’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 *Agency*; (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 *Agency*. The cost of the owner's title insurance policy shall be paid by the *Agency*.

- 1.5 Title and Possession. *Seller* agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to *Agency* 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 *Agency* at the time of Closing.
- 1.6 Environmental; Tests. *Agency* and its agents or representatives have previously been granted the right to have access to the Property to perform a Phase 2 environmental site assessment to identify whether any environmental contamination that exists on the Property ("Test"). In the event *Agency* determines to its reasonable satisfaction based upon the Test that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then *Agency's* sole remedy shall be the right to terminate this Agreement. A copy of the Test together with related documents, reports and test reports shall be delivered to the Seller. *Agency* shall have until the Closing Date to provide notice of termination to the Seller.
- 1.7 Taxes, Assessments and Other Costs. All taxes related to the Property for 2009, and all prior years, shall be paid by *Seller* at or prior to closing. Any tax related to the Property for 2010, shall be prorated to the date of Closing based on the most recent property valuation and the most recent mill levy. 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. *Seller* shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from *Seller* to *Agency*. Each party 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 *Agency*.

2. Representations and Warranties.

- 2.1 Representations and Warranties of Seller. *Seller* represents and warrants to *Agency* as follows:
 - 2.1.1 Organization: Power: Good Standing. *Seller* is a limited partnership, 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 Agency 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.

2.2 Representations and Warranties of Agency.

- 2.2.1 Organization: Power: Good Standing. Agency is a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (Neb. Rev. Stat. §§13-2501 to 13-2550) 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 Agency and constitutes a legal, valid and binding obligation of Agency, enforceable against Agency 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 Agency and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Agency and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Agency 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 Agency, 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 Agency 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 Agency harmless against, and will reimburse Agency 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 Agency 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 by Agency pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.

3.2 Indemnification by Agency. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Agency 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 Agency 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, Agency 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. Agency shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. Conditions of Closing.

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

4.1.1 Agreements. The City of Lincoln or Agency entering into final definitive agreements with BNSF Railway Company (BNSF), Union Pacific Railroad Company (UPRR), National Railroad Passenger Corporation d/b/a Amtrak (Amtrak) for the West Haymarket Project; execution of a Joint Facilities Agreement between BNSF and UPRR for relocation of the BNSF tracks; execution of a mutually agreeable concurrence between Amtrak and BNSF for relocation of Amtrak's passenger track and depot.

4.1.2 Executed Instruments. Agency shall receive at Closing the executed warranty deed and easements, if any, in accordance with this Agreement.

4.1.3 Ingress and Egress Easement. Agency shall have ingress and egress easements to and from the Property, if necessary, which are acceptable to Agency at its sole discretion.

4.1.4 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 Agency. The Agency is entitled to take as a credit toward the Purchase Price the One Thousand Dollar right of entry payment previously paid to the City of Lincoln pursuant to the Right of Entry Access Agreement between the City of Lincoln and Noohznik, L.P.
 - 4.2.2 Representations and Warranties. There have been no material inaccuracies in the representations and warranties of Agency 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 Agency 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, Agency shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.
5. Miscellaneous.
- 5.1 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.
 - 5.2 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.
 - 5.3 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.
 - 5.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
 - 5.5 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 Agency:

West Haymarket Joint Public Agency

Attn: City Clerk
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

with a copy to:

City Attorney's Office

555 South 10th Street
Lincoln, NE 68508

If to *Seller*:

Noohznik, L.P.

Attn: Michael J. Heaton
6737 Everett Street
Lincoln, NE 68506

with a copy to:

Andrew M. Loudon

Baylor, Evnen, Curtiss, Gruit & Witt
Wells Fargo Center
1248 "O" Street, Suite 600
Lincoln, NE 68508

- 5.6 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.
- 5.7 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.
- 5.8 Time of Essence. The parties agree that time is of the essence in the performance of their respective obligations hereunder.
- 5.9 Waiver. Either Agency 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.
- 5.10 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 _____, 2010.

Fed Id. No. or Social Security No.

NOOHZNIK, L.P.,
a Nebraska limited partnership

By: _____
Title: Partner

EXECUTED by Agency this _____ day of _____, 2010.

APPROVED AS TO FORM:

Legal

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

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Purchase Agreement was acknowledged before me on this ____ day of _____, 2010, by _____, Partner of Noohznik, L.P., on behalf of the limited partnership.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Purchase Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

Notary Public

J:\code\agr\Woohznik – Purchase Agr West Haymarket

RESOLUTION NO. WH- _____

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

3 That the NRD Assignment and Assumption Agreement, which is attached hereto marked
4 as Attachment "1" and incorporated herein by this reference, between the City of Lincoln,
5 Nebraska (City) and the West Haymarket Joint Public Agency (Agency) providing for the City,
6 as assignor, to assign and for the Agency, as assignee, to assume all of the City's rights, interests,
7 duties and obligations under the Cooperative Agreement between the City of Lincoln, Nebraska
8 and the Lower Platte South Natural Resources District (NRD) (Exhibit "A" to Attachment "1")
9 which Agreement provides for a transfer and exchange of land between the parties to
10 accommodate the West Haymarket Project, is hereby accepted and approved and the Board of
11 Representatives have executed said NRD Assignment and Assumption Agreement on behalf of
12 the West Haymarket Joint Public Agency.

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

NRD ASSIGNMENT AND ASSUMPTION AGREEMENT

This NRD Assignment and Assumption Agreement ("Assignment") is made and entered into as of the ____ day of _____, 2010, between the **City of Lincoln, Nebraska**, a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay

the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreement with the Lower Platte South Natural Resources District (NRD) which provides for an exchange of properties between the City and NRD, attached hereto as Exhibit A and incorporated herein by this reference which was originally entered into with the City, and Agency assume all obligations of the City under said Agreement.

NOW, THEREFORE, in consideration of the above Recitals, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City's rights, title and interest in and to and under the Agreement attached hereto as Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreement. Agency shall fully and completely indemnify and

hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreement.

3. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreement if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this NRD Assignment and Assumption Agreement as of the ____ day of _____, 2010.

ATTEST:

City of Lincoln, Nebraska
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing NRD Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing NRD Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

Notary Public

COOPERATIVE AGREEMENT

This Cooperative Agreement ("Agreement") is made as of June __, 2010, by and between the **Lower Platte South Natural Resources District**, a political subdivision of the State of Nebraska with its principal office located at 3125 Portia, P.O. Box 83581, Lincoln, Nebraska, 68501-3581, ("NRD") and the **City of Lincoln, Nebraska**, a Nebraska municipality, with its principal office located at 555 South 10th Street, Lincoln, Nebraska 68508 ("City").

WITNESSETH:

WHEREAS, the NRD and the City desire to exchange certain interests in real property described below, pursuant to the mutual understandings between the NRD and the City regarding the implementation of the Agreement regarding Crescent Green Park , dated May 13, 1982 ("Crescent Green Agreement"), based upon the terms and conditions hereinafter set forth.

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

1. PROPERTY: The NRD agrees to convey and transfer to the City and the City agrees to accept from the NRD the real estate (as defined in Neb. Rev. Stat. § 76-201) shown as red on Exhibit "A", which is attached hereto and incorporated herein by this reference and more particularly legally described on Exhibit "B", which is attached hereto and incorporated herein by this reference (collectively the "Property"), together with any and all rights, structures, easements, appurtenances, or improvements located thereon or appertaining thereto, and subject to the terms and conditions of this Agreement.

2. TRANSFER:

(a) Pursuant to the mutual understandings between the NRD and the City regarding the implementation of the Crescent Green Agreement , the NRD agrees to convey and transfer the Property to the City.

(b) In turn, the City intends to retain a portion of the Property as shown in red on Exhibit "A" ("Retained Property") and convey the remaining portion of the Property shown as red cross-hatch to the BNSF Railway Company, a Delaware corporation ("BNSF") in exchange for the City receiving title to other portions of BNSF properties ("BNSF Property"). Together, the City intends to preserve or enhance the Retained Property and BNSF Property as open space, recreation, cultural and/or entertainment opportunities for the citizens of Lincoln within or abutting the area as described in the Crescent Green Agreement.

(c) The City agrees to convey a Conservation Easement to the NRD, at a future date yet to be determined, over future open space/flood management area comprised of certain portions of the BNSF Property as referred to in subparagraph 2(b) above and over certain portions of the property the City intends to acquire from the Union Pacific Railroad for the Lincoln Haymarket Arena project. The City and NRD agree to meet to identify and legally describe the open space/flood management area that will be subject to the Conservation Easement within thirty (30) days (i) after the City, at its expense, acquires such land from the BNSF and Union Pacific Railroad and (ii) after the City, at its expense, completes the final stormwater improvement design of the potential area. The City agrees to convey a Conservation Easement to the NRD within thirty (30) days (a) after such open space/flood management area has been identified and described, at the City's expense, and (b) after the City, at its expense, completes the construction of the designed stormwater improvements thereon.

3. NRD's CONTINGENCY: The NRD's performance of this Agreement and the Closing (defined below) are contingent upon (i) the NRD obtaining the NRD's Board of Directors approval of this Agreement on or before July 21, 2010. In the event the NRD's contingency is not satisfied or waived by the NRD by July 21, 2010, then the NRD shall have the option to terminate this Agreement, in which event, this Agreement shall be null and void, and both parties shall have no further obligations or liability under this Agreement.

4. CITY'S CONTINGENCIES: The City's performance of this Agreement and the Closing (defined below) are contingent upon (i) the City obtaining the City of Lincoln City Council approval of this Agreement, (ii) the City approving Acceptable Title Condition (defined below) of the Property, and (iii) the City approving Acceptable Environmental Condition of the Property. In the event a City's contingency is not satisfied or waived by the City by September 22, 2010, then the City shall have the option to terminate this Agreement, in which event, this Agreement shall be null and void, and both parties shall have no further obligations or liability under this Agreement.

5. CLOSING: The "Closing" of the Property shall occur in the offices of the City Attorney's Office (or such other place as may be acceptable to the parties) on the "Date of Closing" hereinafter specified. The Closing or Date of Closing for the Property shall occur at a date determined by the City, but no earlier than July 22, 2010 and no later than November 22, 2010.

6. ACCEPTABLE TITLE CONDITION: The City, at the City's expense, shall furnish itself with a title insurance commitment on the Property issued by a title insurance company or underwriter who is licensed or authorized to do business in the State of Nebraska. The title insurance commitment will show marketable title to the Property in the NRD and in accordance with the terms and conditions of this Agreement. Said title insurance commitment shall be furnished to the City Attorney's Office (attention: Rick Peo, Chief Assistant City Attorney) and a copy provided to the NRD's legal counsel (attention: Steven G. Seglin) prior to the Closing of the Property. The City shall pay the expense of a title insurance commitment and any title insurance policy that the City might wish to purchase. The City shall approve and

accept title to the Property ("Acceptable Title Condition") prior to September 22, 2010, or mutual extension thereof. If any defect in title is discovered during the examination of the title commitment by the City, the City shall furnish the NRD with a copy of the attorney's opinion which reflects such defect. The City shall have the option of curing such a defect and shall bear the expense of curing the same. If the City elects not to cure the defect, the City shall then have the option to either waive the Acceptable Title Condition and proceed to Closing, or terminate this Agreement and both parties shall have no further obligations or liability under this Agreement. In addition to the terms and conditions of this Agreement, the land title law of Nebraska and the title standards approved by the Nebraska State Bar Association to the date of examination of title shall serve as a guide to marketability of title.

7. ACCEPTABLE ENVIRONMENTAL CONDITION: After execution of this Agreement:

- a. the City shall have the right to enter the Property, at the City's own expense, to undertake an environmental audit, testing, samplings, clean-up groundwater or soil tests, core drillings, engineering tests and studies, wetlands delineation, stream, floodplain and/or environmental analysis of the Property or affecting the Property (collectively "Tests"), for which purposes the NRD shall allow the City and the City's agents reasonable access. The City agrees to indemnify, defend and hold harmless the NRD from and against all claims for injuries to persons on or damage to the Property caused by the acts of the City or its agents or caused by the Tests of the Property; and
- b. the NRD shall provide the City with copies of any prior or current Tests, reports, information, analysis, and/or results of the environmental condition of the Property or any similar or related governmental correspondences, orders or inquiries by a governmental entity having jurisdiction over the Property concerning or touching the environmental condition of the Property (collectively "Prior/Current Condition").

The City shall have up to sixty (60) days after the date of this Agreement, or mutual extensions thereof, in which to notify the NRD that based upon the results of the Tests and the Prior/Current Condition, the City has accepted, in the City's sole discretion, the environmental condition of the Property for the City's and BNSF's intended uses of the Property ("Acceptable Environmental Condition"). In the event the City does not accept or waive the Acceptable Environmental Conditions on or before September 22, 2010, or mutual extensions thereof, this Agreement shall be null and void, the parties shall have no further obligations hereunder.

8. DEDICATIONS AND EASEMENTS: After the date of this Agreement, but prior to the Closing, the NRD shall not dedicate, transfer, mortgage or convey any interest in the Property to any third party without the City's prior written consent.

9. TITLE AND CLOSING COST: At Closing, the NRD will execute and deliver to the City a quit claim deed ("Deed") conveying its right, title and interest to the City in

conformity with this Agreement. The NRD will prepare the Deed. The Property transfer will be exempt from paying Nebraska Documentary Stamp taxes under Section 76-902 (2), Neb. Rev. Stat. The City will pay the cost of filing the Deed at Closing.

10. POSSESSION: The NRD shall deliver possession of the Property to the City on the Date of Closing.

11. RISK OF LOSS: Risk of loss or damage to the Property shall rest with the NRD until the time of delivery of possession.

12. SPECIAL ASSESSMENTS: Title hereunder shall be delivered free and clear of all special assessments levied or assessed or special assessment districts that have been created and ordered constructed, as of the date of this Agreement.

13. TAXES: The Property is currently exempt from the payment of real estate taxes.

14. PRORATIONS: Income, expenses and liabilities attributable to the Property through the Date of Closing shall be for the account of the NRD and thereafter for the account of the City in accordance with generally accepted accounting principles; each party agrees to timely pay and discharge any and all of its respective liabilities and expenses. The proration to be made and paid, insofar as feasible, on the Date of Closing, with a final settlement sixty (60) days after the Date of Closing.

15. NO REAL ESTATE COMMISSION AND FINDER'S FEE: The parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee in connection with the transaction contemplated by this Agreement; and each party warrants to the other parties that it shall indemnify and hold the other parties harmless for any and all claims of any person whomsoever for brokers' or agents' commissions or finder fees making claim through it in connection with the transaction.

16. NRD'S REPRESENTATIONS AND WARRANTIES: The NRD represents and warrants to the City now and on the date of Closing that:

- a. Authority Relative to Agreement. This Agreement has been duly executed and delivered by the NRD and constitutes a legal, valid and binding obligation of the NRD, enforceable 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;
- b. Effect of Agreement. The execution, delivery and performance of this Agreement by the NRD has been duly authorized by all necessary action by the NRD and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and to the knowledge of the NRD will not violate any provision of law applicable to the NRD, and will not

violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the NRD is a party;

- c. Environmental Compliance. To the knowledge of the NRD, the Property is not now and on the Date of Closing will not be in violation of any federal, state, or local law, ordinance, or regulation or requirement relating to industrial hygiene or to the environmental conditions on, under, or about the Property;
- d. Hazardous Materials. To the knowledge of the NRD and during the time in which the NRD owned the Property, neither the NRD nor any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the Property or transported to or from the Property any flammable explosives, asbestos, radioactive materials, hazardous wastes, toxic substances, or related injurious materials, whether injurious by themselves or in combination with other materials (collectively "Hazardous Materials"). To the knowledge of the NRD, there is no proceeding or inquiry by any governmental authority with respect to the presence of such Hazardous Materials on the Property or the migration thereof from or to other property. For the purpose of this Agreement, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq; and in the regulations adopted and publications promulgated pursuant to said laws;
- e. Prompt Notice. If, during the period between the date of this Agreement and the Closing, the NRD learns of, or has a reason to believe that any of the representations and warranties contained in this Agreement may cease to be true, the NRD shall give prompt notice to the City (which notice shall include copies of any instrument, correspondence, or document upon which the NRD's notice is based); and
- f. Additional City Right. In the event any warranty or representation in this Paragraph 16 is false, then the City shall have the right, in addition to the City's other rights and remedies hereunder, to notify the NRD in writing prior to the applicable Closing, and the City shall then have the option to declare this Agreement null and void and both parties shall have no further obligations or liability under this Agreement.

17. REPRESENTATIONS AND WARRANTIES: The City represents and warrants to the NRD now and on the Date of Closing that:

- a. Authority Relative to Agreement. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the

City, enforceable 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;

- b. Effect of Agreement. The execution, delivery and performance of this Agreement by the City has been duly authorized by all necessary action by the City and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to the City, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the City is a party;
- c. Prompt Notice. If, during the period between the date of this Agreement and the Closing, the City learns of, or has a reason to believe that any of the representations and warranties contained in this Agreement may cease to be true, the City shall give prompt notice to the NRD (which notice shall include copies of any instrument, correspondence, or document upon which the City's notice is based); and
- d. Additional NRD Right. In the event any warranty or representation in this Paragraph 17 is false, then the NRD shall have the right, in addition to the NRD's other rights and remedies hereunder, to notify the City in writing prior to the applicable Closing, and the NRD shall then have the option to declare this Agreement null and void and both parties shall have no further obligations or liability under this Agreement.

18. DEFAULT: Time is agreed to be of the essence. In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default fifteen (15) days after the defaulting party receives written notice specifying the nature thereof, provided, however, in the case of a default which cannot, in the exercise of reasonable diligence, reasonably be cured within such fifteen (15) day period, the continuation thereof beyond such period as is required to cure the same with the exercise of reasonable diligence. If any default under this Agreement shall occur and the defaulting party fails to cure the same within the express curative time period herein provided, the other party may seek any remedy at law or in equity without notice or demand, including specific performance. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

19. NON-FOREIGN STATUS: At the Date of Closing, the NRD shall deliver to the City the Certification of Non-Foreign Status duly executed and containing such other information as may be required by Internal Revenue Code Section 1445 and the Regulations issued thereunder.

20. ASSIGNMENT: The City shall have the right to assign this Agreement to a joint public agency that may be created between the City and the Board of Regents of the University of Nebraska, a public body corporate. If such assignment has the joint public agency assuming the City's liabilities and duties to perform under this Agreement, then such assignment shall terminate the liabilities of the City hereunder.

21. NO LEASES: The NRD covenants to cause any and all leases concerning the Property to be terminated prior to Closing and have the Property be free of any and all tenancy at the Closing.

22. SEVERABILITY: If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

23. FURTHER ASSURANCES: Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

24. INTERPRETATIONS: Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

25. CONSTRUCTION: Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

26. NON-MERGER: All representations and warranties made herein are intended to survive Closing and shall not be merged in the Deed. This Agreement shall not be canceled at Closing.

27. ENTIRE AGREEMENT: This Agreement contains the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

28. NOTICE AND DEMANDS: Notice, demand, or other communication mandated by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the address stated above.

29. EXECUTION IN COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

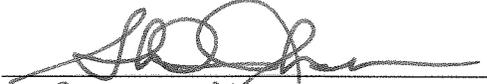
30. GOVERNING LAW: All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

31. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the NRD and the City do hereby execute this Agreement.

“NRD”

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT**, a political subdivision
of the State of Nebraska

By: 
Title: General Manager

“CITY”

THE CITY OF LINCOLN, NEBRASKA, a
Nebraska municipality

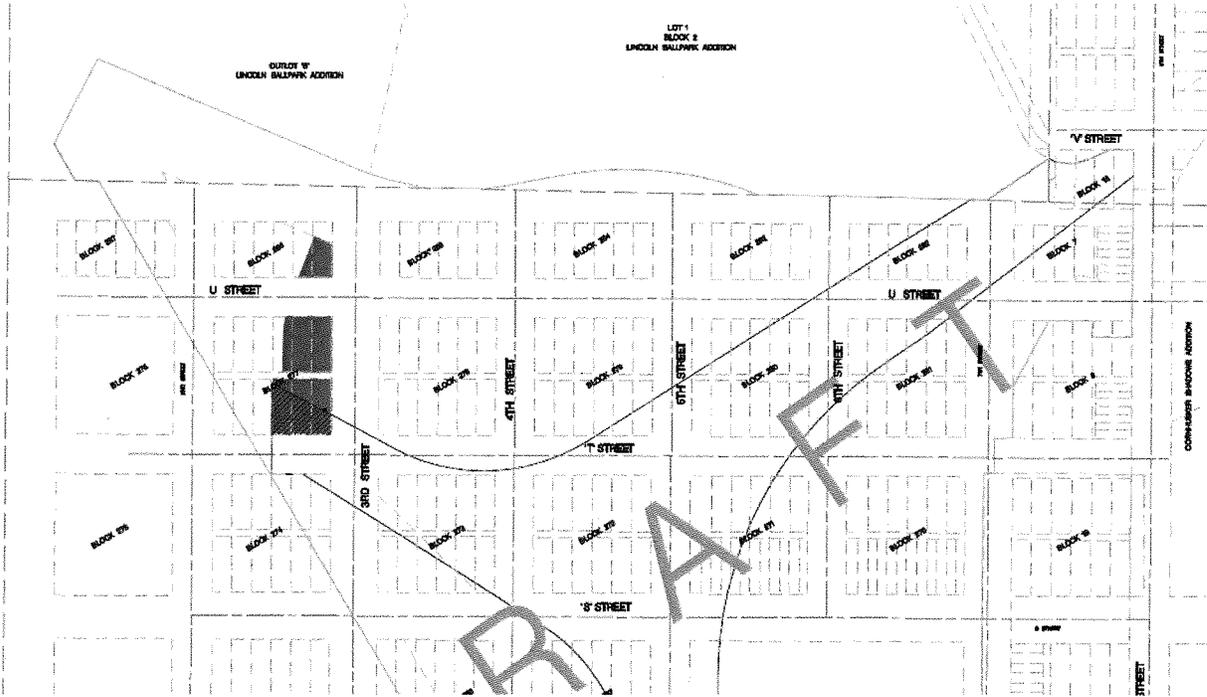
By: _____
Title: _____

Approved as to form:

City Attorney

Exhibit "A"

Property



Legend:



Property to be transferred by the NRD to the City and retained by the City as part of the Crescent Green Agreement and the Lincoln Haymarket Arena Project.



Property to be transferred by the NRD to the City and then to be conveyed by the City to BNSDF as replacement property in exchange for the City receiving title to other portions of the BNSF properties, which will become as part of the Crescent Green Agreement and the Lincoln Haymarket Arena Project.

