

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

CITY-COUNTY BUILDING
555 S. 10TH STREET
ROOM 303
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 November 2, 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. Approval of October 2012 Payment Registers (Steve Hubka)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the payment registers)
6. Review of the October 2012 Expenditure Reports (Steve Hubka)
 - Public Comment
7. WH 12-63 Resolution to approve Change Order No. 2 to the Final Guaranteed Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson for inclusion of hand dryers into their scope of work for an additional contract cost of \$126,255 and to establish \$156,929,246.00 as the revised amount of the Contract Sum. (Paula Yancey)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
8. WH 12-64 Resolution to approve the Agreement between the West Haymarket Joint Public Agency and Donald Lipski for Fabrication, Engineering, and Installation of Art Work to be known as the "Candy Box" at the Pinnacle Bank Arena. (Paula Yancey/Chris Connolly)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
9. WH 12-65 Resolution to approve an Agreement between the West Haymarket Joint Public Agency and IMG College, LLC for marketing of advertising and sponsorship rights at Pinnacle Bank Arena for a term of September 1, 2013 through June 30, 2021. (Jeff Kirkpatrick)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)

10. WH 12-66 Resolution to approve an Agreement between the West Haymarket Joint Public Agency and Dimensional Innovations for the Haymarket Pedestrian Bridge Aesthetic Design. (Paula Yancey/Chris Connolly)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
11. Set Next Meeting Date: Tuesday, December 18, 2012 at 3:00 p.m. in City Council Chambers Room 112
12. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
November 2, 2012

Meeting Began At: 3:00 P.M.

Meeting Ended At: 3:42 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 introduction of the Board members. He advised that the open meetings law posted at the back of the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

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 October 5, 2012

Beutler asked for corrections or changes to the minutes of the October 5, 2012 meeting. Being none, Clare moved approval of the minutes. Carroll seconded the motion. Motion carried 3-0.

Item 4 -- West Haymarket Progress Report

Paula Yancey, PC Sports, distributed a monthly information packet (attached hereto) on the status of the Pinnacle Bank Arena and associated infrastructure projects.

Yancey reviewed the participation numbers, indicating that through September-October of 2012 there have been 2,008 workers on site. This includes both professional engineering and construction workers. Of the total workers, 1,160 (or 58%) live in Lincoln/Lancaster County and another 612 (or 30%) live in Nebraska outside Lancaster County. Only 236 (or 12%) were from outside Nebraska.

Looking at just the construction employees using certified payrolls or Davis Bacon, there have been 1,727 workers on site. Of the total, 1,017 (or 59%) of the workers are from Lincoln/Lancaster County, 557 (or 32%) were from Nebraska, and only 153 (or 9%) were from outside of Nebraska.

Company participation numbers show 315 firms awarded contracts. Out of the total firms, 241 (or 77%) were Nebraska firms and only 74 (or 23%) were outside Nebraska. That equates to \$140 million out of a total \$193 million awarded to firms that actually have an address in Nebraska.

On the infrastructure, Yancey briefed the JPA Board on the significant progress that has happened in the Haymarket area over the last month and a half. From the 7th and 'Q' Street intersection an image shows

the Loft (or private developer) Block. They have reached the highest point of steel for the six-story retail and apartment building. The arena shows in the background of the image. She continued by presenting the image of the grading on the former Ironhorse Parking Lot. The underground abandoned utilities have been removed, excavation and demolition have been completed, and now the parking lot has been regraded in anticipation of the private developer taking over soon. The north half of 'R' Street is poured and is shown looking to the west. DEC work continues. The building is on schedule with heat to be supplied to the arena for this winter. The image shows the underground piping between 'Q' and 'R' Streets that will supply hot and cold water to all the buildings in the district. The new Pinnacle Bank Arena Drive is poured with the shared image looking north from 'Q' Street. Hawkins Construction is ahead of schedule. They will be pouring the south portion of the drive soon. This same image shows the metal panels installed on the arena. Water main construction work, shown at 'N' Street and Pinnacle Arena Drive, is ongoing. Underground utilities are about 70-80% complete for the Core Area Roadway projects. Hausmann Construction has been working on the shared pier between the pedestrian bridge and the elevated arena plaza. An image shows them forming the pier, a second image shows the piling installation on the north side of the pedestrian ramp, and a third image shows the pedestrian bridge embankment work. An October 15 aerial view shows the work beginning at the north or bottom of the picture with the rough grading of the festival area and bridge embankment work, across to where you can see the new Pinnacle Arena Drive down to the Amtrak Station. It shows where Mortenson has put the decking on the roof. Farther south, you can see the temporary parking, along with the ongoing site and utility work.

John Hinshaw, Mortenson Construction, reported on the Pinnacle Bank Arena progress. Hinshaw, displaying a slide of craft workers doing the stretch and bend in the morning, reported that they have worked 141 consecutive days without a safety incident. Responding to Clare's inquiry, Hinshaw explained that an incident is anything requiring medical attention – from stitches, prescriptions, duty restrictions, or anything requiring lost time off work. Clare thought the length was significant and expressed his appreciation and congratulations.

Hinshaw continued that there is an average of 250 craft workers on site daily. The concrete superstructure is topped out with work continuing on the slab on grade on the interior of the bowl, slab on metal decks as the steel is erected, and the garage foundations in the southwest corner as the garage connected to the arena has begun.

Hinshaw emphasized the enclosure of the arena. The displayed images showed a Falewich worker installing the plywood lid of the club, Falewich workers installing exterior metal studs, workers pumping concrete in the southwest corner of the arena, iron workers detailing the last steel truss, workers installing the glass curtainwall at the arena lobby, some pipe fitters from Waldinger Construction working on the hot and chilled water piping, Falewich workers preparing to install the second lift of exterior drum studs along with those studs flying in place, and Davis Erection workers installing a third exit stair that was fabricated locally by Midwest Steel.

A summary of the milestones included:

- The completion of structural precast for 1st Phase
- Installation of all four long steel trusses – erected in place and now free standing
- Installation of 50% of metal deck
- Roofing installation was started and now completed on south third of the project
- Metal panel installation started on the southwest corner of the project
- Curtainwall installation started with glass being installed

Clare asked about timing of the project to which Hinshaw responded that they are on time, as well as on budget.

Item 5 -- Approval of September 2012 Payment Register

Steve Hubka, City Finance Director, presented the payment register for September 2012. He noted that the total expenditure is approximately \$11.86 million, which includes Engineering Services costs. The monthly payments are increasing greatly to mainly the same vendors. This includes a large payment to Mortenson, as well as significant payments for the Core Area Roadway work. This increase in payments was anticipated.

Clare asked if we were on budget and if Hubka had heard anything from the Auditor of Public Accounts (APA). Hubka affirmed that we are on budget. There has been one follow up APA question regarding vouchers payable on the audit report from last year. His office provided a printout of the detail comprising the \$5 million questioned. Hubka also confirmed that they are gathering the necessary signatures and/or documentation from an audit standpoint.

There was no public comment. Clare moved approval of the payment register. Carroll seconded the motion. Motion carried 3-0.

Item 6 -- Review of the September 2012 Expenditure Reports

Although Hubka mentioned there would be some amendments come forward to the project budget, Yancey is still waiting on some pending items to complete that information. Steve anticipates presenting the information next month. The amendments will make adjustments or reallocations, but not change what is to be spent on the project.

There was no public comment.

Item 7 -- WH 12-57 Resolution to approve a Letter Agreement with BKD, LLC to perform an audit of the West Haymarket Joint Public Agency financial statements in accordance with generally accepted auditing standards for the period ending August 31, 2012

Hubka introduced Roger Watton from BKD, who is our independent auditor. This is the third JPA audit to be performed to start soon.

Mr. Watton explained that what is referred to as an “Engagement Letter” is in fact a legally binding contract for BKD to provide the audit services for the August 31, 2012 year-end of the West Haymarket JPA. The letter of contract outlines the objectives of that engagement, which is to do an audit in accordance with generally accepted auditing standards and governmental auditing standards. It also addresses some details regarding responsibilities of both parties. It covers other potential services and lists the fees in accordance with the prior proposal, which is \$15,500 for this audit. It also refers to the potential if a single audit was required, which is not applicable in this case. The remainder includes general conditions and matters involving the engagement.

Jane Kinsey, Watchdogs of Lincoln Government, asked if Tom Foley’s office was auditing the auditors or looking at other expenditures. Hubka explained that there is no audit by the Auditor of Public Accounts. They simply made some inquiries asking to look at work papers from the last audit by BKD.

The questions were of a financial nature and all inquiries have been answered. There has not been additional contact for several weeks.

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

Item 8 -- FY 2013 EPA Brownfields Cleanup Grant Applications Community Notification and Public Hearing

Frank Uhlarik from Alfred Benesch Company, standing in for Ernie Castillo, introduced this item. An announcement was put out this week for the EPA Brownfields Cleanup Grant applications for both the Alter and the manufacture gas plant sites located on previous Jaylyn properties, both in the vicinity of 6th and 'N' Streets. Applications are in draft form. Public comment is stated to be closed today, however, people can still come to Urban Development to review the documents and provide comments. Ernesto Castillo with Urban Development is located in Suite 205 of the County-City Building and can be reached at 402-441-7855 to arrange a review time. Mr. Uhlarik is assisting with the application and is available to take on any managerial or technical aspects of the grant. The amount sought is \$200,000 in federal funds for each of the sites. This is not the total cost for cleanup of each of the sites, but will be a large amount that will be very helpful.

Jane Kinsey asked for clarification on whether this is a new application. Previously she contacted Mr. Castillo, and he told her these funds were not approved. Mr. Uhlarik explained that this grant was unsuccessfully requested last year. They are competitive grants and, after some good feedback, we feel we are submitting an airtight application this year. This is due November 19 to EPA headquarters.

Item 9 -- WH 12-58 Resolution authorizing the conveyance of the JPA's interest in a portion of vacated 7th Street and abutting property located between vacated 7th Street and proposed Canopy right-of-way between N and O Streets to the City of Lincoln, Nebraska for the Lumberworks parking garage and associated liner buildings

Dan Marvin, Project Manager, explained that this item approves exchanges of pieces of land to form complete parcels under one ownership. Urban Development is building a parking garage in the 'O' to 'N' and 8th to Canopy Street area. In addition, they have a proposal out for a liner building along Canopy Street adjacent to the garage. The liner building is located within old Burlington Northern property acquired by the JPA. Those parcels overlap. There is some City 7th Street right-of-way, there is some Lumberworks parking lot, and a railroad parcel. We are trying to create a Block 8 Lot 1 with one common ownership under one parcel. The City will be able to construct the parking garage and liner building within that block along Canopy Street. Sampson Construction will be putting up a fence, and the parcel ownership cleanup would avoid rights of entry and coordination issues between two owners. The item before the Board would compensate JPA for fair market value for the property at some point in the future. That amount has typically been approximately \$15 per sq. ft. Of the two parcels, one was appraised by Great Plains for \$11 sq. ft and one was purchased from the P.O. upon appraisal at \$19 sq. ft – so the average was \$15 per sq. ft.

Beutler asked for public comment. There was none. Clare moved approval of the resolution. Carroll seconded the motion. Motion carried 3-0.

Item 10 -- WH 12-59 Resolution authorizing the conveyance of the JPA's interest in certain property being replatted as Lots 1 and 2, Block 1, West Haymarket Addition to the City of Lincoln, Nebraska in exchange for the City of Lincoln's conveyance of the City's interest in property being replatted as Lot 3, Block 1, West Haymarket Addition

Dan Marvin indicated that this resolution also deals with conveyance of property. This is the Festival Space to the north. Lot 1 of Block 1 would be the pad site that ultimately could be the Breslow Ice Center. Lot 2 is what we call the 901 Site where Public Works has some buildings. Lot 3 to the south would be the Festival Space parking to serve the arena. Land exchanges are necessary to convey some land from JPA to the City to complete the site for the Breslow Block Lot 1 and from the City to the JPA to complete the area for the pedestrian walkway and a piece of property allowing access for a driveway into the Festival Space and parking lot that is being created. By equalizing the various properties, each lot will have one common owner.

Jane Kinsey inquired as to the financing of the Breslow Ice Rink. Marvin responded that is not on the list to be financed. The area of Block 1 Lot 1 will end up completely under City ownership. At that time, the City can make the land available to Breslow to develop as an ice center. Beutler explained that the current thinking is that the City would own the land and could lease it to the University Foundation. The Foundation is holding the money given by Breslow, and it would be up to them to do the fund raising.

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

Item 11 -- WH 12-60 Resolution to approve Amendment No. 15 to the Agreement for Engineering Services between the West Haymarket Joint Public Agency and Olsson Associates for the Infrastructure Design Project to provide design, bidding and construction phase services for the Harris Overpass Pigeon Deterrent System and the DMS and Static Wayfinding Signage Systems and project deductions for the Charleston Bridge and Roadway Project, Traffic Analysis Project and Initial Site Preparation Project

Yancey explained this was an amendment to the Lincoln Haymarket Infrastructure Team (LHIT) contract. As scopes get defined and projects get more clearly decided, appropriate amendments are needed to the LHIT contract for the design, engineering, and/or construction phase services. This particular amendment includes the design, bidding, and construction phase services for the continuation of the pigeon deterrent system under the 'O' Street Bridge. This also includes the design, bidding, and construction services for the wayfinding signage needs throughout the district and downtown to direct people to the arena. The total cost of this amendment is \$1,894,000. Some of the cost has been offset by savings in other areas of the contract, so there is a savings adjustment of \$41,724. Therefore, the net increase to the Olsson contract is \$59,170. These projects were anticipated and are included within the overall budget.

Clare had some inquiries on the Harris Overpass pigeon deterrent system. He understood that when the system was initially installed it went to the City edge and ended at the Burlington Northern property line. Yancey confirmed that it ended where the active tracks began. Now that we have taken over that property, the system needs to be extended since there will be activity under the area -- people walking, cars parking, etc. Clare wondered about cost sharing between the JPA and the City since this is a benefit to both. Yancey explained that is under discussion, and the Public Works Department is looking at some options. Once bid, the construction costs will be available so we will know more as to what is

needed. Clare would like a report back on whether the City will pay some of the costs, thereby reducing the JPA portion.

Beutler clarified that the resolution approval would give the Chair authority to execute the agreement. He questioned whether Clare was looking for an answer prior to that approval. Clare is okay moving forward today. He views this the same as 10th Street where the costs were split between JPA and City. The three Board members agreed they would concur in details before moving forward with actual work.

Being no public comment, Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 12 -- WH 12-61 Resolution to approve Amendment No. 7 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to add a new Task 24 for investigation and remediation action planning for portions of the former Alter Trading Corporation Property for the sum of \$143,562

Yancey introduced this resolution providing continued service by Alfred Benesch Company. As referenced in the earlier discussion on the EPA Brownfield Grant Application, they are working on the investigation and remediation planning activities for the Alter site south of 'N' Street. Now that Alter has moved and cleaned up their required area, the environmental investigation needs to continue to determine the amount of cleanup that will be required. This project was anticipated and it can now be defined and authorized to proceed. The total cost is \$143,562 and is within the environmental project budget.

Clare noted this is for property south of 'O' Street and would like to be reminded of the savings for the work north of 'O' Street. Yancey confirmed we were under budget on the work north of 'O' Street. She will pull that information and provide to Clare. She also reminded the Board that the Brownfields Grant will hopefully offset additional expenses.

Being no public comment, Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 13 -- WH 12-62 Resolution approving a Conservation Easement Agreement between the West Haymarket Joint Public Agency and the Lower Platte South NRD to preserve and protect floodplains, wetlands, natural drainage ways and open space over 15.56 acres of property generally located at North 5th Street to North 3rd Street, from O Street to T Street

Ben Higgins, Public Works, presented this item that is a conservation easement from the JPA to the Lower Platte NRD. This is between approximately West 2nd to West 5th from 'O' to 'T' Streets. Even during the planning stages of the arena, there was discussion about the area being set aside for storm water and flood plain mitigation in order to maintain a no net fill policy with the arena development and provide for storm water quality. This area is west and south of the arena and is in conformance with the Comprehensive Plan. Part of this area also meets the Army Corps of Engineers requirements for the 404 Permit.

Carroll clarified that the no net fill policy says no work can be done in this area without the approval of the NRD. Higgins confirmed that is correct and that is to avoid obstructions.

There was no public comment. Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 14 -- Set Next Meeting Date

The next meeting date is set for Thursday, December 6, 2012 at 3:00 p.m. in County-City Building Conference Room 303

Item 15 -- Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:42 P.M.

Prepared by: Pam Gadeken, Public Works and Utilities



Pinnacle Bank Arena

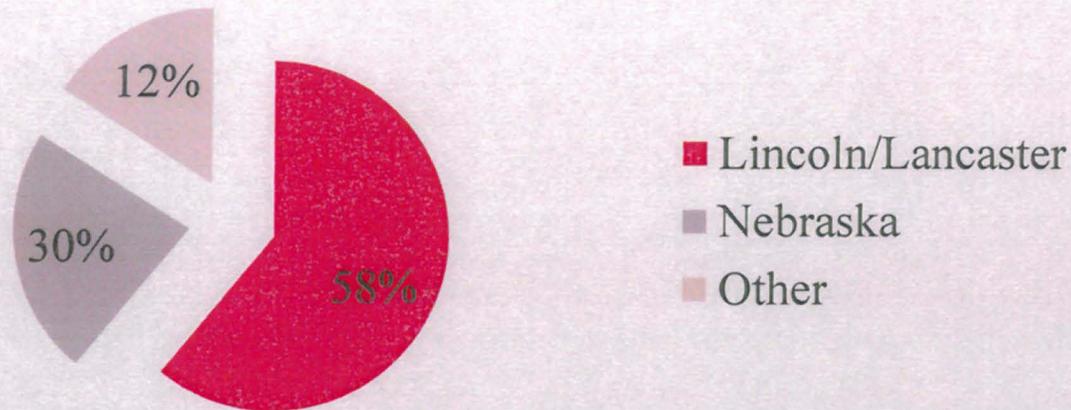
WEST HAYMARKET REDEVELOPMENT PROJECTS



Project Status Update
November 2nd, 2012

**West Haymarket Local Participation Report
All Workers – Including Engineering and Professional Services
Through September / October 2012**

| | Total | Percentages |
|--------------------------|--------------|--------------------|
| Lincoln/Lancaster County | 1160 | 58% |
| Nebraska | 612 | 30% |
| Other | 236 | 12% |
| | 2008 | 100% |



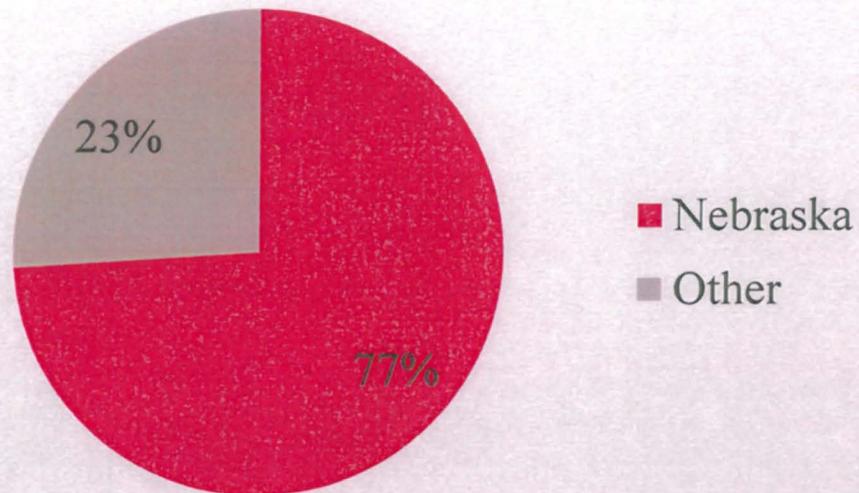
**West Haymarket Local Participation Report
Davis Bacon / Construction Employees
Through September / October 2012**

| | Total | Percentages |
|--------------------------|--------------|--------------------|
| Lincoln/Lancaster County | 1017 | 59% |
| Nebraska | 557 | 32% |
| Other | 153 | 9% |
| | 1727 | 100% |



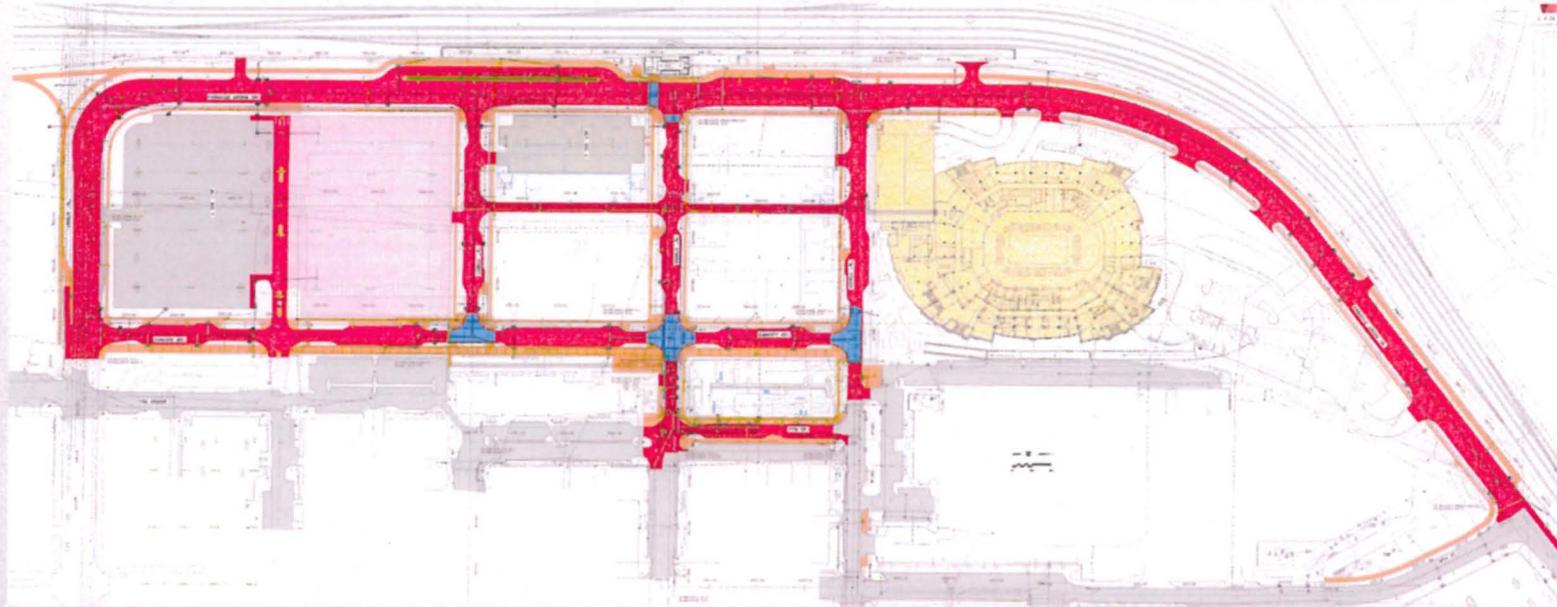
West Haymarket Company Participation

| | Total | Percentage |
|----------------|-------|------------|
| Nebraska Firms | 241 | 77% |
| Other | 74 | 23% |
| | 315 | 100% |



\$140 Million
Nebraska Dollars
out of \$193 Million

Infrastructure Progress



ARENA & LOFTS FROM 7TH & Q STREET



FORMER IRONHORSE PARKING LOT BEING GRADED FOR DEVELOPMENT



NORTH HALF OF "R" STREET



DEC PIPING BEING INSTALLED BETWEEN “Q” AND “R” STREETS



NEW PINNACLE BANK ARENA DRIVE, LOOKING NORTH FROM “Q” STREET



WATER MAIN CONSTRUCTION NEAR "N" STREET AND PINNACLE ARENA DRIVE



ARENA PLAZA & PEDESTRIAN BRIDGE SHARED PIER CONSTRUCTION



BRIDGE ABUTMENT & PEDESTRIAN RAMP CONSTRUCTION



PEDESTRIAN BRIDGE ABUTMENT CONSTRUCTION



OVERALL AERIAL

OCTOBER 15, 2012





Presentation to the JPA

 **Pinnacle Bank Arena**

November 2, 2012



Safety

- **Worked 141 consecutive days without a safety incident**
- **The Project averages over 250 Craft Workers daily**



Concrete Superstructure

- The concrete work continues with Slab on Grade and Slab on Metal Deck
- Garage Foundations have been poured, work continues on Garage walls



Installing Plywood for Club Roof

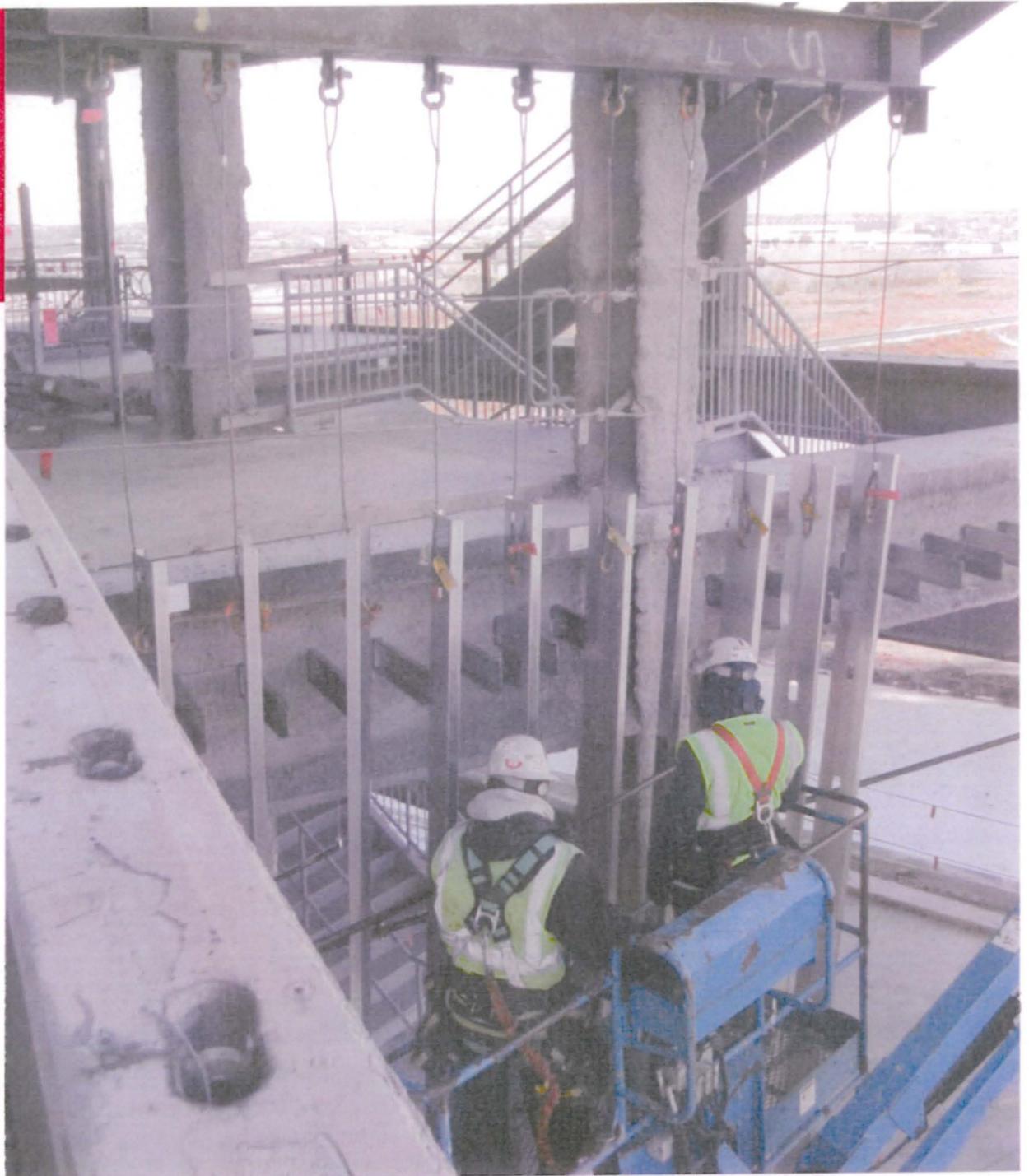




Milestones Achieved

- 1st Phase of structural precast is complete
- All four long span trusses are installed
- 50% of Metal Deck Installed
- Roofing Installation started
- Metal Panel Installation started
- Curtainwall Installation started

Installing Exterior Studs



Pumping Concrete at Garage Walls



Detailing Final Roof Truss



Installing Glass at Curtainwall



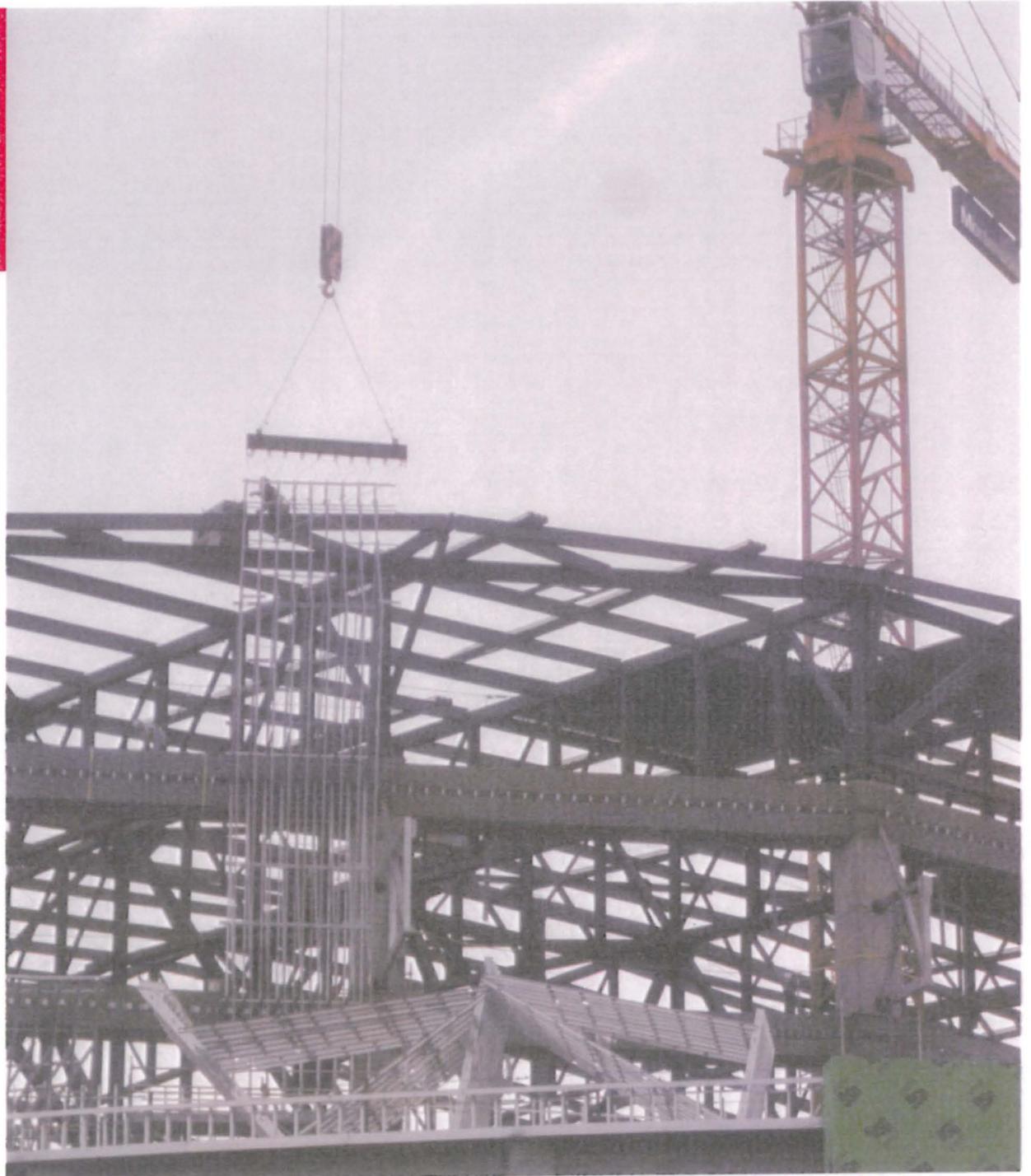
Pipefitters at Work



Preparations to Fly Exterior Drum Studs



Flying High Drum Stud Frame Into Place




Mortenson
construction


HAMPTON
CONSTRUCTION

Installing the 3rd Exit Stair



West Haymarket Joint Public Agency
 Payment Register
 10/1/2012 through 10/31/2012

| Vendor Number | Name | Remark | Project | Description | Do Ty | Doc Number | Amount | Payment Date | Payment Number |
|---------------|---------------------------------|--------------------------------|---------|--------------------------------|-------|------------|--------------|--------------|----------------|
| 27713 | Midwest Steel Works Inc | Right of way | 870302 | WH "M"&"N" St,7th to 10th St | PV | 1398539 | 4,156.00 | 10/03/12 | 480147 |
| 82368 | State of Nebraska | Aug'2012 monitoring #0637 | 870602 | WH Voluntary Clean-up Program | PV | 1398109 | 3,198.02 | 10/03/12 | 480148 |
| 40521 | A to Z Printing | Finance Job 3150H | 06095 | W Haymarket O & M | PV | 1398637 | 68.00 | 10/04/12 | 56547 |
| 249308 | DLR Group Inc | Aug,2012 Fixed reimb exps | 870100 | WH Arena | OV | 1398095 | 10,000.00 | 10/04/12 | 56608 |
| 249308 | DLR Group Inc | Aug'2012 Signage Cattl.yon | 870100 | WH Arena | OV | 1398096 | 9,380.80 | 10/04/12 | 56608 |
| 249308 | DLR Group Inc | Aug'2012 Arena + servs | 870100 | WH Arena | OV | 1398098 | 112,500.00 | 10/04/12 | 56608 |
| 249308 | DLR Group Inc | Aug,2012 Ded Wrk Area LNC | 870100 | WH Arena | OV | 1398099 | 1,504.60 | 10/04/12 | 56608 |
| 249308 | DLR Group Inc | Aug,2012 Furn Interiors | 870100 | WH Arena | OV | 1398104 | 14,775.00 | 10/04/12 | 56608 |
| 249308 | DLR Group Inc | Aug,2012 Parkg Garage | 870100 | WH Arena | OV | 1398105 | 15,290.10 | 10/04/12 | 56608 |
| 320143 | Hawkins Construction | Roadway work,9/2-9/15/12 | 870305 | WH Core Area Roadway & Utility | OV | 1398108 | 772,284.18 | 10/04/12 | 56612 |
| 591846 | Marvin Investment Management Co | Program Admin 6/16/12-7/15/12 | 06095 | W Haymarket O & M | PV | 1398638 | 4,000.00 | 10/04/12 | 56642 |
| 591846 | Marvin Investment Management Co | Program Admin 7/16/12-8/15/12 | 06095 | W Haymarket O & M | PV | 1398640 | 4,000.00 | 10/04/12 | 56642 |
| 591846 | Marvin Investment Management Co | Program Admin 8/16/12-9/15/12 | 06095 | W Haymarket O & M | PV | 1398643 | 4,000.00 | 10/04/12 | 56642 |
| 599315 | Legends Sales & Marketing LLC | Aug ret + rent + salary exp | 870100 | WH Arena | OV | 1398090 | 20,178.78 | 10/04/12 | 56649 |
| 599315 | Legends Sales & Marketing LLC | Arena sales commissions | 06095 | W Haymarket O & M | PV | 1398644 | 115,500.00 | 10/04/12 | 56649 |
| 76881 | Windstream | Billing Number 402-477-6387 | 06095 | W Haymarket O & M | PV | 1400403 | 92.87 | 10/10/12 | 480604 |
| 98642 | Information Services | 08/12 Data Processing | 06095 | W Haymarket O & M | PV | 1400404 | 165.94 | 10/10/12 | 480605 |
| 102154 | Public Building Commission | Finance- Mark L 10/12 | 06095 | W Haymarket O & M | PV | 1400405 | 52.24 | 10/10/12 | 480606 |
| 102154 | Public Building Commission | Finance- Mark L 10/12 | 06095 | W Haymarket O & M | PV | 1400405 | 204.62 | 10/10/12 | 480606 |
| 125330 | NECO Inc | Oct-Dec 12 Alarm Services | 06095 | W Haymarket O & M | PV | 1400406 | 102.60 | 10/10/12 | 480607 |
| 53356 | Lincoln Electric System | 510 N ST 08/30/12-10/01/12 | 06095 | W Haymarket O & M | PV | 1400402 | 642.63 | 10/11/12 | 56699 |
| 77921 | County/City Property Management | CITY CONTROLLER-JPA | 06095 | W Haymarket O & M | PV | 1402210 | 82.67 | 10/17/12 | 481081 |
| 77921 | County/City Property Management | September 2012 Amtrak Station | 06095 | W Haymarket O & M | PV | 1402215 | 524.43 | 10/17/12 | 481081 |
| 97885 | Copy Services | Customer 595381 | 06095 | W Haymarket O & M | PV | 1402211 | 60.60 | 10/17/12 | 481082 |
| 324566 | Union Bank & Trust Company | WHJPA Series 2010A Admin | 195011 | JPA 2010A Debt Service | PV | 1402212 | 524.00 | 10/17/12 | 481083 |
| 594773 | Alfred Benesch & Company | Inspection,8/13-9/9/12 | 870100 | WH Arena | OV | 1400499 | 522.00 | 10/17/12 | 481084 |
| 594773 | Alfred Benesch & Company | Inspections,8/13-8/31/12 | 870100 | WH Arena | OV | 1401102 | 12,150.72 | 10/17/12 | 481084 |
| 594773 | Alfred Benesch & Company | Inspections,9/1-9/9/12 | 870100 | WH Arena | OV | 1401103 | 6,075.23 | 10/17/12 | 481084 |
| 36863 | General Excavating | Conduit work,9/18-9/29/12 | 870951 | WH ITS & Dynamic Message Signs | OV | 1401104 | 14,820.48 | 10/18/12 | 56867 |
| 92806 | Vermeer High Plains | Tree spade rental,9/21-9/28/12 | 870305 | WH Core Area Roadway & Utility | PV | 1401111 | 1,000.00 | 10/18/12 | 56915 |
| 196867 | Terracon Consultants Inc | Testing to 9/1/12 | 870100 | WH Arena | OV | 1400914 | 189,082.64 | 10/18/12 | 56949 |
| 320143 | Hawkins Construction | Roadway work,9/16-9/29/12 | 870305 | WH Core Area Roadway & Utility | OV | 1401106 | 973,020.63 | 10/18/12 | 56963 |
| 320143 | Hawkins Construction | Canopy work to 9/30/12 | 870402 | WH Canopy Phase II | OV | 1401107 | 59,683.75 | 10/18/12 | 56963 |
| 585350 | Hausmann Construction | Parking Lot Imprv,9/13-9/29 | 870201 | WH HymktPkLot,FestSp&PedGrdStr | OV | 1400692 | 234,640.26 | 10/18/12 | 57003 |
| 585350 | Hausmann Construction | Proj 12022300 | 870202 | WH Parking Garage #1 | OV | 1401755 | 293,154.00 | 10/18/12 | 57003 |
| 585350 | Hausmann Construction | Proj 12022300 | 870202 | WH Parking Garage #1 | OV | 1401758 | 129,033.00 | 10/18/12 | 57003 |
| 593485 | Thought District Inc | 10-JPA-0007 On-Going Mgmt | 06095 | W Haymarket O & M | PV | 1402213 | 2,000.00 | 10/18/12 | 57018 |
| 596579 | SMG | July,2012 consulting fee | 870100 | WH Arena | OV | 1400913 | 5,000.00 | 10/18/12 | 57023 |
| 596608 | M A Mortenson Company | GMP work 9/1-9/30/12 | 870100 | WH Arena | OV | 1401818 | 8,933,495.00 | 10/18/12 | 57024 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870951 | WH ITS & Dynamic Message Signs | OV | 1400911 | 4,887.52 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870000 | WH General Coordination | OV | 1400911 | 36,086.41 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870952 | WH Community Space & Civic Art | OV | 1400911 | 1,586.19 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870302 | WH "M"&"N" St,7th to 10th St | OV | 1400911 | 15,849.94 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870306 | WH Traffic Analysis | OV | 1400911 | 1,040.00 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870307 | WH Streetscape | OV | 1400911 | 11,804.15 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870201 | WH HymktPkLot,FestSp&PedGrdStr | OV | 1400911 | 54,962.85 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870305 | WH Core Area Roadway & Utility | OV | 1400911 | 87,950.00 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 8/5-8/31/12 | 870202 | WH Parking Garage #1 | OV | 1400911 | 45,618.24 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870951 | WH ITS & Dynamic Message Signs | OV | 1400912 | 1,503.85 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870202 | WH Parking Garage #1 | OV | 1400912 | 14,036.38 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870305 | WH Core Area Roadway & Utility | OV | 1400912 | 27,061.54 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870201 | WH HymktPkLot,FestSp&PedGrdStr | OV | 1400912 | 16,911.64 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870307 | WH Streetscape | OV | 1400912 | 3,632.05 | 10/18/12 | 57025 |

West Haymarket Joint Public Agency
 Payment Register
 10/1/2012 through 10/31/2012

| Vendor Number | Name | Remark | Project | Description | Do Ty | Doc Number | Amount | Payment Date | Payment Number |
|---------------|-------------------------------|--------------------------------|---------|--------------------------------|-------|------------|---------------|--------------|----------------|
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870000 | WH General Coordination | OV | 1400912 | 11,103.52 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870952 | WH Community Space & Civic Art | OV | 1400912 | 488.06 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870302 | WH "M"&"N" St,7th to 10th St | OV | 1400912 | 4,876.90 | 10/18/12 | 57025 |
| 596877 | Olsson Associates | Design serv 9/1-9/8/12 | 870306 | WH Traffic Analysis | OV | 1400912 | 320.00 | 10/18/12 | 57025 |
| 598263 | PC Sports LLC | Sep,12 Arena mgmt | 870100 | WH Arena | OV | 1400498 | 30,450.00 | 10/18/12 | 57027 |
| 598263 | PC Sports LLC | Sep,12 Program mgmt | 870000 | WH General Coordination | OV | 1400498 | 68,050.00 | 10/18/12 | 57027 |
| 599315 | Legends Sales & Marketing LLC | Sep,2012 ret,rent,website | 870100 | WH Arena | OV | 1401105 | 24,134.44 | 10/18/12 | 57033 |
| 103499 | Register of Deeds | Ordinance 19792 filing fees | 870908 | WH Other Private Prop Acqstns | PV | 1404315 | 167.00 | 10/22/12 | 23939 |
| 82448 | Nebraska Title Company | Land Exchange WH00110,WH00404 | 870908 | WH Other Private Prop Acqstns | PV | 1404589 | 3,535.50 | 10/23/12 | 23941 |
| 601904 | Star City/Federal, LLC | Land Exchange WH00110,WH00404 | 870908 | WH Other Private Prop Acqstns | PV | 1404601 | 210,611.84 | 10/23/12 | 23942 |
| 89391 | Fedex | Account #1082-1984-0 | 06095 | W Haymarket O & M | PV | 1404317 | 33.62 | 10/24/12 | 481623 |
| 249308 | DLR Group Inc | Sept,2012 Arena consulting | 870100 | WH Arena | OV | 1403123 | 112,500.00 | 10/25/12 | 57169 |
| 249308 | DLR Group Inc | Sept,2012 Arena Ded Wrk Are | 870100 | WH Arena | OV | 1403124 | 1,504.59 | 10/25/12 | 57169 |
| 249308 | DLR Group Inc | Sept,2012 Furn Interiors | 870100 | WH Arena | OV | 1403126 | 5,910.00 | 10/25/12 | 57169 |
| 249308 | DLR Group Inc | Sept,2012 Parking Garage | 870203 | WH Arena Parking Garage | OV | 1403128 | 15,289.89 | 10/25/12 | 57169 |
| 249308 | DLR Group Inc | Sept,2012 Naming Signage | 870100 | WH Arena | OV | 1403129 | 37,328.00 | 10/25/12 | 57169 |
| 249308 | DLR Group Inc | Sept,2012 IPTV Design | 870100 | WH Arena | OV | 1403130 | 12,860.10 | 10/25/12 | 57169 |
| 249308 | DLR Group Inc | Sept,2012 Arena Signage | 870100 | WH Arena | OV | 1403133 | 8,924.30 | 10/25/12 | 57169 |
| 103499 | Register of Deeds | File Quitclaim Deed-EO 85480 | 870908 | WH Other Private Prop Acqstns | PV | 1405501 | 167.00 | 10/29/12 | 23972 |
| 601978 | Eighth & T LLC | Closing 605 North 8th St | 870908 | WH Other Private Prop Acqstns | PV | 1405924 | 388.75 | 10/31/12 | 23987 |
| 82368 | State of Nebraska | Sept,2012 monitoring #0637 | 870602 | WH Voluntary Clean-up Program | PV | 1405111 | 2,172.91 | 10/31/12 | 481925 |
| 139758 | Union Pacific Railroad | WO04367, Cust#62517 Track work | 870907 | WH UP Track Mod West of Bridge | PV | 1405450 | 57,477.86 | 10/31/12 | 481926 |
| 139758 | Union Pacific Railroad | WO04367,Cust#62517 Track work | 870907 | WH UP Track Mod West of Bridge | PV | 1405451 | 759.32 | 10/31/12 | 481926 |
| 594773 | Alfred Benesch & Company | Environmental, 8/6-9/2/12 | 870602 | WH Voluntary Clean-up Program | OV | 1405183 | 29,476.68 | 10/31/12 | 481927 |
| 594773 | Alfred Benesch & Company | Environmental, 8/6-9/2/12 | 870604 | WH Other/Miscellaneous | OV | 1405183 | 10,255.50 | 10/31/12 | 481927 |
| 594773 | Alfred Benesch & Company | Environmental, 8/6-9/2/12 | 870603 | WH Environmental Contngy Pln | OV | 1405183 | 39,727.99 | 10/31/12 | 481927 |
| 594773 | Alfred Benesch & Company | Environmental, 8/6-9/2/12 | 870601 | WH NDEQ T-200 | OV | 1405184 | 4,591.74 | 10/31/12 | 481927 |
| Grand total | | | | | | | 12,963,002.06 | | |

West Haymarket Joint Public Agency
 Public Works Engineering Costs
 10/1/2012 through 10/31/2012

| Description | Fund | Project | Description | Do Ty | Document Number | Object | Sub | Amount | G/L Date |
|--------------------|-------|---------|--------------------------------|----------|--------------------|--------|-----|--------|----------|
| Design Engineering | 00951 | 870951 | WH ITS & Dynamic Message Signs | EU | 352455 | 6153 | 130 | 91.31 | 10/04/12 |
| Design Engineering | 00951 | 870000 | WH General Coordination | EU | 352467 | 6153 | 130 | 174.32 | 10/18/12 |
| | | | | | | | | ----- | |
| Grand total | | | | | | | | 265.63 | |

City of Lincoln, NE
 West Haymarket Joint Public Agency
 Job Cost Report
 As of October 31, 2012

| | | Total Budget | Expend. | Encumb. | Available Balance | Accounts Receivable | Adjusted Avail Bal |
|-------|---------------------------------------|-----------------|------------|------------|----------------------|------------------------|-----------------------|
| ----- | | | | | | | |
| 00951 | West Haymarket Capital Proj | | | | | | |
| 70090 | West Haymarket Park | | | | | | |
| | 870000 WH General Coordination | 6,674,522 | 5,145,012 | 1,621,942 | 92,432- | | 92,432- |
| ----- | | | | | | | |
| 70090 | West Haymarket Park | 6,674,522 | 5,145,012 | 1,621,942 | 92,432- | | 92,432- |
| ----- | | | | | | | |
| 70091 | Arena | | | | | | |
| | 870100 WH Arena | 178,107,742 | 79,871,481 | 92,903,438 | 5,332,823 | | 5,332,823 |
| | 870101 WH Arena Contingency | 5,143,925 | | | 5,143,925 | | 5,143,925 |
| | 870203 WH Arena Parking Garage | 698,599 | 572,897 | 152,897 | 27,195- | | 27,195- |
| ----- | | | | | | | |
| 70091 | Arena | 183,950,266 | 80,444,378 | 93,056,335 | 10,449,553 | | 10,449,553 |
| ----- | | | | | | | |
| 70092 | Parking | | | | | | |
| | 870201 WH HymktPkLot,FestSp&PedGrdStr | 13,080,079 | 1,905,976 | 2,210,698 | 8,963,405 | | 8,963,405 |
| | 870202 WH Parking Garage #1 | 15,066,244 | 1,167,379 | 12,879,372 | 1,019,493 | | 1,019,493 |
| | 870204 WH Parking Garage #2 | 232,000 | 203,219 | 3,817 | 24,964 | | 24,964 |
| ----- | | | | | | | |
| 70092 | Parking | 28,378,323 | 3,276,574 | 15,093,887 | 10,007,862 | | 10,007,862 |
| ----- | | | | | | | |
| 70093 | Roads | | | | | | |
| | 870301 WH Charleston Bridge/Roadway | 264,403 | 252,015 | 31,969 | 19,581- | | 19,581- |
| | 870302 WH "M"&"N" St,7th to 10th St | 2,818,574 | 3,431,596 | 61,480 | 674,502- | | 674,502- |
| | 870303 WH USPS Parking Lot Reconstctn | 713,947 | 696,054 | 2,124 | 15,769 | | 15,769 |
| | 870304 WH 10th & Salt Creek Road Impr | 3,420,647 | 3,436,721 | 7,927 | 24,001- | | 24,001- |
| | 870305 WH Core Area Roadway & Utility | 13,531,642 | 7,870,621 | 7,539,080 | 1,878,059- | | 1,878,059- |
| | 870306 WH Traffic Analysis | 125,095 | 71,273 | 17,520 | 36,302 | | 36,302 |
| | 870307 WH Streetscape | 405,706 | 310,193 | 77,496 | 18,017 | | 18,017 |
| | 870308 WH Sun Valley Blvd & West "O" | 40,000 | 23,682 | 5,689 | 10,629 | | 10,629 |
| ----- | | | | | | | |
| 70093 | Roads | 21,320,014 | 16,092,155 | 7,743,285 | 2,515,426- | | 2,515,426- |

City of Lincoln, NE
 West Haymarket Joint Public Agency
 Job Cost Report
 As of October 31, 2012

| | | Total Budget | Expend. | Encumb. | Available Balance | Accounts Receivable | Adjusted Avail Bal |
|-------|---------------------------------------|-----------------|-----------|-----------|----------------------|------------------------|-----------------------|
| ----- | | | | | | | |
| 00951 | West Haymarket Capital Proj | | | | | | |
| 70094 | Pedestrian Ways | | | | | | |
| | 870401 WH Plaza | | | | | | |
| | 870402 WH Canopy Phase II | 1,000,000 | 179,377 | 1,100,375 | 279,752- | | 279,752- |
| ----- | | | | | | | |
| 70094 | Pedestrian Ways | 1,000,000 | 179,377 | 1,100,375 | 279,752- | | 279,752- |
| ----- | | | | | | | |
| 70095 | Utilities | | | | | | |
| | 870501 WH Sanitary Sewer Relocation | 1,492,905 | 1,492,905 | | | | |
| | 870502 WH Fiber Optic Comm & Other | 650,880 | 506,035 | 31,547 | 113,298 | | 113,298 |
| ----- | | | | | | | |
| 70095 | Utilities | 2,143,785 | 1,998,940 | 31,547 | 113,298 | | 113,298 |
| ----- | | | | | | | |
| 70096 | Environmental | | | | | | |
| | 870601 WH NDEQ T-200 | 2,276,402 | 1,586,746 | 17,656 | 672,000 | 80,945 | 752,945 |
| | 870602 WH Voluntary Clean-up Program | 1,725,156 | 771,152 | 8,244 | 945,760 | | 945,760 |
| | 870603 WH Environmental Contngy Pln | 2,124,947 | 1,250,637 | | 874,310 | | 874,310 |
| | 870604 WH Other/Miscellaneous | 525,600 | 570,217 | 380,913 | 425,530- | | 425,530- |
| | 870605 WH Canopy Phase I-Lead Abatemt | 80,000 | | | 80,000 | | 80,000 |
| ----- | | | | | | | |
| 70096 | Environmental | 6,732,105 | 4,178,752 | 406,813 | 2,146,540 | 80,945 | 2,227,485 |
| ----- | | | | | | | |
| 70097 | Dirt Moving | | | | | | |
| | 870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF | 2,305,770 | | | 2,305,770 | | 2,305,770 |
| | 870703 WH Initial Haymarket Site Prep | 6,730,240 | 6,087,617 | 39,538 | 603,085 | | 603,085 |
| | 870704 WH Other Stormwater Mitigation | | | | | | |
| ----- | | | | | | | |
| 70097 | Dirt Moving | 9,036,010 | 6,087,617 | 39,538 | 2,908,855 | | 2,908,855 |
| ----- | | | | | | | |
| 70098 | TIF Improvements | | | | | | |
| | 870800 WH TIF Improvements | | | | | | |
| ----- | | | | | | | |
| 70098 | TIF Improvements | | | | | | |

City of Lincoln, NE
 West Haymarket Joint Public Agency
 Job Cost Report
 As of October 31, 2012

| | | Total Budget | Expend. | Encumb. | Available Balance | Accounts Receivable | Adjusted Avail Bal |
|-------|---------------------------------------|-----------------|-------------|-------------|----------------------|------------------------|-----------------------|
| 70099 | Site Purchase | | | | | | |
| | 870901 WH BNSF Land Acquisition | 1,051,078 | 1,060,280 | | 9,202- | | 9,202- |
| | 870902 WH Alter Site Purchase | 4,860,881 | 4,544,136 | | 316,745 | | 316,745 |
| | 870903 WH Jaylynn Site Purchase | 1,796,652 | 1,700,097 | | 96,555 | | 96,555 |
| | 870904 WH UP Site Purchase | 1,326,248 | 1,326,248 | | | | |
| | 870905 WH BNSF Const, Rehab, Reloc | 47,961,214 | 50,224,377 | | 2,263,163- | | 2,263,163- |
| | 870906 WH Amtrak Station | 2,338,345 | 2,360,525 | 601 | 22,781- | | 22,781- |
| | 870907 WH UP Track Mod West of Bridge | 1,236,000 | 1,225,232 | | 10,768 | | 10,768 |
| | 870908 WH Other Private Prop Acqstns | 1,880,587 | 2,213,515 | 20,397 | 353,325- | | 353,325- |
| 70099 | Site Purchase | 62,451,005 | 64,654,410 | 20,998 | 2,224,403- | | 2,224,403- |
| 70100 | Other Costs | | | | | | |
| | 870951 WH ITS & Dynamic Message Signs | 1,826,827 | 121,478 | 223,667 | 1,481,682 | | 1,481,682 |
| | 870952 WH Community Space & Civic Art | 1,500,000 | 52,024 | 14,761 | 1,433,215 | | 1,433,215 |
| 70100 | Other Costs | 3,326,827 | 173,502 | 238,428 | 2,914,897 | | 2,914,897 |
| 70105 | Bond Related Costs | | | | | | |
| | 870975 WH Miscellaneous | 5,160,000 | | | 5,160,000 | | 5,160,000 |
| | 870976 WH Line of Credit | | 53,227 | | 53,227- | | 53,227- |
| | 870977 WH Series 1 JPA Debt | | 1,535,168 | | 1,535,168- | | 1,535,168- |
| | 870978 WH Series 2 JPA Debt | | 1,221,802 | | 1,221,802- | | 1,221,802- |
| | 870979 WH Series 3 JPA Debt | | 577,661 | | 577,661- | | 577,661- |
| | 870980 WH Series 4 JPA Debt | | 1,243,825 | | 1,243,825- | | 1,243,825- |
| 70105 | Bond Related Costs | 5,160,000 | 4,631,683 | | 528,317 | | 528,317 |
| 00951 | West Haymarket Capital Proj | 330,172,857 | 186,862,400 | 119,353,148 | 23,957,309 | 80,945 | 24,038,254 |

City of Lincoln, NE
 West Haymarket Joint Public Agency
 Operating Expenditure Report
 As of October 31, 2012

00950 West Haymarket Reven
 06095 W Haymarket O & M

| | ORIGINAL BUDGET | REAPPROP & P/Y ENC | BUDGET REVISIONS | TOTAL | YTD EXPEND | AVAILABLE BALANCE |
|---------------------------------|--------------------|-----------------------|---------------------|---------|---------------|----------------------|
| 00950 West Haymarket Revenue | | | | | | |
| 06095 W Haymarket O & M | | | | | | |
| 11 Materials & Supplies | | | | | | |
| 5221 Office Supplies | 250 | | | 250 | 92 | 158 |
| 5261 Postage | 2,000 | | | 2,000 | 116 | 1,884 |
| 5323 Bldg Maint Supplies | 560 | | | 560 | 89 | 471 |
| 11 Materials & Supplies | 2,810 | | | 2,810 | 297 | 2,513 |
| 12 Other Services & Charges | | | | | | |
| 5621 Misc Contractual Services | 454,945 | | | 454,945 | 2,830 | 452,115 |
| 5624 Auditing Service | 15,500 | | | 15,500 | | 15,500 |
| 5631 Data Processing Service | 6,992 | | | 6,992 | 166 | 6,826 |
| 5633 Software | 1,100 | | | 1,100 | | 1,100 |
| 5643 Management Services | 53,000 | | | 53,000 | 4,000 | 49,000 |
| 5683.05 Fire Alarm Monitor | 500 | | | 500 | 103 | 397 |
| 5762 Photocopying | 500 | | | 500 | 125 | 375 |
| 5763 Printing | 500 | | | 500 | 68 | 432 |
| 5794 Public Officials | 27,000 | | | 27,000 | | 27,000 |
| 5821 Electricity - Bldg & Grnds | 4,000 | | | 4,000 | 1,467 | 2,533 |
| 5829 Telephone | 1,200 | | | 1,200 | 282 | 918 |
| 5830 Water | 6,000 | | | 6,000 | | 6,000 |
| 5870 Other Bldg Maintenance | 4,000 | | | 4,000 | 524 | 3,476 |
| 5928 Rent of Co/City Bldg Space | 2,456 | | | 2,456 | 409 | 2,047 |
| 5931 Parking Rent Bldg Comm | 627 | | | 627 | 104 | 523 |
| 5952 Advertising/Media Serv | 2,850 | | | 2,850 | 135 | 2,715 |
| 12 Other Services & Charges | 581,170 | | | 581,170 | 10,213 | 570,957 |
| 06095 W Haymarket O & M | 583,980 | | | 583,980 | 10,510 | 573,470 |

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of October 31, 2012

2
11/27/12
13:11:22

00950 West Haymarket Reven
195011 JPA 2010A Debt Servi

| | ORIGINAL BUDGET | REAPPROP & P/Y ENC | BUDGET REVISIONS | TOTAL | YTD EXPEND | AVAILABLE BALANCE |
|------------------------------|--------------------|-----------------------|---------------------|-----------|---------------|----------------------|
| ----- | | | | | | |
| 195011 JPA 2010A Debt Servic | | | | | | |
| 15 Debt Service | | | | | | |
| 6233 Bd Trustee Pmt-Serv Chg | 4,651,510 | | | 4,651,510 | 524 | 4,650,986 |
| 6235 Bd Trustee Pmt-Interest | 524 | | | 524 | | 524 |
| ----- | | | | | | |
| 15 Debt Service | 4,652,034 | | | 4,652,034 | 524 | 4,651,510 |
| ----- | | | | | | |
| 195011 JPA 2010A Debt Servic | 4,652,034 | | | 4,652,034 | 524 | 4,651,510 |

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of October 31, 2012

3
11/27/12
13:11:22

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

| | ORIGINAL BUDGET | REAPPROP & P/Y ENC | BUDGET REVISIONS | TOTAL | YTD EXPEND | AVAILABLE BALANCE |
|------------------------------|--------------------|-----------------------|---------------------|-----------|---------------|----------------------|
| ----- | | | | | | |
| 195021 JPA 2010B/C Debt Serv | | | | | | |
| 15 Debt Service | | | | | | |
| 6233 Bd Trustee Pmt-Serv Chg | 5,874,322 | | | 5,874,322 | | 5,874,322 |
| 6235 Bd Trustee Pmt-Interest | 1,048 | | | 1,048 | | 1,048 |
| ----- | | | | | | |
| 15 Debt Service | 5,875,370 | | | 5,875,370 | | 5,875,370 |
| ----- | | | | | | |
| 195021 JPA 2010B/C Debt Serv | 5,875,370 | | | 5,875,370 | | 5,875,370 |

83410
MARK
JPAADMIN

City of Lincoln, NE
West Haymarket Joint Public Agency
Operating Expenditure Report
As of October 31, 2012

4
11/27/12
13:11:22

00950 West Haymarket Reven
195031 JPA 2011 Debt Servic

| | ORIGINAL BUDGET | REAPPROP & P/Y ENC | BUDGET REVISIONS | TOTAL | YTD EXPEND | AVAILABLE BALANCE |
|------------------------------|--------------------|-----------------------|---------------------|------------|---------------|----------------------|
| ----- | | | | | | |
| 195031 JPA 2011 Debt Service | | | | | | |
| 15 Debt Service | | | | | | |
| 6233 Bd Trustee Pmt-Serv Chg | 4,591,688 | | | 4,591,688 | | 4,591,688 |
| 6235 Bd Trustee Pmt-Interest | 424 | | | 424 | | 424 |
| ----- | | | | | | |
| 15 Debt Service | 4,592,112 | | | 4,592,112 | | 4,592,112 |
| ----- | | | | | | |
| 195031 JPA 2011 Debt Service | 4,592,112 | | | 4,592,112 | | 4,592,112 |
| ----- | | | | | | |
| 00950 West Haymarket Revenue | 15,703,496 | | | 15,703,496 | 11,034 | 15,692,462 |

RESOLUTION NO. WH- _____

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

3 That the attached Change Order No. 2 to the Final Guaranteed Maximum Price
4 Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A.
5 Mortenson for inclusion of hand dryers into their scope of work for an additional contract cost of
6 \$126,255.00 and to establish \$156,929,246.00 as the revised amount the Contract Sum (GMP)
7 shall not exceed, is hereby approved and the Chairperson of the West Haymarket Joint Public
8 Agency Board of Representatives is hereby authorized to execute said Change Order on behalf
9 of the JPA.

10 The City Clerk is directed to return one fully executed copy of the Contract Agreement to
11 Rick Peo for transmittal to M.A. Mortenson Company.

12 Adopted this _____ day of _____, 2012.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll

WHJPA - Pinnacle Bank Arena

**CHANGE ORDER
No. 002**

440 NORTH 8TH STREET
SUITE 110
LINCOLN NE 68001

Title: Change Order #02
Project: WHJPA-Pinnacle Bank Arena
To: **M A Mortenson Company**
National Projects Group Operations
440 NORTH 8th STREET
SUITE 110
Lincoln NE 68508

Date: 06-NOV-12
Project No: 10150002
Contract No:
Phone:

DESCRIPTION OF CHANGE

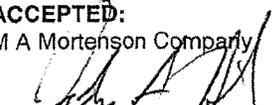
This change order is for all costs associated with adding hand dryers to the project. Hand dryers were not included in the FGMP.

COLLECTED CHANGES

| PCO | Issue | Description | Amount |
|------|-------|---------------------------------|------------|
| 82.1 | 00543 | A - CCA 040 & 40.1: Hand Dryers | 126,255.00 |

Total of collected changes \$ 126,255.00

| | | |
|--|----|----------------|
| The original Contract Sum was | \$ | 156,270,167.00 |
| Net change by previously authorized Change Orders | \$ | 532,824.00 |
| The Contract Sum prior to this Change Order was | \$ | 156,802,991.00 |
| The Contract Sum will be modified in the amount of | \$ | 126,255.00 |
| The new Contract Sum including this Change Order will be | \$ | 156,929,246.00 |

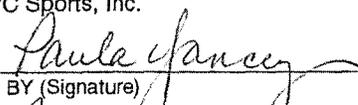
ACCEPTED:
M A Mortenson Company

BY (Signature)
John A. Hirscher
(Printed Name)
11/6/12
DATE

ACCEPTED:
MAYOR BEUTLER OR JOINT PUBLIC AGENCY

BY (Signature)

(Printed Name)

DATE

ACCEPTED:
PC Sports, Inc.

BY (Signature)
Paula Yancey
(Printed Name)
11/12/12
DATE

ACCEPTED:
DLR Group, Inc.

BY (Signature)

(Printed Name)

DATE

WHJPA-Lincoln West Haymarket Arena

Proposed Change Order #82.1
October 25, 2012



CO
9

Summary of Revisions

This PCO is for costs associated with CCA 40 and 40.1, which includes adding Hand Dryers to the facility.

CO # 2

| Summary Revisions | Cost |
|---------------------------------------|---------------------|
| Total Subcontracted Work | 121,988.00 |
| Total Packages | 0.00 |
| Net Subtotal | \$121,988.00 |
| BOND .645% | 786.82 |
| Subtotal Proposed Change Order | \$122,774.82 |
| INSURANCE .868% | 1,065.29 |
| Subtotal Proposed Change Order | \$123,840.11 |
| FEE 1.95% | 2,414.89 |
| Subtotal Proposed Change Order | \$126,255.00 |
| Proposed Change Order Amount | \$126,255.00 |

Submitted
M. A. Mortenson
Company

By:
John Hinshaw

Date: 25 OCT 12

Reviewed
DLR Group, Inc.

By:
Jim Jaros

Date: 10-31-12

Accepted
MAYOR BEUTLER OR
JOINT PUBLIC AGENCY

By: _____

Date: _____

Accepted
PC Sports

By:
Paula Yancey

Date: 11/5/12

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.

WHJPA-Lincoln West Haymarket Arena

Proposed Change Order #82.1
October 25, 2012



Detailed Cost Summary

Subcontracted Work

| Subcontractor | Description | Cost |
|---|--------------------------|---------------------|
| CBS MANHATTAN LLC | A - CCA 040: Hand Dryers | \$0.00 |
| CIMCO REFRIGERATION , INC | A - CCA 040: Hand Dryers | \$0.00 |
| CONCRETE INDUSTRIES INC | A - CCA 040: Hand Dryers | \$0.00 |
| CONTINENTAL FIRE SPRINKLER COMPANY | A - CCA 040: Hand Dryers | \$0.00 |
| FALEWITCH CONSTRUCTION SERVICES INC | A - CCA 040: Hand Dryers | \$72,732.00 |
| GEPHART ELECTRIC CO INC | A - CCA 040: Hand Dryers | \$49,104.00 |
| HAMPTON COMMERCIAL CONSTRUCTION INC | A - CCA 040: Hand Dryers | \$152.00 |
| JONES GEOTECHNICAL CONTRACTORS LLC | A - CCA 040: Hand Dryers | \$0.00 |
| LEJEUNE STEEL COMPANY | A - CCA 040: Hand Dryers | \$0.00 |
| MG MCGRATH INC | A - CCA 040: Hand Dryers | \$0.00 |
| MIDWEST STEEL WORKS INC | A - CCA 040: Hand Dryers | \$0.00 |
| OKEEFE ELEVATOR CO INC | A - CCA 040: Hand Dryers | \$0.00 |
| OVERHEAD DOOR COMPANY OF LINCOLN INC | A - CCA 040: Hand Dryers | \$0.00 |
| PAUL L KESS INC | A - CCA 040: Hand Dryers | \$0.00 |
| RAM CONSTRUCTION SERVICES OF MN, LLC | A - CCA 040: Hand Dryers | \$0.00 |
| SEEDORFF MASONRY INC HOME OFFICE | A - CCA 040: Hand Dryers | \$0.00 |
| THE WALDINGER CORPORATION | A - CCA 040: Hand Dryers | \$0.00 |
| WEATHERCRAFT CO OF LINCOLN | A - CCA 040: Hand Dryers | \$0.00 |
| Total Subcontracted Work | | \$121,988.00 |

Packages

| Description | Qty. | Unit | Hours | Rate | Cost |
|--------------------------|------|------|-------|------|---------------|
| A - CCA 040: Hand Dryers | | | | | |
| A - CCA 040: Hand Dryers | | | | | |
| A - CCA 040: Hand Dryers | | | | | |
| A - CCA 040: Hand Dryers | | | | | |
| Subtotal Packages | | | | | \$0.00 |

Schedule of Values Cost Summary

| Bill Code | Description | Change Amount |
|-----------|---------------------------|---------------|
| 023 | PILES & CAISSONS | 0.00 |
| 030 | CONCRETE LUMP SUM | 0.00 |
| 035 | STRUCTURAL PRECAST - RAMP | 0.00 |
| 042 | UNIT MASONRY | 0.00 |
| 051 | STRUCTURAL STEEL | 0.00 |
| 055 | METAL STAIRS & HANDRAILS | 0.00 |

| | | | | | |
|---------------------------|---------------------------------|--------------------|------------|-----------------------------|----------|
| Issue Number: | 00543 | PCO Date: | 10/25/2012 | Mortenson Project #: | 10150002 |
| Issue Description: | A - CCA 040 & 40.1: Hand Dryers | PCO Number: | 82.1 | | |

WHJPA-Lincoln West Haymarket Arena

Proposed Change Order #82.1
October 25, 2012



Schedule of Values Cost Summary

| Bill Code | Description | Change Amount |
|-------------------------------------|---|---------------------|
| 061 | ROUGH CARPENTRY | 152.00 |
| 072 | MEMBRANE ROOFING | 0.00 |
| 073 | WATERPROOFING & DAMPPROVING | 0.00 |
| 074 | MANUFACTURED ROOFING & WALL PANELS | 0.00 |
| 080 | METAL FRAMES, DOORS, WOOD DOORS, & HARDWARE | 0.00 |
| 083 | OVERHEAD COILING DOORS | 0.00 |
| 092 | PLASTER & GYPSUM BOARD SYSTEMS | 72,732.00 |
| 095 | ACOUSTICAL CEILINGS | 0.00 |
| 131 | ICE PIPING | 0.00 |
| 140 | ELEVATORS | 0.00 |
| 150 | MECHANICAL / PLUMBING | 0.00 |
| 153 | FIRE PROTECTION | 0.00 |
| 160 | ELECTRICAL | 49,104.00 |
| 991 | CM PERFORMANCE & PAYMENT BOND | 786.82 |
| 998 | INSURANCE | 1,065.29 |
| 999 | FEE 1.95% | 2,414.89 |
| Proposed Change Order Amount | | \$126,255.00 |

RESOLUTION NO. WH- _____

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

3 That the Agreement between the West Haymarket Joint Public Agency and Donald
4 Lipski for Fabrication, Engineering, and Installation of Art Work at Pinnacle Bank Arena is
5 hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of
6 Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket
7 Joint Public Agency.

8 The City Clerk is directed to return one fully executed original Engagement Letter
9 Agreement and a copy of this Resolution to Chris Connolly, Assistant City Attorney, for
10 transmittal to Donald Lipski.

11 Adopted this _____ day of _____, 2012.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll

AGREEMENT BETWEEN
THE WEST HAYMARKET JOINT PUBLIC AGENCY AND DONALD LIPSKI
FOR FABRICATION, ENGINEERING, AND INSTALLATION
OF ART WORK AT PINNACLE BANK ARENA

1. **Introduction.** This Agreement is between the **West Haymarket Joint Public Agency**, a Nebraska Joint Public Agency, located in Lincoln, Nebraska ("JPA") and **Donald Lipski** ("Artist") to perform the following services on the following terms. Artist is being engaged to perform final design, engineering, fabrication, and installation services for an approved design for a work of art to be known as the "Candy Box." Said work of art shall be installed at the location designated by the JPA and generally described as the interior of the Pinnacle Bank Arena, 6th and R Streets, Lincoln, Nebraska (hereinafter referred to as the "Space").

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

A. **Candy Box.**

(1) **Design; Fabrication** – Artist shall be responsible for developing the final design of the Candy Box and procuring all materials and third party services required for the fabrication of the Candy Box. Artist shall also be responsible for monitoring the progress of the Candy Box fabrication process and performing such inspections during fabrication of the Candy Box as may be necessary to ensure that the Candy Box substantially conforms to the Design, all of the foregoing as determined by the Artist in his sole discretion. Artist shall notify JPA in writing within ten (10) days of the beginning of the fabrication of the Candy Box and the expected deadline for completion. In the event of an issue with financing of the Art by the JPA, JPA and Artist agree that the Candy Box may be placed in storage by Artist for safekeeping and later installation once the funds are available. The cost of any storage related to project delays imposed by JPA will be outside of the Artists responsibility and will be paid for solely by JPA.

(2) **Delivery; Shipping; Insurance** – Artist agrees to deliver the Candy Box to the Space on a best efforts basis not later than such day (the "Delivery Date") which shall be the later of (a) six (6) calendar months following execution of this Agreement and (b) forty-five (45) calendar days following completion by JPA of the required wall for the Candy Box. Artist shall provide photo documentation to JPA with its notification of completion. Artist shall be solely responsible for preparing the Candy Box for shipment and arranging for transportation to the Space. Shipment shall be FOB destination, and Artist shall be responsible for all costs for materials and labor in connection with preparation and packing of the Candy Box for shipment and all costs of transportation to the Space. Artist shall bear the risk of loss (a) during the fabrication phase of the Candy Box and (b) during transportation and installation of the Candy Box to the Space. Artist agrees to obtain insurance in an amount not less than the replacement value of the Candy Box (or portion thereof relating to work in process) naming JPA as an additional insured for any amounts paid, the costs of which will be borne by Artist, and shall provide a certificate to JPA within thirty (30) days of execution of this Agreement. Artist shall take such necessary and reasonable measures to protect the

Candy Box during fabrication, storage, transportation, and installation. Upon completion of installation, JPA shall bear all risk of loss to the Candy Box.

(3) Interface Design; Inspection; Installation – Not later than ninety (90) days following execution of this Agreement, Artist shall provide to JPA drawings and/or sketches in sufficient detail to define the structural and dimensional interface between the Candy Box to be delivered by Artist and the Candy Box mounting and structural components to be constructed by JPA. Following shipment of the Candy Box to the Space, Artist shall inspect the Candy Box prior to installation. Installation of the Candy Box at the Space, including the cost of all labor, materials and equipment necessary for such installation, shall be the responsibility of Artist.

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

3. Term. The term of this Agreement shall commence upon execution and shall continue until completion of all of the obligations of this Agreement, but in no event longer than one year after the date of execution by JPA.

4. Compensation.

A. For the services provided pursuant to this Agreement, JPA agrees to pay Artist a total of \$317,000.00. The Artist shall pay all applicable sales and use taxes. The cost elements ("Artist Compensation") are as follows:

(1) Candy Box \$244,000.00

(2) Artist Fees \$63,000.00

(3) Engineering and Light Designer Fees \$10,000.00

Total \$317,000.00

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

(1) Within thirty (30) days of execution of the Agreement, the sum of \$95,100.00 representing 30% of the compensation relating to the Candy Box.

(2) Within thirty (30) days following documentation by Artist to JPA that the Candy Box fabrication is at mid-point of fabrication, the sum of \$95,100.00 representing 30% of the compensation relating to the Candy Box.

(3) Within thirty (30) days following documentation by Artist to JPA of fabrication completion and showing the work packed for shipping, the sum of \$95,100.00 representing 30% of the compensation relating to the Candy Box.

(4) Within ten (10) days following final acceptance by the JPA of the Art as installed at the Space, the sum of \$31,700.00 representing the remaining 10% of the compensation relating to the Candy Box.

