AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, July 6, 2012 AT 3:00 P.M.

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

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

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

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

3. Approval of the minutes from the JPA meeting held June 19, 2012 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. West Haymarket Progress Report (Paula Yancey)
   - Public Comment

5. WH 12-40 Resolution approving the Agreement with Judds Brothers Construction Company for the West Haymarket Railroad Track Removal Project No. 870908 (Bid No. 12-151) in the amount of $146,026.00. (Paula Yancey)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

6. WH 12-42 Resolution approving Change Order No. 1 to the Final Guaranteed Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson for inclusion of the enhanced curtaining system into their scope of work for an additional contract cost of $532,824.00 and to establish $156,802,991.00 as the revised amount the Contract Sum (GMP) shall not exceed. (Paula Yancey)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

7. Set Next Meeting Date: Friday, July 20, 2012 at 1:00 p.m. in City Council Chambers Room 112

8. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
June 19, 2012

Meeting Began At: 3:02 P.M.

Meeting Ended At: 3:37 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

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

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

Item 2 -- Public Comment and Time Limit Notification

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

Item 3 -- Approval of the minutes from the JPA meeting held June 1, 2012

Beutler asked for corrections or changes to the minutes of the May 15, 2012 meeting. Clare noted that on page 2 in the third paragraph it states "corridor roadway bids" and should be "core area roadway bids."

Carroll moved approval of the minutes as amended. Clare seconded the motion. Motion carried 3-0.

Item 4 -- Approval of Payment Registers

Steve Hubka came forward and presented the payment registers for the month of May. The Engineering charges were roughly $25,000 and the total expenses were $14.6 million. That number is higher than normal due to a transfer of $7.5 million to the trustee for payment on the bonds, which was due June 15th.

Clare asked if everything was on budget and looking good from an audit perspective. Hubka stated that they are. Beutler asked if there were any payments that might be considered controversial. Hubka answered that there were not.

Hearing no public comment, Clare moved for approval of the payment registers. Carroll seconded the motion. Motion carried 3-0.

Item 5 -- Review of the May 2012 Expenditure Reports

Steve Hubka presented the Job Cost Report for the capital budget and operating budget through May 31, 2012. There were no unusual items included in that timeframe.

Beutler asked for public comments. No one came forward.

Item 6 -- WH 12-36 Resolution authorizing the Chair to execute on behalf of the West Haymarket Joint Public Agency the Corporation Warranty Deed and all closing documents associated with conveyance of City Parcel One and City Parcel Two to Star City, LLC and conveyance of the Star City Parcel to the West Haymarket Joint Public Agency.

Rod Confer informed the Board that is item is a land swap arrangement that the JPA approved in April of 2011. At that time, the resolution only authorized a signature on the land exchange agreement and did not authorize a signing of the warranty deed. Therefore, Confer is asking that the Board authorize the Chair to execute the warranty deed as part of that land exchange.

Beutler observed that this is for some small pieces of land just north of the stadium and roundabouts. Confer confirmed that and added that the JPA exchanged some land with Star City in order to build the Salt Creek Roadway. Star City gave the JPA more land than they were given, so there was a payment made to them for approximately $170,000.

Clare asked if the JPA received the parcel of land from Star City. Confer answered yes and noted that this resolution is just to convey the property to them.

Beutler asked for public comments. Hearing none, Carroll made a motion to approve Resolution WH 12-36. Clare seconded the motion. Motion carried 3-0.

Item 7 -- WH 12-37 Resolution approving Amendment No. 13 to the Agreement for Engineering Services with Olsson Associates for the Haymarket Infrastructure Design Project for Construction Phase Services for the Core Area Roadway Project and the Historic Canopy Renovation Project.

Paula Yancey reported that this resolution is to approve Amendment 13 to the Lincoln Haymarket Infrastructure Team (LHIT) contract. This covers construction phase services related to the core area roadway improvements. The scope of services covers all of the construction observation, construction administration, geotechnical testing, construction testing (concrete, asphalt, compaction, backfill), survey work, records documentation, and assistance through the contract closeout. This will be full time work for several people for 73 weeks. The total for this scope of work is $1.4 million; however, after review of the LHIT contract Yancey determined there were some areas for savings and some projects that were not proceeding at this time. Funds will be transferred from those projects to help offset this cost. This amendment increases the LHIT contract by $816,590. It is within the budget and Yancey recommends approval of the resolution.

Clare observed that the original contract was for $8.9 million and this amendment is for another $800,000. He asked if the scope changed or if this work was not know when the original package was put together. Yancey explained that this work was known and the LHIT contract allows for additional phases and tasks to be added when the projects are scoped. Instead of putting everything in at the beginning without knowing the full scope, only the items required for

the core area roadway have been added. Carroll thanked Yancey for repurposing allocated fund and making changes that will save or reduce costs.

Beutler asked for public comment. Jane Kinsey with the Watchdogs of Lincoln came forward and stated that there was an article in the Journal Star on August 12, 2011 that said the canopy was going to cost $1 million. Kinsey asked if the money in this resolution is in addition to the $1.2 million requested for the canopy in agenda item 9. Beutler allowed Yancey some leeway to discuss agenda item 9 and 7 together to answer Kinsey's question. Yancey indicated that item 9 relates to the work to restore the historic canopy. This work was estimated at $1 million in the budget. The engineer's estimate was more than that and the bid came in at $1.2 million. Yancey feels comfortable with the scope of work that Hawkins will provide. Olsson Associates will help provide some oversight with the historic canopy, but 90% of this amendment relates to the core area roadway.

Clare asked if the core area roadway is on time in conjunction with the construction of the arena. Yancey advised that it is on time. BNSF is moving forward and it is timely that this comes before the Board now so that as soon as the tracks are gone this next phase of this work can begin.

Bob VanValkenburg came forward and stated that has concerns regarding Dan Marvin, who owns an investment company and is credentialed to trade in bonds. He asked that Marvin state before the public and the Board that he receives no benefit from any of the bond transactions. Beutler advised that it was not appropriate for VanValkenburg to bring this allegation forward as it does not speak to the current agenda item.

Hearing no further public comment, Carroll made a motion to approve Resolution WH 12-37. Clare seconded the motion. Motion carried 3-0.

Item 8 -- WH 12-38 Resolution approving the Agreement with Hawkins Construction Company for the West Haymarket JPA Infrastructure Improvements Core Area Roadway and Utilities Project (Bid No. 12-128) in the amount of $14,168,272.94.

Yancey explained that this resolution is to approve an agreement with Hawkins Construction Company for the core area roadway improvement project. This project was bid through the ebid site. Five bids were received and Hawkins was the low and most responsible bidder. The total amount of this contract is $14,168,272.94. The alternates included in this bid are on hold at this time and will be reviewed with the team as this project moves forward. Yancey showed a summary of how the project is funded in the current budget. Out of the $14 million construction contract, about $107,000 is related to the water main betterments which was approved in the updated budget. There is $500,000 that will be transferred from the ITS dynamic message sign budget to cover the conduit and fiber installation. LES, Time Warner Cable and Windstream asked to get some pricing to install the conduits for their work. The utilities are looking at the numbers to determine if it is beneficial for them to install it themselves or utilize this contract. Therefore, $787,000 will either be deducted from this contract or will be refunded by the utilities if they elect to proceed with this contractor. Three hundred thousand of site prep and dirt moving will be moved from that line item as well as $500,000 in the parking line item to cover the temporary parking lots included in the scope. After making those adjustments, the revised number for the scope related to the core area roadway is $11.9 million. The original estimate was $12 million so that is right on target and within the budget.

Clare observed that money is being pulled from other line items and asked if that would affect those areas. Yancey explained that over the past year, the team has been refining and defining what needs to happen in the core area roadway project. Scope was added for coordination and phasing to make sure that conduit is put in at the same time that the road is opened. The temporary parking lot needs to be built prior to the elimination of other parking areas in the developer block. Those budget transfers are being made to accommodate the extra scope that was moved into this project. A budget update will be brought to a future JPA meeting for the Board to approve the official transfers. Clare asked what the time frame for construction is. Yancey indicated that construction will begin in July or August and will be completed in the summer or fall of 2013, prior to the opening of the arena.

Beutler asked for public comment. Jane Kinsey asked if there are penalties for not being finished on time. Yancey answered that there is a liquidated damages clause within all of the JPA contracts.

Hearing no further public comment, Clare made a motion to approve Resolution WH 12-38. Carroll seconded the motion. Motion carried 3-0.

Item 9 -- WH 12-39 Resolution approving the Agreement with Hawkins Construction Company for the West Haymarket JPA Historic Canopy Renovation Project - Phase 2 (Bid No. 12-129) in the amount of $1,254,000.00.

Yancey informed the Board that Hawkins was the low responsible bidder for this project. They will coordinate all aspects of the removal, restoration and reinstallation of the historic canopy. Their bid was $1,254,000 for this scope of work and Yancey recommended approval.

Beutler asked for public comment. Jane Kinsey referenced an article in the Lincoln Journal Star on August 12, 2011 and noted that this contract is for an increased amount than was mentioned at that time to the public. Kinsey asked why the cost is more than was reported at that time. Yancey stated that the original number was an estimate and they weren't sure how the canopy would be restored at that time. They had the cost from when a section was taken down to get R Street done in the first phase and figured it could potentially cost $1 million, but that was before all of the designs were done and the scope was really known. The $1.2 million is a fair bid and is below the engineer's estimate. It is still within the budget due to some other savings from dirt moving and site prep that offset the additional cost. Kinsey added that the article also mentions other places around the country where they had only spent about $900,000 for similar work. Yancey was not familiar with the other projects and the reasons their bids were lower. It could be due to timing or perhaps they were able to do the restoration in place and didn't have to take the canopy down. She could not comment on their scope without knowing how extensive their renovations were.

Hearing no further public comment, Carroll made a motion to approve Resolution WH 12-39. Clare seconded the motion. Motion carried 3-0.

Item 10 -- WH 12-40 Resolution approving the Agreement with Judds Brothers Construction Company for the West Haymarket Railroad Track Removal Project No. 870908 (Bid No. 12-151) in the amount of $146,026.00.

Beutler stated that if there were no objections from the other Board members he was removing Item 10 from the agenda. This particular company has been involved in some work on South Street that will be very late and Beutler would like to further review that project and this contract with regard to the provisions related to liquidated damages, incentives and penalties. With no objections, this item was removed from the agenda until further notice.

Item 11 -- WH 12-41 Resolution approving Amendment No. 1 to the Sublease Agreement between Amtrak and the West Haymarket Joint Public Agency which amends the Sublease by amending Exhibit C, Final Plans, for the New Station to reflect the redesign of the New Station to add an Amtrak crew base and to provide for Amtrak to pay $25,000 toward the redesign of the New Station, and by amending Exhibit D, the Station Lease, to provide that Amtrak pay additional rent in the amount of $420.00 per month due to the additional space being occupied by the crew base and to restrict access from the New Station to the Platform except during the period of time that Amtrak trains have arrived at the New Station and are parked along the Platform for boarding and de-boarding of passengers.

Chris Connolly, City Attorney, informed the Board that the items before them deal with Amtrak and trying to get the new station up and running. The first deals with the sublease on the old station and work that is being done to construct the new station. The second is the lease on the new station itself. Building and Safety issued a limited certificate of occupancy on Friday. In order to get the permanent certificate of occupancy there is some minor work that needs to be done, basically things that are not necessary for the operation of the facility.

Connelly observed that the problem they have run into is that Amtrak has not signed the lease and he has not received any firm commitment from them that it is going to be signed. In dealing with Amtrak's legal department, operations people and real estate people all indications are that they are going to do it but the station is supposed to open next Monday. Connelly recommended that the Board approve these agreements and the Chair not execute them until he gets further word from Amtrak. The resolution allows for the Chair to make some minor changes if necessary. Connelly sent an email last week advising Amtrak that the new station would not be opening until the lease is signed. On June 25, Burlington Northern is scheduled to cut over and the old station is not going to be available for train service. That is going to happen regardless of what happens with these agreements. Again, there is no indication that there is anything wrong with the documents; we just cannot get a signature.

Beutler asked for public comment. Jane Kinsey asked why the Board doesn't just table this item until the signatures are obtained. Beutler advised that it is due to the short timeframe they have to work with. Connelly added that the City is agreeable to the terms it is just a matter of getting the correct signature. Kinsey asked what will happen if it is not signed. Connelly stated that it is his recommendation that the station not be opened.

Hearing no further public comment, Carroll made a motion to approve Resolution WH 12-41. Clare seconded the motion. Motion carried 3-0.

Item 12 – Set Next Meeting Date

The next meeting date is set for Friday, July 6, 2012 at 3:00 in City Council Chambers Room 112.

Item 13 -- Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:37 P.M.

Prepared by: Melissa Ramos-Lammli, Public Works and Utilities

West Haymarket JPA Meeting

Date June 18, 2012

Page 1

Name (Please Print)	Address	Phone/E-Mail
Jane Kinsey Watchdogs	6703 Hawkins Bend	
Don Van Valkenburg	7921 Reno Road LNK	

WH 12-40 Introduce: 6-19-12

RESOLUTION NO. WH- _____

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

That the attached Contract Agreement between the JPA and Judds Brothers Construction Company for the West Haymarket Railroad Track Removal Project No. 870908, pursuant to Bid No. 12-151, under the terms and conditions of said Contract Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract Agreement on behalf of the JPA.

The City Clerk is directed to return one fully executed copy of the Contract Agreement to Rick Peo for transmittal to Judds Brothers Construction Company.

Adopted this _____ day of _____, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
BID NO.12-151
(West Haymarket Railroad Track Removal Project No. 870908)

C O N T R A C T A G R E E M E N T

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into this _____ day of _____, 2012, by and between **JUDDS BROTHERS CONSTRUCTION COMPANY** hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

RECITALS

WHEREAS, JPA 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 a Notice to Bidders advertisement for each project for and in connection with said Work, to wit:

West Haymarket Railroad Track Removal Project No. 870908 (the "Work")

WHEREAS, the Contractor, in response to such advertisement, has submitted to the JPA, in the manner and at the time specified, a sealed Bid for the Work in accordance with the terms of said advertisement.

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Bids 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 total sum named in the Contractor's Base Bid of $146,026.00. Copies of the Bid Opportunity Detail, Notice to Bidders, Addendums 1-4, Supplier Response, the Contractor's Base Bid and Alternates Bid (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, Contractor understands and acknowledges that if a portion of the Work will be carried out on or within 50 feet of BNSF Property, the terms and conditions of the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA ("C&M Agreement") are applicable to the performance of the Work and Contractor must comply with the applicable provisions of the C&M Agreement concerning work on or within 50 feet of BNSF Property including, but not limited to the BNSF Insurance Requirements. The C&M Agreement is attached hereto as Exhibit C.

WHEREAS, Contractor understands and acknowledges that if a portion of the Work will be performed on or within 50 feet of BNSF railroad tracks used by the National Railroad Passenger Corporation ("Amtrak"), the Contractor must obtain two policies of Railroad

Protection Liability Insurance, one naming BNSF as the insured railroad, and the other naming Amtrak as the insured railroad.

WHEREAS, Contractor understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Work and therefore this Contract is subject to the Davis-Bacon Act; and that the Contractor is required to comply with the Contract clauses in 29 C.F.R. §5.5(a) which are made part of this Contract.

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Highway Construction General Wage Decision Number NE120034 dated 03/16/2012 ("NE34 Wage Decision") for the Wye Track (Base Bid) Work, and to pay the Davis-Bacon Act prevailing wages in accordance with NE34 Wage Decision and/or Heavy Construction General Wage Decision Number NE 120057 dated 01/06/2012 ("NE57 Wage Decision") for the BNSF "X" Yards Tracks (Alternate Bids).

WHEREAS, the applicable NE34 and NE57 Wage Decisions are hereinafter referred to as the "Effective Wage Decisions."

WHEREAS, the use of the term “City of Lincoln” in the C&M Agreement shall be deemed to refer to the JPA.

WHEREAS, the use of the term “Contracting Officer” in 29 C.F.R. parts 1, 3 and 5 shall be deemed to refer to the JPA.

WHEREAS, Contractor possesses certain skills, experience, education and competency to perform the Work on behalf of the JPA and the JPA desires to engage Contractor for such services on the terms and conditions provided herein.

WHEREAS, Contractor is willing and able to perform the Work in accordance with this Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein and incorporating all of the above Recitals into this Contract as if fully set forth herein, the Contractor and JPA have agreed and hereby agree as follows:

PERFORMANCE OF WORK - 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 JPA’s official award of this Contract to the Contractor, such award being based on the acceptance by JPA of the Contractor’s Bid as set forth in Exhibit A.

CHANGE IN SCOPE OF SERVICES. If an additive or subtractive change in scope is encountered on the site or requested by the JPA, a detailed Proposed Change Order request is to be provided by the Contractor. This must include a breakout of the estimated labor, materials, tools, and equipment required to complete the actual work. The maximum markup for all other items not associated with the work shall be ten percent (10%). This is to include all onsite and offsite overhead, all general conditions, profit, and any other costs not associated with the actual performance of the work.

BNSF CONTRACT REQUIREMENTS. Contractor agrees that the provisions in the C&M Agreement are made part of this Contract for any portion of the Work performed on or within 50 feet of BNSF Property.