Exhibit "B"

Property Legal Description

PARCEL 1

A TRACT OF LAND COMPOSED OF ALL OF LOTS 10 THRU 12, BLOCK 277, ORIGINAL TOWN, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHEAST CORNER OF SAID LOT 12, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 46 MINUTES 22 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOTS 12 THRU 10, SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF "T" STREET, A DISTANCE OF 150.22 FEET TO THE SOUTHWEST CORNER OF SAID LOT 10; THENCE NORTH 00 DEGREES 14 MINUTES 52 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 10, A DISTANCE OF 141.99 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; THENCE SOUTH 89 DEGREES 46 MINUTES 15 SECONDS EAST, ALONG THE NORTH LINE OF SAID LOTS 10 THRU 12, A DISTANCE OF 150.20 FEET TO THE NORTHEAST CORNER OF SAID LOT 12; THENCE SOUTH 00 DEGREES 14 MINUTES 29 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 12, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF 3RD STREET, A DISTANCE OF 141.99 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 21,328.62 SQUARE FEET (0.49 ACRES) MORE OR LESS.

PARCEL 2

A TRACT OF LAND COMPOSED OF ALL OF LOTS 1 AND 2, AND A PORTION OF LOT 3, BLOCK 277, ORIGINAL TOWN, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 1, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE ON AN ASSUMED BEARING OF SOUTH 00 DEGREES 14 MINUTES 29 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 141.99 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 89 DEGREES 46 MINUTES 15 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOTS 1 THRU 3, A DISTANCE OF 122.98 FEET TO A POINT; THENCE NORTH 01 DEGREES 10 MINUTES 52 SECONDS EAST, A DISTANCE OF 84.29 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY A DISTANCE OF 58.09 FEET ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 340.00

FEET, A CENTRAL ANGLE OF 9 DEGREES 47 MINUTES 18 SECONDS, WITH A CHORD BEARING OF NORTH 06 DEGREES 04 MINUTES 31 SECONDS EAST, AND A CHORD DISTANCE OF 58.01 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 3; THENCE SOUTH 89 DEGREES 46 MINUTES 07 SECONDS EAST, ALONG THE NORTH LINE OF SAID LOTS 3 THRU 1, A DISTANCE OF 115.70 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 17,201.68 SQUARE FEET (0.39 ACRES) MORE OR LESS.

PARCEL 3

A TRACT OF LAND COMPOSED OF A PORTION OF LOTS 1 AND 2, BLOCK 286, ORIGINAL TOWN, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PM LANCASTER COUNTY, CITY OF LINCOLN, NEBRASKA, AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHEAST CORNER OF SAID LOT 1, SAID POINT ALSO BEING **THE TRUE POINT OF BEGINNING**; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 46 MINUTES 07 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOTS 1 AND 2, A DISTANCE OF 83.41 FEET TO A POINT; THENCE NORTH 20 DEGREES 56 MINUTES 04 SECONDS EAST, A DISTANCE OF 110.38 FEET TO A POINT; THENCE SOUTH 67 DEGREES 01 MINUTES 43 SECONDS EAST, A DISTANCE OF 48.14 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1; THENCE SOUTH 00 DEGREES 14 MINUTES 29 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF 3RD STREET, A DISTANCE OF 84.64 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS A CALCULATED AREA OF 6,185.34 SQUARE FEET (0.14 ACRES) MORE OR LESS.

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 between CSL Marketing Group and the West Haymarket
4 Joint Public Agency for professional assistance in providing marketing services for the West
5 Haymarket Arena, upon the terms and conditions set out in said Agreement attached hereto as
6 Attachment “A” and incorporated herein by this reference, is hereby approved and the
7 Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby
8 authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

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

CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2010 , by and between the West Haymarket Joint Public Agency, hereinafter referred to as “JPA” and CSL Marketing Group, 7200 Bishop Road, Suite 220, Plano, TX 75024, hereinafter referred to as “Consultant.”

RECITALS

A.

The JPA proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in providing marketing services for the West Haymarket Arena, as more fully set forth in Attachment “A” (hereinafter referred to as “Consultant Services”).

B.

Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the JPA, and the JPA desires to engage Consultant for such Consultant Services on the terms herein provided.

C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

D.

The City of Lincoln, Nebraska, a municipal corporation and member of the JPA, shall provide support and administrative services under this Agreement with the Lincoln Municipal Code as the source of several clauses in this Agreement.

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

I.
ADMINISTRATOR OF AGREEMENT

The Project Manager of the JPA 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. A representative to be designated by the Consultant, will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

II.
SCOPE OF SERVICES

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Attachment A on behalf of the JPA. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III.
TERM OF AGREEMENT

The term of this Agreement shall commence effective September 1, 2010 upon execution of this Agreement by both parties and shall continue through October 31, 2013 or six (6) months after opening of the Arena, whichever is later.

IV.
COMPENSATION

The JPA agrees to pay Consultant for the services set forth in Attachment "A" the fees set forth in Attachment "A".

V.
SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval

of the JPA or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

VI.
NON-RAIDING CLAUSE

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

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 A or B above, Consultant shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

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

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

VIII.
ADDITIONAL SERVICES

The JPA may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

IX.
FAIR EMPLOYMENT

In connection with the performance of work under this Agreement, Consultant agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and *Neb. Rev. Stat.* § 48-1122, as amended.

X.
FAIR LABOR STANDARDS

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

XI.
ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified 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.

XII.

INTEREST OF CONSULTANT

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

XIII.

OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

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

The 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.

XIV.
COPYRIGHTS, ROYALTIES & PATENTS

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

XV.
COPYRIGHT; CONSULTANT'S WARRANTY

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

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

XVI.
INDEMNIFICATION

A. Consultant's Duty. To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the JPA, its members, representatives of the members, officers, agents, and employees, as indemnitees, 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 therefrom, that is caused in whole or in part by the

negligence, gross negligence, or intentional tort of the Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable. This section will not require Consultant 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. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

B. Total Liability. The total liability of the Consultant arising under, in connection with or out of this Agreement, whether in contract, tort, or any legal or equitable theory of recovery, shall not exceed \$2,000,000.00 (Two Million Dollars).

C. Consequential Damages. Consultant shall not be liable for any indirect, incidental or consequential loss, injury or damage or liability, including but not limited to loss of profit, business, production, income or revenue, reputation, or any other consequential damages incurred from any cause of action whatsoever.

XVII. INSURANCE

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

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Consultant and JPA from any and all claims under any Worker's Compensation Act or Employer's Liability Law. Consultant shall exonerate, indemnify and hold harmless the JPA from and against, and 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 Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

Coverage	Listing	Min. Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

2. Automobile Liability Insurance. For all of the Consultant's automobiles, including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect 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 an 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

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

- i. All Acts or Omissions - \$2,000,000 Aggregate;
- ii. Bodily Injury/Property Damage - \$2,000,000 Aggregate;
- iii. Personal Injury and Advertising - \$1,000,000 each Occurrence;

- iv. Contractual Liability - \$1,000,000 each Occurrence;
- v. Products Liability and Completed Operations - \$1,000,000 each Occurrence;
- vi. Medical Expenses (any one person) - \$10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. 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) per claim and aggregate.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an "occurrence" basis only, except for professional liability insurance which may be based upon a "claims-made" basis. 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.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the JPA at the time the evidence of insurance is provided.

D. Memorandum of Insurance. All Memoranda of Insurance shall be filed with the City showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA and the City of Lincoln as additional insureds for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance, satisfactory to the JPA, in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as

if the Consultant possessed General Liability Insurance. Such memorandum shall specifically state that insurance policies are to be endorsed to require the Consultant to provide the JPA thirty (30) days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

**XVIII.
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:

Agency	West Haymarket Joint Public Attn: Dan Marvin 555 South 10th Street, Suite 301 Lincoln NE 68508 (402) 441-7511	CSL Marketing Group 7200 Bishop Road, Suite 220 Plano, TX 75024
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**XIX.
INDEPENDENT CONTRACTOR**

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

XX.
NEBRASKA LAW

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

XXI.
INTEGRATION

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

XXII.
AMENDMENT

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

XXIII.
SEVERABILITY

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

XXIV.
WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

XXV.

AUDIT AND REVIEW

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

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.

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 JPA do hereby execute this Agreement as of the Execution Date set forth above.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Jayne Snyder, Chair
Board of Representatives

CSL MARKETING GROUP,

By: _____
Title: _____

MARKETING SERVICES

CSLMG has developed a scope of services for the JPA for the planning, development and execution of marketing services to maximize revenues for the new Arena. CSLMG will plan and execute comprehensive sales campaigns for naming rights, sponsorships and premium seating.

The services provided by CSLMG will be divided into two phases:

- Phase I Naming Rights, Sponsorship and Premium Seating Analysis and Planning
- Phase II Naming Rights, Sponsorship and Premium Seating Sales Execution

Phase I Analysis and Planning

CSLMG will evaluate the potential demand for naming rights, sponsorships and premium seating at the Arena and develop recommendations regarding the naming rights, sponsorships and premium seating concepts, inventory, pricing, locations and potential amenities.

CSLMG's phase I services will include, but are not limited to the following:

1. **Situation / Comparative Analysis** - Review existing sponsorship and premium seating packages at the Pershing Center, Memorial Stadium, the Bob Devaney Sports Center and other Omaha area venues. In addition, we will review other comparable collegiate and municipal naming rights, sponsorship and premium seating programs including the following:
 - Entitlements;
 - signage inventory and number of partnerships;
 - premium seating packages including types, inventory and pricing; and,
 - current trends in naming rights, sponsorships and premium seating.
2. **Market Analysis** - Develop an in-depth analysis to determine the most appropriate naming rights, sponsorship and premium seating inventory and pricing. CSLMG will analyze the marketability of each specific concept using research methods that may include telephone surveys, email surveys, one-on-one interviews and focus groups. The market analysis will provide a better understanding of and assess the following:
 - Potential interest in proposed premium seating concepts;
 - location preferences for premium seating;
 - sensitivity to potential price points for premium seating;
 - perceived value of premium seating benefits and amenities;
 - interest in naming rights and sponsorships;
 - potential sales processes;
 - impact of other sports venues in the area; and,
 - other key issues.
3. **Architectural Interface**
 - Consult with architects and project principals on seating bowl design, premium seating configuration and fan amenities that maximize revenue and minimize potential operating expenses
 - Work with architects and project principals to review traffic flow and sightlines to determine the optimal locations for signage in the seating bowl, around the concourses and on the exterior of the arena to maximize naming rights and sponsorship opportunities

4. **Yield Analysis** - Determine the optimum mix of naming rights opportunities, sponsorship zones, signage and premium seat products to generate maximum revenue.
5. **Naming Rights / Sponsorship Valuation** - Determine the optimum mix of naming rights opportunities, sponsorship zones, signage and premium seat products to generate maximum revenue.
 - Asset Identification - Identify and quantify tangible assets for potential inclusion in naming rights and sponsorship packages including but not limited to the following:
 - On-site advertising
 - Broadcast exposure
 - Editorial media coverage
 - Publications
 - Collateral material
 - Promotional opportunities
 - Event marketing
 - Internet
 - Premium seating
 - Ticketing
 - Merchandising
 - Asset Valuation - Measure the tangible and intangible benefits and determine the values of naming rights and sponsorship packages using asset models, impression models, comparables and market conditions.
6. **Pricing and Packaging**
 - Develop naming rights and sponsorship packages including pricing, term and benefits
 - Create premium seat packages including quantity, configuration, pricing, terms, benefits and amenities.
7. **Marketing Plan / Sales Strategy** - Develop a comprehensive naming rights, sponsorship, and premium seat marketing plan to serve as a template for execution of sales programs. The marketing plan will include the following:
 - Sales Objectives and Revenue Goals - Develop goals for naming rights, sponsorships and premium seating
 - Sales Strategy - Identify strategies for positioning and marketing naming rights, sponsorships and premium seating to VIPs, arena vendors, existing premium seat holders, season ticket holders, and the general public
 - Prospect Action Plan - Create specific tactics, messages, action steps and sales forecasts for each group of prospects
 - Client Interface - Develop a communications plan for existing arena clients
 - Premium Seat Holder Priority - Determine priority (location, seniority or other) for purchase of new premium seat options
 - Public Relations - Plan to support sales programs
 - Sales Functions - Create a detailed list of monthly and/or weekly events to attract prospects and introduce products
 - Sales / Project Timeline - Prepare a timeline detailing release dates (sales sequence) for naming rights, sponsorships and premium seating, sales tactics, sales functions, key dates, arena milestones and responsibilities
8. **Database Development** - Identify local, regional, national and international companies and organizations best suited for purchasing naming rights, sponsorships and premium seating
9. **Sales / Marketing Center** - Develop sales / marketing center including site location, design and build-out as headquarters for sales activities and construction tours.

10. **Printed Collateral** - Work with creative firms to develop and produce naming rights, sponsorship and premium seating brochure(s) and other ancillary sales materials (as necessary).
11. **Presentation Materials** - Develop computer and/or audio-visual presentations for both sales / marketing center and remote sales presentations.
12. **Website** - Develop West Haymarket Arena website to provide project updates, disseminate sponsorship and premium seating information and answer frequently asked questions.
13. **Sales / License Agreements** - Develop the naming rights, sponsorship and premium seat agreements.

Phase II Sales Execution

CSLMG will plan and execute comprehensive turnkey sales campaigns to market naming rights, sponsorships and premium seating for the new Arena. CSLMG principals will direct the execution of the sales programs and provide the following services:

1. **Turnkey Sales** - Targeting of prospects, execution of initial sales calls and all required follow-up to close.
2. **Sales Tactics** - Execute tactics to create awareness and engage prospects. Tactics include but are not limited to the following
 - Sales / Marketing Center Grand Opening and Press Conference
 - Sales / Marketing Center Presentations
 - Arena Tours
 - Events centered around Arena announcements such as the unveiling of the design and groundbreaking
 - Host prospects prior to and during University of Nebraska football, basketball and volleyball games
 - Host prospects prior to and during Pershing Center events
 - Utilize existing media opportunities at the Pershing Center to deliver messages
 - Identify and participate in area events that align with our target demographic
 - Direct Mail Campaigns
 - Email Campaigns
3. **Sales Functions** - Plan and coordinate overall sales "kick-off function", as well as other sales functions including meetings, presentations, events and social functions designed to attract prospects and sell products.
4. **Sales Meetings** - Conduct regular sales meetings with th, JPA and Owners Representative.
5. **Sales Reports** - Provide ongoing communication and weekly sales, milestone and prospective business reports to keep, JPA, Owners Representative and project principals informed of CSLMG's progress.
6. **File Maintenance** - Maintain the sponsorship and premium seating account files.
7. **Seat Selection** - Develop a plan to that allows club seat purchasers to select their seat locations based on priority.
8. **Contract Administration** - Manage the contract execution process.
9. **Customer Service** - Coordinate program to keep customers informed, involved and satisfied with their purchase(s). Direct jointly with the JPA and Owners Representative the customer service rollout of the arena plans.

PROFESSIONAL FEES

CSLMG proposes the following compensation for its work on behalf of the JPA with marketing services for the new Arena:

Phase I and Phase II

- Monthly retainer of \$16,000 per month for the term of the agreement. The term will commence September 1, 2010 and conclude October 31, 2013 or six (6) months after opening.
- Retainer includes CSLMG overhead, travel, staffing and local office operations;
- CSLMG will work with the JPA and Owners Representative to develop a sales and marketing budget. Budget items may include: sales / marketing center build-out, collateral material, presentation material, sales video, website, public relations and sales functions; and,
- Commissions paid on all gross term revenue as outlined in the following schedule:

<u>Gross Term Revenue</u>	<u>Commission Rate</u>
\$0 - \$20,000,000	5.0%
\$20,000,001 - \$30,000,000	7.0%
\$30,000,001 - \$40,000,001	12.0%
\$40,000,001 +	14.0%

Gross term revenue is defined as gross revenue payable to the JPA under the full initial term of any agreement secured by CSLMG, including any and all revenue received under any escalation provision. Gross term revenue shall also include the fair market value of any in-kind contribution received by the JPA.

A sale shall be deemed completed upon signature of the agreement or contract by the client and the JPA; provided, however, that CSLMG shall receive credit for any sales initiated during the term and concluded within 90 days after the expiration or termination of this Agreement. The JPA shall use reasonable efforts to conclude a sale within 10 days after CSLMG forwards an agreement or contract executed by the client.

RESOLUTION NO. WH- _____

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

3 That the West Haymarket Utility Relocation Project Assignment and Assumption
4 Agreement, which is attached hereto marked as Attachment "1" and incorporated herein by this
5 reference, between the City of Lincoln, Nebraska (City) and the West Haymarket Joint Public
6 Agency (Agency) providing for the City, as assignor, to assign and for the Agency, as assignee,
7 to assume all of the City's rights, interests, duties and obligations under the Agreement between
8 the City of Lincoln, Nebraska and T.J. Osborn Construction (Exhibit "A" to Attachment "1")
9 which Agreement provides for T.J. Osborn Construction to complete the West Haymarket Utility
10 Relocation Project, is hereby accepted and approved and the Board of Representatives have
11 executed said West Haymarket Utility Relocation Project Assignment and Assumption
12 Agreement on behalf of the West Haymarket Joint Public Agency.

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 UTILITY RELOCATION PROJECT
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This West Haymarket Utility Relocation Project Assignment and Assumption Agreement ("Assignment") is made and entered into as of the ____ day of _____, 2010, between the **City of Lincoln, Nebraska**, a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to

the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreement with T.J. Osborn Construction, attached hereto as Exhibit A and incorporated herein by this reference which was originally entered into with the City, and Agency assume all obligations of the City under said Agreement.

NOW, THEREFORE, in consideration of the above Recitals, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City's rights, title and interest in and to and under the Agreement attached hereto as Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Consent to Assignment. T.J. Osborn Construction does hereby consent to the assignment of the Agreement attached as Exhibit "A" to the Agency. T.J. Osborn Construction agrees to have the bonds and insurance associated with such Agreement reissued to the benefit of the Agency.

3. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreement. Agency shall fully and completely indemnify and hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreement.

4. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreement if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this West Haymarket Utility Relocation Project Assignment and Assumption Agreement as of the ____ day of _____, 2010.

ATTEST:

City Clerk

City of Lincoln, Nebraska
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: _____
Jayne Snyder, Chairperson

T.J. Osborn Construction

By: _____
T.J. Osborn

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing West Haymarket Utility Relocation Project Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

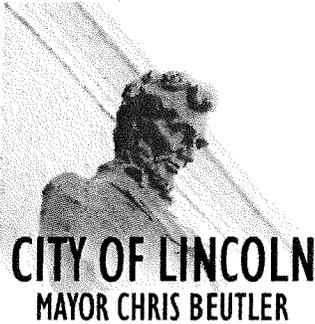
The foregoing West Haymarket Utility Relocation Project Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing West Haymarket Utility Relocation Project Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by T.J. Osborn on behalf of the T.J. Osborn Construction.

Notary Public



**EXECUTIVE
ORDER**

NO. _____

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, Nebraska:

Examination of the bid submittals opened by the Purchasing Division on September 22, 2010, for the West Haymarket Utility Relocation Project No. 870501.365.1750, as ordered constructed by CIP, finds the following bids:

<u>BIDDER</u>	<u>GRAND TOTAL</u>
T.J. Osborn Construction	\$1,161,714.00
Judds Bros. Construction	\$1,287,953.50
Graham Construction	\$1,303,372.73
H.R. Bookstrom	\$1,361,829.00
K2 Construction	\$1,522,262.04
General Excavating	\$1,638,336.29
Dobson Bros. Construction	\$1,958,861.19

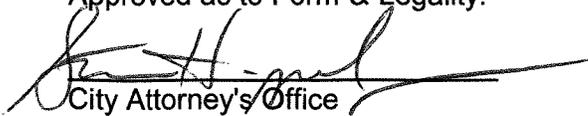
The proposal of T.J. Osborn Construction, 5801 Johanna Road, Lincoln NE being the low bid and in accordance with the plans and contract documents, the contract is hereby approved and I have executed said contract on behalf of the City of Lincoln, Nebraska.

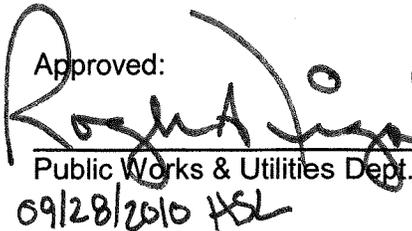
I hereby direct the City Purchasing Agent to return the certified checks accompanying the bids of all the bidders.

Dated this _____ day of _____, 2010

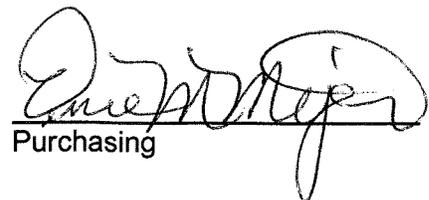
Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:


City Attorney's Office

Approved:

Public Works & Utilities Dept.
09/28/2010 HSL


Finance Department


Purchasing

**Advertise 1 time
Friday, September 3, 2010**

**City of Lincoln/Lancaster County
Purchasing Division
NOTICE TO BIDDERS**

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: 12:00 pm, Wednesday, September 22, 2010 for the following bid:

**West Haymarket Utility
Relocation Project No. 870501
Bid No. 10-190**

Bidders must be registered on the City/County's E-Bid site in order to respond to the above Bid. To Register go to: lincoln.ne.gov (type: e-bid - in search box, then click "Supplier Registration")

Upon e-mail notification of registration approval, you may go to the E-Bid site to respond to this bid. Questions concerning this bid process may be directed to City/County Purchasing at (402) 441-8314 or (402) 441-7410 or vmejer@lincoln.ne.gov

City of Lincoln/Lancaster County (Lincoln Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Deb Winkler Systems Administrator	Address	Purchasing\City & County	Address
Email	dwinkler@lincoln.ne.gov		440 S. 8th St.	Contact
Phone	1 (402) 441-7410		Lincoln, NE 68508	
Fax	1 (402) 441-6513	Contact	Vince M. Mejer	Department Building
Bid Number	10-190 Addendum 2	Department Building		Floor/Room Telephone
Title	West Haymarket Utility Relocation Project No. 870501 (P/W Eng.)	Floor/Room		Fax
Bid Type	Bid	Telephone	(402) 441-8314	Email
Issue Date	09/03/2010	Fax	(402) 441-6513	
Close Date	9/22/2010 12:00:00 PM CST	Email	vmejer@lincoln.ne.gov	
Need by Date				

Supplier Information

Company T.J.Osborn Construction Inc.
 Address 5801 Johanna Rd.
 Lincoln, NE 68507
 Contact Terry Osborn
 Department
 Building
 Floor/Room
 Telephone 1 (402) 4644235
 Fax 1 (402) 4645077
 Email TJOsborn@neb.rr.com
 Submitted 9/22/2010 11:40:04 AM CST
 Total \$1,161,714.00

Signature _____

Supplier Notes

Bid Notes

If you need assistance in preparing your bid, there are several options.

