AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, FEBRUARY 26, 2016 AT 2:30 P.M.

CITY-COUNTY BUILDING
BILL LUXFORD STUDIO, 1ST FLOOR
555 S. 10TH STREET
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 December 10, 2015 (Chair Beutler)
   - (Staff recommendation: Approval of the minutes as presented)

4. WH 16-1 Resolution approving and authorizing the Chair to execute two Environmental Covenants subjecting certain JPA owned properties to activity and use restrictions to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the properties and to ensure that the properties are not developed, used or operated in a manner incompatible with the approved NDEQ environmental remediation under taken by the JPA. (Rick Peo)
   - Public Comment
   - (Staff recommendation: Approval)

5. WH 16-2 Resolution to approve Amendment No. 13 to the Agreement for Environmental Remediating Consulting Services between Alfred Benesch & Company and the JPA to include project management under existing Task 1, implementation of the Environmental Contingency Plan (ECP) for providing support during construction activities impacting remedial systems and established environmental covenants under existing Task 6; and preparing plans and specifications for the cleanup of contamination at the Alter South site under Task 31. (Frank Uhlarik)

6. Set Next Meeting Date: The next meeting date will be Thursday, March 24, 2016 at 3:30 p.m. in the County-City Building, Council Chambers, First Floor.

7. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
December 10, 2015

Meeting Began At: 2:31 P.M.

Meeting Ended At: 2:48 P.M.

Members Present: Chris Beutler, Tim Clare, and Carl Eskridge

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

Beutler advised that the open meetings law posted at the entrance to the room is in effect.

Item 2 – Reports and Communications Received

This item is to let the public know that a letter was received from BKD dated November 9, 2015, summarizing BKD's planned scope and timing for the August 31, 2015 audit of the financial statements of the West Haymarket Joint Public Agency. No action was required.

Item 3 -- Public Comment and Time Limit Notification

Beutler advised the audience that public comment is welcome and explained the time limit.

Item 4 -- Approval of the minutes from the JPA meeting October 29, 2015

Clare moved approval of the minutes as presented. Eskridge seconded the motion. Motion carried 3-0.

Item 5 -- Approval of October 2015 Payment Registers

Steve Hubka, City Finance Director, presented the October 2015 payment register. He reported the November payment registers are not yet available. The October payment registers operating budget was $1,511,549.00. Hubka reported there are a variety of expenses listed on the payment registers such as a payment to the District Energy Corp., a Sponsorship/Increment payment of $410,100.00, parking management service charges, property insurance payment for $155,000. Clare inquired as to what the $57,000 repairs were to the parking lot. Hubka responded he needed to get back to him on this. Clare also inquired as to what the payment to the Citizen Information Center was for. Hubka stated this is a charge to the JPA to televise the meetings. Clare stated the JPA made payments to the City in August of $99,000 and September of $110,000 to manage the parking garages and inquired if this will continue to be a perpetual thing or if there are other less expensive ways to do this. Hubka stated these are reimbursement costs incurred by parking services to manage the parking garages which costs are expected to continue. The contract calls for JPA to reimburse parking services for their actual expenses

incurred. Clare stated the JPA is hiring a consultant for project management and inquired as to whether or not the JPA will continue to utilize those services or what the plan is moving forward. Hubka responded that this question would be answered when this agenda item is discussed. There being no further discussion or public comment, Eskridge moved approval of the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 6 -- Review of October 2015 Expenditure Reports

In presenting the October 2015 Operating Budget Expenditure Reports, Hubka reported that the reports reflect the payments discussed regarding the October 2015 payment registers. Hubka reported that even though it is early in the fiscal year the JPA is well under budget. Clare questioned where the JPA stands with contingencies and the Occupation Tax receipts. With regard to the Occupation Tax Receipts, Hubka reported that the JPA finished the calendar year being up over 7% from last year. He further explained that every month has been very consistent with a 6.5%-8% increase over the same month last year. Hubka requested Paula Portz with PC Sports to answer Clare's question with regard to the contingencies. Paula Portz reported that the overall contingency for the project is almost $12,000,000 in infrastructure contingency and $2,000,000 in arena contingency for a total of $14,000,000. Clare questioned if this includes the payment for the ice center to which Paula Portz confirmed it had already been accounted for. Paula Portz answered Clare's earlier question as to what the $57,000 in repairs were to the parking lot by stating that was a payment to DLA for the maintenance work they did in the West Haymarket as well as a payment to the parks department for mowing the approaches to the bridges. No action on this item was necessary.

Item 7 -- WH 15-25 Resolution approving the Consultant Agreement between the West Haymarket Joint Public Agency and PC Sports Inc. for Project Management Services described in PC Sports Proposal dated November 10, 2015 for a Term of January 1, 2016 through December 31, 2016. (Steve Hubka)

Hubka reported this resolution is to renew the Consultant Agreement with PC Sports, for $17,000 a month or $204,000 total for 2016, to continue to provide the same services they are currently providing such as the Alter site remediation and site preparation work, and relocation of Burlington Northern parking lot project, etc. as stated in the scope of services. PC Sports also assisted with the allocation of bond proceeds to the project that is essential for preparing for any future IRS audits. PC Sports maintained all of the records and worked with Gilmore and Bell on this project. Hubka stated it is a very valuable contract to have ongoing. Clare commented on the Agreement. Eskridge commented on the Agreement also. There being no further discussion or public comment, Clare moved approval of the resolution. The motion was seconded by Eskridge. The motion for approval of the resolution carried 3-0.