A. REQUIREMENTS FOR WORK WITHIN 50 FEET OF BNSF PROPERTY. Contractor agrees if portions of the Work will be performed within 50 feet of BNSF Property, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Contractor understands and agrees that prior to commencing such Work, the Contractor must:

1. Obtain all required insurance, evidenced by certificates of insurance as required by the JPA, City Legal, BNSF, and any other required insurance.
2. Submit the signed C-1A agreement and all required insurance certificates to BNSF@certfocus.com and to PC Sports.
3. Submit copies of signed C-1A agreement and all required insurance certificates to BNSF's Project Engineer Michael Schaefer (BNSF).
4. Receive the BNSF executed C-1A agreement from Michael Schaefer.

B. ADDITIONAL REQUIREMENTS FOR WORK ON BNSF PROPERTY. Contractor further agrees that should it be necessary to enter upon the BNSF Property to perform any portion of the Work, Contractor must prior to such entry:

1. Complete the BNSF Contractor Safety Orientation at www.contractororientation.com. All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.
2. Complete the e-RAILSAFE security orientation training program at www.erailsafe.com. All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.
3. Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Michael Schaefer, along with a list of all personnel who

have taken both programs. This includes employees of subcontractors employed by the Contractor.

4. Assume and comply with the terms and conditions of any right-of-entry agreement, license and/or easement between BNSF and the JPA governing access to such BNSF Property.

COMPENSATION - JPA 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 Contractor's Bid awarded by the JPA to the Contractor, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

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.

INDEMNIFICATION - The following Indemnification provisions are in lieu of the Assumption of Liability and Indemnification provision in Article VI.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. INDEMNIFICATION OF JPA. Contractor shall release, defend, indemnify and hold harmless the JPA to the same extent and under the same terms and conditions as required by the Indemnification of JPA in the Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (Approved by JPA Counsel March 2012) included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. INDEMNIFICATION OF BNSF. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, if any portion of the Work is performed on or within 50 feet of BNSF Property, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor's Right of Entry.

INSURANCE – The following insurance requirements are in lieu of the Insurance Requirements for all City Contracts found in Article X.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. JPA INSURANCE REQUIREMENTS. Contractor shall at all times during the term of this Agreement purchase and maintain in place insurance coverage as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts (Approved by JPA Counsel March 2012) included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

B. BNSF INSURANCE REQUIREMENTS. Contractor shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Insurance requirements of BNSF found in the C&M Agreement (Exhibit C).

Contractor agrees to provide all types of insurance required by either the JPA or BNSF. Contractor will furnish coverages against any and all perils required by either the JPA or BNSF. In the event there is a difference between the JPA and BNSF coverage limits, Contractor will provide the larger amount satisfying both JPA and BNSF requirements.

DAVIS-BACON ACT – Contractor agrees to comply with the Davis-Bacon Act. Contractor further agrees to comply with contract clauses set forth in 29 C.F.R. §5.5(a) included as part of the Other Attached Contract Documents (Exhibit D) which provide in part that Contractor shall:

- On a weekly basis pay all laborers and mechanics not less than the federal prevailing wages listed in the wage determinations included in the contract;
- Submit weekly certified payroll records to the JPA; and
- Post the applicable Davis-Bacon wage determinations with the Davis Bacon poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by the Contractor's workers.

Contractor further agrees to pay the applicable prevailing wages set forth in the Effective Wage Decisions. Said Effective Wage Decisions are included in the Other Attached Contract Documents (Exhibit D). Contractor agrees to attach the Effective Wage Decisions and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Contractor shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decisions and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decisions.

NEB. REV. STAT. § 77-1323 CERTIFIED STATEMENT – Contractor, pursuant to the requirements of Neb. Rev. Stat. § 77-1323, has executed the Certified Statement attached hereto as part of Exhibit D certifying that all equipment to be used in performance of the Work, except that acquired since the assessment date has been assessed for the current year. Contractor understands and acknowledges that under Neb. Rev. Stat. §77-1324, any person, partnership, limited liability company, association, or corporation falsifying any statement required by Neb. Rev. Stat. § 77-1323 shall be guilty of a Class IV misdemeanor.

CONTRACT DOCUMENTS - The Contract Documents comprise the Contract, and consist of the following, whether or not attached hereto:

1. Bid Documents (Exhibit A).
2. Exhibit B – Intentionally Omitted.
3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).

a. Commentary to Accompany Construction Bonds.
b. Construction Performance Bond.
c. Construction Payment Bond.
d. Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012).
e. Executive Order No 83319.
f. Modified BNSF Insurance Certification Process (10-21-2011).
g. 29 C.F.R. § 5.5(a) Contract Provisions.
h. Effective Wage Decisions.
i. Special Provisions West Haymarket Joint Public Agency (2012) Railroad Track Removal Project No. 870908 (includes Environmental Contingency Plan).
j. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
k. Plans/Drawings & Environmental Contingency Plan on FTP Site.

5. Other Non-Attached Contract Documents.
   a. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA's Change Order Process adopted by JPA Resolution No. WH00195.
   b. Lincoln Standard Plans 2010.
   c. Any executed Addenda or Change Orders.
   d. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase).
      i. Form of Nebraska Resale or Exempt Sales Certificate.
      ii. Form of Purchasing Agent Appointment.
      Note: 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.
      Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use tax.
   e. Requirements in 29 C.F.R. parts 1, 3 and 5.
   f. Any non-attached document listed in the Bid Opportunity Detail or in this Contract.

This Contract, 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 JPA 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 JPA do hereby execute this Contract.

CONTRACTOR: **JUDD BROTHERS CONSTRUCTION COMPANY**

By: _____

Title: _____

JPA: **WEST HAYMARKET JOINT PUBLIC AGENCY**

By: _____

Chris Beutler, Chairperson of the West Haymarket Joint Public Agency Board of Representatives

EXHIBIT A

Bid Documents

Return to Login • Supplier Registration

Bid Opportunity Detail

Bid Number 12-151 Addendum 4 (West Haymarket Railroad Track Removal Project)
Close Date & Time 6/6/2012 12:00:00 PM Central
Time Left **4 hours 9 minutes 56 seconds**

Bid Information

Bid Type	Bid (Sealed)
Issue Date & Time	5/16/2012 2:10:55 PM Central
Close Date & Time	6/6/2012 12:00:00 PM Central
Bid Status	Issued
Bid Notes	

Contact Information

Contact Name	Vince M. Mejer
Address	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508 USA
Contact Phone	(402) 441-8314
Contact Fax	(402) 441-6513
Contact Email	vmejer@lincoln.ne.gov

Event Activities

Activity Date	Title	Description
5/30/2012 1:30:00 PM CST	Pre Bid Meeting per Addendum 3	A pre-bid site meeting will be held on Wednesday May 30, 2012 at 1:30 p.m. to provide prospective bidders an opportunity to view the project area for the Base Bid work. Bidders interested in viewing the site should meet at the east end of the City of Lincoln's 901 Building on the aforementioned date and time
6/6/2012 12:00:00 PM CST	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.

Activity Participants

No Event Activities

6/6/2012 12:00:00 PM CST	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

Activity Participants

No Event Activities

Bid Documents

Document	Format	Description
Invitation Document	Adobe (PDF)	PDF Invitation to Bid

Bid Attachments

Header 12-151 adv.pdf (9KB)	Notice to Bidders
Header 12-151 Specifications.pdf (34KB)	Specifications
Header 12-151 FTP site.pdf (127KB)	Plans/Drawings & Environmental Contingency Plan on FTP Site
Header Instructions to Bidders, JPA - B 09-19-11.pdf (26KB)	Instructions to Bidders
Header JPA Insurance March 2012.pdf (236KB)	JPA Insurance Requirements
Header Ex D f ModBNFS InsCertProcess.pdf (299KB)	BNSF Insurance Process
Header Ex D h 1 Effective Wage Dec.pdf (176KB)	Davis Bacon Wage - Heavy, NE57
Header DBW Hwy March NE34.pdf (13KB)	Davis Bacon Wage - Highway, NE34
Header Ex D g -29CFR5 5 DavisBacon.pdf (959KB)	29 CFR
Header Ex D e EO 83319.pdf (657KB)	Employee Verification
Header Ex D a CommentaryToAccompanyConstrBonds.pdf (546KB)	Contruction Bonds

EXHIBIT A TO CONTRACT AGREEMENT

Header	Ex D j NebRevStat77-1323 CertStatement.pdf (79KB)	Tax Assessment Form
Header	12-151ad1.pdf (6KB)	Addendum 1
Header	SAMPLE Bid No.12-151.pdf (76KB)	Sample Contract Per Addendum 1
Header	Ex.C-C&MAgr.wpd.pdf (2.27MB)	C & M Agreement per Addendum 1
Header	ADDENDUM NO 2 - Track Removal Project No 870908.pdf (249KB)	Addendum 2
Header	Addendum No 2_Project 870908_combined_watermark.pdf (5.69MB)	Drawings/Plans per Addendum 2
Header	ADDENDUM NO 3 - Track Removal Project 870908.pdf (229KB)	Addendum No. 3
Header	12-151ad4.pdf (1.08MB)	Addendum No. 4
Line 2	12-151 Bid Proposal.XLS (163KB)	Base Bid Pricing - Addendum 4
Line 3	12-151 Alternate 1 Bid Proposal.XLS (184KB)	ALTERNATE 1 BID PRICING
Line 4	12-151 Alternate 2 Bid Proposal.XLS (184KB)	ALTERNATE 2 BID PRICING

EXHIBIT A TO CONTRACT AGREEMENT

Advertise 1 time
Wednesday, May 16, 2012

Joint Public Agency (JPA)
Purchasing Division
NOTICE TO BIDDERS

Sealed bids will be received by the Purchasing Agent of the Joint Public Agency (JPA) **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Wednesday, June 6, 2012** for providing the following:

West Haymarket Joint Public Agency (JPA)
Railroad Track Removal Project 870908
Bid No. 12-151

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*

EXHIBIT A TO CONTRACT AGREEMENT

Addendum No. 1
West Haymarket Railroad Track Removal Project
12-151

Addenda are instruments issued by the City prior to the date for receipt of offers which will modify or interpret the specification document by addition, deletion, clarification or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section. Be advised of the following changes and clarifications to the City's specification and bidding documents:

1. Added Sample Contract to the Attachment Section of the Bid.

2. Removed BNSF Exhibit C and C1. Replaced with C&M Agreement.

3. Removed Exhibit D i Special Provisions for Demolition Contracts.

Dated this 22nd day of May 2012.

Vince M. Mejer
Purchasing Agent

ADDENDUM NO. 2

WEST HAYMARKET JOINT PUBLIC AGENCY
RAILROAD TRACK REMOVAL
PROJECT NO. 870908
BID NO. 12-151

Addenda are instruments issued by the Purchasing Office prior to the date or time for receipt of offers which will modify or interpret the specifications document by addition, deletion, clarification or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

Please be advised of the following changes and clarifications to the City's specification and bidding documents:

1. Refer to the Notice to Bidders and add the following:

   "All questions regarding the project shall be submitted to the Purchasing Agent no later than 4:00 pm on Thursday, May 31, 2012. Questions submitted after this date and time will not receive responses prior to bids being received for this project."

2. Refer to the Bid Form for the Base Bid and Plan Sheet 2. The following bid items have been updated for the Base Bid as follows:

   The following bid items have been added to the Base Bid:

21.16001	Geotextile Filter Fabric	540 SY
32.02001	Synthetic Fabric Silt Fence Inst	500 LF
32.02002	Synthetic Fabric Silt Fence Maint	500 LF
32.02003	Synthetic Fabric Silt Fence Rem	500 LF
32.03001	Construction Entrance Surfacing	200 TON

3. Refer to the Special Provisions, page 2, Section 3.5:

   Delete Section 3.5 and replace with the following:

   3.5 All work associated with the base bid work shall be completed by August 3, 2012, including all final clean-up and restoration work.

4. Refer to the Special Provisions:

   Add the following section to the Special Provisions:

   24. <u>Storm Water Pollution Prevention Plan</u>

   24.1 The Contractor shall understand the terms and conditions of the general National Pollutant Discharge Elimination System

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(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.

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

24.2.1 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

24.2.2 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

24.2.3 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

24.2.4 Shall be responsible for the maintenance of the sediment control measures until permanent stabilization and cover crop is established; and

24.2.5 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

24.2.6 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

24.2.7 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

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in a mailbox, and provide copies of all inspection forms and modifications to the SWPPP plan to the JPA's Construction Project Manager, within 48 hours of inspection.

5. Refer to the plans:

   Add the attached Plan Sheets 8 and 9 for the Sediment and Erosion Control to the project plans.

Dated this 22nd day of May 2012.

This document was originally issued and sealed by Thomas A. Leikam, E-6290, on 05-22-12. This media should not be considered a certified document.

ADDENDUM NO. 3

WEST HAYMARKET JOINT PUBLIC AGENCY
RAILROAD TRACK REMOVAL
PROJECT NO. 870908
BID NO. 12-151

Addenda are instruments issued by the Purchasing Office prior to the date or time for receipt of offers which will modify or interpret the specifications document by addition, deletion, clarification or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

Please be advised of the following changes and clarifications to the City's specification and bidding documents:

1. Refer to the Notice to Bidders and add the following:

   "All questions regarding the project shall be submitted to the Purchasing Agent no later than 2:00 pm on Thursday, May 31, 2012. Questions submitted after this date and time will not receive responses prior to bids being received for this project."

2. Refer to the Sample Contract that is included with the Bid Documents:

   Exhibit "D" of the Sample Contract includes information on the Davis Bacon Wage requirements for this project. The Davis Bacon Wage requirements shown for the "Heavy Construction Projects" shall be deleted from the sample contract and exhibits. The **Davis Bacon requirements for "Highway Construction Projects" shall apply to all work completed on this project**.

3. Refer to the Notice to Bidders and add the following:

   "A pre-bid site meeting will be held on Wednesday May 30, 2012 at 1:30 p.m. to provide prospective bidders an opportunity to view the project area for the Base Bid work. Bidders interested in viewing the site should meet at the east end of the City of Lincoln's 901 Building on the aforementioned date and time."

Dated this 25th day of May 2012.

This document was originally issued and sealed by Thomas A. Leikam, E-6290, on 5-25-12. This media should not be considered a certified document.

ADDENDUM NO. 4

WEST HAYMARKET JOINT PUBLIC AGENCY
RAILROAD TRACK REMOVAL
PROJECT NO. 870908
BID NO. 12-151

Addenda are instruments issued by the Purchasing Office prior to the date or time for receipt of offers which will modify or interpret the specifications document by addition, deletion, clarification or correction.

Please acknowledge receipt of this addendum in the space provided in the Attribute Section.

Please be advised of the following changes and clarifications to the City's specification and bidding documents:

1. Refer to the Bid Form for the Base Bid and Sheet 3 of the plan set. The following bid items have been updated as follows:

   The following items have been added to the Base Bid quantities:

50.00005	Remove Track (136 LB Rail)	551 LF
50.00005	Remove Ties and Other Track Material	298 LF

   The following items have been revised for the Base Bid quantities to reflect the quantities shown below:

50.00005	Removal of Ballast Material	2,864 LF
50.00020	Cover Crop Seeding	5.5 AC

2. Refer to the Special Provisions, Section 12, Measurement and Payment and add the following items:

   12.1.9 Remove Tack (136 LB Rail), linear foot for a single 136 LB Rail, ties and other track material.
   12.1.10 Remove Ties and Other Track Material, linear foot (this pay item is for locations where the rail has been previously removed by others).
   12.1.11 Unless otherwise noted above, the linear foot measurement for the Remove Track pay item shall be based upon the length as measured along the centerline of the track (for track in place with 2-rails, and along the centerline of the rail if only a single rail remains to be removed) and shall include removal of both rails, ties, and all other track material.

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3. Refer to the Plans, Sheet 7:

   Delete Sheet 7 and replace with the revised Sheet 7A that is included with this addendum. This revised plan sheet shows the additional work to be included with the Base Bid for removal of the 136 pound rail at the former west leg of the BNSF wye. A portion of the rail has been previously removed at this location and the remaining rail, ties and other track material shall be removed and disposed of by the Contractor in accordance with the requirements outlined in the Special Provisions as part of the Base Bid work. All salvaged material associated with this portion of the work shall become the property of the Contractor.

4. Pre-Bid Site Meeting Notes:

   A pre-bid site meeting was held on Wednesday May 30, 2012 at 1:30 pm at the location of the base bid work. Those in attendance at the site meeting were as follows:

   Tom Leikam – Olsson Associates
   Kent Rohren – Olsson Associates
   Kevin Steele – Atlas Company
   Bill Broekemeier – Kelly Hill Company
   Vince Mejer – City Purchasing Agent

   A walk-through of the site for the base bid was performed. It was noted during the walk-through that additional removals would need to be incorporated into the bid documents to cover removal of the remaining track, ties, other track material and ballast at the former west leg wye track. This work is included as part of Addendum 4 to the project.

   It was noted at the pre-bid meeting that recent discussions with BNSF indicate that the BNSF is still planning on removing the track and turnouts at the "X" Yard. The JPA still is requesting bids for Alternate No. 1 and Alternate No. 2 in the event the BNSF is unable to complete this work.

   There were no questions asked by the individuals attending the meeting that required clarification or responses as part of an addendum.

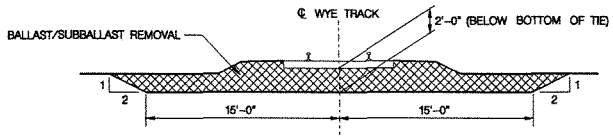
Dated this 1st day of June 2012.

This document was originally issued and sealed by Thomas A. Leikam, E-6290, on 6-1-2012. This media should not be considered a certified document.