- 1) Click the "Help" button in the upper right hand corner of any screen;
- 2) Contact our office for a training session in Purchasing or assistance over the phone;
- 3) View the PowerPoint presentation at <http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt>

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at: http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdndspec/index.htm	Yes
2	NDOR Standard Specs for Hwy Construction	I acknowledge reading and understanding the current Nebraska Department of Road's Standard Specifications for Highway Construction Supplemental Specifications to the Standard Specifications for Highway Construction, view at: http://www.dor.state.ne.us/ref-man/	Yes
3	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
4	Form of Bonds	I acknowledge that the Performance Bond and Payment Bond in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
5	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
6	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
7	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
8	Specifications	I acknowledge reading and understanding the Specifications.	Yes
9	Plan, Profile & Detail Sheets	I acknowledge reading and understanding the Plan, Profile & Detail Sheets included with this bid.	Yes
10	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes
11	Bid Bond Submission - City	I acknowledge and understand that my bid will not be considered unless a bid bond or certified check in the sum of five percent (5%) of the total amount of the bid is made payable to the order of the City Treasurer as a guarantee of good faith prior to the bid opening. The bid security may be scanned and attached to the 'Response Attachments' section of your response or faxed to the Purchasing Office (402)441-6513. The original bond/check must then be received in the Purchasing Office, 440 S. 8th Street, Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing. YOU MUST INDICATE YOUR METHOD OF BID BOND SUBMISSION IN BOX TO RIGHT!	I have scanned and attached my bid bond.
12	Unit Pricing Rules	I acknowledge the Excel spreadsheet is attached to this bid in the Response Attachment Section. The unit price of the Excel Spreadsheet takes precedence over the total submitted in Line Items.	Yes

- | | | | |
|----|------------------------------|---|-----------------|
| 13 | Project Dates | The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than June 1, 2011. | YES |
| 14 | Employee Class Act EO | I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319. | Yes |
| 15 | Employee Class Act Affidavit | I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract. | Yes |
| 16 | Contact | Name of person submitting this bid: | Terry J. Osborn |
| 17 | Electronic Signature | Please check here for your electronic signature. | Yes |
| 18 | Agreement to Addendum No. 1 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.
Reason: Attached Addendum No. 1 and a revised Itemized Pricing Sheet. | Yes |
| 19 | Agreement to Addendum No. 2 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.
Reason: Attached Addendum No. 2. | Yes |

Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	Total Lump Sum of Bid - West Haymarket Utility Relocation Project No. 870501	\$1,161,714.00

Item Notes: Fill out the itemized Excel spreadsheet attached below. Attach completed spreadsheet on the 'Response Attachments' of your response.

Supplier Notes:

Response Total: \$1,161,714.00

T. J. OSBORN CONSTRUCTION, INC.

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount
1	00.2000	Const Staking	1.0000	LS	\$2,500.00	\$2,500.00
2	00.4000	Mobilization	1.0000	LS	\$50,000.00	\$50,000.00
3	02.0010	Gen Clearing & Grubbing	1.0000	LS	\$5,000.00	\$5,000.00
4	10.0010	Crushed Rock Surfacing (In Place)	500.0000	TN	\$25.00	\$12,500.00
5	11.0700	Flowable Fill	9.4000	CY	\$250.00	\$2,350.00
6	20.0705	Smith Steel Cs, 0.438" Th, BIP, 26"	338.0000	LF	\$335.00	\$113,230.00
7	21.0920	Conc for Structures (In Place)	44.5000	CY	\$250.00	\$11,125.00
8	21.0930	Reinf Steel for Structures (In Place)	1,300.0000	LBS	\$1.50	\$1,950.00
9	22.0005	Sanitary Sewer Pipe, 48"	419.0000	LF	\$251.00	\$105,169.00
0	22.0050	Sanitary Sewer Pipe, 15"	1,196.0000	LF	\$69.00	\$82,524.00
1	22.0060	Sanitary Sewer Pipe, 12"	29.0000	LF	\$65.00	\$1,885.00
2	22.0620	Std. Manhole, Type "G"	3.0000	EA	\$14,000.00	\$42,000.00
3	22.0630	Std. Manhole, Type "G"	45.7000	VF	\$400.00	\$18,280.00
4	22.0660	Std. Manhole, Type "P"	6.0000	EA	\$8,500.00	\$51,000.00
5	22.0670	Std. Manhole, Type "P"	82.1000	VF	\$400.00	\$32,840.00
6	22.0740	Concrete For Plugs & Collars (In Place)	0.1200	CY	\$350.00	\$42.00
7	22.0760	Tap Ex MH & Reconst Invert	1.0000	EA	\$3,500.00	\$3,500.00
8	22.0780	Remove Sanitary Sewer Manhole (Cmpl)	6.0000	EA	\$500.00	\$3,000.00
9	24.0810	PB-FOR27	3.0000	EA	\$900.00	\$2,700.00
0	24.0895	Conduit, 2" B	2,206.0000	LF	\$14.00	\$30,884.00
1	30.0110	Seeding, Ty "E"	2.3500	AC	\$2,000.00	\$4,700.00
2	32.0040	Synthetic Fabric Silt Fence Inst	3,500.0000	LF	\$2.50	\$8,750.00
3	32.0050	Synthetic Fabric Silt Fence Maint	7,000.0000	LF	\$0.50	\$3,500.00
4	50.0001	Furnish Waste Storage Container	5.0000	EA	\$150.00	\$750.00
5	50.0005	Sanitary Sewer Pipe, 15" - Pipe Burst Installation	494.0000	LF	\$120.00	\$59,280.00
6	50.0005	Remove 21" Sanitary Sewer Pipe	567.0000	LF	\$15.00	\$8,505.00
7	50.0005	Remove 48" Sanitary Sewer Pipe	419.0000	LF	\$30.00	\$12,570.00
8	50.0005	Smith Steel Cs, 0.438" Th, Open Cut, 26"	205.0000	LF	\$172.00	\$35,260.00
9	50.0005	Smith Steel Cs, 0.875" Th, Open Cut, 66"	379.0000	LF	\$690.00	\$261,510.00
0	50.0010	Management of Contaminated Soil	200.0000	CY	\$25.00	\$5,000.00
1	50.0010	Removal of Unsuitable Material	5,000.0000	CY	\$15.00	\$75,000.00
2	50.0015	Remove Casing Pipe	1.0000	LS	\$6,000.00	\$6,000.00
3	50.0015	By-Pass Pumping, Sta. 40+00.00	1.0000	LS	\$15,000.00	\$15,000.00

4	50.0005	By-Pass Pumping, Sta. 13+93.76 to Sta. 20+00	1.0000	LS	\$15,000.00	\$15,000.00
5	50.0005	Dewatering, Sta. 1+00 to Sta. 5+18.69	1.0000	LS	\$10,000.00	\$10,000.00
6	50.0015	Dewatering, Sta. 13+93.76 to Sta. 25+38.00	1.0000	LS	\$6,000.00	\$6,000.00
7	50.0015	Dewatering, Sta. 40+00 to Sta. 45+73.14	1.0000	LS	\$6,000.00	\$6,000.00
8	50.0015	Temporary Shoring, Sta. 17+21.77	1.0000	LS	\$6,000.00	\$6,000.00
9	50.0015	Temporary Shoring, Sta. 25+28	1.0000	LS	\$6,000.00	\$6,000.00
0	50.0015	Temporary Shoring, Sta. 45+23.00 To Sta. 45+75.00	1.0000	LS	\$25,000.00	\$25,000.00
1	50.0020	Cover Crop Seeding	2.8500	AC	\$650.00	\$1,852.50
2	50.0035	Disposal of Petroleum Contaminated Soil	330.0000	Ton	\$36.50	\$12,045.00
3	50.0040	Geogrid	450.0000	SY	\$3.50	\$1,575.00
4	50.0060	Waste Storage Container	225.0000	CDAY	\$17.50	\$3,937.50
						\$1,161,714.00

WEST HAYMARKET UTILITY RELOCATIONS

PROJECT 870501

BID NO. 10-190

FOR

CITY OF LINCOLN

CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this 27TH day of SEPTEMBER, 2010

by and between T.J. OSBORN CONSTRUCTION, hereinafter called the Contractor and the
City of Lincoln

WITNESS, that:

WHEREAS, the City of Lincoln has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to wit:

WEST HAYMARKET UTILITY RELOCATIONS PROJECT 870501; and

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City of Lincoln, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City of Lincoln, in the manner prescribed by law, has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest and best bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the City of Lincoln have agreed and hereby agree as follows:

CONTRACT AGREEMENT

The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete Work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by the City of Lincoln's official award of this Contract to the Contractor, such award being based on the acceptance by the City of Lincoln of the Contractor's Proposal, or part thereto, as follows:

ALL OF THE PROPOSAL SUBMITTED BY T.J. OSBORN CONSTRUCTION IN CONNECTION WITH THE CITY OF LINCOLN WEST HAYMARKET UTILITY RELOCATIONS DATED APRIL 6, 2010

The City of Lincoln agrees to pay to the Contractor for the performance of the work embraced in this Contract, and the Contractor agrees to accept as full compensation therefore, the sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided in the General Provisions and Requirements.

COMPLETION DATE – The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be N/A calendar days after the beginning or construction shall be no later than JUNE 1, 2011

GUARANTEE – The guarantee periods as stated in Section VIII, Paragraph A of the City of Lincoln Standard Specifications for Municipal Construction shall be applicable to this project.

CONTRACT DOCUMENTS – The Contract Documents comprise the Contract, and consist of the following:

1. City of Lincoln Standard Specifications for Municipal Construction (2006 Edition)
2. Proposal Forms
3. Contract Agreement Forms
4. Commentary to Accompany Construction Bonds
5. Construction Performance Bond
6. Construction Payment Bond
7. Special Provisions
8. Lincoln Standard Plans & Revised 2010 Lincoln Standard Plans
9. Standard Specifications for Highway Construction Nebraska Department of Roads (2007 Edition)
10. Plan and Profile Detail Sheets
11. Any executed Addenda or Change Orders
12. Any portion of this project used for **providing water service**, such as pipe for water mains, **are not tax exempt and are subject to sales and use tax.**
13. The **remainder** of this project, including items exclusively used for providing fire protection, such as fire hydrants, **are exempt from sales and use taxes.**
14. Sales tax exempt forms will be provided upon award of bid.

CONTRACT AGREEMENT

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and City of Lincoln hereby agree that all the terms and conditions of this Contract shall, by these presents, be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and City of Lincoln do hereby execute this Contract.

EXECUTION BY THE CITY

ATTEST:

CITY OF LINCOLN, NEBRASKA

(Seal)
CITY CLERK

BY: _____
MAYOR

APPROVED BY EXECUTIVE ORDER NO.

Dated: _____

EXECUTION BY CONTRACTOR

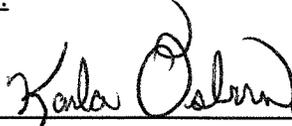
IF A CORPORATION

T.J. Osborn Construction, Inc.

5801 Johanna Rd.

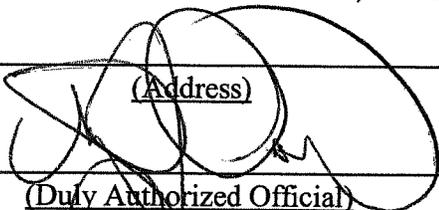
(Name of Corporation) **Lincoln, NE 68507**

ATTEST:



(Seal)

(Address)

By: 

(Duly Authorized Official)

(Legal Title of Official)

IF OTHER TYPE ORGANIZATION

(Name and Type of Organization)

(Address)

(Member)

(Member)

(Member)

By: _____
(Name)

IF AN INDIVIDUAL

EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, I, KEVIN J. OSBORN, herein below known as the Contractor, state under oath and swear as follows:

- 1. Each individual performing services for the Contractor is properly classified under the Employee Classification Act.
- 2. The Contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services.
- 3. The Contractor has complied with Neb Rev Stat 4-114.
- 4. The Contractor has no reasonable basis to believe that any individual performing services for the Contractor is an undocumented worker.
- 5. The Contractor is not barred from contracting with the state or any political subdivision pursuant to section 12 of this Act.
- 6. As the Contractor I understand that pursuant to the Employee Classification Act a violation of the Act by a contractor is grounds for rescission of the contract by the City. I understand that pursuant to the Act any contractor who knowingly provides a false affidavit may be subject to criminal penalties and upon a second or subsequent violation shall be barred from contracting with the City for a period of three years after the date of discovery of the falsehood.

I hereby affirm and swear that the statements and information provided on this affidavit are true, complete and accurate. The undersigned person does hereby agree and represent that he or she is legally capable to sign this affidavit and to lawfully bind the Contractor to this affidavit.

PRINT NAME: _____

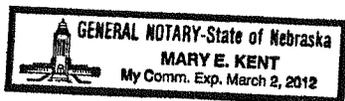
(First, Middle, Last)

SIGNATURE: _____

TITLE: _____

State of Nebraska)
) ss.
County of Lancaster)

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this 27th day of September, 2010



Mary E Kent
Notary Public

Commentary to Accompany Construction Bonds

A. GENERAL INFORMATION

There are two types of construction bonds that are required by statutes for public work in many jurisdictions and are widely used for other projects as well.

- Construction Performance Bond
- Construction Payment Bond

The Construction Performance Bond is an instrument that is used to assure the availability of funds to complete the construction.

The Construction Payment Bond is an instrument that is used to assure the availability of sufficient funds to pay for labor, materials and equipment used in the construction. For public work the Construction Payment Bond provides rights of recovery for workers and suppliers similar to their rights under the mechanics lien laws applying to private work.

The objective underlying the rewriting of construction bond forms was to make them more understandable and to provide guidance to users. The intention was to define the rights and responsibilities of the parties, without changing the traditional rights and responsibilities that have been decided by the courts. The new bond forms provide helpful guidance regarding time periods for various notices and actions and clarify the extent of available remedies.

The concept of a pre-default meeting has been incorporated into the Construction Performance Bond. All of the participants favored early and informal resolution of the problems that may precipitate a default, but some Surety companies were reluctant to participate in pre-default meetings absent specific authorization in the bond form.

The responsibilities of the Owner and the options available to the Surety when a default occurs are set forth in the Construction Performance Bond. Procedures for making a claim under the Construction Payment Bond are set forth in the form.

EJCDC recommends the use of two separate bonds rather than a combined form. Normally the amount of each bond is 100 percent of the contract amount. The bonds have different purposes and are separate and distinct obligations of the Surety. The Surety Association reports that the usual practice is to charge a single premium for both bonds, and there is no reduction in premium for using a combined form or for issuing one bond without the other.

B. COMPLETING THE FORMS

Bonds have important legal consequences; consultation with an attorney and a bond specialist is encouraged with respect to federal, state, and local laws applicable to bonds and with respect to completing or modifying the bond forms.

Both bond forms have a similar format and the information to be filled in is ordinarily the same on both bonds. If modification is necessary, the modifications may be different.

The bond forms are prepared for execution by the Contractor and the Surety. Evidence of authority to bind the Surety is usually provided in the form of a power of attorney designating the agent who is authorized to sign on behalf of the Surety. The power of attorney should be filed with the signed bonds.

Each bond must be executed separately since they cover separate and distinct obligations.

Preferably the bond date should be the same date as the contract, but in no case should the bond date precede the date of contract.

To accompany the Construction Performance Bond (EJCDC No. 1910-28A) and the Construction Payment Bond (EJCDC No. 1910-28B)

Prepared by the Engineers' Joint Contract Documents Committee

Project Name:

Project No.:

Bond No.: 103153

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, The City of Lincoln, Nebraska ("The City") has awarded to T.J. Osborn Construction Inc. as Principal a contract dated the 27th day of October, 2010, (the "Contract"), which Contract is by this reference made a part hereof, for the work described as follows:

West Haymarket Utility Relocation Project 870501

AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

NOW, THEREFORE, we, the undersigned Principal and Universal Surety Company as Surety, are held and firmly bound unto The City in the sum of one million one hundred sixty one thousand seven hundred fourteen and no/100 dollars (\$1,161,714.00), to be paid to The City or its successory and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by The City, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by The City, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless The City as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by The City to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

1. Undertake through its agents or independent contractors, reasonably acceptable to The City, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages, or, at Surety's election, or, if required by The City,

Project Name:

Project No.:

2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by The City of the lowest responsible bidder, arrange for a contract between such bidder and The City and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by The City to the Principal under the Contract and any amendments thereto, less the amount paid by The City to Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing The City's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than The City or its successors or assigns.

Surety may join in any arbitration proceedings brought under the Contract and shall be bound by any arbitration award.

In the event suit is brought upon this bond by The City, Surety shall pay reasonable attorney's fees and costs incurred by The City in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 27th day of September, 2010

Principal: T.J. Osborn Construction Inc.

(Name of Firm)

By: _____

(Signature)

Terry Osborn
(Printed Name)

Title: _____

Surety: Universal Surety Company

(Name of Firm)

By: _____

(Signature)

Mary E. Kent

(Printed Name)

Title: Attorney in Fact

Address for Notices:

601 South 12th St, Ste 100

PO Box 80468

Lincoln NE 68501-0468

NOTE: Notary acknowledgment for Surety and Surety's Power of Attorney must be attached.

Project Name:

Project No.:

Bond No.: 103153

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, The City of Lincoln, Nebraska ("The City") has awarded to T.J. Osborn
Construction Inc. as Principal a contract dated the 27th day of September
2010, (the "Contract") for the work described as follows:

West Haymarket Utility Relocation Project 870501

AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

NOW, THEREFORE, we, the undersigned Principal and Universal Surety Company,
as Surety, are held and firmly bound unto The City in the sum of one million one hundred sixty one thousand seven hundred fourteen and no/100
dollars (\$1,161,714.00-----), for which payment well and truly to be made we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by The City, or its subcontractors shall fail to pay any of the persons named in the City Charter or state statutes, or amounts due with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of Nebraska from the wages of employees of Principal and subcontractors with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall become and be null and void.

Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing The City's rights against the other.

Project Name:

Project No.:

In the event suit is brought upon this bond, the parties not prevailing in such suit shall pay reasonable attorneys' fees and costs incurred by the prevailing parties in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 27th day of September, 2010.

Principal: T.J. Osborn Construction Inc.
(Name of Firm)

By: [Signature]
(Signature)

TERRY J OSBORN
(Printed Name)

Title: [Signature]

Surety: Universal Surety Company
(Name of Firm)

By: [Signature]
(Signature)

Mary E. Kent
(Printed Name)

Title: Attorney in Fact

Address for Notices:

601 South 12th St, Ste 100

PO Box 80468

Lincoln NE 68501-0468

NOTE: Notary acknowledgment for Surety and Surety's Power of Attorney must be attached.

Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax

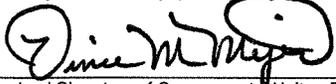
PURCHASING AGENT APPOINTMENT

Name and Address of Prime Contractor			Name and Address of Governmental Unit or Exempt Organization		
Name T.J. Osborn Construction			Name City of Lincoln.		
Street or Other Mailing Address 5801 Johanna Road			Street or Other Mailing Address 555 South 10th Street		
City Lincoln NE	State	Zip Code	City Lincoln	State NE	Zip Code 68508
Name and Location of Project			Appointment Information		
Name West Haymarket Utility Relocation Project 870501			Effective Date (see Instructions) September 27, 2010		
Street or Other Mailing Address			Expiration Date July 1, 2011		
City	State	Zip Code	Nebraska Exemption Number (Exempt Organizations Only) N/A		

Identify Project

NOTE: This form cannot be used to purchase materials used for WATER SERVICES. Materials used for WATER SERVICES are taxable per Reg 066.14A

The undersigned governmental unit or exempt organization appoints the above-named contractor and the contractor's delegated subcontractors as its agent to purchase and pay for building materials that will be annexed to real estate by them into the tax exempt construction project stated above.

sign here  Purchasing Agent 9/28/2010
Authorized Signature of Governmental Unit or Exempt Organization Title Date

DELEGATION OF PRIME CONTRACTOR'S AUTHORITY

Name and Address of Subcontractor			Delegation Information	
Name			Effective Date	
Street or Other Mailing Address			Expiration Date	
City	State	Zip Code	Portion of Project	

The undersigned prime contractor hereby delegates authority to act as the purchasing agent of the named governmental unit or exempt organization to the above-named subcontractor.

sign here _____ Title _____ Date _____
Signature of Prime Contractor or Authorized Representative

INSTRUCTIONS

WHO MUST FILE. Any governmental unit or organization that is **exempt** from sales and use tax may appoint as its agent a prime contractor to purchase building materials and/or fixtures that will be annexed to property that belongs to or will belong to the governmental entity or exempt organization pursuant to a construction contract with the governmental unit or exempt organization. The appointment of the prime contractor as its agent is completed by issuing a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, to the prime contractor. The Form 17 is required to be given to the contractor **BEFORE** he or she annexes building materials. The exempt organization or governmental unit must identify the project (e.g., east wing, chapel construction, or new school auditorium).

The exemption from the payment of the Nebraska and local option sales and use taxes only applies if the governmental unit or exempt organization directly or through its contractor pays for the building materials.

WHEN TO FILE. A prime contractor engaging in a construction project with a governmental unit or exempt organization must receive a properly completed and signed Form 17 **BEFORE** any building materials are annexed. If Form 17 is not issued, the contractor must pay the sales and use taxes and the governmental unit or exempt organization may obtain a refund of the taxes paid by the contractor.

WHERE TO FILE. A copy of the completed form should be retained by the governmental unit or exempt organization

Visit our Web site: www.revenue.ne.gov or call 1-800-742-7474 (toll free in NE and IA) or 1-402-471-5729.

issuing the Form 17. The original is to be retained by the prime contractor. Copies of this form must be made by the prime contractor for delegation purposes to any subcontractors working on the project identified on this form.

APPOINTMENT INFORMATION. Enter the dates the purchasing agent appointment will become effective and when it will expire. This appointment will not allow any purchases without payment of the tax by the prime contractor or subcontractor before the effective date or after the expiration date. The dates the delegation becomes effective and the expiration dates must be completed. The phrase "upon completion" or similar phrase is not acceptable as an expiration date. The governmental unit or exempt organization may need to issue another Form 17 if the project is not completed within the prior "effective" and "expiration" dates. Exempt organizations must enter their Nebraska Sales and Use Tax Exemption number.

DELEGATION OF PRIME CONTRACTOR'S AUTHORITY. The prime contractor may delegate his or her authority to act as the purchasing agent of the governmental unit or exempt organization to a subcontractor. The prime contractor must complete his or her copy of Form 17 for each subcontractor who is delegated authority to act as a purchasing agent. Reproductions of this delegation must be provided to the subcontractor, who must retain a copy for his or her records, and to the governmental unit or exempt organization.

Enter the dates the delegation of the subcontractor will become effective, when it will expire, and the portion of the project delegated. This delegation will not allow any purchases without payment of the tax by the subcontractor before the delegation date or after the expiration date. Any further delegation from a subcontractor to additional subcontractors must be delegated by providing a copy of the Form 17 that they received from the prime contractor and attaching it to a separate Form 17 with any further delegation to other subcontractors. The purchasing agent appointment is limited to the contractor's purchase of building materials and/or fixtures for the specific project and is only valid during the appointment dates shown on the Form 17.

EXEMPT SALE CERTIFICATE. A prime contractor who has been appointed to act as a purchasing agent by a governmental unit or exempt organization, and who hires a subcontractor operating as an Option 1 contractor, must provide to that subcontractor a completed copy of Form 17 and a Nebraska Resale or Exempt Sale Certificate, Form 13, with Section C, Part 2, completed. The subcontractor will retain these forms in his or her records, and will not charge the contractor sales tax on any portion of the invoice involving the annexation of materials to the specific project identified on the Form 17. If these forms are not provided to the subcontractor operating under Option 1, the subcontractor must collect and remit sales tax on the charge for the separately stated building materials portion of the invoice. If the Option 1 subcontractor does not separately state the charge

for the building materials from contractor labor, then the entire charge is taxable to the prime contractor.

