REVISED
AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD WEDNESDAY FEBRUARY 16, 2011 AT 3:30 P.M.

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

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

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

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

3. Approval of the minutes from the JPA meeting held January 26, 2011 (Chair Snyder)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. West Haymarket Progress Report (Jim Martin)
   - Public Comment

5. Approval of Payment Registers (Don Herz)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the payment registers)

6. Review of the January 2010 Expenditure Reports (Don Herz)
   - Public Comment

7. Bill No. WH 11-15 Resolution to approve Agreement with Alfred Benesch and Company to provide Comprehensive Geotechnical Engineering Services for (1) West Haymarket hole in the donut area fill assessment; (2) preliminary subsurface exploration – multistory structure sites located south of Arena and A-17 parking garage sites; and (3) flood storage area excavated soils characterization and assessment of suitability (w/o manipulation) as building fill. Benesch's fee for performing the Comprehensive Geotechnical Engineering Services is $57,000 as more particularly set forth in the fee estimate on page 5 of Exhibit C to the Agreement. (Rick Peo)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

8. Bill No. WH 11-16 Resolution to approve Amendment No. 4 to the Agreement with DLR Group Inc. to add a table listing Additional Specialty Consultants Services as part of Section 4.1 of the Agreement. (Rick Peo)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

9. Bill No. WH 11-17 Amendment No. 3 to the Consultant Agreement between the JPA and Benham (now known as SAIC Energy, Environment & Infrastructure LLC) to extend the term for completion of all obligations of the Agreement to March 24, 2011. (Rick Peo)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

10. Bill No. WH 11-18 Resolution to approve the acquisition of the N Street Company LLC property (i.e. Alter Scrap Metal Site) and JayLynn property (i.e. lumber yard site) needed for the West Haymarket Project by purchase if possible and by condemnation if necessary.
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

11. Executive session for the protection of the public interest to discuss the negotiations for the acquisition of the N Street Company LLC property (i.e. Alter Scrap Metal Site) and JayLynn property (i.e. lumber yard).

12. Set Next Meeting Date: Thursday February 24, 2011 3:30 P.M. (City/County Building Room 303)

13. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
January 26, 2010

Meeting Began At: 3:05 P.M.

Meeting Ended At: 4:50 P.M.

Members Present: Jayne Snyder, Chris Beutler, Tim Clare

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

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

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

Item 3 – Approval of the minutes from the JPA meeting held January 7, 2010

Snyder asked for any corrections or changes to the minutes from January 7, 2010. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – Approval of Payment Registers

Dan Marvin came forward and observed that the largest item on the payment register was the payment to Burlington Northern for $46,305,770. There have been questions about why this amount is over the projection. The reason is that staff coordinated with the railroad and determined that there would be a savings of time and money by hiring Riley Construction through Burlington Northern to do the dirt work for the storm water mitigation. Clare asked if the budget will be adjusted to show that some of the storm water expenditures are being picked up here. Marvin explained that once all of the bills are received, the adjustments can be made to the storm water line item on the budget sheet.

Snyder asked Marvin for additional information regarding the interest payment to Union Bank. Marvin pointed out that the first bond interest check was in the amount of $1,253,323 and was sent out to the bond holders by Union Bank, who is the paying agent.

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

Item 5 – Review of the December 2010 Expenditure Reports

Dan Marvin reported that $76,000 of the operating budget has been expended year to date with an unexpended amount of $425,000. There is a lag on line item 5621, Miscellaneous Contractual Services, which are billings back from Law and other departments that are providing their services as part of the operating budget. Clare thought that line item 5642, Legal Services, included Law Department. Marvin explained that those funds were budgeted for outside legal services and $4,337 has been expended year to date.

Snyder asked for addition information regarding the bond interest payment. Marvin explained that the total budgeted amount for interest expenditures is $3,579,079. Year to date $1,253,324 has been expended which was reflected on the payment register. There will be another interest payment in June which will be larger because of the second bond.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the expenditure reports. Beutler seconded the motion. Motion carried 3-0.

Item 6 – Approval of DLR Summary of Programming Phase

Rick Peo stated that this report is a summary of the program results that the DLR Group has reached at this point regarding how the arena will be constructed and look. The purpose of this report is to get guidance so they can go from the programming stage to the schematic design stage. It is also a condition of the DLR agreement that they submit and have this report approved. A few weeks ago they presented a more detailed document, however the Board is just being asked to approve this summary. This is a document that will grow over time and contains points to give direction. As the design goes forward more details will emerge and there may be modifications which will be brought back to the Board.

Clare encouraged the public to look at the document and offer suggestions to create and enhance the arena to make it a spectacular facility. Snyder added that the report contains a variety of programming facts such as the number of boxes, depth of the seats and number of suites. It is very good for those interested in details on the arena.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the summary. Beutler seconded the motion. Motion carried 3-0.

Item 7 – West Haymarket Progress Report

Jim Martin, Program Manager, reported that SAIC has completed an initial evaluation of the program budget and schedule. Their analysis of the entire program budget is within $4 million or 1.01% of the preliminary estimates. This is a good validation of the conceptual work that was done in the past. SAIC concurs with the schedule, recognizing that there is very little room for schedule slippage. There are obstacles to overcome but they believe the work can be completed in the time allotted.

Working with the Law Department, Martin has established a procedure for the design and construction contract amendments. They will go to SAIC first so they can be reviewed, after which Martin will write a summary recommending adoption or further negotiations. The amendments will then be delivered to the Law Department. The same thing has been done with the Finance Department for all of the invoices. Martin has worked with Don Herz to establish a single place invoices will be received and stamped in. SAIC will review the invoices for conformance with the contract documents and budget. They will then be returned with a recommendation for payment or further discussion.

The arena schematic design has begun and will be completed by the architects in mid to late February. Today in the OAC (Owner Architect Contractor) meeting the first rough drawings of the levels of the arena were reviewed. The Mortenson/Hampton construction team will prepare a budget estimate based on these schematic documents. SAIC will prepare an independent estimate based on those as well. Martin will have more accurate information on the schedule and budget projections at the end of February.

The first four projects of the infrastructure portion of the program are being designed, specifically the Post Office parking lot realignment, M and N Street improvements, 10th and Salt Creek and the initial Haymarket site preparation. Construction is scheduled to commence this spring and bids will be out as soon as possible, possibly the end of March. Other projects under design and scheduled for construction in the fall of 2011 include the Amtrak station and the Charleston Street Bridge and roadway. The site selection is narrowing down for District Energy with a goal to get it close to the arena, their largest customer. The final decision will be made within a couple of weeks.

The Amtrak lease is on the agenda today and there is a possibility for a first closing by the end of the month. Riley, Burlington Northern's contractor, has halted excavation for the winter but they could recommence work in February, weather permitting. Martin has been told that they are on track to complete work this April. The Union Pacific track relocation is in the design phase and is scheduled to commence this the spring.

The mobilization for the diesel plume remediation has begun under the NDEQ Title 200 program. There will be further investigations under the arena site with some test drilling at that location and moving south until they reach O Street.

Most of the design contracts have been negotiated. There will be another amendment to the LHI Team contract as the last of the segments of work are added. There are some additional small services that will be needed from DLR; a few are before the Board today. In the future there will be specialty testing and inspection of soils, concrete, steel and welding. Those are common inspections usually conducted by the owner to review the work the contractor and subcontractors are doing. There will be some third party land purchase agreements and the Board will see a final agreement with District Energy for use of their energy.

The critical path issues include closing the railroad agreement, Post Office negotiations, 10th and Salt Creek negotiations with the Champions Club and Marathon, M & N negotiations with multiple private owners, working through the 106 process with the State Historic Preservation

Office and the 404 permit with the Corps of Engineers. That information represents the summary of where the program is now.

Clare asked to see an abbreviated timeline so the Board can ensure sure the project is moving forward and will meet the September 2013 deadline. He also reminded Martin that the ultimate goal is to get the project done on time and under budget.

Snyder asked for any comments from the public. No one came forward.

Item 8 – Bill No. WH 11-01 Resolution to Approve Amendment No. 1 to the Environmental Remediation Services Contract with Benesch

Miki Esposito presented the Board with a summary of the amendment and maps of the affected area. The first supplemental request re-scopes the original agreement with Benesch to address properties north of O Street, including the Union Pacific property to the west. The mass of land included in this amendment has expanded broadly. The cost to make these changes to the VCP (voluntary cleanup program) work plan is $8,500.

The second supplemental request includes four additional Phase I ESA (environmental site assessment) reports for a total cost of $10,000. When acquiring property that has environmental impairments, due diligence must be done in order to limit state and federal liability. In order to preserve the liability protection the reports must be kept current, within six months of acquisition. In order to acquire the Alter and Jaylynn property later this year, the Phase I's must be updated.

Supplemental request 3 has no additional cost. The contract was examined for efficiencies and it was found that with the Board's approval the scope of the language under task six could be modified to include the ability to respond to unplanned environmental findings. Currently, task six gives the ability to implement and prepare an environmental contingency plan which is a reporting mechanism to inform NDEQ about what was found and how it was managed. Esposito would like to add the ability to respond to the issue within the budgeted item. Although they have a good idea of what they may encounter, they won't know for sure until they get in there. With the aggressive schedule, this would provide a tool to respond quickly without slowing down construction.