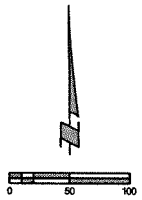
PROJ: Core Roadwaye
PEN: BN_Portable
USER: jwagner
DATE: 6/1/2012
DGN: P:\projects\870-243\Design\Sheets_Track Removal\Addendum No 4\870908CR05_Addendum 4 alt 7a.dgn

PROJECT NO.	SHEET NO.
870908	7A
Date: 6/1/2012	Drawn: JJW
Horz. Scale 1 : 100	Checked: TAL
	Approved: TAL

118-A-26



SECTION AT WYE TRACK
SHOWING BALLAST & SUBBALLAST REMOVAL



N = 208062.36
E = 155837.57

BEGIN REMOVE TRACK
(136 LB RAIL)
N = 207989.47
E = 156010.14

FORMER EAST
LEG OF WYE

CONTRACTOR TO REMOVE BALLAST & SUBBALLAST AND DISPOSE OF AT A SUITABLE OFFSITE LOCATION APPROVED BY THE WEST HAYMARKET ENVIRONMENTAL TEAM. USE SUITABLE MATERIAL FROM EXISTING STOCKPILES TO FILL AREA TO MATCH ADJACENT GROUND AND GRADE TO DRAIN. (PAID FOR AS REMOVAL OF BALLAST MATERIAL)

115 LB RAIL
TO BE REMOVED

N = 207962.52
E = 157072.22

136 LB RAIL, TRACK PARTIALLY DEMOLISHED, SINGLE RAIL, TIES, TIE PLATES AND OTHER TRACK MATERIAL TO BE REMOVED BY CONTRACTOR

CONTRACTOR TO REMOVE BALLAST & SUBBALLAST AND DISPOSE OF AT A SUITABLE OFFSITE LOCATION APPROVED BY THE WEST HAYMARKET ENVIRONMENTAL TEAM. USE SUITABLE MATERIAL FROM EXISTING STOCKPILES TO FILL AREA TO MATCH ADJACENT GROUND AND GRADE TO DRAIN. (PAID FOR AS REMOVAL OF BALLAST MATERIAL)

END 136 LB RAIL, BEGIN
REMOVE TIES AND OTHER
TRACK MATERIALS
N = 207773.24
E = 156516.33

RAIL REMOVED BY BNSF. TIES AND OTHER REMAINING TRACK MATERIAL INCLUDING PLATES, BOLTS, SPIKES, ETC. TO BE REMOVED BY THE CONTRACTOR.

BNSF R.O.W.

END REMOVE TIES AND
OTHER TRACK MATERIAL
N = 207595.61
E = 156751.89

REMOVE TRACK (136 LB RAIL)		50.00005
NORTHING/EASTING		LF
N = 207989.47 E = 156010.14	– N = 207773.24 E = 156516.33	551

REMOVE TIES AND OTHER TRACK MATERIAL		50.00005
NORTHING/EASTING		LF
N = 207773.24 E = 156516.33	– N = 207595.61 E = 156751.89	296

REMOVE TURNOUT (WYE TRACK)	50.00001
NORTHING/EASTING	EA
N = 208005.13 E = 155978.21	1

REMOVE TRACK (WYE TRACK)		50.00005
NORTHING/EASTING		LF
N = 208030.95 E = 155912.81	– N = 208002.05 E = 155900.35	74
N = 208062.36 E = 155837.57	– N = 207962.52 E = 157072.22	1,257

PROFESSIONAL CIVIL ENGINEER
THOMAS A. LEIKAM
E-6290
STATE OF NEBRASKA

ADDENDUM NO. 4
TRACK REMOVAL

118-A-26

This document was originally issued and sealed by Thomas A. Leikam, E-6290, on 6-1-12. This media should not be considered a certified document.

118-A-26

EXHIBIT A TO CONTRACT AGREEMENT

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

Bid Information

Bid Creator	Deb Winkler Systems Administrator
Email	dwinkler@lincoln.ne.gov
Phone	1 (402) 441-7410
Fax	1 (402) 441-6513
Bid Number	12-151 Addendum 4
Title	West Haymarket Railroad Track Removal Project
Bid Type	Bid
Issue Date	05/16/2012
Close Date	6/6/2012 12:00:00 PM CST
Need by Date	

Contact Information

Address	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508
Contact	Vince M. Mejer
Department	
Building	
Floor/Room	
Telephone	(402) 441-8314
Fax	(402) 441-6513
Email	vmejer@lincoln.ne.gov

Ship to Information

Address
Contact
Department
Building
Floor/Room
Telephone
Fax
Email

Supplier Information

Company	Judds Brothers Construction Co.
Address	3835 N 68th Street Lincoln, NE 68505
Contact	
Department	
Building	
Floor/Room	
Telephone	1 (402) 467-4666
Fax	1 (402) 467-4782
Email	
Submitted	6/6/2012 11:47:23 AM CST
Total	$500,381.00

Signature _____

Supplier Notes

Bid Notes

Bid Activities

Date	Name	Description
5/30/2012 1:30:00 PM	Pre Bid Meeting per Addendum 3	A pre-bid site meeting will be held on Wednesday May 30, 2012 at 1:30 p.m. to provide prospective bidders an opportunity to view the project area for the Base Bid work. Bidders interested in viewing the site should meet at the east end of the City of Lincoln's 901 Building on the aforementioned date and time

EXHIBIT A TO CONTRACT AGREEMENT

6/6/2012 12:00:00 PM	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.
6/6/2012 12:00:00 PM	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

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/stndspec/index.htm	Yes
2	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
3	Form of Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
4	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
5	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
6	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
7	Specifications	I acknowledge reading and understanding the Specifications.	Yes
8	Plan, Profile & Detail Sheets	I acknowledge reading and understanding the Plan, Profile & Detail Sheets included with this bid.	Yes
9	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
10	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 August 10, 2012.	YES

11	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
12	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notorize and attach the Employee Classification Act Affidavit to my contract.	Yes
13	Electronic Signature	Please check here for your electronic signature.	Yes
14	Contact	Name of person submitting this bid:	Kevin Steele
15	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: See Bid Attachments section for Addendum information.	Yes
16	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: See Bid Attachments section for Addendum information.	Yes
17	Agreement to Addendum No. 3	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	Yes
18	Agreement to Addendum No. 4	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. Reason: See Bid Attachments section for Addendum information.	Yes

Line Items

#	Qty	UOM	Description	Response
1	1	Lump Sum	Base Bid for track removal at the east leg of the former BNSF wye track in the West Haymarket area	$146,026.00
	Item Notes:			
	Supplier Notes:			
2	1	Lump Sum	ALTERNATE BID 1 for track and turnouts removal and salvage at the east leg of the former BNSF wye track in the West Haymarket area	$230,486.25
	Item Notes:			
	Supplier Notes:			
3	1	Lump Sum	ALTERNATE BID 2 for track and turnouts removal at the east leg of the former BNSF wye track in the West Haymarket area	$123,868.75
	Item Notes:			
	Supplier Notes:			
			Response Total:	$500,381.00

EXHIBIT A TO CONTRACT AGREEMENT

12-151

JUDDS BROTHERS CONSTRUCTION COMPANY

Line No.	Pay Item No.	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCode
01	01.00001	Mobilization	1.0000	LS	$5,000.00	$5,000.00	GENERAL	Base Bid
02	50.00001	Remove Turnout (Wye Track)	1.0000	EA	$3,500.00	$3,500.00	MISC	Base Bid
03	50.00005	Removal of Ballast Material	2,864.0000	LF	$38.00	$108,832.00	MISC	Base Bid
04	50.00005	Remove Track (Wye Track)	2,015.0000	LF	$3.00	$6,045.00	MISC	Base Bid
05	50.00020	Cover Crop Seeding	5.5000	AC	$950.00	$5,225.00	MISC	Base Bid
06	21.16001	Geotextile Filter Fabric	540.0000	SY	$1.00	$540.00	STORM DRAINAGE	Base Bid
07	32.02001	Synthetic Fabric Silt Fence Inst	500.0000	LF	$3.00	$1,500.00	EROSION CTRL	Base Bid
08	32.02002	Synthetic Fabric Silt Fence Maint	500.0000	LF	$2.00	$1,000.00	EROSION CTRL	Base Bid
09	32.02003	Synthetic Fabric Silt Fence Rem	500.0000	LF	$1.00	$500.00	EROSION CTRL	Base Bid
10	32.03001	Construction Entrance Surfacing	200.0000	TON	$40.00	$8,000.00	EROSION CTRL	Base Bid
11	50.00005	Remove Track (136 LB Rail)	551.0000	LF	$5.00	$2,755.00	MISC	Base Bid
12	50.00005	Remove Ties and Other Track Material	298.0000	LF	$10.50	$3,129.00	MISC	Base Bid

$146,026.00 Total Amount

EXHIBIT A TO CONTRACT AGREEMENT

12-151 Alternate 1 JUDDS BROTHERS CONSTRUCTION COMPANY

Line No.	Standard Item No.	Description	Quantity	Unit	Unit Price	Amount
1	01.00001	Mobilization	1.00	LS	$1,500.00	$1,500.00
2	50.00001	Remove and Salvage Turnout (BNSF "X" Yard)	11.00	EA	$6,450.00	$70,950.00
3	50.00005	Remove and Salvage Track (BNSF "X" Yard)	17,085.00	LF	$9.25	$158,036.25

$230,486.25 Total Amount

EXHIBIT A TO CONTRACT AGREEMENT

12-151 Alternate 2 JUDDS BROTHERS CONSTRUCTION COMPANY

Line No.	Timer	Description	Quantity	Unit	Unit Price	Amount
1	01.00001	Mobilization	1.00	LS	$1,500.00	$1,500.00
2	50.00001	Remove Turnout (BNSF "X" Yard)	11.00	EA	$5,300.00	$58,300.00
3	50.00005	Remove Track (BNSF "X" Yard)	17,085.00	LF	$3.75	$64,068.75

$123,868.75 Total Amount

EXHIBIT A TO CONTRACT AGREEMENT

EXHIBIT B

Intentionally Omitted

EXHIBIT C

Construction and Maintenance Agreement
Between BNSF and the City of Lincoln

Approved by Law
6-7-2012

A- 86070

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("**C&M Agreement**") is made to be *effective the 18th day of October, 2010* ("***Effective Date***"), *by and between* **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**"), and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**City**"). City and BNSF, respectively, are sometimes referred to in this C&M Agreement each as a "**Party**" and collectively, as the "**Parties**".

RECITALS

A. BNSF owns and operates a line of railroad in and through the City of Lincoln, State of Nebraska

B In an effort to strengthen the long-term economic and physical viability of the West Haymarket District and Downtown Lincoln, City plans to construct entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities (collectively, the "**West Haymarket Project**") in the area shown on the map attached hereto as **Exhibit A** and incorporated herein by reference ("**Project Area**") The West Haymarket Project will include, among other things, an approximately 16,000-seat arena (the "**Arena**"), an ice center facility (the "**Ice Center**"), a district energy facility, and upgrades to parking, utilities, and surface transportation access to the area.

C. City and BNSF have entered into that certain Master Development Agreement of even date *herewith (the "**Master Agreement**"). In connection with certain economic development objectives of City* as set forth in the Master Agreement, City desires that BNSF grant certain permanent or temporary license and/or easement rights to City and certain third parties (each a "**Right of Entry**" and, in multiples, "**Rights of Entry**") for certain activities on BNSF's Property (defined below) (each a "**Right of Entry Work**" and collectively, "**Rights of Entry Work**"). For the purposes of this C&M Agreement, the term "BNSF's Property" shall mean the applicable Existing BNSF Property, Retained BNSF Property, and/or Replacement BNSF Property which is under BNSF ownership at the time work is done under the Right of Entry. All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I – CITY C&M WORK. The provisions of this C&M Agreement, in addition to and not in limitation of the provisions contained in the applicable Rights of Entry, shall apply with respect to the Rights of Entry Work and any other construction, maintenance, Operation (as defined in the Master Agreement), or other work being performed on or adjacent to BNSF property by or for City (collectively, the "**City C&M Work**"). In the event of conflicts between the terms of this C&M Agreement and any applicable Right of Entry agreement, the most restrictive provisions shall apply to City.

ARTICLE II – BNSF OBLIGATIONS. In consideration of the covenants of City set forth herein and the faithful performance thereof, BNSF agrees to do the following:

2.1 Grant to City the following temporary Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.1.1 The Temporary Access License for Initial Construction as defined and described in Section 3.2.1 of the Master Agreement and attached thereto as Exhibit EE;

2.1.2 The Temporary Grading License for Storm Water Mitigation as defined and described in Section 3.2.2(a) of the Master Agreement and attached thereto as Exhibit FF-1;

2.1.3 The Temporary Access License for Soil Staging as defined and described in Section 3.2.3 of the Master Agreement and attached thereto as Exhibit GG;

2.1.4 The Temporary Access License for Construction Staging - Pedestrian Bridge as defined and described in Section 3.2.4(a) of the Master Agreement and attached thereto as Exhibit HH-1;

2.1.5 The Temporary Access License for Amtrak Work as defined and described in Section 3.2.5 of the Master Agreement and attached thereto as Exhibit II;

2.1.6 The Temporary Grading License for Arena Drive and Parking Lot Construction as defined and described in Section 3.2.9 of the Master Agreement and attached thereto as Exhibit KK;

2.1.7 The Temporary Access License for Survey / Geotech / Environmental Activities as defined and described in Section 3.2.11(a) of the Master Agreement and attached thereto as Exhibit BB;

2.1.8 The Crossing Agreements as defined and described in Section 3.2.12 of the Master Agreement and attached thereto as Exhibit UU.

2.1.9 The Temporary Construction and Access License for Sanitary Sewer Work as defined and described in Section 3.2.11(b) of the Master Agreement and attached thereto as Exhibit BB-1.

2.2 Grant to City the following permanent Rights of Entry in accordance with and as described in Section 3.2 of the Master Agreement:

2.2.1 The Storm Water Mitigation Easement as defined and described in Section 3.2.2(b) of the Master Agreement and attached thereto as Exhibit FF;

2.2.2 The Pedestrian Bridge Easement as defined and described in Section 3.2.4(b) of the Master Agreement and attached thereto as Exhibit HH; and

2.2.3 The City Utility Easements as defined and described in Section 3.2.7 of the Master Agreement and attached thereto as Exhibit TT and Exhibit TT-1.

2.2.4 The 2nd & J Utility Easement as defined and described in Section 3.2.10 of the Master Agreement and attached thereto as Exhibit TT.

2.3 Grant to City the Security Fencing License in accordance with and as defined and described in Section 3.2.8 of the Master Agreement and attached thereto as Exhibit JJ.

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

3.1.1 If any City C&M Work is not included in the City Work Final Design (as defined in the Master Agreement), City must furnish to BNSF four sets of plans and specifications for such City C&M Work (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, for approval prior to commencement of any construction. For each set of such plans and specifications submitted by City to BNSF, BNSF shall approve or reject such plans and specifications within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans and specifications shall be approved or rejected in the manner hereinbefore provided. BNSF will give City final written approval of the plans and specifications substantially in the form of **Exhibit B**, attached hereto and incorporated herein by reference. Upon BNSF's final written approval of the plans and specifications (the "**Approved Plans**"), the Approved Plans will

become part of this C&M Agreement and incorporated herein. Any approval of the Approved Plans by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the Approved Plans meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the Approved Plans or construction is structurally sound and appropriate or that the Approved Plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

3.1.2 City must provide for and maintain minimum vertical and horizontal clearances, as required in the Contractor Requirements in **Exhibit C**, attached hereto and incorporated herein by reference, and as approved by BNSF as part of the City Work Final Design or any other Approved Plans.

3.1.3 Prior to the start of any segment of City C&M Work on or affecting BNSF's property, City must provide to BNSF, and BNSF must approve, exact minimum vertical and horizontal clearances for such segment of City C&M Work being constructed pursuant to the City Work Final Design. Upon BNSF's approval of each segment of City C&M Work, BNSF and City agree to execute an amendment to this C&M Agreement incorporating the approved clearances into this C&M Agreement as **Exhibit D** ("**Final Clearances**"). City shall not deviate from the Final Clearances for the applicable segment of City C&M Work without the prior written approval of BNSF.

3.1.4 City or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Project Engineer (defined below) for approval. The shoring, falsework or cribbing used by City Contractors (defined below) shall comply with all applicable requirements *promulgated by state and federal agencies, departments, commissions and other legislative bodies.*

3.1.5 (a) For purposes of notices required under this C&M to be made to BNSF's Project Engineer, Division Engineer, Manager Signal, and Director Engineering Services, the following contact information is in effect at the Effective Date:

(i) BNSF's "**Project Engineer**" is:

Gerald Maczuga
Gerald.Maczuga@BNSF.com
402-458-7537 (office)
206-265-2427 (cell)
402-458-4376 (fax)

(ii) BNSF's "**Division Engineer**" is:

Andrew Shearer
Andrew.Shearer@BNSF.com
402-458-7724 (office)

(iii) BNSF's "**Manager Signal**" is:

Mike Koetter
Michael.Koetter@BNSF.com
402-458-7504 (office)
402-458-7590 (fax)

(iv) BNSF's "***Director Engineering Services***" is:

Tom Schmidt
Thomas.Schmidt@BNSF.com
913-551-4330 (office)

(b) The contact information in **Section 3.1.5(a)** may be changed from time to time in accordance with the notice provisions of **Section 4.6** below.