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

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

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

5. Copyrights, Royalties & Patents.

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

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

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

D. On the final payment to the Artist under the Agreement, Artist grants to JPA an irrevocable license to make and use graphic reproductions of the Art for non-commercial purposes, including reproductions used in brochures, media publicity, or other similar publications, including by computer and internet, and that such rights are royalty-free and unrestricted, but shall always credit the Artist. It is understood that the Art may be photographed by the public. **JPA shall not perform**

any substantial repairs, modifications, or other changes without the consent of the Artist, whose consent shall not be unreasonably withheld.

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

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

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

9. Insurance.

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

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate;
2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate;
3. Personal Injury Damage - \$1,000,000 each Occurrence;
4. Contractual Liability - \$1,000,000 each Occurrence;

5. Products Liability and Completed Operations - \$1,000,000 each Occurrence;

6. Medical Expenses (any one person) - \$10,000; and

7. Fire Damage (any one fire) - \$100,000.

B. The following shall be provided and attached to this Agreement by Artist:

1. A Certificate of Insurance for its General Liability Insurance. The West Haymarket Joint Public Agency shall be specifically named as an additional insured on the General Liability Insurance through an appropriate endorsement.

2. Proof of Workers Compensation Insurance, where appropriate.

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

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

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

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

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

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

15. Integration, Amendment, Assignment, Severability, Waiver. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written

agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party, except that the JPA may assign this Agreement to the City of Lincoln, Nebraska. Each section of this Agreement is hereby declared to be independent of every other section so far as inducement for the acceptance of this Agreement and invalidity of any section of this Agreement shall not invalidate any other section thereof. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. This Agreement shall be governed and interpreted by the laws of the State of Nebraska without reference to the principles of conflicts of law.

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

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

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

Artist Signature: The Lipski Group

32 Beach Avenue

Amagansett, NY 11930 *(for mail by courier or FedEx)*

P.O. Box 1344

32 Beach Avenue

Amagansett, NY 11930 *(for U.S. mail)*

By: _____

Donald Lipski, President

JPA Signature: West Haymarket Joint Public Agency

By: _____

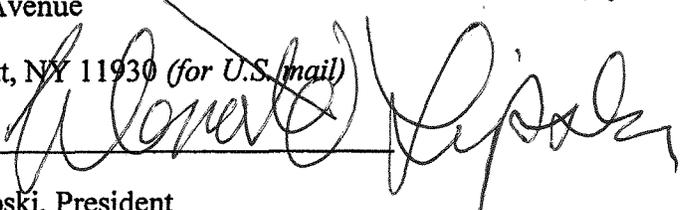
Chris Beutler, Chair

West Haymarket Joint Public Agency

Board of Representatives

Date of Execution: _____

THE LIPSKI GROUP, INC.
C/O CAMPBELL
267 BOWERY
APT-3-SR
NEW YORK, NY
10002



RESOLUTION NO. WH- _____

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

3 That the Agreement between the West Haymarket Joint Public Agency and IMG College,
4 LLC for marketing of advertising and sponsorship rights at Pinnacle Bank Arena for a term of
5 September 1, 2013 through June 30, 2021 is hereby approved and the Chairperson of the West
6 Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said
7 Agreement on behalf of the West Haymarket Joint Public Agency.

8 The City Clerk is directed to return one fully executed original Engagement Letter
9 Agreement and a copy of this Resolution to Jeff Kirkpatrick, Assistant City Attorney, for
10 transmittal to IMG College, LLC.

11 Adopted this _____ day of _____, 2012.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll



November 26, 2012

Mayor Chris Beutler
Board Chair
West Haymarket Joint Public Agency
555 South 10th Street, Room 103
Lincoln, NE 68508

LETTER OF AGREEMENT

Dear Mayor Beutler,

Thank you for your confidence and trust in IMG. We are delighted to have the opportunity to create a partnership with you and your team.

So that we may proceed with announcing our partnership and developing sales materials, I have taken the liberty of outlining the basic tenets of our agreement ("Agreement"):

- A. **PARTIES.** This Agreement is dated this ___ day of November, 2012, by and between West Haymarket Joint Public Agency ("JPA") and IMG College, LLC ("IMG").
- B. **TERM.** The term of this Agreement ("Term") will be eight (8) years, beginning September 1, 2013, and ending June 30, 2021.
- C. **FINANCIALS.** In consideration for the exclusive advertising and sponsorship rights at Pinnacle Bank Arena ("Arena"), IMG will pay to JPA for each License Agreement Year the guaranteed rights fee ("Guaranteed Rights Payment") outlined below totaling Eight Million, Three Hundred Thirty-Two Thousand, Nine Hundred Sixty-Nine Dollars (\$8,332,969.00) plus fifty percent 50% of any gross collected cash revenue ("GCCR") in excess of the revenue sharing threshold in the table below ("Revenue Sharing Payment").

| <u>License Agreement Year</u> | <u>Guaranteed Rights Fee</u> | <u>Revenue Sharing Threshold</u> |
|-------------------------------|------------------------------|----------------------------------|
| 9/1/13 – 8/31/14 | \$750,000 | \$1,300,000 |
| 9/1/14 – 8/31/15 | \$1,020,000 | \$1,800,000 |
| 9/1/15 – 8/31/16 | \$1,040,400 | \$1,840,000 |
| 9/1/16 – 8/31/17 | \$1,061,208 | \$1,880,800 |
| 9/1/17 – 8/31/18 | \$1,082,432 | \$1,922,416 |
| 9/1/18 – 8/31/19 | \$1,104,081 | \$1,964,864 |
| 9/1/19 – 8/31/20 | \$1,126,162 | \$2,008,162 |
| 9/1/20 – 8/31/21 | \$1,148,686 | \$2,052,325 |

For the purpose of calculating the Revenue Sharing Payment only GCCR is defined as cash revenue received from the exploitation of all marketing, advertising, and sponsorship rights less the following:

- 1. Agency/Third-party sales commissions;
- 2. Cost of tickets purchased from JPA or the Arena operator (currently SMG hereinafter "Operator") as part of a sponsorship agreement negotiated by IMG;
- 3. Pre-approved hospitality expenses; and

4. Pass-throughs to JPA (i.e., suite sales, should such revenue be included in an advertising/sponsorship agreement)

Any budget-reducing trade, requested and pre-approved by the City of Lincoln's Finance Director, secured by IMG shall be deducted from the Guaranteed Rights Payment based on the fair market value of the trade, to be mutually agreed upon by the JPA and IMG. The budget reducing trade shall also be included in GCCR for purposes of calculating the Revenue Sharing Payment.

- D. PAYMENT.** IMG shall pay the Guaranteed Rights Payments to the JPA in two (2) installments each License Agreement Year. The first payment (50% of Guaranteed Rights Payment) will be made on or before December 31st and the second payment (50% of Guaranteed Rights Payment) will be made on or before June 30th.

Any Revenue Sharing Payment shall be paid on or before September 1 for all GCCR for the previous License Agreement Year, with the first Revenue Sharing Payment (if applicable) due on September 1, 2014.

- E. RIGHTS.** In consideration for the payments described in Sections C and D, JPA grants IMG the exclusive, worldwide rights to all advertising and sponsorship opportunities available in and around the Arena ("Rights"). Rights include, but are not limited to, the following:

- Permanent and temporary signage in and around the Arena. Permanent and temporary signage includes but is not limited to:
 - IPTV
 - Video walls
 - Center-hung scoreboard signage
 - Digital fascia signage
 - Backlit fascia and vomitory signage
 - Concourse signs
 - Landmark sponsor identification signage
 - Sponsor zone signage
 - Drink-cup-holder signage
 - Concourse displays, temporary signage, and special-event displays
 - Tunnel covers (if any)
 - Concession signage
 - Restroom signage
 - Outdoor marquee (if applicable)
- Permanent and temporary signage in and on the parking garage attached to the Arena and any other parking lots and garages approved by the City of Lincoln Finance Director, described in **EXHIBIT A**, attached hereto.
- Digital-distribution platform rights for all inventory throughout all official Arena digital-distribution platforms (website, Wi-Fi, social media, etc.) including but not limited to:
 - Arena's website (www.pinnaclebankarena.com)
 - Social-Media Presence
 - Mobile Application
 - Tablet Application
 - WAP Site
 - Mobile Texting

IMG will exclusively own all advertising/sponsorship opportunities related to the Arena's Wi-Fi/DAS system.

- At-event impact including but not limited to:
 - Promotions
 - Product displays
 - Sampling, couponing, and product distribution

- Additional sponsorship opportunities including but not limited to:
 - Message-center and public-address announcements
 - Sponsor IDs in ticket promotions, brochures, and advertising media
 - Plastic souvenir cups and concession containers
 - Branded-vending opportunities
 - Ticket-mailer inserts
 - E-mail blasts
 - Ticket envelopes
 - Media backdrop
 - Official (advertising, category-exclusive) sponsorships
 - Royalty-free use of Arena marks and logos

- Hospitality events as defined below. All food and beverages for any hospitality event must be purchased through JPA or Operator.

The parties agree, during the Term, neither JPA nor anyone acting on its behalf will enter into any agreements with any third party granting such person or entity Rights similar to those granted or licensed to IMG. JPA further agrees any and all sponsorship, advertising and promotional opportunities related to the Rights will be granted only in connection with a corporate sponsorship agreement through IMG, with the exception of any such opportunities separately negotiated through the JPA and/or Operator as part of locally- and/or nationally-sponsored events that take place in the Arena (e.g., tour/show stops, conventions, etc.).

In addition to currently-existing rights, the Rights also include any future modifications, expansions, refinements, and technological improvements of currently-existing rights and future advertising/sponsorship opportunities, which may be developed.

- F. DONOR-RELATED SPONSORSHIP OPPORTUNITIES.** IMG acknowledges that areas outside the Arena, including the south plaza, northeast elevated plaza and festival space, may be named for donors with no participation from IMG.
- G. IMG'S AGREEMENT WITH THE UNIVERSITY OF NEBRASKA.** JPA and IMG agree that the University Multi-Media Rights Agreement, dated July 1, 2008, by and between University and IMG, grants IMG certain advertising/sponsorship rights (i.e., inventory in the Arena's "bowl", which includes floor logos, stanchions, player seat backs, courtside LED signage, LED signage on the center-hung scoreboard, LED fascia signage, other temporary signage, giveaways, and couponing, etc.) during University men's and women's basketball home games at the Arena, and revenue generated from IMG's exercising such rights will not be included in GCCR as it relates to this Agreement.
- H. ARENA SIGNAGE.** In an effort to ensure the Arena maintains the look and feel of a first-class facility, the City of Lincoln Finance Director shall have the right to approve the appearance and location of all permanent and temporary signage.
- I. TRADE.** If requested and approved in advance by the City of Lincoln's Finance Director, IMG may secure budget-reducing trade under this Agreement.

J. TICKETS. JPA grants IMG the right to purchase tickets for Arena events prior to their public sale subject to event-promoter restrictions. JPA and/or Operator shall work to provide IMG with complimentary tickets for sponsors/clients. However, IMG acknowledges that JPA and/or Operator does not receive complimentary tickets from event promoters on a regular basis and if JPA and/or Operator receive complimentary tickets, such tickets may be used for other purposes. JPA and/or Operator will provide IMG initial access to event marketing to discuss potential advertising/sponsorship opportunities.

K. HOSPITALITY. IMG will have the right to create hospitality areas approved by JPA and/or Operator in and around Arena events. All food and beverages for any hospitality event must be purchased through JPA and/or Operator. IMG acknowledges that the Operator and/or JPA are planning to (i) sell hospitality packages during Husker football games, (ii) lease the Arena and spaces inside the Arena to companies or individuals for conferences or events, and (iii) create additional events in and around the Arena and its parking facilities. Revenue from the Operator and/or JPA hospitality events shall be used to fund the Arena's operation.

JPA confirms that it is currently planning to allow Arena suite holders to access their respective suites during University home football games (pre-game, in-game, and post-game), subject to the Arena's availability. During these events, JPA agrees to operate Arena video boards and LED rings at no cost to IMG.

Additionally, JPA will grant IMG access to the Arena for meetings and sponsor functions on dates that are agreeable to the JPA and/or Operator when no other event is scheduled (including pre- and post-event activities) without charging IMG a rental fee. IMG will pay all costs associated with such meeting(s) or function(s) including but not limited to: security, preparation, clean-up, etc.

L. CURRENTLY-PITCHED OPPORTUNITIES. JPA agrees all advertising and sponsorship opportunities pitched prior to the execution of this Agreement shall be assigned to IMG and all revenue generated by any resulting agreements will be included in GCCR.

M. FOOD VENDORS. IMG acknowledges and agrees that the JPA and/or Operator are not obligated to sell any food and/or beverage product at the Arena and IMG shall not commit any food/beverage vending or supplier rights to any third party, unless the JPA or Operator approves of such sale. The JPA and/or Operator shall require all Arena food or beverage vendors or suppliers to pursue Arena sponsorship opportunities with IMG. Food or beverage companies not agreeing to become Arena sponsors may not receive any exclusivity with respect to vending and/or advertising rights.

N. BEST EFFORTS. The JPA and/or Operator agree to use their best efforts to prevent event promoters from removing or covering signage purchased by Arena corporate partners.

O. PROHIBITED ADVERTISING CATEGORIES. IMG may sell advertising and sponsorships into all categories, except those (i) prohibited by existing agreements detailed in **EXHIBIT B**, attached hereto; (ii) that in the JPA's discretion, are inappropriate for any public facility or (iii) encompassing any issues potentially sensitive to the JPA and/or City of Lincoln. IMG will work with the City Finance Director with respect to such issues.

P. SIGNAGE PRODUCTION. IMG shall pay for new Arena signage not currently contemplated by the Arena budget. (*i.e.*, light boxes on the concourse and upper-seating bowl fascia, the "Dock", etc.). A list of signage contemplated by the project budget can be found in **EXHIBIT C**, attached hereto. Additionally, IMG shall not pay for new video equipment installed in the Arena during the Term.

- Q. VIDEOBOARD OPERATION/PRODUCTION.** JPA and/or the Operator shall be responsible for all expenses related to video board operations, maintenance, and insurance during Arena events.
- R. OFFICE SPACE.** JPA and/or the Operator will use their best efforts to provide, at no cost to IMG, suitable office space at the Arena for one (1) IMG employee who is working on fulfilling the terms of this Agreement. JPA will provide utilities, janitorial services, internet access, and telephone services (local and long distance) at no cost to IMG.
- S. RADIO-STUDIO SPACE.** JPA will provide, at no cost to IMG, radio-studio space(s) visible to the public and equipped with proper electricity and internet access. IMG acknowledges that there will be dates and/or times, to be determined by the Operator, when IMG is unable to broadcast from the Arena.
- T. MINIMUM EVENTS/ATTENDANCE.** Beginning with the 2014/15 License Agreement Year (and each License Agreement Year thereafter), IMG and the JPA agree that the Arena will host a minimum of seventy-five (75) Arena Events (as defined hereinafter) having a total attendance of at least five hundred thousand (500,000). "Arena Event" shall mean and include every public event, presentation, or performance that occurs in the Arena, whether or not (i) tickets are issued or offered for sale for admission to any such event, presentation, or performance, (ii) admission is actually charged, or (iii) the Arena Event is produced by or for the JPA, directly or indirectly, pursuant to permission, license, or lease by the JPA. Should the JPA fail to meet these minimums in any License Agreement Year, IMG shall receive a pro-rata reduction of its Guaranteed Rights Payment for the subsequent License Agreement Year (*i.e.*, If total attendance in the 2015/16 License Agreement Year only reaches 490,000, 2% less than the 500,000 on which IMG's Guaranteed Rights Payments are based, then IMG's Guaranteed Rights Payment for the 2016/17 License Agreement Year will be \$1,039,983.84, which is 2% less than the \$1,061,208 Guaranteed Rights Payment listed above for the 2016/17 License Agreement Year).
- U. GOOD FAITH RESOLUTION OF DISPUTES.** In fulfilling the terms of this Agreement, the parties covenant and agree to work cooperatively and in good faith to address any issues or problems that may arise.

V. REPRESENTATIONS AND WARRANTIES.

JPA. JPA represents and warrants that (i) it has the authority to enter into this Agreement and to grant the Rights and (ii) the affixed signature on this Agreement is by a duly-authorized JPA representative. JPA further represents and warrants that it will prohibit other entities from exploiting any of the Rights.

IMG. IMG represents that it is a duly-organized Delaware limited-liability company in good standing, authorized to do business in the state of Nebraska. Additionally, IMG represents and warrants that this Agreement is a valid act of the company and the affixed signature is by a duly-authorized IMG representative.

W. MATERIAL IMPAIRMENT.

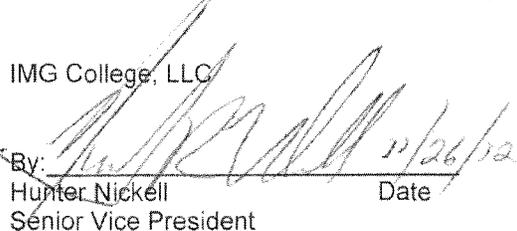
1. If, during the Term, the JPA, or any of its employees or representatives, engages or fails to engage in any activity that materially damages IMG's advertising and/or sponsorship commitments or ability to exploit the Rights, then IMG's Guaranteed Rights Payment for the following License Agreement Year shall be reduced by an amount equal to the actual damages IMG incurred as a result of such activity.

2. To the extent allowed by law, neither the JPA nor the City of Lincoln shall knowingly allow or permit any Arena Events which would shock, insult, or offend a majority of the people of the City of Lincoln.
 3. In the event of a major disaster or national emergency (e.g., a declaration of war), which materially impairs IMG's ability to exploit the Rights or collect revenue, IMG's Guaranteed Rights Payment for the following License Agreement Year shall be adjusted equitably to reflect the impact of such interruption, cancellation, or impairment
 4. If IMG provides JPA written notice that any person or entity is engaging in actions materially impairing IMG's ability to exploit the Rights, JPA shall be responsible for undertaking efforts to bar such person or entity from further engaging in such actions. If JPA has the legal authority and ability to undertake all efforts necessary to eliminate the material impairment of the Rights but fails to do so, then IMG's Guaranteed Rights Payment for the following License Agreement Year will be adjusted equitably and proportionately to reflect the impact of such impairment.
 5. If the inventory offerings described in Section E are materially changed or adversely impacted by the JPA or by subsequent agreements, JPA must honor (including by creating additional prohibited categories or reducing available inventory, etc.), then IMG's Guaranteed Rights Payment for the subsequent License Agreement Year will be adjusted equitably and proportionately to reflect the impact of such impairment.
 6. In the event the JPA/City of Lincoln and the University decide the University's men's and women's basketball teams shall play their home games in a venue other than the Arena, then IMG's Annual Royalty Payment shall be adjusted equitably and proportionately to reflect the impact of such impairment on IMG's total revenues for the affected License Agreement Year(s).
- X. BREACH/TERMINATION.** If either party believes the other party has materially breached this Agreement or has failed to perform any of its material obligations, that party may deliver to the allegedly-breaching party a written notice of such breach or failure, providing a reasonable opportunity of not less than thirty (30) days after receipt of such notice ("Cure Period") during which the allegedly-breaching party shall cure such breach before the other party may declare a default or seek other remedies. If, after the Cure Period expires, the breach or failure to perform has not been cured, then the party that gave the notice may declare the other party in default of this Agreement and terminate it, effective at the end of the then-current License Agreement Year, by providing such party a written notice of termination within ninety (90) days of the Cure Period's expiration. If the nature of the default is such that the interests of the terminating party would not be adequately protected until such termination date, in the discretion of the terminating party, then the terminating party may take any action permitted by law or equity as a remedy for such default, to the extent such action is necessary to reasonably to protect its interests.
- Y. ADDITIONAL PINNACLE BANK INVENTORY OPPORTUNITIES.** Pinnacle Bank shall receive the first right of refusal to match Arena-related naming opportunities. Should Pinnacle Bank agree to additional inventory, revenue generated from such inventory will be included in GCCR.

If the foregoing is in accordance with your understanding, please sign one (1) copy and return it to me. The other is for your records. Thank you for your trust and confidence in our team!

IMG College, LLC

West Haymarket Joint Public Agency

By: 
Hunter Nickell
Senior Vice President

Date

11/26/12

Mayor Chris Beutler
Board Chair

Date

EXHIBIT A
Parking Lots and Parking Garages Inventory

The parking garage attached to the Arena is included in the exclusive Rights.

Signage and additional sponsorship inventory related to the parking garage includes but is not limited to:

- Landmark sponsor identification signage
- Light pole banners
- Booth signage
- Parking passes
- Parking tickets (if applicable)

EXHIBIT B
Advertising Restrictions in Existing Agreements

IMG may not sell advertising or sponsorships to any companies prohibited by and must abide by all restrictions and/or limitations in the attached agreements:

1. Title Sponsorship Agreement between Pinnacle Bank and West Haymarket Joint Public Agency
2. University of Nebraska/City of Lincoln Lease and Operating Agreement

EXHIBIT C
Signage Included in Project Budget

The following signage is included in the project budget:

1. IPTV and television monitors
2. Center hung scoreboard
 - Four (4) video replay boards measuring approximately 16.55' high x 22.05' wide
 - Four (4) statistics boards measuring approximately 6.3' high x 22.05' wide
 - Four (4) upper corner boards measuring approximately 6.3' high x 9.45' wide
 - One (1) lower LED halo measuring approximately 2.36' high x 62.98' wide
3. Digital fascia signage
 - Approximately 2.58' high x 307' long
4. Basketball scorer's table
 - Viewable area is approximately 2' 8" high x 37' 9" long

RESOLUTION NO. WH- _____

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

3 That the Agreement between the West Haymarket Joint Public Agency and Dimensional
4 Innovations for the Haymarket Pedestrian Bridge Aesthetic Design is hereby approved and the
5 Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby
6 authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

7 The City Clerk is directed to return one fully executed copy of the Contract Agreement to
8 Chris Connolly, Assistant City Attorney, for transmittal to Dimensional Innovations, Inc.

9 Adopted this ____ day of _____, 2012.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)

BID NO. 12-282

CONTRACT AGREEMENT

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into as of the _____ day of _____, 2012, by and between **DIMENSIONAL INNOVATIONS, INC.**, 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 and in connection with said Work, to wit:

West Haymarket Improvements –
Haymarket Pedestrian Bridge Aesthetic Design
Bid No. 12-282

WHEREAS, the Contractor, in response to such advertisement, has submitted to the JPA, in the manner and at the time specified, a sealed Bid 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 sum or sums named in the Contractor's Bid. Copies of the Bid Opportunity Detail, Notice to Proposers, the Instructions to Bidders, Addendums, if any, Supplier's Response and the Contractor's Bid (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, since the Work will be carried out within 50 feet of BNSF Property pursuant to a Temporary License/Right-of-Entry ("ROE"), the terms and conditions of the ROE and 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 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 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 since future use of the site will be for a surface parking lot, the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Highway Construction General Wage Decision NE120034 dated 06/15/2012 ("NE34 Wage Decision").

WHEREAS, the NE34 Wage Decision is hereinafter referred to as the "Effective Wage Decision."

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. Contractor agrees that if 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 the Work, the Contractor must:

(a) Obtain all required insurance, evidenced by certificates of insurance as required by the JPA, City Legal, BNSF, and any other required insurance.

(b) Submit the signed C-1A agreement and all required insurance certificates to BNSF@certfocus.com and to PC Sports.

(c) Submit copies of signed C-1A agreement and all required insurance certificates to Michael Schaefer (BNSF):

Michael Schaefer
Michael.Schaefer2@BNSF.com
402-458-7379 (office)
402-304-1437 (cell)
402-458-7457 (fax)

(d) Receive the BNSF executed C-1A agreement from Michael Schaefer.

Contractor further agrees that should it be necessary to enter upon the BNSF Property to perform the Work, Contractor must prior to such entry:

(a) 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.

(b) 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.

(c) 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.

(d) 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 award, 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 addition to and not 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 agrees to defend, indemnify and hold harmless 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 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, 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 Insurance Requirements for All West Haymarket Joint Public Agency Contracts 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 prevailing wages set forth in the Effective Wage Decision. Said Effective Wage Decision is included in the Other Attached Contract Documents (Exhibit D). Contractor agrees to attach the Effective Wage Decision 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 Decision 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 Decision or any other applicable Effective Wage Decision as may be determined by the U.S. Department of Labor.

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. Indemnification and Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012).
 - e. Executive Order No 83319.

- f. 29 C.F.R. § 5.5(a) Contract Provisions.
 - g. Effective Wage Decision.
 - h. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323
 - i. Contractor Certification of Compliance, NPDES Dewatering Discharge Permit No. NEG671000.
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. ROE.
 - d. Special Provisions.
 - e. Plan/Drawings and Geotechnical Report.
 - f. Environmental Contingency Plan.
 - g. North 48th Street Solid Waste Facility Location Map.
 - h. North 48th Street Grading Plan Sheet 1 and Sheet 2.
 - i. Beneficial Soils and Construction and Demolition Waste Materials Requirements.
 - j. Contractor Certification of Compliance - NPDES Dewatering Discharge Permit No. NEG671000.
 - k. Contractor Qualification Form.
 - l. Contractors Project Manager Qualification Form.
 - m. Any executed Addenda or Change Orders.
 - n. 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.
 - o. Requirements in 29 C.F.R. parts 1, 3 and 5.
 - p. Special Provisions. West Haymarket Joint Public Agency (2012) Haymarket Infrastructure Improvements Haymarket Parking Lot Preliminary Grading Project No. 870201A.
 - q. Report of Geotechnical Exploration – West Haymarket Pedestrian Bridge and Embankment, Lincoln, Nebraska.
 - r. Environmental Contingency Plan – West Haymarket Redevelopment Site.
 - s. Select Structural Plan Sheets.
 - t. Pedestrian Bridge Architectural Schematic Drawings.
 - u. Pricing Sheets.

- v. Any Bid Documents and/or Bid Attachments listed in the Bid Opportunity Detail not attached as part of Exhibit A.

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: **DIMENSIONAL INNOVATIONS, INC.**

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

Approved by Law
11-27-2012



[Return to Login](#) • [Supplier Registration](#)

Bid Opportunity Detail

Bid Number 12-282 (Haymarket Pedestrian Bridge Aesthetic Design)

Close Date & Time 11/9/2012 12:00:00 PM Central

Bid Duration 21 days 2 hours 1 minute 34 seconds

Bid Information

Bid Type RFP
Issue Date & Time 10/19/2012 9:58:25 AM Central
Close Date & Time 11/9/2012 12:00:00 PM Central
Bid Status Unsealed
Bid Notes

Contact Information

Contact Name Vince Mejer Purchasing Agent
Address Purchasing
 440 S. 8th St.
 Lincoln, NE 68516 USA
Department Purchasing
Floor/Room Suite 200
Contact Phone 1 (402) 441-8314
Contact Fax 1 (402) 441-6513
Contact Email vmejer@lincoln.ne.gov

Bid Documents

| Document | Format | Description |
|---|-------------------|---|
| Invitation Document | Adobe (PDF) | PDF Invitation to Bid |
| Bid Tabulation by Supplier Spreadsheet | Spreadsheet (XLS) | Bid Tabulation by Supplier Spreadsheet |
| Bid Tabulation by Line Item Spreadsheet | Spreadsheet (XLS) | Bid Tabulation by Line Item Spreadsheet |

Bid Attachments

| Location | File Name | Description |
|----------|--|--|
| Header | 12-282 adv.pdf (11KB) | Notice to Proposers |
| Header | 12-257 Insurance - March.pdf (234KB) | Insurance |
| Header | 12-282_DB.pdf (239KB) | Davis Bacon Rates |
| Header | 29_CFR.pdf (959KB) | CFR 29 |
| Header | 12-282_spec.pdf (23KB) | Specifications |
| Header | EXHIBIT C Contractor Requirements.pdf (80KB) | Exhibit C |
| Header | EXHIBIT C-1(A).pdf (32KB) | Exhibit C-1(A) |
| Header | Select Structural Plan Sheets.pdf (812KB) | Select Structural Plan Sheets |
| Header | 12-282_ftp.pdf (127KB) | Pedestrian Bridge Architectural Schematic Drawings |
| Header | 12-282 Pricing Sheet.xlsx (11KB) | Pricing Sheet |

**Advertise 1 time
Monday, October 22, 2012**

**West Haymarket Joint Public Agency
Purchasing Division
Notice To Proposers**

Sealed proposals will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Friday, November 9, 2012** for providing the following:

**Haymarket Pedestrian Bridge Aesthetic Design
Request for Proposal Bid No. 12-282
Project #870201B**

Submitters 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 submittal process may be directed to City/County Purchasing at (402) 441-8314 or (402) 441-7410 or vmejer@lincoln.ne.gov

INSTRUCTIONS TO BIDDERS

WEST HAYMARKET JOINT PUBLIC AGENCY

E-Bid

1. BIDDING PROCEDURE

- 1.1 Sealed bid, formal and informal, subject to Instructions and General Conditions and any special conditions set forth herein, will be received in the office of the Purchasing Division, 440 So. 8th St., Lincoln, NE 68508, until the bid closing date and time indicated for furnishing the West Haymarket Joint Public Agency, hereinafter referred to as "JPA", the materials, supplies, equipment or services shown in the electronic bid request.
- 1.2 Bidders shall use the electronic bid system for submitting bids and must complete all required fields.
- 1.3 Identify the item you will furnish by brand or manufacturer's name and catalog numbers. Also furnish specifications and descriptive literature if not bidding the specific manufacturer or model as listed in the specifications.
- 1.4 Any person submitting a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.5 Bids received after the time and date established for receiving bids will be rejected.
- 1.6 The Bidders and public are invited, but not required, to attend the formal opening of bids. At the opening, prices will be displayed electronically and/or read aloud to the public. The pricing is also available for immediate viewing on-line. No decisions related to an award of a contract or purchase order will be made at the opening.
- 1.7 If bidding on a construction contract, the City's Standard Specifications for Municipal Construction 2011 shall apply.
 - 1.7.1 Bidders may obtain this document from the City's Design Engineering Division of the Public Works & Utilities Department for a small fee.
 - 1.7.2 Said document can be reviewed at Design Engineering or at the office of the Purchasing Division.
 - 1.7.3 Said document is available on the web site.
<http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspect/index.htm>

2. BID SECURITY

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bid bond, may be required to be submitted with this bidding document, as indicated on the bid.
 - 2.1.1 Bid security, if required, shall be in the amount specified on the bid. The bid security must be scanned and attached to the "Response Attachments" section of your response or it can be faxed to the Purchasing Division at 402-441-6513. The original bid security should then be sent or delivered to the office of the Purchasing Division, 440 S. 8th St., Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing.
 - 2.1.2 If bid security is not received in the office of the Purchasing Division as stated above, the vendor may be determined to be non-responsive.
- 2.2 If alternates are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful Bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful Bidder(s) as follows:
 - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by JPA.
 - 2.4.2 For all other contracts: upon approval by JPA of the executed contract and bonds.
- 2.5 JPA shall have the right to retain the bid security of Bidders to whom an award is being considered until either:
 - 2.5.1 A contract has been executed and bonds have been furnished.
 - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
 - 2.5.3 All bids have been rejected.
- 2.6 Bid security will be forfeited to JPA as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this bidding document:
 - 2.6.1 If the Bidder fails or refuses to enter into a contract on forms provided JPA, and/or if the Bidder fails to provide sufficient bonds or insurance within the time period as established in this bidding document.

3. BIDDER'S REPRESENTATION

- 3.1 Each Bidder by electronic signature and submitting a bid, represents that the Bidder has read and understands the bidding documents, and the bid has been made in accordance therewith.
- 3.2 Each Bidder for services further represents that the Bidder has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bidding documents.

4. CLARIFICATION OF BIDDING DOCUMENTS

- 4.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the bidding documents.
- 4.2 Bidders desiring clarification or interpretation of the bidding documents for formal bids shall make a written request which must reach the Purchasing Agent at least five (5) calendar days prior to the date and time for receipt of formal bids.
- 4.3 Changes made to the bidding documents will be issued electronically. All vendors registered for that bid will be notified of the addendum. Subsequent Bidders will only receive the bid with the addendum included.
- 4.4 Oral interpretations or changes to the bidding documents made in any manner other than written form will not be binding on JPA; and Bidders shall not rely upon such interpretations or changes.

5. ADDENDA

- 5.1 Addenda are instruments issued by JPA prior to the date for receipt of bids which modify or interpret the bidding document by addition, deletion, clarification or correction.
- 5.2 Addenda notification will be made available to all registered vendors immediately via e-mail for inspection on-line.
- 5.3 No formal addendums will be issued later than forty-eight (48) hours prior to the date and time for receipt of formal bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.

6. INDEPENDENT PRICE DETERMINATION

- 6.1 By signing and submitting this bid, the Bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder prior to bid opening directly or indirectly to any other Bidder or to any competitor; no attempt has been made, or will be made, by the Bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. ANTI-LOBBYING PROVISION

- 7.1 During the period between the bid advertisement date and the contract award, Bidders, including their agents and representatives, shall not lobby or promote their bid with the Mayor, any member of the City Council, or JPA Board and staff except in the course of JPA sponsored inquiries, briefings, interviews, or presentations, unless requested by JPA.

8. BRAND NAMES

- 8.1 Wherever in the specifications or bid that brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 8.2 It is the Bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of JPA that said item is equal to, or better than, the product specified.
- 8.3 Bids for alternate items shall be stated in the appropriate space on the e-bid form, or if the proposal form does not contain blanks for alternates, Bidder MUST attach to its bid document on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation.
- 8.4 The Bidder must indicate any variances by item number from the bidding document no matter how slight.
- 8.5 If variations are not stated in the bid, it will be assumed that the item being bid fully complies with JPA's bidding documents.

9. DEMONSTRATIONS/SAMPLES

- 9.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from JPA.
- 9.2 Such demonstration can be at the JPA delivery location or a surrounding community.
- 9.3 If items are small and malleable, the Bidder is proposing an alternate product, the Bidder shall supply a sample of the exact item. Samples will be returned at Bidder's expense after receipt by JPA of acceptable goods. The Bidder must indicate how samples are to be returned.

10. DELIVERY (Non-Construction)

- 10.1 Each Bidder shall state on the bid the date upon which it can make delivery of all equipment or merchandise.
- 10.2 JPA reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the bid.
- 10.3 All bids shall be based upon **inside** delivery of the equipment/ merchandise F.O.B. to JPA at the location specified by JPA, with all transportation charges paid.
- 10.4 At the time of delivery, a designated JPA employee will sign the invoice/packing slip. The signature will only indicate that the order has been received and the items actually delivered agree with the delivery invoice. This signature does not indicate all items met specifications, were received in good condition and/or that there is not possible hidden damage or shortages.

11. WARRANTIES, GUARANTEES AND MAINTENANCE

- 11.1 Copies of the following documents, if requested, shall accompany the bid proposal for all items being bid:
 - 11.1.1 Manufacturer's warranties and/or guarantees.
 - 11.1.2 Bidder's maintenance policies and associated costs.
- 11.2 As a minimum requirement of JPA, the Bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to JPA. Replacement parts of defective components shall be shipped at no cost to JPA. Shipping costs for defective parts required to be returned to the Bidder shall be paid by the Bidder.

12. ACCEPTANCE OF MATERIAL

- 12.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 12.2 Material delivered under this proposal shall remain the property of the Bidder until:
 - 12.2.1 A physical inspection and actual usage of the material is made and found to be acceptable to JPA; and
 - 12.2.2 Material is determined to be in full compliance with the bidding documents and accepted bid.
- 12.3 In the event the delivered material is found to be defective or does not conform to the bidding documents and accepted bid, JPA reserves the right to cancel the order upon written notice to the Bidder and return materials to the Bidder at Bidder's expense.
- 12.4 Awarded Bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of JPA, as required by the bidding documents or purchase orders.
- 12.5 Awarded Bidder's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

13. BID EVALUATION AND AWARD

- 13.1 The electronic signature shall be considered an offer on the part of the Bidder. Such offer shall be deemed accepted upon issuance by JPA of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 13.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each Bidder so agrees in submitting the bid.
- 13.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 13.4 The bid will be awarded to the lowest responsible, responsive Bidder whose bid will be most advantageous to JPA, and as JPA deems will best serve the requirements and interests of JPA.
- 13.5 JPA reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, with or without alternates, by groups, or "lump sum"; to waive minor irregularities in bids; such as shall best serve the requirements and interests of JPA.
- 13.6 In order to determine if the Bidder has the experience, qualifications, resources and necessary attributes to provide the quality workmanship, materials and management required by the plans and specifications, the Bidder may be required to complete and submit additional information as deemed necessary by JPA. Failure to provide the information requested to make this determination may be grounds for a declaration of non-responsive with respect to the Bidder.
- 13.7 JPA reserves the right to reject irregular bids that contain unauthorized additions, conditions, alternate bids, or irregularities that make the bid incomplete, indefinite or ambiguous.
- 13.8 Any governmental agency may piggyback on any contract entered into from this bid.

14. INDEMNIFICATION

- 14.1 The Bidder shall indemnify and hold harmless JPA from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Bidder, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Bidder to indemnify or hold harmless JPA for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of JPA.
- 14.2 In any and all claims against JPA or any of its members, officers or employees by an employee of the Bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Bidder or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

15. TERMS OF PAYMENT

- 15.1 Unless stated otherwise, JPA will begin processing payment within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

16. LAWS

- 16.1 The laws of the State of Nebraska shall govern the rights, obligations, and remedies of the parties under this bid and any contract reached as a result of this process.
- 16.2 Bidder agrees to abide by all applicable local, state and federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.

17. EQUIPMENT TAX ASSESSMENT

- 17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. Indicating; 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 sign a certified statement which will accompany the contract. The certified statement shall state 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.

18. AFFIRMATIVE ACTION

- 18.1 The City of Lincoln provides equal opportunity for all Bidders and encourages minority businesses, women's businesses and locally owned business enterprises to participate in our bidding process.

19. LIVING WAGE

- 19.1 The Bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81 of the Lincoln Municipal Code. This wage is subject to change every July.

20. INSURANCE

- 20.1 All Bidders shall take special notice of the insurance provisions required for all JPA contracts (see *Insurance Requirements for All JPA Contracts*).

21. EXECUTION OF AGREEMENT

- 21.1 Depending on the type of service provided, one of the following methods will be employed. The method applicable to this contract will be checked below:

- a. **PURCHASE ORDER**, unless otherwise noted.
1. A copy of the Bidder's bid response (or referenced bid number) attached and that the same, in all particulars, becomes the contract between the parties hereto: that both parties thereby accept and agree to the terms and conditions of said bid documents.
- b. **CONTRACT**, unless otherwise noted.
1. JPA will furnish copies of the Contract to the successful Bidder who shall prepare attachments as required. Insurance as evidenced by a Certificate of Insurance (as required), surety bonds properly executed (as required), and Contract signed and dated.
 2. The prepared documents shall be returned to the Purchasing Office within 10 days (unless otherwise noted).
 3. JPA will sign and date the Contract.
 4. Upon approval and signature, the JPA will return one copy to the successful Bidder.

22. TAXES AND TAX EXEMPTION CERTIFICATE

- 22.1 JPA is generally exempt from any taxes imposed by the state or federal government. A Tax Exemption Certificate will be provided as applicable.

23. AUDIT ADVISORY BOARD

- 23.1 All parties of any JPA agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make Available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.

24. E-VERIFY

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

09/19/11



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

Bid Information

Bid Creator Vince Mejer Purchasing Agent
 Email vmejer@lincoln.ne.gov
 Phone 1 (402) 441-8314
 Fax 1 (402) 441-6513
 Bid Number 12-282
 Title Haymarket Pedestrian Bridge Aesthetic Design
 Bid Type RFP
 Issue Date 10/19/2012
 Close Date 11/9/2012 12:00:00 PM CST
 Need by Date

Contact Information

Address Purchasing
 440 S. 8th St.
 Lincoln, NE 68516
 Contact Vince Mejer
 Purchasing Agent
 Purchasing
 Department
 Building
 Suite 200
 Floor/Room
 Telephone 1 (402) 441-8314
 Fax 1 (402) 441-6513
 Email vmejer@lincoln.ne.gov

Ship to Information

Address
 Contact
 Department
 Building
 Floor/Room
 Telephone
 Fax
 Email

Supplier Information

Company Dimensional Innovations, Inc
 Address 3421 Merriam Lane
 Overland Park, KS 66203
 Contact Ed Coon
 Department
 Building
 Floor/Room
 Telephone 1 (913) 744 2195
 Fax 1 (913) 384 1077
 Email ecoon@dimin.com
 Edited 10/24/2012 9:18:09 AM CST

Signature _____

Supplier Notes _____

Bid Notes _____

Bid Activities _____

Bid Messages _____

Please review the following and respond where necessary

| # | Name | Note | Response |
|---|------------------------------|---|-------------|
| 1 | Instructions to Proposers | I acknowledge reading and understanding the Instructions to Proposers. | Yes |
| 2 | Insurance Requirements | I acknowledge reading and understanding the Insurance Requirements. | Yes |
| 3 | Specifications | I acknowledge reading and understanding the specifications and attachments. | Yes |
| 4 | DBacon | I acknowledge reading and understanding the Davis Bacon Requirements in 29 CFR 5.5 information and Wage Rates. | Yes |
| 5 | Performance/Payment 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 |
| 6 | 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 |
| 7 | Proposal Submission | I have prepared and delivered/mailed to the City Purchasing Agent my proposal as required in the Specifications. | Yes |
| 8 | Contact | Name of person submitting this bid: | Justin Wood |
| 9 | Electronic Signature | Please check here for your electronic signature. | Yes |

Line Items

| # | Qty | UOM | Description | Response |
|---|-----|-----|--|----------------|
| 1 | 1 | EA | Please prepare your written response and return your proposals as instructed in the RFP according to the supplemental instructions. Respond to the Attribute section of this electronic bid and submit before the closing date and time. You must enter a 0 for your response in this line item. | \$2,456,350.00 |

Item Notes:
Supplier Notes: This bid price is based on the following:

1. No anodizing on aluminum cladding
2. Exterior is not a panelized system
3. Exterior is single layer aluminum cladding on structural steel. Finish is Matthews exterior rated paint with UV protected clear coat
4. All LED lighting for portals will be GE Tetra Mini-Max in white
5. 1 extrusion shape will be utilized for LED rail lights with standard white lighting for walkway
6. All install labor will be standard time, no over time
7. No permits, taxes, variance or inspection fees are included



Mr. Vince Mejer
Purchasing Agent, City of Lincoln
K Street Complex, Suite 200
440 S. 8th Street
Lincoln, NE 68508

November 26, 2012

Justin Wood
Vice President of Business Development
3421 Merriam Lane
Overland Park KS 66303

Re: West Haymarket JPA Project # 870201B

Dear Mr. Mejer,

Thank you for taking the time to discuss Dimensional Innovations' RFP response via the conference call this morning. We appreciate the opportunity to clarify and offer the following responses.

1. Our bid response to the RFP is \$2,456,350. This reflects an add to the preliminary number of \$12,800 for added insurance and \$22,000 for 20 additional days of utilizing flagmen during the installation period beyond the 40 specified in the bidding documents. This accounts for the discrepancy between numbers of \$34,800.
 - a. If the cost for the additional 20 days for the flagman is assumed by the JPA, then the overall project cost will reduce by \$20,000 (\$1,000/ day for 20 days).
2. We calculated all installation at time and a half based on the language on page 1 of the Davis Bacon requirements, documents down loaded from the bidding web site, for work performed in areas of a fall hazard of over 40'. This equated to an additional \$190,730 for the on-site installation.

Please let us know if there are other questions. We look forward to continuing our involvement on this exciting addition to the City of Lincoln.

Best regards,

Justin Wood
Vice President of Dimensional Innovations



Haymarket Bridge RFP Bid Summary
November 21, 2012

| | | |
|---------------------------|--------------------------------|---------------------|
| Portal Construction | | 1,071,209.15 |
| | 142,868.92 | |
| | 150,823.75 | |
| | 157,469.21 | |
| | 161,253.44 | |
| | 158,223.77 | |
| | 153,103.70 | |
| | 147,466.37 | |
| Bench Construction | | 100,291.33 |
| Aluminum Light Rail Const | | 59,797.73 |
| | 13,810.10 | |
| | 45,987.63 | |
| Fencing | | 427,154.40 |
| | <i>1,200 St</i> 332,895.37 | |
| | <i>R/R Stainless</i> 94,259.03 | |
| Engineering, Bond, Survey | | 60,057.91 |
| Stamped Engineering | 18,090.00 | |
| Bond | 39,375.00 | |
| Survey | 2,592.91 | |
| Freight & Installation | | 737,839.48 |
| Freight | 13,065.00 | |
| Installation | 724,774.48 | |
| | Total | 2,456,350.00 |

Table of Contents

- Letter of Transmittal
- 7.0 Project Approach
 - 7.1 Firm's Approach
- 8.0 Experience and Qualifications
 - 8.1 Business Synopsis
 - 8.2 Relevant Experience and Qualifications
 - 8.3 Resumes
 - 8.3.1 Justin Wood
 - 8.3.2 Ed Coon
 - 8.3.3 Rob Weber
 - 8.3.4 Jason Grove
 - 8.3.5 Chris Clay
 - 8.3.6 Tim Britton
 - 8.3.7 Mike Trio
 - 8.3.8 Stephen Hopkins
 - 8.3.9 Allison Schmitt
 - 8.3.10 Fabrication
 - 8.4 Shop Visits
 - 8.5 Consultants and Subcontractors
 - 8.6 Representative Projects
- 9.0 Financial Condition of the Firm
 - 9.1 2011 Financial Statement
 - 9.2 2010 Financial Statement
 - 9.3 2009 Financial Statement
- 10.0 Safety Record
 - 10.1 Firm's Philosophy on Safety
 - 10.2 Project Specific Safety Plan
 - 10.3 Safety Indices
- 11.0 Production Capability
 - 11.1 Skills and Qualifications for Requested Work/ Management Approach
 - 11.2 Methods and Quality Control
 - 11.3 Organizational Chart
 - 11.4 Production Facility Details
 - 11.5 Work on Hand
- 12.0 On Site Installation Plan
 - 12.1 Coordination
 - 12.2 Installation Plan for the Work
 - 12.3 Installation Details
- 13.0 Disclosure of Investigations/ Actions
- 14.0 Cost Proposal

1.0 Letter of Transmittal

Mr. Vince Mejer
Purchasing Agent, City of Lincoln
K Street Complex, Suite 200
440 S. 8th Street
Lincoln, NE 68508

November 7, 2012

Justin Wood
Vice President of Business Development
Dimensional Innovations
3421 Merriam Lane
Overland Park, KS 66203

Re: West Haymarket JPA Project #870201B

Dear Mr. Mejer,

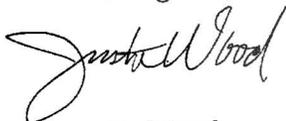
Thank you for the opportunity to propose design detailing and fabrication services for West Haymarket JPA Project #870201B; Haymarket Pedestrian Bridge Aesthetic Design. Dimensional Innovations (DI) is a diversely talented design/build specialty fabrication firm based in the Kansas City area, with a team that is comprised of designers, engineers, estimators, world-class project managers, and the best fabricators in the Midwest. Your project is a perfect fit for the unique skill sets carried by the staff here at DI.

As you may know, Dimensional Innovations – in fact, this exact project team – has played a substantial role in other similar kinds of large-scale civic projects. We feel we are well equipped, poised, and excited to deliver the entire scope for the JPA. Our expertise in LEAN manufacturing and continuous workflows will guarantee the high level of work a project of this stature deserves, and on-time delivery of the project.

Our entire team is excited for the opportunity to build and deliver the aesthetic bridge portals and supporting materials for this project. Our involvement in the design portion of this project, and in working with the JPA and the Mayor, has given us the familiarity with the project and the city so that we fully understand the needs of constructing this project, from deliverables to schedule. We feel we have the necessary tools to bring this important project home for the City of Lincoln.

Our team is strengthened by of years of experience and strong relationships, both in-house and with subcontractors. DI's entire staff, from principals to fabricators and everyone in between, is seasoned veterans of the industry. No addenda were received on this project.

Best regards,



Justin Wood
Vice President of Dimensional Innovations

3421 Merriam Lane
Overland Park, KS 66203

7.0 Project Approach

7.1 Firm's Approach

- Dimensional Innovations has been intimately involved with the project since late 2011. Having been the designer and actively engaged with the JPA and the Mayor, we have a firm understanding of the needs and requirements of the project. Close coordination with the JPA and associated team members is crucial. Once awarded the work, Dimensional Innovations will immediately take the Design Intent drawings provided in the RFP, and move into final Design Development, while simultaneously completing the storytelling portion of the aesthetic design.
- Dimensional Innovations' fabrication methodologies are often referred to as digital fabrication, as we will work to manage as much of the process in our shop as possible to minimize the time in the field. This will allow for the JPA to see a working mock-up/prototype of the portal in our shop prior to installation.
- Schedule of benchmarks and City involvement:
 - Award: December 8
 - Design Detailing/ Construction Docs completed by: January 31, 2013
 - Review and approval by City, PC Sports, and Olsson
 - Design development of kiosks by January 31, 2013
 - Meeting with Ed Zimmer to kick off in mid-December
 - Review meeting with Mayor, JPA and PC Sports in mid-January
 - Final delivery on January 31, 2013
 - Fabrication of Mock-ups begins February 15, 2013
 - Review and approval of mock-up March 31, 2013
 - Stakeholders meet at Dimensional Innovations' office for review and approval
 - Fabrication schedule: April – July 2013
 - Installation (concurrent): June – August 2013

7.2 Proposed Project Schedule

- The schedule above provides an overview of the project schedule. A detailed schedule with exact dates will be negotiated post award with PC Sports, the JPA, and Olsson Associates.

8.0 Experience and Qualifications

8.1 Business Synopsis

- Dimensional Innovations is a multi-disciplinary design/build specialty fabrication firm. Major business activities include design, engineering, and fabrication of unique projects in the civic, sports, theatre, retail, transit, and public fulfillment marketplaces. We are based in Overland Park, KS, and have been located in the same building since 2001. The firm was founded in 1993 and is incorporated as an S Corporation in the State of Missouri. The ownership consists of Jim Baker, CEO (50%) and Tucker Trotter, President (50%). Mr. Baker has been an owner since the inception, and Mr. Trotter has been a full 50% owner since 2004. The company conducts business nationally and internationally from our Overland Park headquarters.
- Officers of the firm include:
 - Jim Baker – CEO
 - Tucker Trotter – President
 - Mike Trio – Vice President of Estimating and Purchasing

- Justin Wood – Vice President of Business Development
- Jason Grove – Vice President of Operations
- Allison Schmitt – Controller

8.2 Relevant Experience and Qualifications

- Dimensional Innovations regularly takes on large and complex jobs requiring a great deal of shop work, as well as coordination with other entities and complex schedules. Our shop has the ability to handle nearly all aspects of this job, from metal fabrication and plastics production to paint and installation.
- Relevant experience in the last three years:
 - Kansas City Area Transportation Authority Bus Shelters: 2009 – 2010
 - In 2009, Dimensional Innovations was awarded the shelters and kiosks for the Troost Avenue MAX bus run. Our project award was for \$1.9 million for 16 24-foot standard bus shelters and 29 markers. We were later awarded an additional 6 16-foot modified shelters, for a total contract value of approximately \$2.2 million.
 - The project was estimated and sold by Justin Wood and Mike Trio, both of whom will be running this project from a high level.
 - All paperwork and compliance work completed per KCATA requirements by Dimensional Innovations' Controller, Allison Schmitt.
 - Production execution was managed by Project Engineer Jonathon Wright, and was engineered by Chris Clay, Senior Engineer. The lead metal fabricator was Tim Britton. Most, if not all of these team members will play lead roles in the Haymarket Pedestrian Bridge Project.
 - Dimensional Innovations is currently under contract for: \$1.8 million of additional work for KCATA on a Kansas City, KS, State Avenue run, as well as \$1.8 million for neighboring Johnson County Transit.

8.3 Relevant Resumes for Project Team

- 8.3.1 Project Executive – Justin Wood
 - Justin is responsible for business development, client relations and retention, job performance and ultimately, total client satisfaction. Justin has been with Dimensional Innovations since 2004, and was made a Vice President in 2007. He is responsible for sales, marketing and management of \$10 to 12 million per year in revenue volume. Major market segments include: civic, transit, sports, museums, and a heavy focus on keeping DI connected to the Midwest regional area.
 - Projects (major):
 - Johnson County Transit: 2012 – 2013
 - \$1.8 million, with GC holding contract
 - KCATA State Avenue Connex Run: 2012 – 2013
 - \$1.8 million, with KCATA holding contract
 - Mosaic Life Care Experience: 2012
 - \$1.6 million, with Northpoint Development and Mosaic Lifecare holding contracts
 - Palmetto Health Care, Columbia, SC: 2012 – 2013
 - \$1.1 million
 - Kansas State University: 2012 – ongoing
 - More than \$1 million in ongoing work for multiple facilities
 - KCATA Troost MAX run: 2009 – 2010

- \$2.2 million, KCATA held contract
 - KCATA Main Street run: 2007
 - \$1.8 million, KCATA held contract
 - Pittsburgh Penguins: 2009 – current
 - 4 projects completed for more than \$2.5 million, Pittsburgh Penguins held contract
 - HyVee Hot Zone at Arrowhead Stadium: 2009
 - \$1.8 million, HyVee Corporation held contract
 - Oak Park Mall signage renovation: 2012
 - \$900,000 project, EMJ Corporation held contract
 - University of Missouri Athletic Training Complex: 2011
 - \$650,000 project, University of Missouri held contract
 - Front Street Towers: 2011
 - \$250,000 project, Mega Industries held contract
- 8.3.2 Project Manager – Ed Coon, AIA
 - Ed brings extensive project management experience to the DI team, acting as a senior project manager on major civic and sports projects for more than 32 years. He is responsible for communicating the internal process and job flow. He tracks and reports each job phase and attends to client and internal service requests and inquiries. Additionally, he facilitates all communication between the client and the facility. Ed manages many of DI’s civic projects, as well as a significant portion of our sports-oriented portfolio. Ed is a licensed architect in the States of Kansas and Nebraska.
 - Projects (major):
 - Amway Arena Interiors for the Orlando Magic (while at Populous)
 - Phillies Spring Training Facility (while at Populous)
 - Phillies Ballpark (while at Populous)
 - Sunlife Stadium (while at Populous)
- 8.3.3 Field Supervisor – Rob Weber
 - Rob brings more 26 years of field and fabrication industry experience, and has acted in the role as Lead Fabricator/ Project Engineer for 8 years at Dimensional Innovations.
- 8.3.4 Production manager/VP of Operations – Jason Grove
 - As Vice President of Operations at DI, Jason directs production, engineering, installation and shipping and receiving. Jason coordinates all production activity to ensure that costs, budgets, quality and deadline commitments are met.
 - Projects: Jason has overseen all projects at DI for the past 7 years.
- 8.3.5 Lead Engineer – Chris Clay (assisted by Jared Nelson)
 - Chris is a Senior Engineer with Dimensional Innovations and has been a part of the team since 2003. Starting as a fabricator on our shop floor, and since spending the last 6 years as a lead engineer, Chris brings a unique knowledge of real world fabrication methodologies to the engineering department. Chris is proficient in CAD, Solidworks, and CNC machining and digital fabrication.
 - Projects (major):
 - Johnson County Transit: 2012 – 2013

- \$1.8 million, with GC holding contract
 - KCATA State Avenue Connex Run: 2012 – 2013
 - \$1.8 million, with KCATA holding contract
 - KCATA Troost MAX run: 2009 – 2010
 - \$2.2 million, KCATA held contract
 - KCATA Main Street run: 2007
 - \$1.8 million, KCATA held contract
 - HyVee Hot Zone at Arrowhead Stadium: 2009
 - \$1.8 million, HyVee Corporation held contract
 - Oak Park Mall signage renovation: 2012
 - \$900,000 project, EMJ Corporation held contract
 - University of Missouri Athletic Training Complex: 2011
 - \$650,000 project, University of Missouri held contract
 - Project FRED: 2011
 - \$1.8 million (confidential)
 - Scheels All-Sports Fairchild Float Planes (multiple locations)
 - Multiple jobs totaling \$110,000, Scheels All Sports held contract
 - Marlins Bobblehead Museum, Marlins Park, Miami, FL: 2011
 - \$120,000 job, contract held by Hunt Construction
 - Front Street Towers: 2011
 - \$250,000 project, Mega Industries held contract
- 8.3.6 Lead Fabricator – Tim Britton
 - Tim works as Dimensional Innovations’ metal shop supervisor and lead metal fabricator. Tim is instrumental in the coordination of most of DI’s large-scale metal projects.
 - Projects:
 - Johnson County Transit: 2012 – 2013
 - \$1.8 million, with GC holding contract
 - KCATA State Avenue Connex Run: 2012 – 2013
 - \$1.8 million, with KCATA holding contract
 - KCATA Troost MAX run: 2009 – 2010
 - \$2.2 million, KCATA held contract
 - KCATA Main Street run: 2007
 - \$1.8 million, KCATA held contract
 - Pittsburgh Penguins: 2009 – current
 - 4 projects completed for more than \$2.5 million, Pittsburgh Penguins held contract
 - HyVee Hot Zone at Arrowhead Stadium: 2009
 - \$1.8 million, HyVee Corporation held contract
 - Oak Park Mall signage renovation: 2012
 - 900,000 project, EMJ Corporation held contract
 - Front Street Towers: 2011
 - \$250,000 project, Mega Industries held contract
- 8.3.7 Estimator/VP of Estimating – Mike Trio
 - Mike has been with Dimensional Innovations for more than 15 years, and was made a Vice President in 2007. As head of estimating, Mike is responsible for all aspects of job estimating and subcontractor management. He also oversees quality control and

details of jobs as they run through production. Mike remains closely connected to jobs into their production and delivery cycle. Prior to Dimensional Innovations, Mike served other signage companies in production and estimating roles for a total industry experience of more than 35 years.

- Projects: Mike has overseen all projects at DI for the past 15 years.
- 8.3.8 Lead Designer/Director of Innovation: Stephen Hopkins, AIA
 - Stephen has been with Dimensional Innovations since 2010 and has not only run and grown the in-house think tank known as the Innovation Lab, but also pursues fixture-oriented architectural work. Haymarket Pedestrian Bridge is an example.
 - Projects (major):
 - Pittsburgh Penguins: 2009 – current (while at Populous)
 - 4 projects completed for more than \$2.5 million, Pittsburgh Penguins held contract
 - HyVee Hot Zone at Arrowhead Stadium- 2009 (with Populous)
 - \$1.8 million, HyVee Corporation held contract
 - Innovation client work with international brands Knapheide Manufacturing Company and Brugal & Co.
- 8.3.9 Controller – Allison Schmitt
 - Allison acts as CFO and Controller for Dimensional Innovations. Since 2003, Allison has dramatically streamlined all accounting processes here at DI. She plays a key role in all public, federal and general transit work in her efficiency and attention to detail in paperwork, pay applications, and records management and reporting. Allison has been directly involved with the KCATA since 2006.
 - Projects: Allison has overseen all projects at DI for the past 9 years.
- 8.3.10 Fabrication Staff
 - 8.3.3.5.1 Plastics Fabricators
 - Dimensional Innovations has three technicians with more than 50 years combined experience in plastics production and construction, including acrylic, PVC, ABS, and polycarbonate. Our lead CNC technician has more than 10 years experience carving, shaping and molding the various mediums as well.
 - 8.3.3.5.2 Paint Lab
 - One dedicated manager with two assistants create custom paint and finishes in our two separate, dedicated paint booths.
 - 8.3.3.5.3 UL Listed Shop
 - Monthly inspections per UL standards ensure DI meets both the quality control and safety standards that come with this certification.
 - 8.3.3.5.4 Metal Fabrication
 - Dimensional Innovations has eight full-time metalsmiths on staff, with the ability to add well-qualified subcontractors. Our staff is certified in MIG, TIG, mild steel, stainless steel, and aluminum.

8.4 Shop Visits

- Dimensional Innovations welcomes collaboration amongst stakeholders, and welcomes shop visits at regularly scheduled intervals

8.5 Consultants and Sub-Contractors

- Bob D. Campbell, structural engineer

- Janssen Glass, glass fabricator
- 8.6 Representative Projects
 - Mosaic Life Care: 2012 (and ongoing)
 - David Jones, Regional Market Director
 - david.jones@mymosaic.com
 - 816.244.3695
 - KCATA Troost Bus Shelter Run: 2009 – 2010, and ongoing (\$2.2 million)
 - Keith Sanders, Project Manager
 - ksanders@kcata.org
 - 816.210.3960
 - Justin Wood led this project team
 - Pittsburgh Penguins- 2010 – current (\$2.8 million+)
 - David Peart, Senior Vice President of Business Partnerships
 - dpeart@pittsburghpenguins.com
 - 408.592.4900
 - Justin Wood led this project team.
 - Front Street Towers- 2011 (\$264,000)
 - Dan Maginn, Principal with Eldorado Architects
 - dan@eldo.us
 - 816.474.3838
 - Justin Wood led this project team.
 - HyVee Hot Zone- 2010 (\$1.8 million)
 - Daniel Willrich, HyVee Assistant Director of Store Architecture
 - dwillrich@hy-vee.com
 - 515.267.2800
 - Justin Wood led this project team.
 - Texas Rangers Kids Zone- 2011-2012 (\$800,000)
 - Rob Matwick, Texas Rangers Executive Vice President of Ballpark Operations
 - rmatwick@texastrangers.com
 - 817.622.7975
 - Justin Wood led this project team.

9.0 Financial Condition of the Firm

- Dimensional Innovations is financially sound and possesses the necessary financial resources to perform this contract in an exemplary manner. See additionally requested information below.
- See Cost Proposal for:
 - 2011 Financial Statement
 - 2010 Financial Statement
 - 2009 Financial Statement
- Please see attached surety letter stating Dimensional Innovations' ability to bond

10.0 Safety Record

- 10.1 Firm's Philosophy on Safety

- DI believes in a safe work environment. All employees are empowered to bring to management's attention any unsafe working conditions; we conduct regular safety meetings, incorporate safety messages into production meetings and other forms of staff communication. Installers are OSHA-certified and safety is stressed within our internal communication as an important part of how we do business.
- 10.2 Project Specific Safety Plan
 - KCATA Bus Shelters fabrication: With the weight of materials (steel and glass) and the amount of material handling required on this project, we began the project with an internal safety strategy session. Staff assigned to the project were "qualified" in regards to material handling, trained on proper equipment usage, and supervision levels were developed to ensure all staff were working safely at all times. Special material handling devises (gantries) were engineering specifically for the project as a backbone to the production approach with safety firmly in mind. The project had work duration of 6 months and this program proved to be incredibly successful at eliminating injuries.
- 10.3 Up to Date Safety Indices for the Firm
 - We measure "days since last injury" on a production board in the shop, post our OSHA injury log per compliance regulations, and conduct monthly safety meetings. We keep up-to-date staffing completion lists for forklift and other list certification, OSHA 10-hour training and have active lock-out, tag-out program. We have a visual board that records vehicle and equipment maintenance.

11.0 Production Capability

11.1 Skills and Qualifications for Requested Work

- Dimensional Innovations is a multi faceted specialty fabrication firm.
- Currently, we have 92 full time employees, with ability to ramp up higher very quickly through a network of qualified subcontractors
- We have 9 full-time welders on staff, and others on staff with the capability
- DI's warehouse is 70,000 square feet of space that holds our dedicated CNC cut room, engineering department, metal shop, dedicated space for paint laboratory with two booths, all under one roof.
- DI has executed a significant number of large-scale jobs, including shop drawings, mock-ups, detailing of specific elements, as well as full production and installation.
 - Concluded the Troost MAX bus shelter job with throughput of 2.5 shelters per week. Since we will be set up to produce more than one shelter at a time in production, we can guarantee meeting deadlines.
- Ability to throughput in excess of \$1million per month through production
- Specific throughput lines established for this project
- Close working relationship with PC Sports and Olsson Associates
- Financial stability and bonding capacity
- Management Approach
 - Dedicated project manager, project engineer, lead engineer, lead fabricator: visiting subcontractors, weekly large group meetings
 - PE bench marks in production: delivery of materials, subcontracted parts, routed parts, sub-assembly parts, welding, paint finishes
 - The project manager sets schedule for entire project
 - Two-to-three-month production capacity schedule: an advance schedule that sets all known work and resources to ensure they are allocated well in advance of any project needs

11.2 Methods and Quality Control

- Client review, and internal team members review and approval
- Formal quality system to check parts, tolerances, and fabrication quality at agreed upon fabrication steps
- Open book quality assurance- actively seeking clients and other stakeholders to actively participate in the review process
- Any team member can stop the line at any given moment
- Shop drawing review
- Internal welding review of all welds on all elements, as well as from outside sources (architect and engineers)
- As required by project specifications, we welcome outside consultants to participate in the review of welds and other fabrication methodologies

11.3 Organization Chart (Five of these in time dedicated to Haymarket Bridge job)

Principal in Charge – Tucker Trotter, 5%
VP/ Business Development – Justin Wood, 20%
VP Operations – Jason Grove, 20%
VP Estimating – Mike Trio, 20%
Controller- Allison Schmitt, 5%
Project Manager – Ed Coon, 50%
Project Engineer – Rob Weber, 75%
Subcontract Manager/Installation Manager – David Gross, 10%
Lead Engineer – Chris Clay, 50%
Lead Fabricator – Tim Britton, 100%
Materials Manager – Steve Schmidlein, 10%
Engineers (TBD)
Fabricators (TBD)

11.4 Production Facility Details

- 70,000 square feet of flexible fabrication space with a large footprint dedicated to this job (approximately 25% dedicated to fabrication and storage)
- Large exterior secure storage area for staged and finished portals (prior to shipping and installation)
- Equipment: gantry cranes, welders, CNC routers, steel saws
- Strategic partnerships: well-maintained and long-lasting partnerships with strategic fabrication and installation partners.
 - Jannsen Glass is our glass supplier and is already a registered provider of glass and gaskets for DI
- Welding jigs for facilitating a quick start-up
- Specific throughput lines established for this project

11.5 Work on Hand – List of Manufacturing Contracts in Progress and Anticipated
11.5
Work on Hand

| <u>Job Name</u> | <u>Type of Work</u> | <u>Estimated Completion Date</u> | <u>Current Work On Hand 10.31.2012</u> |
|--------------------------------|--|--|--|
| Garmin Marine - Tradeshow | AV - Technology | 01.31.2013 | 17,750.67 |
| KCPA - Showcase Wall | AV - Technology | 11.30.2012 | 1,760.22 |
| K-State Basketball | AV - Technology/Desgin | 11.30.2012 | 128,704.15 |
| KU HOF Interactive | AV - Technology/Desgin | 12.31.2012 | 56,153.81 |
| Mosaic Life Care - Derm Clinic | AV - Technology/Desgin | 12.31.2012 | 75,002.00 |
| Pens AR Software Renewal | AV - Technology/Desgin | 12.31.2012 | 7,500.00 |
| Scheels | AV - Technology/Desgin | 11.30.2012 | 48,981.33 |
| Toyota @Pepsi Center | AV - Technology/Desgin | 03.31.2012 | 120,816.22 |
| University of Michigan | AV - Technology/Desgin | 12.15.2012 | 315,704.65 |
| AMC 2012 -Theater Work | Design | 03.31.2013 | 316,067.00 |
| Carlos O'Kellys -2012 Retail | Design | 11.30.2012 | 25,322.00 |
| Cinergy Cinemas-Midland Design | Design | 11.30.2012 | 11,569.91 |
| Haymarket Pedestrian Bridge | Design | 11.30.2012 | 36,925.00 |
| HeartlandCardiovascularConsult | Design | 12.31.2012 | 6,742.93 |
| IT'Z Euless, TX | Design | 02.28.2013 | 45,185.95 |
| Oasis Phase II | Design | 12.31.2012 | 19,705.00 |
| Port Authority of Kansas City | Design | 01.31.2013 | 35,976.44 |
| Starlight Thermal Study | Design | 12.31.2012 | 6,085.00 |
| ACI Livestrong Band | Duralite Construction/Graphics/Wayfinding Signage | 11.30.2013 | 40,161.72 |
| Alamo Draffhouse Aspen Grove | Duralite Construction/Graphics/Wayfinding Signage | 01.31.2013 | 141,066.65 |
| Cinemark 2012 Theater Work | Duralite Construction/Graphics/Wayfinding Signage | 04.30.2013 | 833,331.97 |
| Commerce Arcade Signage | Duralite Construction/Graphics/Wayfinding Signage | 11.30.2012 | 47,061.53 |
| Eglin AFB | Duralite Construction/Graphics/Wayfinding Signage | 12.31.2014 | 296,502.64 |
| Galleria 360 | Duralite Construction/Graphics/Wayfinding Signage | 11.30.2012 | 4,394.74 |
| Global Prairie Glass | Duralite Construction/Graphics/Wayfinding Signage | 11.30.2012 | 3,467.00 |
| Montehiedra | Duralite Construction/Graphics/Wayfinding Signage | 02.28.2013 | 7,000.00 |
| Richard Bolling Center Phase 4 | Duralite Construction/Graphics/Wayfinding Signage | 12.31.2014 | 650,726.20 |
| Silver Sun | Duralite Construction/Graphics/Wayfinding Signage | 11.30.2012 | 132,055.19 |
| VIP Cinema PO 549 Total | Duralite Construction/Graphics/Wayfinding Signage | 11.30.2012 | 2,379.96 |
| U of LV Baseball Sculpture | HardCoating | 01.31.2013 | 39,846.03 |
| BCBS Exterior Sign | Metal | 11.30.2012 | 43,526.26 |
| Commerce Brookside Clock Tower | Metal | 11.30.2012 | 3,061.65 |
| D&P George W. Bush Library | Metal | 11.30.2012 | 26,287.07 |
| KCATA "Travels with Charlie" | Metal | 11.15.2012 | 2,432.00 |
| KCATA Bus Shelters | Metal | 03.31.2013 | 1,492,871.50 |

| | | | |
|-------------------------------|---------------|------------|---------------------|
| KCI CCTV | Metal | 12.31.2012 | 27,321.24 |
| Metcalf Transit | Metal | 03.31.2013 | 1,509,633.81 |
| SMMC - Aluminum End Caps | Metal | 11.15.2012 | 3,600.00 |
| BJH Ambulatory Care - AWC T | Solid Surface | 12.31.2012 | 17,393.59 |
| Ft. Leonard Wood - MEB | Solid Surface | 11.30.2012 | 37,794.90 |
| ISEC - Ft Riley IACH | Solid Surface | 12.31.2013 | 121,883.78 |
| Peters Student Recreation Ctr | Solid Surface | 11.30.2012 | 4,818.87 |
| SPM - KS Wheat Innovation Ctr | Solid Surface | 11.15.2012 | 40,889.60 |
| | | | 6,805,460.19 |
| | | | |

12.0 On-Site Installation

12.1 Coordination

- Dimensional Innovations recognizes that there will be coordination with the structural bridge contractor, the festival plaza contractor, the Arena contractor and BNSF Railroad.

12.2 Installation Plan for the Work

- It is planned for each of the portals to be fully assembled in our shop to confirm configuration and fit-up. Each portal will be disassembled into three major pieces for shipment to the site. The letter cans and LED lighting will be fabricated and assembled in the shop. We intend to coordinate the utilization of the parking lot on the west side of the tracks for lay-down. The two sides of the portals will bolt into place and then the “roof” structure will be bolted to span between. All cladding will be done on site. All bench construction will occur onsite.

12.3 Installation Details

- Dimensional Innovations will perform this entire installation utilizing our own workforce. The intention is to coordinate the utilization of parking on the west side of the railroad track as laydown area.

13.0 Disclosure of Investigations/ Actions

- Dimensional Innovations has not been a part of any investigation or legal actions in the public sector.

14.0 Cost Proposal

- Please see attached.

EXHIBIT B

Intentionally Omitted

EXHIBIT C

**Construction and Maintenance Agreement
Between BNSF and the City of Lincoln**

*Approved by Law
11-27-2012*

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 of 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

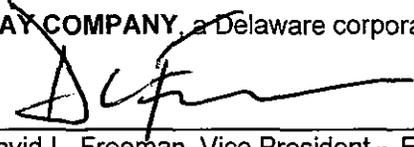
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

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]



APPROXIMATE LIMITS OF PROJECT AREA. ADDITIONAL OFFSITE TRANSPORTATION IMPROVEMENT ARE ALSO REQUIRED

PRELIMINARY PLAN

| LEGEND | |
|----------|-----------------|
| [Symbol] | ROADWAY/PARKING |
| [Symbol] | SIDWALK |
| [Symbol] | SURFACE PARKING |
| [Symbol] | NEW DEVELOPMENT |
| [Symbol] | ARENA |
| [Symbol] | RIGHT OF WAY |
| [Symbol] | PROPOSED TRACK |
| [Symbol] | FUTURE TRACK |

TRAIL CONNECTION TO LINCOLN CENTER STATION

PROJECT NO: 008-0645
 DRAWN BY: JGO
 DATE: 8/23/2010

WEST HAYMARKET REDEVELOPMENT AREA

MOLSSON
 ASSOCIATES

1111 Lincoln Mall, Suite 111
 P.O. Box 84608
 Lincoln, NE 68501-4608
 TEL: 402.474.6311
 FAX: 402.474.5160

EXHIBIT
 A

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 or 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: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

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 or 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: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Project Engineer

Contact Person: _____
Address: _____

Accepted and effective this ____ day of 20__.

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
11-27-2012

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 practicable 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; and
 - 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 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 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 charges 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 OMISSION 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 or 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 of 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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7-26-10/law/tb



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).

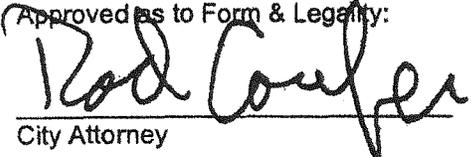
(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 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

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) | 1215-014 |
| (a)(1)(ii)(C) | 1215-014 |
| (a)(1)(iv) | 1215-014 |
| (a)(3)(i) | 1215-0140, 1215-00: |
| (a)(3)(ii)(A) | 1215-014 |
| (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 06/15/2012 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 |
| 2 | 06/15/2012 |

* ELEC0022-018 06/04/2012

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

| | Rates | Fringes |
|------------------|----------|---------|
| ELECTRICIAN..... | \$ 31.00 | 13.71 |

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.

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

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

(SEAL)

Contractor Certification of Compliance
NPDES Dewatering Discharge Permit No. NEG671000

In accordance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et. seq.*, as amended), the Nebraska Environmental Protection Act (Neb. Rev. Stat. § 81-1501 *et. seq.*, as amended), and the Rules and Regulations promulgated thereunder, the West Haymarket Joint Public Agency (JPA) has submitted a site-wide Dewatering Notice of Intent (DW-NOI) for dewatering discharges authorization under the General NPDES Permit NEG671000, attached as Exhibit A and incorporated as if fully set forth herein, for the West Haymarket Redevelopment Site. The JPA is designated as an "Owner" and the Contractor, including any selected subcontractor conducting the dewatering activities, is designated as an "Operator" of the dewatering activity conducted under the permit.

As such, I certify that:

I, or qualified members of my staff, have reviewed and understand the terms and conditions of the NPDES General Permit Number NEG671000 and I understand that the submission of this "Contractor Certification of Compliance" obligates the Contractor as the operator responsible for conducting dewatering activities, to comply with all said terms and conditions of the permit.

Operator's Signature

Date

Title

Company

Business Address