Clare pointed out that in the amendment under task six it says costs are not to exceed $64,000. Esposito explained that the $64,000 was the cost of the original scope. Approximately $14,000 has already been expended and the remaining $50,000 would be utilized to respond to environmental urgencies.

Snyder noted that Attachment A states that the total cost of the amendment is $60,250. Esposito indicated that the total also includes supplemental request 4 which is a new task involving investigation of the Alter property. The property in red on the third map shows what is called the Alter Sliver that Burlington Northern will be taking ownership of in March of 2012. The City is obligated by contract to investigate and clean that property. In order to ensure it is completed prior to the acquisition date, the investigation needs to be expedited. Benesch has asked for an

additional $41,000 for the time and materials to do an investigation, quality assurance project plan, health and safety plan and a report. This is the only new task being added in this amendment.

Clare inquired if these additional tasks were contemplated when the initial proposal was put together. Esposito stated that they knew they were going to have to do a voluntary clean up but didn't know the full scope until the environmental consultant came on board. The four additional Phase I's were contemplated, but now need to be updated in order to retain the liability protection. Although there is no additional cost in regards to supplemental request 3, as the project has progressed they have found an additional need to not only record and report but to respond quickly.

Clare asked if there may be additional items that could expand the scope in the future. Esposito answered that there may be some items with regard to the Clean Water Act. As the project moves forward there is a need to facilitate all of the NPDES permits including a site wide plan for NDEQ. Esposito feels that it would be appropriate for the environmental team to handle this task because the team has the expertise and a good line of communication with NDEQ. However, that decision has not yet been made. Clare asked if the addition funds for these tasks have been budgeted. Esposito acknowledged that they are in the environmental remediation budget.

Beutler inquired if there was an approximate timeframe of when the Priority 1 and Priority 3 areas would be clear of environmental problems and any need for further remediation. Esposito observed that there are two critical milestones to be reached this year. The first is the public notice period with NDEQ which allows the public to provide input on whether they agree with the remedial actions. That is a 30-45 day process and at the end would indicate that the area is safe to build on and put it on track for a no further action letter. The second milestone is a report that will be filed with NDEQ saying that we took the necessary actions and put any institutional controls necessary in place prior to getting the no further action letter. That could be completed by the end of this year. The diesel plume is on a different track under the Title 200 petroleum remediation program. That project is mobilizing next week and should be excavated soon. After excavation, monitoring wells will be placed in the area which triggers the year long monitoring period. The no further action letter on the diesel plume could then come in the summer or fall of 2012.

Snyder asked if there would be any federal funds available for this work. Esposito explained that they will be submitting reimbursement applications to the State for approximately $800,000 from a fund that addresses petroleum contamination. The federal funds will be focused on the property south of O Street, the Jaylynn and Alter properties. They have applied for a $200,000 Brownfield Communitywide Assessment Grant to investigate those properties more. The EPA should be responding sometime this spring. Clare asked if the Title 200 reimbursement money was included in the budget. Esposito stated that neither the grant nor State funding was taken into account when the budget was created.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 11-04 Resolution to Approve the Sublease Agreement between Amtrak and the West Haymarket Joint Public Agency for the New Platform [includes future execution of the Station Lease]

Rick Peo informed the Board that when the arena site was selected it was realized that the cooperation of Union Pacific, Burlington Northern Santa Fe and Amtrak would be needed to move this project forward. Discussions with the railroads began about two to three years ago at which time they gave verbal commitments that they would not stand in the way of the project provided it was cost neutral for them. In the interim, agreements have been negotiated and executed with Union Pacific for property needed for the Burlington Northern track relocation and with Burlington Northern for conveyance of land to the City for the arena project. In order to close on the agreement with Burlington Northern, an agreement needed to be in place with Amtrak. This agreement with Amtrak is for the sublease of the platform. The platform is actually owned by Burlington Northern, but Amtrak will lease it and then sublease it to the JPA. The JPA will be responsible for building the platform and the new station. The terms of the station lease have been identified and agreed to but cannot be entered into until we can close on the Burlington Northern property. It will be assigned at a date defined in the sublease agreement when that condition has been met.

Amtrak is currently working on negotiating the primary lease with Burlington Northern. Peo has been told that those negotiations have been 99% completed and there are only a couple of minor issues to be resolved. He is hopeful that Burlington Northern and Amtrak will sign the prime lease this week so that we can close on the property by January 31st, which is the current deadline for that closing.

The standards for the platform are identified in the sublease agreement. There are a lot of details that have to be put in the final design. In regards to the station, Amtrak is looking to have the same square footage they have today. They want the arrangement to be cost neutral and are willing to relocate to a new station provided the rent is the same that they pay today.

Snyder noted that on page 4 there is some wording about trains stopping at the new depot would be funded in whole by the State of Nebraska Department of Transportation or another governmental agency. Peo stated that he was not familiar with Amtrak's financial arrangements but believes it is basically saying that as long as the same types of subsidized activities continue they will provide rail service through Nebraska. Snyder then asked if the JPA would own the new platform. Peo answered that the JPA would be subleasing the land and build the platform on it. Once the platform is built and accepted, the sublease will terminate. That was done so that the JPA would not have continuing liability for snow removal and other maintenance. Amtrak does expect the JPA to reimburse them for those costs but it seemed a small price to pay to be rid of the liability issue.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-09 Amendment No. 2 to the Consultant Agreement between the JPA and Benham (now known as SAIC Energy, Environment & Infrastructure LLC) to extend the term for completion of all obligations of the Agreement to February 28, 2011

Peo indicated that this is a very simple amendment. SAIC has been selected as the Program Manager and they are currently trying to negotiate a final agreement. The previous amendment extended the agreement to the end of January but negotiations have not yet been completed. This amendment requests an extension to the end of February. Peo is hopeful that they will have a final agreement before the Board for approval at the February 25th meeting.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 11 – Bill No. WH 11-10 Resolution to Approve Amendment No. 3 for the West Haymarket Infrastructure Design Contract

Randy Hoskins, Assistant City Engineer, explained that Amendment No. 3 to the agreement with Olsson Associates includes four projects: (1) the Haymarket parking lot and festival space and pedestrian grade separation structure, (2) the core area roadway and utilities, (3) the intelligent transportation systems and (4) the south parking garage. The total fee for all four projects is around $3.5 million and brings the cost of the overall agreement to just over $7.5 million.

Clare indicated that he did not understand why the Board approved the previous agreement with a total not to exceed amount of $3.9 million if this amendment increases the not to exceed amount to $7.5 million. He feels the wording is misleading if it was planned that additional items would be added later. Hoskins explained that initially there were 17 design projects identified to be completed under this contract. In order to expedite some of the projects they initially came to the Board with six projects for approval. Other projects have been added since that time and there are four more projects that will come before the Board for approval in the future. The way these contracts have been negotiated, the consultant is being paid on an hourly basis. If they use all of the hours that were agreed upon, that would get them to the not to exceed amount. Clare asked that the language made clearer on the next amendment.

Beutler asked if there are any services included in this contract with respect to the ice rink. Hoskins informed the Board that the design team will be doing some work to help site the ice rink to ensure that there are no conflicts with the proposed pedestrian bridge. Beutler inquired how much of the cost is related to work on the ice rink. John Olsson came forward and stated that approximately $20,000 of their fee is related to master planning including the entire festival space. Part of the festival space includes planning for a box or some type of ice facility.

Clare inquired about the overall design budget. Dan Marvin explained that when preparing the budget, they took approximately 20% from each project for engineering and design costs which totaled approximately $40 million. They then deducted $7 million to come up with $33 million for soft dollar engineering and design costs. With the amendment before the Board today, there is a balance remaining in excess of $9 million. The goal is for the $9 million to cover the remaining expected soft costs.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 12 – Bill No. WH 11-11 Resolution to Approve the Consultant Agreement with Thought District for Website and Facebook Management Services

Dan Marvin stated that this agreement provides for the active maintenance and management of the West Haymarket website. The website is online now and Thought District has been working somewhat at risk by maintaining the website. This agreement will provide ongoing maintenance on a month by month basis for as long as the Board would like to keep the website online. The cost per month is about $2,000. This would be an operating cost and would not go against the soft dollar balance or any other budgeted area.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 13 – Bill No. WH 11-12 Resolution to approve Agreement with M.A. Mortenson Company to perform Construction Manager at Risk Preconstruction Services and certain Construction-Related Services which are required to commence prior to commencement of actual construction

John Wood from Mortenson thanked the Board for the opportunity to be here today. The preconstruction agreement contract for construction management services for the arena is before the Board and he offered to answer any questions.