Item 8 -- WH 15-26 Resolution approving the Amendment No. 20 to Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency Haymarket Infrastructure Design Project, Project No. 870000, to extend the Agreement through December 31, 2016, and to adjust the hourly rates up 1.6 % from the 2015 rates and to provide a $100,000 deduction in the fee for General Design Coordination and Support thereby decreasing the total contract amount. (Adam Hoebelheinrich)

Caleb Swanson with PC Sports introduced this Agreement on Adam Hoebelheinrich's behalf. The current contract will expire at the end 2015. There are still several projects remaining such as remediation work, relocation of the Burlington Northern parking, coordination of streetscapes with private developer's, etc. that will need continued support from Olsson Associates. There currently is approximately $220,000 remaining unspent on the current contract. This sum of money is more than adequate to cover any expenses for the remainder of the year. This year's Agreement is being reduced by $100,000 which ends up being a net savings/credit to the project budget. Eskridge questioned what happens with the $100,000. Caleb stated the $100,000 would roll back into the contingency. There being no further questions or public comment, Clare moved approval of the resolution. The motion was seconded by Eskridge. The motion for approval of the resolution carried 3-0.

Item 9 -- Set Next Meeting Date

Without objection, the next meeting date was set for Wednesday, January 27, 2016 at 3:30 p.m. in the City-County Building, First Floor, Council Chambers.

Item 10 -- Motion to Adjourn

Eskridge moved to adjourn. Motion seconded by Clare. The meeting adjourned at 2:48 p.m.

Prepared by: Kasey Simonson, City Law Department

West Haymarket JPA Meeting

Date 12-10-15

Page_____

Name (Please Print)	Address	Phone/E-Mail

WH 16-1 Introduce: 2-26-16

RESOLUTION NO. WH- _____

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

That the two (2) attached Environmental Covenants subjecting:

a) Lot 3, Block 1, West Haymarket Addition; and

b) Outlot B, West Haymarket Addition;

to activity and use restrictions to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the properties and to ensure that the properties are not developed, used, or operated in a manner incompatible with the approved NDEQ environmental remediation under taken by the JPA are hereby approved and Chris Beutler, Chair of the West Haymarket Joint Public Agency, is hereby authorized to execute the two (2) Environmental Covenants on behalf of the West Haymarket Joint Public Agency.

The City Clerk is directed to return the original of each Environmental Covenant to Frank Uhlarik, Compliance Administrator, Public Works and Utility Department, to obtain the Nebraska Department of Environmental Quality's execution of and consent to the Environmental Covenants and following such execution to record the same with the Register of Deeds for Lancaster County, Nebraska.

Adopted this _____ day of February, 2016.

Introduced by:

_____

WH 16-1

Approved as to Form & Legality:

Jeffery R. Kirkpatrick

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

Chris Beutler

Tim Clare

Carl Eskridge

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

West Haymarket Joint Public Agency
c/o Rick Peo, Chief Assistant City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT
(North Flank-West Haymarket Redevelopment Site North)

This Environmental Covenant is executed this ____ day of _____, ____, by the West Haymarket Joint Public Agency ("JPA"), a political subdivision and corporate body politic of the State of Nebraska, as Grantor and Holder/Grantee, pursuant to the Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613, hereinafter the "Act."

RECITALS:

A. Grantor is the owner of certain real property located within the boundaries of the North Flank of the West Haymarket Redevelopment Site North (WHRSN) and legally described as Lot 3, Block 1, West Haymarket Addition (the "Property"). The boundaries of the North Flank of the West Haymarket Redevelopment Site North are shown on the Figure 4 - North Flank Boundary Map attached hereto marked as Attachment "A". Figure 4 – North Flank Boundary Map also shows the soil/concrete cap boundary area within the North Flank where contact with contaminated soils shall be prevented by maintaining either a minimum of 18 inches of clean fill material or 6 inches of concrete. The location of the Property is shown on the Lancaster County/City of Lincoln GIS Map attached hereto marked as Attachment "B". The Property is marked by an arrow and outlined on the map.

B. Holder/Grantee (hereinafter "Holder") is JPA.

C. Prior to the JPA's acquisition of the Property, the Property was used for railroad operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the "West Haymarket Redevelopment Site North Investigation Report and Remedial Action Plan" (Benesch, 2012). The Property is currently used for a dual purpose as a parking lot and festival event space.

D. The Property is the subject of environmental response projects or actions pursuant to enrollment in the Nebraska Department of Environmental Quality's Voluntary Cleanup

Program (VCP) authorized by the Remedial Action Plan Monitoring Act and the Petroleum Products and Hazardous Substances Storage and Handling Act."

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environmental Quality (NDEQ).

F. The selected environmental response projects or actions which has heretofore been performed by Grantor, is documented in "West Haymarket North Investigation Report and Remedial Action Plan", (Benesch, 2012). The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400; Lincoln, NE.

NOW, THEREFORE, Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. Representations and Warranties**.** The Grantor warrants to the other signatories to this Covenant that:

   a. The Grantor is the sole fee title owner of the Property;
   b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
   c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy

after the effective date. This Environmental Covenant in no way amends, modifies, limits, or releases the Grantor from its duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

a. Groundwater shall not be used as a potable drinking water source.
b. Contact with contaminated soils shall be prevented in the area shown on Attachment "A" – Figure 4 – North Flank Boundary Map as the Soil/Concrete Cap Boundary Area by maintaining either a minimum of 18 inches of clean fill material or 6 inches of concrete (North Flank).
c. Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, 2015).
d. No residential development or uses by other noncommercial/nonindustrial sensitive receptors including, but not limited to, hospitals, schools, childcare facilities, elderly housing and convalescent facilities is allowed.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental

Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Lancaster County Register of Deeds.

> NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF LANCASTER COUNTY, NEBRASKA ON _____, AS INSTRUMENT NO. _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
>
> 1) Groundwater shall not be used as a potable drinking water source.
> 2) Contact with contaminated soils shall be prevented in the area shown on Attachment "A" – Figure 4 – North Flank Boundary Area Map as the Soil/Concrete Cap Boundary Area by maintaining either a minimum of 18 inches of clean fill material or 6 inches of concrete (North Flank).
> 3) Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, 2015).
> 4) No residential development or uses by other noncommercial/nonindustrial sensitive receptors including, but not limited to, hospitals, schools, childcare facilities, elderly housing and convalescent facilities is allowed.

10. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb.

Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Lancaster County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Lancaster County Register of Deeds.

17. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Agency and each person identified in Neb. Rev. Stat. §76-2607(a).

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

City of Lincoln, Nebraska
Compliance Administrator
Public Works & Utilities Department
555 South 10th Street
Lincoln, NE 68508

West Haymarket Joint Public Agency
c/o City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor**,** as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this ____ day of _____, 2016.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Chris Beutler, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ of _____, 2016, by Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, who acknowledged said Environmental Covenant on behalf of Grantor/Holder.

_____
(SEAL) Notary Public

AGENCY:

IN WITNESS WHEREOF, NDEQ, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEQ a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

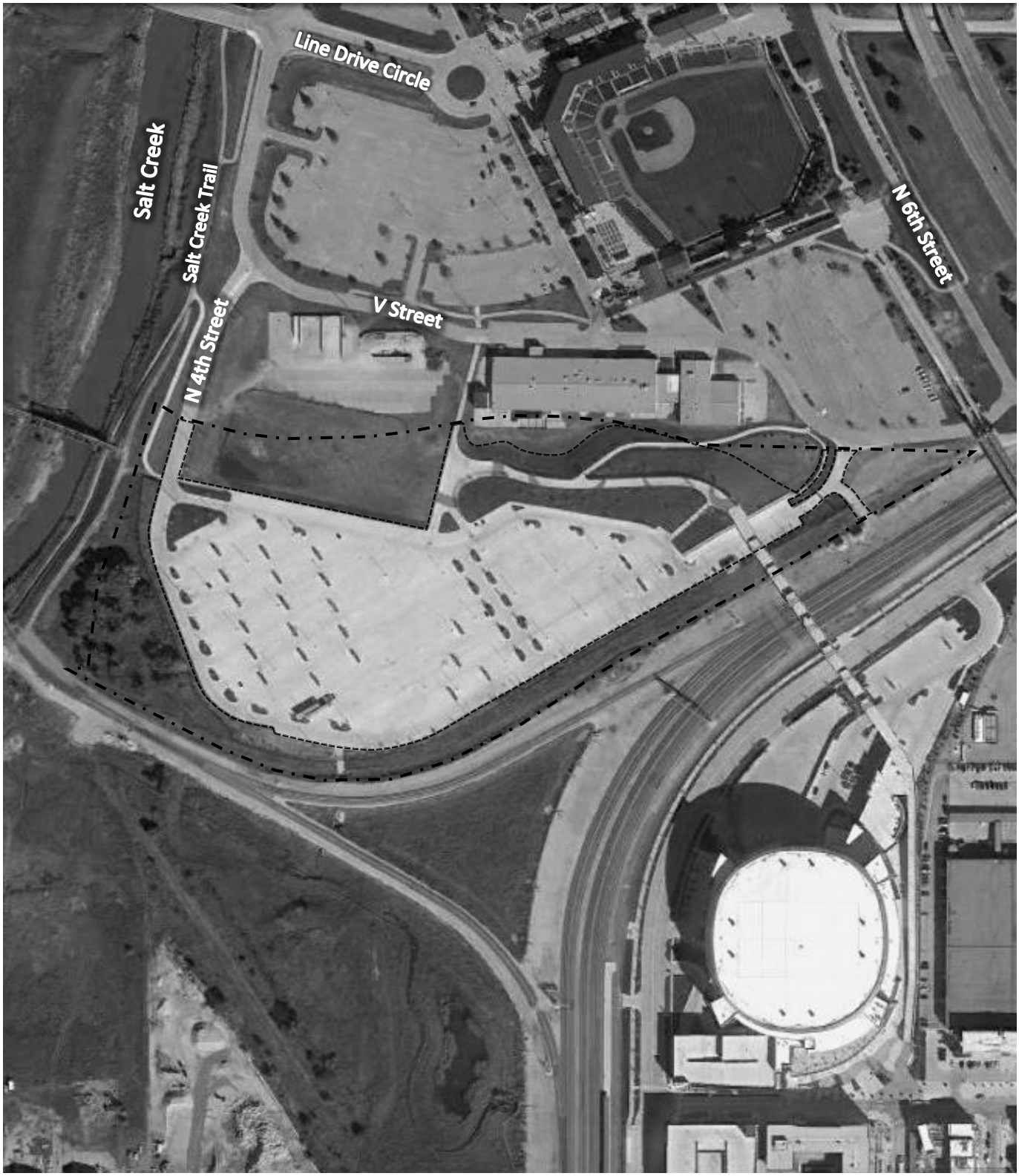
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ of _____, 2016, by _____ who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) _____
Notary Public