3.2 Additional City Requirements.

3.2.1 City must supervise and inspect the operations of all City Contractors to assure compliance with the City Work Final Design and all other Approved Plans, the terms of this C&M Agreement and all communicated and applicable safety requirements of BNSF.

3.2.2 City must make any required applications and obtain all required permits and approvals for the City C&M Work.

3.2.3 City must acquire all rights of way necessary for the City C&M Work.

3.2.4 City must furnish all labor, materials, tools and equipment for the performance of the City C&M Work.

3.2.5 City must advise BNSF's Project Engineer in writing of: (i) the completion date of each Right of Entry Work within thirty (30) days after each such completion date and (ii) the date on which City and/or City Contractor will meet with BNSF for the purpose of making final inspection of each Right of Entry Work.

3.2.6 City must notify and obtain prior authorization from BNSF's Project Engineer before entering BNSF's right-of-way for inspection, construction, maintenance, or any other purposes. Prior to performing any inspection, construction or maintenance with its own personnel, City shall: comply with all of BNSF's communicated and applicable safety rules and regulations; require any City employee performing maintenance to complete the safety training program at the Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of **Exhibit C** or **Section 3.3.6** below, flaggers are required to be present; and procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

3.2.7 City agrees to reimburse BNSF for work of an emergency nature caused by City or City Contractors in connection with the City C&M Work which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such emergency work may be performed by BNSF without prior approval of City and City agrees to fully reimburse BNSF for all such work.

3.2.8 The City C&M Work must be performed by City or City Contractors in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

3.2.9 City must include the following provisions in any contract with City Contractors:

3.2.9.1 City Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "**Lines**") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. City Contractor will be responsible for contacting BNSF's Project Engineer, BNSF's Manager Signal, and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. City Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. City Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

3.2.9.2 City Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the City C&M Work. City Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

3.2.9.3 Failure to mark or identify these Lines will be sufficient cause for BNSF's Project Engineer to stop all or any part of the City C&M Work at no cost to City or BNSF until these items are completed.

3.2.9.4 All City C&M Work performed within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF.

3.2.9.5 Changes or modifications during the City C&M Work that affect safety or BNSF operations must be subject to BNSF's approval.

3.2.9.6 No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(A)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.7 Notwithstanding the provisions of **Section 3.2.9.6** above, solely for the temporary Rights of Entry described in **Sections 2.1.1**, **2.1.3**, **2.1.4**, and **2.1.5** above, no work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with the City C&M Work under the referenced temporary Rights of Entry have (i) executed and delivered to BNSF a letter agreement in the form of **Exhibit C-1(B)** attached hereto and incorporated herein by reference, and (ii) delivered to and secured BNSF's approval of the required insurance.

3.2.9.8 To facilitate scheduling for the City C&M Work, City Contractors shall give BNSF's Project Engineer eight (8) weeks' advance notice of the proposed times and dates for work windows, except in case of emergency, in which event City Contractors must notify BNSF's Project Engineer by telephone at (402) 458-7537 as soon as practicable and shall promptly thereafter follow up with written notice to BNSF's Project Engineer at City Contractor's earliest opportunity. Notwithstanding the foregoing, in no event shall City or any City Contractors enter onto BNSF's property prior to receiving written approval for such entry from BNSF's Project Engineer. BNSF and the City Contractors will establish mutually agreeable work windows for the City C&M Work. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the City C&M Work.

3.3 Construction and Contractor Requirements.

3.3.1 Contractor Requirements. For the City C&M Work, City must comply, and cause all of its contractors (each a "**City Contractor**", and collectively the "**City Contractors**") to comply, with the obligations set forth in **Exhibit C** attached hereto and incorporated herein by reference, and cause all City Contractor(s) for such work to execute and deliver a Contractor Right of Entry ("**CROE**") in the form of **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable. In addition, all City C&M Work must comply with all of the following requirements:

3.3.2 Standards. All City 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, each

portion of the City C&M Work must be promptly commenced by the Party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the City 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 BNSF's Project Engineer.

3.3.3 Site Cleanup and Restoration. City 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 City C&M Work to the* reasonable satisfaction of BNSF's Division Engineer.

3.3.4 Safety/Security.

3.3.4.1 During the City C&M Work, City, at City's sole cost, shall perform all activities and work in such a manner as to preclude personal injury or property damage to BNSF or any other party, and shall ensure that there is no interference with the railroad operations or other activities of BNSF, or anyone present on BNSF's property with the authority or permission of BNSF. City shall not disturb any improvements of BNSF or BNSF's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements, except as permitted by **Section 3.3.5** below.

3.3.4.2 Prior to entering BNSF's property to perform the City C&M Work, City shall *cause all City Contractor(s) to comply with all of BNSF's communicated and applicable safety and security* rules and regulations and complete the safety training program at the Website "www.contractororientation.com" or then-current program designated by BNSF (the "**Safety Orientation**") and eRAILSAFE or then-current security program designated by BNSF (the "**Security Orientation**") within one year prior to entering upon BNSF's property. Additionally, City must ensure that each and every employee of all City Contractors possess a card certifying completion of the Safety Orientation and the Security Orientation prior to entering upon BNSF's property. City must renew the Safety Orientation and Security Orientation annually.

3.3.4.3 City must supervise and inspect the activities of all City Contractors entering onto BNSF's property to perform the City C&M Work, and assure compliance with the applicable Approved Plans, the terms of this C&M Agreement, and all communicated and applicable safety requirements of BNSF. BNSF will have the right to stop work if any of the following events take place: (i) If BNSF determines that proper supervision and inspection are not being performed by City at any time during the City C&M Work, (ii) any City Contractor performs any work in a manner contrary to the applicable Approved Plans; (iii) any City Contractor, in BNSF's opinion, prosecutes its work in a manner which is hazardous to BNSF property, facilities, personnel, or the safe and expeditious movement of railroad traffic; or (iv) the insurance described herein or in **Exhibit C-1(A)** or **Exhibit C-1(B)**, as applicable, is canceled or expires. The work stoppage will continue until all necessary actions are taken by City to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have under this C&M Agreement or an applicable Right of Entry. In the event that BNSF desires to stop work, BNSF agrees to immediately notify City. Notwithstanding the foregoing, BNSF has no duty or obligation to observe or inspect, or to halt work by any City Contractor on BNSF's property, it being solely City's responsibility to ensure that work performed by any City Contractor is conducted in compliance with *the terms of this C&M Agreement, all Legal Requirements and the applicable Approved Plans.*

3.3.5 Disturbance of Improvements. City 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**"). City 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. City 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. City 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. City must make all adjustments and other work described in this **Section 3.3.5**, 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. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

3.3.6 Flagging. Subject to modification in writing by BNSF's Division Engineer, no City Contractor shall conduct any activities on, or be present on, any portion of BNSF's property that is within twenty-five (25) feet of any active railroad track or where any such activities have the potential to foul any active railroad track, except in the presence of a flagger. In addition to and not in limitation of the foregoing, City shall, and shall cause its City Contractors to, comply with all BNSF requirements concerning flagging, including without limitation the provisions of Section 1.05 of **Exhibit C**. BNSF shall arrange for the presence of flaggers as soon as practicable after receipt of notice from City in accordance with Section 1.05.01 of **Exhibit C**; provided, however, BNSF shall not be held responsible for City delays when flaggers are not available.

3.3.7 Flagging Costs. Flagging costs of the Included BNSF Work (as defined in the Master Agreement) are the responsibility of BNSF to the extent described in Section 2.2(i) of the Master Agreement. All other flagging costs, including without limitation flagging costs for City C&M Work, BNSF Additional Cost Work and any other work that is or becomes a part of the West Haymarket Project, shall be at City's cost and expense; provided, however, to the extent BNSF is performing work requiring flagging that is the responsibility of BNSF (under the first sentence of this **Section 3.3.7**) at the same time and in the same location as the City C&M Work, BNSF Additional Cost Work and/or any other work that is or becomes a part of the West Haymarket Project, such flagging costs and expenses shall be deemed to be part of the Included BNSF Work. Notwithstanding the foregoing, however, if the City C&M Work, BNSF Additional Cost Work or any other work that is or becomes part of the West Haymarket Project is of such magnitude that additional flaggers or additional flagging time is required, then City shall be responsible for all flagging costs and expenses for such incremental flaggers and additional flagging time as BNSF Additional City Cost Work. As further described in Section 1.05.03c of **Exhibit C**, the governmental flagging rate in effect at the time of performance by the flaggers will be used to calculate flagging costs. As more particularly described in Section 2.7.2 of the Master Agreement and also in the Escrow Agreement (as defined in the Master Agreement), City shall deposit additional amounts, including amounts for estimated flagging costs, into escrow for BNSF Additional City Cost Work.

3.3.8 No Unauthorized Tests or Digging. No City 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 City has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.

3.3.9 Drainage. Any and all cuts and fills, excavations or embankments as part of the City C&M Work shall be deemed to be a part of the City C&M Work and shall be made by City in such manner, form and to the extent as will provide adequate drainage of and from BNSF's property and any adjoining BNSF right of way. Wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from either or both BNSF's property and BNSF's adjoining right of way, City shall construct such culverts or drains to preserve such natural and pre-existing drainage, and such culverts or drains shall also be deemed to be a part of the City C&M Work. City shall wherever necessary with respect to the City C&M Work, construct extensions of existing drains, culverts or ditches through or along BNSF's property (which extensions will also be deemed to be a part of the City C&M Work), such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

3.3.10 Liens. City shall promptly pay and discharge any and all liens arising out of any construction done, suffered or permitted to be done by City. BNSF is hereby authorized to post any notices

or take any other action upon or with respect to BNSF's property that is or may be permitted by Legal Requirements to prevent the attachment of any such liens to any portion of BNSF's property; provided, however, that failure of BNSF to take any such action shall not relieve City of any obligation or liability under this Section or any other section of this C&M Agreement. City shall include in its contracts with all City Contractors, and require all contractors performing any work on BNSF's property or providing materials to include in their contracts with their subcontractors, a notice and acknowledgement by the party providing work or materials that BNSF is not liable for any amounts due such contractor or contractors and waiving any right to place a lien on BNSF's property.

3.4 Environmental Compliance and Notification.

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to 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. City and its contractors, if any, 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. City and its contractors, if any, 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 the SMP (defined below), 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.

3.4.2 Notice of Release. City 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 City's use of BNSF's property. City shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in this C&M Agreement only in compliance with Environmental Laws and the SMP. City shall also give BNSF notice of all measures undertaken on City's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

3.4.3 Remediation of Release. In the event City has notice of a release or violation of Environmental Laws which occurred or may occur as a result of City's activities contemplated in this C&M Agreement, City 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 City C&M Work, soils or other materials considered to be environmentally contaminated are exposed, City will remove and safely dispose of said contaminated soils only in compliance with Environmental Laws and the SMP. 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.

3.4.4 Evidence of Compliance. City agrees to periodically to furnish BNSF upon written request with reasonable proof that it is in compliance with this **Article III, Section 3.4**.

3.4.5 Soil Management Plan. In addition to the other obligations of City and City Contractors as set forth herein, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the Soil Management Plan attached hereto as **Exhibit E** ("**SMP**") sets forth additional obligations of City and BNSF with respect to the proper management of impacted environmental media during the Development Period (as defined in the Master Agreement).

3.5 Timing.

3.5.1 City will use commercially reasonable efforts to perform all City C&M Work in accordance with the Timeline.

3.5.2 BNSF and City mutually agree that no construction activities for the City C&M Work, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on BNSF's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). BNSF and City mutually understand and agree that trains cannot be subjected to delay during this time period.

3.6 Indemnifications.

3.6.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, 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 CITY OR ANY CITY PARTY (DEFINED BELOW) PURSUANT TO THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THIS C&M AGREEMENT;**

(ii) **THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CITY CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY *WORK PERFORMED BY CITY OR ANY CITY PARTY 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 (AS DEFINED IN THE MASTER AGREEMENT), OR STORM WATER MITIGATION (AS DEFINED IN THE MASTER AGREEMENT) BY CITY;**

(iii) **ANY ENVIRONMENTAL MATTERS ARISING FROM THE WEST HAYMARKET PROJECT AND/OR AFFECTING THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO;**

(iv) **ANY AND ALL CLAIMS BROUGHT BY ANY PARTY RELATED TO OR ARISING FROM THE ACQUISITION AND/OR DEVELOPMENT OF ANY AND ALL PROPERTY AS PART OF THE WEST HAYMARKET PROJECT, INCLUDING WITHOUT LIMITATION PROPERTY DESCRIBED IN THIS C&M AGREEMENT, THE MASTER AGREEMENT, THE EXCHANGE AGREEMENT, AND/OR THE RIGHTS OF ENTRY AGREEMENTS;**

(v) **THE CONDITION OF THE REPLACEMENT BNSF PROPERTY, INCLUDING WITHOUT LIMITATION ANY AND ALL CLAIMS RELATED TO OR ARISING FROM THE EXISTENCE OF ANY THIRD PARTY RESERVED RIGHTS AND/OR ANY THIRD PARTY'S EXERCISE OF ITS RESERVED RIGHTS;**

(vi) **ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CITY OR ANY CITY PARTY, 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;

(vii) **CITY'S OR ANY CITY PARTY'S BREACH OF THE TERMS AND CONDITIONS OF THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THE MASTER AGREEMENT;**

(viii) **ANY ACT OR OMISSION OF CITY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS, OR A CITY PARTY, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

THE LIABILITY ASSUMED BY CITY AND THE CITY CONTRACTORS 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.

3.6.2 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, 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), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M 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, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.**

3.6.3 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES, AND SHALL CAUSE CITY'S CONTRACTORS TO AGREE, 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 CITY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE 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.**

3.6.4 City agrees that its obligations under the provisions of this **Section 3.6** expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement and the Rights of Entry agreements.

3.7 Waiver of Municipal and Sovereign Immunity. To the fullest extent permitted by law, City waives its municipal immunity and its sovereign immunity with respect to BNSF for matters arising out of the West Haymarket Project, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and this C&M Agreement, including, without limitation, (i) for environmental and other conditions of the Replacement BNSF Property that City is conveying to BNSF pursuant to the Master Agreement and the Exchange Agreement; (ii) for environmental and other conditions of the real property that BNSF is quitclaiming to City pursuant to the Master Agreement and the Exchange Agreement and of property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest, including remediation costs beyond Nebraska Department of Environmental Quality Title 200 funds ("**Title 200 Funding**"); (iii) for claims arising out of work performed by City or its contractors pursuant to the provisions of this C&M Agreement, the Master Agreement, the Exchange Agreement, the Rights of Entry agreements, and the Exchange Agreement; and (iv) for claims arising out of continuing rights of City to enter onto property of BNSF, including work performed by City and City Contractors on such property of BNSF. Any lawful waiver of City's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of City's sovereign immunity pursuant to the terms and provisions of the Master Agreement, the Exchange Agreement, and the Rights of Entry agreements.

3.8 Insurance Obligations.

3.8.1 During the Development Period, City shall, at its sole cost and expense, procure and maintain the following insurance:

3.8.1.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability in an amount of at least $25,000,000 per occurrence and an aggregate limit of $50,000,000, but in no event less than the amount otherwise carried by City. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to 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.

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

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

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

- Waiver of subrogation in favor of and acceptable to 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.

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

- City's statutory liability under the workers' 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.

3.8.1.4 Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000.00 per occurrence and $10,000,000.00 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 Railroad prior to performing any work or services under this C&M Agreement

In lieu of providing a Railroad Protective Liability Policy, City may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to City and City Contractors.

3.8.1.5 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.

City 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, or to the extent caused by the gross negligence or 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, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. City 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 City's care, custody or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

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. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions

of this C&M Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the City C&M Work, City must furnish to Railroad 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. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Upon notification to BNSF of cancellation, non-renewal, substitution or material alteration of any such policy(ies), BNSF shall have the option to (i) if feasible, pay, on behalf of the City, any and all such premiums, penalties, fees or expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market and procure such policy(ies) of insurance on behalf of City as required by this C&M Agreement at the then-current market rate. Upon any of the above occurrences, BNSF shall invoice the City for reimbursement of all such premiums, penalties, fees or expenses advanced on City's behalf plus an additional fifteen (15%) of such advanced amounts as remuneration for BNSF's overhead. Such amounts advanced by BNSF shall be paid by City within thirty (30) days after delivery of a statement for such expense. Any insurance policy must be written by a reputable insurance company reasonably 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 provided.

City represents that this C&M Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by City to procure the insurance coverage required by this C&M Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. City represents that it understands and its insurance agent(s)/broker(s) have been informed that the City's insurance coverage being procured by City herein is to protect, defend, indemnify and hold harmless BNSF from any and all Liabilities, as such term is defined herein, that may arise in connection with this C&M Agreement and City, to the fullest extent allowed by law, waives its sovereign and municipal immunity and any caps or limitations on legal liability that may result therefrom.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by City, City must require that City Contractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured; provided, however, that policy limits for Commercial General Liability Insurance may be reduced to $5,000,000 per occurrence and an aggregate limit of $10,000,000, but in no event less than the amount otherwise carried by the City Contractor. In addition, City must require that City Contractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Section 3.8** will entitle, but not require, Railroad to immediately suspend, until such default is cured, any and/or all work under this C&M Agreement, including without limitation: (i) BNSF Work, (ii) City C&M Work, and (iii) any other work on or affecting any BNSF property, subject to termination as provided in the Master Agreement. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by City will not be deemed to release or diminish the liability of City including, without limitation, liability under the indemnity provisions of this C&M Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this **Section 3.8**, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

3.8.2 During the Post-Development Period (as defined in the Master Agreement), City shall, and shall require City Contractors to, at City's sole cost and expense, procure and maintain the insurance coverages listed in the applicable Rights of Entry, continuing thereafter so long as the C&M Agreement and/or any Right of Entry agreement is in effect.