In order to begin discussions, Beutler made a motion to adopt Resolution WH 11-12. Clare seconded the motion. Beutler made a Motion to Amend No. 1 to modify provisions deleting the pedestrian bridge from the project description and deleting the VDC exhibit and inserting a revised insurance exhibit. Clare seconded the motion. Beutler then made a Motion to Amend No. 2 to add the subcontractor procurement document as drawn up by Regent Clare. Clare seconded the motion.

Snyder asked for any comments from the public. Coby Mach from the Lincoln Independent Business Association came forward and stated that the LIBA Board of Directors called a special meeting today due to concerns over the subcontractor bidding process, as this contract calls for a private opening of bids. LIBA asks that the Board reconsider the private opening of bids and requests a one week delay for LIBA and the community to have more time to assess the private opening of bids. They would also like an explanation as to why the Board is agreeing to pay Davis-Bacon wages in this contract. If the JPA has accepted federal funding that requires Davis-Bacon wages LIBA would like to know if it was spelled out at the time that the Board accepted those federal funds. LIBA is not opposed to the awarding of this contract but would like more clarification and perhaps some changes. Mach also pointed out that the City Council gets very upset if they are asked to approve something with only one week notice. This Board is on a very fast track and all of these things, including this contract were made public with a week or less of

notice. He encouraged the Board to consider going to a first and second reading to allow for more community input and transparency.

Clare addressed the subcontractor procurement amendment. He feels it is important for the public to know who is attempting to get these jobs. To that end, he has prepared an amendment that would require Mortenson to disclose to the public who the respondents are to the requests for proposals. This amendment also calls for the grading criteria that will be utilized in the evaluation process to be disclosed to the public. It also requires that a member of the JPA or its designated representative be able to observe the discussions and interviews that will be conducted with the various respondents. Finally, when the responses are evaluated and a respondent is awarded a bid that information will be made available to the public. Clare asked to hear Mortenson's take on this and to discuss what is happening around the country with respect to these types of contracts. He also asked how this process compares to how they were selected.

Wood expressed his appreciation for being given the privilege of being involved with this project. In their proposal and presentation they committed to a number of things that are understood to be key factors to the success of this project, the most obvious of which is completing on time and on budget. Wood recognizes the other critical issues that are important to the citizens of Lincoln which are maximum opportunities for local workers, a safe work environment and delivery of a building of enduring quality. Mortenson is committed and devoted to those objectives. What was proposed in regards to the procurement process is a tried and tested method used on major complex building projects in both the public and private sector around the United States. What is described in this exhibit is the exact process they have used in similar arena projects in the past and Mortenson's has a very strong track record of successful completion of these projects. Wood feels that the changes being proposed are very responsive to the concerns that have been expressed in the community and are acceptable to Mortenson. They want to assure the business community and other interested parties that to the greatest extent possible, this will be an open and transparent process. They will provide the information both up front and at the end of the process that is set forth in these modifications.

Clare noted that some of the concerns are that if this information isn't made public then Mortenson can hire its friends to come and work these jobs. Therefore, it won't be local workers, it will be higher priced and Lincoln will get stuck with the tab. Wood responded that if people look at Mortenson's track record in other places they have built, other cities would not say that has been their experience. There is no doubt that there will be firms outside of Lincoln and outside of Nebraska that will be interested in competing for this project. Some of them will be firms Mortenson has worked with before because they have worked all over the country and have a faithful following of contractors that like to work on Mortenson jobs. As Wood has been approached by firms that have expressed an interest in this project, his first response has been that this is going to be a project that needs to have maximum opportunity for Lincoln businesses. The firms have been advised that if they are interested in the project they should get to Lincoln and figure out how to partner or team with Lincoln businesses. The good news is that in this current economy this project is going to be an attractive project both regionally and nationally in the construction industry. It will attract a lot of competition which will pay off by ensuring that they meet the budget on this project. What Mortenson will need to do is balance the

commitment to using local businesses with the inevitable interest that there is going to be from outside firms.

Clare asked Wood to explain the interplay between the procurement process and GMP. Wood pointed out that their obligation is to provide a guaranteed maximum price for this project with a 60% complete design. There is a risk that they undertake to understand the full scope and detail of the project and to give the Board a price that is acceptable and is a guarantee that the number won't be exceeded. If it is exceeded that is at Mortenson's risk, it comes out of their pocket. It is customary in the industry that Mortenson would have the benefit of having guaranteed prices from at least the key subcontractors on the project to underpin their guarantee to the JPA. The procurement process provides them the ability to seek competitive proposals from key subcontractors at approximately the same point of completion of design, 60%. That would be incorporated in the overall GMP. That is in the JPA's best interest as it ensures that the guaranteed price is in large part based on the result of a rigorous competitive process. It's not just an estimate or an opinion of the cost of the project. If that were the case, it would likely cause the GMP to be higher rather than lower with the security that it is based upon subcontractor pricing. Clare emphasized that the GMP will not exceed $140 million. Wood understood that expectation.

Clare inquired if there was some discussion in Mortenson's initial proposal regarding the subcontractor procurement. Wood acknowledged that there was discussion in their presentation about the utilization of the City's ebid system and they remain willing to work with that.

Beutler pointed out that some citizens are under the impression that the City has only one set of processes with respect to contracting and bidding, and up until a short time ago that was true. The Legislature gave to the cities of Nebraska two additional mechanisms for working through these processes, those being the contractor at risk process and the design build process. The city now has three pathways that are available and it should be made clear to the public that the Board is not going around any particular process. They have picked a process that works best in this situation which is the contractor at risk process. Beutler thinks it is particularly appropriate in this situation which is so large and requires an incredible amount of coordination and organization. The JPA is relying on Mortenson to get this project done within the budget and on time especially because there is little margin for error. He is counting on Mortenson to organize the subcontractors to get the prices down so they can present a price that is well within the budget.

Rod Confer addressed a question that was raised regarding Davis-Bacon wages. The bonds that financed this project are under the American Recovery and Reinvestment Act and as part of accepting the favorable interest rates and interest subsidies is the requirement that Davis-Bacon wages be paid. The Board approved an outside legal expense of $4,000 which was for an opinion as to whether Davis-Bacon compliance was required. The determination from the outside legal firm was that Davis-Bacon wages would be required, so that is the reason those have been included.

With no further discussion, the Motion to Amend No. 2 was approved 3-0, Motion to Amend No. 1 was approved 3-0 and the Motion to Adopt Resolution WH 11-12 was approved 3-0.

Item 14 – Bill No. WH 11-13 Resolution to Approve AIA Document G802-2007 Amendment No. 3 to the Professional Services Agreement with DLR Group, Inc. dated August 14, 2008 to provide additional services with respect to design of the Arena and other Arena Improvements

Jim Martin informed the Board that there are three items in this amendment to the agreement with DLR. The first is for the War Room which is a 2,200 square foot space that the entire West Haymarket team will utilize. It will be used for everything from material samples to drawings and a meeting space to get the project done. This is located in the 1111 building at a rate of $4.00 per square foot, which is half of the going rate. Instead of trying to split this three different ways and having to bring three different contract amendments to the Board, DLR offered to bring this forward. The second item is for assistance with the 106 process with the State Historical Preservation Office and the 404 process with the Corps of Engineers. Dan Worth, who is already on the DLR team, has a great deal of experience with this. He will help the team get through the process for a cost not to exceed of $85,780. The third item is for the architect to design the CSL marketing space which will be a mockup of one of the suites so that people can walk around and get the feel of what is like. This has a not to exceed cost of $10,300.

Snyder asked if this will be a space for the public to come in and observe during certain hours. Martin indicated that there will be opportunities for the public to come in during events or at the request of the JPA or city to host any open houses. Clare inquired if these expenses were anticipated when they began the project. Martin answered that they were not identified but were anticipated. They did not know where the War Room would be or at what cost. Similarly when the Marketing consultant came on board they knew they would build a suite mockup but did not know the location or cost. As far as needing help on the 106 and 404 processes, those are conversations between a federal agency and the State Historic Preservation Office. It is very process oriented and it was felt that with the short time frame it would be best to get expert advice. Dan Marvin added that the decision to go with a not to exceed amount was because it is going to be meeting dependent. He doesn't know how many meetings there will be but anticipates there will be fewer than were budgeted for. They will work very hard to come in under that not to exceed number.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 15 – Bill No. WH 11-14 Resolution to Approve the Contract for Appraisal Services with Great Plains Appraisal Inc. and two Appraisal Review Service Contracts with Fred W. Briggs Real Estate and Thomas E. Stevens & Associates, for appraisals in connection with the acquisition and/or exchange of property and easements for the Haymarket Infrastructure Design Project

Rick Peo explained that in order to acquire the properties needed for some of the street work and other activities, an appraisal of the properties is needed to determine what to pay the property owners. Great Plains Appraisal has been hired to do the appraisal for the Haymarket infrastructure design project which includes but is not limited to the Post Office parking lot reconstruction, 10th and Salt Creek roadway improvements and M and N street improvements

from 7th to 10th Streets. Great Plains will do the main appraisal and Fred Briggs will review the appraisal and make any comments or adjustments that may have been omitted. The Post Office has a requirement that all appraisers be certified, however, Fred Briggs is a general appraiser so for that project a review appraiser was hired that has the required designation. These are lump sum contracts with Great Plains for $37,250, Fred Briggs for $13,500 and Thomas Stevens for $1,750.