Contractors operating under Option 2 (maintaining a tax-paid inventory) who have been issued a Form 17 from a governmental unit or an exempt organization, must furnish each vendor a copy of the Form 17 and a Form 13, completing Section C, Part 2, when purchasing building materials that will be annexed to real estate. Forms 13 and 17 must be retained with the vendor's and contractor's records for audit purposes. A contractor or subcontractor may reproduce copies of these documents which will be furnished to the vendors for each invoice or order made by them.

Invoices from vendors for the purchase of building materials by the contractor as purchasing agent, or the authorized subcontractor, must clearly identify that such purchase is for the specific Form 17 project.

CREDIT/REFUND OF SALES AND USE TAX. A contractor or subcontractor who has been appointed as a purchasing agent before any materials are annexed, may withdraw sales or use tax-paid materials from inventory that will be annexed to real estate or used to repair property annexed to real estate and receive a credit for the sales or use tax amount previously paid on those materials.

The contractor or subcontractor may take a credit either against his or her current tax liability, or file a Claim for Overpayment of Sales and Use Tax, Form 7, and receive a refund of the sales or use tax paid on those materials.

TOOLS, EQUIPMENT, AND SUPPLIES. The purchase, rental, or lease of tools, supplies, or equipment (i.e., scaffolding, barricades, machinery, etc.) by a contractor for use in the completion of an exempt project CANNOT be purchased tax free, even if the contractor has been issued a Form 17. These items do not become annexed to the real estate.

OPTION 1 CONTRACTOR ONLY. If an Option 1 contractor is the **only** contractor involved in performing work for a governmental unit or exempt organization, a Form 17 is NOT required. The Option 1 contractor must only obtain a Form 13, Section B, from the exempt project owner.

PENALTY. Any person who signs this document with the intent to evade payment of tax is liable for the sales and use tax, interest, and penalty, and may be found guilty of a misdemeanor. A contractor can confirm the exempt status of a governmental unit or organization by contacting the Nebraska Department of Revenue.

AUTHORIZED SIGNATURE. The Purchasing Agent Appointment must be signed by an officer of the exempt organization or proper government official. The Delegation of Prime Contractor's Authority must be signed by the owner, partner, corporate officer, or other individual authorized to sign by a power of attorney on file with the Nebraska Department of Revenue.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/27/2010

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER UNICO Group 4435 O Street Lincoln NE 68510	CONTACT NAME: Mary Kent PHONE (A/C, No, Ext): (402) 434-7200 E-MAIL ADDRESS: mkent@unicogroup.com PRODUCER CUSTOMER ID #: 00003067	FAX (A/C, No): (402) 434-7272
	INSURER(S) AFFORDING COVERAGE	
INSURED T.J. Osborn Construction, Inc. 5801 Johanna Road Lincoln NE 68507	INSURER A: Bituminous	NAIC #
	INSURER B: Cincinnati Insurance Co.	10677
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 2010-11 All Liab **REVISION NUMBER:**

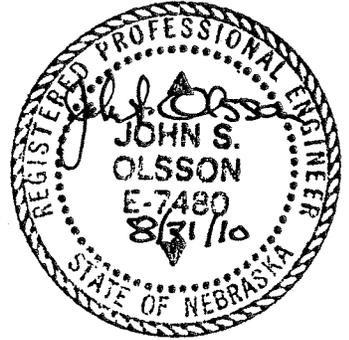
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			CLP3271712	3/1/2010	3/1/2011	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY			CAP3536432	3/1/2010	3/1/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						Medical payments \$
	<input type="checkbox"/> NON-OWNED AUTOS						Uninsured motorist combined \$
							\$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB			XS1164717	3/1/2010	3/1/2011	EACH OCCURRENCE \$ 5,000,000
	<input checked="" type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 5,000,000
	DEDUCTIBLE						\$
	RETENTION \$ 0						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC3536431	3/1/2010	3/1/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: West Haymarket Utility Relocation Project 870501
City of Lincoln & BNSF Railroad are additional insureds with regards to general liability as required by written contract. Waiver of Subrogation in favor of Certificate Holder is applicable to Commercial General Liability coverage.

CERTIFICATE HOLDER (402) 441-6576 City of Lincoln 555 South 10th Street Lincoln, NE 68508	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Ric Stoakes/MKENT 

**SPECIAL PROVISIONS
CITY OF LINCOLN, NEBRASKA (2010)
WEST HAYMARKET UTILITY RELOCATIONS
PROJECT NO. 870501**



GENERAL CONTRACT REQUIREMENTS

The work as detailed on the plans shall be completed in accordance with the requirements of the 2006 City of Lincoln Standard Specifications for Municipal Construction and the City of Lincoln, Lincoln Standard Plans 2010 and these Special Provisions. The 2006 City of Lincoln Standard Specifications for Municipal Construction, the Special Provisions, Lincoln Standard Plans 2010, project plans, and all supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project.

In case of a discrepancy:

1. Special Provisions shall govern over the City of Lincoln Standard Specification for Municipal Construction.
2. The Special Provisions shall govern over the Plans.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications. Upon discovery of such an error or omission, the Contractor shall notify the Engineer immediately. The Engineer will then make such corrections or interpretations as necessary to fulfill the intent of the plans and specifications.

Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.

Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Engineer and the Engineer's decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work

BONDING PERIOD

The City of Lincoln Standard Specifications, General Provisions and Requirements has been amended as follows:

Award and Execution of Contract.

- B. Construction Performance and Construction Payment Bonds and Execution of Contract.

Within **five (5) days** after the acceptance of the bid, the successful Bidder must execute a written Contract between the Bidder and the City, said Contract will incorporate the

City's Contract Documents and be on forms provided by the City, Construction Performance and Construction Payment Bonds, in a sum not less than the contract price, executed by the Bidder and by a corporate surety company authorized to transact business in the State of Nebraska.

SUBSTANTIAL AND FINAL COMPLETION

Substantial completion shall mean the completion of all removals, sanitary sewer construction, backfill and testing. Substantial completion for this contract shall be on or before April 15, 2011.

Final completion of all work including seeding, site clean-up, and all other incidental work required to provide a complete and functional project shall be completed by June 1, 2011. Determination of Substantial Completion and Final Completion shall be subject to Engineer's approval.

Notice to Proceed with work on this project is anticipated to be given to the Contractor on or before October 15, 2010. It is imperative that the Contractor is ready to begin work as soon as possible upon receipt of the notice to proceed so as not to delay work associated with the grading for the track relocation project.

STATUS OF RIGHT-OF-WAY

All work to be completed shall be performed in existing public right-of-way or on BNSF property under a right-of-entry that the City will secure from BNSF. No additional Right-of-Way, permanent easements or temporary easements are required to construct this project.

STATUS OF UTILITIES

The following information is current as of May 7, 2010. The Contractor should request a utility status update at the project pre-construction conference, and/or prior to starting work. The Contractor shall coordinate all construction activities with affected utilities that have identified relocations which are to be completed concurrent with the BNSF Track Relocation Project.

Utilities known to have facilities in the project area:

Private Utilities

The following utilities are known to exist within the Project limits, and may need to be relocated as a result of the Project. The Contractor shall take into consideration the associated durations of utility relocations, and these associated durations should be considered in the baseline schedule, and prosecution of the Work. The Contractor shall conduct ongoing coordination meetings with all utility owners to facilitate these relocations.

MCI/Verizon – MCI/Verizon has an existing fiber optic line that runs along the BNSF corridor. This fiber line is being relocated as part of the BNSF track relocation project.

Contact: Steve Bonczkowski
Phone: (630) 395-6701

Qwest Communications – Qwest has an existing fiber optic line that runs along the BNSF corridor. This fiber line is being relocated as part of the BNSF track relocation project.

Contact: Brian Cornish
Phone: (913) 871-9992

BNSF – The BNSF Railway has existing signal and communication lines that runs along the BNSF corridor. These lines are being relocated as part of the track relocation project.

Contact: Ron Olson
Phone: (402) 458-7600

UTILITIES

Add the following paragraphs to Article II, Section A (EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK):

The CONTRACTOR shall notify the Digger's Hotline of Nebraska (HOTLINE), Phone Number 1-800-331-5666, at least 48 hours in advance of the commencement of work at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities.

The CONTRACTOR acknowledges that some (or all) of the utility companies, with facilities shown on the drawings may not be members of the Hotline and, therefore, not automatically contacted by the above-referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the Hotline, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall also be responsible for verifying that each utility has responded to such notification

PERMITS AND LICENSES

Add the following to Article VI, Section M. (PERMITS AND LICENSES):

The OWNER will provide the following permits:

- 1) NPDES Permit
- 2) Flood Plain Permit

The CONTRACTOR shall be responsible for complying with the requirements of all permits acquired by the City.

The CONTRACTOR shall acquire all permits required by Laws or Regulations, including, without limitation, the following specific permits (if applicable):

- 1) Certificates and permits are required for uses such as, but not limited to:
 - a) Fuel burning equipment
 - b) Gasoline and petroleum distillate storage containers
 - c) Land disturbing activities
 - d) Odors
- 2) All associated building demolition permits
- 3) City, State, and County Transportation Encroachment permits
- 4) Permit-Required Confined Space
 The workplace in which the WORK is to be performed may contain permit-required confined spaces (permit spaces) as defined 29 CFR 1910.146 and, if so, permit space entry is allowed only through compliance with a confined space entry program meeting the requirements of 29 CFR 1910.146. Contractor shall submit a confined space entry program or submit in writing that compliance with the City's program will be made.
- 5) Dewatering Permits as required by NDEQ and the Lower Platte South Natural Resources District.
- 6) Fugitive Dust Control Permit

STORMWATER POLLUTION PREVENTION PLAN

The Contractor shall understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with the industrial activity from the construction site. For reference the general permit is posted on the City's web site, www.lincoln.ne.gov ; keyword: NPDES.

Additionally, the Contractor, as evidenced by their signature on this proposal, agrees and understands that, if awarded the contract on this project, he/she:

1. becomes a co-permittee, along with the owner(s), to the Nebraska Department of Environmental Quality NPDES General Permit for Stormwater Discharge from construction sites on this project; and
2. is legally bound to comply with the Clean Water Act to ensure compliance with the terms and conditions of the stormwater pollution prevention plan as developed under the NPDES permit and the terms of the NPDES permit; and
3. will hold owners harmless for damages and fines arising as a result of noncompliance with the terms of the stormwater permits and authorizations associated with the work on this project; and
4. shall be responsible for the maintenance of the sediment control measures until permanent stabilization and cover crop is established; and
5. shall complete permanent or temporary stabilization within seven (7) calendar days of soil disturbance to the surface of all perimeter controls, topsoil stockpiles, and any other disturbed or graded areas on the project site which are not being used for material storage, or on which actual earth moving activities are not being performed; and

6. shall complete the approved inspection forms and inspect/maintain all sediment or erosion control practices required under this contract at least once every seven (7) calendar days and after any storm event of greater than 0.5 inches of precipitation, on the site, during any 24-hour period; any necessary repairs or cleanup to maintain the effectiveness of the best management practices shall be made by contractor immediately; and
7. shall update the approved SWPPP plan immediately following any changes or additions to the plan, keep all inspection forms with the SWPPP plan, preferably on site in a mailbox, and provide copies of all inspection forms and modifications to the SWPPP plan to the City's Construction Project Manager, within 48 hours of inspection.

SPECIAL PROSECUTION AND PROGRESS - MATERIALS

Add the following paragraph to Article IV (CONTROL OF MATERIALS):

The Contractor will be allowed to order sanitary sewer pipe, steel casing pipe, and other items that are approved as necessary for early construction by the Engineer upon award of the contract. In the event that the contract is not fully executed by reason beyond the control of the Contractor, and the materials have been delivered or firm delivery commitments have been made, the City will purchase this material from the Contractor at paid invoice prices plus 10 percent of the total invoice amount for the Contractor's operating and overhead costs.

SPECIAL PROSECUTION AND PROGRESS – CONSTRUCTION PHASING

The first order of work on the project shall be the completion of the work associated with the installation of the new casing and sewer pipe for the 48” sanitary sewer line along with the construction of the new 12” sanitary sewer and associated casing pipe that is located along the “Q”/”R” Street corridor. Both of these sewer lines need to be relocated or reconstructed as quickly as possible since they are located within the limits of the first phase grading work for the railroad relocation project. The Contractor may be required to provide bypass pumping for the sewers along the “Q”/”R” Street corridors if this relocated sewer is completed prior to the completion and acceptance of the 48” sanitary sewer.

The existing sanitary sewer line that is shown to be removed in the R Street area can be completed following the completion of the initial Phase I railroad grading work that will create the storm water mitigation area.

The Contractor shall work closely with the BNSF and their contractor for the track grading project in the completion of all sanitary sewer work on this project.

TECHNICAL PROVISIONS

The following Special Provisions amend or supplement the 2006 City of Lincoln Standard Specifications for Municipal Construction. All provisions which are not so amended or supplemented remain in full force and effect.

COORDINATION WITH OTHERS

The Contractor shall be required to closely coordinate all of their work on this project with the planned grading, storm sewer, culvert and railroad track construction work that is being completed by the BNSF Railway and their contractors within the project area. The Contractor shall communicate directly with the BNSF and their contractor on an on-going basis when scheduling and performing the sanitary work to be completed under this project. This shall include regular attendance at all BNSF progress meetings and preconstruction conferences associated with the railroad relocation work up until such time that the sanitary sewer work is complete and accepted by the City.

The Contractor shall also be required schedule and complete all of their work in such a manner so as not to interfere with or delay the work being completed by the BNSF or their contractors. In order to maintain the project schedule for the railroad track construction work the Contractor may be required to work extended hours or weekends.

In addition to the work being completed by the BNSF, MCI/Verizon and Qwest Communications will be relocating their buried fiber optic utilities along the railroad right-of-way. The Contractor shall be required to coordinate their construction work directly with MCI/Verizon and Qwest to ensure that all parties can complete the necessary relocation/construction work without undue interference or delays. The Contractor shall not begin any work on the project in the vicinity of the conduits and buried cables without verifying with the respective utility companies that all relocation work has been completed.

All work on this project is being completed on BNSF property and as such the Contractor shall abide by all rules and requirements of the railroad. The Contractor shall contact the BNSF to determine the location of all railroad communication lines along the corridor prior to starting work and conduct their operations so as not to impact the railroad utilities.

GROUND WATER AND DEWATERING

The Contractor shall provide and maintain adequate equipment to remove and dispose of ground water entering the excavations, trenches, or other parts of the work. Each excavation shall be kept dry during subgrade preparation and continually thereafter until the structure to be built, or the pipe to be installed therein, is completed to the extent that no damage from hydrostatic pressure, flotation or other cause will result.

All excavations for concrete structures or trenches which extend down to or below ground water shall be dewatered by lowering and keeping the ground water below the bottom of the pipe or as required to maintain a stable foundation.

Methods and details for care and diversion of water are not detailed on the plans. Full responsibility for the diversion and care of water from whatever source, including, but not

limited to, direct rainfall, groundwater, surface runoff and sources outside of the construction area shall be borne by the Contractor until completion of work under this contract. The Contractor shall provide all materials, labor, and equipment, and perform all work necessary to facilitate construction and to protect the work in progress from damage by water.

The Contractor shall make his own investigation and determination of existing and anticipated conditions concerning care of water. Plans for diversion and care of water during construction shall be submitted to the Engineer, for information only, within 10 calendar days after receipt of Notice to Proceed, and shall show location, material, and method for dewatering the work area and disposal of the water.

The Contractor shall be responsible for acquiring the NPDES General Permit for Excavation Dewatering and Hydrostatic Testing Discharges from the Nebraska Department of Environmental Quality (NDEQ) to authorize point discharge of ground water from the site during construction of the utilities or structures. All dewatering activities associated with construction of the utilities and structures on this project that result in a point discharge of ground water into a storm sewer or other surface waterway, shall be completed in such a manner to meet the discharge limitations as set forth in NPDES General Permit for Excavation Dewatering and Hydrostatic Testing Discharges. The Contractor shall provide all equipment, wells, and /or filtering systems as necessary to achieve the discharge limitations as shown in the permit for total suspended solids. Additional payment for filtering or other devices required to maintain the discharged water below the maximum total suspended solids limits shown in the permit shall not be made.

The Contractor will be held responsible for the condition of any existing storm sewer system which may be used for drainage purposes on this contract, and all storm sewers shall be left clean and free of sediment. The Contractor shall not pump or drain any ground water or surface runoff into any part of the sanitary sewer system.

Measurement and payment for dewatering required to complete all sanitary sewer work for the project shall be measured and paid for at the contract lump sum price bid for the pay item "Dewatering at Sta. XX to Sta. XX". Said payment shall include furnishing all labor, equipment, materials and incidentals required to dewater the utility trenches and excavations to accommodate the construction of the new sanitary sewers, casings, manholes and other appurtenances at the locations shown on the plans including securing all necessary permits, testing of effluent, and restoration or maintenance of outlet storm sewers.

If chemical products are encountered during testing of the effluent and the source of the chemical contamination is not the result of the Contractor's activities, then additional compensation for disposal of contaminated water will be considered on an "Extra Work" basis. The proposed method for treating and/or disposal of contaminated groundwater that is encountered during the work and that is not the result of the Contractor's activities shall be determined by the City and their environmental consultant. The Contractor shall be required to coordinate their activities with the City and their environmental consultant as necessary to treat or dispose of the contaminated groundwater in a timely manner to minimize disruption to the project schedule.

TEMPORARY SHORING

The Contractor shall be required to design, construct and maintain temporary shoring as required to complete the construction of the new casing pipes, sanitary sewers and other structures that are

located adjacent to railroad tracks that will remain in service during the construction of the project. Each temporary shoring installation shall be established to accommodate all of the work required to construct the pertinent utility across the limits of the railroad tracks and in such a manner so as not to restrict the use of the tracks or stability of the railroad embankment.

The Contractor may make a written request to the BNSF Railway to allow the existing yard tracks to be temporarily taken out of service during the construction of the utilities to reduce the railroad live load applied to the shoring in these areas. Taking tracks out of service to facilitate construction of the utilities is at the sole discretion of the BNSF Railway and the Contractor shall consult with the appropriate BNSF staff prior to completing their bids to determine if this option will be available on this particular project. No main line tracks will be taken out of service.

The temporary shoring bid item shall include the design for the shoring, construction work associated with installation of the shoring including any tie back anchors required to provide a stable excavation, and removal of the shoring upon completion of the utility work. The temporary shoring installation shall meet the applicable portions of Section 703 in the State of Nebraska Standard Specifications for Highway Construction 2007 Edition.

It shall be the responsibility of the Contractor to contract with a professional engineer registered in the State of Nebraska to design the temporary shoring including all necessary tie back anchors to protect the existing railroad embankment and tracks. The design of the shoring shall use an E-80 railroad loading and shall take into account all other applicable surcharge loadings and soil conditions that may be encountered during the completion of the work. Prior to the start of excavation adjacent to the tracks, the Contractor shall submit their shoring design calculations to the BNSF for review to ensure that E-80 loading requirements are met and that there are no impacts to adjacent "in-service" tracks. No excavation work that may impact existing "in-service" tracks or temporary shoring construction shall proceed without BNSF concurrence on the shoring design.

The item "Temporary Shoring at Station ____" shall be paid for by Lump Sum. The price shall be considered full compensation for all work prescribed in these Special Provisions including the design, construction, removal, maintenance and furnishing all necessary materials and incidental items associated with the temporary shoring.

FLOWABLE FILL

Existing concrete pipes and sewers to be abandoned in place shall be filled with a flowable fill material where shown on the plans or as directed by the Engineer. The flowable fill shall be placed as specified in Section 726 of the NDOR Standard Specifications and shall meet the requirements outlined in this Special Provision. The bulkheads or plugs constructed at the ends to seal the pipes shall not be paid for directly but shall be considered subsidiary to the flowable fill. Measurement and payment for the flowable fill used to abandon sewers shall be made based upon the contract unit price bid per cubic yard for the item "Flowable Fill". Said payment shall be full compensation for all labor, equipment, materials and incidentals required to fill the pipes to be abandoned in-place with the flowable fill including construction of necessary bulkheads, excavation, backfill, compaction, and pumping.

BACKFILL

Backfilling and compaction of excavations shall follow as closely after the construction as possible. All excavations shall be backfilled with approved material up to the original surface of the ground unless otherwise indicated on the plan. No backfill shall be made with material containing stone, large clods, frozen earth or debris of any kind. The backfill shall be placed in loose lifts not to exceed the thickness required to attain 8 inch thick compacted layers or as noted in a geotechnical report signed and sealed by an Engineer registered in the State of Nebraska.

Backfilling shall not be done in freezing weather, except by permission of the Engineer, nor shall any fill be made where the material already in the trench is frozen. If construction proceeds at any time when frozen material is encountered and frozen material is placed in the trench line, all such trenches shall be re-compacted in the spring after frost conditions are no longer present in the ground. This re-compaction of the trench shall include the removal of all material to a depth of 12 inches below the depth of the frozen material and the replacement and re-compaction of the trench to the proper grade with suitable material. Care shall be exercised in backfilling so as not to damage any finished work. The backfill shall be brought up evenly on both sides of the utility or structure.

Backfilling against any concrete structure shall not be started until test specimens of the concrete develop a compressive strength of at least 2500 psi.

Unless otherwise directed by the Engineer, compaction of backfill within 3 feet of all structures and utility appurtenances, including but not limited to, valves, hydrants, manholes, and inlets, shall be accomplished by hand methods using the appropriate equipment for the soil type(s) encountered.

Jetting or hydro-flushing of the backfill shall not be permitted. Care shall be taken to ensure that the utility is properly bedded with material of an approved density or in accordance with Section 20.06 of the Standard Specifications. The initial 12 inches of backfill above the top of the pipe shall be carefully placed to protect the pipe bedding from further backfilling operations.

Backfill for utility trenches or excavated areas that are located laterally ten feet (10'-0") or greater outside the limits of the embankments for new track construction, future pavement or future track construction, shall be compacted to a minimum density of ninety-two percent (92%) of the maximum dry density of the material as determined in accordance with ASTM D-1557, Modified Proctor Test. The moisture content of the soils shall be between two percent (2%) below and four percent (4%) above the optimum moisture content as determined by the above test.

Backfill for all utility trenches and excavated areas that will be located laterally within twenty five feet of the centerline of new, relocated or future railroad tracks or within ten feet laterally of the toe of the railroad embankment, whichever is greater; and any trenches or excavated areas that will be located under any future pavement, shall be compacted to a minimum density of 95 percent (95%) of the maximum dry density of the material as determined in accordance with ASTM D-1557, Modified Proctor Test,. The moisture content of the soils shall be between two percent (2%) below and four percent (4%) above the optimum moisture content as determined by the above test.