LEGEND

Site Boundary

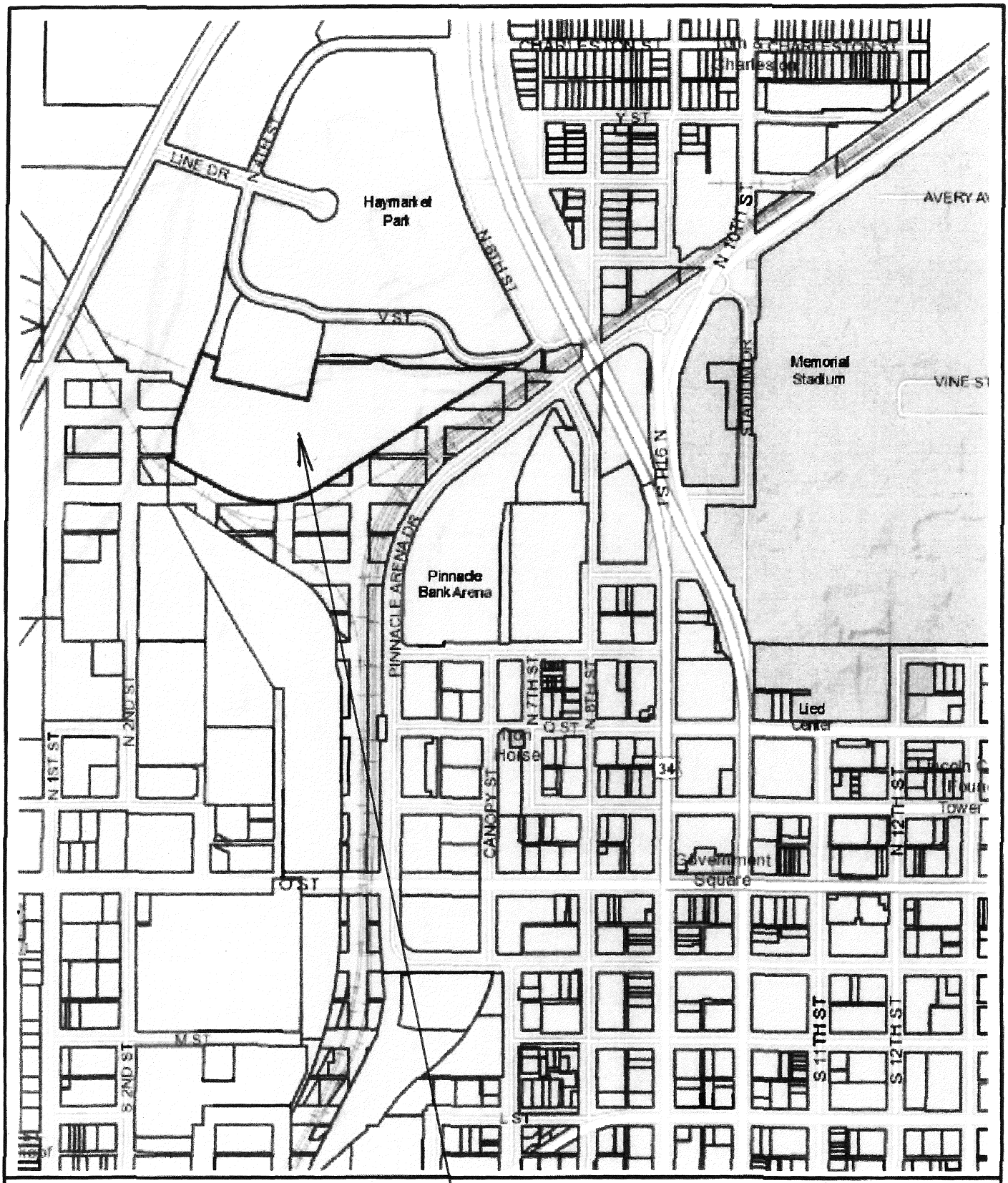
Soil/Concrete Cap Boundary

0 150 300
Feet

benesch
engineers · scientists · planners

FIGURE 4 - NORTH FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE

ATTACHMENT "B"



Lancaster County/City of Lincoln GIS Map

JPA-Festival Space

N
W E
S

Printed: Dec 15, 2015

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

West Haymarket Joint Public Agency
c/o Rick Peo, Chief Assistant City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT
(West Flank-West Haymarket Redevelopment Site North)

This Environmental Covenant is executed this ____ day of _____, ____, by the West Haymarket Joint Public Agency ("JPA"), a political subdivision and corporate body politic of the State of Nebraska, as Grantor and Holder/Grantee, pursuant to the Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613, hereinafter the "Act."

RECITALS:

A. Grantor is the owner of certain real property located within the boundaries of the West Flank of the West Haymarket Redevelopment Site North (WHRSN) and legally described as Outlot B, West Haymarket Addition (the "Property"). The boundaries of the West Flank of the West Haymarket Redevelopment Site North are shown on the West Flank Boundary Map attached hereto marked as Attachment "A". The location of the Property is shown on the Lancaster County/City of Lincoln GIS Map attached hereto marked as Attachment "B". The Property is marked by an arrow and outlined on the map.

B. Holder/Grantee (hereinafter "Holder") is JPA.

C. Prior to the JPA's acquisition of the Property, the Property was used for railroad operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants described in detail in the "West Haymarket Redevelopment Site North Investigation Report and Remedial Action Plan" (Benesch, 2012).