Clare made a recommendation that the appraisers consider hiring student interns for experience.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 16 – Set Next Meeting Date

Snyder indicated that the length of the meeting today shows that there is a lot of material to cover in a short period of time. A comment was made that documents don't go out until a week before the meeting. The Board receives the documents at the same time the public gets them. Those who read and review every document know that this project is on a fast track, so the Board has talked about increasing the meetings to two times a month while there is so much activity. Some of this will calm down and at that time the Board can go back to meeting once a month. The schedule has not been identified yet but the public will be informed of when the next meeting will be.

Item 17 – Motion to Adjourn

Beutler made a motion to adjourn. Clare seconded the motion. Meeting adjourned at 4:50.

Prepared by: Melissa Ramos-Lammli, Engineering Services

26 January 2011

To: West Haymarket Joint Public Agency

From: SAIC Energy, Environment & Infrastructure (SEE&I)

RE: West Haymarket Redevelopment Progress Report January, 2011

EXECUTIVE SUMMARY

SAIC has completed an initial evaluation of the budget and schedule established for the West Haymarket Redevelopment. This evaluation was based upon a review of preliminary design information consultations with design teams to ascertain existing status of component projects. Conclusions of our evaluation can be summarized as follows:

- Budget – SAIC's estimate of work included in the original TEUP program is within approximately $4 million of the budgeted value. This represents a variance of approximately 1.01%.

- Schedule – SAIC's evaluation of project schedules has resulted in our concurrence with the existing program schedule. While there is VERY little tolerance for slippage due to design changes, delayed decisions, or unseasonable weather conditions, all necessary work can be completed within the time allotted.

- A procedure has been established for future contracts and contract amendments that need to be presented to the JPA. Those will first be submitted to SAIC for review, discussion, negotiation and summarization before being sent to the Law Department. During this review, SAIC will consult with the City's Public Works and other departments as necessary. When we deliver the documents to Law, we will include a letter summarizing the contents and our recommendation for approval or denial or delay for further discussions.

- A similar procedure has been developed for invoices relating to the Program. All invoices will be sent to a single person in the Finance Department at a single address to be logged in and date-stamped, then put into SAIC's box. We will be notified that we've "got mail" and pick them up, review them in-depth for conformance to the contract documents and budgets, then send them back to Finance along with our recommendations for payment, partial payment or delay pending further discussions.

Project Updates:

- Arena: Schematic Design has begun. This is the part of the design process where the design of the building, the budget and the schedule come together. In today's OAC

        - UP – Union Pacific track relocation is in design, and scheduled to commence in spring 2011.

- Environmental Remediation

    - Mobilization has begun for the diesel plume remediation effort (under NDEQ's T.200 Program)
    - Further Investigation focused on the Arena Footprint (under the NDEQ's Voluntary Cleanup Program) begins next week. This expedited effort to assess soils and groundwater are to make sure we meet the 2011 construction schedule (hole in the donut)

- Contracts

    - Design contracts have been negotiated. We expect one more amendment to the Lincoln Haymarket Infrastructure Team (LHIT) contract in addition to the one on this agenda. There is a request for additional services pending to the DLR contract. SAIC is currently reviewing this request and will provide recommendations to the JPA on the disposition.

    - Expected additional contracts/agreements include:

        - Specialty testing and inspection
        - Third-party land purchase agreements
        - Final agreement with DEC for construction/operation of West Haymarket central plant.

- Critical Path Issues:

    - Finalize BNSF agreement
    - Acquire necessary property to facilitate construction

        - USPS Negotiations
        - 10th and Salt Creek (UNL Champions Club, Marathon)
        - M & N Streets (multiple private property owners)
        - 106/404 Process

    - Finalize site selection for District Energy central plant
    - There is a meeting today to narrow the optional location list

SAIC Energy, Environment & Infrastructure, LLC
140 North 8th Street, Suite 220 | The Apothecary | Lincoln, NE 68508 | tel: 402.474.0155 | saic.com/EEandI

The preceding information represents a summary of our understanding of the status of major work items within the program. We stand ready to provide additional information on any of the topics listed above. As always, I remain

Respectfully yours:

James W. Martin
Senior Program Manager
SAIC Energy, Environment & Infrastructure, LLC

Cc: File

SAIC Energy, Environment & Infrastructure, LLC
140 North 8th Street, Suite 220 | The Apothecary | Lincoln, NE 68508 | tel: 402.474.0155 | saic.com/EEandI

Bill No. WH 11-01 Resolution to Approve Amendment No. 1 to the Environmental Services Contract with Benesch

Summary of the Resolution:

Supplemental Request #1

$8500 in costs to prepare amended VCP Application and Investigation Work Plan due to modification in scope of environmental remediation project.

Supplemental Request #2

$10,000 for 4 additional Phase I ESA Reports.

Supplemental Request #3

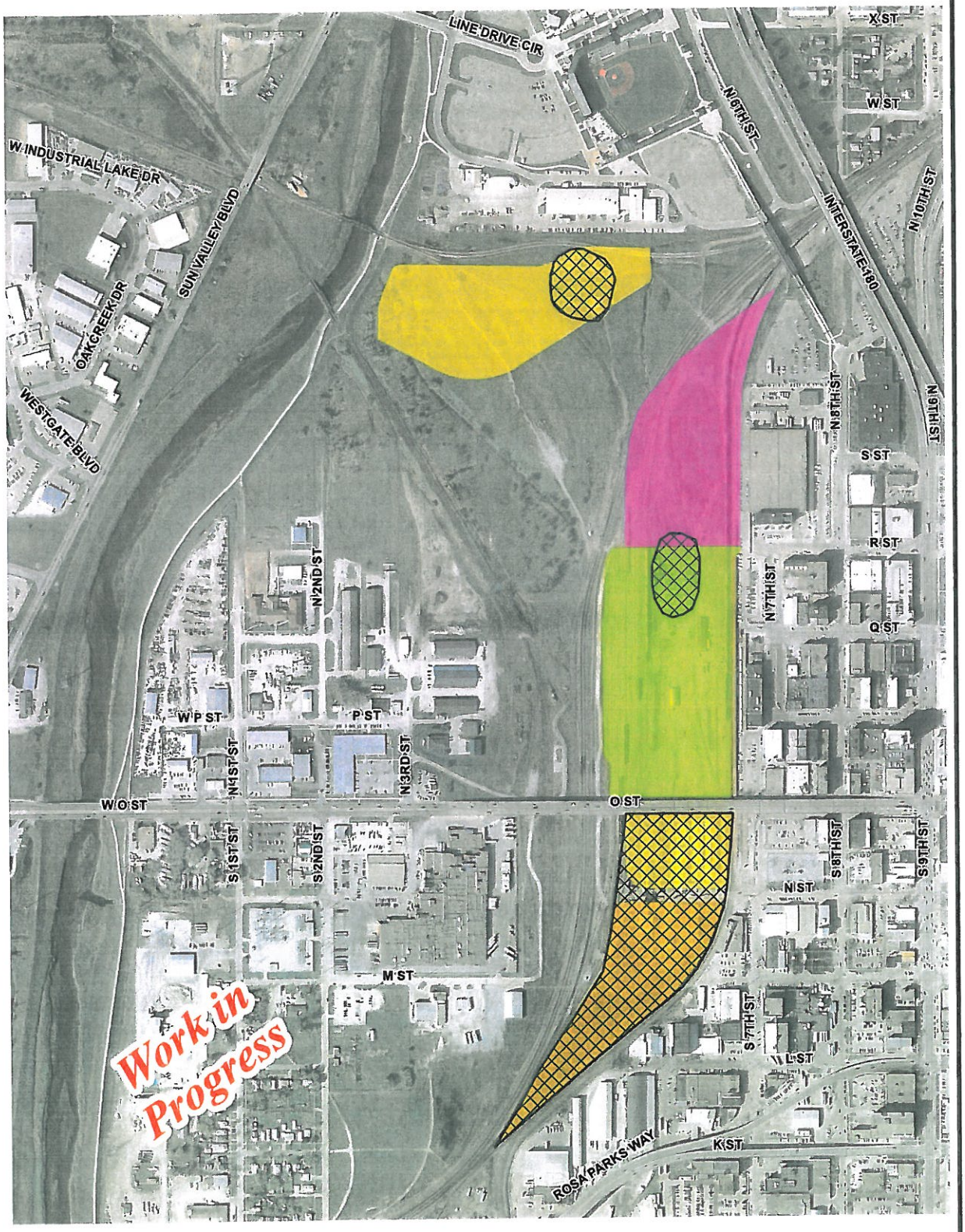
No additional cost. Modification to the scope to include the ability to respond to unplanned environmental findings (urgencies/emergencies) under the Environmental Contingency Plan.

Supplemental Request #4

Addition of new Task 18 to expedite investigation of land to be acquired by BNSF in March 2012 located on the Alter Scrapyard.