When the moisture content of the material is too low to obtain specified density, sufficient water shall be added to the material and/or lift thickness shall be decreased before compaction.

After backfilling, the work area shall be kept maintained in a smooth and well drained condition.

GEOGRID

Geogrid shall be installed at the bottom of the trench prior to the placement of the bedding material for all open cut pipe installations that occur within the limits of Railroad Right-of-Way. The Geogrid material shall be the Tensar TX140 or BX1100 product and installed in accordance with the manufactures recommendations. Measurement and payment for the item "Geogrid" shall be made based upon the contract unit price square yards. Said payment shall be full compensation for all labor, equipment, materials and incidentals required to install the Geogrid.

REMOVE CASING PIPE

Remove Casing Pipe shall include all labor, equipment, materials and incidentals required to remove the existing casing from the existing sanitary sewer pipe to allow for the construction of the new manhole. The remaining casing pipe shall be plugged at each end with a concrete plug and shall be considered subsidiary to the remove casing pipe pay item. Measurement and payment for the item "Remove Casing Pipe" shall be made based upon the lump sum contract unit price bid.

CASING PIPE

All smooth steel casing pipe shall conform to the requirements stipulated in the City of Lincoln Standard Specification for Municipal Construction, requirements outlined in these Special Provisions and the details shown on the plans.

The casing pipes and minimum wall thicknesses shall be as shown on the plans. The size of the casing pipe for the 48" diameter sanitary sewer is based upon the outside diameter of a concrete carrier pipe. If the Contractor elects to use an alternate material for the carrier pipe that has a smaller outside diameter than the 48" concrete pipe than they may reduce the size of the casing. The casing shall be sized such that the inside diameter of the casing (based upon the minimum wall thickness as required below) is greater than the outside diameter of the carrier pipe plus 4.5 inches. The minimum wall thickness of all casing pipes shall be based upon the diameter of the casing and the associated minimum pipe wall thickness shown in the current BNSF Utility Accommodation Policy for Non Coated Steel Casing Pipe.

Casing pipe shall be installed either by boring/jacking the pipe as specified in the Standard Specifications or casings that extend outside the limits of the railroad embankment may be installed utilizing open-trench construction as shown on the plans. Open trench installation will only be allowed at areas that are outside the toe of the track embankment and at least a minimum of 35 feet from the centerline of the nearest track as shown on the plans.

The casing for the 48" sanitary sewer shall have concrete anchors constructed along each side of the casing through the limits shown on the plans. The concrete and reinforcing steel for the

anchors shall be paid for directly as shown. Furnishing and installation of the steel channels to connect the anchors to the casing shall not be paid for directly but shall be subsidiary to the pay item for the casing.

Construction of all steel casing pipes shall be measured and paid for by the linear foot in accordance with the contract unit price bid for "Smooth Steel Casing ___" Thick, Bored in Place, ___" or "Smooth Steel Casing, ___" Thick, Open Cut, ___". Said payment shall be full compensation for furnishing all labor, equipment, tools and materials required to construct the casings to the lines and grades shown on the plans including all casing chucks, flowable fill at the casing, welded plugs for access holes to facilitate flowable fill installation and other items required to support the carrier pipe that will be installed through the casing. The carrier sanitary sewer pipe will be paid for directly.

BYPASS PUMPING FOR SANITARY SEWER CONSTRUCTION

Bypass pumping will be required for the construction of the "Q"/"R" St sanitary sewer work and for construction of the new sanitary sewer to the north of the proposed arena site. The contractor shall provide redundant bypass pumping during the reconstruction of the sanitary sewer. The pumping operations shall also have 24-hour standby capabilities. Bypass pumping will be paid for separately in accordance with the lump sum bid item "Bypass Pumping Station "XX" to Station "XX"" or "Bypass Pumping at Station "XX"". Said payment shall be full compensation for providing all equipment, labor, materials and incidental items required to bypass pump the sewage as necessary to facilitate construction of the sewers as shown on the plans. Existing flow data is available upon request and can be obtained from the Engineer.

CONSTRUCTION STAKING

The Contractor shall use the horizontal and vertical control points as shown on the plans for use in establishing the exact location and elevations for the project. The Contractor shall be responsible for preserving (or reestablishing) these control points if necessary. The Contractor shall use this control to provide all construction staking that is required for the project. This shall include staking for utility construction and all other survey work to complete the project in accordance with the details shown on the plans.

The Contractor shall be responsible for the placement and preservation of adequate ties and references necessary to complete his work. Any additional stakes, templates and other materials necessary for marking and maintaining all reference points and lines shall be the responsibility of the Contractor. The Contractor shall be solely and completely responsible for the accuracy of the line and grade for all features of the work. All work shall be completed to the lines, grades, and elevations indicated on the drawings. The Contractor shall remove and reconstruct work that is improperly located at his expense.

The Contractor shall be required to coordinate with the private and public utilities and shall stake all needed reference points or lines needed for the private utilities to adequately construct or relocate their utilities to avoid conflicts with the proposed construction. This shall include all needed finished elevations, tie-in points, line and grades for proposed utilities to be installed by the Contractor or any other points approved by the Engineer.

The Contractor's staking records shall be recorded in a bound notebook, in a format approved by the Engineer. Record notebooks will be submitted to the City of Lincoln at the completion of the project.

Basis of Payment

Construction staking shall not be measured, but shall be paid for at the Contract Lump Sum amount bid for the pay item "Construction Staking". The amount of the lump sum to be included in each partial payment shall be in proportion to the value of the work completed with respect to the total amount of the original bid.

EXCESS MATERIAL FROM EXCAVATIONS

Material from excavations on this project, which the Engineer determines to be not suitable for use in the backfill of the utility structures and trenches shall be promptly removed from the site and disposed of by the Contractor at no additional cost to the owner. Excess excavated materials that are determined to be suitable for use as fill material by the Engineer may be stock piled in the designated soil staging/stockpiling area being used by the railroad's grading contractor.

REMOVAL OF UNSUITABLE MATERIAL

It is anticipated that the Contractor may be required to remove additional material not detailed on the plans due to unsuitable material being encountered at elevations below the excavation limits shown on the plans or cross sections to provide an acceptable subgrade or backfill for the utility construction. Removal of unsuitable material from approved over excavations on this project (over excavations defined as additional excavation below the limits of the bottom of the trench excavations shown on the plans or Lincoln Standard Plans), shall be removed from the site and disposed of by the Contractor. The Contractor will be required to properly dispose of any unsuitable material at a location offsite as approved by the Engineer.

Soils with excessive moisture content, that if dried are acceptable for backfill shall not be considered as unsuitable material. Only quantities approved by the Engineer shall be considered for payment. Overruns due to over excavation not authorized by the Engineer or other unapproved removal of wet soils shall not be considered for payment. The limits of unsuitable material removal for payment shall be calculated based upon the area between the proposed excavation line shown on the plans or on the City of Lincoln Standard Plans for trench excavation and the actual depth of the over excavation limit.

Unsuitable material removed in conformance with these specifications and accepted by the Engineer shall be measured and paid for at the contract unit price bid per cubic yard for the pay item "REMOVAL OF UNSUITABLE MATERIAL". Such payment shall be full compensation for removal and disposal of the unsuitable material including furnishing approved borrow material and backfilling the over excavated area in accordance with the specifications and these special provisions.

REMOVE SANITARY SEWER PIPE

The Contractor shall remove existing sanitary sewer pipe as shown on the plans or as directed by the Engineer to accommodate the construction of the new sewers or to abandon existing lines.

The Contractor shall saw cut the pipe at the limits for the removal and exercise extreme care so as not to damage existing manholes or sewers that are to remain in place. All material from the removal shall be promptly removed from the project site and disposed of by the Contractor.

Payment for removal of sanitary sewer pipe shall be paid for at the contract unit price bid per linear foot for the item "Remove Sanitary Sewer Pipe, ___". Said payment shall be full compensation for all labor, equipment, and material required for excavation, cutting, removal, backfill and disposal of the sewer pipe and all other incidental items required to remove the sewer pipe. Concrete for plugging existing sewer pipes or pipe stubs at manholes shall be paid for directly as noted on the plans.

CONTAMINATED SOILS

During the prosecution of the work on this project it is anticipated that the Contractor may encounter some contaminated soils. If contaminated soils are encountered and it is determined that they cannot be used as backfill for the utility trenches, then the Contractor shall be required to dispose of the soils offsite in accordance with all State and Local regulations.

The Contractor shall immediately report the discovery of any contaminated soils or potentially contaminated soils to the Engineer for resolution on how to manage the soil. Typical indications of potential contaminated soils would include discoloration of the soil or odors associated with soils removed as part of the boring or trenching work. Upon authorization by the Engineer, the Contractor shall immediately furnish water tight roll off boxes and place soil designated by the Engineer as contaminated soils in the storage boxes. All roll off storage boxes shall be suitable for containing hazardous materials and shall be water tight with covers to prevent rainfall from entering the boxes and shall be capable of holding up to 20 cubic yards of soil.

The Contractor shall provide and maintain the waste storage containers until all required sampling and testing of the soil is completed. The method for disposal shall be determined by the City of Lincoln. All excavated soil that may be contaminated shall be kept separated from clean soils encountered during the boring or trenching work.

During the handling and managing of contaminated soils the Contractor shall comply with all OSHA regulations for worker safety as well as all other Federal, State or Local Health Department requirements.

Measurement and payment for handling and storing contaminated soil shall be paid for in accordance with the following pay items: Furnish Waste Storage Container – per each storage container furnished to the site; Waste Storage Container – per each day the container is at the site; and Management of Contaminated Soil – per cubic yard of contaminated soil excavated or removed from the borings and that is placed and stored in the storage containers on site.

The pay item "Furnish Waste Storage Container" shall be measured and paid for per each storage container approved by the Engineer to be supplied to the site for storage of contaminated soil. Said payment shall include all labor, equipment, materials and incidentals required to furnish and deliver each 20 cubic yard waste storage container to the site. Temporary removal of the storage container for disposal of the contents and placement of the container back at the site after disposal will not constitute additional payment under this item.

The pay item "Waste Storage Container" shall be measured and paid for per each day the storage container is on-site. Said payment shall include all labor, equipment, materials and incidentals required to maintain each 20 cubic yard waste storage container at the site for use in storing contaminated materials that are encountered during the work. Temporary removal of the storage container for disposal of the contents and placement of the container back at the site will not constitute additional payment under this pay item.

The pay item "Management of Contaminated Soil" shall be measured and paid for per cubic yard of contaminated soil encountered and stored on site in the storage container as approved by the Engineer. Said payment shall include all labor, equipment, materials and incidentals required to handle and place the contaminated soil in the storage container.

If analysis of the soil indicates that the contamination is petroleum related and it is determined that local landfills (landfills that are located within 30 miles of the project site) are available and will accept the contaminated soil, then the Contractor shall dispose of the petroleum contaminated soil at local landfill or other acceptable facility as approved by the Engineer. Disposal of petroleum contaminated soils shall be measured and paid for by the ton in accordance with the contract bid item "Disposal of Petroleum Contaminated Soil". Said payment shall include all labor, equipment, materials and incidentals required to haul and dispose of the soil at the local landfill including all necessary landfill fees, permits and all other incidental items associated with hauling and disposal of the soil.

If it is determined that the contaminated soils cannot be disposed of at a local landfill then disposal of the soil will be paid for on an "Extra Work" Basis based upon the final determination of the disposal site and the associated costs for the hauling, landfill/waste facility fees, permits and other incidental items associated with the disposal of the contaminated soil.

POTHOLE UTILITIES

The Contractor will be required to pothole existing utilities that cross the proposed sanitary sewers that are to be constructed on this project to verify the depth to the utilities and clearance between the new sewer and casings. This shall include the MCI and Qwest fiber optic lines, the BNSF communication and signal lines, existing sewers, existing telephone and all other existing utilities that are identified as part of the one call and BNSF utility notifications that are required prior to the start of the work. All work associated with potholing existing utilities to verify location, depth and clearances from the new construction shall not be paid for directly but shall be considered subsidiary to other items for which direct payment is made.

GEOTECHNICAL DATA FOR REFERENCE

Soils boring information for the project area is available in Appendix A of these Special Provisions.

RAILROAD REQUIREMENTS

The Contractor will be required to execute the following C-1 Agreement with the BNSF prior to start of work on this project. The Contractor shall abide by all requirements outlined in the following Exhibit C and Exhibit C-1 during work on this project.

EXHIBIT C

Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where Construction and Maintenance Work ("C&M Work") as defined in Section 4 of the Master Agreement is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the C&M Work.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** Contractor shall strictly comply with all federal, state and local environmental laws and regulations in its use of BNSF's property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to the BNSF property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on BNSF's property. Contractor shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in BNSF's property

and as encountered in the City C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the City C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any BNSF property.

Contractor shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from BNSF's property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of BNSF's property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give BNSF notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting BNSF's property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish BNSF upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the BNSF Project Manager.
- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of BNSF's Division Engineer.
- **1.01.08** The Contractor must notify the City of Lincoln at (402) 441-7511 and Railway's Manager Public Projects, telephone number (913) 515-7862 at least ten (10) calendar days before commencing any C&M Work on Railway Property. Contractors' notification to Railway, must refer to Railroad's file _____.
- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing

details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the C&M Work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.
- **1.03.02** The Contractor must notify Railway's Division Superintendent _____ at (____) _____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts

- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
 - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Lincoln and must not be undertaken until approved in writing by the Railway, and until the City of Lincoln has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the plans for the C&M Work must be submitted to the Railway by the City of Lincoln for approval before work is undertaken and this work must not be undertaken until approved by the Railway. Railway agrees to review such request in a timely manner and to not unreasonably withhold such approval.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the C&M Work, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines

listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone (402) 458-7538) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.

- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by the City up to a maximum of \$48,000. Flagging costs over the \$48,000 limit will be billed to the City and the City will withhold the excess flagging costs from final payment to the Contractor. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 60 freight trains per 24-hour period at a timetable speed 45 MPH and 2 passenger trains at a timetable speed of 70 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** **C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on BNSF's property, except after Contractor has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.**
- **1.06.02** **Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).**

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any C&M Work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILROAD'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be

left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (Gerald Maczuga at (402) 458-7537). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.
- **1.07.05** Contractor will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "Other Improvements"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. Contractor must

also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St
2. Date: _____ Time: _____ County: _____
3. Temperature:
4. Weather
(if non-Railway location)
5. Social Security #
6. Name (last, first, mi)
7. Address: Street: _____ City: _____ St. _____
Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.):
12. Treatment:
 First Aid Only
 Required Medical Treatment
 Other Medical Treatment
13. Dr. Name _____ 30. Date: _____
14. Dr. Address:
Street: _____ City: _____ St: _____
Zip: _____
15. Hospital Name:
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis:

**FAX TO RAILWAY AT (817) 352-7595
AND COPY TO RAILWAY ROADMASTER FAX**

EXHIBIT C-1

Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: _____
Agency Project: _____

Gentlemen:

The undersigned (hereinafter, the "Contractor"), has entered into a contract (the "Contract") dated _____, 20__, for the performance of certain C&M Work (as defined in the Master Agreement) in connection with the West Haymarket Project (as defined in the Master Agreement). Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Indemnifications.

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AND BNSF'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, 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 CONTRACTOR PURSUANT TO THE MASTER AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THE MASTER AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR'S SUBCONTRACTORS, EMPLOYEES OR AGENTS AND/OR ANY WORK

PERFORMED BY CONTRACTOR IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY CONTRACTOR;

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR'S C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES BY CONTRACTOR, 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) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS RIGHT OF ENTRY;

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY CONTRACTOR 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 BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY BNSF'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES AS DEFINED IN THE EXCHANGE AGREEMENT FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CONTRACTOR WILL INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CONTRACTOR FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES AS CONTEMPLATED BY THE MASTER AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY OF ITS AGENTS, INVITEES, OR SUBCONTRACTORS CLAIM OR

ALLEGED THAT THEY ARE EMPLOYEES OF BNSF OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT NOT RAILWAY'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR SOLE NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000, but in no event less than the amount otherwise carried by the contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit 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 Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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 Railroad employees.

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

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

C. Workers Compensation and Employers Liability insurance including 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 Railroad.

D. Railroad Protective Liability insurance naming only the Railroad as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence of Railroad or to the extent caused by the gross negligence of willful misconduct of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence of Railroad or to the extent caused by the gross negligence of willful misconduct of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under contractor's care, custody or control, except for claims and suits arising wholly out of the sole negligence of Railroad or to the extent caused by the gross negligence of willful misconduct of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad, except under the City's OCIP in which case the City is allowed to self-insure up to \$250,000 per occurrence and \$250,000 aggregate on General Liability and Automotive Liability and up to \$500,000 per occurrence and \$500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this Agreement has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to stop work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for

train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (____) ____ weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

City: _____ State: ___ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

PERCENTAGE OF COST OF WORK WITHIN RAILROAD RIGHT-OF-WAY

The following information is furnished to aid in the determination of a proper premium for the Railroad Protective Liability Insurance required elsewhere in these special provisions.

RAILROAD PROTECTIVE POLICY DATA SHEET

Railroad: Burlington Northern Santa Fe Railway Company

Railroad Contact: Andy Amparan

Title: Manager Public Projects

Address: 4515 Kansas Avenue, Kansas City, KS 66106

Telephone Number: (913) 551-4964

Project Number: City of Lincoln 702390

Project Location: West Haymarket, Lincoln, Nebraska

Type of Project: Sanitary Sewers and Casings Under Railroad

No. of trains/day: Total: 65

Freight or Coal: 63 Speed: 45 mph Passenger 2 Speed 70 mph

No. of Tracks: Mainline 3 Branchline 0

Project Over RR: No X Yes _____ Project Under Railroad: No _____ Yes X

Railroad Shoo-fly Required: No X Yes _____

Project Parallel to RR: No X Yes _____ If Yes, Number of Miles _____

Crossings on State Highway or City Street System: No X Yes _____

If Yes, Number of Crossings _____

Pavement or Overlay up to Crossing on County or City Road:

No X Yes _____ If Yes, Number of Crossings _____

Work to be done by Railroad Associated grading and drainage construction work for proposed track relocation project.

It shall be the contractor's responsibility to contact the railroad for additional information needed to purchase the Railroad Protective Policy.

The percentage of work within railroad right of way that is within 50 feet (15.25 meters) of any railroad track shall be covered by railroad protective insurance. The railroad's ownership of right of way that extends beyond 50 feet (15.25 meters) from the closest track shall be covered under regular Contractor's Public liability and Property Damage Insurance in the amounts specified in this contract.

<u>Group</u>	<u>Approximate Percent of Work Within 50 feet (15.25 meters) of Nearest Track</u>	<u>Approximate Percent of Work on RR/ROW Not Within 50 feet (15.25 meters) of Nearest Track</u>	<u>Description of Work</u>
	<u>60 %</u>	<u>40 %</u>	<u>Jacking/Tunneling, Casing and Sanitary Sewer Construction</u>
	<u>60 %</u>	<u>40 %</u>	<u>All other incidental work</u>

CONCRETE PROTECTIVE LINER - PVC PLASTIC LINER

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. The Contractor shall furnish and install concrete protective liner for interiors of the following locations:
 - 1. Reinforced concrete pipe (RCP) sewers.
 - 2. Prestressed and reinforced concrete cylinder pipe (PCCP & RCCP) sewers.
 - 3. Concrete manholes.
- B. Only plastic liners manufactured with integral locking ribs spaced at approximately 2-1/2 inches on center over the entire liner are acceptable. Liners relying on mechanically fastened batten strips as the primary means of anchorage are unacceptable.
- C. All plastic liner shall be white in color.

1.2 REFERENCE STANDARDS

- A. ASTM D412 - Standard Test Methods for Rubber Properties in Tension.
- B. ASTM D2440 - Standard Test Methods for Oxidation Stability of Mineral Insulating Oil.

1.3 SUBMITTALS

- A. Submit shop drawings according to City of Lincoln Standard Specifications General Conditions. Submit current manufacturer's product and installation guide. Show liner fabrication, placement location, splices, piece designation, standard details, and other pertinent information, including dimensions.
- B. Provide sufficient details to permit placement of liner without use of design drawings. Reproduction of design Drawings for use as shop drawings will not be allowed. Do not begin fabrication of the liner until after shop drawings have been reviewed by the Engineer.

1.4 INSTALLER QUALIFICATIONS

- A. Applicators. The application of plastic liner to forms and other surfaces is considered highly specialized work. Personnel performing such work shall be trained in methods of installation, be certified in writing by the liner manufacturer, provide references for of successful installation experience on similar past projects, and shall demonstrate their ability to the Engineer.

B. Welders

1. Each welder shall pass a qualification welding test before doing any welding. Requalification may be required at any time deemed necessary by the Engineer.
2. All test welds shall be made in the presence of the Engineer and shall consist of the following:
 - a. Begin with two pieces of liner, at least 15-inches long and 9-inches wide. Hold pieces in a vertical position, lapped 1-1/2 inches.
 - b. Position a welding strip over the edge of the lap and weld to both pieces of liner. Extend each end of the welding strip at least 2-inches beyond the liner to provide tabs.
3. The weld specimen will be tested by the Engineer as follows:
 - a. Each welding strip tab, tested separately, shall be subjected to 110-pound pull normal to the face of the liner with the liner secured firmly in place. The weld is acceptable if there is no separation between the welding strip and liner.
 - b. Three test specimens shall be cut from the welded sample and tested in tension across the welds. If none of these specimens fails when tested as indicated above, the weld will be considered satisfactory.
 - c. If one specimen fails to pass the tension test, a retest will be permitted. The retest shall consist of testing three additional specimens cut from the original welded sample. If the three retest specimens pass the test, the weld will be considered satisfactory.
4. A disqualified welder may submit a new welding sample when the welder has had sufficient off-the-job training or experience to warrant re-examination.

PART 2 PRODUCTS

2.1 MANUFACTURERS

- A. Plastic liner shall be as manufactured by Ameron T-Lok, Poly-Tee, Inc., or approved equal.

2.2 MATERIALS

A. Manufacturing

1. Plastic liner sheet, joint, corner and weld strips shall be manufactured from a high molecular weight thermoplastic polymer compounded to make a permanently flexible material suitable for use as protective liner in pipe or other structures. Polyvinyl chloride resin shall constitute not less than 99 percent by weight of the resin used in the formulation. Copolymer resins shall not be permitted.

2. At any time during the manufacture or prior to the final acceptance of the Work, the Engineer may sample specimens taken from sheets, strips or welded joints for testing.
3. Changes in formulation will be permitted only after prior notice is given to the Engineer and the manufacturer demonstrates that the new plastic liner will meet or exceed requirements for chemical resistance and physical properties. Samples taken from sheets, joints and weld strips shall be tested by the manufacturer to determine material and physical properties. The samples thus taken shall be subject to the tests set forth below and the results shall be submitted to the Engineer for approval. All plastic liner plate sheets, joint, corner, and welding strips shall have the following physical properties when tested at 77°F ± 5°F.