D. The Property is the subject of environmental response projects or actions pursuant to enrollment in the Nebraska Department of Environmental Quality's Voluntary Cleanup Program (VCP) authorized by the Remedial Action Plan Monitoring Act and the Petroleum Products and Hazardous Substances Storage and Handling Act." The Property is subject to a Conservation Easement Agreement between the West Haymarket Joint Public Agency and the Lower Platte South Natural Resources District filed of record with the Lancaster County

Nebraska County Assessor/Register of Deeds, as Instrument No. 2012061161 on November 30, 2012 which is incorporated and made a part hereof by reference as though fully set forth herein verbatim.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environmental Quality (NDEQ).

F. The selected environmental response projects or actions which has heretofore been performed by Grantor, is documented in "West Haymarket North Investigation Report and Remedial Action Plan", (Benesch, 2012). The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400; Lincoln, NE.

NOW, THEREFORE, Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. Representations and Warranties**.** The Grantor warrants to the other signatories to this Covenant that:

   a. The Grantor is the sole fee title owner of the Property;
   b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
   c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy

after the effective date. This Environmental Covenant in no way amends, modifies, limits, or releases the Grantor from its duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

a. Groundwater shall not be used as a potable drinking and/or irrigation water source.
b. Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the terms and conditions of the Conservation Easement and the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, 2015).
c. The Property shall only be used for purposes compatible with open space, recreational or wetlands management practices as set forth in paragraph 1.A of the Conservation Easement Agreement. Non-compatible uses as set forth in paragraph 1.B of the Conservation Easement are prohibited.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. This right of access also grants the Agency, its agents, contractors, and employees access to the Free Product Location for continued implementation of free product recovery and

performance of future remedial action which may be necessary. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Lancaster County Register of Deeds.

> NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF LANCASTER COUNTY, NEBRASKA ON _____, AS INSTRUMENT NO. _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:
>
> 1) Groundwater shall not be used as a potable drinking and/or irrigation water source.
> 2) Any ground intrusive work (including, but not limited to excavation, digging and drilling) must be conducted in accordance with the terms and conditions of the Conservation Easement and the West Haymarket Area Environmental Operations and Maintenance Plan (Benesch, 2015).
> 3) The Property shall only be used for purposes compatible with open space, recreational or wetlands management practices as set forth in paragraph 1.A of the Conservation Easement Agreement. Non-compatible uses as set forth in paragraph 1.B of the Conservation Easement are prohibited.

10. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb.

Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Lancaster County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Lancaster County Register of Deeds.

17. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Agency and each person identified in Neb. Rev. Stat. §76-2607(a).

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922
City of Lincoln, Nebraska
Compliance Administrator
Public Works & Utilities Department
555 South 10th Street
Lincoln, NE 68508

West Haymarket Joint Public Agency
c/o City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508

ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor**,** as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this ____ day of _____, 2016.

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Chris Beutler, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ of _____, 2016, by Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of Representatives, who acknowledged said Environmental Covenant on behalf of Grantor/Holder.

(SEAL) _____
Notary Public

AGENCY:

IN WITNESS WHEREOF, NDEQ, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEQ a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

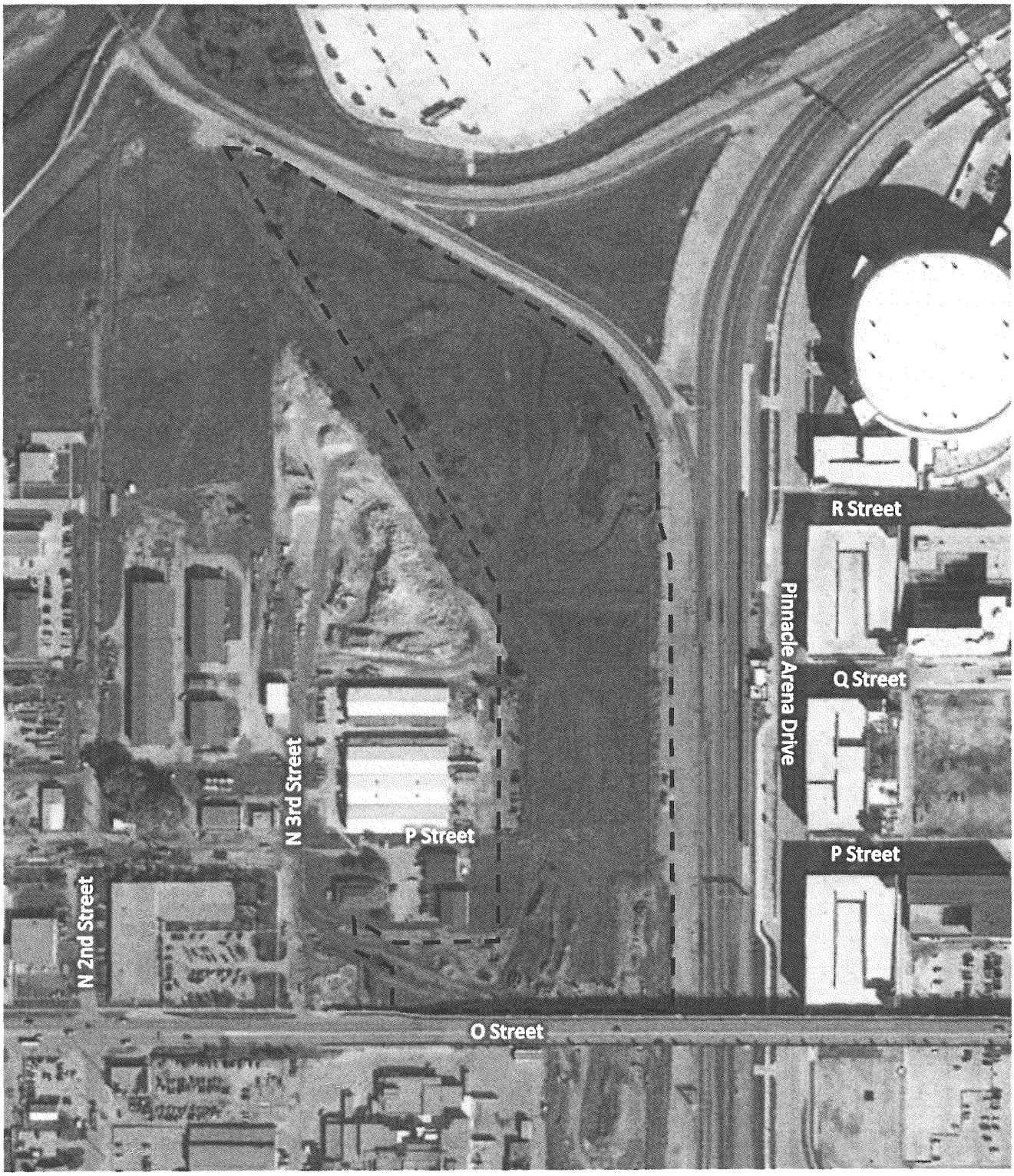
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ of _____, 2016, by _____ who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) _____
Notary Public