****These costs are accounted for and included in the environmental remediation budget.**

mesposito, 1-26-11 \\Cs_san_server\san1\FILES\SIFMME\WEST HAYMARKET\ENVIRONMENTAL\CONTRACTS & PERMITS\Benesch-OA\Amendments\1-26-11 JPA Summary Amendment No. 1.doc



West Haymarket Nebraska Voluntary Cleanup Program

Areas of Concern

Priority Areas

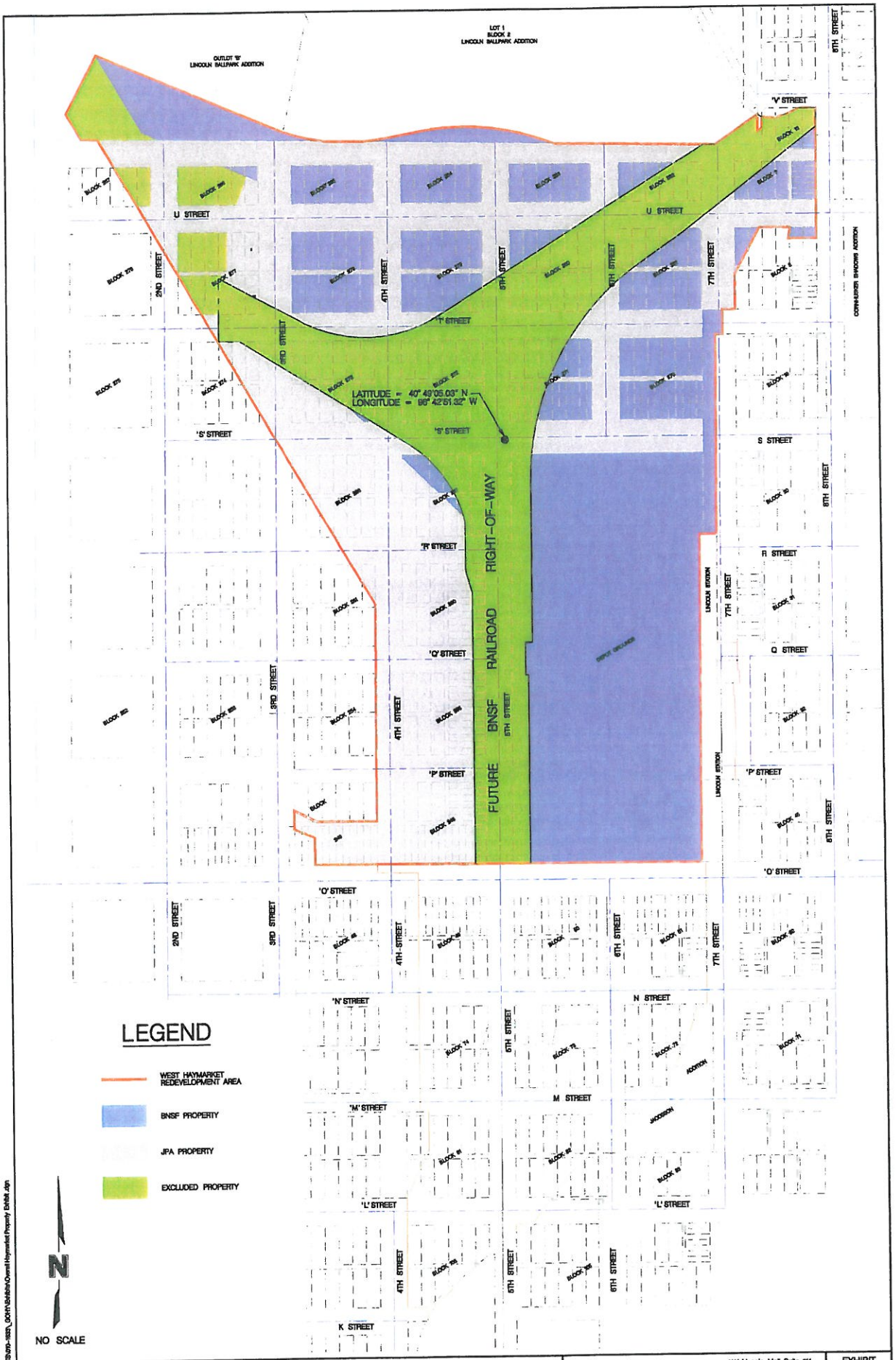
- Priority 1 (BNSF)
- Priority 2 (Alter)
- Priority 3 (BNSF)
- Priority 4 (BNSF, Alter & JayLynn)
- Areas of Concern

N

0 490 980 Feet

M:\plan\subareas\west_haymarket\mxd\Environmental Remediation Priorities_Building Footprints.mxd
March 9, 2010 (mam)

Does not include those areas that will remain undeveloped.



PROJECT NO: 010-1633	WEST HAYMARKET REDEVELOPMENT AREA (NORTH OF 'O' STREET)	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY:		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	1
DATE: 10/12/2010			

DATE: 10/12/2010
DGN: P:\PROJECTS\010-1633_DGN\Exhibits\Overall Haymarket Property Exhibit.dgn

PROJECT NO: 008-0645	THIRD PARTY/RETAINED CITY PROPERTY AND THIRD PARTY/ REPLACEMENT BNSF PROPERTY	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	F-1
DATE: 8/8/2010			

DATE: 8/8/2010
DGN: P:\PROJECTS\008-0645_TRIP\Sheet\Exhibits\Railroad Agreement Exhibits\BNSF Exhibits\DISPLAYS\BNSF_Exhibit F-1 Display.dgn

West Haymarket JPA Check Register
01/01/11 through 01/31/11

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
330309	University of Nebraska Lincoln	Archaeol test	PV	1245016	1,442.87	01/05/11	00436478
330309	University of Nebraska Lincoln	Archaeol test	PV	1245015	3,363.12	01/05/11	00436478
330309	University of Nebraska Lincoln	Geo testing	PV	1245013	3,291.09	01/05/11	00436478
37233	Olsson Associates	008-0645, 10/3-11/6/10 work	PV	1245010	51,832.41	01/06/11	00041720
38391	Lincoln Journal Star	Bid 10-230	PV	1245017	41.99	01/06/11	00041721
308161	Midwest Right of Way Services Inc	Relocation, Oc	PV	1245018	238.00	01/06/11	00041784
98642	Information Services	DP Service 11/10	PV	1246625	64.18	01/12/11	00436960
102154	Public Building Commission	Office Space 0	PV	1246601	157.50	01/12/11	00436961
591846	Marvin Investment Management Co	Progrm Admin 11/16/10-12/15/10	PV	1246618	6,800.00	01/12/11	00436962
594773	Alfred Benesch & Company	7/12-9/19/10	PV	1245788	68,141.38	01/12/11	00436963
594773	Alfred Benesch & Company	9/20-10/17/10	PV	1245802	14,012.91	01/12/11	00436963
594773	Alfred Benesch & Company	10/18-11/14/10	PV	1245805	18,209.89	01/12/11	00436963
594773	Alfred Benesch & Company	7/12-9/19/10	PV	1245788	4,950.00	01/12/11	00436963
594773	Alfred Benesch & Company	9/20-10/17/10	PV	1245802	6,422.25	01/12/11	00436963
594773	Alfred Benesch & Company	10/18-11/14/10	PV	1245805	5,320.43	01/12/11	00436963
594773	Alfred Benesch & Company	10/18-11/14/10	PV	1245807	3,473.75	01/12/11	00436963
594773	Alfred Benesch & Company	9/20-10/17/10	PV	1245804	3,715.00	01/12/11	00436963
594773	Alfred Benesch & Company	8/16-9/19/10	PV	1245801	8,752.01	01/12/11	00436963
88022	T J Osborn Construction	Proj 870501	PV	1246956	224,682.49	01/13/11	00041905
406174	BKD LLP	Billing #1:2010 WHJPA Audit	PV	1246613	5,000.00	01/13/11	00041960
593485	Thought District Inc	10-JPA-0001: Website	PV	1246604	5,750.00	01/13/11	00041988
97885	Copy Services	51 copies	PV	1247991	2.18	01/19/11	00437465
127319	Urban Development	Reimb ROW, prop acq,8/19-11/24	PV	1247992	38.90	01/19/11	00437466
127319	Urban Development	Reimb ROW, prop acq,8/19-11/24	PV	1247992	110.01	01/19/11	00437466
127319	Urban Development	Reimb ROW, prop acq,8/19-11/24	PV	1247992	95.04	01/19/11	00437466
127319	Urban Development	Reimb ROW, prop acq,8/19-11/24	PV	1247992	206.68	01/19/11	00437466
127319	Urban Development	Reimb ROW, prop acq,8/19-11/24	PV	1247992	1,536.51	01/19/11	00437466
127319	Urban Development	Reimb ROW, prop acq,8/19-11/24	PV	1247992	1,011.71	01/19/11	00437466
594773	Alfred Benesch & Company	Serv 11/8-12/5	PV	1247990	3,861.56	01/19/11	00437467
77921	County/City Property Management	Postage 12/10	PV	1249941	337.19	01/26/11	00437931
90958	Moody's Investors Service	Series 2010C	PV	1249950	8,409.19	01/26/11	00437932
90958	Moody's Investors Service	Series 2010B	PV	1249950	17,840.81	01/26/11	00437932
96760	Petty Cash - Law	Filing fees, 408 Q St.(L18B260	PV	1249413	16.00	01/26/11	00437933
97885	Copy Services	Photocopies	PV	1249943	44.43	01/26/11	00437934
97885	Copy Services	Photocopies	PV	1249942	.58	01/26/11	00437934
100722	US Bank	BNSF Escrow Admin 12/10-11/11	PV	1249948	1,500.00	01/26/11	00437935
108417	Citizen Information Center	JPA Arena Mtg video 12-26-10	PV	1249944	67.50	01/26/11	00437936
139758	Union Pacific Railroad	Track work #4	PV	1250248	23,838.29	01/26/11	00437937
139758	Union Pacific Railroad	Track work #5	PV	1250249	12,933.87	01/26/11	00437937
148582	Aon Risk Services Central Inc	12/31/10-13	PV	1249414	228,866.00	01/27/11	00042221
148582	Aon Risk Services Central Inc	12/31/10-13	PV	1249416	130,037.50	01/27/11	00042221
148582	Aon Risk Services Central Inc	12/31/10-13	PV	1249415	81,800.00	01/27/11	00042221
324304	BNSF Railway Company	JPA to BNSF	PV	1252128	1,008,920.00	01/31/11	00021550
Grand total					1,957,135.22		