Property	Initial	Paragraph 2.4
Tensile Strength	2,200 psi minimum	2,100 psi minimum
Elongation at break	200% minimum	200% minimum
Shore Durometer, Type D	1-sec. 50-60 10-sec. 35-50	± 5 with respect to initial test result
Weight Change		± 5 with respect to initial test result ± 1.5%

- B. Tensile specimens shall be prepared and tested in accordance with ASTM D412 using die B. Weight change specimens shall be 1-inch by 3-inch sample of the sheet thickness. Specimens may be taken from sheet and strip at any time prior to final acceptance of the work.
- C. Once cast into the concrete of structures or pipe, the lining shall be permanently and physically attached to the concrete by the T-lock mechanism and shall not rely on an adhesive bond. Liner plate locking extensions embedded in concrete shall withstand a test pull of at least 100 pounds per linear inch, applied perpendicularly to the concrete surface for a period of one minute, without rupture of the locking extensions or withdrawal from embedment. This test shall be made at a temperature of 70°F-80°F inclusive.
- D. All plastic liner plate sheets, including locking extensions, all joint, corner, and welding strips shall be free of cracks, cleavages, or other defects adversely affecting the protective characteristics of the material.
- E. The lining shall have good impact resistance, shall be flexible, and shall have an elongation sufficient to bridge up to 1/4-inch settling cracks which may occur in the structure, without damage to the lining.

- F. Plastic liner shall be impermeable to sewage gases and liquids and shall be nonconductive to bacterial or fungus growth.
- G. All liners shall be factory checked electrically to insure freedom from any porosity or holidays. Liners shall be shop and field tested with a spark tester set to provide a minimum of 20,000 volts. Sheets having holes shall be satisfactorily repaired in the shop prior to shipment from the manufacturer's plant. Repairs shall be made by welders qualified in accordance with these specifications.
- H. Shop-welded joints used to fuse individual sections of liner together, shall be at least equal to the minimum requirements of the liner for thickness, corrosion resistance and impermeability. Welds shall show no cracks or separations and shall be tested for tensile strength. Tensile strength, measured across the welded joint in accordance with ASTM D412 using Die B, shall be at least 2000 psi. Test temperature shall be 77 degrees F plus or minus 5 degrees F and the measured minimum width and thickness of the reduced section shall be used. Each specimen shall meet or exceed the minimum requirements of the liner for thickness, corrosion resistance, impermeability and other physical properties.
- I. The lining shall be repairable at any time during the life of the structure.

2.3 CHEMICAL RESISTANCE

- A. After conditioning to constant weight at 110°F, tensile specimens and weight change specimens shall be exposed to the following solutions for a period of 112 days at 77°F ± 5°F.

<u>Chemical Solution</u>	<u>Concentration</u>
Sulfuric acid	20%*
Sodium hydroxide	5%
Ammonium hydroxide	5%*
Nitric acid	1%*
Ferric chloride	1%
Soap	0.1%
Detergent (linear alkyl benzyl sulfonate or LAS)	0.1%
Bacteriological	BOD not less than 700 MG/L

* Volumetric percentages of concentrated C.P. grade reagents.

At 30-day intervals, tensile specimens and weight change specimens shall be removed from each of the chemical solutions and tested in accordance with Paragraph 2.3.2. If any specimen fails to meet the 112-day requirements before completion of the 112-day exposure, the material will be subject to rejection.

2.4 DETAILS AND DIMENSIONS

- A. Approval of Details. Liner sheet, strip and other accessory pieces shall conform to the requirements of these Specifications and applicable provisions of the accepted shop drawings.

- B. Thickness of Material. The minimum thickness of PVC sheet and strip shall be as follows:

<u>Material</u>	<u>Thickness in Inches</u>
Sheet, integral locking extensions	0.065
Sheet, smooth	0.094
Joint strip	0.065
Weld strip	0.125

- C. Material Sizes. Sheets of PVC liner used for pipe shall be sized to provide the coverage required by the Drawings. Structural sheets shall be standard 4 feet plus or minus 0.25 inch by 8 feet plus or minus 0.25 inch with any special size noted on the shop drawings. Joint strips shall be 4 inches plus or minus 0.25 inch in width and shall have each edge beveled prior to application. Welding strips shall be 1 inch plus or minus 0.125 inch in width. Welding and outside corner strips shall have edges beveled at time of manufacture.
- D. Locking Extensions
1. No polygrip-type holding or locking extension will be permitted.
 2. PVC liner to be embedded in concrete shall have integral locking extensions. Liner shall not be bonded to concrete surfaces with adhesives except as specifically acceptable to the Engineer.
 3. PVC locking extensions shall be the same material as the liner, shall be integrally molded or extruded with the sheets, and shall have an approved cross section with a minimum height of 0.375 inch and a minimum web thickness of 0.085 inch. They shall be approximately 2.5 inches apart and shall be such that when the extensions are embedded in concrete, the liner will be held permanently in place.
 4. PVC locking extensions shall be parallel and continuous except where interrupted for joint flaps, weep channels, strap channels and for other purposes shown on Drawings or permitted by the Engineer.
 5. The liner sheet edge which will be the lower terminal edge in the structure shall not extend beyond the base of the final locking extension more than 0.375 inch.
- E. Provisions for Strap Channels. Unless alternate methods are acceptable to the Engineer, the liner required to be secured to the inner form with straps shall have strap channels at not more than 20 inches on center perpendicular to the locking extensions. The channels shall not be provided in the final two locking extensions adjacent to the terminal edge of the liner coverage.
- F. Flaps. When transverse flaps are specified or required, they shall be fabricated by removing locking extensions so that no more than 0.032 inch of the base of the locking extensions remains on the sheet.

- G. Adhesive Products. Adhesive products and application procedures used in the installation of the liner shall be according to the manufacturer's recommendations.
- H. Cleaners. Cleaners used in the installation of the liner shall be approved by the liner manufacturer and accepted by the Engineer prior to use. Cleaners shall be nonflammable and shall be water soluble or water dispersible and shall not be detrimental to the plastic liner.

PART 3 EXECUTION

3.1 NOTIFICATION

- A. Notify the Engineer at least 24 hours before concrete placement so that the lining may be inspected and errors corrected without delaying the Work.

3.2 PLACING LINER

- A. Location. Liner shall be placed throughout the entire length of reinforced concrete pipe (RCP) and prestressed and reinforced concrete cylinder pipe (PCCP & RCCP) sewers along the top 300 degrees of the pipe circumference, inside all concrete manholes, and (at the option of the Contractor) connection structures as indicated on the Drawings. Liner shall be applied and secured to the forms, inspected, and reviewed by the Engineer prior to the placement of reinforcing steel.

- B. Coverage

1. In cast-in-place structures, no offset of the lower terminal edge is permitted.
2. At any station where there is a difference in circumferential liner coverage, as shown on the Drawings, and the longitudinal terminal edges of liner downstream from that station are lower than those upstream, the terminal edges of the liner installed in the section of pipe or structure immediately upstream from the station shall be sloped uniformly for the entire length of the section of pipe or structure from the limits of the smaller coverage to those of the greater coverage. Wherever the longitudinal terminal edges of the liner downstream from the station are higher than those upstream, the slope shall be accomplished uniformly throughout the length of the section of pipe or structure immediately downstream from the station. An approved locking extension shall be provided along all sloping lower terminal edges of liner plate.

- C. Positioning Liner

1. Position PVC liner installed in pipe and concrete manholes so that locking extensions are parallel to the axis of the pipe or manhole section.
2. Position PVC liner installed in cast-in-place structures so that the locking extensions are parallel to the axis or direction of flow of the structure.
3. Liner shall be closely fitted to inner forms. Sheets shall be cut to fit curved and warped surfaces using a minimum number of separate pieces.

4. The Engineer may require the use of patterns or the marking of sheet layouts directly on the forms where complicated warped surfaces are involved.
5. At transverse joints between sheets of liner used in cast-in-place structures and pipe joints, the space between ends of locking extensions, measured longitudinally, shall not exceed 4 inches. Where sheets are cut and joined for the purpose of fitting irregular surfaces, this space shall not exceed 2 inches.

D. Securing Liner in Place

1. Liner shall be held snugly in place against inner forms. For pipes and similar circular sections, light steel banding straps or other approved means shall be used.
2. Banding straps shall be placed in strap channels, as specified under provision for strap channels, at a spacing not to exceed 20 inches.
3. Any method of banding, other than in strap channels, shall be reviewed by the Engineer.
4. On vertical surfaces where form ties or form stabilizing rods pass through liner, provisions shall be made to maintain the liner in close contact with the forms during concrete placement. These provisions shall be reviewed by the Engineer.
5. Concrete shall be prevented from flowing around the edges of sheets at joints by a method reviewed by the Engineer.
6. Forms in contact with plastic liner need not be oiled.

E. Weep Channels

1. At each pipe joint and at transverse joints in cast-in-place structures, a gap not less than 2 inches nor greater than 4 inches shall be left in all locking extensions to provide a transverse weep channel. If locking extensions are removed to provide a weep channel at joints, the base of the extension left on the sheet shall not exceed 0.032 inch.
2. Intermediate weep channels shall be provided as required to maintain a maximum spacing of 8 feet. Intermediate weep channels shall not be less than 2.5 inches nor greater than 4.0 inches in width. If locking extensions are removed to provide intermediate weep channels, the base of the extension left on the sheet shall not exceed 0.063 inch.
3. Any area behind liner, which is not properly served by regular weep channels, shall have additional weep channels 2 inches wide provided by cutting away locking extensions.
4. A transverse weep channel shall be provided approximately 12 inches away from each liner return where surfaces lined with plastic liner join surfaces which are not so lined.

5. As a part of the Work of installing liner, outlets of all weep channels shall be cleared of obstructions which would interfere with their proper functions.
6. Weep channels shall be designed for external hydrostatic pressures on pipe equal to 100 feet water column (43 psi) or greater.

F. Liner Returns

1. A liner return shall be installed where shown on the approved shop drawings and wherever surfaces lined with plastic liner joins surfaces which are not so lined.
2. Unless otherwise indicated by the Drawings or the approved shop drawings showing liner installation methods, returns shall be made as follows:
 - a. Each liner return shall be a separate strip of liner at least 3 inches wide joined at right angles to the main liner by means of approved corner strips.
 - b. Corner strips shall be welded continuously to the return and to the main liner and applied wherever possible from the back of the lining.
3. Locking extensions shall be provided on returns to lock the returns to the concrete of plastic-lined, cast-in-place structures.
4. Each liner return shall be sealed to adjacent construction with which it is in contact by means of a compound acceptable to the Engineer. If the joint space is too wide or the joint surfaces too rough to permit the use of the compound, the joint space shall be filled with 2 inches of densely caulked cement mortar, lead wool, or other caulking material and finished with a minimum of 1 inch of an approved corrosion resistant material.

3.3 CONCRETING OPERATIONS

A. Concrete Placement

1. Concrete placed against liner shall be carefully vibrated so as to avoid damage to the liner and to produce dense concrete securely anchoring the locking extensions into the concrete. External vibrators shall be used in addition to internal vibrators, particularly along the lower terminal edge of the liner.
2. Stiffeners used along locking extensions of liner, installed in forms for pipe, shall be withdrawn completely during the placement of concrete in the forms. The concrete shall be revibrated to consolidate the concrete in the void spaces caused by the withdrawal of the stiffeners.

B. Removing Forms

1. In removing forms, care shall be taken to protect liner from damage. Sharp instruments shall not be used to pry forms from lined surfaces. When forms are removed, any nails that remain in the liner plate shall be pulled without tearing

the liner and the resulting holes clearly marked. Form tie holes shall be marked before ties are broken off and all areas of abrasion of the liner shall be marked.

2. Following completion of form removal, liner in pipe and structures shall be cleaned for inspection.
3. Banding straps used in securing liner to forms for pipe and cast-in-place structures shall be removed within the limits of the unlined invert. Voids left in the invert at the edge of the liner shall be filled with cement mortar or other material acceptable to the Engineer.

3.4 FIELD JOINTING OF LINER

A. Installation Requirements

1. No field joint shall be made in the liner until the lined pipe or structure has been backfilled and leakage testing has been completed. Where ground water is encountered, the joint shall not be made until pumping of ground water has been discontinued for at least 7 days and no visible leakage is evident at the joint. Liner at joints shall be free of all mortar and other foreign material and shall be clean and dry before joints are made.
2. Hot joint compound shall not be brought in contact with liner.
3. No coating of any kind shall be applied over any joint, corner or welding strip, except where nonskid coating is applied to liner surfaces.

B. Field Joints in Pipe Installation

1. Field joints in liner plate at pipe joints shall be one of the following types:
 - a. Type 1 Pipe Joint. A Type 1 Pipe Joint shall consist of a 4-inch joint strip, centered over the mortared pipe joint and secured along each edge to adjacent liner by means of a welding strip.
 - b. Type 2 Pipe Joint
 - (1) A Type 2 Pipe Joint shall be made with an integral joint flap with locking extensions removed as extending 4 inches, 1/4 inch beyond the spigot end of the pipe. In the case of beveled pipe, the flap shall overlap and be welded to the lining of the adjacent pipe section with a weld strip. Care shall be taken to protect the flap from damage. Avoid excessive tension and distortion in bending the flap back to facilitate laying and joint mortaring.
 - (2) Any flap which has been bent back and held shall be allowed to return to its original shape and flatness well in advance of making the liner joint.

2. Field joints in liner at pipe joints shall not be made until the mortar in the pipe joint has been allowed to cure for at least 48 hours.
 3. Joints between lined pipe and lined structures shall be either Type 3 Structure Joint or Type 4 Structure Joint.
- C. Field Joints in Concrete Structures. Field joints in liner on concrete structures shall be one of the following types:
1. Type 3 Structure Joint. A Type 3 Structure Joint shall be made in the same manner as a Type 1 Pipe Joint. The width of space between adjacent sheets of liner in a Type 3 Joint shall not exceed 1/2 inch. This is the only type of joint permitted at transverse contraction joints in concrete. Its only other use is for joints between precast reinforced concrete pipes and concrete structures.
 2. Type 4 Structure Joint
 - a. A Type 4 Structure Joint shall be made by overlapping sheets not less than 1-1/2 inches and securing the overlap to the adjacent liner by means of a welding strip. The upstream sheet shall overlap the down stream sheet. The length of that part of the overlapping sheet not having locking extensions shall not exceed 4 inches.
 - b. A welding strip shall be applied to the back of the joint. This type of joint may be used at any transverse liner joint in concrete and shall be used for liner joints made at longitudinal joints in concrete.
 3. Type 5 Structure Joint. A Type 5 Structure Joint shall be made by butting sheets of liner together and applying a welding strip over the back of the joint before concrete is placed, and applying a welding strip over the front of the joint, after concrete is in place. A Type 5 Joint will not be permitted at a transverse joint which extends to a lower terminal edge of liner or at any joint where the gap between adjoining sheets of liner exceed 1/8 inch.
- D. Installation of Welding Strips
1. Welding strips shall be fusion welded to joint strips and liner by qualified welders using only approved methods and techniques. The welding operation of any joint shall be continuous until that joint has been completed.
 2. Adequate ventilation shall be maintained in confined spaces during welding operations.
 3. The welding strip shall be centered over the cleaned surfaces to be jointed and fused across its entire width. Incomplete fusion, or charred or blistered welds will be rejected.

4. Hot air welding guns shall provide clean effluent air at constant pressure to the surfaces to be joined within a temperature range between 500 degrees F and 600 degrees F.
 5. After repairs have been made, defective welds will be reinspected and tested.
- E. Joint Reinforcement. A 12-inch long welding strip shall be applied as a reinforcement across each transverse joint and weep channel which extends to the lower terminal edge of liner. These reinforcement strips shall be centered over the joint being reinforced and located as close to the lower edge of liner as practicable. They shall be welded in place after the transverse welding strips have been installed.
- F. Application of Liner to Concrete Surfaces with Adhesives. Application of liner plate to concrete surfaces by means of adhesive shall be allowed only where specifically acceptable to the Engineer and called out on approved shop drawings and shall be accomplished by the following steps:
1. The concrete surface shall be etched by abrasive blasting to develop a slightly granular surface.
 2. After abrasive blasting, the concrete surface shall be thoroughly cleaned of dust.
 3. The concrete surface and back surface of the liner shall then receive one brush coat of a primer (approved by the manufacturer). Coverage shall not exceed 300 square feet per gallon for each coat. One hour drying time shall be allowed after application of the primer prior to applying the adhesive.
 4. The concrete surface and the back surface of the liner shall each be given one coat of an approved adhesive. Coverage shall not exceed 250 square feet per gallon for each coat.
 5. When the surface of the adhesive is barely tacky to the touch, the liner shall be positioned with one edge firmly pressed down. The liner shall then be rolled into place, care being taken to avoid the formation of air pockets. Joints shall be tight fitting butt joints. The surface of the liner shall be rubbed vigorously to secure the liner plate firmly in place. Corner and welding strips shall be positioned over joints and welded in place.
- G. Nonskid Surfaces. Surfaces of liner, shown on the Drawings to be nonskid, shall be treated as follows prior to installation:
1. The liner shall be cleaned, dried, and spread with an adhesive coating recommended by the manufacturer of the liner plate.
 2. The surface shall then be liberally sprinkled with clean, dry, well graded sand, all of which will pass a No. 30 sieve but be retained on a No. 70 sieve.

3. After the sanded surface has thoroughly dried, excess sand shall be brushed away and a seal coat of the adhesive coating shall be sprayed over the sand in sufficient quantity to coat and bond the sand to the liner plate.
4. The coated sand surface shall be allowed to dry thoroughly before handling.

H. Protection and Repair of Liner

1. Necessary measures and precautions shall be taken to prevent damage to liner from equipment and materials used in or taken through the Work. Any damage to installed liner plate shall be repaired by the Contractor in accordance with the requirements for repair of the liner.
2. Nail and tie holes and cut, torn and seriously abraded areas in the liner plate shall be patched. Patches made entirely with welding strip shall be fused to the liner over the entire patch. The use of this method is limited to patches which can be made with a single welding strip. The use of parallel, overlapping or adjoining welding strips will not be permitted. Larger patches may consist of smooth liner over the damaged area, with edges covered with welding strips fused to the patch and to the liner adjoining the damaged area. The size of a single patch of the latter type shall be limited only as to its width, which shall not exceed 4 inches.
3. Whenever liner is not properly anchored to concrete, or whenever patches larger than those permitted above are necessary, the repair of the liner and the restoration of anchorage shall be accomplished by injecting epoxy grout behind the liner plate by a method approved by the Engineer. The use of adhesives will not be allowed to repair improperly anchored liner plate.

I. Field Tests

1. Upon completion of the installation, the surface of liner shall be cleaned to permit visual inspection and spark testing by the Engineer, using a spark-type detector complying with the requirements for Spark Test. Areas of liner failing to meet the field test shall be properly repaired and retested.
2. The Contractor shall assist in the inspection and spark testing by providing adequate ventilation, ladders for access, barricades or other traffic control devices, and shall be responsible for opening and closing entrances and exits.
3. Any spark testing of liner by the Contractor shall be done with a detector complying these Specifications.

3.5 MANUFACTURER'S ASSISTANCE

- A. Initial Training. At the start of liner plate installation, the manufacturer shall provide a minimum of 5 working days of technical assistance to the Contractor for the purpose of instructing the Contractor's personnel in proper placement techniques.

- B. **Inspection of Initial Installation.** After placement of concrete on the initial liner installation, the liner manufacturer shall instruct the Contractor's personnel on removal of forms and shall inspect the initial liner installation after removal of forms. The Contractor shall not proceed with liner installation prior to inspection of the initial installation by the liner manufacturer.
- C. **Periodic Assistance.** After satisfactory initial liner installation, the liner manufacturer shall make periodic visits to the job site for the purpose of providing ongoing instruction to the Contractor and inspecting the liner installation at no greater than 30 day intervals throughout the period of liner installation.
- D. **Additional Assistance.** In addition to the specified periodic job site visits, the Engineer may request additional assistance of the liner manufacturer or his authorized representative.

CONSTRUCTION OF SANITARY SEWERS BY PIPE BURSTING

PART 1 GENERAL

1.1 WORK INCLUDED

1. This section covers the installation of new sewer pipe in the sizes indicated and at the locations shown on the drawings using pipe bursting.
2. Work specified under this section includes television inspection of the existing sewer prior to beginning pipe bursting and after installation has been completed, point repairs to the existing sewer prior to bursting where indicated on the drawings or authorized by the Engineer, replacement of the existing sewer with a new sewer using the pipe bursting process, connecting sewer service laterals to the new sewer, and furnishing all materials, equipment, labor, and other items as required for completion of the work in accordance with the Contract documents.
3. Pipe bursting is a trenchless method by which a pneumatic burster unit is inserted inside of the existing pipe and splits the existing pipe while simultaneously installing a new HPDE pipe of the same or larger diameter at the location of the existing pipe.
4. Only pneumatically operated equipment with either front or rear expanders (as determined by Contractor) for the proper connection to the HDPE will be considered for use. The pneumatic tool shall be used in conjunction with a constant tension/variable speed winch. The winch shall have twin cable pulling capstans with twin hydraulic drive motors and twin gear boxes for independent operation of either 20, 10, or 5 tons. The size of the winch shall be selected by the Contractor and will depend upon the diameter of the pipe to be replaced but in no case shall the constant tension on the winch exceed 20 tons.

1.2 REFERENCES

- A. ASTM F714.
- B. ASTM D1248.
- C. ASTM D3350.

1.3 RELATED SECTIONS

- A. City of Lincoln Standard Specifications for Municipal Construction General Provisions
- B. City of Lincoln Standard Specifications for Municipal Construction Chapter 20.
- C. City of Lincoln Standard Specifications for Municipal Construction Chapter 22.

1.4 QUALIFICATIONS AND EXPERIENCE

- A. The Contractor shall be certified by the particular Pipe Bursting System Manufacturer that such firm is licensed installer of their system. Contractor's personnel shall demonstrate, to the satisfaction of the Engineer, satisfactory prior experience on previous pipebursting projects. Contractor shall submit crew references and listing of previous pipebursting projects.
- B. Polyethylene pipe jointing shall be performed by personnel trained in the use of thermal butt-fusion equipment and recommended methods for new pipe connections. Personnel directly involved with installing the new pipe shall receive training in the proper methods for handling and installing the polyethylene pipe. Training shall be performed by qualified representative.
- C. Contractor shall be responsible for any royalties resulting from their work. The Contractor shall hold the City of Lincoln and the Engineer whole harmless in any legal action resulting from patent infringements.

1.5 SUBMITTAL DATA

- A. Submit drawings and data for review as required by the City of Lincoln Standard Specifications for Municipal Construction General Provisions.
- B. Submit the following Contractor's Drawings:
 - 1. Shop drawings, catalog data, and manufacturer's technical data showing complete information on material composition, physical properties, and dimensions of new pipe and fittings. Include manufacturer's recommendation for handling, storage, and repair of pipe and fittings damaged.
 - 2. Method of construction and restoration of existing sewer service connections. This shall include:
 - a. Detail drawings and written description of the entire construction procedure to install pipe, bypass sewage flow and reconnection of sewer service connections.
 - 3. Certification of proposed crew along with references and listing of previous pipebursting projects.
 - 4. Television inspection reports and video tapes of existing sewer prior to pipe bursting (preinstallation) and of new sewer pipe after installation and connection of service laterals (postinstallation).

PART 2 PRODUCTS

2.1 GENERAL

- A. Products shall be furnished and delivered in accordance with the Contract requirements.

2.2 MATERIALS

- A. Materials shall be HDPE pipe suitable for sanitary sewer service, fusible PVC pipe or restrained joint PVC sanitary sewer pipe compatible for use in pipe burst installations. The Contractor shall submit the proposed pipe material to be used to the Engineer for review and approval prior to start of work.

2.3 EQUIPMENT

A. Pipe Bursting Tool.

1. The pipe bursting tool shall be designed and manufactured to force its way through existing pipe materials by fragmenting the existing pipe and forcing the fragmented existing pipe sections into the surrounding soil as it progresses.
2. The bursting tool shall be pneumatic and shall be of sufficient size and generate sufficient force to burst and compact the existing pipe into the surrounding soil.
3. The pipe bursting tool shall have its own forward momentum while being assisted by winching. A constant tension hydraulic winch shall provide the bursting tool with friction by which it can be advanced forward.
4. The bursting action of the tool shall increase the external dimensions sufficiently, causing breakage of the existing pipe and at the same time expanding the surrounding ground as required. This action shall not only break the pipe but also create the void into which the bursting tool can be winched and enabling forward progress to be made.
5. Pipe bursting head shall be of sufficient diameter to enlarge the soil as required to accommodate the new pipe where the new pipe is larger than the existing pipe.
6. The pipe bursting tool shall be pulled through the sewer by a winch located at either the upstream or downstream manhole as required.
7. The pipe bursting head shall have provisions to attach the new pipe and shall pull the new pipe into place as it moves forward. The pipe bursting head shall incorporate a shield/expander to prevent collapse of the hole ahead of the new pipe being inserted.
8. The pipe bursting tool shall be remotely controlled.

B. Winch Unit.

1. The winch shall be attached to the front of the pipe bursting tool, connecting to or through the advanced guide head technology.
2. The winch shall provide a constant tension to the bursting tool in order that it may operate in an efficient manner. The winch shall have twin capstan with twin hydraulic drive motors and twin gear boxes for independent operation.
3. The winch shall be hydraulically operated providing a constant tension throughout the operation. The winch shall be of the constant tension type but shall be fitted with a direct reading load gauge to measure the winching load.
4. The winch shall automatically maintain a constant tension at a set tonnage reading.
5. The constant tension winch shall supply sufficient cable in one continuous length so that the pull shall be continuous between approved winching points.
6. The winch, cable, and cable drum shall be provided with safety cage and supports so that it may be operated safely without injury to persons or property.
7. The Contractor shall provide a system of guide pulleys and bracing at the exit pit to minimize cable contact with the existing pipe between launch and exit pits.
8. The supports to the trench shoring in the insertion pit shall remain completely separate from the winch boom support system and shall be designed so that neither the pipe nor the winch cable shall be in contact with them.
9. The winch shall have twin capstan with twin hydraulic drive motors and twin gear boxes for independent operation. In no case shall the winch cable storage spool be considered part of the twin capstan pulling system.

2.4 DELIVERY, STORAGE, AND HANDLING

- A. Transport, handle, and store pipe and fittings as recommended by manufacturer.
- B. If new pipe and fittings become damaged before or during installation, it shall be repaired as recommended by the manufacturer or replaced as required by the Engineer at the Contractor's expense, before proceeding further.
- C. Deliver, store and handle other materials as required to prevent damage.

PART 3 EXECUTION

3.1 PREINSTALLATION TELEVISION INSPECTION

- A. Prior to beginning pipe bursting installation, all existing sewers that will be pipe burst shall be internally inspected using CCTV equipment with pan and tilt capabilities. Television inspection of pipelines shall be performed by experienced personnel trained in locating breaks, obstacles and service connections by closed circuit color television. Television inspection shall include the following:
1. A copy of each preinstallation video tape shall be submitted to the Engineer prior to beginning pipe bursting work.
 2. Video tapes shall remain property of the Owner; Contractor shall retain second copy for his use.
 3. All flows tributary to reach of sewer being inspected shall be completely bypassed around the reach during inspection. if necessary and as required by Engineer. Sewer shall be cleaned as required for video inspection.
 4. Each video tape shall include voice description, as appropriate with stationing of services indicated. Data and stationing to be shown on the video.
 5. Should any portion of the inspection tapes be of inadequate quality or coverage, as determined by the Owner, the Contractor will have the portion reinspected and video taped at no additional expense to the Owner.
 6. Preinstallation sewer inspection shall be used to locate all existing active sewer service laterals and to confirm that the condition of the existing sewer is satisfactory for pipe replacement using the pipe bursting process.
 7. Contractor shall immediately notify Engineer if, in the opinion of the Contractor, the preinstallation video inspection reveals conditions within the existing sewer that differ significantly from those presented in the supplemental information sewer inspection videos. Engineer will evaluate Contractor's claim for differing conditions and recommend if additional existing sewer should be replace by point repair prior to beginning pipe bursting.

3.2 BYPASS PUMPING OF SEWAGE

- A. By-Pass Pumping: The Contractor, when and where required, shall provide diversion of sewage flows for the pipe bursting/replacement process. The pumps and by-pass lines shall be of adequate capacity and size to handle all flows. All costs for by-pass pumping, required during installation of the pipe shall be paid for in accordance with the appropriate pay item shown in the contract documents.
- B. The Contractor shall be responsible for continuity of sanitary sewer service to each facility connected to the section of sewer during the execution of the work.

- C. If sewage backup occurs and enters buildings, the Contractor shall be responsible for clean-up, repair, property damage cost and claims.

3.3 SEWER SERVICE CONNECTIONS

- A. All sewer service connections shall be identified, located and excavated prior to the pipe insertion to expedite reconnection. Upon commencement, pipe insertion shall be continuous and without interruption from one manhole to another, except as approved by the engineer and/or his representative. Upon completion of insertion of the new pipe, the Contractor shall expedite the reconnection of services so as to minimize any inconvenience to the customers.
- B. Sewer service connections shall be connected to the new pipe by mechanical methods. Once the saddle is secured in place, drill hole full inside diameter of saddle outlet in pipe liner.

3.4 PIPE BURSTING

- A. Insertion or launching pits shall only be allowed at locations of existing or proposed manholes, unless otherwise approved by Engineer, to minimize excavation and site impacts.
- B. Equipment used to perform the work shall be located away from buildings so as not to create a noise impact. Provide silencers or other devices to reduce machine noise as required to meet requirements. Provide a silent engine compartment with the winch to reduce machine noise as required to meet local requirements.
- C. Launch pits shall be long enough to properly align the bursting tool with the existing pipe and to allow the new pipe to transition from within the pit to the ground level without deleterious effect to the new pipe.
- D. The Contractor shall install all pulleys, rollers, bumpers, alignment control devices and other equipment required to protect existing manholes, and to protect the pipe from damage during installation. Lubrication may be used as recommended by the manufacturer. Under no circumstances shall the pipe be stressed beyond its elastic limit.
- E. Contractor shall locate existing underground utilities prior to beginning work and to assess the necessity and feasibility of excavating window to protect existing utilities. Contractor shall expose existing utilities as required by excavating windows to prevent damage to existing utilities.
- F. Service connections shall be excavated to a minimum depth of one foot below the lateral pipe to prevent uneven expansion of the soil by the bursting tool.
- G. Point repairs will be constructed at the locations indicated on the drawings and at locations authorized by the Engineer.

- H. The installed pipe shall be allowed the manufacturer's recommended amount of time, but not less than four (4) hours, for cooling and relaxation due to tensile stressing prior to any reconnection of service lines, sealing of the annulus or backfilling of the insertion pit. Sufficient excess length of new pipe, but not less than four (4) inches, shall be allowed to protrude into the manhole to provide for occurrence.
- I. Following the relaxation period, all annular space shall be sealed. Sealing shall be made with material approved by the Engineer and/or his representative and shall extend a minimum of eight (8) inches into each manhole wall in such a manner as to form a smooth, uniform, watertight joint. An external water stop shall be attached for the full circumference of the exterior of the new pipe at the approximate center of each manhole wall and embedded within the seal to prevent the entry of groundwater through the manhole wall.

3.5 POSTINSTALLATION TELEVISION INSPECTION

- A. After installation of the sewer by pipe bursting and connection of all sewer service laterals, the entire length of all new sewers shall be internally inspected using CCTV equipment with pan and tilt capabilities. Television inspection of pipelines shall be performed by experienced personnel trained in locating breaks, obstacles and service connections by closed circuit color television. Television inspection shall include the following:
 - 1. A copy of each postinstallation video tape shall be submitted and accepted by the Engineer prior to payment for the new sewer.
 - 2. Video tapes shall remain property of the Owner; Contractor shall to retain second copy for his use.
 - 3. All flows tributary to reach of sewer being inspected shall be completely bypassed around the reach during inspection. if necessary and as required by Engineer.
 - 4. Each video tape shall include voice description, as appropriate with stationing of services indicated. Data and stationing to be shown on the video.
 - 5. Should any portion of the inspection tapes be of inadequate quality or coverage, as determined by the Village, the Contractor will have the portion reinspected and video-taped at no additional expense to the Owner.
 - 6. Postinstallation sewer inspection shall be used to evaluate the installed condition of the new sewer and sewer service lateral connections. Engineer shall evaluate and accept the new sewer and new service connections prior to recommending payment for these items.

3.6 FIELD TESTING REQUIREMENTS

- A. After the existing sewer is completely replaced, internally inspect with television camera and video tape as required. The finished tape shall be continuous over the entire length of the sewer between two manholes and to be free from visual defects.
- B. Defects which may affect the integrity or strength of the pipe in the opinion of the Engineer shall be repaired or the pipe replaced at the Contractor's expense.
- C. Other testing requirements for sanitary sewers as stipulated in the City of Lincoln's Standard Specifications for Municipal Construction.

**APPENDIX A
SOIL BORING LOGS**



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 207826.7 E 157396.1
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & SG

BORING LOG

BORING No.: B-6

SHEET 1 of 1

DATE: 7-22-2008

WATER LEVELS

7.8 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1146.1	0.0	[Hatched pattern]	CL - LEAN CLAY; 0-5% fine sand; medium plasticity; black; wet; stiff; with small roots. (Topsoil)		2.8*			0.0
1145.6	0.5		CL/CH - LEAN TO FAT CLAY; medium to high plasticity; very dark grayish brown; wet; very stiff. (Subsoil)	1	2.5*	90.6	26.4	
						2.2*		
1143.6	2.5		CL - LEAN CLAY; medium plasticity; very dark grayish brown slightly mottled with light grayish brown; wet; stiff. (Alluvium)					2.5
1141.1	5.0		CL - LEAN CLAY; 0-5% fine sand; medium plasticity; black; wet; very stiff. (Alluvium)					5.0
1138.6	7.5		CL - LEAN CLAY; 10-15% fine sand; medium plasticity; dark grayish brown slightly mottled with very dark gray; saturated; very stiff. (Alluvium)					7.5
1135.1	11.0		CL - LEAN CLAY; same as above except medium stiff. (Alluvium)					11.0
1131.1	15.0		Boring Terminated at: 15.0ft					15.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.

Figure C - 1



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 207609.5 E 157083.8
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & SG

BORING LOG

BORING No.: B-02

SHEET 1 of 1

DATE: 7-22-2008

WATER LEVELS

▼ 3.7 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1145.1	0.0	[Hatched pattern]	CL - LEAN CLAY; 0-5% fine gravel; 0-5% fine to coarse sand; medium plasticity; very dark brown; wet; stiff; with small roots. (Fill)	2	93.4	24.7	0.0
1144.6	0.5		CL - SANDY LEAN CLAY; 0-5% fine gravel; 30-40% fine to coarse sand; medium plasticity; brown heavily mottled with black; wet; stiff; with cinders and rubble. (Fill)				2.5
1141.4	3.7		CL - SANDY LEAN CLAY; same as above except saturated. (Fill)				5.0
1138.6	6.5		CH - FAT CLAY; 0-5% fine sand; high plasticity; very dark gray slightly mottled with gray; saturated; stiff. (Alluvium)				7.5
1134.1	11.0		CL - LEAN CLAY; 0-5% fine sand; medium plasticity; gray slightly mottled with light gray; saturated; stiff. (Alluvium)				12.5
1130.1	15.0		Boring Terminated at: 15.0ft				15.0
							17.5
							20.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

Figure C - 2



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard

LOCATION: N 207294.2 E 156110.9

JOB NO.: 52-68-5070
RIG / METHOD: Hand Auger
CREW: CL & BB

BORING LOG

BORING No.: B-0

SHEET 1 of 1

DATE: 7-23-2008

WATER LEVELS

▼ 1.3 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1134.2	0.0	[Hatched pattern]	CL - LEAN CLAY; 5-10% fine sand; medium plasticity; very dark gray; saturated; soft. (Alluvium)					0.0
1133.7	0.5		CL - LEAN CLAY with Sand; 20-30% fine to medium sand; medium plasticity; black; saturated; medium stiff. (Alluvium)					2.5
1131.2	3.0		CL - LEAN CLAY; medium plasticity; very dark gray mottled with dark gray; saturated; very soft to soft. (Alluvium)	5	0.4*	70.7	51.2	2.5
1129.9	4.3		Site access would not allow for a drill rig, borehole advanced by hand. With soft, saturated soils the borehole would not remain open. Boring caved in at 4.0'. Boring Terminated at: 4.3ft		0.2*			5.0
								7.5
								10.0
								12.5
								15.0
								17.5
								20.0

BORING LOG - VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 207279.8 E 156457.3
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & SG

BORING LOG

BORING No.: B-07

SHEET 1 of 1

DATE: 7-22-2008

WATER LEVELS ▼ 8.9 on 7-25-2008

ELEV (NAVDB88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1146.5	0.0		CL - LEAN CLAY with Sand; 0-5% fine gravel; 15-25% fine to medium sand; medium plasticity; olive brown with dark gray; moist to wet; stiff; with a trace of limestone. (Fill)					0.0
1144.5	2.0		CL-ML - SILTY CLAY; low to medium plasticity; brown heavily mottled with dark grayish brown; wet; stiff. (Alluvium)	6	2.4*	87.1	29.8	2.5
1142.5	4.0		CL - LEAN CLAY; 5-10% fine sand; medium plasticity; black; saturated; soft to medium stiff. (Alluvium)		1.2*			5.0
1140.5	6.0		CL - LEAN CLAY; 5-10% fine sand; medium plasticity; black slightly mottled with gray; wet; stiff. (Alluvium)					7.5
1137.6	8.9		CL - LEAN CLAY; same as above except saturated. (Alluvium)					10.0
1136.0	10.5		CL - SANDY LEAN CLAY; 30-40% fine sand; medium plasticity; very dark brown; saturated; medium stiff; with sand seams. (Alluvium)					12.5
1133.5	13.0		CH - FAT CLAY; 10-15% fine sand; high plasticity; dark grayish brown slightly mottled with dark yellowish brown slightly mottled with very dark gray; saturated; stiff to very stiff. (Alluvium)					15.0
1131.5	15.0		Boring Terminated at: 15.0ft					17.5
								20.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.

Figure C - 4



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 206874.6 E 156640.7
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & SG

BORING LOG

BORING No.: B-0.
SHEET 1 of 1
DATE: 7-22-2008

WATER LEVELS ▼ 7.9 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1147.2	0.0	[Hatched pattern]	CL - LEAN CLAY; 0-5% fine to coarse sand; medium plasticity; very dark brown; wet; stiff; with small roots. (Fill)	8	2.0*	91.0	26.5	0.0
1146.7	0.5		CL - LEAN CLAY; CINDERS and BRICK; black. (Fill)					0.5
1145.7	1.5	[Hatched pattern]	CL - LEAN CLAY; medium plasticity; dark grayish brown slightly mottled with black; wet; stiff. (Alluvium)					1.5
1144.7	2.5		CL - LEAN CLAY; 10-15% fine sand; medium plasticity; gray mottled with dark grayish brown; wet; medium stiff. (Alluvium)					2.5
1141.7	5.5		CL - LEAN CLAY; 0-5% fine sand; medium plasticity; black; wet; stiff to very stiff. (Alluvium)					5.5
1138.7	8.5	[Hatched pattern]	CL - LEAN CLAY; 15-25% fine sand; medium plasticity; very dark gray mottled with grayish brown heavily mottled with dark grayish brown; wet to saturated; stiff to very stiff. (Alluvium)					8.5
1135.2	12.0		CL - LEAN CLAY; 5-10% fine sand; medium plasticity; very dark gray; saturated; soft to medium stiff. (Alluvium)					12.0
1132.2	15.0		Boring Terminated at: 15.0ft					15.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 206627.7 E 156760.2
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & BB

BORING LOG

BORING No.: B-10

SHEET 1 of 1

DATE: 7-23-2008

WATER LEVELS

7.9 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1146.1	0.0		CL - LEAN CLAY with Sand; 0-5% fine to coarse gravel; 15-25% fine to coarse sand; medium plasticity; very dark brown; moist; medium stiff. (Fill)					0.0
1141.1	5.0		CL - LEAN CLAY with Gravel; 5-15% coarse gravel; medium plasticity; very dark brown; wet; stiff. (Fill)	9	1.75*	79.5	34.8	5.0
1139.1	7.0		CL - LEAN CLAY; 0-5% fine gravel; 10-15% fine to coarse sand; medium plasticity; black slightly mottled with dark yellowish brown; saturated; soft to medium stiff. (Alluvium)					7.5
1136.1	10.0		CL - LEAN CLAY with Sand; 15-25% fine to medium sand; medium plasticity; very dark gray; saturated; soft. (Alluvium)					10.0
1131.1	15.0		Boring Terminated at: 15.0ft					15.0
								17.5
								20.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.

Figure C - 6



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 206277.1 E 156873.4
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & BB

BORING LOG

BORING No.: B-1

SHEET 1 of 1

DATE: 7-23-2008

WATER LEVELS

9.2 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1150.5	0.0		SC - CLAYEY SAND; 0-5% fine to coarse gravel; 50-60% fine to coarse sand; low plasticity; dark brown with dark yellowish brown heavily mixed with black; moist; dense. (Fill)					0.0
1148.0	2.5		CL - LEAN CLAY; medium plasticity; dark gray; wet; stiff. (Alluvium)	10	1.2*	91.4	27.1	2.5
1146.0	4.5		ML - SILT; low plasticity; dark grayish brown heavily mottled with very dark gray; wet; very loose. (Alluvium)		0.75*			5.0
1144.5	6.0		CL - LEAN CLAY; medium plasticity; dark grayish brown; wet to saturated; medium stiff. (Alluvium)					7.5
				11	1.25*	90.5	30.3	10.0
					1.0*			
					0.6*			10.0
1139.5	11.0		CH - FAT CLAY; 0-5% fine to medium sand; high plasticity; very dark gray slightly mottled with dark grayish brown; saturated; stiff. (Alluvium)					12.5
1135.5	15.0		Boring Terminated at: 15.0ft					15.0
								17.5
								20.0

BORING LOG - VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.

Figure C - 7



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 206167.2 E 156875.4
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & BB

BORING LOG

BORING No.: B-13

SHEET 1 of 2

DATE: 7-23-2008

WATER LEVELS

▼ 8.5 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1150.1	0.0		SM - SILTY SAND; 70-80% fine to coarse sand; dark brown with very dark gray; wet; dense. (Fill)					0.0
1148.1	2.0		CL - LEAN CLAY with Sand; 15-25% fine to medium sand; medium plasticity; dark grayish brown mottled with very dark gray slightly mottled with dark yellowish brown; wet; medium stiff. (Alluvium)					2.5
1145.1	5.0		CL - LEAN CLAY; 0-5% fine sand; medium plasticity; very dark grayish brown slightly mottled with dark gray; saturated; medium stiff; with silt seams. (Alluvium)					5.0
								7.5
1140.1	10.0		CH - FAT CLAY; 0-5% fine to coarse sand; high plasticity; black slightly mottled with dark brown slightly mottled with very dark grayish brown; saturated; medium stiff. (Alluvium)					10.0
								12.5
1136.1	14.0		CL - LEAN CLAY; 0-5% fine sand; medium plasticity; black; saturated; soft. (Alluvium)					15.0
1133.5	16.6		CH - FAT CLAY; high plasticity; dark gray; saturated; stiff. (Alluvium)	12	0.25* 1.0*	76.6	44.8	17.5
1132.1	18.0		CL - LEAN CLAY; medium plasticity; dark gray; saturated; medium stiff. (Alluvium)					17.5
1130.1	20.0							20.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.

Figure C - 8a



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard

LOCATION: N 206167.2 E 156875.4

JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & BB

BORING LOG

BORING No.: B-1

SHEET 2 of 2

DATE: 7-23-2008

WATER LEVELS

▼ 8.5 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
			CL - LEAN CLAY; same as above. (Alluvium)					20.0
								22.5
				13	0.7*	91.1	30.4	22.5
1126.4	23.7		Boring Terminated at: 23.7ft		0.7*			25.0
								27.5
								30.0
								32.5
								35.0
								37.5
								40.0

BORING LOG - VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.



825 J Street
Lincoln, NE 68501
402-479-2200 * Fax: 402-479-2276
www.hws.com

PROJECT: West Haymarket Redevelopment
BNSF Lincoln Depot Yard
LOCATION: N 206054.4 E 156873.5
JOB NO.: 52-68-5070
RIG / METHOD: CME 75HT / Straight Auger
CREW: CL & BB

BORING LOG

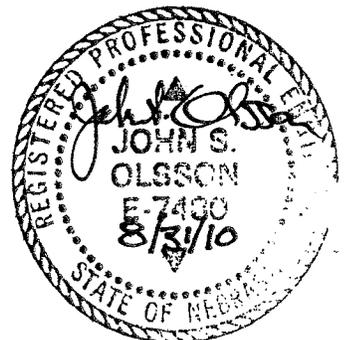
BORING No.: B-14
SHEET 1 of 1
DATE: 7-23-2008

WATER LEVELS ▼ 8.8 on 7-25-2008

ELEV (NAVD88)	DEPTH (feet)	LOG	LITHOLOGY DESCRIPTION	SAMPLE	qu (tsf)	DRY DENSITY (pcf)	MOISTURE (%)	DEPTH (feet)
1149.9	0.0	[Hatched Pattern]	CH - FAT CLAY with Sand; 20-30% fine to medium sand; high plasticity; olive brown with dark grayish brown slightly mottled with dark yellowish brown, slightly mottled with black; wet; very stiff. (Fill)					0.0
1147.9	2.0		CL - LEAN CLAY; 0-5% fine sand; medium plasticity; very dark gray slightly mottled with dark yellowish brown; wet; stiff. (Alluvium)					2.5
1144.9	5.0	[Hatched Pattern]	CL - LEAN CLAY; medium plasticity; dark grayish brown mottled with gray; wet; stiff. (Alluvium)	14	1.3*	92.0	28.1	5.0
1142.9	7.0		CL-ML - SILTY CLAY; 0-5% fine sand; low to medium plasticity; dark grayish brown mottled with very dark gray; wet; medium stiff. (Alluvium)		2.1*			7.5
1141.4	8.5	[Hatched Pattern]	CH - FAT CLAY; 0-5% fine sand; high plasticity; black; saturated; stiff. (Alluvium)					10.0
1137.9	12.0	[Hatched Pattern]	CL - LEAN CLAY; medium plasticity; very dark gray mottled with dark gray; saturated; medium stiff. (Alluvium)					12.5
1134.7	15.2		Boring Terminated at: 15.2ft	15	0.9*	86.6	34	15.0
				0.8*	17.5			
								20.0

BORING LOG VISION 2015 BORING LOGS.GPJ HWS.GDT 05/19/10

* Unconfined compressive strength was estimated using a calibrated hand penetrometer.



RESOLUTION NO. WH- _____

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

3 That the Purchase Agreement between Magdalen A. Franssen and the West Haymarket
4 Joint Public Agency for the acquisition of Lot 18, Block 260, Original Lincoln, commonly
5 known as 408 Q Street, Lincoln, Nebraska, upon the terms and conditions set out in said
6 Agreement attached hereto as Attachment "A" and incorporated herein by this reference, is
7 hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of
8 Representatives is hereby authorized to execute said Agreement on behalf of the West
9 Haymarket Joint Public Agency.

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

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (Agreement) is made and entered into this ____ day of _____, 2010, by and between **Magdalen A. Franssen**, a married person acting through James E. Franssen, Sr., Attorney-in-Fact, ("*Seller*"), and the **West Haymarket Joint Public Agency**, ("*Agency*") a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (Neb. Rev. Stat. §§13-2501 to 13-2550).

RECITALS

- A. *Seller* is the owner of certain real estate (as defined in Neb. Rev. Stat. § 76-201) and improvements commonly known as 325 North 5th Street in Lincoln, Lancaster County, Nebraska, and legally described as Lot 18, Block 260, Original Lincoln, Lancaster County, Nebraska, a/k/a 408 Q Street ("*Property*"); and
- B. *Seller* desires to sell and *Agency* 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. Transfer of Property.
 - 1.1 Sale and Transfer. At Closing (as hereinafter defined), *Seller* shall sell to *Agency*, and *Agency* shall acquire the fee simple right, title, and interest in the *Property*.
 - 1.2 Compensation. *Agency* shall pay to *Seller* **EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$18,000.00)** ("*Purchase Price*"), payable at Closing, subject to adjustments and prorations as herein provided.
 - 1.3 Date of Closing. *Seller* and *Agency* agree to close and complete this sale in accordance herewith on or before the 30th day of October, 2010 ("*Closing*").
 - 1.4 Evidence of Title. Prior to Closing, *Agency* 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 *Agency* if they do not interfere with *Agency's* intended use of the *Property*; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by *Agency*, and which do not interfere with *Agency'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 *Agency*; (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 *Agency*. The cost of the owner's title insurance policy shall be paid by the *Agency*.

- 1.5 Title and Possession. *Seller* agrees to deliver at Closing a properly executed Warranty Deed conveying the Property to *Agency* 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 *Agency* at the time of Closing.
- 1.6 Environmental; Tests. *Agency* and its agents or representatives have previously been granted the right to have access to the Property to perform a Phase 2 environmental site assessment to identify whether any environmental contamination that exists on the Property ("Test"). In the event *Agency* determines to its reasonable satisfaction based upon the Test that there exists environmental hazards, materials, or liabilities or other matters which are material to the use of the Property, then *Agency's* sole remedy shall be the right to terminate this Agreement. A copy of the Test together with related documents, reports and test reports shall be delivered to the Seller. *Agency* shall have until the Closing Date to provide notice of termination to the Seller.
- 1.7 Taxes, Assessments and Other Costs. All taxes related to the Property for 2009, and all prior years, shall be paid by *Seller* at or prior to closing. Any tax related to the Property for 2010, shall be prorated to the date of Closing based on the most recent property valuation and the most recent mill levy. 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. *Seller* shall pay any and all transfer taxes or similar fees which are payable upon the recording of the Warranty Deed from *Seller* to *Agency*. Each party 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 *Agency*.

2. Representations and Warranties.

- 2.1 Representations and Warranties of Seller. *Seller* represents and warrants to *Agency* as follows:

2.1.1 *[Intentionally Omitted]*

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 Agency 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.

2.2 Representations and Warranties of Agency.

2.2.1 Organization: Power: Good Standing. Agency is a political subdivision and body corporate and politic of the State of Nebraska created under the Joint Public Agency Act (Neb. Rev. Stat. §§13-2501 to 13-2550) 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 Agency and constitutes a legal, valid and binding obligation of Agency, enforceable against Agency 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 Agency and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action by Agency and will not require the consent, waiver, approval, license or authorization of any person or public authority on the part of Agency 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 Agency, 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 Agency 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 Agency harmless against, and will reimburse Agency 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 Agency 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 by Agency pursuant to this Agreement or any other agreement involving the parties hereto and contemplated hereby.
- 3.2 Indemnification by Agency. Upon the terms and subject to the conditions set forth in Section 3.3 hereof and this Section, Agency 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 Agency 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, Agency 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. Agency shall where necessary restore the Property to original condition if such tests alter the grade, compaction, or vegetation.

4. Conditions of Closing.

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

- 4.1.1 Agreements. The City of Lincoln or Agency entering into final definitive agreements with BNSF Railway Company (BNSF), Union Pacific Railroad Company (UPRR), National Railroad Passenger Corporation d/b/a Amtrak (Amtrak) for the West Haymarket Project; execution of a Joint Facilities Agreement between BNSF and UPRR for relocation of the BNSF tracks; execution of a mutually agreeable concurrence between Amtrak and BNSF for relocation of Amtrak's passenger track and depot.
- 4.1.2 Executed Instruments. Agency shall receive at Closing the executed warranty deed and easements, if any, in accordance with this Agreement.
- 4.1.3 Ingress and Egress Easement. Agency shall have ingress and egress easements to and from the Property, if necessary, which are acceptable to Agency at its sole discretion.
- 4.1.4 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 Agency. The Agency is entitled to take as a credit toward the Purchase Price the One Thousand Dollar right of entry payment previously paid to the City of Lincoln pursuant to the Right of Entry Access Agreement between the City of Lincoln and Magdalen A. Franssen.
- 4.2.2 Representations and Warranties. There have been no material inaccuracies in the representations and warranties of Agency 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 Agency 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, Agency shall have the right and option to cancel this Agreement and receive all monies paid under the Agreement.
5. Miscellaneous.
- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.
- 5.5 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 Agency:

West Haymarket Joint Public Agency

Attn: City Clerk
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

If to *Seller*:

Joseph F. Flattery

Vice President, Personal Trust
Relationship Manager
U.S. Bank Private Client Group
233 South 13th Street, Ste. 1011
Lincoln, NE 68508

with a copy to:

City Attorney's Office

555 South 10th Street
Lincoln, NE 68508

- 5.6 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.
- 5.7 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.
- 5.8 Time of Essence. The parties agree that time is of the essence in the performance of their respective obligations hereunder.
- 5.9 Waiver. Either Agency 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.
- 5.10 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 _____, 2010.

MAGDALEN A. FRANSSSEN,

Fed Id. No. or Social Security No.

By: _____
James E. Franssen, Attorney-in-Fact

EXECUTED by Agency this _____ day of _____, 2010.

APPROVED AS TO FORM:

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

Legal

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Purchase Agreement was acknowledged before me on this ____ day of _____, 2010, by James E. Fransssen, Sr., Attorney-in-Fact for Magdalen A. Franssen, on behalf of Magdalen A. Franssen.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Purchase Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

Notary Public

J:\code\agr\Franssen- Purchase Agr w WHJPA

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 between Thought District and the West Haymarket Joint
4 Public Agency to provide Website and Facebook Development and Design Services for the West
5 Haymarket Joint Public Agency, attached hereto and incorporated herein by this reference, is
6 hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of
7 Representatives is hereby authorized to execute said Agreement on behalf of the West
8 Haymarket Joint Public Agency.

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

CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 20____ (Execution Date), by and between the West Haymarket Joint Public Agency, hereinafter referred to as “JPA” and “Thought District”, hereinafter referred to as “Consultant.”

RECITALS

A.

The JPA proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in website development, design and content and facebook page development for the JPA and Haymarket Arena. (“Consultant Services”).

B.

Consultant possesses certain skills, experience, education and competency to perform the Consultant Services on behalf of the JPA, and the JPA desires to engage Consultant for such Consultant Services on the terms herein provided.

C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

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

I.

ADMINISTRATOR OF AGREEMENT

Dan Marvin, JPA Project Manager and JPA Board Secretary, 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. Eric Dinger, CEO of Thought District,

shall be the Consultant's representative and will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

II. SCOPE OF SERVICES

Consultant agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Attachment A on behalf of the JPA.

Attachment A is a copy of the proposal for Phase One: website development and design and facebook development and implementation. There are five services to be provided under Phase One:

1. site strategy and concept;
2. website design;
3. copyrighting and content collection and development;
4. programming and content management, live site launch and follow up and;
5. facebook page integration and development.

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

III. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until completion of all obligations of this agreement, but in no event longer than two months from the date of this contract.

IV.
COMPENSATION

The JPA agrees to pay Consultant for the Phase One services set forth in Attachment “A” a sum not to exceed Twenty Three Thousand Dollars (\$23,000). Progress payments based upon the completion of services performed as provided in Attachment “A” shall be payable upon receipt of supporting documentation acceptable to the JPA for the work completed.

1. \$5,750 shall be payable within ten days of execution of the Agreement.
2. \$5,750 shall be payable within 30 days upon approved and acceptable completion of the site map.
3. \$5,750 shall be payable within 30 days upon approved and acceptable completion of the website design, copyrighting and content collection.
4. \$5,750 shall be payable within 30 days upon approved and acceptable completion of the website going live for thirty days.

V.
NON-RAIDING CLAUSE

Consultant 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.

VI.
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 A or B above, Consultant shall be paid for all approved services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

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

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

VII.

ADDITIONAL SERVICES

The JPA may from time to time, require additional services from the Consultant including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such additional services, which are mutually agreed upon by and between the JPA and Consultant shall be effective when incorporated in written amendments to this Agreement.

VIII.

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.

IX.

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.

X.

ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified 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.

XI.

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.

XII.

**OWNERSHIP, PUBLICATION, REPRODUCTION
AND USE OF MATERIAL**

Consultant agrees to and hereby transfers all rights it has, including those of a property or copyright nature, in any marketing copy and content, reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced by the Consultant 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 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, 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.

XIV.

COPYRIGHT; CONSULTANT'S WARRANTY

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

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

XV.
INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless JPA, its elected officials, officers, agents, and employees, as indemnitees, 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 therefrom, that is caused in whole or in part by Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable. This section will not require Consultant 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. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

XVI.
INSURANCE

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

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Consultant and JPA from any and all claims under any Worker's Compensation Act or Employer's Liability Law. Consultant shall exonerate, indemnify and hold harmless JPA from and against, and 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 Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

Coverage	Listing	Min. Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

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

- i. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- ii. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
- iii. Personal Injury Damage - \$1,000,000 each Occurrence; and
- iv. Contractual Liability - \$1,000,000 each Occurrence; and
- v. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
- vi. Medical Expenses (any one person) - \$10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) 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.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant and shall be disclosed to the JPA at the time the evidence of insurance is provided.

D. 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 as an additional insured for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as if the Consultant possessed General Liability Insurance. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the JPA thirty days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

XVII.

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 JPA
Dan Marvin, JPA Project Manager
2523 Woods Blvd
Lincoln NE 68502

Thought District
Eric Dinger, CEO
300 S. 13th Street
Lincoln, NE 68508

XVIII.

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.

XIX.

NEBRASKA LAW

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

XX.

INTEGRATION

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

XXI.

AMENDMENT

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

XXII.

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.

XXIII.

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.

XIV.

AUDIT AND REVIEW

The Consultant shall make available to the JPA copies of all financial and performance related records and materials germane to this Agreement as allowed by law.

XXV.

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.

XXVI.
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 JPA do hereby execute this Agreement as of the Execution Date set forth above.

THOUGHT DISTRICT

JPA

By: _____
Eric Dinger, CEO

By: _____
Jayne Snyder, JPA Board President

TRANSPARENT HAYMARKET ARENA PROJECT WEBSITE PROPOSAL



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www.thoughtdistrict.com
July 02, 2010
402.486.3200

PROJECT OVERVIEW

Executive Summary

Thought District is pleased to present the JPA with a proposed plan and budget for the development of the website that will track the development of the Haymarket Arena. General information regarding the project's goals, proposed strategies, design deliverables and initial assumptions are available to you here. The proposed deployment with JPA may include several phases; this document outlines the timeline and investment schedule for what our team views as Phase One.

Should you have any questions, please do not hesitate to contact Eric Dinger at 402.486.3200 or edinger@thoughtdistrict.com.

Current Challenge

- The vote for the Haymarket Arena caused quite a debate amongst Lincoln citizens. Citizens who were against the arena have no outlet to follow the development of the arena or to see how the money around the project will be spent. This lack of knowledge may breed further distrust or ill will towards the arena.

Opportunity

- By providing an up-to-date, transparent view of the project, the website will inform the public, curb negative sentiment, and excite supporters of the arena. An accompanying social media strategy will drive site traffic, encourage a dialog between concerned citizens, and provide an outlet by which the JPA can answer public concerns. The goal is to create a website that serves as a shining example of transparency in government and the ways in which it can inform and excite the public.

EXPLANATION OF DELIVERABLES

Site Strategy and Concept

This is an alignment phase. During this period, time will be spent to clearly understand what you are trying to achieve. The more information we can gather, both primarily and secondarily, the more effective your site will be. We always say, “The best answer can only be given once you truly understand the question.” Out of this phase will come the overarching site concept and sitemap.

Website Design

After approval of the site concept and sitemap, we move to the design phase. From this phase, we will develop the wireframes (otherwise known as the “skeletal layout” of how items are laid out on the website) and the designs that will be implemented onto the wireframes. Design implementation doesn’t begin until we receive approval of the wireframes.

For all of our wireframes and designs, we allow for up to two rounds of revisions. Further revisions or any revisions of previously approved items will have to be billed separately beyond this proposal. However, we’re confident we can achieve your vision within the allotted numbers of revisions.

Not every page on your site will be designed completely from scratch. Our content management tool will allow us to design different page “templates,” which can then be used to create literally thousands of different pages on your site. We’ll do the same thing for up to two forms.

Copywriting and Content Collection

The best websites not only engage visitors through visuals, but through content. Though your team will be responsible for keeping the site updated with new content, our professional copywriters will provide high-quality marketing copy throughout the site that will encourage visitors to interact, introduce sections, and direct users to specific areas of the site.

Website/Social Media Integration

As part of this investment, we propose to create the website and Facebook page for this project. The investment will include the integration of the Facebook page’s wall onto the website.

EXPLANATION OF DELIVERABLES

Content Management Tool/Design Integration

As a brand strategy firm, we ask our clients to focus on the things that are their core competency. For this reason, we choose not to maintain a software development department in-house. Vipa Solutions, a division of i2rd, is a long-time solution provider and partner of Thought District. Their technology, Vipa Suite, is the backbone of almost all of the newest and best site designs in our portfolio, and it is the technology on which we propose to develop your site. As a solution provider, we believe it is our job to select the best solution providers for our clients. After careful review of dozens of content management and web software systems, including many of which are live today, we arrived with Vipa Solutions as our choice provider.

We believe Thought District and Vipa Solutions working on your site will provide you with the best of both worlds: design and site strategy provided by an emerging firm, built on the proven software of a local leader. Though we'll use a second company to help us launch the site, you will have a single point of contact for this project at all times.

Standard Components

The following functions are standard components included in the software bundle we are proposing:

- Content Management (*change content with ease*)
- Content Management Work Flow (*multiple users with multiple user levels*)
- Dynamic Data-Driven Content (*ability to set beginning and ending dates of content*)
- Virtual Newsroom and Press Room
- RSS Feeds (*ability to specify content pieces available through standardized RSS feeds*)
- FAQ Directory
- Rich Media (*ability to manage and deliver rich media, such as Flash, a customizable video player, audio & podcasts, photo galleries, images, etc., to website visitors*)
- Forms (*including Contact Us form, Promotional Emails sign-up form*)
- Data Reporting and Website Metrics
- User Administration
- Managed Hosting and Data Security
- Ability to Keyword Optimize
- Training
- Support

THOUGHT DISTRICT WEB DESIGN PROCESS

We believe the design and final delivery of your new site is an exciting opportunity. As you no doubt understand, meeting any deadline will require timely work from both parties. Below is the outline of how Thought District will proceed through the project.

I. Planning Phase

1. Use existing research and client-supplied data on customers
2. Client discovery sessions
3. Understand site strategy and goals around the site
4. Write creative brief
5. Get client approval on creative brief

II. Design / Copywriting Phase

1. Internal kick-off of design phase with creative team
2. Sitemap / navigation created
 - i. Present to client for feedback / approval
3. Wireframes created
 - i. Present to client for feedback / approval
4. Rough mockups created
 - i. Present to client for feedback / approval
5. Site design
 - i. Present to client for feedback / approval
6. Client revisions / feedback
7. Copywriting
 - i. Present to client for feedback / approval
8. Client copy revisions / feedback
9. Final client sign-off
 - i. On design
 - ii. On copy

III. Programming Phase

1. Software / code in place
2. Copy / content added to site
3. Beta site presented to client
 - i. Client revisions / feedback / sign-off
4. Client / Thought District testing
5. Site lockdown for final Thought District audit (1-3 days prior to launch)
 - i. Final client sign-off for launch of site
6. Site launch (best practices to launch on Friday)
7. Website metrics software incorporated—Google Analytics, etc.
8. Submit URL(s) to Google and other search engines — Thought District to initiate, clients to finalize

IV. Live Site Launch

V. Follow-up Phase

1. Client/Thought District debrief on project

THOUGHT DISTRICT WEB DESIGN PROCESS

Project Timeline

This timeline is to be used as an estimate; actual timeline will be finalized once contract is signed. Any missed client deadlines will move deadlines back.

Deliverable	Weeks	1	2	3	4	5	6
Site Concept/Sitemap	4						
Wireframes/Rough Mocks	3						

Deliverable	Weeks	7	8	9	10	11	12	13	14	15	16	17
Site Design	5											
Site Revised Design	2											
Site to Coding	4											
Copy/Content Gathering	8											
Copy Implementation	4											
Client Training/Content Entry	2											
Final Design Tweaks	2											
Facebook Strategy/Launch	2											
Promotional Strategy	2											

INVESTMENT

Thought District300 South 13th Street

Lincoln, NE 68508

P: 402.486.3200 F: 866.523.4785

<http://thoughtdistrict.com>**Date:** July 2, 2010**TD Contact:** Eric Dinger**Project Title:** Website Proposal**Prepared For:****Company:** JPA**Contact:** Rick Hoppe**Address:****City, State, Zip:****Phone:****Fax:****Email:**

If this proposal meets your approval, and you agree to the terms below, please sign and return this page of the proposal, authorizing our team to proceed with the project; it may be faxed to 866.523.4785.

Phase One Investment Includes:

- | | |
|---|------------|
| 1. Site Concept and Sitemap | \$2,250.00 |
| 2. Website Design (wireframes/designs) | \$9,000.00 |
| a. Home Page Designs (up to 2 layouts) | |
| b. Interior Page Designs (up to 4 layouts) | |
| c. Forms Pages (2 unique layouts) | |
| 3. Copywriting/Content Development | \$5,250.00 |
| 4. Content Management Tool/Design Integration | \$5,000.00 |
| a. Website implementation (up to 2 layouts) | |
| b. Vipa Suite Content Management (Small Business Edition) | |
| 5. Facebook Page Integration/Development | \$1,500.00 |

TOTAL PHASE ONE INVESTMENT:	\$23,000.00
TOTAL DOWN PAYMENT*:	\$5,750.00

*Milestone Billing Terms *(negotiable to client needs)*

- 25% payable up-front
- 25% payable at site map sign-off
- 25% payable at site design sign-off
- 25% payable prior to site going "live"

RESOLUTION NO. WH- _____

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

3 Pursuant to Article III, Section 3a and Section 4 of the Rules of Governance West
4 Haymarket Joint Public Agency, the Board of Representatives does hereby delegate to Dan
5 Marvin, in his capacity as Project Manager/Secretary of the West Haymarket Joint Public
6 Agency, the power to execute, receive and acknowledge on behalf of the West Haymarket Joint
7 Public Agency any and all documents, including but not limited to quitclaim deeds, easements,
8 warranties, and owner’s affidavits, as may be necessary to complete the conveyances of property
9 to be conveyed to or by the West Haymarket Joint Public Agency pursuant to the following
10 agreements:

11 1. The Purchase and Sale Agreement dated June 15, 2010 between Union Pacific
12 Railroad Company and the City of Lincoln as assigned to the West Haymarket Joint Public
13 Agency by assignment dated August 13, 2010 (“Purchase and Sale Agreement”).

14 2. The Purchase Agreement dated October 13, 2010 between Noohznik, L.P. and the
15 West Haymarket Joint Public Agency.

16 3. The Purchase Agreement dated October 13, 2010 between Magdalen A. Franssen
17 and the West Haymarket Joint Public Agency.

18 4. The Cooperative Agreement dated October 1, 2010 between the Lower Platte
19 South Natural Resources District and the City of Lincoln as assigned to the West Haymarket
20 Joint Public Agency by assignment dated October 13, 2010 (“Cooperative Agreement”).

1 5. The Master Development Agreement and Land Exchange Agreement, each dated
2 October 18, 2010, between the BNSF Railway Company and the City of Lincoln as assigned to
3 the West Haymarket Joint Public Agency by assignment dated October 19, 2010 (hereinafter
4 “Master Agreement” and “Exchange Agreement” respectively).

5 BE IT FURTHER RESOLVED that the Board of Representatives does hereby delegate
6 to Dan Marvin in his capacity as Project Manager/Secretary of the West Haymarket Joint Public
7 Agency, the power to execute the following agreements on behalf of the West Haymarket Joint
8 Public Agency:

9 1. The Agreement covering rehabilitation of track and bridge in Lincoln, Nebraska,
10 the form of which is attached as Exhibit D to the Purchase and Sale Agreement.

11 2. Assignment and Assumption Agreement, the form of which is attached as Exhibit
12 F to the Purchase and Sale Agreement.

13 3. License Agreement, the form of which is attached as Exhibit H to the Purchase
14 and Sale Agreement.

15 4. Escrow Agreement attached as Exhibit Z to the Master Agreement.

16 5. The various licenses and easement agreements referred to in the Master
17 Agreement including, but not limited to, those agreements the forms of which are attached
18 thereto as Exhibits BB, BB-1, EE, FF, FF-1, GG, HH, HH-1, II, JJ, KK, NN, TT, TT-1 UU, and
19 VV.

20 6. The agreements referred to in the Exchange Agreement including, but not limited
21 to, those agreements the forms of which are attached thereto as Exhibits PP, PP-1, QQ, QQ-1,
22 RR, SS, and SS-1.

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