3.9 Adherence to Timeline. City must require City Contractors to reasonably adhere to the Timeline. The Parties mutually agree that BNSF's failure to complete the BNSF Work in accordance with *the Timeline due to inclement weather or unforeseen railroad emergencies will not constitute a breach of* this C&M Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the Timeline, BNSF reserves the right to reallocate the labor forces assigned to complete the BNSF Work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The Parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this C&M Agreement by BNSF.

ARTICLE IV – MISCELLANEOUS

4.1 Any books, papers, receipts, and accounts of the Parties relating to the City C&M Work and the BNSF Additional City Cost Work will at all reasonable times and upon reasonable prior written notice be open to inspection and audit by the agents and authorized representatives of the Parties for a period of one (1) year after the date of the final disbursement from the Escrow Account.

4.2 The terms and conditions of indemnification and liability provisions of **Sections 3.6** and **3.7** shall survive expiration or termination of this C&M Agreement, the Master Agreement and the Exchange Agreement, and all Closings under the Exchange Agreement.

4.3 The covenants and provisions of this C&M Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding the preceding sentence, neither Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this C&M Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) City's entire interest under the Master Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to JPA.

4.4 This C&M Agreement shall be in effect for so long as the Master Agreement and/or any Right of Entry is in effect; provided, however, that if the Master Agreement and all Rights of Entry have expired or been terminated, BNSF has the right to terminate this C&M Agreement upon written notice to City.

4.5 Neither termination nor expiration of this C&M Agreement will release either Party from any liability or obligation under this C&M Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

4.6 Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party no less than thirty (30) days' advance written notice of such change in address.

If to BNSF: BNSF Railway Company
P.O. Box 961034
Fort Worth, TX 76161-0034.
Attn: Robert J. Boileau, P.E., Assistant Vice President, Engineering Services

If to City: City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

4.7 Time is of the essence of this C&M Agreement.

4.8 In any action (declaratory or otherwise) brought by either Party in connection with or arising out of the terms of this C&M Agreement, the prevailing Party in such action will be entitled to recover from the non-prevailing Party all actual costs, actual damages, and actual expenses, including, without limitation, reasonable attorneys' fees and charges to the fullest extent permitted by law.

4.9 Each Party and its counsel have reviewed and revised this C&M Agreement. The Parties agree that the rule of construction that any ambiguities are to be resolved against the drafting Party must not be employed to interpret this C&M Agreement or its amendments or exhibits.

4.10 If any clause or provision of this C&M Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this C&M Agreement, then and in that event, it is the intention of the Parties that the remainder of this C&M Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision of this C&M Agreement that is illegal, invalid or unenforceable, there be added, as a part of this C&M Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

4.11 This C&M Agreement, the Master Agreement, the Exchange Agreement, and, to the extent executed, the Right of Entry licenses and/or easements described herein, contain the entire agreement between BNSF and City with respect to the West Haymarket Project. Oral statements or prior written matters not specifically incorporated into this C&M Agreement are superseded hereby. No variation, modification, or change to this C&M Agreement, the Exchange Agreement or the Rights of Entry agreements shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party's right to require strict compliance with any term of this C&M Agreement. The captions next to the section numbers of this C&M Agreement are for reference only and do not modify or affect this C&M Agreement.

4.12 No director, officer, elected or appointed official, or employee of either of the Parties shall be personally liable in the event of any default.

4.13 This C&M Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.

4.14 As of this same Effective Date, City and BNSF have also entered into the Master Agreement, the Exchange Agreement and to the extent executed, certain Right of Entry licenses and/or easements. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Right of Entry licenses and/or easements. City and BNSF agree that, except as otherwise stated in **Article 1** of this C&M Agreement: (i) in the event the terms of the Master Agreement and the terms of the C&M Agreement, the Exchange Agreement and the various licenses and/or easements are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement and the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the Exchange Agreement shall prevail, and (iii) in the event the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the C&M Agreement shall prevail.

4.15 All aspects of this C&M Agreement shall be governed by the laws of the State of Nebraska.

4.16 To the fullest extent permitted by law any dispute arising under or in connection with this C&M Agreement or related to any subject matter which is the subject of this C&M Agreement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive. Each Party hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

4.17 By signing below, the Parties affirm they have the legal authority to enter into this C&M Agreement.

4.18 Each 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 reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Party shall reasonably 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 reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this C&M Agreement.

[*Signature page follows*]

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David L. Freeman, Vice President – Engineering

Date: _____

Signature Page - C&M Agreement

IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
David L. Freeman, Vice President – Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]

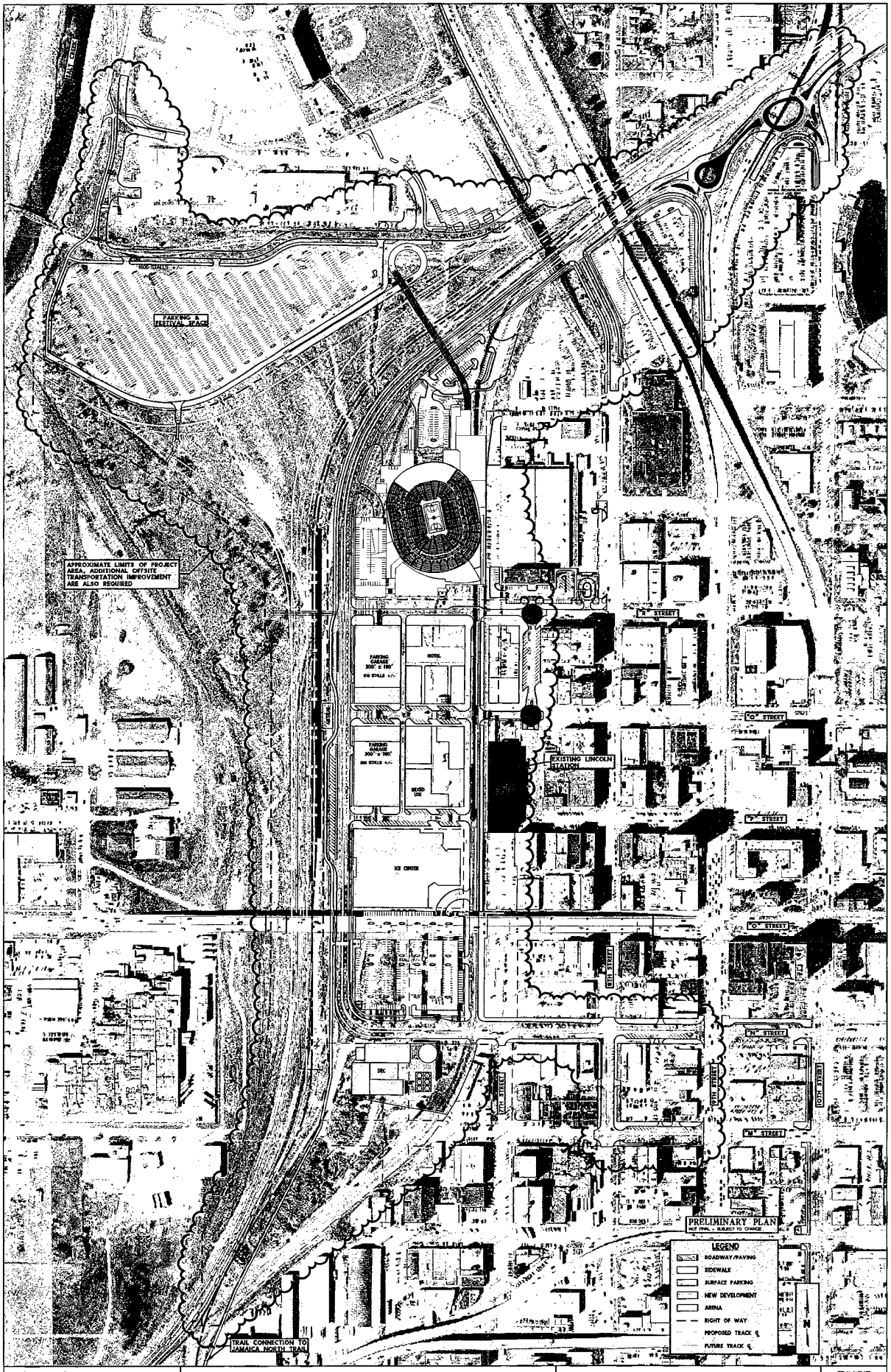

PARKING & FESTIVAL SPACE
APPROXIMATE LIMITS OF PROJECT AREA; ADDITIONAL OFFSITE TRANSPORTATION IMPROVEMENT ARE ALSO REQUIRED
PARKING GARAGE 300' x 180' 816 STALLS +/-
HOTEL
PARKING GARAGE 300' x 180' 360 STALLS +/-
MIXED USE
ICE CENTER
EXISTING LINCOLN STADIUM
"N" STREET
"O" STREET
"P" STREET
"Q" STREET
"R" STREET
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EXHIBIT B

Form of BNSF Plan Approval

Gerald Maczuga
Project Engineer

BNSF Railway Company
201 N 7th St
Lincoln, NE 68508
402-458-7537 (office)
402-458-4376 (fax)
Gerald.Maczuga@BNSF.com

Date: _____

Ernest R. Peo, III
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: Chief Assistant City Attorney

Re: Review of Plans and Specifications dated September 2, 2010, drafted by Olsson Associates (hereinafter called the "**Plans and Specifications**")

Dear Mr. Peo:

This letter serves as BNSF Railway Company's ("**BNSF**") response to its review of the Plans and Specifications covering the construction of the West Haymarket Utility Relocation - Project Number 870501. BNSF has reviewed these plans and no exceptions are taken. BNSF has not reviewed the design details or calculations for structural integrity or engineering accuracy. BNSF accepts no responsibility for errors or omissions in the design of the project. These comments are given to the City of Lincoln, Nebraska ("**City**") pursuant to Section 3.1.1 of that certain Construction and Maintenance Agreement between BNSF and City, dated _____, 2010. If the Plans and Specifications are revised by City subsequent to the date set forth above, this letter shall no longer serve as BNSF's written comments and City must resubmit said Plans and Specifications to BNSF for review.

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, 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 Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway 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:

  Roger Figard, City Engineer
  Department of Public Works and Utilities
  City of Lincoln, Nebraska
  555 South 10th Street
  Lincoln, NE 68508

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway'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 Railway's 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 Railway'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 Railway Property and as encountered in the 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 C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway 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 Railway 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 Railway 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 Railway 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 plans and specifications approved in advance by Railway (the "**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 Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway 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 Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.

- **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 Railway's Division Engineer.

- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

- **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, which approved plans shall become part of the Approved Plans. 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 the 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's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.**

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 Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway 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 and must not be undertaken until approved in writing by the Railway, and until the City 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 Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **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 Railway's 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 Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

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's Project Engineer 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.

  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 Project Engineer, telephone number (402) 458-7537, 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 Engineer, 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 Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, 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 Railway's Project Engineer.

- **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 City. 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 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 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 Railway Property, except after Contractor has obtained written approval from Railway 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 Engineer. 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, Railway's Project Engineer 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 Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway 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 Project Engineer. 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's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer 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 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 Railway's Project Engineer 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 RAILWAY'S PROJECT ENGINEER.

- **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 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 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 Railway's Project Engineer, telephone number (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 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 Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway 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 Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway 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 Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway 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 Railway Property, in a manner that does not adversely impact utility service to Railway.

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 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 Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. 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 Engineer 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(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M 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 C&M 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

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'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 THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'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 ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), 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 RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY 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 Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

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 $5,000,000.00 per occurrence, and $10,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
    - Bodily Injury and Property Damage
    - Personal Injury and Advertising Injury
    - Fire legal liability
    - Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to 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.

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

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

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

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

- Waiver of subrogation in favor of and acceptable to 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. This insurance shall include coverage for, but not limited to:

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

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

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

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 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 Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF'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, or to the extent caused by the gross negligence or 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, 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 the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure 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 C&M Work, Contractor must furnish to Railroad 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. Certificate(s) should be sent 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 reasonably 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 provided.

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.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors 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 immediately suspend 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 this Agreement and the Contract, 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 Project Engineer (402) 458-7537 thirty (30) days' minimum 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.

[Signature page follows]

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:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*
Contact Person: _____	Accepted and effective this _____day of 20__.
Address: _____	
_____	
City:_____ State:___ Zip:____	
Fax: _____	
Phone: _____	
E-mail:_____	

EXHIBIT C-1(B)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated _____, 20_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated _____, 2010, between BNSF Railway Company and the City). Performance of such C&M 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 C&M 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

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AND RAILWAY'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 THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'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 ANY CONTRACTOR PARTY (DEFINED BELOW);

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF RAILWAY'S RIGHT-OF-WAY OR OTHER RAILWAY PROPERTY IN CONNECTION WITH PERFORMANCE OF THE C&M WORK;

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT BY CONTRACTOR AND/OR CONTRACTOR PARTIES, INCLUDING BUT NOT LIMITED TO (A) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (B) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

(v) CONTRACTOR'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF CONTRACTOR OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "CONTRACTOR PARTY" AND COLLECTIVELY, "CONTRACTOR PARTIES"), 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 RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY 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 Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

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 $2,000,000.00 per occurrence, and $4,000,000.00 in the aggregate, 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 limited to, the following:
    - Bodily Injury and Property Damage
    - Personal Injury and Advertising Injury
    - Fire legal liability
    - Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to 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.

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

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

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

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

- Waiver of subrogation in favor of and acceptable to 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. This insurance shall include coverage for, but not limited to:

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

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

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

D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 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 Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in BNSF'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, or to the extent caused by the gross negligence or 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, 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 the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure 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 C&M Work, Contractor must furnish to Railroad 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. Certificate(s) should be sent 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 reasonably 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 provided.

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.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors 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 immediately suspend 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 this Agreement and the Contract, 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 Project Engineer (402) 458-7537 thirty (30) days' minimum 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.

[Signature page follows]

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:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*
Contact Person: _____	Accepted and effective this _____day of 20__.
Address: _____	
_____	
City:_____ State:___ Zip:____	
Fax: _____	
Phone: _____	
E-mail:_____	

EXHIBIT D

Final Clearances

Pursuant to the provisions of **Section 3.1.3** of the C&M Agreement, approved Final Clearances for each segment of City C&M Work being constructed pursuant to the City Work Final Design are attached hereto as **Exhibit D**.

EXHIBIT E

Soil Management Plan

In addition to and not in limitation of the requirements and obligations of City and City Contractors contained in the C&M Agreement, the following requirements shall apply to City and City Contractors with respect to management of impacted environmental media. In the event of conflicts between the terms of this **Exhibit E** and the rest of the C&M Agreement, including but not limited to the provisions of **Exhibit C** and, as applicable, **Exhibit C-1(A)** or **Exhibit C-1(B)**, the most restrictive provisions shall apply to City and City Contractors.

Proper Management of Impacted Media

1. Access

Access to the West Haymarket Redevelopment Site (WHRS) is restricted to railroad and City of Lincoln personnel and contractors conducting work in their official capacity as employees or contractors of their respective organizations. Access to Railroad operating property for purposes of providing construction – related services is subject to specific safety and rules training certifications and requirements found at: **www.contractororientation.com**. Access to other non-railroad private property for purposes of performing construction – related services within the WHRS must be arranged through the EPMT.

2. Management Practices

Due to the potential risks and penalties involved in management of impacted media and protection of rare and unique saline wetlands as well as the wide applicability of these issues to planned construction activity, prescriptive management practices for these areas are as follows:

2.1 Impacted Soil and Debris Management

Attachment 3 - NDEQ Environmental Guidance Document 05-061 "Investigation Derived Waste and Remediation Considerations" (GD 05-061) is provided as reference. Relevant and critical points extracted from GD 05-061 as well as NDEQ's Title 132 (Integrated Solid Waste Management Regulations) for purposes of implementation and compliance is as follows:

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.

2. Title 132, Chapter 1, Section 041 defines fill as: "*solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material*".

3. The "*use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment*".

4. From pg. 2 of NDEQ GD 05-161: "*Activity not related to investigation or remediation is not considered "active management" under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation.*"

5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

contaminants of concern (if any) and allowable re-use (including use as fill), alternatives to be employed for excess soil or debris to be generated associated with his/her respective work task. The project manager will work with the construction representative and advise where excess soils or debris shall be stored. Provisions for temporary storage of potentially impacted soil/debris must be explicitly agreed upon.

2.2 Grading/Excavation

Construction grading and excavation activities associated with applicable WHRS project activities require coordination and compliance as follows:

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.

2. The PM/CR must arrange for all utility clearance.

3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).

4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation***.

5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.

7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.

8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

2.3 Utility Work

Contractors performing utility work including all intrusive work (trenching, boring, digging, etc.) where surface features (soil, concrete, asphalt, vegetated surfaces) will be disturbed require conformance to the following procedures:

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.

2. The PM/CR must arrange for all related utility clearance.

3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).

4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.

6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.

7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.

8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.

9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

SPILL/INCIDENT RESPONSE REFERRAL SHEET

SPILL REPORTING

First Call:

Environmental Project Management Team Technical Representatives:

Frank Uhlarik – Alfred Benesch & Company:	**402-333-5792**
	Cell: 402-669-0546
Alternate:	
Bill Imig – Olsson Associates:	**402-458-5903**
	Cell: 402-314-4568
Alternate:	
Miki Esposito – Environmental Project Management Team:	**402-441-6173**

Agencies/Railroad Authorities:

Nebraska Department of Environmental Quality:	**402-471-2186 or 877-253-2603**

After Hours, Weekends and Holidays:

Nebraska State Patrol Dispatch:	**402-471-4545**
BNSF Railway Company Resource Operations Center:	**800-832-5452**
Union Pacific Railroad Security:	**888-877-7267**
National Response Center:	**800-424-8802**

ALL OTHER INCIDENTS

Fire and Police: **Dial 911**

LIST OF ACRONYMS

CR	Contractor's Representative
SMP	Soil Management Plan
EPMT	City of Lincoln Environmental Project Management Team
PM	Project Manager
TR	Environmental Project Management Team Technical Representative
WHRS	West Haymarket Redevelopment Site

EXHIBIT D

Other Contract Documents

Approved by Law
6-7-2012

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 re-writing of construction bond forms was to make them more understandable 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 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 settings 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 the contract.

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

Owner (Name and Address):
West Haymarket Joint Public Agency
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
For all labor, material and equipment necessary for (Bid Name and Number)

BOND
Date:
Amount:
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp.Seal)

Signature:_____
Name and Title: Name and Title:

Signature:_____

EJCDC NO. 1910-28a (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors: or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practiceable after the amount is determined tender payment therefore to the Owner; or

2. Deny liability in whole or in part and notify the Owner citing reasons therefore.

5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; an d

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a satutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place Of Business):

Owner (Name and Address):
West Haymarket Joint Public Agency
555 South 10th St.
Lincoln, NE 68508

CONSTRUCTION CONTRACT
Date:
Amount:

Description (Name and Location):
For all labor, material and equipment necessary for (Bid Name and Number)

BOND
Date:
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL
Company: (Corp. Seal)

SURETY
Company: (Corp. Seal)

Signature: _____

Name and Title:

Signature: _____

Name and Title:

EJCDC NO. 1910-28B (1984 Edition)
Prepared through the joint efforts of The Surety Assoc. of America. Engineers' Joint Contract Documents Committee. The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:

   2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:

   4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.

   4.2 Claimants who do not have a direct contract with the Contractor:

   1.Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and

   2.Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

   3.Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

   6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

   6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS

    15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

    15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

    15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(FOR INFORMATION ONLY - NAME, ADDRESS AND TELEPHONE)
AGENT OR BROKER: OWNER'S REPRESENTATIVE (ARCHITECT, ENGINEER OR OTHER PARTY)

INDEMNIFICATION AND INSURANCE REQUIREMENTS
FOR ALL WEST HAYMARKET JOINT
PUBLIC AGENCY CONTRACTS

1. INDEMNIFICATION

A. **Indemnification of JPA**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

C. The obligations of indemnification herein shall not include or extend to:

(1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and

(2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.

D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

2. INSURANCE GENERAL PROVISIONS

A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.

C. **Authorized and Rated Insurers Required.** All insurance coverage 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 no less than A:VII unless specific approval has been granted by the City Attorney.

D. **Certificates Showing Coverage**. Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information 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 JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

West Haymarket Joint Public Agency
c/o City Attorney
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

Certificates of insurance may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA, including by specific endorsement where necessary, as indicated in the following requirements.

E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

F. **Other Requirements**. Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of JPA. 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 JPA for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA 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.

Upon notification to JPA of cancellation, non-removal, substitution or material alteration of any such policy(ies), JPA shall have the option to (i) if feasible, pay, on behalf of the Contractor, any and all such premiums, penalties, fees for expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market to procure such policy(ies) of insurance on behalf of Contractor as required by this Agreement at the then current market rate. Upon any of the above occurrences, JPA shall invoice the Contractor for reimbursement of such premiums, penalties, fees, or expenses advanced on the JPA's behalf plus an additional fifteen percent (15%) of such advanced amounts as remuneration for JPA's overhead. Such amounts advanced by JPA shall be paid by the Contractor within thirty (30) days after delivery of a statement for such expense.

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 its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release, defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend 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 JPA will not be limited by the amount of the required insurance coverage.

3. INSURANCE REQUIREMENTS

A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of the Contract such insurance in the forms and minimum amounts as specified in this Section and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(1) Claims under workers' compensation, disability benefit, or other employee benefit acts;

(2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;

(3) Claims customarily covered under personal injury liability coverage;

(4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;

(5) Claims arising out of ownership, maintenance or use of any motor vehicle;

(6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. **Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of JPA."

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

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

C. **Commercial General Liability Insurance.**

(1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

Coverage	Min Amt	Notes
General	$5,000,000/$10,000,000	Each Occurrence/Aggregate
Products and Completed Operations	$5,000,000/$10,000,000	Each Occurrence/Aggregate
Personal and Advertising Injury	$5,000,000/$10,000,000	Each Occurrence/Aggregate
Fire Damage Limit	$ 100,000	any one fire
Medical Damage Limit	$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include coverage for the following:

- Bodily injury and property damage.
- Fire legal liability
- Coverage for all premises and operations.
- Personal and advertising injury.
- Operations by independent contractors.
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted.
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Liability coverage which shall include contractually assumed defense costs in addition to any policy limits.
- Contractual liability coverage.

(3) This policy shall also include 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 work being done within 50 feet of railroad property.
- Endorsement to provide the general aggregate per project endorsement.
- Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
- Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
- Separation of insureds.
- Additional insured endorsement in favor of and acceptable to the JPA.

(4) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer). The definition of insured contract shall be amended to remove any exclusion or other limitation for any work done within fifty (50) feet of railroad property.

D. **Vehicle liability insurance coverage.**

The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

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

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

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor or and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.
- Endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. **Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

F. **Railroad Protective Liability.** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of $5,000,000 per occurrence, $10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following endorsements:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.

No other endorsements restricting coverage may be added. The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in ANY RAILROAD'S Blanket Railroad Protective Liability Insurance Policy available to JPA and JPA Contractors.

G. **Special Provision.** At the JPA's option, the minimum insurance requirements specified above may be increased or decreased by special provision in a JPA contract.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.

B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.

B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be $5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.

C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.

D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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CITY OF LINCOLN
MAYOR CHRIS BEUTLER

CITY OF LINCOLN
EXECUTIVE ORDER

NO. 083319

WHEREAS, there is concern over the inappropriate competitive advantages in the public bidding process for local publicly funded construction and delivery service contracts resulting from the misclassification of individuals performing construction labor services as "independent contractors" rather than "employees"; such "independent contractors" are commonly referred to as "1099 workers" due to the IRS form they receive rather than a W-4 which an employee receives;

WHEREAS, this misclassification of such individuals as "independent contractors" rather than as "employees" eliminates any obligation to pay these individuals legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit such individuals would typically receive if properly classified as employees;

WHEREAS, this misclassification of individuals performing construction labor services for the contractor as "independent contractors" rather than "employees" is a violation of federal and state law, but is difficult to enforce once public construction or delivery service contracts have been bid, awarded, and entered into;

WHEREAS, the use of public funds to compensate contractors who unlawfully avoid their obligation to pay legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit is not in the public interest; and

WHEREAS, the Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912 (effective July 15, 2010) provides that any contract entered into between a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat. § 4-114 requirements that the contractor register and use a federal immigration employment verification system to determine the work eligibility status of new employees physically performing services in the State of Nebraska, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to § 48-2912 of the Employee Classification Act.

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, I hereby establish the following policy as to the bid and award of contracts to contractors for construction and delivery services with the City of Lincoln:

The Purchasing Agent shall immediately include in the City of Lincoln's notice to bidders for construction contracts that all contractors submitting bids in response to the notice shall affirmatively certify to the Purchasing Agent that all individuals hired to perform construction or delivery labor services for the contractor under the contract shall be properly classified as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under federal and state law (including the requirements of the State of Nebraska Employee Classification Act), and that the contractor will comply with all legal obligations with respect to these employees (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes). The

notice to bidders shall further provide that contractors may use affidavits required pursuant to the Employee Classification Act for this purpose, but that a failure to make the affirmative certification to the Purchasing Agent shall render the bidder ineligible for award of the contract.

The Purchasing Agent shall immediately include the following provisions in contracts for construction or delivery services:

(1) Contractor agrees that each individual performing services for the contractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that contractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(2) Contractor understands and agrees that failure to classify each individual hired to perform services under the contract as an employee rather than as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the contract by the City.

(3) Contractor additionally agrees to include the following provisions in each subcontract entered into with a subcontractor as part of the contractor's contract with the City:

(a) Subcontractor agrees that each individual performing services for the subcontractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that subcontractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay,

workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(b) Subcontractor understands and agrees that subcontractor's failure to properly classify individuals hired to perform services under the subcontract as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the subcontract by the contractor.

(4) Contractor agrees that if subcontractor fails to or is suspected of failing to properly classify each individual hired pursuant to the subcontract as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or fails to comply with legal obligations with respect to the subcontractor's employee, the contractor shall take appropriate corrective action including, but not limited to, reporting the suspected violation of the State of Nebraska Employee Classification Act to the Nebraska Department of Labor or rescission of the subcontract by the contractor. Written notification of the corrective action shall be submitted to the City of Lincoln Purchasing Department. Contractor understands and agrees that contractor's failure to take appropriate corrective action shall be considered a breach of the contractor's contract with the City of Lincoln and is a grounds for rescission of the contract by the City.

(5) The City of Lincoln shall notify the Nebraska Department of Labor of any contractor or subcontractor it has determined is in breach of contract due to the terms of this order.

(6) Any contractor or subcontractor who shall have been determined by the Nebraska Department of Labor to have knowingly provided a false affidavit to the City of Lincoln

under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period of time, in accordance with Lincoln Municipal Code § 2.18.030(n)(1) or (2).

(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 5 of Neb. Rev. Stat. § 48-604 and is otherwise valid under federal and state law and is not intended to circumvent lawful obligations under federal and state law or city contractual requirements.

The City Clerk is directed to send a copy of this Executive Order to Vince Mejer, City Purchasing Agent, for his record.

Dated this 28 day of July, 2010.

Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

City Attorney

EMPLOYEE CLASSIFICATION ACT AFFIDAVIT

For the purposes of complying with THE NEBRASKA EMPLOYEE CLASSIFICATION ACT, I, _____, 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 _____)

This affidavit was signed and sworn to before me, the undersigned Notary Public, on this ____ day of _____, 20__.

_____
Notary Public

EXHIBIT D TO CONTRACT AGREEMENT

RECEIVED
OCT 31 2011
LAW DEPT.

Jamie Stamper
Manager-Risk Management

BNSF Railway Company
P.O. Box 961073
Fort Worth, Texas 61
2500 Lou Menk Drive
Fort Worth, Texas 76131-2828
Telephone 817-352-3485
Fax 817-352-7207
Email Address
Jamie.Stamper@bnsf.com

October 21, 2011

WEST HAYMARKET JOINT AGENCY (JPA),

BNSF Railway Company (BNSF) is pleased to advise that we are modifying our insurance certification process. This new process will ***improve your ease of doing business with BNSF*** and increase the efficiency of insurance certification. We have partnered with CertFocus, an industry leader in the automation of certificate of insurance review and validation. Once a certificate is received, BNSF's Risk Management Department will work directly with customers, contractors, and vendors to resolve any variances between submitted certificates and contractual requirements.

The new process will begin November 1, 2011. To minimize the impact to entities submitting certificates of insurance, we will be transitioning as follows:

- **New agreements** processed on or after November 1, 2011, please e-mail your current certificate(s) of insurance to BNSF@certfocus.com.
- **Existing agreements** with BNSF requiring insurance which renews on or after November 1, 2011, please e-mail renewal certificate(s) of insurance to BNSF@certfocus.com. Any insurance renewal prior to November 1, 2011 should be directed to BNSF@Ebix.com until December 31, 2011.
- **Effective January 1, 2012 all certificates of insurance should be e-mailed to BNSF@certfocus.com.**
- For all certificates of insurance submitted on or after November 1, 2011, we also ask that you update the address in the certificate holder box to read as follows:

  BNSF Railway Company
  PO Box 140528
  Kansas City, MO 64114

Thank you for your patience and understanding as we transition to our new process; we apologize in advance for any confusion or angst this transition may cause in the short term, but we also would remind you that the new process will improve your experience with BNSF as respects to insurance certification.

If you have any questions or would like further information on our new process, please contact Jamie Stamper, Manager – Risk Management at (817) 352-3485 or Jamie.Stamper@bnsf.com or Vickie Barnett, Assistant Manager – Risk Management at (817) 352-2414 or Vickie.Barnett@bnsf.com

Sincerely,

Jamie Stamper
Vickie Barnett

EXHIBIT D TO CONTRACT AGREEMENT

29 C.F.R. § 5.5

Code of Federal Regulations Currentness
Title 29. Labor
Subtitle A. Office of the Secretary of Labor
Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)
Subpart A. Davis-Bacon and Related Acts Provisions and Procedures
§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when

the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract,

the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency

recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the

name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-01
(a)(1)(ii)(C)	1215-01
(a)(1)(iv)	1215-01
(a)(3)(i)	1215-0140, 1215-00
(a)(3)(ii)(A)	1215-01
(c)	1215-0140, 1215-00

[29 FR 100, Jan. 4, 1964, as amended at 29 FR 13463, Sept. 30, 1964; 30 FR 13136, Oct. 15, 1965; 36 FR 19304, Oct. 2, 1971; 40 FR 30481, July 21, 1975; 41 FR 10063, March 9, 1976; 47 FR 145, Jan. 5, 1982; 51 FR 12265, April 9, 1986; 54 FR 4243, Jan. 27, 1989; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 61 FR 68641, Dec. 30, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 74 FR 2862, Jan. 16, 2009]

SOURCE: 48 FR 19541, April 29, 1983; 51 FR 12265, April 9, 1986; 61 FR 40716, Aug. 5, 1996; 65 FR 80278, Dec. 20, 2000; 73 FR 77511, Dec. 19, 2008, unless otherwise noted.

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; and the laws listed in 5.1(a) of this part; Secretary's Order 01-2008; and Employment Standards Order No. 2001-01.; 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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General Decision Number: NE120034 03/16/2012 NE34

Superseded General Decision Number: NE20100044

State: Nebraska

Construction Type: Highway

Counties: Lancaster, Saunders and Seward Counties in Nebraska.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/06/2012
1	03/16/2012

ELEC0022-018 06/01/2011

Saunders County - East of Highway 109 and North of Alternate Highway 30)

	Rates	Fringes
ELECTRICIAN	$ 30.80	13.40

ELEC0265-005 09/01/2011

REMAINDER OF SAUNDERS COUNTY

	Rates	Fringes
Electricians:		
Zone 1	$ 25.57	4.5%+8.75
Zone 2	$ 25.87	4.5%+8.75
Zone 3	$ 26.17	4.5%+8.75
Zone 4	$ 26.57	4.5%+8.75

ZONE DEFINITIONS [Mileage from main Post Office in Lincoln]
Zone 1: 0 to 35 miles
Zone 2: 36 to 50 miles
Zone 3: 51 to 75 miles
Zone 4: 76 miles and over

FOOTNOTE:
Work on scaffolds, hanging scaffolds, boatswains chairs or ladders, etc., in any area where the worker is in a position to fall 40 ft. or more, or where objects above the worker can fall 40 ft. or more: to be paid one and one-half times the straight- time rate of pay.

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* SUNE2011-023 08/29/2011

	Rates	Fringes
CARPENTER (Includes Form Work)	$ 18.51	
CEMENT MASON/CONCRETE FINISHER		
Lancaster County	$ 18.48	5.86
Seward, Saunders Counties	$ 18.17	5.86

ELECTRICIAN, Includes
Installation of Traffic
Signals
Lancaster, Seward Counties..$ 28.83

HIGHWAY/PARKING LOT STRIPING:
Laborer
Lancaster County.....$ 11.82
Saunders County.....$ 12.37
Seward County.....$ 11.27

IRONWORKER, REINFORCING.....$ 19.35

LABORER (COMMON OR GENERAL)
Lancaster County.....$ 12.58
Saunders County.....$ 12.55
Seward County.....$ 12.20

LABORER: Concrete Saw (Hand
Held/Walk Behind).....$ 16.07 6.55

LABORER: Mason Tender
(Cement/Concrete).....$ 10.44

LABORER: Traffic Control -
Flagger and Cone/Barrel Setter
Lancaster County.....$ 11.87
Seward County.....$ 9.00

Operating Engineers: (Skid
Loader)
Lancaster County.....$ 10.56
Saunders County.....$ 12.51
Seward County.....$ 14.85

OPERATOR: Asphalt Spreader.....$ 18.74

OPERATOR: Backhoe Loader
Combo.....$ 15.94

OPERATOR: Backhoe/Excavator
Lancaster County.....$ 19.91 6.07
Saunders County.....$ 19.47 6.07
Seward County.....$ 16.15

OPERATOR: Broom.....$ 11.43

OPERATOR: Bulldozer
Lancaster County.....$ 16.78
Seward, Saunders Counties...$ 16.34

OPERATOR: Compactor.....$ 13.36

OPERATOR: Concrete Saw
Lancaster, Seward Counties..$ 20.87

OPERATOR: Crane.....$ 22.38

OPERATOR: Hydrohammer.....$ 17.03

OPERATOR: Loader
Lancaster County.....$ 17.44
Saunders County.....$ 17.19
Seward County.....$ 16.04

OPERATOR: Mechanic.....$ 19.58

OPERATOR: Milling Machine.....$ 12.80

OPERATOR: Oiler.....$ 16.21

OPERATOR: Paver
Lancaster County.....$ 14.79
Seward, Saunders Counties...$ 16.13

OPERATOR: Roller
Lancaster County.....$ 13.00
Saunders County.....$ 13.45
Seward County.....$ 14.04

OPERATOR: Scraper
Lancaster County.....$ 14.80
Seward, Saunders Counties...$ 14.83

OPERATOR: Tractor
Lancaster County.....$ 9.50
Seward, Saunders Counties...$ 10.65

OPERATOR: Grader/Blade
Lancaster County.....$ 16.09
Seward, Saunders Counties...$ 16.04

TRUCK DRIVER, Includes Dump
and Tandem Truck
Lancaster County.....$ 14.51
Saunders County.....$ 14.47
Seward County.....$ 14.16

TRUCK DRIVER: Lowboy Truck.....$ 15.93

TRUCK DRIVER: Semi-Trailer
Truck
Lancaster County.....$ 13.48
Seward, Saunders Counties...$ 14.09

TRUCK DRIVER: Water Truck.....$ 18.00 6.40

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

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Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: NE120057 01/06/2012 NE57

Superseded General Decision Number: NE20100067

State: Nebraska

Construction Type: Heavy

County: Lancaster County in Nebraska.

HEAVY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/06/2012

* ELEC0265-006 09/01/2011

	Rates	Fringes
Electricians:		
Zone 1	$ 25.57	4.5%+8.75
Zone 2	$ 25.87	4.5%+8.75
Zone 3	$ 26.17	4.5%+8.75
Zone 4	$ 26.57	4.5%+8.75

ZONE DEFINITIONS [Mileage from main Post Office in Lincoln]
Zone 1: 0 to 35 miles
Zone 2: 36 to 50 miles
Zone 3: 51 to 75 miles
Zone 4: 76 miles and over

FOOTNOTE:
Work on scaffolds, hanging scaffolds, boatswains chairs or ladders, etc., in any area where the worker is in a position to fall 40 ft. or more, or where objects above the worker can fall 40 ft. or more: to be paid one and one-half times the straight- time rate of pay.

SUNE2011-017 08/31/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 16.72	0.00
FORM WORKER	$ 17.48	5.74
LABORER: Common or General	$ 13.11	3.23
LABORER: Pipelayer	$ 16.33	5.60
OPERATOR: Backhoe/Excavator	$ 19.43	3.59
OPERATOR: Crane	$ 24.00	5.56
OPERATOR: Loader	$ 17.67	2.98
TRUCK DRIVER: Lowboy Truck	$ 21.49	7.40
TRUCK DRIVER: Dump and Tandem Truck	$ 13.62	2.60

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

==========

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

SPECIAL PROVISIONS
WEST HAYMARKET JOINT PUBLIC AGENCY (2012)
RAILROAD TRACK REMOVAL
PROJECT NO. 870908

1. GENERAL NOTES

1.1 The work as detailed on the plans shall be completed in accordance with the requirements of the 2011 City of Lincoln Standard Specifications for Municipal Construction as supplemented by these Special Provisions.

1.2 The Contractor shall not take advantage of any apparent error, discrepancy or omission in the plans or specifications.

- 1.2.1 Upon discovery of such an error, discrepancy or omission, the Contractor shall notify the Engineer immediately.
- 1.2.2 The Engineer will then make such corrections or interpretations as necessary to fulfill the intent of the plans and specifications.
- 1.2.3 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.

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

1.4 Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction.

1.5 Any reference to the City, or OWNER, in the City of Lincoln Standard Specifications for Municipal Construction shall be considered reference to the West Haymarket Joint Public Agency (JPA), its employees, or representatives hired by the JPA as a consultant for Program Management (PC Sports), construction project management, observation or testing services.

- 1.5.1 The JPA's address is 555 South 10th Street, Lincoln, Nebraska 68508.

1.6 JPA: JPA shall mean the West Haymarket Joint Public Agency, a joint administrative entity under the Interlocal Cooperation Act, comprised of the City of Lincoln and the University of Nebraska - Lincoln for the purpose of implementing and overseeing the operation of the West Haymarket arena and infrastructure improvement projects.

1.7 Contractor shall submit bid documents and all supporting material via e-bid.

1.8 All inquiries regarding these specifications shall be directed via e-mail or faxed request to Vince Mejer, Purchasing Agent (vmejer@lincoln.ne.gov) Or Fax: (402) 441-6513.

- 1.8.1 These inquiries and/or responses shall be distributed to prospective Contractor electronically as an addendum.
- 1.8.2 The Purchasing Office shall only reply to written inquiries received within five (5) calendar days of bid opening.

1.9 No direct contact is allowed between Vendor and other City Staff throughout the bid process.

- 1.9.1 Failure to comply with this directive may result in Vendor bid being rejected.

2. BASIS OF AWARD

2.1 This project is set up for respective bidders to provide prices to complete the base bid project and to complete one of two alternate bid packages.

2.2 The alternate bid packages are described as follows:

2.2.1 Alternate Bid 1: This shall include removal and salvaging of the railroad track and turnouts at the BNSF "X" Yard with BNSF retaining all salvaged material.

2.2.1.1 Work on this alternate includes removal and salvaging all or a portion of the railroad tracks at the BNSF owned property identified on the plans as the "X" Yard in accordance with the requirements outlined in these Special Provisions.

2.2.2 Alternate Bid 2: This shall include removal of the railroad track and turnouts at the BNSF "X" Yard with the Contractor retaining all salvaged material.

2.2.2.1 Work on this alternate includes removal of all or a portion of the railroad tracks at the BNSF owned property identified on the plans as the "X" Yard in accordance with the requirements outlined in these Special Provisions, with the Contractor retaining the salvaged material

2.2 The JPA reserves the right to award the base bid on the basis of the lowest responsive bid received for the work identified in the proposal for the base bid.

2.3 Furthermore, the JPA reserves the right to award either Alternate Bid 1 or Alternate Bid 2 on the basis of the lowest responsive bid received for the respective alternate bid selected.

2.3.1 Award of an Alternate Bid is not tied to the award of the base bid and the Bid Alternate, if selected, may be awarded to a Contractor other than the Contractor selected to perform the base bid work.

2.3.2 All bids for the Alternate Bid Packages shall remain in place for a period of 120 days following the bid opening.

3. LIMITS OF TRACK REMOVAL AND TIME OF COMPLETION

3.1 The plans outline the limits of the railroad track removal work covered under this contract.

3.2 The east leg of the former BNSF wye track is owned by the JPA. Work associated with removal of this track composes the base bid.

3.3 The Contractor shall retain all salvaged material along this segment of the existing wye track and shall promptly remove the salvaged rail, turnouts and other track material from the site along with any other material resulting from the removal of this track.

3.4 The Contractor selected for the base bid work will receive a notice to proceed on or before June 29, 2012.

3.5 All work associated with the base bid work shall be completed by September 15, 2012, including all final site clean-up and restoration work.

3.6 The existing track shown in the "X" Yard area is owned by the BNSF and the BNSF has first right of refusal for salvaged material that results from the removal of this track.

3.7 The BNSF is currently planning on removing all of the rail segments within the "X" Yard and salvaging the material using their own forces.

3.8 In the event the BNSF determines that they will not be able to complete this work by July 31, 2012 than they shall notify the JPA and the JPA will make a determination on awarding either Bid Alternate 1 or Bid Alternate 2 dependent upon the BNSF's decision regarding whether or not they wish to retain the salvaged material.

3.8.1 The JPA is working with the BNSF to obtain a final decision regarding who will remove the "X" Yard track.

3.9 If the work at the "X" Yard is completed prior to September 12, 2012 it will be completed under a right-of-entry agreement between the JPA and BNSF and the Contractor will be required to complete all work in accordance with the requirements outlined in these Special Provisions for work on BNSF property.

3.10 It is anticipated that a portion of the BNSF tracks at the "X" Yard may be removed by the BNSF prior to the Contractor starting work.

3.10.1 As such the contract time allowed for either Bid Alternate 1 or Bid Alternate 2 will be based upon the total length of track in-place that will need to be removed (length of track shall be measured through turnouts).

3.10.2 The contract time for work associated with Alternate Bid 1 or Alternate Bid 2 shall be an established number of working days based upon the actual length of track to be removed.

3.10.2.1 The number of days shall be calculated by assuming removal of 600 feet of track per working day with 5 working days allowed for final site clean-up and restoration.

3.10.3 A working day shall be defined as any day, Monday through Friday with the exception of Holidays or days where adverse weather or adverse site conditions, as determined by the Engineer, would preclude the Contractor from working at the site.

3.10.4 The Contractor shall mobilize and begin work at the site for Bid Alternate 1 or Bid Alternate within 14 calendar days following receipt of a Notice to Proceed.

3.10.4.1 Working days shall begin when the Contractor starts work at the site or at the 15th Calendar day following issuance of the Notice to Proceed, whichever is earlier.

4. EXTRA WORK

4.1 Refer to Section III, "Scope of Work", Subsection "B", Extra Work, in the General Conditions of the City of Lincoln Standard Specification for Municipal Construction.

4.1.1 In the second paragraph delete item number 4 for the approved methods for paying for the extra work and replace with the following:

4.2 The actual cost of labor, direct overhead, materials, supplies, equipment and other services required to complete the Extra Work so ordered.

4.2.1 In addition, there may be added an amount, to be agreed upon but not to exceed ten percent of the actual cost of the Extra Work, to cover the cost of general overhead and profit.

5. WORKER VISIBILITY

5.1 Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:

5.1.1 Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

5.1.2 High-visibility safety apparel is defined to mean personal protective safety clothing that:

5.1.2.1 Is intended to provide conspicuity during both daytime and nighttime usage

5.1.2.2 Meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standards for High-Visibility Safety Apparel and Headwear."

5.1.3 If the Contractor fails to comply with the worker visibility requirements and as a result, Federal and State authorities withhold Federal Funds, then JPA reserves the right to seek reimbursement from the Contractor for the loss of federal funds that are attributed to the Contractor's non-compliance.

6. COORDINATION WITH OTHERS

6.1 The Contractor will be required to coordinate their work with on-going work at the Amtrak Station building, the construction work on "N" Street between 7th Street and 9th Street, the construction work at the new development south of the arena, and the construction work at the new arena and potentially with early construction work associated with the JPA's "Core Area Roadway and Utilities Project".

6.2 The Contractor shall familiarize themselves with these projects, the location of the work and the areas affected by the construction of these projects.

6.3 The Contractor shall coordinate closely with these other projects to ensure that proper access is maintained to the project sites at all times.

7. ENVIRONMENTAL CONTINGENCY PLAN

7.1 During the execution of the work on this project it is anticipated that the Contractor may encounter contaminated soils, debris or groundwater (media).

7.1.1 If contaminated media is encountered and it is determined by the West Haymarket Environmental Team that it cannot be used on-site (e.g. as backfill for the utility trenches), the Contractor shall be required to dispose of any contaminated media in accordance with all federal, state and local laws.

7.2 The Contractor shall also strictly adhere to the requirements and procedures set forth in the Environmental Contingency Plan.

7.2.1 The Environmental Contingency Plan is attached and incorporated as if fully set forth herein.

7.3 In the event the Contractor or on-site construction management personnel suspect that contaminated media is encountered or will be during the performance of the work, they shall immediately notify the West Haymarket Environmental Team and follow the procedures outlined in the Environmental Contingency Plan for resolution on how to manage the contaminated media.

7.3.1 Typical indications of potentially contaminated media include discoloration, odors associated with the media removed as part of boring, trenching or other excavation work.

7.3.1.1 In addition, the Environmental Contingency Plan illustrates where environmental testing has been taken on-site.

7.3.2 The Contractor shall familiarize themselves with these Figures to determine whether the project is located in the area of these environmental impacts.

8. MANAGEMENT OF SOIL OR DEBRIS TO BE REMOVED FROM THE WORK SITE

8.1 During the course of the project the Contractor shall not haul any excavated material off-site without the prior approval of the West Haymarket Environmental Team.

8.2 As such, the Contractor shall provide locations on-site to temporarily stockpile all excavated material that has not been approved by the West Haymarket Environmental Team for removal from the site.

8.3 All temporary stockpiles shall comply with the requirements set forth in the Construction Storm Water Pollution Prevention Plan (SWPPP).

8.4 The West Haymarket Environmental Team will determine the appropriate method for disposal of the excavated material and make a recommendation to the Contractor.

8.5 The Contractor shall base their bid on the basis that all excavated soils/ballast/ subballast material from this project can be disposed of at a Contractor furnished non-residential development site that will be used solely for industrial or commercial purposes for perpetuity.

8.6 The site for disposal of the ballast/subballast material shall be subject to the approval of the West Haymarket Environmental Team.

8.7 The Contractor shall furnish information with their bid on the location of the disposal site including site location, current uses at the site and future uses at the property.

8.8 If the excavated material requires special handling due to contamination (petroleum or other chemicals) and the contamination is not the result of the Contractor's activities, then additional compensation for disposal of the contaminated material will be considered on an "Extra Work" basis.

9. CONTAMINATED SOILS

9.1 During the prosecution of the work on this project it is anticipated that the Contractor may encounter some contaminated soils.

9.1.1 If contaminated soils are encountered and it is determined that they cannot be used as backfill for the utility trenches or other excavations, then the Contractor shall be required to dispose of the soils offsite in accordance with all Federal, State and Local regulations.

9.1.2 No material shall be removed from the site without the approval of the West Haymarket Environmental Team.

9.2 The Contractor shall immediately report the discovery of any contaminated soils or potentially contaminated soils to the West Haymarket Environmental Team for resolution on how to manage the soil.

9.2.1 Typical indications of potential contaminated soils would include discoloration of the soil or odors associated with soils removed as part of the excavation or trenching work.

9.2.2 The Contractor shall temporarily stockpile potential contaminated soils on site as directed by the West Haymarket Environmental Team for further testing to determine the extent of potential contamination and the method for disposal.

9.2.3 All excavated soils that may be contaminated shall be kept separated from clean soils encountered during the excavation or trenching work.

9.3 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.

9.4 Disposal of contaminated or hazardous material will be considered as "Extra Work" and compensation for the removal, handling and disposal of the material will be negotiated separately as a change order to the project.

10. DUST CONTROL DURING CONSTRUCTION

10.1 The Lincoln/Lancaster County Health Department has Air Pollution Regulations that provide requirements for dust control that need to be followed by contractors working on the project.

10.2 No dust that is generated by the construction activities shall be allowed to migrate off the site onto adjacent properties.

10.2.1 This will require the Contractor to provide some means for dust control at the site at all time during the work.

10.2.2 At this time there is not a permit required by this agency for a fugitive dust control permit.

10.3 The following is a portion of the regulations pertaining to dust control:

SECTION 32. DUST -- DUTY TO PREVENT ESCAPE OF

(A) Handling, Transportation, Storing. No person may cause or permit the handling, transporting or storage of any material in a manner which may allow particulate matter to become airborne in such quantities and concentrations that it remains visible in the ambient air beyond the premises where it originates.

(B) Construction, Use, Repair, Demolition. No person may cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures to prevent particulate matter from becoming airborne so that it remains visible beyond the premises where it originates. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to paving or frequent cleaning of roads, driveways and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.

(C) Notwithstanding any other provisions of this section, the Department shall not regulate emissions from normal farming practices, farm crop drying and handling, or animal feeding activities, provided that reasonable and practical measures to limit particulate matter from such sources are utilized.

Ref: Title 129, Chapter 32, Nebraska Department of Environmental Quality

11. RAILROAD TRACK REMOVAL GENERAL REQUIREMENTS

11.1 The Work covered under this Special Provision includes providing all labor, materials, tools, permits and equipment necessary to remove, salvage, relocate, transport and dispose of existing track, turnouts and other track equipment located on the BNSF or JPA owned property.

11.1.1 The track may consist of existing jointed and continuous welded rail, crossties, turnouts, road crossing panels, track fastening materials, and other track materials.

11.1.2 All signal equipment to be salvaged shall be removed by BNSF prior to the start of the track removal work.

11.1.2.1 All signal equipment and foundations remaining shall be considered as salvaged material to the Contractor and shall be promptly removed from the site.

11.2 This Work pertains to existing tracks within BNSF or JPA's right of way only, as indicated on the plans.

11.3 Removal of existing ballast, subballast, aggregate, soil and all other materials between and below the crossties at the locations as indicated on the plans.

11.3.1 This work shall include placement of suitable materials from the on-site stockpiles to fill the area where the material is removed to match the adjacent grade and to provide proper drainage.

12. MEASUREMENT AND PAYMENT

12.1 Measurement and payment shall be made in accordance with the following units for the respective bid items as shown in the proposal:

12.1.1 Mobilization – Limited to a maximum of ten percent of the base bid or the total bid for the Alternate Bid package, lump sum.

12.1.2 Remove Track (Wye Track), linear foot

12.1.3 Removal of Ballast Material, linear foot

12.1.4 Remove Turnout (Wye Track) each.

12.1.5 Remove and Salvage Track (BNSF "X" Yard), linear foot.

12.1.6 Remove Track (BNSF "X" Yard), linear foot

12.1.7 Remove and Salvage Turnout (BNSF "X" Yard), each.

12.1.8 Remove Turnout (BNSF "X" Yard), each

12.2 Rail to be removed and not designated to be salvaged shall become the property of the contractor and promptly removed from the site.

12.2.1 All turnouts to be removed shall not be differentiated by size.

12.3 The price for removal of track and turnouts shall include furnishing all labor, equipment, materials and incidentals required to remove the track, turnouts, ties and other track materials.

12.3.1 Ballast material and subballast material shall be removed and the area filled as designated on the plans.

12.3.2 For items identified to be salvaged the price shall include the delivery of the salvaged items to a location to be determined by the BNSF within five miles of the project area as directed by the JPA.

12.3.3 All removed items that are not designated for salvage shall become the property of the contractor and shall be promptly removed from the site.

12.3.3 All ties shall be removed and delivered to a temporary stockpile location adjacent to the BNSF tracks within a two mile distance of the project site for future loading and disposal by the BNSF.

12.3.4 The final location for ties shall be provided by the BNSF and all costs associated with removal, transport and stacking of the ties at the temporary location shall be considered part of the bid price for removal of the track and/or turnouts.

13. SUBMITTALS

13.1 Contractor shall submit detailed narratives as listed below for track removal within 5 days of signing of contract for approval by the JPA.

- 13.1.1 Schedule for performing all Work under this Section.
- 13.1.2 A list of equipment to be used.
- 13.1.3 A track removal sequence plan.
- 13.1.4 Traffic control plans (as required).

14. GENERAL EXECUTION

14.1 All required protection measures, protective and regulatory devices and flagmen shall be in place before demolition commences.

14.2 Contractor shall secure any necessary permits with municipalities and coordinate with JPA, BNSF and other entities, as appropriate, prior to commencement of work.

14.3 Where an abutting structure or a part of a structure (e.g., sidewalk) is to be left in place, clean, smooth, vertical cuts shall be made.

14.4 The Contractor shall not use the salvaged materials for use in temporary facilities or in the work unless approved in writing by the JPA for each specific case.

14.5 The Contractor performing the Work of track removal shall have at least five (5) years experience in railroad construction and demolition work and shall exercise care so as to not damage the materials to be salvaged.

15. REPAIRS

15.1 Items to remain that are damaged during demolition shall be repaired or replaced as directed by the JPA at the Contractor's expense.

16. RUBBISH

16.1 Except for salvageable railroad track and turnouts or unless otherwise stipulated, all rubbish, resulting from the removal of track and associated items indicated on the plans shall become the property of the Contractor at the place of origin and shall be removed from the property by the Contractor in conformance with all laws, regulations and rules legally imposed on such activities and items.

17. RELEASE OF WORK AREAS

17.1 Track and track structure shall not be dismantled until approval to do so is received in writing from the JPA.

18. TRACK REMOVAL METHODS AND PROCEDURES

18.1 The Contractor may use any method to dismantle the track and crossings provided that proper measures are taken to ensure the safety of all employees, the general public, the BNSF and all JPA and railroad property.

- 18.1.1 Track removal and transportation methods shall cause no damage to track components to be salvaged or other tracks and structures that are indicated to remain in place.
- 18.1.2 Methods of removal of existing tracks shall not cause damage to adjacent sidewalks, paved roadways and wayside railroad and signal facilities.
- 18.1.3 Damage caused by the Contractor to facilities not destined for demolition or salvage shall be restored to the satisfaction of the JPA at the Contractor's expense.

18.2 The Contractor shall be responsible for cleaning, removing and properly disposing of any materials, except hazardous materials, generated during the removal and salvage of all track or any other material, covered herein.

18.2.1 Removal and disposal of hazardous material that is encountered shall be coordinated with the West Haymarket Environmental Team.

18.2.2 The Contractor shall contact the Environmental Team immediately upon discovery of any potentially contaminated or hazardous material to obtain direction on how to proceed.

19. REMOVAL OF EXISTING TRACK AND SIGNAL EQUIPMENT

19.1 All track components removed by the Contractor and temporarily stockpiled on site, shall be done in an organized, and safe fashion.

19.2 No stockpiled material shall be closer than 50 feet to the nearest rail of any in service track unless otherwise approved in advance by the BNSF.

19.2.1 The BNSF and JPA right of ways/properties shall be left in a suitable and safe condition after close of each work day.

19.3 Contractor shall identify, prior to removal, which tracks and turnouts are designated for salvage to the BNSF and which tracks are owned by the JPA in which the salvage shall go to the contractor.

19.4 As part of the price to remove and salvage the rail and turnouts, the Contractor shall identify, remove and deliver the rail, other track material and turnouts to be salvaged to the BNSF to a designated storage area located within 5 miles of the Project site.

19.4.1 Furthermore the Contractor shall remove and deliver all ties to a location adjacent to the existing BNSF tracks within two miles of the project site and properly stack the ties for future loading and removal by the BNSF.

19.4.2 The final location shall be as designated by the JPA and the BNSF.

19.5 All personnel performing Work in any capacity under these Special Provisions on BNSF property shall be certified through the BNSF E-Rail Safe program and shall have the required BNSF Contractor Safety Orientation as outlined in the BNSF Special Provision that is attached to these contract documents.

19.6 The Contractor is responsible for locating and protecting any and all utilities that may be located within the limits of the work including all BNSF, public and private utilities.

19.6.1 The Contractor shall be responsible for repair of any utilities damaged during the completion of the work.

19.7 Contractor shall at no time access or perform activities within 50 feet of any active track unless authorized by BNSF.

19.8 Contractor may use on or off track equipment, or a combination of methods, subject to the approval of the JPA and the BNSF, to dismantle the track provided that measures are taken to ensure the safety of employees, the general public, BNSF employees and the property.

19.8.1 The removal methods shall cause no damage to track components to be salvaged or other tracks and structures which are to remain in place.

19.9 Methods of removal of existing tracks shall not cause damage to adjacent sidewalks, paved roadways, or other structures unless scheduled for reconstruction.

19.9.1 Damage to those facilities caused by Contractor shall be repaired to the satisfaction of the JPA at Contractor's expense.

19.10 Track shall be carefully dismantled using proper tools and equipment designed for this type of Work.
19.11 Rails longer than forty (40) feet shall be handled with spreader bars.
19.12 Designated 115RE and heavier class 1 & 2 continuous welded rail (CWR) that are designated to be salvaged to the BNSF shall be removed and transported in eighty (80) foot nominal lengths to the designated BNSF storage areas.
19.13 Minimum rail length to be salvaged for BNSF shall be 25 feet.
19.14 Rails shall not be torch cut or broken.
19.15 Rail and road crossing materials shall not be removed or salvaged without the Contractor first securing a road closure and traffic control permits from the Local jurisdiction (no road crossings anticipated on this project).
19.16 Foundation for signal equipment shall be removed in their entirety unless otherwise specified in writing by the JPA.
19.16.1 All signal equipment shall be removed by BNSF prior to the start of work.
19.17 Contractor shall remove all crossties, tie pieces and associated material. All ties shall be stockpiled at a location designated by the BNSF for disposal off site by the BNSF.
19.18 Contractor shall collect and remove from the BNSF and the JPA property all other track materials.
19.19 Contractor to rough grade track areas after track removal and cleanup efforts, as to render the area safe and accessible for vehicle access, BNSF personnel and public safety.
19.20 Track removal shall include all structures, such as unused culverts, poles, and miscellaneous supporting structures as indicated on the plans or as directed by the Engineer.

20. OWNERSHIP OF MATERIALS

20.1 All track materials removed, including but not limited to rail, other track materials, crossties, at grade crossing materials and foundations not designated to be salvaged to the BNSF shall become the property of the Contractor and shall be removed from the property in their entirety and disposed of properly.
20.2 The BNSF has the first right of salvage to the material removed at the BNSF "X" Yard tracks. The following track materials shall remain the property of the BNSF (if BNSF elects to retain salvage), be salvaged by the Contractor, and relocated to designated BNSF storage sites.
20.2.1 Designated 110RE and 112RE rail at the BNSF "X" Yard.
20.2.2 Designated turnouts and all associated components; including rail, switches, switch machines, frogs, guard rails, switch plates, relay switch ties, switch stands, and connecting rods assemblies at the BNSF "X" Yard.

21. SALVAGED TRACK MATERIALS

21.1 Salvaged materials that are to remain property of BNSF shall be carefully removed, loaded, transported and stored at BNSF's designated storage sites in the following manner:
21.1.1 Compromise joints bars shall be neatly stacked on pallets and properly banded with two (2) inch wide metal strapping.
21.1.2 Rail shall be handled using rail tongs.
21.1.3 Contractor shall ensure that lifting, picking and transporting techniques will not damage or strain the rail or special track work.

21.1.4 Rail stacks shall be located in level areas safely accessible by transporting trucks, forklifts, and cranes.

21.1.5 Salvaged frogs shall be located in a level area safely accessible by transporting truck forklifts and cranes.

21.1.6 The bottom of each rail stack shall rest on two (2) suitable crossties spaced at no more than eight (8) feet and no less than three (3) feet from each end of the rail and located in a well drained area.

21.1.7 The bottom of each salvaged frog shall rest on a minimum of three (3) suitable crossties evenly spaced in a well drained area.

21.1.8 Salvaged rail shall be segregated and stacked by rail section, class (1 & 2) and length.

21.1.9 Rail shall be stacked with the heads up and with the rail ends square and even.

21.1.10 Each layer of rail shall be separated by four (4) inch wide wood strips placed upon the ball of the rail and directly above each crosstie.

21.1.11 All relay rail within each stack shall be positioned in a manner where the markings face the same direction.

21.1.12 Rail shall be pyramided in stacks not greater than five (5) feet high and seven (7) feet wide, or as otherwise directed by BNSF.

21.1.13 Salvaged turnouts, including all pertinent hardware, shall be individually banded, palletized/boxed and identified with paint prior to transporting to the storage site.

21.1.14 Weight of any container or pallet shall not exceed 1500 pounds.

21.2 The Contractor shall provide a detailed inventory of all salvaged track materials to the BNSF upon completion.

22 WAGE RATES

22.1 The Contractor acknowledges to following all requirements stipulated for compensation to workers on this project and acknowledges reading and understanding the Davis Bacon Requirements as outlined in 29 CFR 5.5.

22.1.1 The Davis Bacon Requirements are a part of this contract.

23. BNSF RAILWAY SPECIAL PROVISIONS

23.1 The attached Exhibit "X" provides the Contractor Requirements for work that will be completed on existing BNSF Railway property or within 50 feet of the BNSF property as part of this project.

23.1.1 This would include the work associated with Bid Alternates 1 and 2.

23.2 The Contractor shall strictly adhere to all requirements as outlined and shall coordinate their work with the BNSF's Project Engineer, Mike Schaefer or other designated representative at all times during completion of work on the BNSF property.

23.3. All Contractor employees that will be involved with work within the BNSF right-of-way will need to be certified through the BNSF E-Rail Safe program and shall have the required BNSF Contractor Safety Orientation as outlined in the BNSF Special Provisions.

23.3.1 Refer to the BNSF Special Provision for the requirements for the Contractor Safety Orientation.

23.3.2 Refer to https://www.e-railsafe.com/ev/servlet/hr.utilities.HRInfo E-Rail Safe certification requirements.

23.4 In addition the Contractor will be required to execute the attached agreement Exhibit C-1A and provide certification of the required insurance coverages outlined in the agreement to the BNSF Railway prior to start of any work on railroad property (this would apply to work associated with either Bid Alternate 1 or Bid Alternate 2).

23.5 Flagging will be required when work is required on BNSF property within 25 feet of the existing tracks and as outlined in the BNSF Special Provision.

- 23.5.1 Flagging services shall be performed by BNSF employees as outlined in the following Contractor's Requirements for work on BNSF Railway property.
- 23.5.2 The cost of the flagging up to a maximum amount of $60,000 shall be borne by the JPA.
  - 23.5.2.1 The $60,000 amount of flagging is based upon 60 flagging days using a standard 10-hour work day and the BNSF requiring a single flagger for this work.
  - 23.5.2.2 If the BNSF requires additional flaggers than the maximum amount is subject to change as determined by the Engineer.
- 23.5.3 All flagging costs in excess of the $60,000 amount shall be deducted from the retainage held on the project prior to final payment.

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20___.

By: _____

Title:_____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On _____, 20___, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

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

_____
Notary Public

(S E A L)

WH 12-42 Introduce: 7-6-12

RESOLUTION NO. WH- _____

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

That the attached Change Order No. 1 to the Final Guaranteed Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson for inclusion of the enhanced curtaining system into their scope of work for an additional contract cost of $532,824.00 and to establish $156,802,991.00 as the revised amount the Contract Sum (GMP) shall not exceed, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Change Order on behalf of the JPA.

The City Clerk is directed to return one fully executed copy of the Contract Agreement to Rick Peo for transmittal to M.A. Mortenson Company.

Adopted this _____ day of _____, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

WHJPA - Pinnacle Bank Arena

440 NORTH 8TH STREET
SUITE 110
LINCOLN NE 68001

CHANGE ORDER
No. 001

Title:	Change Order #01	**Date:**	07-JUN-12
Project:	WHJPA-Pinnacle Bank Arena	**Project No:**	10150002
To:	**M A Mortenson Company**	**Contract No:**	
	National Projects Group Operations	**Phone:**	
	440 NORTH 8th STREET		
	SUITE 110		
	Lincoln NE 68508		

DESCRIPTION OF CHANGE

This change order is for procurement of the Arena Curtains Subcontract, which was not included in the FGMP.

COLLECTED CHANGES

42.0	00398	A - House Reduction & Vomitory Curtain Award	532,824.00

Total of collected changes $ 532,824.00

The original Contract Sum was	$	156,270,167.00
Net change by previously authorized Change Orders	$	0.00
The Contract Sum prior to this Change Order was	$	156,270,167.00
The Contract Sum will be modified in the amount of	$	532,824.00
The new Contract Sum including this Change Order will be	$	156,802,991.00

ref: MAM #002

WHJPA - Pinnacle Bank Arena

440 NORTH 8TH STREET
SUITE 110
LINCOLN NE 68001

CHANGE ORDER
No. 001

Title: Change Order #01
Project: WHJPA-Pinnacle Bank Arena
To: **M A Mortenson Company**

Date: 07-JUN-12
Project No: 10150002
Contract No:

ACCEPTED:
M A Mortenson Company

BY (Signature)

John A. Hinshaw
(Printed Name)

6/7/12
DATE

ACCEPTED:
MAYOR BEUTLER OR JOINT PUBLIC AGENCY

BY (Signature)

(Printed Name)

DATE

ACCEPTED:
PC Sports, Inc.

Paula Yancey
BY (Signature)

Paula Yancey
(Printed Name)

6/14/12
DATE

ACCEPTED:
DLR Group, Inc.

BY (Signature)

James Jaros
(Printed Name)

6-7-12
DATE

WHJPA-Lincoln West Haymarket Arena

Proposed Change Order #42

Mortenson construction

Summary of Revisions

This PCO is for procurement of the Arena Curtains and awarding a subcontract to Nickerson Corporation in accordance with their proposal form dated April 20, 2012.

Summary Revisions	**Cost**
Total Subcontracted Work	497,406.00
Contingencies Applied	17,409.00
Net Subtotal	**$514,815.00**
BOND .645%	
	3,320.56
Subtotal Proposed Change Order	**$518,135.56**
INSURANCE .868%	
	4,497.10
Subtotal Proposed Change Order	**$522,632.66**
FEE 1.95%	
	10,191.34
Subtotal Proposed Change Order	**$532,824.00**
Proposed Change Order Amount	**$532,824.00**

Submitted	Reviewed	Accepted	Accepted
M. A. Mortenson Company	**DLR Group, Inc.**	**MAYOR BEUTLER OR JOINT PUBLIC AGENCY**	**PC Sports**
By: John Hinshaw	By: Jim Jaros	By:	By: Paula Yancey
Date: 05 JUN 12	Date: 6-6-12	Date:	Date: 6/6/12

This change estimate includes items clearly indicated on the referenced documentation only, and as clarified herein. Changes to Contract Documents not specifically identified as revisions are not included in this proposal, unless specifically noted. Mortenson reserves the right to a future contract sum and schedule adjustment should changes be discovered which are not identified as such in the referenced documents and to submit for additional compensation related to the impact of this change on unchanged work or the effect of this change in combination with other changes.

Issue Number:	00398	**PCO Date:**	06/05/2012	**Mortenson Project #:**	10150002
Issue Description:	A - House Reduction & Vomitory Curt	**PCO Number:**	42		

WHJPA-Lincoln West Haymarket Arena

Proposed Change Order #42
[illegible]

Mortenson construction

Detailed Cost Summary

Subcontracted Work

Subcontractor	Description	Cost
Undetermined	A - House Reduction & Vomitory Curtain Award	$497,406.00
	Total Subcontracted Work	**$497,406.00**

Contingencies

Description	Qty.	Unit	Hours	Rate	Cost
Contingency (3.5%)	1.0			17,409.00	17,409.00
				Subtotal Contingencies	**$17,409.00**

Schedule of Values Cost Summary

Bill Code	Description	Change Amount
100	MISCELLANEOUS SPECIALTIES	497,406.00
991	CM PERFORMANCE & PAYMENT BOND	3,320.56
995	CONTINGENCY	17,409.00
998	INSURANCE	4,497.10
999	FEE 1.95%	10,191.34
	Proposed Change Order Amount	**$532,824.00**

Issue Number:	00398	**PCO Date:**	06/05/2012	**Mortenson Project #:**	10150002
Issue Description:	A - House Reduction & Vomitory Curt	**PCO Number:**	42		