2/3/2011

Public Works WHJPA Engineering Costs
1/1/11 through 1/31/11

Description	Explanation	Type	Doc Num	Fund	Business Unit	Object	Sub	Amount	G/L Date
Construction Engineering	WH Sanitary Sewer Relocation	EU	308080	00951	870501	6153	320	1,447.85	1/13/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	308080	00951	870302	6153	130	1,204.08	1/13/2011
Design Engineering	WH Core Area Roadways & Util	EU	308080	00951	870303	6153	130	727.45	1/13/2011
Design Engineering	WH Environmental Contngy Pln	EU	308080	00951	870603	6153	130	104.95	1/13/2011
Design Engineering	WH Initial Haymrket Site Prep	EU	308080	00951	870703	6153	130	103.30	1/13/2011
Design Engineering	WH NDEQ T-200	EU	308080	00951	870601	6153	130	314.85	1/13/2011
Design Engineering	WH Other/Miscellaneous	EU	308080	00951	870604	6153	130	104.95	1/13/2011
Design Engineering	WH Sanitary Sewer Relocation	EU	308080	00951	870501	6153	130	419.80	1/13/2011
Design Engineering	WH USPS Parking Lot Reconst	EU	308080	00951	870304	6153	130	464.87	1/13/2011
Design Engineering	WH West Haymarket Park	EU	308080	00951	870000	6153	130	2,198.93	1/13/2011
Laboratory & Testing	WH Sanitary Sewer Relocation	EU	308080	00951	870501	6153	350	336.26	1/13/2011
Observer/Inspections	WH Sanitary Sewer Relocation	EU	308080	00951	870501	6153	325	3,450.19	1/13/2011
Construction Engineering	WH Sanitary Sewer Relocation	EU	308912	00951	870501	6153	320	1,882.68	1/27/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	308912	00951	870302	6153	130	361.57	1/27/2011
Design Engineering	WH Charleston Bridge/Roadway	EU	308912	00951	870301	6153	130	103.30	1/27/2011
Design Engineering	WH Core Area Roadways & Util	EU	308912	00951	870303	6153	130	206.63	1/27/2011
Design Engineering	WH HymktPkLot,FestSp&PedGrdStr	EU	308912	00951	870201	6153	130	131.20	1/27/2011
Design Engineering	WH Initial Haymrket Site Prep	EU	308912	00951	870703	6153	130	94.66	1/27/2011
Design Engineering	WH NDEQ T-200	EU	308912	00951	870601	6153	130	419.80	1/27/2011
Design Engineering	WH Other/Miscellaneous	EU	308912	00951	870604	6153	130	524.78	1/27/2011
Design Engineering	WH Sanitary Sewer Relocation	EU	308912	00951	870501	6153	130	419.80	1/27/2011
Design Engineering	WH South Parking Garage	EU	308912	00951	870202	6153	130	131.20	1/27/2011
Design Engineering	WH USPS Parking Lot Reconst	EU	308912	00951	870304	6153	130	587.43	1/27/2011
Design Engineering	WH Voluntary Clean-up Progrm	EU	308912	00951	870602	6153	130	104.95	1/27/2011
Design Engineering	WH West Haymarket Park	EU	308912	00951	870000	6153	130	5,743.60	1/27/2011
Design Engineering	WH 10th & Salt Ck Road Impr	EU	308912	00951	870305	6153	130	131.20	1/27/2011
Laboratory & Testing	WH Sanitary Sewer Relocation	EU	308912	00951	870501	6153	350	21.75	1/27/2011
Observer/Inspections	WH Sanitary Sewer Relocation	EU	308912	00951	870501	6153	325	4,727.90	1/27/2011
								26,469.93	

City of Lincoln, NE
West Haymarket
Construction Expenditure Report
As of January 31, 2011

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
870000 WH West Haymarket Park		1,533,193		1,533,193-
870100 WH Arena	168,895,600	1,335,897		167,559,703
870201 WH HymktPkLot,FestSp&PedGrdStr	14,089,426	286		14,089,140
870202 WH South Parking Garage	13,090,000	131		13,089,869
870203 WH Arena Parking Garage	10,352,100			10,352,100
870301 WH Charleston Bridge/Roadway	4,835,720	31,784		4,803,936
870302 WH "M"&"N" St,7th to 10th St	2,280,000	30,232		2,249,768
870303 WH Core Area Roadways & Util	14,668,960	1,236		14,667,724
870304 WH USPS Parking Lot Reconst	885,000	1,576		883,424
870305 WH 10th & Salt Ck Road Impr	3,412,000	790		3,411,210
870306 WH Traffic Analysis				
870307 WH Streetscape				
870308 WH Sun Valley Blvd & West "O"	737,400			737,400
870401 WH Plaza	1,200,000			1,200,000
870501 WH Sanitary Sewer Relocation	1,440,000	572,450	646,778	220,772
870502 WH Fiber Optic Comm & Other	650,880			650,880
870601 WH NDEQ T-200	978,000	20,674	2,250	955,076
870602 WH Voluntary Clean-up Progrm	2,100,000	105,541		1,994,459
870603 WH Environmental Contngy Pln	2,400,000	17,107		2,382,893
870604 WH Other/Miscellaneous	525,600	2,036		523,564
870701 WH Stmwtr Mtgtn-Sth&WstOfBNSF	2,400,000			2,400,000
870703 WH Initial Haymrket Site Prep	2,088,360	198		2,088,162
870704 WH Other Strmwater Mitigation	3,105,840			3,105,840
870800 WH TIF Improvements	5,515,693			5,515,693
870901 WH BNSF Land Acquisition	1,000,000	1,042,795		42,795-
870902 WH Alter Site Purchase	4,080,000	4,195		4,075,805
870903 WH Jaylynn Site Purchase	3,080,000	5,326		3,074,674
870904 WH UP Site Purchase	1,000,000	1,317,502		317,502-
870905 WH BNSF Const, Rehab, Reloc	44,000,000	46,305,770		2,305,770-
870906 WH Amtrak Station	1,440,000			1,440,000
870907 WH UP Track Mods West of Brdg	1,236,000	36,772		1,199,228
870908 WH Other Private Prop Acqstns	625,000			625,000

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
870951 WH ITS & Dynamic Message Sgns	2,700,000			2,700,000
870952 WH Community Space& Civic Art	1,500,000			1,500,000
870975 WH Miscellaneous	5,160,000			5,160,000
870976 WH Line of Credit		52,500		52,500-
870977 WH Series 1 JPA Debt		1,535,168		1,535,168-
870978 WH Series 2 JPA Debt		1,102,864		1,102,864-
870979 WH Series 3 JPA Debt		521,600		521,600-
	321,471,579	55,577,623	649,028	265,244,928
00951 West Haymarket Capital Proj	321,471,579	55,577,623	649,028	265,244,928

City of Lincoln, NE
West Haymarket JPA
Operating Expenditure Report
As of January 31, 2011