LEGEND

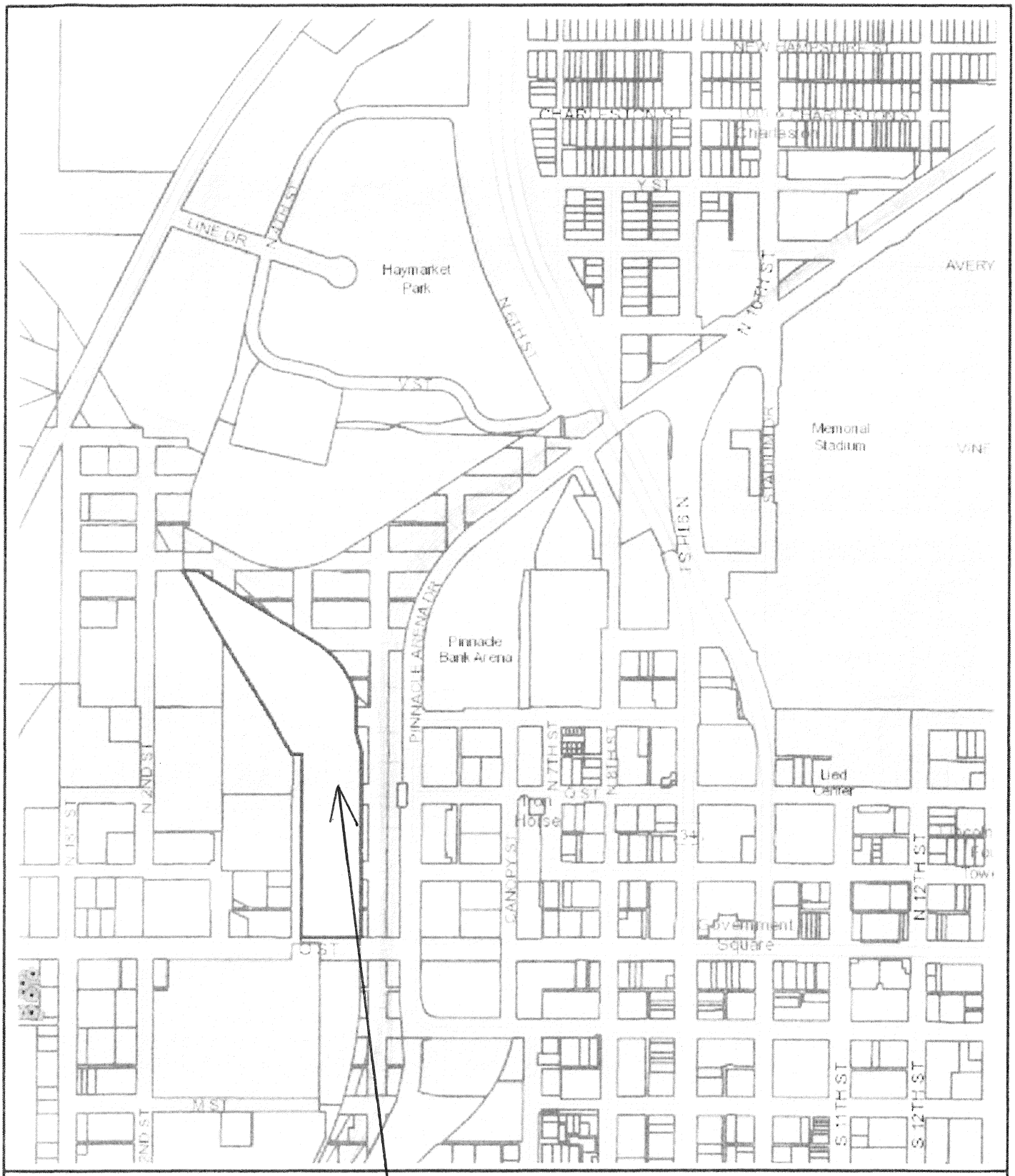
Site Boundary

0 150 300
Feet

benesch
engineers · scientists · planners

FIGURE 5 - WEST FLANK
WEST HAYMARKET REDEVELOPMENT SITE
ENVIRONMENTAL OPERATIONS & MAINTENANCE PLAN
LINCOLN, NE

ATTACHMENT "B"



Lancaster County/City of Lincoln GIS Map

OUTLOT B WEST HAYMARKET ADDITION

N
W E
S

Printed: Dec 23, 2015

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email ags@lincoln.ne.gov and you will be directed to the appropriate department.

WH 16-2 Introduce: 2-26-16

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 13 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to include project management under existing Task 1; implementation of the Environmental Contingency Plan (ECP) for providing support during construction activities impacting remedial systems and established environmental covenants under existing Task 6; and preparing plans and specifications for the cleanup of contamination at the Alter South site under Task 31, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 13 on behalf of the JPA.

The City Clerk is directed to return the original of Amendment No. 13 to Frank Uhlarik, Compliance Administrator, Public Works and Utility Department, to obtain Alfred Benesch & Company's execution of and consent to the Amendment No. 13.

Adopted this _____ day of February, 2016.

Introduced by:

_____

WH 16-2

Approved as to Form & Legality:

Jeffery R. Kirkpatrick

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

Chris Beutler

Tim Clare

Carl Eskridge

AMENDMENT NO. 13

to the AGREEMENT for

ENVIRONMENTAL REMEDIATION CONSULTING SERVICES

between ALFRED BENESCH & COMPANY

and the

WEST HAYMARKET JOINT PUBLIC AGENCY

WEST HAYMARKET ENVIRONMENTAL REMEDIATION PROJECT

Specification No. 10-083

This Contract Amendment is made by and between Alfred Benesch & Company (Consultant), and the West Haymarket Joint Public Agency, hereinafter called JPA, this _____ day of _____ 2016 and approved by Resolution No. _____.

WHEREAS, it is the mutual desire of the parties hereto to amend the Agreement to provide professional services associated with the West Haymarket Environmental Remediation Contract which was entered into with the City of Lincoln on July 15, 2010 by Executive Order No. 083296 to provide environmental remediation consulting services. Such agreement was approved by the JPA under Resolution *WH-JPA Resolution for Assignment and Assumption Agreements* on July 22, 2010.

The general description of work covered by this Amendment shall include project management under existing Task 1; implementation of the Environmental Contingency Plan (ECP) for providing support during construction activities impacting remedial systems and established environmental covenants under existing Task 6; and preparing plans and specifications for the cleanup of contamination at the Alter South site under Task 31.

A detailed breakdown of the scope and fee for this amendment is included in the attached "**Amendment No. 13 to Scope of Services**."

The total estimated fee for completion of the work associated with this Amendment is **$79,682.00,** which increases the total not-to-exceed contract amount from **$2,596,842.17** to **$2,676,524.17**.

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described in the attached "**Amendment No. 13 to Scope of Services**."

This AMENDMENT shall be deemed a part of, and shall be subject to all terms and conditions of the existing Agreement. Except as modified above, the existing Agreement shall remain in full force and effect.

West Haymarket Joint Public Agency

By: _____

Title: _____

Environmental Consultant – Alfred Benesch & Company

By: _____

Title: _____

Attachment:

Amendment no. 13 to Scope of Services

Amendment No. 13 to Scope of Services

Qualified Environmental Consultants

Haymarket Environmental Remediation Services - Specification no. 10-083

On July 15, 2010, Alfred Benesch & Company (Consultant) entered into an agreement with the City of Lincoln under EO 083296 to provide environmental remediation consulting services. The agreement allows for adjustments in the scope of services and corresponding adjustments in compensation for such changes in the scope of services.

This Amendment No. 13 provides for scope and fee for supplemental ongoing project management under Task 1; ongoing implementation of the ECP under Task 6; ongoing free product recovery, monitoring and reporting under Task 8; preparing BNSF access agreement and soil characterization report for the remediation of the Alter South site under task 24; preparing a Operation and Maintenance (O&M) plan for the West Haymarket Redevelopment Site South (WHRSS) under Task 29; and preparing the detailed plans and specifications for the construction works to remediate the contamination at the Alter South site under Task 31.

Task 1 – Project Management

Current Contract Authorized Fee – Time and Material – Cost Not to Exceed $443,492.00

Supplemental Request: Supplemental project management time is required to manage/coordinate/oversight of the remediation activities at the Alter South Parcels; attend monthly meetings with the Nebraska Department of Environmental Quality; prepare monthly invoices and progress reports; and provide technical support to the cleanup processes. This supplemental request covers activities through the end of calendar year 2016.

Additional fees of **$11,350.00** are requested to complete this supplemental work as detailed below bringing the total authorization of Task 1 to $**454,842.00**.

		Task 1	
ITEM/DESCRIPTION	RATE	Project Management	
LABOR		HRS	$$
Project Manager	$140.00	80	$11,200
TOTAL LABOR (HRS/$)		80	$11,200
EXPENSES		UNITS	$$
Mileage	$0.75	200	$150
TOTAL EXPENSES			$150
TOTAL TASK/ACTIVITY			***$11,350***

Task 6 – Environmental Contingency Plan

Current Contract Authorized Fee: Time and Materials – Cost not to Exceed $456,894.73

Supplemental Request: Continued implementation of the ECP requires oversight and response to various construction – related incidents and continued response to incidental requests to inspect, sample and report upon various ECP-related activities throughout the WHRS.

The total estimated cost to complete this supplemental work is **$7,000.00** as detailed below bringing the total authorization for Task 7 to **$463,784.73:**

		Task 6	
ITEM/DESCRIPTION	RATE	Supplemental ECP Support	
LABOR		HRS	$$
Project Manager	$140.00	20	$2,800
Sr. Technician	$87.00	40	$3,480
TOTAL LABOR (HRS/$)		60	$6,280
EXPENSES	RATE	UNITS	$$
Travel/Mileage	$0.75	200	$150
Photoionization Detector	$95.00	6	$570
TOTAL EXPENSES			$720
TOTAL TASK/ACTIVITY			***$7,000***

Task 8 – T-200 Investigation

Current Contract Authorized Fee – Time and Material – Cost Not to Exceed $163,400.58

Supplemental Request: Supplemental monitoring and reporting to monitor five (5) groundwater monitoring wells, to recover free product, to complete groundwater monitoring reports, and to abandon one (1) groundwater monitoring well under the NDEQ's Petroleum Remediation Program. This supplemental request is for continuing the monthly free product recovery for calendar one 2016 with quarterly reporting to NDEQ and to abandon one (1) monitoring well.

Additional fees of **$36,032.00** are requested to complete this supplemental work as detailed below bringing the total authorization of Task 8 to $**199,432.58**.

		Task 8	
ITEM/DESCRIPTION	RATE	T-200 Investigation - Free Product Recovery	
LABOR		HRS	$$
Project Manager	$140.00	32	$4,480
Environmental Scientist	$96.00	34	$3,264
Sr. Technician	$87.00	100	$8,700
Technician	$67.00	96	$6,432
TOTAL LABOR (HRS/$)		262	$22,876
EXPENSES		UNITS	$$
Travel/Mileage	$0.56	100	$56
Water Level Indicator	$50.00	12	$600
Vacuum Truck Contractor (Tan Aire)	$1,000.00	12	$12,000
Sand & Grout	$200.00	1	$200
Misc. Equipment	$300.00	1	$300
TOTAL EXPENSES			$13,156
TOTAL TASK/ACTIVITY			***$36,032***

Task 24 – VCP Investigation and Remedial Action Plan Preparation – Former Alter Trading Corporation Property

Current Contract Authorized Fee – Time and Material – Cost Not to Exceed $264,906.00

Supplemental Request: Supplemental funding is required to cover out of scope tasks required by NDEQ and BNSF including the preparation of a Soil Characterization Report summarizing the analytical results of the BNSF ROW Ballast Area; and the preparation of an Environmental Work Plan and Access Application with BNSF to access BNSF property adjacent to the Alter South site.

Additional fees of **$12,404.00** are requested to complete this supplemental work as detailed below bringing the total authorization of Task 24 to $**277,310.00**.

		Task 24	
ITEM/DESCRIPTION	RATE	Alter South Additional Investigation	
LABOR		HRS	$$
Project Manager	$140.00	40	$5,600
Environmental Scientist	$96.00	60	$5,760
Senior Technician	$87.00	12	$1,044
TOTAL LABOR (HRS/$)		112	$12,404
EXPENSES		UNITS	$$
TOTAL EXPENSES			$0
TOTAL TASK/ACTIVITY			***$12,404***

Task 29 – Area-Wide Operation & Maintenance (O&M) Plan

Current Contract Authorized Fee – Time and Material – Cost Not to Exceed $18,148.00

Supplemental Request: Supplemental fees are required to prepare a separate Operation & Maintenance (O&M) plan to address all WHRSS parcels (former JayLynn and Alter South sites) that have or will have undergone remedial action where restrictions are applied to future use. All institutional and engineering controls including prohibition on groundwater drinking water wells, procedures and controls for utility and construction activities, and maintenance of soil or hard cover caps will be addressed in the O&M plan. The frequency of inspections and the reporting requirement will also be laid out.

Additional fees of **$8,416.00** are requested to complete this supplemental work as detailed below bringing the total authorization of Task 8 to **$26,564.00**.

		Task 29	
ITEM/DESCRIPTION	RATE	O&M Plan for WHRSS	
LABOR		HRS	$$
Project Manager	$140.00	16	$2,240
Senior Environmental Scientist	$132.00	40	$5,280
WP Support/Accounting	$56.00	16	$896
TOTAL LABOR (HRS/$)		72	$8,416
EXPENSES		UNITS	$$
TOTAL EXPENSES			$0
TOTAL TASK/ACTIVITY			***$8,416***

Task 31 – Alter South Soil Removal Plans and Specifications

Current Contract Authorized Fee – Time and Material – Cost Not to Exceed $60,711.00

Supplemental Request: Supplemental fees are required to cover project management for the out of scope tasks required to complete the preparation of detailed plans and specifications for the construction works to remediate the contamination at the Alter South site. The out of scope tasks include the inclusion of additional detailed drawings to the final plans and specifications and additional meeting with affected parties.

Additional fees of **$4,480.00** are requested to complete this supplemental work as detailed below bringing the total authorization of Task 8 to **$65,191.00**.

		Task 31	
ITEM/DESCRIPTION	RATE	Alter South Soil Removal Plan & Specs	
LABOR		HRS	$$
Project Manager	$140.00	32	$4,480
TOTAL LABOR (HRS/$)		32	$4,480
EXPENSES		UNITS	$$
TOTAL EXPENSES			$0
TOTAL TASK/ACTIVITY			***$4,480***