00950 West Haymarket Reven
06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies					240	240-
5261 Postage	5,000			5,000	5,682	682-
5323 Bldg Maint Supplies					125	125-
11 Materials & Supplies	5,000			5,000	6,047	1,047-
12 Other Services & Charges						
5621 Misc Contractual Services	330,612			330,612	37,716	292,896
5624 Auditing Service	12,000			12,000	5,000	7,000
5631 Data Processing Service					267	267-
5632 System Develop - I.S.	20,000			20,000		20,000
5633 Software					979	979-
5642 Legal Services	20,000			20,000	4,337	15,663
5643 Management Services	92,043			92,043	34,000	58,043
5725 Mileage - Personal Vehicles	1,000			1,000		1,000
5762 Photocopying	1,000			1,000	432	568
5763 Printing					441	441-
5829 Telephone	1,000			1,000		1,000
5928 Rent of Co/City Bldg Space	1,900			1,900	788	1,112
5952 Advertising/Media Serv	1,500			1,500	759	741
12 Other Services & Charges	481,055			481,055	84,719	396,336
13 Capital Outlay - Equipment						
6069 Data Processing Equipment	4,500			4,500	2,461	2,039
6072 Furniture & Fixtures	11,000			11,000	2,757	8,243
13 Capital Outlay - Equipment	15,500			15,500	5,218	10,282
06095 W Haymarket O & M	501,555			501,555	95,984	405,571

00950 West Haymarket Reven
195011 JPA 2010A Debt Servi

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195011 JPA 2010A Debt Servic						
15 Debt Service						
6235 Bd Trustee Pmt-Interest			3,579,079	3,579,079	1,253,324	2,325,755
6236 Note Principal			2,000,000	2,000,000	2,000,000	
6237 Note Interest			2,397	2,397	2,397	
15 Debt Service			5,581,476	5,581,476	3,255,721	2,325,755
195011 JPA 2010A Debt Servic			5,581,476	5,581,476	3,255,721	2,325,755

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

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6235 Bd Trustee Pmt-Interest			3,165,607	3,165,607		3,165,607
15 Debt Service			3,165,607	3,165,607		3,165,607
195021 JPA 2010B/C Debt Serv			3,165,607	3,165,607		3,165,607
00950 West Haymarket Revenue	501,555		8,747,083	9,248,638	3,351,705	5,896,933

WH 11-15 Introduce: 2-16-11

RESOLUTION NO. WH- _____

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

That the Agreement with Alfred Benesch and Company to provide Comprehensive Geotechnical Engineering Services for fill assessment, preliminary subsurface exploration and flood storage area soil assessment as building fill, in accordance with the terms and conditions set forth in said Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

Adopted this _____ day of _____, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

AGREEMENT

THIS AGREEMENT is entered as of this 16th day of February, 2011 ("the Effective Date"), by and between the West Haymarket Joint Public Agency, a Nebraska political subdivision, hereinafter referred to as "JPA" and Alfred Benesch & Company, hereinafter referred to as "Benesch."

RECITALS

A. The JPA proposes to engage Benesch to provide Comprehensive Geotechnical Engineering Services for (1) West Haymarket hole-in-the-donut area fill assessment; (2) preliminary subsurface exploration - multi-story structure sites located south of the Arena and A-17 parking garage sites; and (3) flood storage area excavated soils characterization and assessment of suitability (w/o manipulation) as building fill, in accordance with the terms and conditions set forth herein, as well as the Scope of Services defined below (the "Work").

B. The Work will be carried out on BNSF Railway Company ("BNSF") property pursuant to a Temporary License for Survey/ Geotech/Environmental Activities Advance Construction ("License") granted by BNSF to the City of Lincoln and assigned by the City to the JPA. A copy of the License and a copy of the First Amendment to the License are attached hereto as Exhibits A and A-1, respectively, and incorporated herein by this reference. The Work to be performed under the License is subject to the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.

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

D. Benesch hereby represents that Benesch is willing and able to perform the services in accordance with this Agreement. Benesch hereby acknowledges that Benesch is deemed to be the JPA's agent under the License and as such is required to comply with the restrictions imposed on the JPA as Licensee in the License. Benesch hereby further acknowledges that Benesch is deemed to be the JPA's contractor

under the C&M Agreement and is required to comply with the Contractor Requirements in the C&M Agreement.

E. The use of the term "City of Lincoln" in the License, the C&M Agreement and the Benesch letter dated January 16, 2011 shall be deemed to refer to the JPA.

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

I. ADMINISTRATOR OF AGREEMENT

Jim Martin, the Program Manager for the West Haymarket Project, shall be the JPA's representative for the purposes of administering this Agreement and shall have authority on behalf of the JPA to give approvals under this Agreement. Gary Proskovec, of Benesch, will supervise all services and be in charge of performance of such services by Benesch as set forth in this Agreement and the Scope of Services.

II. SCOPE OF SERVICES

Benesch agrees to perform the engineering services set forth in pages 1-5 (except for Execution of Contract) of Benesch's letter dated January 16, 2011 as more particularly described in Attachments A-1, A-2, and A-3 but excluding Benesch's General Conditions. The January 16, 2011 letter is attached hereto as Exhibit C and incorporated herein by this reference. Benesch understands and agrees that the License and the C&M Agreement, including, but not limited to, Exhibits C and C-1(A) attached to the C&M Agreement by reference are part of this Agreement. As part of said engineering services, Benesch agrees to enter into the Contractor's Right of Entry with BNSF (Exhibit C-1(A) to the C&M Agreement) and to abide by the terms and conditions of the Contractor's Right of Entry. Benesch further agrees to abide by the terms and conditions imposed upon the JPA as Licensee in the License and to abide by the terms and conditions imposed upon the Contractor in the Contractor Requirements attached to the C&M Agreement.

III. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until completion of all obligations of this Agreement in accordance with the Scope of Services, but in no event longer than June 1, 2011.

IV. COMPENSATION

The JPA agrees to pay Benesch for the services set forth in the Scope of Services, a total fee not to exceed $57,000.00, as more particularly set forth in the Fee Estimate (page 5 of the January 16, 2011 letter). Progress payments based upon a percentage of the services performed shall be payable monthly upon receipt of supporting documentation acceptable to the JPA for the work completed. All approved payments will be made to Benesch.

If at any time during the Project, Benesch determines that its costs will exceed, or have exceeded the maximum amount stated above, Benesch must immediately notify the JPA in writing and describe which costs are causing the overrun and the reason. Benesch must also estimate the additional costs needed to complete the work. The JPA will then determine if the maximum amount is to be increased, and an amendment will be prepared if needed.

The JPA is not responsible for costs incurred prior to the Notice-to-Proceed date or the Effective Date, which ever is earlier, or after the completion deadline date stated in Paragraph III above.

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

V. NON-RAIDING CLAUSE

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

VI. TERMINATION OF AGREEMENT

A. This Agreement may be terminated by Benesch if the JPA fails to adequately perform any material obligation required of the JPA by this Agreement ("Default"). Termination

rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from Benesch specifying the nature of the Default.

B. The JPA may terminate this Agreement, in whole or part, for any reason for the JPA's own convenience upon at least ten days written notice to Benesch.

If the Agreement is terminated by either the JPA or Benesch as provided in A or B above, Benesch shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the amount in Paragraph IV above, up until the date of termination.

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

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

VII. ADDITIONAL SERVICES

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

VIII. FAIR EMPLOYMENT

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

IX. FAIR LABOR STANDARDS

Benesch shall maintain Fair Labor Standards in the performance of this Agreement as required by Neb. Rev. Stat. Chapter 73, as amended.

X. ASSIGNABILITY

Benesch shall not assign any interest in this Agreement, except for the work of the subcontractors (if any) identified in this Agreement or Scope of Services, delegate any duties or work required under this Agreement or Scope of Services, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the JPA thereto; provided, however, that claims for money due or to become due to Benesch from JPA under this Agreement maybe assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

XI. INTEREST OF BENESCH

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

XII. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Benesch agrees to and hereby transfers to the JPA all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement or as part of the Scope of Services, shall be subject to private use or copyright by Benesch without the express written consent of JPA. However, any reuse by the JPA without verification or adaption by Benesch for the specific purpose intended will be at the JPA's sole risk and without liability or legal exposure to Benesch or Benesch's independent professional associates or subcontractors.

XIII. COPYRIGHTS, ROYALTIES & PATENTS

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

XIV. COPYRIGHT; CONSULTANT'S WARRANTY

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

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

XV. INDEMNIFICATION

A. INDEMNIFICATION OF JPA.

TO THE FULLEST EXTENT PERMITTED BY LAW, BENESCH SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

(i) ANY RIGHTS OR INTERESTS GRANTED TO BENESCH PURSUANT TO THIS AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF BENESCH AND BENESCH PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY BENESCH AND BENESCH'S CONTRACTOR PARTIES IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WORK AREA;

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

(iv) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WORK BY BENESCH AND/OR BENESCH 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) BENESCH'S BREACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT; OR

(vi) ANY ACT OR OMISSION OF BENESCH OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR SUBCONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND SUBCONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "BENESCH PARTY" AND COLLECTIVELY, "BENESCH PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.

THE LIABILITY ASSUMED BY BENESCH WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH

WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF JPA, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY JPA'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF JPA.

B. INDEMNIFICATION OF BNSF. Benesch understands and acknowledges that the Indemnification requirements of BNSF found in the C&M Agreement and the Contractor's Right of Entry are in addition to, and not in lieu of, the above obligations of Benesch to indemnify and hold harmless the JPA.

XVI. INSURANCE

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

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000.00 per occurrence, and $10,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by Benesch. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

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

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

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

- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to JPA employees.

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

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

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

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

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor or and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.

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

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

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

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

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.

Benesch agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence of willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Benesch 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 Benesch'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.

Benesch 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 Benesch in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Benesch's insurance will be covered as if Benesch elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Benesch must furnish to JPA 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 JPA in writing at least 30 days prior to any cancellation, non-renewal, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. This cancellation provision must be

indicated on the certificate of insurance. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

City of Lincoln
c/o Bill Kostner, Risk Manager
555 South 10th Street
Lincoln, NE 68508

Any insurance policy must be written by a reputable insurance company reasonably acceptable to JPA 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.

Benesch represents that this Agreement has been thoroughly reviewed by Benesch's insurance agent(s)/broker(s), who have been instructed by Benesch 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 Benesch, Benesch 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 Benesch is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by this section 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 Benesch's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Benesch will not be deemed to release or diminish the liability of Benesch 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.

BNSF Requirements:

Benesch understands and acknowledges that the Insurance requirements of BNSF found in the C&M Agreement and the Contractor's Right of Entry are in addition to the above

obligations of Benesch. Benesch agrees to provide all types of insurance required by either the JPA or BNSF. Benesch will furnish coverages against any and all perils required by either the JPA or BNSF. In the event Benesch discovers a discrepancy in coverage limits, Benesch will provide the larger amount satisfying both JPA and BNSF requirements.

XVII. NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by fax, commercial carrier or certified mail, postage prepaid, return receipt requested to the following addresses:

West Haymarket Joint Public Agency
City Attorney's Office
555 S. 10th Street, 3rd Floor
Lincoln NE 68508
Attn: Rick Peo

Alfred Benesch Company
825 J Street
Lincoln, NE 68501
Attn: Jim Linderholm

XVIII. INDEPENDENT CONTRACTOR

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

XIX. NEBRASKA LAW

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

XX. INTEGRATION

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

XXI. AMENDMENT

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

XXII. SEVERABILITY

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

XXIII. WAIVER OF CONTRACTUAL RIGHT

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

XXIV. FEDERAL IMMIGRATION VERIFICATION

A. If Benesch is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Benesch agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Benesch agrees to have each applicant for employment attest that he or she is a U.S. Citizen or qualified alien using the form attached hereto as Exhibit D. Benesch 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. Benesch shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

B. Public Benefits Eligibility Status Check. If Benesch is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, Benesch agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached hereto as Exhibit E. Benesch agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, Benesch shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at the JPA's request. For information on the SAVE program, go to: www.uscis.gov/SAVE.

XXV. REPRESENTATIONS

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

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

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Jayne Snyder, Chair

ALFRED BENESCH AND COMPANY

By: James L. Lindenbaum
Title: Executive Vice President

WH 11-16 Introduce: 2-16-11

RESOLUTION NO. WH- _____

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

That the Amendment No. 4 to the Agreement dated August 14, 2008 between the City of Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group, Inc. attached hereto as Attachment "A" and incorporated herein by this reference, providing for a table of Additional Services to be added to Section 4.1 of the Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 4 on behalf of the West Haymarket Joint Public Agency.

Adopted this _____ day of _____, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

ATTACHMENT “A”

AMENDMENT NO. 4

This Amendment No. 4 to the Agreement dated August 14, 2008 is made and entered into as of the 16th day of February, 2011 between the West Haymarket Joint Public Agency and DLR Group, Inc. (“DLR”), a Nebraska corporation, for the Lincoln Arena.

DLR and JPA hereby agree that the August 14, 2008 Agreement , as amended by Amendment Nos. 1-3, be further amended to include the Table of Additional Services in Exhibit 1 attached hereto as part of Section 4.1 of the Agreement.

West Haymarket Joint Public Agency, Owner	DLR Group, Inc., Architect
_____	_____
Jayne Snyder Chairperson	Name: Title:

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

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

ARTICLE 4 ADDITIONAL SPECIALTY CONSULTANT SERVICES

(Paragraph deleted)

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

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

Services		Responsibility *(Architect, Owner or Not Provided)*	Location of Service Description *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1	Programming	Architect	As Basic Services
§ 4.1.2	Multiple preliminary designs	NP	
§ 4.1.3	Measured drawings	NP	
§ 4.1.4	Existing facilities surveys	NP	
§ 4.1.5	Site Evaluation and Planning (B203™–2007)	NP	
§ 4.1.6	Building information modeling	Architect	As Basic Services
§ 4.1.7	Civil engineering	Architect	As Basic Services
§ 4.1.8	Landscape design	NP	
§ 4.1.9	Architectural Interior Design (B252™–2007)	NP	
§ 4.1.10	Value Analysis (B204™–2007)	NP	
§ 4.1.11	Detailed cost estimating	Owner	CM at Risk
§ 4.1.12	On-site project representation	NP	
§ 4.1.13	Conformed construction documents	NP	
§ 4.1.14	As-Designed Record drawings	NP	
§ 4.1.15	As-Constructed Record drawings	NP	
§ 4.1.16	Post occupancy evaluation	NP	
§ 4.1.17	Facility Support Services (B210™–2007)	NP	
§ 4.1.18	Tenant-related services / Interior Design	NP	
§ 4.1.19	Coordination of Owner's consultants	NP	
§ 4.1.20	Telecommunications/data design	Architect	Specialty Consultant
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	NP	
§ 4.1.22	Commissioning (B211™–2007)	NP	
§ 4.1.23	Extensive environmentally responsible design	NP	
§ 4.1.24	LEED® Certification (B214™–2007)	NP	
§ 4.1.25	Historic Preservation (B205™–2007)	NP	
§ 4.1.26	Furniture, Finishings, and Equipment Design (B253™–2007)	NP	
§ 4.1.27	Food Service	Owner	Specialty Consultant
§ 4.1.28	ADA	Architect	Specialty Consultant
§ 4.1.29	Audio Visual / Acoustics	Architect	Specialty Consultant
§ 4.1.30	Curtain Wall	Architect	Specialty Consultant

Init.

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User Notes:

(1970354009)

§ 4.1.31	Fire Protection / Codes	Architect	Specialty Consultant
§ 4.1.32	Graphics / Signage	Architect	Specialty Consultant
§ 4.1.33	Ice Flooring	Architect	Specialty Consultant
§ 4.1.34	Security	Architect	Specialty Consultant
§ 4.1.35	Sports Lighting	Architect	Specialty Consultant
§ 4.1.36	Stage Rigging	Architect	Specialty Consultant
§ 4.1.37	Vertical Transportation	Architect	Specialty Consultant
§ 4.1.38	Wind Tunnel	Architect	Specialty Consultant

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

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

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing;

.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.9 Evaluation of the qualifications of bidders or persons providing proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction;

.11 Assistance to the Initial Decision Maker, if other than the Architect.

.12 Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;

.13 Providing services made necessary by the default or termination of Construction Manager at Risk, by defects or deficiencies in the construction of the Project or by the failure of the Owner, any contractor or others performing services or Work in connection with the Project;
or

.14 Providing services in connection with building commissioning.

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

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User Notes:

(1970354009)

WH 11-17 Introduce: 2-16-11

RESOLUTION NO. WH- _____

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

That Amendment No. 3 to the Consultant Agreement between the City of Lincoln as assigned to the West Haymarket Joint Public Agency and Benham Companies LLC, now known as SAIC Energy, Environment & Infrastructure LLC, is hereby accepted and approved and the Chair of the Board of Representatives of the West Haymarket Joint Public Agency is hereby authorized to execute said Amendment No. 3 on behalf of the West Haymarket Joint Public Agency. Amendment No. 3 extends the term for completion of all obligations of this Agreement to March 24, 2011.

Adopted this _____ day of _____, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

AMENDMENT NO. 3
CONSULTANT AGREEMENT

THIS AMENDMENT NO. 3 to the Consultant Agreement by and between the City of Lincoln as assigned to the West Haymarket Joint Public Agency ("JPA") and Benham Companies, LLC, now known as SAIC Energy, Environment & Infrastructure, LLC ("Consultant"), is entered into as of the 26th day of January, 2011 by and between JPA and the Consultant.

RECITAL

The JPA and Consultant desire to extend the Consultant Agreement for the interim program management services in order to complete the final negotiations and enter into a final agreement for program management services.

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

1. That the sentence under Article III. Term of Agreement is hereby deleted and replaced with the following language:

   <u>The term of this Agreement shall commence on August 12, 2010 and shall continue until completion of all obligations of this agreement, but in no event beyond March 24, 2011.</u>

2. Except as expressly modified by this Amendment No. 3, all of the terms and provisions of the Consultant Agreement as amended by Amendment Nos. 1 and 2 are hereby reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, JPA and Consultant have executed this Amendment No. 3 as of the _____ day of _____, 2011.

West Haymarket Joint Public Agency

_____

Jayne Snyder, Chair
Board of Representatives

SAIC Energy, Environment & Infrastructure, LLC,
formerly Benham Companies, LLC

_____

Title: