

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

**CITY-COUNTY BUILDING**  
**555 S. 10<sup>TH</sup> STREET**  
**CITY COUNCIL CHAMBERS ROOM 112**  
**LINCOLN, NE 68508**

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)
2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

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

3. Approval of the minutes from the JPA meeting held March 16, 2012 (Chair Beutler)
  - (Staff recommendation is for the JPA Board to approve the minutes as presented)
4. West Haymarket Progress Report (Paula Yancey)
  - Public Comment
5. WH 12-19 Resolution approving Amendment No. 12 to the Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency, for the Haymarket Infrastructure Design Project to include work associated with additional services for the M and N Street – 7th to 9th Street Improvement Project (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
6. WH 12-20 Resolution approving a Contract Agreement between Haes Contracting Inc. and the West Haymarket Joint Public Agency for the demolition of buildings on the Old Watson Brickson Lumber Yard Site pursuant to Bid No. 12-060 (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
7. WH 12-21 Resolution authorizing Chris Beutler, Chair of the Board of Representative of the West Haymarket Joint Public Agency, to execute all Third City Closing documents associated with BNSF Railway Company's conveyance of the Third City Closing Replacement Property to the JPA (Rick Peo)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)

8. WH 12-22 Resolution approving Amendments No. 008, 009 and 010 to the Agreement between DLR Group, Inc. and the West Haymarket Joint Public Agency for a structural engineered model to complete the steel mill order, for the design and engineering of the Pinnacle Bank Arena exterior signs and for the design of the IPTV system in the Arena (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
9. WH 12-23 Resolution approving a Contract Agreement between Constructor's Inc. and the West Haymarket Joint Public Agency for the construction of Water Main Project No. 702724 in N Street from 7th to 9th Streets and N Street Roadway Project No. 870302 from 7th to 9th Streets and Railroad Track Removal (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
  
10. Set Next Meeting Date: Friday, April 20, 2012 at 3:00 in City Council Chambers Room 112
  
11. Motion to Adjourn

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**March 16, 2012**

Meeting Began At: 3:00 P.M.

Meeting Ended At: 3:25 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

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

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

**Item 2 – Public Comment and Time Limit Notification**

Chair Beutler welcomed public comment. He stated that individuals from the audience would 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 February 28, 2012**

Beutler asked for corrections or changes to the minutes from the February 28, 2012 meeting. Clare requested a correction on page 4, Item 6 to change "online" to "on time" in the first sentence of paragraph 2. Hearing no further changes, Carroll moved approval of the minutes as amended. Clare seconded the motion. Motion carried 3-0.

**Item 4 – Approval of Payment Registers**

Steve Hubka, City Finance and JPA Treasurer, informed the Board that he is submitting the February payment register for approval. There are a significant number of transactions marked TCW Construction. Those are the return of retainages. Those amounts, along with a couple of negative numbers on the next page, net out to zero -- with the exception of a final payment of \$121,018 that is in the total. The total for the month is approximately \$4,660,000, including engineering revolving payments on the third page. Clare asked for clarification on retainages to which Hubka explained retainers are monies held as guarantees of work performance. Different amounts are held for different projects. Clare asked if these payments were within budget and if the paperwork is processed correctly in case of audit. Hubka confirmed that was the case.

Carroll made a motion to approve the February payment registers. Clare seconded the motion. Motion carried 3-0.

**Item 5 - Review of the February 2012 Expenditure Reports**

Steve Hubka presented the job cost and the expenditure report for February 2012. An amended budget was approved at the February 28 meeting. This report is as of February 29, so it reflects the

budget prior to the amended budget. The March report will show the amended budget, which will show a better comparison between the budget and the expenditures. Responding to a request from Clare, Hubka affirmed that they would summarize or explain the changes when presenting that March report.

Beutler invited public comment on either Item 4 or Item 5.

Jane Kinsey, Lincoln Watchdogs, inquired about the audits that Clare refers to frequently. She wondered how often these happen, who would perform those audits, and if the public would know about any audits. Further, Kinsey asked if the amended budget approved at the last meeting was now posted on the website.

Clare explained he is referring to any audits that may occur. His point is that he wants to guarantee the taxpayers that things are processed accurately. Beutler further explained that we do an annual audit, but also that the State Auditor can perform an audit at will and it is his decision to alert the public. Hubka added that the annual audit occurs at the end of each Fiscal Year, which ends August 31. The regularly scheduled audit will be performed by BKD. Hubka also confirmed that the amended budget is now available on the City website.

**Item 6 - Bill No. WH 12-17 Resolution to approve a model Pinnacle Bank Arena Loge Box Use Agreement for private use agreements between the West Haymarket Joint Public Agency and the Loge Box User and authorizing the Chair to execute said Use Agreements on behalf of the JPA**

Jeff Kilpatrick explained that this Loge agreement is the same as the suite agreement with a few changes. The loge box is a four-person box, but is still on the suite level. The insurance is \$2 million aggregate for a suite, but reduced to \$1 million aggregate for the smaller loge box. They did not want to reduce their market by asking for too much on the insurance and this requires less capital outlay commitment. Ben Wrigley also explained that, unlike the suites that have a \$10,000 security deposit with a three-payment plan, the loge boxes have a \$1,000 security deposit with a two-payment plan available.

Kilpatrick described that the loge boxes are different in that, when a leasee decides not to buy all the tickets for a multi-night performance, the box can be resold for the unsold performances. This is different from the suites that are blacked out for those performances not purchased.

Wrigley further clarified that the loge box agreements can be purchased for 5, 7, or 10 years just like the suites. There may be an opportunity for the arena operator to distinguish “special events” up to three times per year, in which case the leasee of a loge box would have the first opportunity to purchase the seats or they would be available for resale to the public.

Jane Kinsey asked when the public would know who purchased the suites and boxes and the number available. Rick Peo responded that the information is or will be on file in the City Clerk’s Office. Beutler did point out that suites may be purchased through a corporate name that someone might not recognize or under which several organizations might be bundled. Wrigley further responded that there are four seats in each loge box and there are 20 boxes. As far as how many would be available, it would depend on which were used or purchased by the leasee. That would then dictate the remaining available for resale. Wrigley mentioned the Circus as an example. Then responding to Kinsey’s inquiry, he confirmed that this is the type of event they would anticipate be in the new facility.

Being no further comment, Carroll made a motion to approve Resolution WH 12-17. Clare seconded the motion. Motion carried 3-0.

**Item 7 - Bill WH 12-18 Resolution to create and define duties for the West Haymarket Art Committee pertaining to the selection and acquisition of art work within for the West Haymarket Area and the Pinnacle Bank Arena site**

Paula Yancey explained this resolution if for the formal creation of the West Haymarket Public Art Committee, which is in the process of doing a call to artists. They will accumulate information and make some suggestions for priority areas located throughout the West Haymarket District.

Clare asked for clarification on Item 5 on page 2. Once the Chair has approved the art and it comes before the JPA Board, he wondered if it required a majority or unanimous vote of the Board to change. Peo explained his interpretation would be that it is subject to the same rules of governance as on other items voted upon by the Board. If non-arena, it would require a majority. However, if in the specific arena site, it would require unanimous vote. The arena site would be bounded on the south by 'R' Street.

Jane Kinsey asked if the specific art will be before the Board. Yancey confirmed the process will have those come before the Board. Kinsey reflected that there was something recently in the newspaper regarding Mayor Beutler's reference to the Sunshine Committee and use of the open mic at City Council meetings. She wondered if he meant to invite the public to the JPA meetings as well since it was not referenced in the article. Beutler stated he was referring to City, but that there is a standing invite for public comment at both.

Being no further comment, Carroll made a motion to approve Resolution WH 12-18. Clare seconded the motion. Carroll reported that City Council passed a resolution and is using this same process. Motion carried 3-0.

**Item 8 -- Set Next Meeting Date**

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

**Item 9 – Motion to Adjourn**

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:25 P.M.

**Prepared by: Pam Gadeken, Public Works and Utilities**



**RESOLUTION NO. WH- \_\_\_\_\_**

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

3 That Amendment No. 12 to the Agreement for Engineering Services with Olsson  
4 Associates for the Haymarket Infrastructure Design Project for completion of the work  
5 associated with additional services for the M and N Street – 7th to 9th Street Improvement  
6 Project is hereby accepted and approved and the Chairperson of the West Haymarket Joint  
7 Public Agency Board of Representatives is hereby authorized to execute said Amendment No.  
8 12 on behalf of the West Haymarket Joint Public Agency.

9 The total estimated fee for the work associated with this Amendment No. 12 is  
10 \$124,600.00, which increases the total contract amount from \$8,851,616.00 to \$8,976,216.00.

11 Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

**AMENDMENT NO. 12**  
**to AGREEMENT for ENGINEERING SERVICES**  
**between OLSSON ASSOCIATES**  
**dba LINCOLN HAYMARKET INFRASTRUCTURE TEAM and the**  
**WEST HAYMARKET JOINT PUBLIC AGENCY**  
**HAYMARKET INFRASTRUCTURE DESIGN PROJECT**  
**Project No. 870302**

This Contract Amendment No. 12 is made by and between Olsson Associates, dba Lincoln Haymarket Infrastructure Team, hereinafter called ENGINEER, and the West Haymarket Joint Public Agency, hereinafter called JPA, this 6th day of April, 2012 and approved by Resolution No. \_\_\_\_\_.

WHEREAS, it is the mutual desire of the parties hereto to amend the Agreement to provide professional services associated with the Haymarket Infrastructure Design Contract which was entered into on November 18, 2010 under Resolution WH 00055, hereinafter called the existing Agreement. The description of work to be added to the existing Agreement under this amendment generally shall include the Construction Phase Services for the M and N Street – Bid Package No. 3 project. A detailed breakdown of scope of services for this project is included in the March 22, 2012 letter from Engineer attached hereto and marked as Exhibit A.

The fee for the M and N Street Construction Phase Services – Bid Package No. 3 Project is \$124,600.00. With this additional work, the total contract amount increases from \$8,851,616.00 to \$8,976,216.00.

NOW, THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described herein.

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

**West Haymarket Joint Public Agency**

\_\_\_\_\_  
Title: \_\_\_\_\_

**Engineer – Olsson Associated dba  
Lincoln Haymarket Infrastructure Team**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



March 22, 2012

RE: Proposal for Construction Observation & Testing Services  
M & N Street – Bid Package No. 3

Alfred Benesch & Company (Benesch) is pleased to submit this proposal to provide Construction Management, Observation and Materials Testing for the M & N Street Bid Package 3 Project. The project includes:

- The total reconstruction of N Street from 7th Street to 9th Street
- Traffic Signal @ N & 9th Streets
- Rail Removals and pavement replacement in 8th & L Streets (Various Locations)
- 16" Water Main in N Street - Tied Project (Benesch will keep track of Water main quantities separately from the paving work)

Construction phasing will be essential in keeping access open to businesses adjacent to N Street and Alter Scrap. This can be accommodated by the use of detours on M and 7th as well as phasing of the paving pours.

Construction is scheduled to begin with a notice to proceed to the Contractor on April 9, 2012, provided the Contractor has obtained all required insurance documents. Construction shall be completed in 4 phases with all work scheduled to be complete by August 10, 2012.

The cost of this Construction Observation and testing work is based on Construction beginning April 9, 2012 and a completion date of August 10, 2012. Construction Management, Observation and Testing will include the following tasks:

Benesch proposes to have a Senior Technician on site an average of 50 hours per week to monitor construction progress and assist in confirming all work is constructed in compliance with the City of Lincoln Standard Specifications for Municipal Construction 2011 Edition and Project Special Provisions. The work involved is described in the specific project tasks identified below:

### **Task No. 1: Pre- Conference Meeting**

The Project Manager (PM) will organize and chair the preconstruction meeting. The PM will also produce meeting minutes and distribute those minutes within 24 hours after meetings to all parties.

A Benesch Administrative Assistant (Clerk) will attend the meeting, take notes and prepare preliminary minutes for the project Manager.

The Senior Technician (ST) who will be responsible for daily observation, quantity takeoffs and organization of testing activities will attend the Pre-Construction Meeting.

### **Task No. 2: Review Shop Drawings**

The PM, which in this case is also the Signing Professional Engineer of record, will be responsible for review, comment and/or approval/rejection of all shop drawings. The PM will utilize the assistance of other Engineers and the Project ST as needed.

The assigned Benesch Clerk will keep organized files containing all shop Drawings.

### **Task No. 3: Change Orders Requests**

Any requested Change Orders will be coordinated by the PM through PC Sports. The PM will prepare and recommend any change orders in coordination with the ST and Contractor. PC Sports will be the entity to provide final approval or rejection to change orders. PC Sports must approve all change orders prior to any construction activities associated with the change orders commencing. The Clerk will assist the PM in documentation and filing of these documents.

The ST will be involved in the aspect of documenting the reason and justification for any change orders and provide this documentation and justification to the PM.

### **Task No. 4: Prepare Revision Sheets**

If any design changes are required due to underground utility conflicts or other conflicts, etc. a plan revision sheet will be prepared and distributed. These plans sheets will be included in the project closeout As-Built records.

The PM will oversee and sign plan revisions. Assistance from other project engineers and drafting technicians may be required.

### **Task No. 5: Answer design Questions**

All construction team members will be involved in answering design questions related to the plans. These questions will be coordinated between the PM and ST. The ST will perform most of the communication to the Contractor in the field.

All design questions from the Contractor should be sent to the designer in a Request for Information (RFI) format. PC Sports will be copied on all RFI's, changes or directives. If questions result in a change or contract amount or contract duration, PC Sports will need to approve prior to a directive to the Contractor.

### **Task No. 6: Attend Weekly Progress Meetings**

Weekly progress meetings will be organized and Chaired by the PM. The meetings will be held at the Benesch 825 J Street Office in Lincoln. Typical Weekly agenda topics to be discussed will include:

- Safety Briefing
- Work Zone Traffic Control Review
- Review of previous weeks minutes
- Summary of previous weeks progress
- Discussion of current work activities
- Anticipated progress for upcoming week.
- Review Overall Schedule
- Change Order Requests
- Questions

Attendance is anticipated by Benesch PM, ST & Clerk, PC Sports, Contractor and City Personnel.

### **Task No. 7: Construction Observation & Testing**

The PM will make site visits intermittently throughout the duration of the project. This activity is anticipated to take approximately 2 hours per week.

The majority of the construction observation and site visit activities will be performed by the ST or Senior Field lab Technician. These two technicians will spend a combined time of 50 hours per week observing and documenting construction activities. They will also be responsible for organizing and directing Benesch field lab technicians performing soils density and moisture tests for subgrades and utility trenches. The field lab technicians will also take concrete air and slump tests, report those findings to the ST and make

concrete cylinders. Benesch Surveyors will also provide periodic staking checks as requested by the site ST

**Task No. 8: Review and Certify Pay Request:**

The Contractor will provide all pay requests. The PM who will verify quantities and accuracy with the ST, process and forward to PC Sports. Daily reports will be done in Aurigo. The final pay application will be approved by PC Sports.

**Task No. 9: Project Closeout**

At the conclusion of the project, Benesch will assemble all project records including Red-lined As-builts and provide a copy of those documents to the City of Lincoln and PC Sports. The Engineer of Record will prepare a punch list and issue formal notice of "Substantial Completion" and "Final Completion".

Fees for the above described services shall be performed for the **Not-To-Exceed** fee of \$123,104.00. Invoices will be submitted monthly and be payable within thirty (30) days of the invoice date.

Appendix A  
Total Project Fee - OA

M & N - Bid Package 3 - Const. Phase Services  
City Project Number 870302

Task No.	Task Description		Fee Estimate
1	Project Management		\$0.00
2	General Project Meetings		\$0.00
3	Survey		\$0.00
4	Utility Coordination		\$0.00
5	Public Involvement		\$0.00
6	Drainage Analysis		\$0.00
7	Traffic		\$0.00
8	First Submittal		\$0.00
9	Geotechnical Evaluation		\$0.00
10	Environmental / Historical Review		\$0.00
11	Exist Water - Sanitary Relocates		\$0.00
12	Structural / Bridge Design		\$0.00
13	Water Main Design		\$0.00
14	Wastewater Design		\$0.00
15	Right-of-Way		\$0.00
16	Landscape Design		\$0.00
17	Second Submittal		\$0.00
18	QA/QC		\$0.00
19	Permit Applications		\$0.00
20	PS&E Submittals		\$0.00
21	Bidding Phase		\$0.00
22	Construction Phase		\$3,628.56
23	Expenses		\$120,952.00
		<b>Total Project Cost</b>	<b>\$124,580.56</b>

Use \$124,600

**Appendix A  
Total Project Fee - Benesch**

**M & N - Bid Package No. 3 - Const. Phase Services  
City Project Number 870302**

<b>Task No.</b>	<b>Task Description</b>		<b>Fee Estimate</b>
1	Project Management		\$0.00
2	General Project Meetings		\$0.00
3	Survey		\$0.00
4	Utility Coordination		\$0.00
5	Public Involvement		\$0.00
6	Drainage Analysis		\$0.00
7	Traffic		\$0.00
8	First Submittal		\$0.00
9	Geotechnical Evaluation		\$0.00
10	Environmental / Historical Review		\$0.00
11	Exist Water - Sanitary Relocates		\$0.00
12	Structural / Bridge Design		\$0.00
13	Water Main Design		\$0.00
14	Wastewater Design		\$0.00
15	Right-of-Way		\$0.00
16	Landscape Design		\$0.00
17	Second Submittal		\$0.00
18	QA/QC		\$0.00
19	Permit Applications		\$0.00
20	PS&E Submittals		\$0.00
21	Bidding Phase		\$0.00
22	Construction Phase		\$115,592.00
23	Expenses		\$5,360.00
		<b>Total Project Cost</b>	<b>\$120,952.00</b>

**TOTAL EXPENSES**

<b>Expenses</b>	<b>Amount</b>		<b>\$ Ea.</b>		<b>Cost</b>
<b>Design</b>					
Travel, mile (car)	8	Days	45.00		\$360.00
Travel, mile (survey vehicle)	0	MILES	0.50		\$0.00
Half Size Plots (each)	0	EA.	1		\$0.00
Mylars, Half Size Plots (each)	0	EA.	1		\$0.00
Aerial Mapping (DTM)		L.S.			\$0.00
Miscellaneous Expenses(Plots, Copies, Reports, etc.)	0	L.S.	65		\$0.00
Materials & Testing	1	L.S.	5000		\$5,000.00
			<b>Sub Total</b>		<b>\$5,360.00</b>
<b>Survey Expenses</b>					
<b>Public Involvement Expenses</b>					
			<b>Total</b>		<b>\$5,360.00</b>

**PAY RATES (BASED ON HOURLY RATE SCHEDULE PER CLASSIFICATION)**

Overhead Rate : 0%

Profit : 0%

Personnel		Total Hr.	Hourly Rate (2010)	Cost	Total Cost
Principal	Principal	0	\$183.00	\$0	\$0.00
Senior Project Manager	PM	136	\$164.00	\$22,304	\$22,304.00
Senior Engineer	Sr Eng	0	\$125.00	\$0	\$0.00
Project Manager	Traffic	0	\$140.00	\$0	\$0.00
Structural Engineer	STR Eng	0	\$0.00	\$0	\$0.00
Project Engineer I	PE	0	\$97.00	\$0	\$0.00
Project Engineer II	PE	16	\$101.00	\$1,616	\$1,616.00
Senior Technologist	ST	470	\$105.00	\$49,350	\$49,350.00
Designer II	D2	14	\$76.00	\$1,064	\$1,064.00
Office Assistant	Off Assist	36	\$42.00	\$1,512	\$1,512.00
Field Lab Technician III	FLT III	526	\$67.00	\$35,242	\$35,242.00
Olsson Associates - Coordination	OAR	0	\$155.00	\$0	\$0.00
Public Involvement Coordinator	PI Coord	0	\$0.00	\$0	\$0.00
Graphic Designer	GR. DES.	0	\$0.00	\$0	\$0.00
Illustrator	ILL	0	\$0.00	\$0	\$0.00
Webmaster / Database Developer	WM / DD	0	\$0.00	\$0	\$0.00
Survey Project Manager	RLS	0	\$80.00	\$0	\$0.00
Surveyor	RLS	8	\$104.00	\$832	\$832.00
Instrument Operator	IO	72	\$51.00	\$3,672	\$3,672.00
Survey Crew Member (CM)	SCM	0	\$0.00	\$0	\$0.00
Survey Technician	Srvy Tech	0	\$0.00	\$0	\$0.00
<b>Expenses</b>					<b>\$5,360.00</b>
		<b>1278</b>		<b>\$115,592</b>	<b>\$120,952.00</b>

**MAN-HOUR ESTIMATE - PROJECT NAME/PROJECT NUMBER**

Task No.	Description of Work Items / Tasks	PM	PE	ST	D2	Off Assist	FLT III	RLS	IO	Total Manhours	Total Labor Fee	Total (A+B)	Total Fee (A+B+C)
<b>22</b>	<b>Construction Phase</b>												
	Attend Pre-Construction Meeting	8	0	4	0	0	0	0	0	12	\$1,732	\$1,732	\$1,732.00
	Review Shop Drawings	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0.00
	Prepare Change Orders	8	0	8	0	0	0	0	0	16	\$2,152	\$2,152	\$2,152.00
	Prepare Revision Sheets	4	16	0	0	0	0	0	0	20	\$2,272	\$2,272	\$2,272.00
	Answer Design Questions	8	0	8	0	0	0	0	0	16	\$2,152	\$2,152	\$2,152.00
	Attend Weekly Progress Meetings	72	0	0	0	36	18	0	0	126	\$14,526	\$14,526	\$14,526.00
	Construction Observation & Testing	36	0	450	14	0	508	8	72	1088	\$92,758	\$92,758	\$92,758.00
	Review and Certify Pay Requests	0	0	0	0	0	0	0	0	0	\$0	\$0	\$0.00
	<b>Total Manhours</b>	136	16	470	14	36	526	8	72	1278			
	<b>Total</b>	\$22,304	\$1,616	\$49,350	\$1,064	\$1,512	\$35,242	\$832	\$3,672	\$115,592	\$115,592	\$115,592	\$115,592.00
	<b>Total Labor, OH &amp; Profit</b>	\$22,304	\$1,616	\$49,350	\$1,064	\$1,512	\$35,242	\$832	\$3,672				\$115,592.00

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3           That the Contract Agreement between Haes Contracting, Inc. and the West Haymarket  
4 Joint Public Agency for the demolition of buildings on the Old Watson Brickson Lumber Yard  
5 Site, pursuant to Bid No. 12-060 for a total fee of \$79,675.00, is hereby accepted and approved  
6 and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is  
7 hereby authorized to execute said Contract Agreement on behalf of the West Haymarket Joint  
8 Public Agency.

9           Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**

**BID NO. 12-060**

**CONTRACT AGREEMENT**

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **HAES CONTRACTING, INC.**, hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

**RECITALS**

WHEREAS, JPA has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published a Notice to Bidders advertisement for and in connection with said Work, to wit:

**Demolition of Buildings on the Old Watson Brickson Lumber Yard Site**  
**Bid No. 12-060**

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

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Bids submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest and best bidder for the said Work for the sum or sums named in the Contractor's Bid. Copies of the Notice to Bidders, the Instructions to Bidders, Addendums, if any, and the Contractor's Bid (collectively "Bid Documents") are attached hereto as Exhibit A.

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

WHEREAS, since the Work will be performed within 50 feet of BNSF railroad tracks used by the National Railroad Passenger Corporation ("Amtrak"), the Contractor must obtain two policies of Railroad Protection Liability Insurance, one naming BNSF as the insured railroad, and the other naming Amtrak as the insured railroad.

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

WHEREAS, Contractor understands and acknowledges that since future use of the Watson Brickson site will be for a surface parking lot, the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Highway Construction General Wage Decision NE120034 dated 01/06/2012 ("NE34 Wage Decision").

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

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

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

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

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

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

**PERFORMANCE OF WORK** - The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete Work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by JPA's official award of this Contract to the Contractor, such award being based on the acceptance by JPA of the Contractor's Bid as set forth in Exhibit A.

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

**BNSF CONTRACT REQUIREMENTS** Contractor agrees that the provisions in the C&M Agreement are made part of this Contract. Contractor agrees that since the Work will be performed within 50 feet of BNSF Property, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Contractor understands and agrees that prior to commencing the Work, the Contractor must:

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

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

(c) Submit copies of signed C-1A agreement and all required insurance certificates to Gerald Maczuga (BNSF).

(d) Receive the BNSF executed C-1A agreement from Gerald Maczuga.

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

(a) Complete the BNSF Contractor Safety Orientation at [www.contractororientation.com](http://www.contractororientation.com). All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(b) Complete the e-RAILSAFE security orientation training program at [www.erailsafe.com](http://www.erailsafe.com). All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(c) Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Gerald Maczuga, along with a list of all personnel who have taken both programs. This includes employees of subcontractors employed by the Contractor.

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

**COMPENSATION** - JPA agrees to pay to the Contractor for the performance of the Work embraced in this Contract, and the Contractor agrees to accept as full compensation therefore, the sums and prices for all Work covered by and included in the Contractor's Bid awarded by the JPA to the Contractor award, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

**COMPLETION DATE** - The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date.

**INDEMNIFICATION** - The following Indemnification provisions are in addition to and not in lieu of the Assumption of Liability and Indemnification provision in Article VI.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. INDEMNIFICATION OF JPA.

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

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

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

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF 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. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor’s Right of Entry.

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

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

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

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

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

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

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

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

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

1. Bid Documents (Exhibit A).
2. Exhibit B – Intentionally Omitted.
3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).
  - a. Commentary to Accompany Construction Bonds.
  - b. Construction Performance Bond.
  - c. Construction Payment Bond.
  - d. Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved February 2012).
  - e. Executive Order No 83319.
  - f. Modified BNSF Insurance Certification Process (10-21-2011).
  - g. 29 C.F.R. § 5.5(a) Contract Provisions.
  - h. Effective Wage Decision.
  - i. Special Provisions for Demolition Contracts.
  - j. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.

5. Other Non-Attached Contract Documents.
  - a. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA's Change Order Process adopted by JPA Resolution No. WH00195.
  - b. Lincoln Standard Plans 2010.
  - c. Project Plans, Specifications, and Profile Detail Sheets.
  - d. Any executed Addenda or Change Orders.
  - e. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase).
    - i. Form of Nebraska Resale or Exempt Sales Certificate.
    - ii. Form of Purchasing Agent Appointment.
 

Note: Any portion of this project used for providing water service, such as pipe for water mains, are not tax exempt and are subject to sales and use tax.

Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use tax.
  - f. Requirements in 29 C.F.R. parts 1, 3 and 5.

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

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

IN WITNESS WHEREOF, the Contractor and JPA do hereby execute this Contract.

**CONTRACTOR:**

**HAES CONTRACTING, INC.**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**JPA:**

**WEST HAYMARKET JOINT PUBLIC AGENCY**

By: \_\_\_\_\_,  
 \_\_\_\_\_, Chairperson of the West Haymarket Joint Public Agency Board of Representatives

**EXHIBIT A**  
**Bid Documents**

*Approved by Law*  
*2-21-2012*

**Advertise 1 time  
Wednesday, February 22, 2012**

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

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Wednesday, March 7, 2012** for providing the following:

**Demolition of  
Former Watson Brickson Lumber Yard  
Bid No. 12-060**

***A Pre-bid meeting will be held Tuesday, February 28, 2012 at 2:00 p.m., at the SW Corner of 6<sup>th</sup> and "N" Street (Main Entrance), Lincoln, NE. All interested Vendors are strongly encouraged to attend.***

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

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

# INSTRUCTIONS TO BIDDERS

## WEST HAYMARKET JOINT PUBLIC AGENCY

E-Bid

### 1. BIDDING PROCEDURE

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

### 2. BID SECURITY

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

### 3. BIDDER'S REPRESENTATION

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

**4. CLARIFICATION OF BIDDING DOCUMENTS**

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

**5. ADDENDA**

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

**6. INDEPENDENT PRICE DETERMINATION**

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

**7. ANTI-LOBBYING PROVISION**

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

**8. BRAND NAMES**

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

**9. DEMONSTRATIONS/SAMPLES**

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

**10. DELIVERY (Non-Construction)**

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

**11. WARRANTIES, GUARANTEES AND MAINTENANCE**

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

**12. ACCEPTANCE OF MATERIAL**

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

**13. BID EVALUATION AND AWARD**

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

**14. INDEMNIFICATION**

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

**15. TERMS OF PAYMENT**

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

**16. LAWS**

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

**17. EQUIPMENT TAX ASSESSMENT**

- 17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. Indicating; every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract. The certified statement shall state that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

**18. AFFIRMATIVE ACTION**

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

**19. LIVING WAGE**

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

**20. INSURANCE**

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

**21. EXECUTION OF AGREEMENT**

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

**22. TAXES AND TAX EXEMPTION CERTIFICATE**

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

**23. AUDIT ADVISORY BOARD**

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

**24. E-VERIFY**

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

**Addendum #1  
For  
Demolition of Former Watson Brickson Lumber Yard  
Bid No. 12-060**

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

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

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

- 1. Updated Tax Assessment Form (Stat. 77-1323) has been replaced in Attachment D (page 6).**
- 2. Updated Insurance Requirements have been replaced in Attachment D (pages 7-14).**
- 3. Special Provisions have been added in the Attachment section.**
- 4. Sample Contract has been replaced with a revised Sample Contract.**

All other terms and conditions shall remain unchanged.

Dated this 23<sup>rd</sup> day of February, 2012.

Vince M. Mejer  
Purchasing Agent

Demolition of Former Watson Brickson Lumber Yard, Bid No. 12-060  
 Prebid Attendees, Tuesday, February 28, 2012 -- 2:00 p.m.

Name	Company	Phone No.	Fax No.	E-Mail Address
Adam HOBELMANN	PK SPORTS	402-405-9311		ADAM@PROJECTCONTRA.COM
Steve Short	DECO	816-483-5656	483-1585	steves@deco-kc.com
Scott Haes	HAES	402-499-1166	402-423-3553	scotthaes@gmail.com
Heather Piersol	New Horizons	402-261-8130	402-261-8136	heather@newhorizons-llc.com
BEN Woods	LAND	402-477-5263	402-477-2193	ben@landconstruction.com
Tim Lempeka	Gama Trucking LLC	402-430-4853	794-5002	timl@gamatrucking.com
Jim ANDERSON	ANDERSON EXCAVATING	402-345-8800	402-345-2400	jd-andersonexcavating@kotrmail.com
SEAN Burkholz	BRANDT EX	429-7180	474-4116	SEAN@BRANDTEXCAVATING.COM
Wes d Kent Malow	Malow Const	402-540-8214		wesdirt@gmail.com
GUAD ALDRICH	TCW	475-5030		caldrich@tcwconstruction.com
Tony A. Rhye	TCW Construction Inc	402-475-5030	402-475-5049	trhye@tcwconstruction.com
STAN BOZES	TEC Construction	402-499-2552		Stanbozes@TECConstruction.com
Nick MENTZER	LEGRANDE EXC	402-430-4145		nick.mentzer@gmail.com
Todd Porshiz	PERSHIN	402-610-6057		
DAN LEHL	LOOSTAR	402-416-6140		
RON BRUCK	ESA, INC	402-708-7633	934 2634 402-708-7634	RBRUCK@ESASITE.COM
BOB BOVKE	BOCKMANN INC	402-423-6631		bob@BOCKMANNINC.COM

EXHIBIT A

**Addendum #2  
For  
Demolition of Former Watson Brickson Lumber Yard  
Bid No. 12-060**

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

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

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

1. **As listed in the original Special Provisions:  
Estimated Contract Award Date = March 16, 2012  
Project Completion Date = April 14, 2012**
2. **Alternate #1 is to provide a deduct amount for extending the completion date one week to April 21, 2012.**
3. **Please include in your lump sum 300 cy of import soil fill. Provide a unit price for each CY added or deducted as needed by the actual work.**
4. **Alternate #2 is to provide a deduct to use soil provided by the JPA which is currently stockpiled in the West Haymarket Area as fill in lieu of importing soil from another location.**
5. **The limit of Demolition, excluding utilities, is to be the Property Line.**
6. **Asbestos Abatement is no longer part of this project. Abatement work will be handled separately with the goal of being completed prior to Demolition Project commencing.**
7. **The top soil layer of gravel/small rock/soil mix can be stripped and stock piled on the site to be re-spread at the completion of demolition and fill. All concrete, wood, and other debris are to be disposed of as directed in the Special Provisions.**
8. **The Pre-Bid Attendance Sheet is attached.**

All other terms and conditions shall remain unchanged.

Dated this 29th day of February, 2012.

Vince M. Mejer  
Purchasing Agent

**Addendum #3  
For  
Demolition of Former Watson Brickson Lumber Yard  
Bid No. 12-060**

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

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

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

- 1. The Davis Bacon Wages attachments have been replace with NE34 for Highway Construction.**
- 2. Note: All references of NE3 in the Sample Contract should read NE34.**

All other terms and conditions shall remain unchanged.

Dated this 2nd day of March, 2012.

Vince M. Mejer  
Purchasing Agent

<b>Bid Request Number</b>	12-060 Addendum 3	<b>Organization</b>	Lincoln Purchasing
<b>Title</b>	Demolition of Former Watson Brickson Lumbe	<b>Bid Creator</b>	Deb Winkler Systems Administrator
<b>Description</b>	There will be a prebid at the site, SW corner o	<b>Email</b>	dwinkler@lincoln.ne.gov
<b>Bid Type</b>	Bid	<b>Phone</b>	1 (402) 441-7410
<b>Issue Date</b>	2/22/2012 8:07:47 AM Central	<b>Fax</b>	1 (402) 441-6513
<b>Close Date</b>	3/8/2012 12:00:00 PM Central		

Responding Suppliers

Name	City	State	Response Submitted	Lines Responded	Response Total
Haes Contracting Inc.	Lincoln	NE	3/8/2012 8:59:51 AM CST	3	\$80,675.00
Land Construction, Inc.	Lincoln	NE	3/8/2012 11:07:07 AM CST	3	\$86,670.00
NGC Group Inc.	Lincoln	NE	3/8/2012 11:17:37 AM CST	3	\$120,674.00
Gana Trucking & Excavating	Martell	NE	3/7/2012 12:56:25 PM CST	3	\$132,524.00
TCW Construction Inc.	Lincoln	NE	3/8/2012 8:47:45 AM CST	3	\$150,606.70
LeGrande Excavating, Inc	Lincoln	NE	3/7/2012 10:31:28 AM CST	3	\$209,775.00
Valley Corporation	Valley	NE	3/8/2012 10:23:42 AM CST	3	\$277,300.00

Response Notes

Supplier	Line	Notes
Haes Contracting Inc.	1	\$79,675.00
	3	Deduct \$1,000.00 from bid for using soil from West Haymarket stockpile.

Bid No. 12-060 Addendum 3

Specification Responses				Haes Contracting Inc.		Land Construction, Inc.		NGC Group Inc.		Gana Trucking & Excavating		TCW Construction Inc.		LeGrande Excavating, Inc		Valley Corporation	
Line	Description	UOM	QTY	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended	Unit	Extended
1	Complete Demolition per the specifications - LUMP Sum	Lump Sum	1	\$79,675.00	\$79,675.00	\$86,668.00	\$86,668.00	\$119,674.00	\$119,674.00	\$132,519.00	\$132,519.00	\$148,103.20	\$148,103.20	\$208,200.00	\$208,200.00	\$236,800.00	\$236,800.00
2	Alternate #1 - Deduct to move Completion Date to April 21, 2012.	Deduct	1	\$0.00	\$0.00	\$0.00	\$0.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	\$2,500.00	\$2,500.00	\$0.00	\$0.00	\$10,000.00	\$10,000.00
3	Alternate #2 - Deduct for using soil for fill which is stockpiled within the West Haymarket Project Area in lieu of import.	Deduct	1	\$1,000.00	\$1,000.00	\$2.00	\$2.00	\$0.00	\$0.00	\$5.00	\$5.00	\$3.50	\$3.50	\$1,575.00	\$1,575.00	\$30,500.00	\$30,500.00
			Total		\$80,675.00		\$86,670.00		\$120,674.00		\$132,524.00		\$150,606.70		\$209,775.00		\$277,300.00

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

Bid Information		Contact Information		Ship to Information	
Bid Creator	Deb Winkler Systems Administrator	Address		Address	
Email	dwinkler@lincoln.ne.gov	Contact		Contact	
Phone	1 (402) 441-7410	Department		Department	
Fax	1 (402) 441-6513	Building		Building	
Bid Number	12-060 Addendum 3	Floor/Room		Floor/Room	
Title	Demolition of Former Watson Brickson Lumber Yard	Telephone		Telephone	
Bid Type	Bid	Fax		Fax	
Issue Date	02/22/2012	Email		Email	
Close Date	3/8/2012 12:00:00 PM CST				
Need by Date					

## Supplier Information

Company Haes Contracting Inc.  
 Address 4760 Union Hill Road  
  
 Lincoln, NE 68516  
 Contact Scott Haes  
 Department  
 Building  
 Floor/Room  
 Telephone 1 (402) 499-1166  
 Fax 1 (402) 423-3553  
 Email shaes@inebraska.com  
 Submitted 3/8/2012 8:59:50 AM CST  
 Total \$80,675.00

Signature \_\_\_\_\_

## Supplier Notes

## Bid Notes

There will be a prebid at the site, SW corner of 6th & "N" Street, Lincoln, NE on Tuesday February 28 at 2:00 p.m.

## Bid Activities

Date	Name	Description
2/28/2012 2:00:00 PM	Prebid Meeting	Prebid Meeting - On February 28, 2012 at 2:00 PM, at the SW Corner of 6th and "N" Street - Main Entrance. All interested vendors are strongly encouraged to attend.

## Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at:  <a href="http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspec/index.htm">http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stndspec/index.htm</a>	Yes
2	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
3	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
4	Specifications	I acknowledge reading and understanding the specifications.	Yes
5	Bid Bond Submission - City	I acknowledge and understand that my bid will not be considered unless a bid bond or certified check in the sum of five percent (5%) of the total amount of the bid is made payable to the order of the City Treasurer as a guarantee of good faith prior to the bid opening. The bid security may be scanned and attached to the 'Response Attachments' section of your response or faxed to the Purchasing Office (402)441-6513. The original bond/check must then be received in the Purchasing Office, 440 S. 8th Street, Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing. YOU MUST INDICATE YOUR METHOD OF BID BOND SUBMISSION IN BOX TO RIGHT!	I have faxed my bid bond.
6	Sample Contract	I acknowledge reading and understanding the sample contract.	Yes
7	Performance/Payment Bond	I acknowledge that the Performance Bond and Payment Bond in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
8	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes
9	Project Dates	The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be April 14, 2012.	YES
10	Electronic Signature	Please check here for your electronic signature.	Yes
11	Contact	Name of person submitting this bid:	Scott Haes
12	Agreement to Addendum No. 1	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: See Bid Attachments section for Addendum information.	Yes

- |                                |  |                                    |
|--------------------------------|--|------------------------------------|
| 13 Agreement to Addendum No. 2 | Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid. <br>Reason: See Bid Attachments section for Addendum information. | Yes                                |
| 14 Add'l CY Pricing            | Add/Deduct Unit Price for Import Soil Fill (State unit CY with + or - sign).   | Eight Dollars Cubic Yard (+\$8.00) |

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**Line Items**

#	Qty	UOM	Description	Response
1	1	Lump Sum	Complete Demolition per the specifications - LUMP Sum	\$79,675.00
Item Notes:				
Supplier Notes: \$79,675.00				
2	1	Deduct	Alternate #1 - Deduct to move Completion Date to April 21, 2012.	\$0.00
Item Notes:				
Supplier Notes:				
3	1	Deduct	Alternate #2 - Deduct for using soil for fill which is stockpiled within the West Haymarket Project Area in lieu of import.	\$1,000.00
Item Notes:				
Supplier Notes: Deduct \$1,000.00 from bid for using soil from West Haymarket stockpile.				
			Response Total:	\$80,675.00

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**EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT C**

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

*Approved by Law  
2-21-2012*

## CONSTRUCTION AND MAINTENANCE AGREEMENT

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

### RECITALS

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

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

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

### AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE III – CITY OBLIGATIONS**

3.1 Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.3 Construction and Contractor Requirements.

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

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each

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

3.3.3 Site Cleanup and Restoration. City shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the City C&M Work to the reasonable satisfaction of BNSF's Division Engineer.

3.3.4 Safety/Security.

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

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

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

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "**Other Improvements**"). City must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. City must also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or

Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this **Section 3.3.5**, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

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

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

**3.3.8 No Unauthorized Tests or Digging.** No City Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on BNSF's property, except after City has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.

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

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

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

### 3.4 Environmental Compliance and Notification.

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to strictly comply with all federal, state and local environmental laws and regulations in its use of BNSF's property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to the BNSF property. City and its contractors, if any, shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on BNSF's property. City and its contractors, if any, shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in BNSF's property and as encountered in the City C&M Work and then only in compliance with Environmental Laws and the SMP (defined below), and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the City C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any BNSF property.

3.4.2 Notice of Release. City shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from BNSF's property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of BNSF's property. City shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in this C&M Agreement only in compliance with Environmental Laws and the SMP. City shall also give BNSF notice of all measures undertaken on City's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

3.4.3 Remediation of Release. In the event City has notice of a release or violation of Environmental Laws which occurred or may occur as a result of City's activities contemplated in this C&M Agreement, City shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting BNSF's property or improvements. If during the City C&M Work, soils or other materials considered to be environmentally contaminated are exposed, City will remove and safely dispose of said contaminated soils only in compliance with Environmental Laws and the SMP. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

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

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

### 3.5 Timing.

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

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

3.6 Indemnifications.

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

(i) ANY RIGHTS OR INTERESTS GRANTED TO CITY OR ANY CITY PARTY (DEFINED BELOW) PURSUANT TO THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THIS C&M AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CITY CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY WORK PERFORMED BY CITY OR ANY CITY PARTY IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING (AS DEFINED IN THE MASTER AGREEMENT), OR STORM WATER MITIGATION (AS DEFINED IN THE MASTER AGREEMENT) BY CITY;

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

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

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

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

OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

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

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

THE LIABILITY ASSUMED BY CITY AND THE CITY CONTRACTORS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY BNSF'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

3.6.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.

3.6.3 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES, AND SHALL CAUSE CITY'S CONTRACTORS TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CITY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

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

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

### 3.8 Insurance Obligations.

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

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

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

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

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

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

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

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

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

3.8.1.4 Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

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

3.8.1.5 Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

City agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. City further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under City's care, custody or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

City is allowed to self-insure up to \$250,000 per occurrence and \$250,000 aggregate on General Liability and Automotive Liability and up to \$500,000 per occurrence and \$500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions

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

Prior to commencing the City C&M Work, City must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV – MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

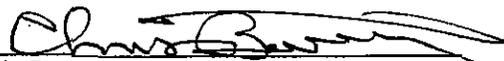
4.18 Each Party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably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

***[Signature page follows]***

**Signature Page - C&M Agreement**

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

**CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation

By:   
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

**BNSF RAILWAY COMPANY**, a Delaware corporation

By: \_\_\_\_\_  
David L. Freeman, Vice President – Engineering

Date: \_\_\_\_\_

**Signature Page - C&M Agreement**

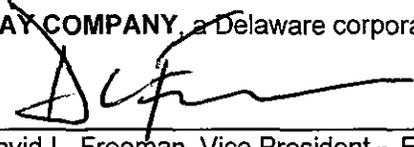
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

**CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

Date: \_\_\_\_\_

**BNSF RAILWAY COMPANY**, a Delaware corporation

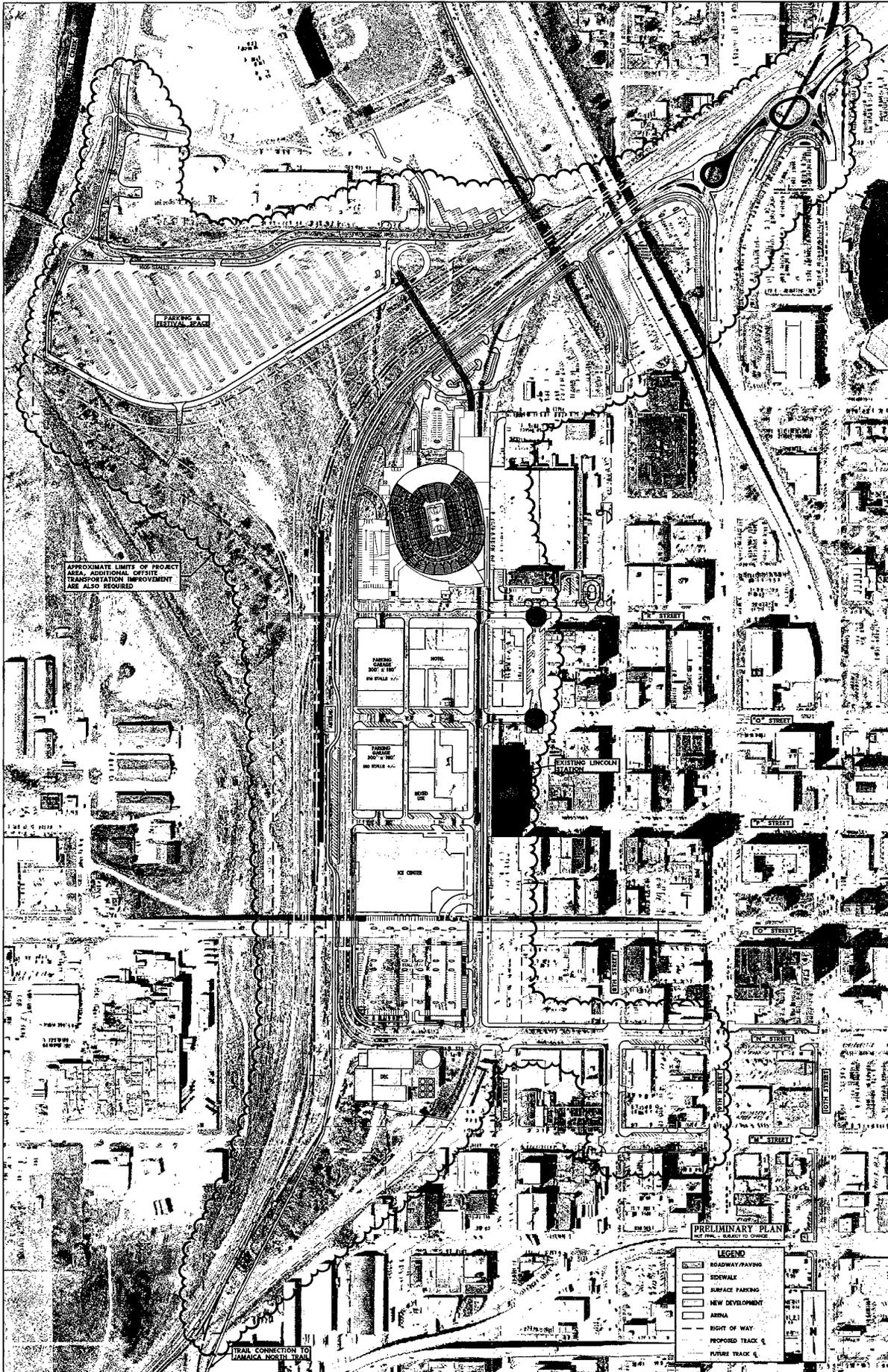
By:  \_\_\_\_\_  
David L. Freeman, Vice President - Engineering

Date: \_\_\_\_\_

**EXHIBIT A**

Project Area

[See attached]



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

**WEST HAYMARKET  
 REDEVELOPMENT AREA**

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

EXHIBIT  
**A**

**EXHIBIT B**

**Form of BNSF Plan Approval**



Gerald Maczuga  
Project Engineer

BNSF Railway Company  
201 N 7<sup>th</sup> St  
Lincoln, NE 68508  
402-458-7537 (office)  
402-458-4376 (fax)  
[Gerald.Maczuga@BNSF.com](mailto:Gerald.Maczuga@BNSF.com)

Date: \_\_\_\_\_

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

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

Dear Mr. Peo:

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

Regards,

Gerald Maczuga  
Project Engineer

## EXHIBIT C

### Contractor Requirements

#### 1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

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

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway's Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to Railway's Property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on Railway's Property. Contractor shall not handle, transport, release or suffer the release of "hazardous

waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in Railway Property and as encountered in the C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway Property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give Railway notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting Railway Property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish Railway upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.
- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.
- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.
- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the C&M Work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## **1.02 Contractor Safety Orientation**

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.

## **1.03 Railway Requirements**

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's

operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15' Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
  - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor, upon completion of the C&M Work, must promptly remove from the Railway Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

#### **1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan**

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway's Project Engineer to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

#### **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

#### **1.06 Contractor General Safety Requirements**

- **1.06.01** C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Railway Property, except after Contractor has obtained written approval from Railway Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the

personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF

**THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

#### **1.07 Excavation**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

- **1.07.05** Contractor will be responsible at no cost to Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway Property (collectively, "**Other Improvements**"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway improvements and Other Improvements in the field in order to verify their locations. Contractor must also use all reasonable methods when working on or near Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting Railway Property, in a manner that does not adversely impact utility service to Railway.

#### **1.08 Hazardous Waste, Substances and Material Reporting**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1 (800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

#### **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1 (817) 352-7595 and to the Railway's Project Engineer no later than the close of shift on the date of the injury.

**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

- 1. Accident City/St
- 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_ County: \_\_\_\_\_
- 3. Temperature: \_\_\_\_\_
- 4. Weather \_\_\_\_\_  
(if non-Railway location)
- 5. Social Security # \_\_\_\_\_
- 6. Name (last, first, mi) \_\_\_\_\_
- 7. Address: Street: \_\_\_\_\_ City: \_\_\_\_\_  
St. \_\_\_\_\_ Zip: \_\_\_\_\_
- 8. Date of Birth: \_\_\_\_\_ and/or Age \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)
- 9. (a) Injury: \_\_\_\_\_ (b) Body Part: \_\_\_\_\_  
(i.e. (a) Laceration (b) Hand)
- 11. Description of Accident (To include location, action, result, etc.): \_\_\_\_\_
- 12. Treatment: \_\_\_\_\_  
 First Aid Only  
 Required Medical Treatment  
 Other Medical Treatment
- 13. Dr. Name \_\_\_\_\_ 30. Date: \_\_\_\_\_
- 14. Dr. Address: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_  
Zip: \_\_\_\_\_
- 15. Hospital Name: \_\_\_\_\_
- 16. Hospital Address: \_\_\_\_\_  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_  
Zip: \_\_\_\_\_
- 17. Diagnosis: \_\_\_\_\_

**FAX TO RAILWAY AT (817) 352-7595  
AND COPY TO RAILWAY ROADMASTER FAX**

**EXHIBIT C-1(A)**

**CONTRACTOR'S RIGHT OF ENTRY  
For C&M Work**

**BNSF RAILWAY COMPANY  
Attention: Project Engineer**

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated \_\_\_\_\_, 20\_\_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated \_\_\_\_\_, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

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

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

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

**CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

**Section 2. TERM**

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

**Section 3. INSURANCE**

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

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

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
  - Any and all vehicles owned, used or hired

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

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

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

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

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

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

- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

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

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

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

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

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

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

#### **Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### **Section 5. TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

**Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.**

**Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.**

*[Signature page follows]*

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**EXHIBIT C-1(B)**

**CONTRACTOR'S RIGHT OF ENTRY  
For C&M Work**

**BNSF RAILWAY COMPANY  
Attention: Project Engineer**

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated \_\_\_\_\_, 20\_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated \_\_\_\_\_, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

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

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

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

**CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

*It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.*

**Section 2. TERM**

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

**Section 3. INSURANCE**

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000.00 per occurrence, and \$4,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

- B. **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
  - Any and all vehicles owned, used or hired

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

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

- C. **Workers Compensation and Employers Liability Insurance.** This insurance shall include coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

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

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

- D. **Railroad Protective Liability Insurance.** This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

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

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

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

**Other Requirements:**

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

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

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

#### **Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### **Section 5. TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

**Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.**

**Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.**

*[Signature page follows]*

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**EXHIBIT D**

**Final Clearances**

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

## **EXHIBIT E**

### **Soil Management Plan**

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

#### **Proper Management of Impacted Media**

##### **1. Access**

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

##### **2. Management Practices**

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

###### **2.1 Impacted Soil and Debris Management**

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

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.
2. Title 132, Chapter 1, Section 041 defines fill as: *"solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material"*.
3. The *"use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment"*.
4. From pg. 2 of NDEQ GD 05-161: *"Activity not related to investigation or remediation is not considered "active management" under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation."*
5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

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

## **2.2 Grading/Excavation**

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

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.***
5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.
7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

## **2.3 Utility Work**

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

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all related utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

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

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.
7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.
8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

#### **SPILL/INCIDENT RESPONSE REFERRAL SHEET**

##### **SPILL REPORTING**

###### **First Call:**

###### **Environmental Project Management Team Technical Representatives:**

**Frank Uhlarik – Alfred Benesch & Company:** 402-333-5792  
Cell: 402-669-0546

###### **Alternate:**

**Bill Imig – Olsson Associates:** 402-458-5903  
Cell: 402-314-4568

###### **Alternate:**

**Miki Esposito – Environmental Project Management Team:** 402-441-6173

###### **Agencies/Railroad Authorities:**

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

###### **After Hours, Weekends and Holidays:**

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

##### **ALL OTHER INCIDENTS**

**Fire and Police:** Dial 911

## LIST OF ACRONYMS

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

**EXHIBIT D**

**Other Contract Documents**

*Approved by Law*  
2-21-2012

## COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

### A. GENERAL INFORMATION

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

Construction Performance Bond  
Construction Payment Bond

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

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

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

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

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

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

### B. COMPLETING THE FORMS

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

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

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

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

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

CONSTRUCTION PERFORMANCE BOND

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

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CONTRACTOR (Name and Address):

SURETY (Name and Principal  
Place of Business):

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

CONSTRUCTION CONTRACT

Date:  
Amount:

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

BOND  
Date:  
Amount:  
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company:

(Corp. Seal) SURETY  
Company:

(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title: Name and Title:

Signature: \_\_\_\_\_

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

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefore to the Owner; or
    2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
  - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
  - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

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

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place  
Of Business):

Owner (Name and Address):

**West Haymarket Joint Public Agency  
555 South 10th St.  
Lincoln, NE 68508**

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND

Date:

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

SURETY

Company:

(Corp. Seal)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title: \_\_\_\_\_

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
    2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly, and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
  11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
  13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
  14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
  15. DEFINITIONS
    - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
    - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and charges thereto.
    - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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

**INSURANCE REQUIREMENTS  
FOR ALL WEST HAYMARKET JOINT  
PUBLIC AGENCY CONTRACTS**

**1. GENERAL PROVISIONS**

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, 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:

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

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

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)
- F. **Other Requirements.** All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against JPA for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Contractor represents and understands that its insurance agent(s)/broker(s) have been informed that the Contractor's insurance coverage being procured by the Contractor herein is to protect, defend, identify and hold harmless JPA from any and all liabilities, as such term is defined herein, that may arise in connection with this Agreement and the Contractor to the fullest extent allowed by law waives any caps or limitations on legal liability that may result therefrom.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release, defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

**2. INSURANCE REQUIREMENTS**

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

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

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

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

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

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions “a” through “o” and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

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

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

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

- (3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.

- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
- Endorsement to provide the general aggregate per project endorsement.
- Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
- Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
- Separation of insureds.
- Additional insured endorsement in favor of and acceptable to the JPA.

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

**D. Vehicle liability insurance coverage.**

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

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

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

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

**E. Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 2.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

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

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

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.

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

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

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

### 3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:

#### INDEMNIFICATION OF JPA.

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

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

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

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF 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.

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

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
  - (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
  - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

#### **4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.**

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

#### **5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

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

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

**6. PROPERTY INSURANCE/ BUILDER'S RISK.**

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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7-26-10/law/tb



**CITY OF LINCOLN  
EXECUTIVE ORDER**

NO. 083319

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

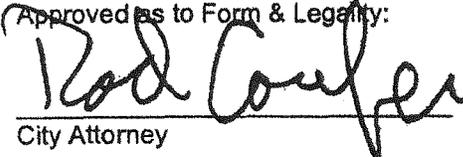
under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period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

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

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

Dated this 28 day of July, 2010.

  
Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:  
  
City Attorney

**EMPLOYEE CLASSIFICATION ACT AFFIDAVIT**

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

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

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

PRINT NAME: \_\_\_\_\_  
(First, Middle, Last)

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

State of Nebraska            )  
  ) ss.  
County of \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public



Jamie Stamper  
Manager-Risk Management

BNSF Railway Company  
P.O. Box 961073  
Fort Worth, Texas 76114-0733  
2500 Lou Menk Drive  
Fort Worth, Texas 76131-2828  
Telephone 817-352-3485  
Fax 817-352-7207  
Email Address  
Jamie.Stamper@bnsf.com

RECEIVED

OCT 31 2011

LAW DEPT.

October 21, 2011

WEST HAYMARKET JOINT AGENCY (JPA),

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

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

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

BNSF Railway Company  
PO Box 140528  
Kansas City, MO 64114

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

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

Sincerely,

Jamie Stamper  
Vickie Barnett

Exhibit D

## 29 C.F.R. § 5.5

Code of Federal Regulations Currentness

## Title 29. Labor

## Subtitle A. Office of the Secretary of Labor

Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

**§ 5.5 Contract provisions and related matters.**

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

(1) Minimum wages.

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

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

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

the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

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

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-014
(a)(1)(ii)(C)	1215-014
(a)(1)(iv)	1215-014
(a)(3)(i)	1215-0140, 1215-00:
(a)(3)(ii)(A)	1215-014
(c)	1215-0140, 1215-00:

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

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

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

#### NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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Lancaster County.....	\$ 11.82	
Saunders County.....	\$ 12.37	
Seward County.....	\$ 11.27	
IRONWORKER, REINFORCING.....	\$ 19.35	
LABORER (COMMON OR GENERAL)		
Lancaster County.....	\$ 12.58	
Saunders County.....	\$ 12.55	
Seward County.....	\$ 12.20	
LABORER: Concrete Saw.....	\$ 16.07	6.55
LABORER: Mason Tender (Cement/Concrete).....	\$ 10.44	
LABORER: Traffic Control - Flagger and Cone/Barrel Setter		
Lancaster County.....	\$ 11.87	
Seward County.....	\$ 9.00	
OPERATOR: Asphalt Spreader.....	\$ 18.74	
OPERATOR: Backhoe/Excavator		
Lancaster County.....	\$ 19.91	6.07
Saunders County.....	\$ 19.47	6.07
Seward County.....	\$ 16.15	
OPERATOR: Backhoe/Loader.....	\$ 15.94	
OPERATOR: Bobcat/Skid Loader		
Lancaster County.....	\$ 10.56	
Saunders County.....	\$ 12.51	
Seward County.....	\$ 14.85	
OPERATOR: Broom/Sweeper.....	\$ 11.43	
OPERATOR: Bulldozer		
Lancaster County.....	\$ 16.78	
Seward, Saunders Counties...	\$ 16.34	
OPERATOR: Compactor.....	\$ 13.36	
OPERATOR: Crane.....	\$ 22.38	
OPERATOR: HYDRO HAMMER.....	\$ 17.03	
OPERATOR: Loader		
Lancaster County.....	\$ 17.44	
Saunders County.....	\$ 17.19	
Seward County.....	\$ 16.04	
OPERATOR: Mechanic.....	\$ 19.58	
OPERATOR: Milling Machine.....	\$ 12.80	
OPERATOR: Oiler.....	\$ 16.21	
OPERATOR: Paver		
Lancaster County.....	\$ 14.79	
Seward, Saunders Counties...	\$ 16.13	
OPERATOR: Roller		
Lancaster County.....	\$ 13.00	
Saunders County.....	\$ 13.45	
Seward County.....	\$ 14.04	



characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

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

#### Non-Union Identifiers

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

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

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#### WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

SPECIAL PROVISIONS  
FOR  
DEMOLITION PROJECTS  
Purchasing Division  
City of Lincoln, Nebraska

1. SCOPE OF WORK

1.1 Demolish all buildings and clear parcels located in the SW corner of 6th and "N" Street in Lincoln, Nebraska (Old Watson Brickson Lumber buildings).

1.1.1 See site map and additional information in Bid "Attachment A: Watson Brickson Recordation" in the Attachments section of ebid.

1.1.2 Due to its close proximity to railroad tracks contractor must provide all insurance as required by BNSF and the City's agreement with BNSF. This is above and beyond the normal City of Lincoln Insurance Requirements.

1.1.3 Contractor must coordinate with the railroad and perform work as necessary to meet all railroad requirements.

1.2 Legal description of property: Lincoln original block 51. Buildings are located on lots 6 through 15 and W25' lot 16 EX 8.5'.

1.3 Total clearing of the property, including abandonment of all existing utilities that are not presently abandoned, including but not limited to gas, water, sewer, electric, telephone and Cablevision.

1.3.1 Water and Sanitary service lines are to be abandoned at the main in accordance with the City of Lincoln and the utility provider's requirements prior to the commencement of demolition.

1.4 All buildings and parking areas, including pavement, within the property boundaries will be demolished and removed, foundations and footings will be removed including any concrete steps, poles, fences, all signs on the property, parking lot lights, and any other structure not mentioned. This excludes the billboard structure and all associated items (electrical) required to maintain its current condition on the property.

1.5 Debris will be kept in a wet condition to prevent visible emissions to the air. A fire main is located near the property. Contractor will be responsible for all water and meter costs.

1.6 Remove concrete/brick/crushed rock driveways, parking surfaces, slabs and trees/brush within the confines of the property, and dispose of debris at an appropriate landfill or disposal site.

1.7 Contractor will be responsible for protecting existing sidewalks, curbs and existing utilities that are not specified for removal.

1.8 Contractor is responsible for the removal of all wires running to and on said property(s), cap or plug all sewer and gas lines, etc. serving the property(s) to the satisfaction of the agency

involved and as directed by the Project Manager. The power to the billboard located on site is to remain intact.

1.9 Contractor will follow all items that pertain to traffic control as outlined in City of Lincoln, Department of Public Works and Utilities "Guidelines for Street Construction, Maintenance and Utility Operations".

1.9.1 This information is available from Public Works Department, Traffic Engineering Operations.

1.9.2 Sidewalk closure is the Contractors responsibility, including signs indicating "Sidewalk Closed".

1.9.3 Contractor is responsible for getting approval for street lane closure, if needed, to exit demolition site or provide flagman to warn traffic of trucks entering "N" Street.

1.9.4 Payment for Traffic Control shall be subsidiary to the bid item "General Site Demolition."

1.10 The site is currently partially fenced. However, as needed a 6' chain link fence, or other barricade as approved by the Project Manager, shall be erected to prevent demolition debris from entering the street and keeping pedestrians out of the demolition site.

1.10.2 Payment for the fence shall be subsidiary to the bid item "General Site Demolition."

1.10.3 After removal of the fence, or approved barricade, any holes on the existing pavement shall be filled properly.

1.11 Contractor will be required to coordinate with all utilities, local businesses, and other construction projects in the area during construction.

1.12 Contractor shall immediately stop work if hazardous material that was not included in the asbestos inspection reports is encountered and contact the project manager. Recordation reports indicate that there is a potential for encountering storage tanks below grade.

1.12.1 A geotechnical investigation was completed in May 2010.

1.12.1.1 This investigation sampled 10 soil locations.

1.12.1.1 Based on this report it is not anticipated that hazardous material will be encountered at or above building footing level. Please refer to "Attachment C – EPA Phase II ESA Jay Lynn" for further information.

1.121.1.1 If unanticipated contaminated soil or hazardous material is encountered and remediation is required, then a contract change order will be created, priced, negotiated, and finalized.

1.12.2 The geotechnical report: "Attachment C – EPA Phase II ESA Jay Lynn" may be viewed at the City of Lincoln, Engineering Services, 531 Westgate Blvd.

1.13 Contractor shall immediately stop work if underground tanks are encountered.

1.14 Final grading of the site shall be done to provide natural water runoff and a smooth surface to drain off site. Include silt fence etc. as required to prevent sediment run off.

1.14.1 All compaction requirements shall follow the City of Lincoln's Standard Specification Section 20.03D.

1.14.2 Finished slopes shall not exceed 3:1.

1.15 Bidder shall submit bid documents and all supporting material via e-bid.

1.16 All inquiries regarding these specifications shall be directed via e-mail or faxed request to Bob Walla, Asst. Purchasing Agent ([rwalla@lincoln.ne.gov](mailto:rwalla@lincoln.ne.gov))

Or Fax: (402) 441-6513.

1.16.1 These inquiries and/or responses shall be distributed to all prospective bidders electronically as addenda.

1.16.2 The City of Lincoln/Lancaster County shall only reply to written inquiries received within five (5) calendar days of bid opening.

## 2. PROJECT MANAGER

2.1 The Project Manager shall be PC Sports.

## 3. SITE VISITATION AND PRE-BID CONFERENCE

3.1 Bidders shall review and undertake full responsibility of the conditions under which the work is to be performed.

3.3 A Pre-bid Meeting will be held at the demolition site on Tuesday, February 21<sup>st</sup>, 2012 at 2 pm, 660 "N" Street, Lincoln, NE 68508.

3.3.1 All interested bidders are strongly encouraged to attend.

## 4. ESCALATOR CLAUSE

4.1 An escalator clause or any qualification of price conditions which makes it possible to bill at a price higher than price quoted will disqualify the bid, unless such maximum billing price or percentage of increase is definitely shown on the Proposal, in which case such higher price will be used for comparison of bids.

## 5. HEALTH AND SAFETY REGULATIONS

5.1 The Contractor and his subcontractors shall in all respects comply with the terms and provisions of Sections 48-425 through 48-435, Nebraska Reissue Revised statutes of 1943, generally pertaining but not limited to scaffolding and flooring, and shall perform fully on behalf of the City such requirements as said sections may impose upon the City.

5.1.1 The Contractor and his subcontractors shall likewise comply and perform with respect to any and all other applicable health and safety regulations.

5.1.2 A site specific safety plan and job hazard analysis for demo work will be provided by the contractor to be reviewed by the Project Manager.

6. LINCOLN MUNICIPAL CODE AND RELATED REGULATIONS, FEES, AND PERMITS including, but not limited to:

6.1 Demolition shall be performed in accordance with the following provisions of the Lincoln Municipal Code (LMC) and related regulations.

6.1.1 LMC Chapter 20.10, Lincoln Building Code, pertaining to excavations and fills, protection of pedestrians during demolition, and demolition of buildings.

6.1.2 LMC Chapter 14.29, pertaining to use of public streets for construction purposes.

6.1.3 LMC Section 17.10.120, pertaining to abandonment of utilities.

6.1.4 LMC Chapter 8.02, pertaining to public health and safety.

6.1.5 LMC Chapter 8.32, pertaining to disposal of demolition debris.

6.2 Contractors shall secure and pay for all permits, licenses and certificates of inspections that may be required by the City of Lincoln and any other authorities having jurisdiction as needed.

## 7. NOTICE TO PROCEED AND COMPLETION DATE

7.1 The Contractor shall not begin demolition until receiving written "Notice to Proceed" from the Project Manager this date is preliminarily scheduled to be March 16, 2012.

7.2 Work shall begin as soon after the "Notice to Proceed" as is necessary for the contractor to complete the work prior to April 14, 2012.

7.2.1 Once work is started by the Contractor it shall continue without interruption until completed.

## 8. PRE-DEMOLITION CONFERENCES AND PROGRESS SCHEDULE

8.1 Prior to starting any work, the Contractor shall meet with the Project Manager, or Project Manager's designee, for clarification of procedures and work to be accomplished.

8.2 The Contractor, immediately after being awarded the contract, shall prepare and submit for the Project Manager's approval an estimated progress schedule for the work.

8.3 The progress schedule shall be related to the entire project to the extent required by the Contract Documents.

8.4 This schedule shall indicate the dates for the starting and completion of the various states of demolition and shall be revised as required by the conditions of the work, subject to the Project Manager's approval.

## 9. INSPECTIONS

9.1 Inspections in general will be conducted by Project Manager or Project Manager's designee.

9.2 The Contractor shall be responsible for contacting City Building, Safety Department, State Environmental, and Environmental testing agency, for inspections required by City Codes for this type of public improvement and these Special Provisions.

10. ACCESS AND PARKING

10.1 The Contractor shall park all equipment on the demolition site during demolition, not on City right-of-way or City streets.

11. TEMPORARY UTILITIES

11.1 The Contractor shall be responsible for securing and setting up temporary utilities required for job completion.

12. CLEAN UP

12.1 The Contractor shall be responsible for keeping the premises free of waste materials or rubbish resulting from operations or the operations of subcontractors.

12.2 The Contractor shall remove equipment, scaffolding, waste, and surplus materials from the premises when the need for keeping them on the job no longer exists.

12.3 The Contractor shall make every effort to recycle any and all material being demolished when it is economical to do so.

12.4 All salvageable materials shall become the property of the Contractor upon completion of the project.

13. DELAYS

13.1 With written permission of the Project Manager, the completion date may be extended if unsuitable weather or force majeure should halt progress during the demolition period.

14. LIQUIDATED DAMAGES

14.1 If the Contractor fails to complete the Contract prior to the completion date, considering approved extension of time, liquidated damages will be charged for each calendar day that the work remains incomplete.

14.2 The amount of liquidated damages will be deducted from the money due the Contractor prior to final payment or in the case where the remaining amount due the Contractor is less than the total amount of liquidated damages, the City shall have the right to recover the difference from the Contractor or his Surety.

14.3 Unless specifically amended or modified by the special provisions, the schedule below shall establish the daily amount of the liquidated damages:

BID AMOUNT: UP TO AND MORE THAN	INCLUDING	LIQUIDATED DAMAGES PER CALENDAR DAY
\$0	\$100,000	\$250
\$100,000	\$500,000	\$500
\$500,000	\$1,000,000	\$750

\$1,000,000 AND UP ..... \$1000

14.4 The amounts set forth in the above schedule are not to be considered punitive, but rather predetermined and reasonable amounts to compensate for the detriment to the public and to defray expenses incurred by the City due to the delay in the completion of the project.

15. ASBESTOS

15.1 Asbestos has been discovered on the site.

15.2 Asbestos removal and disposal is part of the scope of this project. Please see "Attachment B – Watson Brickson Lumber Company Office Building: Asbestos Survey and Test Results" for affected areas and quantities.

15.3 Properly remove all asbestos as indicated in the report.

15.4 Company performing the asbestos removal to have all applicable licenses, insurance, training, and safety procedures required for this type of work.

16. GUARANTEE

16.1 As a minimum requirement of the City, the Contractor shall guarantee all materials and workmanship for a period of one (1) year following completion of the project.

17. PAYMENT TERMS

17.1 Payment for demolition of buildings shall be paid on a lump sum basis.

17.1.1 Such lump sum price includes all buildings and abatement.

17.2 Payment for general site demolition shall be paid on a lump sum basis.

17.3 Payment for utility taps shall be paid on a per each basis.

17.3.1 Such price shall include full payment for all work necessary to complete the item, including any pavement or sidewalk replacement and/or relocation of power.

17.4 Payment for sediment and erosion control shall be paid on a lump sum basis. Such price shall include full payment for all work necessary to complete the item, including silt fence, gutter buddies, cover crop seeding or any other sediment or erosion control item necessary to complete the task.

17.5 Payment for items noted above shall be full compensation to complete the required work and shall include all labor, materials, equipment, and tools necessary.

18. ERRORS AND OMISSIONS

18.1 If any errors or omissions are found in the drawings or specifications or other documents during demolition, the Contractor shall notify the Project Manager of such error or omission, and request clarification before proceeding with the work.

**Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323**

*§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.*

Pursuant to Neb. Rev. Stat. § 77-1323, I, \_\_\_\_\_, do hereby certify that all equipment to be used on JPA Project/Bid No. \_\_\_\_\_, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came \_\_\_\_\_, to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

\_\_\_\_\_  
Notary Public

(SEAL)

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3 That Chris Beutler, Chair of the West Haymarket Joint Public Agency Board of  
4 Representatives, is hereby authorized to execute on behalf of the West Haymarket Joint Public  
5 Agency all Third City Closing documents associated with BNSF Railway Company’s conveyance of  
6 the Third City Closing Replacement Property and other rights to the West Haymarket Joint Public  
7 Agency, as provided for in the Exchange Agreement between the parties. The Closing documents  
8 include but are not limited to:

- 9 1. Acceptance of the Quitclaim Deed City (City Replacement Property).
- 10 2. Acceptance of Bridge Bill Sale (BNSF Surplus Bridge).
- 11 3. Acceptance of Bill of Sale (BNSF Personal Property).
- 12 4. Temporary Access License for Construction Staging - Pedestrian Bridge.
- 13 5. Pedestrian Bridge Easement.
- 14 6. Security Fencing License.
- 15 7. Partial Assignment and Assumption Agreements.
- 16 8. Access License Agreement (Security Fence Gates).
- 17 9. First Amendment to Temporary License for Partial Removal of Platform and Canopy.
- 18 10. Declaration of Restrictive Covenant.

19 Adopted this \_\_\_\_\_ day of April, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

---

Legal Counsel for  
West Haymarket Joint Public Agency

---

Chris Beutler, Chair

---

Tim Clare

---

Eugene Carroll

RESOLUTION NO. WH - \_\_\_\_\_

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

3 That the attached Amendments No. 008, 009, and 010 to the Agreement between DLR  
4 Group Inc. and the West Haymarket Joint Public Agency dated September 1, 2010 are hereby  
5 approved and the Chair of the West Haymarket Joint Public Agency Board of Representatives is  
6 hereby authorized to execute said Contract Amendments on behalf of the West Haymarket Joint  
7 Public Agency. Amendment No. 008 provides a structural engineered model in order to  
8 complete the steel mill order for a fee of \$36,000.00. Amendment No. 009 provides for the  
9 design and engineering needed for the Pinnacle Bank Arena exterior signs for a fee of  
10 \$105,775.00. Amendment No. 010 provides for the design of the IPTV system in the Arena for a  
11 fee of \$29,700.00.

12 Adopted this \_\_\_\_ day of April, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

 **AIA<sup>®</sup> Document G802<sup>™</sup> – 2007**

***Amendment to the Professional Services Agreement***

Amendment Number: 008

TO: Mayor Chris Beutler  
(Owner or Owner's Representative)

In accordance with the Agreement dated: September 01, 2010

**BETWEEN** the Owner:  
(Name and address)  
West Haymarket Joint Public Agency  
555 South 10th Street  
Lincoln, NE 68508

and the Architect:  
(Name and address)  
DLR Group, inc. (a Nebraska corporation)  
1111 Lincoln Mall  
Suite 201  
Lincoln, NE 68508

for the Project:  
(Name and address)  
Pinnacle Bank Arena  
Lincoln, Nebraska

Authorization is requested  
 to proceed with Additional Services.  
 to incur additional Reimbursable Expenses.

As follows:  
TEKLA Modeling for Mill Steel Order

The following adjustments shall be made to compensation and time.  
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:	
Buro Happold Design	\$35,000
Administrative Fee	\$1,000
Total Additional Compensation	\$36,000

Time:  
Work has been completed.

SUBMITTED BY:



*(Signature)*

Stan Meradith, AIA

Principal

*(Printed name and title)*

March 26, 2012

*(Date)*

AGREED TO:

*(Signature)*

Mayor Chris Beutler

Chair

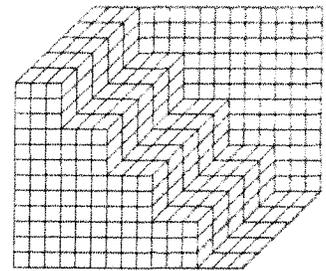
*(Printed name and title)*

*(Date)*



May 18, 2011

Mr. John Hinshaw  
Mortenson Construction  
700 Meadow Lane North  
Minneapolis, MN 55422  
via email: john.hinshaw@mortenson.com



Buro Happold

RE: **West Haymarket Arena, Lincoln NE**  
STEEL MILL ORDER, CONNECTION DESIGN & 3D MODELING PROPOSAL

Dear John:

Further to our recent conversations, Buro Happold Consulting Engineers P.C. ('Buro Happold') is pleased to submit this proposal for steel Tekla modeling and connection design services for the West Haymarket Arena project. This proposal covers our anticipated steel modeling and connection design services, including scope of work and associated estimated fees.

## 1.0 PROJECT DESCRIPTION

The project is an arena designed to initially seat 16,000 people with the ability to increase seating capacity to 18,000 people in the future. The anticipated steel consists of approximately 1,500 tons of arena high roof steel and approximately 200 tons of structural steel framed construction on grid line G in the come back areas, including sloped pipe columns and the stair towers. This project includes work for the creation of a Mill Order ready 3D model using Tekla Structures version 16.0, the connection design for major connections and a model including major connections. The members consist of wide flange members, built up members, hollow structural sections and connection elements (i.e., angles and plates), necessary for the framing of major members and connections.

## 2.0 SCOPE OF WORK

The Scope of Services includes the three services below, Mill Order Model, Connection Design and Connection Modeling as described below.

### A. MILL ORDER MODEL

1. Input all Primary Structural Steel Members into the 3-D TEKLA model. Members will be entered with:
  - a. Correct size
  - b. Material properties (i.e., yield strength and mill test requirements)
  - c. Orientation (i.e., rotation about members axis).
  - d. Special coating requirements (ie class B or intumescent paint)
  - e. Members will be input full length from work point to work point, not accounting for the reduced length that may be achieved when member lengths are adjusted for actual connection dimensions. These length adjustments will be achieved in connection modeling.
2. Primary Structural Steel Members included in this scope at this phase are defined as:

- a. Columns
  - b. Beams, Girders
  - c. Vertical and horizontal braces
  - d. Truss members
3. Minor Members not modeled in this scope are defined as:
    - a. Joists
    - b. Dunnage
    - c. MEP supports
    - d. Secondary façade support steel
    - e. Edges of slab and deck supports
    - f. Stairs (except structural steel stair supports)
    - g. "Miscellaneous steel" as defined by AISC Code of Standard Practice
  4. The deliverable for the Mill Order Model will be an electronic Tekla file(s) containing the Primary Structural Steel Members, with a degree of accuracy that the Structural Steel Contractor **has the right to rely on**, suitable for use by the Structural Steel Contractor to create their Advanced Bill of Materials (ABM) as required to order structural steel shapes and plates for built-up members.

## B. STEEL CONNECTION DESIGN

1. Work with the design team, the Structural Steel Fabricator and Contractor to develop connection concepts appropriate to the type of framing system(s) selected and the architectural requirements.
2. Work with the structural analysis and design team to extract analysis forces required for design of structural steel connections most suitable to the requirements of the project.
3. Consult with the Structural Steel Fabricator to confirm suitability of connections to fabrication and erection requirements. Where possible, Fabricator preferences that are known prior to connection design will be incorporated into connection designs.
4. Weekly attendance at job meetings during design and detailing, with the Fabricator(s), erector(s) and contractor.
5. Design connections of Main Structural Steel Members included are listed below:
  - Roof Truss connections (in tabular format)
  - Roof beam and bracing connections
  - Catwalk connections
  - Lateral Frame connections
  - Axial connections
  - Column Splices
  - Select exposed steel connections in the grid line G come back areas.

- Reinforcement for beam web penetrations that are identified and located by the design team prior to the completion of Connection Design
6. Connections NOT included are listed below:
    - Connections for Minor Members, such as members at slab openings, edges of slab, deck supports
    - Connections for secondary steel for façade support
    - Connections for Miscellaneous Steel as defined by AISC
    - Standard connections that are found in the AISC Manual of Steel Construction
  7. The Structural Steel Contractor is responsible and must sign and seal the connection designs not included in the scope above. Buro Happold can provide this service for additional cost if requested.
  8. At the end of Connection Design work, the final connection designs included in this scope will be incorporated into the 2D Construction Drawings and signed and sealed by Buro Happold.

#### C. STEEL CONNECTION MODEL (SELECT LOCATIONS)

1. Select connections will be modeled in the Steel Connection Model. The quantity of connections is indicated in parenthesis of each type of connection below. These example connections are intended to include the complex connections to clearly define scope and reduce overall project risk as well connections that require significant interaction with the architect and structural design team.
  - Roof truss connections (12)
  - Roof beam and bracing connections (4)
  - Catwalk connections (4)
  - Ring Beam beam moment connections (2)
  - Horizontal bracing connections (3)
  - Beam axial connections (4)
  - Column splices (One each type, each tier)
  - Column baseplates (One each type)
2. These connections will be modeled in a manner to convey the design intent. These modeled connections will attempt to incorporate the Fabricators TEKLA modeling preferences and general modeling practice. These connections will then be completed, by the Fabricator, and then applied at similar locations in accordance with the instructions on the Contract Documents.
3. These modeled connections will attempt to incorporate the Fabricators' TEKLA modeling preferences and general modeling practice. These connections will then be reviewed for acceptance by the Fabricator.
4. Buro Happold will share their Tekla modeling standards with the Fabricator and will modify (if necessary) to suit the selected design assist Fabricator.

5. The Fabricators detailer will be responsible for: completing the connections above at all locations, inputting the minor members and connections not included in the above, as well as means and methods information, erection aids and safety devices.
6. The following non-steel models will be included for reference and coordination. These elements will be modeled in a separate linked file(s).
  - Concrete superstructure framing
  - Interior line of façade will be shown as representative planes
7. We will coordinate with the Fabricator's detailer to assist in a smooth transition of the completed 3-D model.
8. Weekly attendance at job meetings during design and detailing, with the Fabricator(s), erector(s) and contractor.
9. At the end of Connection Model work, the Owner will be presented with an electronic Tekla file(s) that contains a 3-D model that the Steel Fabricators may use as basis to complete the connection modeling, create a shop drawing model or physical shop drawings, such as shop piece and assembly drawings, erection plans, erection details, CNC down-loads and field bolt lists.
10. We anticipate the shop drawing review process will be done by the transferring and reviewing of the Tekla models, and no 2D paper/PDF piece drawings will be required to be transferred to the structural engineer. This is to be confirmed with the Owner and architect. Erection drawings may be created in 2D or 3D.
11. The Steel Fabricator is responsible for their typical role including verifying fit-up, assemblies, and shipping sizes, etc. in addition the contractor is responsible for site safety and means and methods.

### **3.0 TERMS AND CONDITIONS**

Services provided will be in accordance with and subject to the attached Terms and Conditions, which are integral to this proposal.

### **4.0 CLARIFICATION OF SCOPE OF WORK – EXCLUDED SERVICES**

The following services are not included in this proposal for basic services and for the purposes of this proposal are understood to be provided by others or Buro Happold as an additional service.

- A. Revisions to design based on uncovering of existing conditions after completion of design work.
- B. Changes required due to unanticipated field conditions.
- C. Modeling services for other structural systems such as Cast-in-Place Concrete, or masonry, or inclusion of material or systems from other trades, such as curtain wall or MEP systems and duct work.

- D. Preparation of physical drawings, such as shop piece and assembly drawings, erection plans, erection details, CNC down-loads and field bolt lists. This work is the responsibility of the Fabricator and their detailer.
- E. Detailing of minor steel members and standard shear connections as identified above. This work is the responsibility of the Fabricator's detailer.
- F. Providing professional design services that are included in the Buro Happold contract for professional design services
- G. Providing services required due to project changes including, but not limited to, changes in the following: scope, design, size, complexity, Owner's schedule or the character of construction.
- H. Revisions for work which has already been completed and approved by the owner.
- I. Time and expenses involved in serving as an expert witness or consultant in connection with any construction claim support meeting, public or private hearing, arbitration or other legal proceeding.
- J. As-built drawings.
- K. Any other services not explicitly described in Scope of Work section of this proposal.

## 5.0 SCHEDULE

All fees have been based on the schedule as follows:

Preliminary Tekla Model for Design Assist Bidding: May 28, 2011  
 Mill Order Model complete by: July 15, 2011  
 Connection Designs complete by: September 15, 2011  
 Connection Model complete: September 15, 2011

The services shall commence on the date Buro Happold receives a fully executed copy of this proposal.

## 6.0 FEES

### A. Fees for Basic Services

Our proposed fees for the project are based on the schedule, complexity, steel tonnage and estimated construction budget as described above. We propose our fees to be as follows:

A. Mill Order Model	\$ 35,000
B. Connection Design	\$150,000
C. <u>Connection Model (select locations)</u>	<u>\$ 75,000</u>
TOTAL:	\$260,000

### B. Reimbursable Expenses

Reimbursable expenses incurred by Buro Happold in the interests of the project will be paid, within thirty (30) days of the invoice date, on a direct cost basis plus 10% to cover administrative costs. Unless otherwise agreed in writing, Buro Happold will be reimbursed, with no requirement for prior authorization, for the following project-related expenses:

- 1.1 Bulk printing and reproduction of prints (including but not limited to check prints, review/draft/preliminary/final submittals), models, calculations and reports;
- 1.2 Mileage, tolls, taxis, etc. for local travel;
- 1.3 Overnight mail; Messenger and Courier Services;
- 1.4 Internal CAD plots;
- 1.5 Long distance phone calls;
- 1.6 Miscellaneous out of pocket costs in connection with the project, with prior client approval

It is agreed that the client waives the requirement for back-up documentation for reimbursable expenses of \$100 or less.

### 7.0 Fees For Additional Services

Additional services, if requested by the client beyond the agreed above scope of work, shall be paid on either a lump sum or time and expenses basis. Any additional fees are to be mutually agreed upon prior to the start of work.

### 8.0 Authorization

We are extremely excited about the opportunity to work on this exciting project and hope that our proposal is satisfactory to your needs. If the above arrangements are satisfactory to you, please indicate your acceptance by signing in the space provided below, and returning one original of this proposal. By signing and returning this proposal, the signatory attests that he/she is authorized to accept this proposal on behalf of the client.

Sincerely,  
Buro Happold Consulting Engineers P.C.



Erleen Hatfield  
Principal

cc:

**Mortenson Construction**  
Agreed to and Accepted By:

---

Name, Title

Date

## TERMS AND CONDITIONS

### 1. General

These Standard Terms and Conditions, together with the attached proposal, constitute the Professional Services Agreement between Buro Happold and the person or entity to whom the proposal is addressed ("Client") to perform basic or additional services.

### 2. Performance of Services

Buro Happold's services will be performed in accordance with generally accepted practices of engineers providing similar services at the same time, in the same locale and under like project circumstances. This agreement does not confer upon Buro Happold the responsibility for or the authority to control, direct or supervise construction means, methods, techniques, sequences or procedures, or safety measures and programs.

### 3. Payment

Invoices will generally be submitted monthly and payment will be due within thirty (30) days of invoice date. Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month on the outstanding balance. All payments to be made in US dollars and wired directly to Buro Happold c/o HSBC Bank USA, N.A., 452 Fifth Avenue, New York, NY 10018; Account No. 003791840, ABA No. 021001088, SWIFT Code MRMDUS33.

Reimbursable expenses incurred by Buro Happold in the interests of the project are to be paid in addition to the fee. Reimbursable expenses will be billed on a direct-cost basis + 10% to cover administrative costs.

### 4. Publicity

Client agrees that Buro Happold is authorized to use the name,

general description and images of the Project in press materials, marketing and business development materials and as a reference for other prospective clients, unless said use would violate an existing written confidentiality agreement between Client and Buro Happold.

### 5. Indemnification

To the fullest extent permitted by law, the Client shall defend, indemnify and hold harmless Buro Happold, its officers, directors, agents and employees from any claims, damages, losses, causes of action, legal or administrative proceedings, costs and reasonable attorneys' fees for injuries or damages (including economic losses) to the extent caused by the failure of the Client (or its officers, employees and/or agents, independent contractors or consultants, other than Buro Happold) to perform the services under this Agreement and other applicable agreements for the Project or to discharge the standard of care and degree of professional ethics generally expected of architects and engineers in performance of services similar to the services for projects similar to this Project. The Client's obligation to indemnify Buro Happold shall not apply to the extent that claims and/or losses are caused by the gross negligence or willful misconduct of Buro Happold. This clause shall not have the effect of extending the time period within which a claim against the Client must otherwise commence under the applicable statutes of limitations or repose. This agreement to indemnify and defend shall survive the termination or expiration of this Agreement.

### 6. Authorized Use of Design Documents

Provided that Buro Happold has been compensated in full pursuant to the terms of this Agreement, Buro Happold shall grant to Client a non-exclusive license to reproduce Buro Happold's designs, drawings and specifications solely for purposes of constructing, using and maintaining the Project. The Client shall obtain similar non-exclusive licenses from its other consultants consistent with this Agreement. Any Termination of this Agreement prior to the completion of the Project shall terminate this non-exclusive license. Any re-use or modification of any documents (including drawings, specifications and models) created, prepared or furnished by Buro Happold or its consultants pursuant to this Agreement is at Client's sole risk and responsibility.

### 7. Suspension of Work and Termination

If Client fails to make payment to Buro Happold in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Buro Happold's option, cause for suspension of performance of services under this Agreement. If Buro Happold elects suspension, Buro Happold shall give seven days' written notice to Client before suspending services. In the event of a suspension of services, Buro Happold shall have no liability to Client for delay or damage caused the Client because of such suspension of services. Before resuming services, Buro Happold shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of our services. Buro Happold's fees for the remaining services and the time schedules shall be equitably adjusted.

### 8. Limitation of Liability

The Client agrees, to the fullest extent permitted by law, to limit the liability of Buro Happold to the Client for any and all claims, causes of action, losses, costs, expenses (including attorneys' fees and expenses), damages of any nature whatsoever, and claims expenses from any and all cause or causes, arising out of, resulting from or in any way related to negligent acts, errors or omissions of Buro Happold and its consultants, so that the total aggregate liability of Buro Happold shall not exceed the fee earned by, or paid to, Buro Happold (whichever is less). It is intended that this limitation applies to any and all liability or cause of action described herein, regardless of the legal theory alleged unless otherwise prohibited by law.

### 9. Waiver of Consequential Damages

The Client and Buro Happold waive consequential damages for claims, disputes or other matters in question arising out of or relating to the services provided pursuant to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination.

### 10. Force Majeure

Neither party to this Agreement will be liable to the other party for delays in performing the Scope of Services, or for direct or indirect costs resulting from such delays, that may result from labor strikes, riots, acts of war or terrorism, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

### 11. Severability

If any of these Terms and Conditions are adjudicated in a court of competent jurisdiction and determined to be invalid or unenforceable in whole or in part, the remaining provisions shall remain in full force and effect, and remain binding upon the parties.

### 12. Survival

These Terms and Conditions shall survive the completion of Buro Happold's services on this Project and the termination of services for any cause.

### 13. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

# AIA<sup>®</sup> Document G802<sup>™</sup> – 2007

## **Amendment to the Professional Services Agreement**

Amendment Number: 009

**TO:** Mayor Chris Beutler  
(Owner or Owner's Representative)

In accordance with the Agreement dated: September 01, 2010

**BETWEEN** the Owner:  
(Name and address)  
West Haymarket Joint Public Agency  
555 South 10th Street  
Lincoln, NE 68508

and the Architect:  
(Name and address)  
DLR Group, inc. (a Nebraska corporation)  
1111 Lincoln Mall  
Suite 201  
Lincoln, NE 68508

for the Project:  
(Name and address)  
Pinnacle Bank Arena  
Lincoln, Nebraska

Authorization is requested  
 to proceed with Additional Services.  
 to incur additional Reimbursable Expenses.

As follows:  
Naming Rights Signage Development

The following adjustments shall be made to compensation and time.  
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:	
Catt Lyon Design*	\$37,750
Buro Happold	\$20,000
ME Engineers Electrical Design ✓	\$5,000
Omaha Neon ✓	\$10,000
BVH (Building Skin Flashing, etc.) ✓	\$7,500
DLR Group Coordination	\$17,500
Administrative Markup (10%)	\$8,025
<b>Total Additional Compensation</b>	<b>\$105,775</b>

\*Not to exceed amount

Time:  
Design Development to be completed by June 1, 2012

SUBMITTED BY:



(Signature)  
Stan Meradith, AIA  
Principal

(Printed name and title)

February 28, 2012

(Date)

AGREED TO:

(Signature)  
Mayor Chris Beutler  
Chair

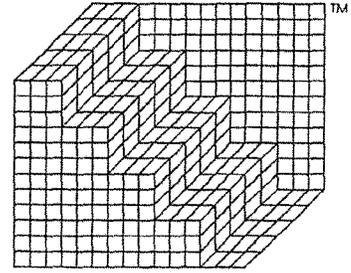
(Printed name and title)

(Date)

December 19, 2011

via email: smeradith@dlrgroup.com

Mr. Stan Meradith  
DLR GROUP  
6457 Frances, Ste 200  
Omaha, NE 68106



Buro Happold

**RE: LINCOLN ARENA STRUCTURAL ENGINEERING ADDITIONAL SERVICE REQUEST  
SIGNAGE SUPPORT - Job No. 028566**

Dear Stan,

We are pleased to submit our proposal to provide additional structural engineering services on the West Haymarket Arena Project. We request an additional service for the evaluation and upgrading of the primary structure as required for the support of the new Pinnacle Arena signage.

We will evaluate the loads imposed as provided signage supplier(s) and determine if the primary steel structure requires upgrades to meet signage supplier's criteria. If the steel structure needs changes or upgrading due to additional loads caused by the anticipated signage loads then the primary steel will be redesigned and revised construction documents will be issued. We will also check the increase in the magnitude of the loads on the foundations however we do not anticipate changes to the foundations at this time.

This scope includes the analysis, design and documentation of the primary steel due to the new Pinnacle Bank signage along with coordination meetings via conference call and shop drawing review of primary steel and signage for loads imposed. We estimate the additional effort to complete this level of effort is \$20,000 invoiced as a lump sum. We will invoice this work monthly commensurate with the amount of work performed. We estimate this work will be complete and new drawings issued by the end of February, 2012. This scope does not include secondary steel design, connection design or additional site visits.

Please confirm this additional service proposal is acceptable. We look forward to continuing to work with you and DLR GROUP on this exciting project.

Sincerely,

on behalf of Buro Happold Consulting Engineers, P.C.

A handwritten signature in cursive script that reads "Erleen Hatfield".

Erleen Hatfield, PE, AIA, LEED  
Partner  
Buro Happold

cc: James Jaros

**ACCEPTED BY:**

**DLR GROUP**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

## Meradith, Stan

---

**From:** Terry Rush [TerryRush@omahaneon.com]  
**Sent:** Tuesday, December 27, 2011 12:51 PM  
**To:** Meradith, Stan; Mike Leick  
**Cc:** Paula Yancey; Char Catt Lyon; Nattermann, Peggy  
**Subject:** RE: Omaha Neon and Pinnacle Bank Arena Signs

Stan,

After further discussion, we determined the following rates to cover the scope Mike originally listed below:

Shop time for samples: \$45/hr.

Design Team: \$60/hr.

Structural and electrical expertise via plant foremen: \$100/hr.

Project management: \$100/hr.

Please feel free to contact us if you have any further questions at this time.

Thank you.

Terry Rush

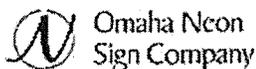
Account Executive

Omaha Neon Sign Co., Inc.

PH: 402.341.6077

Toll Free: 1.800.786.6366

Fax: 402.341.7654



---

**From:** Meradith, Stan [mailto:smeradith@DLRGROUP.com]  
**Sent:** Tuesday, December 27, 2011 10:41 AM  
**To:** Mike Leick  
**Cc:** Terry Rush; Paula Yancey; Char Catt Lyon; Nattermann, Peggy  
**Subject:** RE: Omaha Neon and Pinnacle Bank Arena Signs

Mike, we think it is ethically appropriate to compensate you and your staff for this planning phase as we discussed, being the actual work will have to be bid out by Mortensen.

---

**From:** Mike Leick [mailto:Mikeleick@omahaneon.com]  
**Sent:** Friday, December 23, 2011 1:50 PM  
**To:** Meradith, Stan  
**Cc:** Terry Rush  
**Subject:** Omaha Neon and Pinnacle Bank Arena Signs

Stan,

We are responding to your request for information related to the signs for the Hay Market Arena project. We welcome the opportunity to work with you on planning for the signs.

Our key people involved in the discussion will be Terry Rush, Bernie Steffen and me. Terry is a Sales Executive assigned to the project and Bernie Steffen is our Shop Manager. My involvement will be early on for transition since I handled much of the early discussion for Sam Marchese.

For this design project we are open to billing for services, yet this is something we normally build into the overall job. We don't have established billing rates for this type engagement.

Given the information you have provided we anticipate time in the following areas:

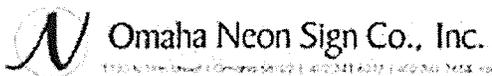
- Overall image and look
- Structure of signs
- Review of support and structure required at attachment points
- Access for installation and service
- Electrical requirements: primary and secondary (low voltage for LED)
- Drawings for Graphics
- Mechanical drawings
- Budget or cost estimating for materials
- Samples if requested or desired

Our standard shop rate is 45.00 per hour and our Design rates when used are \$60.00 per hour. We do not have established rates for time spent on work requiring people like Bernie and Terry.

Please call me so we can discuss rates before we finalize a proposal for you.

Thanks,

**Mike Leick**



## Meradith, Stan

---

**From:** Terry Rush [TerryRush@omahaneon.com]  
**Sent:** Tuesday, January 31, 2012 11:56 AM  
**To:** Meradith, Stan  
**Cc:** Mike Leick  
**Subject:** ONS Consultation Pricing

Stan,

In accordance with Mike's previous statements, we are not accustomed to billing for our services on a consultation only basis. After further discussion, and based on time committed to creating budget numbers for Char's interior package last week, we estimate the value of consultation on this project to be at \$10,000. We are committed to working with you and others on this project, so we are more than willing to treat that figure as a "Not to Exceed" ceiling; and would not bill for time not used. Please feel free to contact Mike or myself if you desire further discussion.

### Terry Rush

Account Executive

Omaha Neon Sign Co., Inc.

PH: 402.341.6077

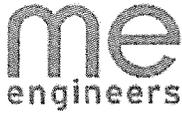
Toll Free: 1.800.786.6366

Fax: 402.341.7654



**Pinnacle Bank Arena**  
**3.28.2012**  
**BVH Architects Fee Proposal-Additional Services for Exterior Signage**

Work/Task	Principal Dan S.	Project Manager Mike	Project Architect Ryan	Prof Staff	Admin/ Clerical	TOTALS
Design and Coordination Meetings (3)	0	9	5			
Revise Contract Documents						
Elevations		2	4			
Sections		2	6			
Details		2	8			
Renderings			4			
Specifications		2				
Coordination with CDC			4	4		
Shop Drawing Review/RFI/CA			4			
Project Management	3	2				
<b>TOTAL HOURS - ALL PHASES</b>	<b>3</b>	<b>27</b>	<b>31</b>	<b>0</b>	<b>0</b>	<b>61</b>
<b>HOUR RATES (\$/HOUR)</b>	<b>\$175</b>	<b>\$150</b>	<b>\$95</b>	<b>\$75</b>	<b>\$75</b>	
<b>TOTAL BVH LABOR COSTS</b>	<b>\$525</b>	<b>\$4,050</b>	<b>\$2,945</b>	<b>\$0</b>	<b>\$0</b>	<b>\$7,520</b>
<b>CONSULTANT COSTS</b>						
Mech/Elec Engineer Fees	\$ -	0%				
Structural Engineer Fees	\$ -	0%				
Civil Engineer Fees	\$ -	0%				
<b>TOTAL CONSULTANT FEES</b>	<b>\$ -</b>	<b>0%</b>				
<b>TOTAL FEES</b>						
<b>TOTAL BVH FEES</b>	<b>\$ 7,520</b>	<b>100%</b>				
<b>TOTAL CONSULTANT FEES</b>	<b>\$ -</b>	<b>0%</b>				
<b>TOTAL BASIC SERVICE FEES</b>	<b>\$ 7,520</b>	<b>(not including reimbursable expenses)</b>				



M-E Engineers, Inc.  
 10055 west 43rd avenue / wheat ridge / co 80033  
 t. 303.421.6655 / f. 303.421.0331  
 www.me-engineers.com

March 27, 2012

Mr. James Jaros  
 DLR Group  
 400 Essex Court  
 Regency Park  
 Omaha, NE 88114-3778

RE: Lincoln Arena – Naming Signage Added Service  
 (M-E Job #DV10098.02)

I. Scope of Services:

Provide electrical power engineering and design to support the installation of the naming rights signage on the facility. This would include adding circuiting as needed and issuing drawings with the appropriate revisions to coincide with the signage documents. This proposal is an amendment to the existing agreement and conditions that were described in our proposal for the engineering and design of the arena dated October 29, 2010.

II. Fee: Fixed - \$5,000

If acceptable, please sign below and return a copy to M-E Engineers for our records. We are looking forward to working with you on this project.

Sincerely,  
**M-E Engineers, Inc.**  
 Denver Office

Robert McCoy, P.E.  
 Principal

Approved and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

 **AIA** Document G802™ – 2007

**Amendment to the Professional Services Agreement**

Amendment Number: 010

TO: Mayor Chris Beutler  
(Owner or Owner's Representative)

In accordance with the Agreement dated: September 01, 2010

**BETWEEN** the Owner:  
(Name and address)  
West Haymarket Joint Public Agency  
555 South 10th Street  
Lincoln, NE 68508

and the Architect:  
(Name and address)  
DLR Group, inc. (a Nebraska corporation)  
1111 Lincoln Mall  
Suite 201  
Lincoln, NE 68508

for the Project:  
(Name and address)  
Pinnacle Bank Arena  
Lincoln, Nebraska

Authorization is requested  
 to proceed with Additional Services.  
 to incur additional Reimbursable Expenses.

As follows:  
IPTV Design

The following adjustments shall be made to compensation and time.  
(Insert provisions in accordance with the Agreement, or as otherwise agreed by the parties.)

Compensation:	
WJHW Design	\$21,800
ME Engineers Electrical Design	\$5,200
Administrative Markup (10%)	\$2,700
Total Additional Compensation	\$29,700

\*Not to exceed amount

Time:  
To be completed by June 1, 2012

SUBMITTED BY:



*(Signature)*

Stan Meradith, AIA  
Principal

*(Printed name and title)*

March 26, 2012

*(Date)*

AGREED TO:

*(Signature)*

Mayor Chris Beutler  
Chair

*(Printed name and title)*

*(Date)*



Wrightson, Johnson, Haddon & Williams, Inc.  
Designers and Planners for Sound, Video, Multi-Media  
Telecommunications, Broadcast, Theatre & Acoustics  
Dallas - San Antonio - Denver

March 8, 2012

Mr. Jim Jaros  
DLR Group, Inc.  
400 Essex Court, Regency Park  
Omaha, NE 68114

VIA Email: [jjaros@dlrgroup.com](mailto:jjaros@dlrgroup.com)

**RE: Pinnacle Bank Arena  
WJHW Proposal – IPTV System Design and CA Services**

Dear Mr. Jaros,

As requested by PC Sports, WJHW is happy to provide this additional services proposal for the performance documentation through CA phase efforts for an IP based television distribution system at Pinnacle Bank Arena.

**SCOPE OF SERVICES**

WJHW's scope of services includes:

- Consult on TV/IP service providers and program content sources (e.g. cable TV, satellite, off air TV, in-house signals, Huskervision)
- Provide IPTV specifications and drawings and RFP for design-build IPTV contractors. Coordination of space, power and cooling requirements for the content provider and IPTV head end equipment and personnel. Due to the different and sometime proprietary nature of equipment provided by IPTV vendors, our specifications will be performance based to allow for a variety of potential solutions from different vendors.
- Provide preliminary IPTV data network requirements and port counts. The installing contractor will be specified to provide final coordination.
- Identify digital signage, concession displays and advertising components (hardware).
- Outline initial services associated with configuring switches/IPTV (e.g. addressing schemes, extent of advertising).
- Respond to bidder questions, review proposals received indicate additional information that may be required to properly evaluate proposals, and provide a written analysis along with recommendation for award, based on best value.
- Review submittal drawings and respond to construction RFI's substation requests, etc.
- Make a single punch list trip to review the substantially completion installation and prepare a written punch list in accordance with the project requirements.

We assume that these documents will be issued as part of a future ASI.

**FEES**

WJHW assumes we will issue these documents as part of a future ASI. We propose to provide the foregoing services for a fixed fee of \$21,800. This includes four (4) additional man-days in Lincoln for these efforts. Travel expenses will be invoiced in addition to fees, at our cost.

This scope of work is not intended to include design of the data network, changes to the structured cabling system, specification of TV sets and brackets or coordination/scheduling of TV set location,

4801 Spring Valley Road, Suite 113 Dallas TX 75244  
972.934.3700 voice 972.934.3720 fax

Mr. Jim Jaros  
March 8, 2012

Page 2 of 2

sizes and mounting conditions. It is our understanding that these efforts are being performed under separate, currently contracted for, scopes of work.

We assume that these efforts will be an extension of our existing service engagement for the project and all provisions will apply to the scope of work listed in this proposal.

I trust the scope of work and fees are consistent with your understanding of the needs of the project and the Owner. Please do not hesitate to let us know should you have any questions or need additional information.

Sincerely,  
Wrightson, Johnson, Haddon, & Williams, Inc.



Jack Wrightson  
Principal

Cc: Kevin Day WJHW, Inc.

Wrightson, Johnson, Haddon & Williams, Inc.  
Designers and Planners for Sound, Video, Multi-Media,  
Telecommunication, Broadcast, Theatre & Acoustics



M-E Engineers, Inc.  
 10055 west 43rd avenue / wheat ridge / co 80033  
 t. 303.421.6655 / f. 303.421.0331  
 www.me-engineers.com

March 26, 2012

Mr. James Jaros  
 DLR Group  
 400 Essex Court  
 Regency Park  
 Omaha, NE 88114-3778

RE: Lincoln Arena – IPTV Added Service  
 (M-E Job #DV10098.01)

I. Scope of Services:

Provide electrical power engineering and design to support the implementation of IPTV in the arena. This would include adding and circuiting outlets and power supplies as needed, revising lighting control and issuing drawings with the appropriate revisions to coincide with the IPTV documents. This proposal is an amendment to the existing agreement and conditions that were described in our proposal for the engineering and design of the arena dated October 29, 2010.

II. Fee: Fixed - \$5,200

If acceptable, please sign below and return a copy to M-E Engineers for our records. We are looking forward to working with you on this project.

Sincerely,  
 M-E Engineers, Inc.  
 Denver Office

Robert McCoy, P.E.  
 Principal

Approved and accepted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

**RESOLUTION NO. WH- \_\_\_\_\_**

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

3           That the Contract Agreement between Constructor’s Inc. and the West Haymarket Joint  
4 Public Agency for the construction of Water Main Project No. 702724 in N Street from 7th to  
5 9th Streets and N Street Roadway Project No. 870302 from 7th to 9th Streets and Railroad Track  
6 Removal, is hereby accepted and approved and the Chairperson of the West Haymarket Joint  
7 Public Agency Board of Representatives is hereby authorized to execute said Contract  
8 Agreement on behalf of the West Haymarket Joint Public Agency.

9           Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

\_\_\_\_\_  
Legal Counsel for  
West Haymarket Joint Public Agency

\_\_\_\_\_  
Chris Beutler, Chair

\_\_\_\_\_  
Tim Clare

\_\_\_\_\_  
Eugene Carroll

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**BID NO.12-072 (Water Main Project 702724) and**  
**BID NO. 12-073 (N Street Roadway Project 87032)**  
**(Collectively the "Work")**

**CONTRACT AGREEMENT**

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **CONSTRUCTOR'S, INC.**, hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

**RECITALS**

WHEREAS, JPA has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published a Notice to Bidders advertisement for each project for and in connection with said Work, to wit:

**Water Main Project #72724**  
**in N Street from 7th to 9th Street**

**and**

**N Street Project # 870302**  
**Bid Package 3**  
**N Street, 7<sup>th</sup> to 9<sup>th</sup> Street**  
**Miscellaneous Railroad Track Removal**

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

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Bids submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the combined lowest and best bidder for the said Work for the total sum named in the Contractor's two Bids. Copies of the Notice to Bidders, the Instructions to Bidders, Addendums, if any, the Contractor's Bids and the Bid Opportunity Details (collectively "Bid Documents") are attached hereto as Exhibit A.

WHEREAS, since a portion of the Work will be carried out within 50 feet of BNSF Property, the terms and conditions of the Construction and Maintenance Agreement ("C&M Agreement") between BNSF and the City of Lincoln as assigned to the JPA ("C&M

Agreement") are applicable to the performance of the Work and Contractor must comply with the applicable provisions of the C&M Agreement concerning work within 50 feet of BNSF Property including, but not limited to the BNSF Insurance Requirements. The C&M Agreement is attached hereto as Exhibit C.

WHEREAS, since the Work will be performed within 50 feet of BNSF railroad tracks used by the National Railroad Passenger Corporation ("Amtrak"), the Contractor must obtain two policies of Railroad Protection Liability Insurance, one naming BNSF as the insured railroad, and the other naming Amtrak as the insured railroad.

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

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with Highway Construction General Wage Decision Number NE120034 dated 01/06/2012 ("NE34 Wage Decision") for the N Street Roadway Project 870302 portion of the Work and to pay the Davis-Bacon Act prevailing wages for in accordance with Heavy Construction General Wage Decision Number NE 120057 dated 01/06/2012 ("NE57 Wage Decision") for the Water Main Project 702724 portion of the Work.

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

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

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

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

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

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

**PERFORMANCE OF WORK** - The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other construction accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and

form a permanent part of the complete Work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute, construct, and complete all Work included in and covered by JPA's official award of this Contract to the Contractor, such award being based on the acceptance by JPA of the Contractor's Bid as set forth in Exhibit A.

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

**BNSF CONTRACT REQUIREMENTS.** Contractor agrees that the provisions in the C&M Agreement are made part of this Contract. Contractor agrees that since portions of the Work will be performed within 50 feet of BNSF Property, Contractor will comply with the Contractor Requirements attached as Exhibit C to the C&M Agreement), including execution of a Contractor Right of Entry in the form of Exhibit C-1(A) attached to the C&M Agreement. Contractor understands and agrees that prior to commencing the Work, the Contractor must:

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

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

(c) Submit copies of signed C-1A agreement and all required insurance certificates to BNSF's Project Engineer Michael Schaefer (BNSF).

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

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

(a) Complete the BNSF Contractor Safety Orientation at www.contractororientation.com. All personnel who will be on site must take the safety training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(b) Complete the e-RAILSAFE security orientation training program at www.erailsafe.com. All personnel who will be on site must take the security training program and keep the issued ID card on their person at all times while on site. This includes employees of subcontractors employed by the Contractor.

(c) Send confirmation of the completion of the Contractor's Safety Orientation and e-RAILSAFE security orientation programs to the City Representative (PC Sports) and to Michael Schaefer, along with a list of all personnel who have taken both programs. This includes employees of subcontractors employed by the Contractor.

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

**COMPENSATION** - JPA agrees to pay to the Contractor for the performance of the Work embraced in this Contract, and the Contractor agrees to accept as full compensation therefore, the sums and prices for all Work covered by and included in the Contractor's Bid awarded by the JPA to the Contractor, payment thereof to be made in the manner provided in Article VIII of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

**COMPLETION DATE** - The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date.

**INDEMNIFICATION** - The following Indemnification provisions are in addition to and not in lieu of the Assumption of Liability and Indemnification provision in Article VI.B. of the City of Lincoln Standard Specifications for Municipal Construction (2011 Edition).

A. **INDEMNIFICATION OF JPA.**

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

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

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

(iii) ANY ENVIRONMENTAL MATTERS ARISING FROM CONTRACTOR AND/OR CONTRACTOR PARTIES' USE AND OCCUPANCY OF ANY RAILROAD'S RIGHT-OF- WAY OR OTHER RAILROAD PROPERTY, INCLUDING WITHOUT

LIMITATION USE AND OCCUPANCY OF RAILROAD'S RIGHT-OF-WAY OR OTHER RAILROAD PROPERTY IN CONNECTION WITH PERFORMANCE OF THE WORK;

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF 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. Contractor understands and acknowledges that the JPA under the C&M Agreement is required to require the Contractor to release, defend and indemnify BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF. Therefore, Contractor agrees to defend, release, indemnify and hold harmless BNSF to the same extent and under the same terms and conditions as the JPA is required to release, defend and indemnify BNSF in the C&M Agreement and as required in the Contractor's Right of Entry.

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

A. JPA Insurance Requirements. Contractor shall at all times during the term of this Agreement purchase and maintain in place insurance coverage as required by the Insurance

Requirements for All West Haymarket Joint Public Agency Contracts included as part of the Other Attached Contract Documents attached hereto as Exhibit D.

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

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

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

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

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

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

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

1. Bid Documents (Exhibit A).
2. Exhibit B – Intentionally Omitted.

3. Construction and Maintenance Agreement (Exhibit C).
4. Other Attached Contract Documents (Exhibit D).
  - a. Commentary to Accompany Construction Bonds.
  - b. Construction Performance Bond.
  - c. Construction Payment Bond.
  - d. Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved February 2012).
  - e. Executive Order No 83319.
  - f. Modified BNSF Insurance Certification Process (10-21-2011).
  - g. 29 C.F.R. § 5.5(a) Contract Provisions.
  - h. Effective Wage Decisions.
  - i. Special Provisions for (1) N Street Water Main Project #702724 and (2) N Street Project #870302.
  - j. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323.
5. Other Non-Attached Contract Documents.
  - a. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA's Change Order Process adopted by JPA Resolution No. WH00195.
  - b. Lincoln Standard Plans 2010.
  - c. Project Plans, Specifications, and Profile Detail Sheets.
  - d. Any executed Addenda or Change Orders.
  - e. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase).
    - i. Form of Nebraska Resale or Exempt Sales Certificate.
    - ii. Form of Purchasing Agent Appointment.

Note: Any portion of this project used for providing water service, such as pipe for water mains, are not tax exempt and are subject to sales and use tax.

Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use tax.
  - f. Requirements in 29 C.F.R. parts 1, 3 and 5.
  - g. Any non-attached document listed in the Bid Opportunity Detail.

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

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

IN WITNESS WHEREOF, the Contractor and JPA do hereby execute this Contract.

**CONTRACTOR:**

**CONSTRUCTOR'S, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

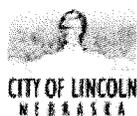
**JPA:**

**WEST HAYMARKET JOINT PUBLIC  
AGENCY**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson of the West  
Haymarket Joint Public Agency Board of  
Representatives

**EXHIBIT A**

**Bid Documents**



Return to Login • Supplier Registration

## Bid Opportunity Detail

Bid Information		Contact Information	
<b>Organization</b>	Lincoln Purchasing (Lincoln Purchasing)	<b>Address</b>	Purchasing\City & County
<b>Buyer Name</b>	Deb Winkler Systems Administrator		440 S. 8th St.
<b>Buyer Email</b>	dwinkler@lincoln.ne.gov		Lincoln, NE 68508
<b>Buyer Phone</b>	1 (402) 441-7410		USA
<b>Buyer Fax</b>	1 (402) 441-6513		
<b>Bid Number</b>	12-072 Addendum 2	<b>Contact Name</b>	Vince M. Mejer
<b>Bid Title</b>	Water Main Project 702724 in N Street from 7th to 9th Streets (JPA)	<b>Contact Phone</b>	(402) 441-8314
<b>Bid Type</b>	Bid	<b>Contact Fax</b>	(402) 441-6513
<b>Bid Security</b>	Sealed	<b>Contact Email</b>	vmejer@lincoln.ne.gov
<b>Issue Date &amp; Time</b>	3/9/2012 7:47:02 AM Central		
<b>Close Date &amp; Time</b>	3/28/2012 12:00:00 PM Central - <b>Time Left:</b>		
<b>Bid Notes</b>	<p>This bid is tied with Bid No. 12-073 (Project 870302).                      Prebid: 10:00 a.m., Wednesday, March 14, 2012 at Public Works &amp; Utilities, Engineering Services, 901 W. Bond St., Lincoln, NE</p> <p>If you need assistance in preparing your bid, there are several options. 1) Click the "Help" button in the upper right hand corner of any screen; 2) Contact our office for a training session in Purchasing or assistance over the phone; 3) View the PowerPoint presentation at <a href="http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt">http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt</a></p>		
<b>Bid Status</b>	Unsealed		
<b>Status Reason</b>	Bid request unsealed by GCFDLW.		

### Event Activities

Activity Date	Title	Description
3/14/2012 10:00:00 AM CST	Prebid Meeting	Prebid Meeting - On Wednesday, March 14, 2012 at 10:00 a.m. at the Training Room, Engineering Service, 901 "N" Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.
3/28/2012 12:00:00 PM CST	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.

#### Activity Participants

No Event Activities

3/28/2012 12:00:00 PM CST	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.
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#### Activity Participants

Supplier Name	City	State	Intent
Horizontal Boring & Tunneling Co.	Exeter	NE	

### Bid Documents

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

**Bid Attachments**


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Header 12-072_not.pdf (7KB)	Notice To Bidders
Header Instructions to Bidders, JPA - B 09-19-11.pdf (26KB)	Instructions to Bidders
Header Ex D d InsRequirementsForAll JPAContracts-Feb 2012.pdf (39KB)	JPA Insurance Requirements
Header Ex D f ModBNFS InsCertProcess.pdf (299KB)	BNSF Insurance Process
Header Ex D i SpecProvDemoContracts.pdf (468KB)	Special Provisions for Demolition Projects
Header Ex D h 1 Effective Wage Dec.pdf (176KB)	Davis Bacon Wage - Heavy, NE57
Header Ex D h 2 Effective Wage Dec.pdf (241KB)	Davis Bacon Wage - Highway, NE34
Header Ex D g -29CFR5 5 DavisBacon.pdf (959KB)	29 CFR
Header Ex D e EO 83319.pdf (657KB)	Employee Verification
Header Ex C-CMAgr wpd.pdf (2.27MB)	Construction & Maintenance Agreement
Header JPA Contract Agr - N Street Project.pdf (83KB)	Sample Contract
Header Ex D a CommentaryToAccompanyConstrBonds.pdf (546KB)	Construction Bonds
Header Ex D j NebRevStat77-1323 CertStatement.pdf (79KB)	Tax Assessment Form
Header N Street Water Main Specifications.pdf (496KB)	Special Provisions
Header Microsoft Word - FTP site.pdf (327KB)	Plans/Drawings
Header Addendum 1.pdf (143KB)	Addendum No. 1
Header Addendum 2.pdf (94KB)	Addendum No. 2
Header Bid Tabs 702724.pdf (1.70MB)	ITEMIZED PRICING
Line 2 12-072 Bid Proposal.XLS (206KB)	Itemized Pricing (per Addendum No. 1)

**Advertise 1 time  
Friday, March 9, 2012**

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

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Wednesday, March 28, 2012** for providing the following:

**Water Main 702724 in N Street  
from 7<sup>th</sup> to 9<sup>th</sup> Streets  
Bid No. 12-072**

This bid is connected to Bid No. 12-073, Project 870302.

*A Pre-bid meeting will be held Wednesday, March 14, 2012 at 10:00 a.m., at the Training Room, Engineering Services, 901 West Bond St., Lincoln, NE. All interested Vendors are strongly encouraged to attend.*

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

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

# INSTRUCTIONS TO BIDDERS

## WEST HAYMARKET JOINT PUBLIC AGENCY

E-Bid

### 1. BIDDING PROCEDURE

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

### 2. BID SECURITY

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

### 3. BIDDER'S REPRESENTATION

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

**4. CLARIFICATION OF BIDDING DOCUMENTS**

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

**5. ADDENDA**

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

**6. INDEPENDENT PRICE DETERMINATION**

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

**7. ANTI-LOBBYING PROVISION**

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

**8. BRAND NAMES**

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

**9. DEMONSTRATIONS/SAMPLES**

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

**10. DELIVERY (Non-Construction)**

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

**11. WARRANTIES, GUARANTEES AND MAINTENANCE**

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

**12. ACCEPTANCE OF MATERIAL**

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

**13. BID EVALUATION AND AWARD**

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

**14. INDEMNIFICATION**

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

**15. TERMS OF PAYMENT**

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

**16. LAWS**

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

**17. EQUIPMENT TAX ASSESSMENT**

- 17.1 Any bid for public improvement shall comply with Nebraska Revised Statute Sections 77-1323 and 77-1324. Indicating; every person, partnership, limited liability company, association or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall sign a certified statement which will accompany the contract. The certified statement shall state that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

**18. AFFIRMATIVE ACTION**

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

**19. LIVING WAGE**

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

**20. INSURANCE**

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

**21. EXECUTION OF AGREEMENT**

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

**22. TAXES AND TAX EXEMPTION CERTIFICATE**

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

**23. AUDIT ADVISORY BOARD**

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

**24. E-VERIFY**

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

**ADDENDUM NO. 1  
TO  
CITY OF LINCOLN, NE (2012)  
City Project #702724  
BID PACKAGE 3  
N STREET, 7TH TO 9TH STREET  
WATER MAIN PROJECT**

**March 23, 2012**

**To Prospective Bidders:**

The contract documents, specifications and plans for the project are hereby amended as follows:

**Entry 1 –Bid Proposal Revision - City Project #702724 (Water Main Project)**

The following items shall be removed from the bid item list for the N Street, 7th to 9th Street Water Main Project:

Delete Item No. 04.09405, Conc Driveway, 5"

Delete Item No. 05.07007, Conc Base, LB-3500, 7"

Delete Item No. 06.06.003, Asphaltic Concrete, Type 3

Paving items required for this project are included in the tied roadway project.

**ADDENDUM NO. 2  
TO  
CITY OF LINCOLN, NE (2012)  
JPA PROJECT #870302 & City Project #702724  
BID PACKAGE 3  
N STREET, 7TH TO 9TH STREET  
WATER MAIN PROJECT**

**March 27, 2012**

**To Prospective Bidders:**

**Question:**

The specs reference two wage scales Heavy and Highway. Which scale are we using or is their specific scopes of work for one of the scales.

**Answer:**

The correct Davis Bacon information is available for download on the Purchasing website.

**Question:**

During Phase two and three what is the expectations for East/West traffic on N Street during these phases.

**Answer:**

In phase II the Contractor will be allowed to close the entire block to through traffic between 7<sup>th</sup> and 8<sup>th</sup> Street and traffic should be detoured around that block. However only ½ of the intersection of 8<sup>th</sup> Street shall be closed to allow North\ Traffic to be able to get through.

**Question:**

Also during phase two and three several overhead doors and alley ways have been flagged for us to coordinate with local businesses. What has been promised to these businesses? The time frames for phases two and three are extremely challenging and trying to provide phased access from N Street will make these phases even more unlikely to be done on time.

**Answer:**

In Phase 3 the entire block of N Street between 8<sup>th</sup> & 9<sup>th</sup> will be allowed to be closed to through traffic. Traffic should be detoured around that block. And again ½ the 8<sup>th</sup> Street intersection is to remain open to let restricted traffic get through.

For the Overhead door accesses to Midwest Steel. Midwest Steel has requested to be given 1 weeks advanced notice as to when they cannot access them. Those are the doors with the #1 labeled on them on the phasing plan.

For the Alley Access labeled # 3 on the phasing drawing, Midwest Steel has requested that that railroad track removal in 8<sup>th</sup> Street not be performed at the same time. They use both this Alley to access parking as well as they park along 8<sup>th</sup> Street, so both cannot be shut down at the same time. In Phase 3 the Coordination with the owner of the building labeled A.J. Equip & Supply should be contacted. That facility is not currently in operation, so no urgent need for that drive is anticipated. The Owner is John Camp who we have discussed this with.

No promises have been made to the tenants of the building on the NW corner of 9<sup>th</sup> & N Street. The Contractor shall communicate with those owners in regards to pedestrian traffic to their businesses. Closure of the alley on the north side and adjacent to seven seas tattoo has accesses out to the north, west and east and should not cause too much problems by closing. Still coordination and communication with adjacent property owners and businesses is important.

In phase 3. **Baker Hardware is adamant** that access must be kept open to the business through the driveway or the alley at all times. The Contractor needs to complete either the driveway access or alley access first, these two access points can't be closed at the same time

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

Bid Information		Contact Information		Ship to Information
Bid Creator	Deb Winkler Systems Administrator	Address	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508	Address
Email	dwinkler@lincoln.ne.gov	Contact	Vince M. Mejer	Contact
Phone	1 (402) 441-7410			
Fax	1 (402) 441-6513			
Bid Number	12-072 Addendum 2	Department		Department
Title	Water Main Project 702724 in N Street from 7th to 9th Streets (JPA)	Building		Building
Bid Type	Bid	Floor/Room		Floor/Room
Issue Date	03/09/2012	Telephone	(402) 441-8314	Telephone
Close Date	3/28/2012 12:00:00 PM CST	Fax	(402) 441-6513	Fax
Need by Date		Email	vmejer@lincoln.ne.gov	Email

## Supplier Information

Company	Constructors Inc.
Address	1815 Y Street  Lincoln, NE 68508
Contact	Eric Anderson
Department	
Building	
Floor/Room	
Telephone	1 (402) 434-1764
Fax	1 (402) 441-4176
Email	EricA@Constructorslincoln.com
Submitted	3/28/2012 11:50:51 AM CST
Total	\$194,077.70

Signature \_\_\_\_\_

## Supplier Notes

## Bid Notes

This bid is tied with Bid No. 12-073 (Project 870302).<br>  
Prebid: 10:00 a.m., Wednesday, March 14, 2012 at Public Works & Utilities, Engineering Services, 901 W. Bond St., Lincoln, NE<br><br>

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

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

## Bid Activities

Date	Name	Description
3/14/2012 10:00:00 AM	Prebid Meeting	Prebid Meeting - On Wednesday, March 14, 2012 at 10:00 a.m. at the Training Room, Engineering Service, 901 "N" Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.
3/28/2012 12:00:00 PM	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.
3/28/2012 12:00:00 PM	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

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## Bid Messages

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Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at:  <a href="http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdnspec/index.htm">http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdnspec/index.htm</a>	Yes
2	NDOR Standard Specs for Hwy Construction	I acknowledge reading and understanding the current Nebraska Department of Road's Standard Specifications for Highway Construction Supplemental Specifications to the Standard Specifications for Highway Construction, view at: <a href="http://www.dor.state.ne.us/ref-man/">http://www.dor.state.ne.us/ref-man/</a>	Yes
3	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
4	Form of Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
5	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
6	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
7	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
8	Specifications	I acknowledge reading and understanding the Specifications.	Yes
9	Plan, Profile & Detail Sheets	I acknowledge reading and understanding the Plan, Profile & Detail Sheets included with this bid.	Yes

10	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes
11	Not tax exempt	I acknowledge that this project is not tax exempt.	Yes
12	Unit Pricing Rules	I acknowledge the Excel spreadsheet is attached to this bid in the Response Attachment Section. The unit price of the Excel Spreadsheet takes precedence over the total submitted in Line Items.	Yes
13	Project Dates	The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than August 10, 2012.	YES
14	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
15	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.	Yes
16	Tied to 12-072	I acknowledge and understand that this bid is tied with Bid No. 12-072 (Project 702724).	Yes
17	Electronic Signature	Please check here for your electronic signature.	Yes
18	Contact	Name of person submitting this bid:	Randy Howard
19	Agreement to Addendum No. 1	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: Attached Addendum No. 1 and revised pricing sheet.	Yes
20	Agreement to Addendum No. 2	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: Attached Addendum No. 2.	Yes

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## Line Items

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#	Qty	UOM	Description	Response
1	1	Lump Sum	Water Main Project 702724 in N Street from 7th to 9th Streets -- Total Lump Sum of Bid	\$194,077.70

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

Supplier Notes:

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Response Total: \$194,077.70

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12-072

Constructors

Line #	Pay Item #	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateCo
01	01.01001	Const Staking	1.0000	LS	\$1,500.00	\$1,500.00	GENERAL	Base Bid
02	01.00001	Mobilization	1.0000	LS	\$20,000.00	\$20,000.00	GENERAL	Base Bid
03	01.04001	Pavt & Sidewalk Rem	271.0000	CY	\$20.10	\$5,447.10	GENERAL	Base Bid
04	01.05001	Sawing, Type "A"	1,045.0000	LF	\$4.60	\$4,807.00	GENERAL	Base Bid
05	01.07001	Sawing, Type "C"	373.0000	LF	\$3.60	\$1,342.80	GENERAL	Base Bid
06	02.01001	Gen Clearing & Grubbing	1.0000	LS	\$950.00	\$950.00	EARTHWORK	Base Bid
07	02.02012	Tree Rem (12" to 23")	7.0000	EA	\$158.00	\$1,106.00	EARTHWORK	Base Bid
08	02.02024	Tree Rem (24" to 35")	2.0000	EA	\$312.00	\$624.00	EARTHWORK	Base Bid
09	14.01111	Remove Traffic Sign and Post	2.0000	EA	\$85.00	\$170.00	SIGNING	Base Bid
10	50.00001	Parking Meter & Post Removal	15.0000	EA	\$42.00	\$630.00	MISC	Base Bid
11	50.00001	Parking Meter Post Removal	10.0000	EA	\$42.00	\$420.00	MISC	Base Bid
12	50.00005	Railroad Track Removal	18.0000	LF	\$15.60	\$280.80	MISC	Base Bid
13	15.09001	Traffic Control for Const	1.0000	LS	\$110.00	\$110.00	TRAFFIC CONT	Base Bid
14	20.06112	Directional Drilling for 12" Water Main	42.0000	LF	\$106.00	\$4,452.00	WATER	Base Bid
15	23.07016	Water Main, 16"	788.0000	LF	\$86.00	\$67,768.00	WATER	Base Bid
16	23.07012	Water Main, 12"	112.0000	LF	\$68.00	\$7,616.00	WATER	Base Bid
17	50.00005	Water Main, Restrained Joints, 12"	42.0000	LF	\$107.00	\$4,494.00	MISC	Base Bid
18	23.07008	Water Main, 8"	66.0000	LF	\$46.00	\$3,036.00	WATER	Base Bid
19	23.07006	Water Main, 6"	20.0000	LF	\$41.00	\$820.00	WATER	Base Bid
20	23.08116	Butterfly Valve, MJ, 16"	1.0000	EA	\$2,651.00	\$2,651.00	WATER	Base Bid
21	23.08112	Butterfly Valve, MJ, 12"	1.0000	EA	\$1,952.00	\$1,952.00	WATER	Base Bid
22	23.08008	Gate Valve, MJ, 8"	1.0000	EA	\$1,465.00	\$1,465.00	WATER	Base Bid
23	23.08006	Gate Valve, MJ, 6"	6.0000	EA	\$1,098.00	\$6,588.00	WATER	Base Bid
24	23.08365	Hydrant, L=6.5'	5.0000	EA	\$2,070.00	\$10,350.00	WATER	Base Bid
25	23.07812	Retainer Glands, MJ, 12"	1.0000	EA	\$162.00	\$162.00	WATER	Base Bid
26	23.07103	Deg Bend, MJ, 12" X 90	1.0000	EA	\$335.00	\$335.00	WATER	Base Bid
27	23.07102	Deg Bend, MJ, 8" x 90	1.0000	EA	\$210.00	\$210.00	WATER	Base Bid
28	23.07113	Deg Bend, MJ, 16" X 45	4.0000	EA	\$578.00	\$2,312.00	WATER	Base Bid
29	23.07112	Deg Bend, MJ, 12" X 45	2.0000	EA	\$298.00	\$596.00	WATER	Base Bid
30	23.07111	Deg Bend, MJ, 8" X 45	3.0000	EA	\$190.00	\$570.00	WATER	Base Bid
31	23.07110	Deg Bend, MJ, 6" X 45	2.0000	EA	\$162.00	\$324.00	WATER	Base Bid
32	23.07309	Tee, MJ, 16" X 12"	2.0000	EA	\$957.00	\$1,914.00	WATER	Base Bid

33	23.07310	Tee, MJ, 16" X 16"	3.0000	EA	\$710.00	\$2,130.00	WATER	Base Bid
34	23.07303	Tee, MJ, 8" X 8"	1.0000	EA	\$273.00	\$273.00	WATER	Base Bid
35	23.07072	Anchoring Coupling, MJ (L=18"), 6"	4.0000	EA	\$214.00	\$856.00	WATER	Base Bid
36	23.07084	Reducer, MJ, 16" X 6"	1.0000	EA	\$468.00	\$468.00	WATER	Base Bid
37	23.07081	Reducer, MJ, 8" X 6"	1.0000	EA	\$168.00	\$168.00	WATER	Base Bid
38	23.07082	Reducer, MJ, 12" X 6"	1.0000	EA	\$297.00	\$297.00	WATER	Base Bid
39	23.07516	Solid Sleeve, MJ (L=15"), 16"	3.0000	EA	\$879.00	\$2,637.00	WATER	Base Bid
40	23.07512	Solid Sleeve, MJ (L=12"), 12"	1.0000	EA	\$451.00	\$451.00	WATER	Base Bid
41	23.07716	Plug, MJ, 16"	1.0000	EA	\$308.00	\$308.00	WATER	Base Bid
42	20.09001	Conc for Thrust Blocks & Anchorages	21.0000	CY	\$185.00	\$3,885.00	WATER	Base Bid
43	20.09002	Reinf Stl for Thrust Blks & Anchorages	1,050.0000	LBS	\$3.50	\$3,675.00	WATER	Base Bid
44	23.10900	Construct Water Service	4.0000	EA	\$2,305.00	\$9,220.00	WATER	Base Bid
45	23.10075	Copper Water Service Pipe, 0.75"	20.0000	LF	\$47.60	\$952.00	WATER	Base Bid
46	23.10100	Copper Water Service Pipe, 1"	80.0000	LF	\$49.20	\$3,936.00	WATER	Base Bid
47	23.10200	Copper Water Service Pipe, 2"	20.0000	LF	\$61.00	\$1,220.00	WATER	Base Bid
48	23.04105	Rem & Salvage Gate Valve and Box	1.0000	EA	\$422.00	\$422.00	WATER	Base Bid
49	23.04121	Rem Hydrant	1.0000	EA	\$422.00	\$422.00	WATER	Base Bid
50	23.04122	Rem Plug	1.0000	EA	\$169.00	\$169.00	WATER	Base Bid
51	50.00001	Retainer Glands, MJ, 10"	1.0000	EA	\$162.00	\$162.00	MISC	Base Bid
52	50.00001	Reducer, MJ, 10" x 8"	1.0000	EA	\$370.00	\$370.00	MISC	Base Bid
53	50.00001	16" Megalugs (Or Approved Equal)	19.0000	EA	\$250.00	\$4,750.00	MISC	Base Bid
54	50.00001	12" Megalugs (Or Approved Equal)	9.0000	EA	\$130.00	\$1,170.00	MISC	Base Bid
55	50.00001	8" Megalugs (Or Approved Equal)	10.0000	EA	\$85.00	\$850.00	MISC	Base Bid
56	50.00001	6" Megalugs (Or Approved Equal)	4.0000	EA	\$71.00	\$284.00	MISC	Base Bid

**\$194,077.70 Total Amount**



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

## Bid Opportunity Detail

Bid Information		Contact Information	
<b>Organization</b>	Lincoln Purchasing (Lincoln Purchasing)	<b>Address</b>	Purchasing\City & County
<b>Buyer Name</b>	Deb Winkler Systems Administrator		440 S. 8th St.
<b>Buyer Email</b>	dwinkler@lincoln.ne.gov		Lincoln, NE 68508
<b>Buyer Phone</b>	1 (402) 441-7410		USA
<b>Buyer Fax</b>	1 (402) 441-6513		
<b>Bid Number</b>	12-073 Addendum 4	<b>Contact Name</b>	Vince M. Mejer
<b>Bid Title</b>	N Street Roadway Project 870302 from 7th to 9th Street and Railroad Track Removal (JPA)	<b>Contact Phone</b>	(402) 441-8314
<b>Bid Type</b>	Bid	<b>Contact Fax</b>	(402) 441-6513
<b>Bid Security</b>	Sealed	<b>Contact Email</b>	vmejer@lincoln.ne.gov
<b>Issue Date &amp; Time</b>	3/9/2012 7:58:02 AM Central		
<b>Close Date &amp; Time</b>	3/28/2012 12:00:00 PM Central - <b>Time Left:</b>		
<b>Bid Notes</b>	<p>This bid is tied with Bid No. 12-072 (Project 702724).                      Prebid: 10:00 a.m., Wednesday, March 14, 2012 at Public Works &amp; Utilities, Engineering Services, 901 W. Bond St., Lincoln, NE</p> <p>If you need assistance in preparing your bid, there are several options. 1) Click the "Help" button in the upper right hand corner of any screen; 2) Contact our office for a training session in Purchasing or assistance over the phone; 3) View the PowerPoint presentation at <a href="http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt">http://www.lincoln.ne.gov/city/finance/purch/spec/bidinst.ppt</a></p>		
<b>Bid Status</b>	Unsealed		
<b>Status Reason</b>	Bid request unsealed by GCFDLW.		

### Event Activities

Activity Date	Title	Description
3/14/2012 10:00:00 AM CST	Prebid Meeting	Prebid Meeting - On Wednesday, March 14, 2012 at 10:00 a.m. at the Training Room, Engineering Service, 901 "N" Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.
3/28/2012 12:00:00 PM CST	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.

#### Activity Participants

No Event Activities

3/28/2012 12:00:00 PM CST	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.
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#### Activity Participants

No Event Activities

### Bid Documents

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

### Bid Attachments

Header 12-073\_not.pdf (7KB)

Notice To Bidders

Header Instructions to Bidders, JPA - B 09-19-11.pdf (26KB)	Instructions to Bidders
Header Ex D d InsRequirementsForAll JPAContracts-Feb 2012.pdf (39KB)	JPA Insurance Requirements
Header Ex D f ModBNFS InsCertProcess.pdf (299KB)	BNSF Insurance Process
Header Ex D h 1 Effective Wage Dec.pdf (176KB)	Davis Bacon Wage - Heavy, NE57
Header Ex D h 2 Effective Wage Dec.pdf (241KB)	Davis Bacon Wage - Highway, NE34
Header Ex D g -29CFR5 5 DavisBacon.pdf (959KB)	29 CFR
Header Ex D e EO 83319.pdf (657KB)	Employee Verification
Header Ex C-CMAgr wpd.pdf (2.27MB)	Construction & Maintenance Agreement
Header JPA Contract Agr - N Street Project.pdf (83KB)	Sample Contract
Header Ex D a CommentaryToAccompanyConstrBonds.pdf (546KB)	Construction Bonds
Header Ex D j NebRevStat77-1323 CertStatement.pdf (79KB)	Tax Assessment Form
Header Specifications.pdf (516KB)	Special Provisions
Header Microsoft Word - FTP site.pdf (327KB)	Plans/Drawings
Header Addendum 1.pdf (338KB)	Addendum No. 1
Header Addendum 2.pdf (125KB)	Addendum No. 2
Header 12-073ad3.pdf (6KB)	Addendum No. 3
Header Addendum 4.pdf (103KB)	Addendum No. 4
Header Bid Tabs 870302.pdf (2.98MB)	ITEMIZED PRICING
Line 2 12-073 Bid Proposal.XLS (216KB)	Itemized Pricing (per Addendum No. 2)

**Advertise 1 time  
Friday, March 9, 2012**

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

Sealed bids will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Wednesday, March 28, 2012** for providing the following:

**N Street Roadway Project 870302  
from 7<sup>th</sup> to 9<sup>th</sup> Street and Railroad Track Removal  
Bid No. 12-073**

This bid is connected to Bid No. 12-072, Project 702724.

*A Pre-bid meeting will be held Wednesday, March 14, 2012 at 10:00 a.m., at the Training Room, Engineering Services, 901 West Bond St., Lincoln, NE. All interested Vendors are strongly encouraged to attend.*

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

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

**ADDENDUM NO. 1  
TO  
CITY OF LINCOLN, NE (2012)  
JPA PROJECT #870302 & City Project #702724  
BID PACKAGE 3  
N STREET, 7TH TO 9TH STREET**

**March 21, 2012**

**To Prospective Bidders:**

The contract documents, specifications and plans for the project are hereby amended as follows:

**Entry 1 – Earthwork Explanation**

Excavation is the excavation as shown on the roadway cross sections.

Excavation borrow includes embankment for filling in the voids from removing the railroad tracks and embankment as shown on the cross sections

Over-Excavation is a number estimated incase the Contractor runs into materials that need to be reworked to establish uniform density, compaction and moisture required in Chapter 2 of the City of Lincoln Standard Specifications for Municipal Construction.

**Entry 2 – Plan Sheet 3 Revised - JPA Project #870302**

Plan sheet 3 has the following revisions:

Over-Excavation has been revised from 430CY to 520 CY

An Item #50.00010 NDOR 47B Sand Gravel Mix has been added to the Quantity List

**Entry 3 – Plan Sheet 10 Revised – City Project #702724**

An existing electrical duct bank has been added to the profile information

**Entry 4 – City Project #702724**

The Lincoln Water System will install necessary hydrant extensions for this project. The Contractor will be charged \$500.00 for each hydrant extension.

**Entry 5 – Special Provision**

Added Dewatering Special Provision (Copy Attached)

Added Environmental Contingency Plan Documents (Copy Attached)

**Entry 6 – Proposal Entry**

Line # 76, Change Item No. 2403240 "Conduit 4", Trenched" to Item No. 2403140 "Conduit 4", Bored"

Add Item No. 50.0050 Dewatering for Storm Sewers - 414 LF

Add Item No. 50.00600 Dewatering Container Useage - 123 Calendar Days

Add Item No. 50.00010 Furnish Dewatering Container - 1 Each

Add item No. 50.00050 Dewatering for Water mains – 986 LF

**ADDENDUM NO. 2  
TO  
CITY OF LINCOLN, NE (2012)  
JPA PROJECT #870302  
BID PACKAGE 3  
N STREET, 7TH TO 9TH STREET  
WATER MAIN PROJECT**

**March 23, 2012**

**To Prospective Bidders:**

The contract documents, specifications and plans for the project are hereby amended as follows:

**Entry 2 –Bid Proposal Revision - JPA Project #870302 (Paving Project)**

Add Item No. 24.10301, Inst. and Adjust Emergency Vehicle Detector, 1 EA

Add Item No. 24.01010, Remove Mast Arm Pole, 2 EA

Add item No. 50.0001, Install LED Luminaire and Shorting Cap (LES Supplied) – 8 EA

ADDENDUM NO. 3  
TO  
CITY OF LINCOLN, NE (2012)  
JPA PROJECT #870302  
BID PACKAGE 3  
N STREET, 7<sup>TH</sup> TO 9<sup>TH</sup> STREET

March 26, 2012

To Prospective Bidders;

The contract documents, specifications and plans for the project are clarified as follows:

1. **Please verify if the Davis-Bacon wage scales apply to this project.**
  - A. Davis Bacon is applicable. Heavy Wage decision will apply to the Water Main Project. Highway will apply to the N Street Project.
  
2. **Do the demolition special provisions apply to this project? The demolition special provisions reference demolition of the Watson-Brickson lumber yard, but there are not any bid items in either project that appear to have any relation to the Watson-Brickson lumber yard demolition. Please clarify what these special provisions are related to.**
  - A. Please disregard the Special Provisions for Demolition Projects (Attachment No. 5) This was erroneously included on the bid and has been deleted from the bid with this addendum.

**ADDENDUM NO. 4  
TO  
CITY OF LINCOLN, NE (2012)  
JPA PROJECT #870302 & City Project #702724  
BID PACKAGE 3  
N STREET, 7TH TO 9TH STREET  
WATER MAIN PROJECT**

**March 27, 2012**

**To Prospective Bidders:**

**Question:**

The specs reference two wage scales Heavy and Highway. Which scale are we using or is their specific scopes of work for one of the scales.

**Answer:**

The correct Davis Bacon information is available for download on the Purchasing website.

**Question:**

During Phase two and three what is the expectations for East/West traffic on N Street during these phases.

**Answer:**

In phase II the Contractor will be allowed to close the entire block to through traffic between 7<sup>th</sup> and 8<sup>th</sup> Street and traffic should be detoured around that block. However only ½ of the intersection of 8<sup>th</sup> Street shall be closed to allow North\ Traffic to be able to get through.

**Question:**

Also during phase two and three several overhead doors and alley ways have been flagged for us to coordinate with local businesses. What has been promised to these businesses? The time frames for phases two and three are extremely challenging and trying to provide phased access from N Street will make these phases even more unlikely to be done on time.

**Answer:**

In Phase 3 the entire block of N Street between 8<sup>th</sup> & 9<sup>th</sup> will be allowed to be closed to through traffic. Traffic should be detoured around that block. And again ½ the 8<sup>th</sup> Street intersection is to remain open to let restricted traffic get through.

For the Overhead door accesses to Midwest Steel. Midwest Steel has requested to be given 1 weeks advanced notice as to when they cannot access them. Those are the doors with the #1 labeled on them on the phasing plan.

For the Alley Access labeled # 3 on the phasing drawing, Midwest Steel has requested that that railroad track removal in 8<sup>th</sup> Street not be performed at the same time. They use both this Alley to access parking as well as they park along 8<sup>th</sup> Street, so both cannot be shut down at the same time. In Phase 3 the Coordination with the owner of the building labeled A.J. Equip & Supply should be contacted. That facility is not currently in operation, so no urgent need for that drive is anticipated. The Owner is John Camp who we have discussed this with.

No promises have been made to the tenants of the building on the NW corner of 9<sup>th</sup> & N Street. The Contractor shall communicate with those owners in regards to pedestrian traffic to their businesses. Closure of the alley on the north side and adjacent to seven seas tattoo has accesses out to the north, west and east and should not cause too much problems by closing. Still coordination and communication with adjacent property owners and businesses is important.

In phase 3. **Baker Hardware is adamant** that access must be kept open to the business through the driveway or the alley at all times. The Contractor needs to complete either the driveway access or alley access first, these two access points can't be closed at the same time

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

Bid Information		Contact Information		Ship to Information
Bid Creator	Deb Winkler Systems Administrator	Address	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508	Address
Email	dwinkler@lincoln.ne.gov	Contact	Vince M. Mejer	Contact
Phone	1 (402) 441-7410			
Fax	1 (402) 441-6513			
Bid Number	12-073 Addendum 4	Department		Department
Title	N Street Roadway Project 870302 from 7th to 9th Street and Railroad Track Removal (JPA)	Building		Building
		Floor/Room		Floor/Room
		Telephone	(402) 441-8314	Telephone
Bid Type	Bid	Fax	(402) 441-6513	Fax
Issue Date	03/09/2012	Email	vmejer@lincoln.ne.gov	Email
Close Date	3/28/2012 12:00:00 PM CST			
Need by Date				

## Supplier Information

Company	Constructors Inc.
Address	1815 Y Street  Lincoln, NE 68508
Contact	Eric Anderson
Department	
Building	
Floor/Room	
Telephone	1 (402) 434-1764
Fax	1 (402) 441-4176
Email	EricA@Constructorslincoln.com
Submitted	3/28/2012 11:56:22 AM CST
Total	\$1,285,819.55

Signature \_\_\_\_\_

## Supplier Notes

## Bid Notes

This bid is tied with Bid No. 12-072 (Project 702724).<br>  
Prebid: 10:00 a.m., Wednesday, March 14, 2012 at Public Works & Utilities, Engineering Services, 901 W. Bond St., Lincoln, NE<br><br>

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

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

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## Bid Activities

Date	Name	Description
3/14/2012 10:00:00 AM	Prebid Meeting	Prebid Meeting - On Wednesday, March 14, 2012 at 10:00 a.m. at the Training Room, Engineering Service, 901 "N" Street, Lincoln, NE. All interested vendors are strongly encouraged to attend.
3/28/2012 12:00:00 PM	General Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a general contractor on this bid.
3/28/2012 12:00:00 PM	Sub-Contractors - Call 402-441-7410 or e-mail purchasing@lincoln.ne.gov to be added to this list.	Suppliers who will bid as a sub-contractor.

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## Bid Messages

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Please review the following and respond where necessary

#	Name	Note	Response
1	Standard Specifications for Municipal Construction	I acknowledge reading and understanding the current City of Lincoln Standard Specifications for Municipal Construction and Lincoln Standard Plans (including General Provisions and Requirements, and Material and Construction Specifications) View at:  <a href="http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdnspec/index.htm">http://www.lincoln.ne.gov/city/pworks/engine/dconst/standard/stdnspec/index.htm</a>	Yes
2	NDOR Standard Specs for Hwy Construction	I acknowledge reading and understanding the current Nebraska Department of Road's Standard Specifications for Highway Construction Supplemental Specifications to the Standard Specifications for Highway Construction, view at: <a href="http://www.dor.state.ne.us/ref-man/">http://www.dor.state.ne.us/ref-man/</a>	Yes
3	Form of Contract Agreement	I acknowledge reading and understanding the Contract Agreement Forms.	Yes
4	Form of Bonds	I acknowledge that a Performance Bond and a Payment Bond each in the amount of 100% of the Contract amount will be required with the signed contract upon award of this job.	Yes
5	Special Provisions/Traffic Control Provisions	I acknowledge reading and understanding the Special Provisions and/or Traffic Control Provisions.	Yes
6	Instructions to Bidders	I acknowledge reading and understanding the Instructions to Bidders.	Yes
7	Insurance Requirements	I acknowledge reading and understanding the Insurance Requirements.	Yes
8	Specifications	I acknowledge reading and understanding the Specifications.	Yes
9	Plan, Profile & Detail Sheets	I acknowledge reading and understanding the Plan, Profile & Detail Sheets included with this bid.	Yes

10	Tax Exempt Certificate Forms	Materials being purchased in this bid are tax exempt and unit prices are reflected as such. A Purchasing Agent Appointment form and a Exempt Sales Certificate form shall be issued with contract documents. (Note: State Tax Law does not provide for sales tax exemption for proprietary functions for government, thereby Water projects are taxable.)	Yes
11	Bid Bond Submission - City	I acknowledge and understand that my bid will not be considered unless a bid bond or certified check in the sum of five percent (5%) of the total amount of the bid is made payable to the order of the City Treasurer as a guarantee of good faith prior to the bid opening. The bid security may be scanned and attached to the 'Response Attachments' section of your response or faxed to the Purchasing Office (402)441-6513. The original bond/check must then be received in the Purchasing Office, 440 S. 8th Street, Ste. 200, Lincoln, NE 68508 within three (3) days of bid closing. YOU MUST INDICATE YOUR METHOD OF BID BOND SUBMISSION IN BOX TO RIGHT!	I have scanned and attached my bid bond.
12	Unit Pricing Rules	I acknowledge the Excel spreadsheet is attached to this bid in the Response Attachment Section. The unit price of the Excel Spreadsheet takes precedence over the total submitted in Line Items.	Yes
13	Project Dates	The Contractor agrees that the Work in this Contract shall begin as soon after the Notice to Proceed as is necessary for the Contractor to complete the Work within the number of calendar days allowed and prior to the stated completion date. The completion date shall be no later than August 10, 2012.	YES
14	Employee Class Act EO	I acknowledge reading and understanding the Employee Classification Act, Executive Order 83319.	Yes
15	Employee Class Act Affidavit	I acknowledge if awarded the contract I will abide by the law, notarize and attach the Employee Classification Act Affidavit to my contract.	Yes
16	Tied to 12-072	I acknowledge and understand that this bid is tied with Bid No. 12-072 (Project 702724).	Yes
17	Electronic Signature	Please check here for your electronic signature.	Yes
18	Contact	Name of person submitting this bid:	Randy Howard
19	Agreement to Addendum No. 1	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: Attached Addendum No. 1 (Item 16 of the Attachments) and revised pricing sheet.	Yes
20	Agreement to Addendum No. 2	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: Attached Addendum No. 2 and revised pricing sheet.	Yes
21	Agreement to Addendum No. 3	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: Attached Addendum No. 3.	Yes
22	Agreement to Addendum No. 4	Respondent hereby certifies that the change set forth in this addendum has been incorporated in their proposal and is part of their bid.  Reason: Attached Addendum No. 4.	Yes

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## Line Items

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#	Qty	UOM	Description	Response
1	1	Lump Sum	N Street Roadway Project 870302 from 7th to 9th Street and Railroad Track Removal -- Total Lump Sum of Bid	\$1,285,819.55

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

Supplier Notes:

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Response Total: \$1,285,819.55

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12-073

Constructors

Line	Pay Item No	Description	Quantity	Unit	Unit Price	Amount	Section	AlternateC
001	01.01001	Const Staking	1.0000	LS	\$5,400.00	\$5,400.00	GENERAL	Base Bid
002	01.00001	Mobilization	1.0000	LS	\$100,000.00	\$100,000.00	GENERAL	Base Bid
003	01.04001	Pavt & Sidewalk Rem	2,061.0000	CY	\$19.35	\$39,880.35	GENERAL	Base Bid
004	01.06001	Sawing, Type "B"	4,138.0000	LF	\$3.60	\$14,896.80	GENERAL	Base Bid
005	01.07001	Sawing, Type "C"	164.0000	LF	\$3.60	\$590.40	GENERAL	Base Bid
006	01.11001	Adj MH to Grade	14.0000	EA	\$400.00	\$5,600.00	GENERAL	Base Bid
007	01.13001	Adj Water Valve Box To Grade	13.0000	EA	\$205.00	\$2,665.00	GENERAL	Base Bid
008	02.01001	Gen Clearing & Grubbing	1.0000	LS	\$3,500.00	\$3,500.00	EARTHWORK	Base Bid
009	02.02012	Tree Rem (12" to 23")	9.0000	EA	\$150.00	\$1,350.00	EARTHWORK	Base Bid
010	02.02024	Tree Rem (24" to 35")	4.0000	EA	\$300.00	\$1,200.00	EARTHWORK	Base Bid
011	02.05001	Excavation	640.0000	CY	\$17.75	\$11,360.00	EARTHWORK	Base Bid
012	02.05002	Over-Excavation	520.0000	CY	\$9.50	\$4,940.00	EARTHWORK	Base Bid
013	02.05003	Excavation - Borrow	2,367.0000	CY	\$13.50	\$31,954.50	EARTHWORK	Base Bid
014	04.09007	PCC Pavt, 7"	537.0000	SY	\$45.50	\$24,433.50	PAVING	Base Bid
015	04.09109	PCC Pavt w/ Int Curb, 9"	6,051.0000	SY	\$56.00	\$338,856.00	PAVING	Base Bid
016	04.09209	RPCC Pavt, 9"	1,477.0000	SY	\$109.00	\$160,993.00	PAVING	Base Bid
017	04.09305	Conc Sidewalk, 5"	16,983.0000	SF	\$4.00	\$67,932.00	PAVING	Base Bid
018	04.09306	Conc Sidewalk, 6"	6,383.0000	SF	\$5.00	\$31,915.00	PAVING	Base Bid
019	04.09601	Combined Curb & Gutter	127.0000	LF	\$24.00	\$3,048.00	PAVING	Base Bid
020	04.09602	Conc Barrier Curb (9" X 20")	449.0000	LF	\$37.00	\$16,613.00	PAVING	Base Bid
021	04.09604	Conc Median Curb	57.0000	LF	\$24.00	\$1,368.00	PAVING	Base Bid
022	04.09804	Conc Median Surfacing, 4"	80.0000	SF	\$8.90	\$712.00	PAVING	Base Bid
023	04.11001	Detectable Warning Panels	168.0000	SF	\$27.00	\$4,536.00	PAVING	Base Bid
024	05.07007	Conc Base, LB-3500, 7"	2,505.0000	SY	\$36.00	\$90,180.00	PAVING	Base Bid
025	06.06003	Asphaltic Concrete, Type 3	488.0000	TON	\$76.00	\$37,088.00	PAVING	Base Bid
026	09.03001	Crushed Rock Roadway Surfacing	185.0000	TON	\$39.00	\$7,215.00	PAVING	Base Bid
027	14.01111	Remove Traffic Sign and Post	7.0000	EA	\$85.00	\$595.00	SIGNING	Base Bid
028	15.09001	Traffic Control for Const	1.0000	LS	\$23,000.00	\$23,000.00	TRAFFIC CONTROL	Base Bid
029	50.00001	Adjust Hydrant to Grade	1.0000	EA	\$1,015.20	\$1,015.20	MISC	Base Bid
030	50.00001	Relocate Hydrant, Complete	1.0000	EA	\$2,000.00	\$2,000.00	MISC	Base Bid
031	50.00001	Remove Parking Meter Post	10.0000	EA	\$42.00	\$420.00	MISC	Base Bid
032	50.00001	Remove Parking Meter & Post	33.0000	EA	\$42.00	\$1,386.00	MISC	Base Bid
033	50.00001	Re-Route and Tap Building Roof Drain Line	3.0000	EA	\$1,100.00	\$3,300.00	MISC	Base Bid
034	50.00005	Remove Railroad Tracks	2,212.0000	LF	\$15.00	\$33,180.00	MISC	Base Bid
035	50.00010	NDOR 47B Sand Gravel Mix (Compacted Fill)	320.0000	CY	\$26.80	\$8,576.00	MISC	Base Bid
036	13.02501	Grvd Prfmd Plstc Mkg, Lt Arrow	1.0000	EA	\$456.00	\$456.00	PAVEMENT MARKINGS	Base Bid

037	13.02502	Grvd Prfmd Plstc Mkg, Rt Arrow	4.0000	EA	\$456.00	\$1,824.00	PAVEMENT MARKINGS	Base Bid
038	13.02507	Grvd Prfmd Plstc Mkg, "ONLY"	3.0000	EA	\$786.00	\$2,358.00	PAVEMENT MARKINGS	Base Bid
039	13.04524	Grvd Liquid Polyurea Mkg - Type I, 24" W	790.0000	LF	\$22.90	\$18,091.00	PAVEMENT MARKINGS	Base Bid
040	13.07004	Paint Mkg, 4" W	1,530.0000	LF	\$0.50	\$765.00	PAVEMENT MARKINGS	Base Bid
041	13.07005	Paint Mkg, 4" Y	2,975.0000	LF	\$0.50	\$1,487.50	PAVEMENT MARKINGS	Base Bid
042	13.07013	Paint Mkg, 12" Y	72.0000	LF	\$2.00	\$144.00	PAVEMENT MARKINGS	Base Bid
043	14.01010	Traffic Sign, < 4 Sq Ft	10.0000	EA	\$112.00	\$1,120.00	SIGNING	Base Bid
044	14.01012	Traffic Sign, 4 Sq Ft < 9 Sq Ft	4.0000	EA	\$147.00	\$588.00	SIGNING	Base Bid
045	14.01014	Traffic Sign, 9 Sq Ft or >	5.0000	EA	\$178.00	\$890.00	SIGNING	Base Bid
046	14.03210	"U" Channel Sign Posts	215.0000	LF	\$7.60	\$1,634.00	SIGNING	Base Bid
047	14.04010	Street Name Posts (Round)	1.0000	LF	\$127.00	\$127.00	SIGNING	Base Bid
048	20.07001	Conc for Collars, Elbows, Plugs & Hdwls	1.0000	CY	\$1,015.00	\$1,015.00	STORM DRAINAGE	Base Bid
049	20.07002	Reinf Steel for Collars, Elbows, Plugs & Hdwls	50.0000	LBS	\$1.50	\$75.00	STORM DRAINAGE	Base Bid
050	21.03015	Rem Storm Sewer Pipe, 15"	151.0000	LF	\$20.00	\$3,020.00	STORM DRAINAGE	Base Bid
051	21.03315	RCP Storm Sewer, CI III, 15"	263.0000	LF	\$51.00	\$13,413.00	STORM DRAINAGE	Base Bid
052	21.05001	Tap Ex Storm Sewer MH & Replace	1.0000	EA	\$1,000.00	\$1,000.00	STORM DRAINAGE	Base Bid
053	21.05004	Tap Ex RC Box	7.0000	EA	\$305.00	\$2,135.00	STORM DRAINAGE	Base Bid
054	21.07015	Storm Sewer MH, 15" - 30"	1.0000	EA	\$2,540.00	\$2,540.00	STORM DRAINAGE	Base Bid
055	21.08001	Storm Sewer Inlet, 72"	6.0000	EA	\$2,450.00	\$14,700.00	STORM DRAINAGE	Base Bid
056	21.08003	Radius Storm Sewer Inlet, 72"	2.0000	EA	\$2,450.00	\$4,900.00	STORM DRAINAGE	Base Bid
057	21.08010	Grate Inlet, Ty "E"	2.0000	EA	\$3,045.00	\$6,090.00	STORM DRAINAGE	Base Bid
058	21.08011	Grate Inlet, Ty "F-1"	1.0000	EA	\$2,020.00	\$2,020.00	STORM DRAINAGE	Base Bid
059	21.13002	Rem Ex Inlet	8.0000	EA	\$200.00	\$1,600.00	STORM DRAINAGE	Base Bid
060	32.04001	Curb Inlet Protection Inst	11.0000	EA	\$240.00	\$2,640.00	EROSION CTRL	Base Bid
061	32.04002	Curb Inlet Protection Maint	11.0000	EA	\$38.00	\$418.00	EROSION CTRL	Base Bid
062	32.04003	Curb Inlet Protection Rem	11.0000	EA	\$30.00	\$330.00	EROSION CTRL	Base Bid
063	24.03215	Conduit, 1 1/2", Trenched	984.0000	LF	\$6.85	\$6,740.40	TRAFFIC SIGNAL & LIGHT	Base Bid
064	24.03220	Conduit, 2", Trenched	757.0000	LF	\$7.10	\$5,374.70	TRAFFIC SIGNAL & LIGHT	Base Bid
065	24.05009	Pull Box, T9	3.0000	EA	\$584.00	\$1,752.00	TRAFFIC SIGNAL & LIGHT	Base Bid
066	24.08435	Pole, Street Light, SL-A-C-35-6-3	8.0000	EA	\$1,624.00	\$12,992.00	TRAFFIC SIGNAL & LIGHT	Base Bid
067	24.12208	Cable, No 8 Circuit Ground	984.0000	LF	\$1.90	\$1,869.60	TRAFFIC SIGNAL & LIGHT	Base Bid
068	24.12506	Cable, No 6 Street Light	1,965.0000	LF	\$2.15	\$4,224.75	TRAFFIC SIGNAL & LIGHT	Base Bid
069	50.00005	Cable No. 2 Circuit Ground	757.0000	LF	\$3.05	\$2,308.85	MISC	Base Bid
070	50.00005	Cable No. 1/0 Street Light	1,514.0000	LF	\$3.80	\$5,753.20	MISC	Base Bid
071	50.00005	Cable No. 6 Neutral	984.0000	LF	\$2.15	\$2,115.60	MISC	Base Bid
072	50.00005	Cable No. 1/0 Neutral	757.0000	LF	\$3.80	\$2,876.60	MISC	Base Bid
073	24.01001	Rem Pedestrian Signal	2.0000	EA	\$609.00	\$1,218.00	TRAFFIC SIGNAL & LIGHT	Base Bid
074	24.01020	Rem Traffic Signal Pole Foundation	2.0000	EA	\$1,725.00	\$3,450.00	TRAFFIC SIGNAL & LIGHT	Base Bid

075	24.01022	Rem Pull Box	2.0000	EA	\$102.00	\$204.00	TRAFFIC SIGNAL & LIGHT	Base Bid
076	24.03140	Conduit, 4", Bored	1,300.0000	LF	\$15.25	\$19,825.00	TRAFFIC SIGNAL & LIGHT	Base Bid
077	24.03230	Conduit, 3", Trenched	34.0000	LF	\$10.15	\$345.10	TRAFFIC SIGNAL & LIGHT	Base Bid
078	24.04000	Locate Stick	6.0000	EA	\$102.00	\$612.00	TRAFFIC SIGNAL & LIGHT	Base Bid
079	24.05009	Pull Box, T9	1.0000	EA	\$584.00	\$584.00	TRAFFIC SIGNAL & LIGHT	Base Bid
080	24.05027	Pull Box, FOR27	7.0000	EA	\$787.00	\$5,509.00	TRAFFIC SIGNAL & LIGHT	Base Bid
081	24.08201	Pole, Inst Mast Arm, MA-2>46'	1.0000	EA	\$3,554.00	\$3,554.00	TRAFFIC SIGNAL & LIGHT	Base Bid
082	24.08701	Pole, Inst Pedestal, 1	1.0000	EA	\$761.00	\$761.00	TRAFFIC SIGNAL & LIGHT	Base Bid
083	24.12003	Cable, 3/C Traffic Signal	14.0000	LF	\$2.55	\$35.70	TRAFFIC SIGNAL & LIGHT	Base Bid
084	24.12005	Cable, 5/C Traffic Signal	234.0000	LF	\$2.80	\$655.20	TRAFFIC SIGNAL & LIGHT	Base Bid
085	24.12012	Cable, 12/C Traffic Signal	113.0000	LF	\$3.80	\$429.40	TRAFFIC SIGNAL & LIGHT	Base Bid
086	24.12100	Cable, Tracer Wire	1,710.0000	LF	\$0.50	\$855.00	TRAFFIC SIGNAL & LIGHT	Base Bid
087	24.12103	Cable, Emergency Detector	113.0000	LF	\$2.95	\$333.35	TRAFFIC SIGNAL & LIGHT	Base Bid
088	24.12206	Cable, No 6 Circuit Ground	65.0000	LF	\$2.15	\$139.75	TRAFFIC SIGNAL & LIGHT	Base Bid
089	24.12208	Cable, No 8 Circuit Ground	34.0000	LF	\$1.95	\$66.30	TRAFFIC SIGNAL & LIGHT	Base Bid
090	24.12504	Cable, No 4 Street Light	130.0000	LF	\$2.50	\$325.00	TRAFFIC SIGNAL & LIGHT	Base Bid
091	24.12506	Cable, No 6 Street Light	12.0000	LF	\$2.15	\$25.80	TRAFFIC SIGNAL & LIGHT	Base Bid
092	24.13013	Head, Inst Pedestrian Signal, PS-1, T13C	4.0000	EA	\$152.00	\$608.00	TRAFFIC SIGNAL & LIGHT	Base Bid
093	24.13031	Head, Inst Traffic Signal, TS-1, T31	1.0000	EA	\$203.00	\$203.00	TRAFFIC SIGNAL & LIGHT	Base Bid
094	24.13036	Head, Inst Traffic Signal, TS-1, T36	5.0000	EA	\$203.00	\$1,015.00	TRAFFIC SIGNAL & LIGHT	Base Bid
095	24.13060	Inst Metro Street Name Sign	1.0000	EA	\$152.00	\$152.00	TRAFFIC SIGNAL & LIGHT	Base Bid
096	24.14140	Luminaire, 400W HPSV-SC	1.0000	EA	\$253.00	\$253.00	TRAFFIC SIGNAL & LIGHT	Base Bid
097	50.00001	Install Traffic Sign, Medium (On Traffic Signal Pole)	5.0000	EA	\$127.00	\$635.00	MISC	Base Bid
098	50.00005	Dewatering for Storm Sewers	414.0000	LF	\$10.00	\$4,140.00	MISC	Base Bid
099	50.00060	Dewatering Container Usage	123.0000	CDAY	\$70.00	\$8,610.00	MISC	Base Bid
100	50.00001	Furnish Dewatering Container	1.0000	EA	\$6,300.00	\$6,300.00	MISC	Base Bid
101	50.00005	Dewatering for Water Mains	986.0000	LF	\$10.00	\$9,860.00	MISC	Base Bid
102	24.10301	Inst and Adj Emergency Vehicle Detector	1.0000	EA	\$305.00	\$305.00	TRAFFIC SIGNAL & LIGHT	Base Bid
103	24.01010	Rem Mast Arm Pole	2.0000	EA	\$558.00	\$1,116.00	TRAFFIC SIGNAL & LIGHT	Base Bid
104	50.00001	Install LED Luminaire & Shoring Cap (LES Supplied)	8.0000	EA	\$76.00	\$608.00	MISC	Base Bid

**\$1,285,819.55 Total Amount**

**EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT C**

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

## CONSTRUCTION AND MAINTENANCE AGREEMENT

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

### RECITALS

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

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

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

### AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE III – CITY OBLIGATIONS**

3.1 Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.3 Construction and Contractor Requirements.

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

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each

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

3.3.3 Site Cleanup and Restoration. City shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the City C&M Work to the reasonable satisfaction of BNSF's Division Engineer.

3.3.4 Safety/Security.

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

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

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

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "**Other Improvements**"). City must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. City must also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or

Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this **Section 3.3.5**, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

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

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

**3.3.8 No Unauthorized Tests or Digging.** No City Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on BNSF's property, except after City has obtained written approval from BNSF Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.

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

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

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

### 3.4 Environmental Compliance and Notification.

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to strictly comply with all federal, state and local environmental laws and regulations in its use of BNSF's property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to the BNSF property. City and its contractors, if any, shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on BNSF's property. City and its contractors, if any, shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in BNSF's property and as encountered in the City C&M Work and then only in compliance with Environmental Laws and the SMP (defined below), and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the City C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any BNSF property.

3.4.2 Notice of Release. City shall give BNSF immediate notice to BNSF's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from BNSF's property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to City's use of BNSF's property. City shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in this C&M Agreement only in compliance with Environmental Laws and the SMP. City shall also give BNSF notice of all measures undertaken on City's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

3.4.3 Remediation of Release. In the event City has notice of a release or violation of Environmental Laws which occurred or may occur as a result of City's activities contemplated in this C&M Agreement, City shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting BNSF's property or improvements. If during the City C&M Work, soils or other materials considered to be environmentally contaminated are exposed, City will remove and safely dispose of said contaminated soils only in compliance with Environmental Laws and the SMP. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

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

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

### 3.5 Timing.

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

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

3.6 Indemnifications.

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

(i) ANY RIGHTS OR INTERESTS GRANTED TO CITY OR ANY CITY PARTY (DEFINED BELOW) PURSUANT TO THIS C&M AGREEMENT, THE RIGHTS OF ENTRY, OR THE LICENSES AND/OR EASEMENTS GRANTED TO CITY PURSUANT TO THIS C&M AGREEMENT;

(ii) THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CITY CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY WORK PERFORMED BY CITY OR ANY CITY PARTY IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING (AS DEFINED IN THE MASTER AGREEMENT), OR STORM WATER MITIGATION (AS DEFINED IN THE MASTER AGREEMENT) BY CITY;

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

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

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

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

OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;

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

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

THE LIABILITY ASSUMED BY CITY AND THE CITY CONTRACTORS WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY BNSF'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

3.6.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.

3.6.3 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES, AND SHALL CAUSE CITY'S CONTRACTORS TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF BNSF, TO INDEMNIFY, DEFEND AND HOLD HARMLESS BNSF AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY BNSF UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CITY OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF BNSF OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

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

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

### 3.8 Insurance Obligations.

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

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

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

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

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

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

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

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

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

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

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

3.8.1.4 Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000.00 per occurrence and \$10,000,000.00 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement

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

3.8.1.5 Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

City agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. City further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under City's care, custody or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

City is allowed to self-insure up to \$250,000 per occurrence and \$250,000 aggregate on General Liability and Automotive Liability and up to \$500,000 per occurrence and \$500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions

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

Prior to commencing the City C&M Work, City must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV – MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***[Signature page follows]***

**Signature Page - C&M Agreement**

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

**CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation

By:   
Chris Beutler, Mayor of Lincoln

Date: 10/19/2010

**BNSF RAILWAY COMPANY**, a Delaware corporation

By: \_\_\_\_\_  
David L. Freeman, Vice President – Engineering

Date: \_\_\_\_\_

**Signature Page - C&M Agreement**

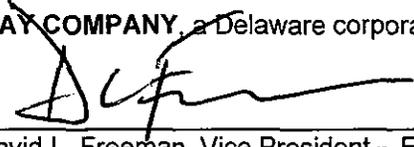
IN WITNESS WHEREOF, the Parties have caused this C&M Agreement to be executed as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

**CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

Date: \_\_\_\_\_

**BNSF RAILWAY COMPANY**, a Delaware corporation

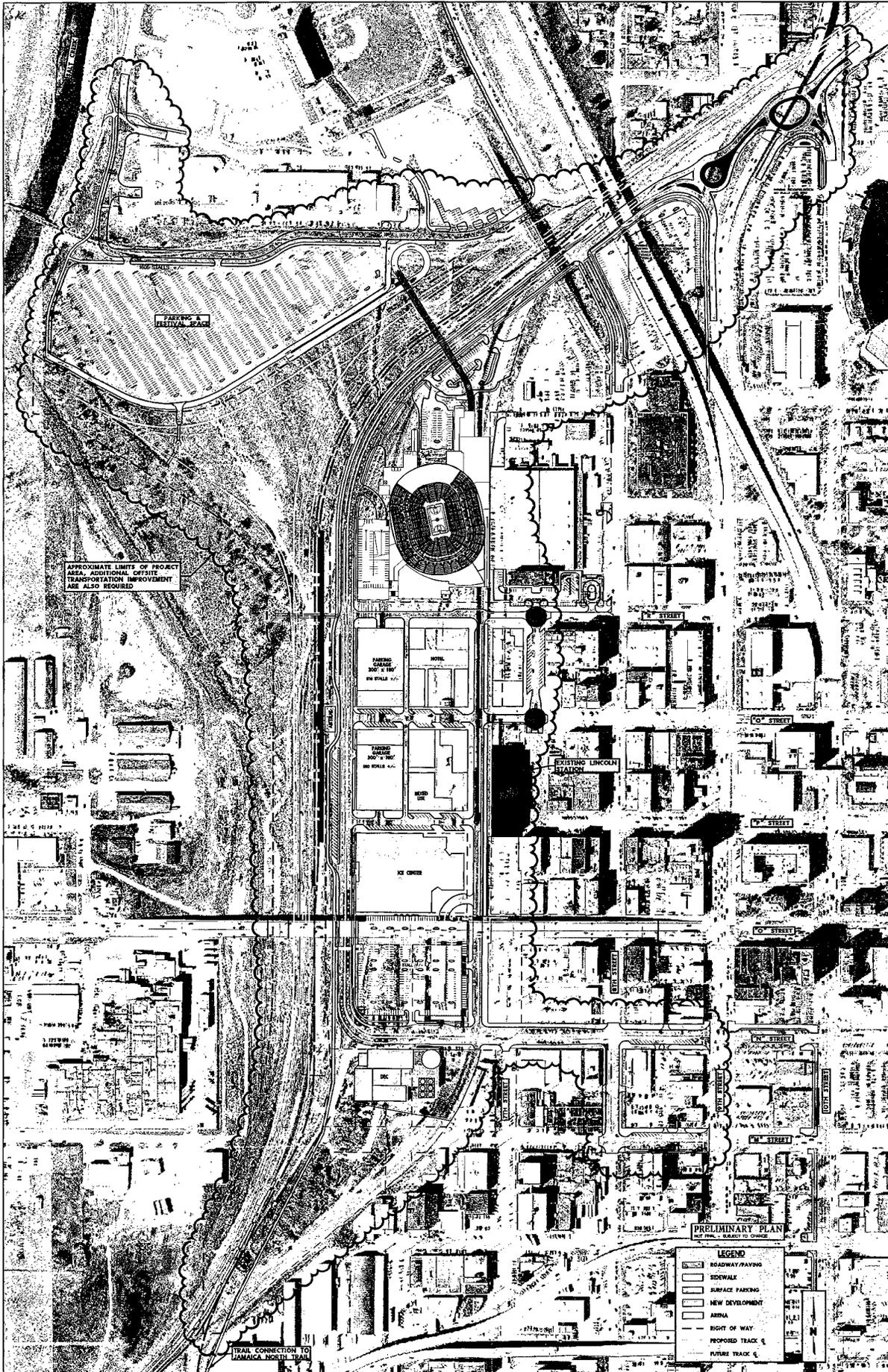
By:  \_\_\_\_\_  
David L. Freeman, Vice President - Engineering

Date: \_\_\_\_\_

**EXHIBIT A**

Project Area

[See attached]



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

PARKING A

PARKING BOND ST. 100 W. W. 100 W. W.

PARKING BOND ST. 100 W. W. 100 W. W.

100 CENTER

EXISTING LINCOLN STATION

PRELIMINARY PLAN

TRAIL CONNECTION TO LINCOLN CENTER STATION

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

DATE: 8/23/2010  
 TIME: 10:00 AM  
 DRAWN BY: JGO  
 PROJECT NO: 008-0645

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

WEST HAYMARKET REDEVELOPMENT AREA

**MOLSSON**  
 ASSOCIATES

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

EXHIBIT  
 A

**EXHIBIT B**

**Form of BNSF Plan Approval**



Gerald Maczuga  
Project Engineer

BNSF Railway Company  
201 N 7<sup>th</sup> St  
Lincoln, NE 68508  
402-458-7537 (office)  
402-458-4376 (fax)  
[Gerald.Maczuga@BNSF.com](mailto:Gerald.Maczuga@BNSF.com)

Date: \_\_\_\_\_

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

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

Dear Mr. Peo:

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

Regards,

Gerald Maczuga  
Project Engineer

## EXHIBIT C

### Contractor Requirements

#### 1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" during the performance of the C&M Work (as defined in Exhibit C-1) and any other work over, under, on or adjacent to Railway Property.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit C-1 Contractor Right of Entry for C&M Work, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit C-1. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all C&M Work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway Property is subject to the absolute right of Railway to cause the Contractor's work on Railway Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway Property, employees, and/or operations. Railway will have the right to stop construction work on the C&M Work if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the C&M Work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the C&M Work in a manner which is hazardous to Railway Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the C&M Work. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the C&M Work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop the C&M Work, Railway agrees to immediately notify the following individual in writing:

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

- **1.01.05** Contractor shall, and shall cause all Contractor parties to, strictly comply with all federal, state and local environmental laws and regulations in its use of Railway's Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively, the "**Environmental Laws**") with respect to Railway's Property. Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on Railway's Property. Contractor shall not handle, transport, release or suffer the release of "hazardous

waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws, except as may be pre-existing in Railway Property and as encountered in the C&M Work and then only in compliance with Environmental Laws, and shall not use any soils or other materials containing hazardous waste or hazardous substances in connection with the C&M Work, or otherwise bring any hazardous waste or hazardous substances onto any Railway Property.

Contractor shall give Railway immediate notice to Railway's Resource Operations Center at (800) 832-5452 in the event of any release of hazardous substances on or from Railway Property, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of Railway Property. Contractor shall use best efforts to promptly respond to any release arising from or related to its activities contemplated in the C&M Work. Contractor shall also give Railway notice of all measures undertaken on Contractor's behalf to investigate, remediate, respond to or otherwise cure such release or violation.

In the event Contractor has notice of a release or violation of Environmental Laws which occurred or may occur as a result of Contractor's activities contemplated in the C&M Work, Contractor shall take timely measures to investigate, remediate, respond to or otherwise cure as required by applicable law such release or violation affecting Railway Property or improvements. If during the C&M Work, soils or other materials considered to be environmentally contaminated are exposed, Contractor will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof will be made only by an agency having the capacity and authority to make such a determination.

Contractor agrees to periodically to furnish Railway upon written request with reasonable proof that it is in compliance with this **Section 1.01.05**.

- **1.01.06** All C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with plans and specifications approved in advance by Railway (the "**Approved Plans**"), (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any Railway improvements or other improvements on or near Railway Property, or any lateral support of any structures adjacent to or in the proximity of any Railway improvements or Railway Property. In addition, the C&M Work must be promptly commenced by the Contractor and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the C&M Work which affect Railway will be subject to Railway's written approval prior to the commencement of any such changes or modifications from the Railway's Project Engineer.
- **1.01.07** Contractor shall be responsible for all job site cleanup and restoration, including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials resulting from the C&M Work to the reasonable satisfaction of Railway's Division Engineer.
- **1.01.08** The Contractor must notify the City at City's City Engineer, telephone number (402) 441-7567 and Railway's Project Engineer, telephone number (402) 458-7537 at least ten (10) calendar days before commencing any C&M Work on Railway Property.

- **1.01.09** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin C&M Work until notified by the Railway that plans have been approved, which approved plans shall become part of the Approved Plans. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of the Approved Plans.
- **1.01.10** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the C&M Work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## **1.02 Contractor Safety Orientation**

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.

## **1.03 Railway Requirements**

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's

operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Contractor.

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15' Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
  - 31' Vertically above top of rail to the bottom of the Pedestrian Bridge
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.
- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor, upon completion of the C&M Work, must promptly remove from the Railway Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said Railway Property by Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and must cause Railway Property to be left in a condition acceptable to Railway's Project Engineer.

#### **1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan**

- **1.04.01** Each Contractor that will perform C&M Work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway's Project Engineer to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of C&M Work, the Contractor must audit its C&M Work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

#### **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

#### **1.06 Contractor General Safety Requirements**

- **1.06.01** C&M Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations. No Contractor shall conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on Railway Property, except after Contractor has obtained written approval from Railway Director Engineering Services, and then only in strict accordance with the terms and any conditions of such approval.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the

personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF

**THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S PROJECT ENGINEER.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

#### **1.07 Excavation**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

- **1.07.05** Contractor will be responsible at no cost to Railway to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within Railway Property (collectively, "**Other Improvements**"). Contractor must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. Contractor must mark all Railway improvements and Other Improvements on the applicable Approved Plans or other plans and specifications approved in advance by Railway, and mark all Railway improvements and Other Improvements in the field in order to verify their locations. Contractor must also use all reasonable methods when working on or near Railway Property to determine if any Railway improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any Railway improvements or Other Improvements will be sufficient cause for Railway to stop construction at no cost to Railway until such items are completed. Contractor must make all adjustments and other work described in this Section 1.07.05, including without limitation adjustments to Other Improvements and work on and affecting Railway Property, in a manner that does not adversely impact utility service to Railway.

#### **1.08 Hazardous Waste, Substances and Material Reporting**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1 (800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

#### **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's Project Engineer. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1 (817) 352-7595 and to the Railway's Project Engineer no later than the close of shift on the date of the injury.

**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

- 1. Accident City/St
- 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_ County:
- 3. Temperature:
- 4. Weather  
(if non-Railway location)
- 5. Social Security #
- 6. Name (last, first, mi)
- 7. Address: Street: \_\_\_\_\_ City:  
St. \_\_\_\_\_ Zip: \_\_\_\_\_
- 8. Date of Birth: \_\_\_\_\_ and/or Age \_\_\_\_\_ Gender:  
(if available)
- 9. (a) Injury: \_\_\_\_\_ (b) Body Part:  
(i.e. (a) Laceration (b) Hand)
- 11. Description of Accident (To include location, action, result, etc.):
  
- 12. Treatment:  
 First Aid Only  
 Required Medical Treatment  
 Other Medical Treatment
- 13. Dr. Name \_\_\_\_\_ 30. Date: \_\_\_\_\_
- 14. Dr. Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St:  
Zip: \_\_\_\_\_
- 15. Hospital Name:
- 16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_  
Zip: \_\_\_\_\_
- 17. Diagnosis:

**FAX TO RAILWAY AT (817) 352-7595  
AND COPY TO RAILWAY ROADMASTER FAX**

**EXHIBIT C-1(A)**

**CONTRACTOR'S RIGHT OF ENTRY  
For C&M Work**

**BNSF RAILWAY COMPANY  
Attention: Project Engineer**

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated \_\_\_\_\_, 20\_\_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated \_\_\_\_\_, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

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

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

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

**CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

**Section 2. TERM**

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

**Section 3. INSURANCE**

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

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

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
  - Any and all vehicles owned, used or hired

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

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

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

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

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

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

- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

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

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

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

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

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

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

#### **Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### **Section 5. TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

**Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.**

**Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.**

*[Signature page follows]*

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**EXHIBIT C-1(B)**

**CONTRACTOR'S RIGHT OF ENTRY  
For C&M Work**

**BNSF RAILWAY COMPANY  
Attention: Project Engineer**

Gentlemen:

The undersigned (hereinafter, the "**Contractor**"), has entered into a contract (the "**Contract**") dated \_\_\_\_\_, 20\_ with the City of Lincoln, Nebraska ("**City**") for the performance of certain work ("**C&M Work**") in connection with the construction of entertainment, recreation, lodging, offices, retail and/or other complementary and/or supporting facilities in Lincoln, Nebraska (collectively, the "**West Haymarket Project**"). The work to be performed under this Agreement is deemed to be "City C&M Work" (as defined in that certain Construction and Maintenance Agreement ["**C&M Agreement**"] dated \_\_\_\_\_, 2010, between BNSF Railway Company and the City). Performance of such C&M Work will necessarily require Contractor to enter BNSF RAILWAY COMPANY ("**Railway**") right of way and property ("**Railway Property**"). The Contract provides that no C&M Work will be commenced within Railway Property until the Contractor employed in connection with said C&M Work for the **City of Lincoln, Nebraska** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

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

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

(ii) THE USE, OCCUPANCY OR PRESENCE OF CONTRACTOR AND CONTRACTOR PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY CONTRACTOR AND CONTRACTOR PARTIES IN, ON, OR ABOUT RAILWAY'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY ANY CONTRACTOR PARTY (DEFINED BELOW);

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF RAILWAY, TO INDEMNIFY, DEFEND AND HOLD HARMLESS RAILWAY AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY RAILWAY UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF CONTRACTOR OR ANY CONTRACTOR PARTY CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF RAILWAY OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE

## **CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all Liabilities against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising out of any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all Liabilities arising out of any such claims or suits, provided that the foregoing indemnification obligations do not include Liabilities arising wholly out of the sole negligence of Railway or to the extent caused by the gross negligence or willful misconduct of Railway.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY RAILWAY'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

*It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.*

### **Section 2. TERM**

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

### **Section 3. INSURANCE**

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000.00 per occurrence, and \$4,000,000.00 in the aggregate, but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

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

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

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
  - Any and all vehicles owned, used or hired

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

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

- C. Workers Compensation and Employers Liability Insurance. This insurance shall include coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

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

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

- D. Railroad Protective Liability Insurance. This insurance shall name only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

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

- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Railroad prior to performing any work or services under this Agreement

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

**Other Requirements:**

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Railroad.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the C&M Work, Contractor must furnish to Railroad acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

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

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractors release, defend and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

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

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

#### **Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit C attached to this Agreement and the Contract, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### **Section 5. TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

**Contractor and its subcontractors must give Railway's Project Engineer (402) 458-7537 thirty (30) days' minimum advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.**

**Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.**

*[Signature page follows]*

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Project Engineer*

Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

City: \_\_\_\_\_ State: \_\_\_\_ Zip: \_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**EXHIBIT D**

**Final Clearances**

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

## **EXHIBIT E**

### **Soil Management Plan**

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

#### **Proper Management of Impacted Media**

##### **1. Access**

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

##### **2. Management Practices**

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

###### **2.1 Impacted Soil and Debris Management**

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

1. A fundamental premise regarding the regulatory status of any soils, debris or other media encountered during intrusive activities is that such items are not considered waste material until determined by the Project Manager in consultation with the Technical Representative to be no longer suitable for its intended purpose.
2. Title 132, Chapter 1, Section 041 defines fill as: *"solid waste that consists only of one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material"*.
3. The *"use of fill for legitimate land improvement (backfilling a foundation) is allowed per Title 132, Chapter 2, Section 002.01 as long as the fill is not mixed with other solid wastes that have the potential to cause contamination that may threaten human health or the environment"*.
4. From pg. 2 of NDEQ GD 05-161: *"Activity not related to investigation or remediation is not considered "active management" under the waste regulations. For example, routine trench or foundation excavation spoils that are generated at a site that is not a remediation or investigation activity site or are not related to remediation or investigation activities are not considered a waste unless it is intended for disposal. Such spoils could normally be replaced in the excavation."*
5. Prior to initiation of each construction task, the project manager will consult with the technical representative to determine the type of material anticipated to be excavated, potential

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

## **2.2 Grading/Excavation**

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

1. Grading/excavation project manager/contractor's representative (PM/CR) must contact the Technical Representative (TR) at least 14 days prior to initiation of grading/excavation work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the responsibility of the PM/CR to notify the TR of construction schedules and activities (including any changes in schedules or scope of work effort) that may require on-site support and observation.***
5. Unless superseded by other special considerations, grading/excavation activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed areas/volumes of soil grading/excavation/filling) must be reported to the TR.
7. If during execution of contractual plans and specifications the PM/CR determines the need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
8. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

## **2.3 Utility Work**

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

1. The utility project manager/contractor's representative (PM/CR) must contact the TR at least 14 days prior to initiation of intrusive utility work to discuss anticipated conditions and any special precautions to consider.
2. The PM/CR must arrange for all related utility clearance.
3. The PM/CR must meet with the TR to discuss task – specific precautions (as detailed in any and all applicable work activities described in this Section).
4. A TR must be on-site or on call to respond to questions or observations that could require sampling or determinations relevant to management of impacted soil or debris. ***It is the***

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

5. Unless superseded by other special considerations, utility construction activities may proceed per the contractual project/task plans and specifications.
6. Changing field considerations and observations (including encountering suspect soils/debris/other media or modifications of proposed routes of utility corridors) must be immediately reported to the TR.
7. In general, soil/debris/spoils which will not be removed from the site can be used as backfill around utilities if determined by the PM/CR to be suitable fill material and the material has no appearance of contamination or odor. Soil/debris/spoils removed during the course of intrusive utility work with an appearance of contamination or odor will be immediately notified to the TR for consultation and resolution including temporary storage of the suspect material.
8. If during execution of contractual plans and specifications the PM/CR determines there is a need to manage excess soils/debris/other media) not previously addressed, the PM/CR will consult with the TR to discuss management of affected media. Resolution and ultimate fate of the affected media will be documented by the TR.
9. Work shutdown will be at the discretion of the PM/CR's corporate health and safety policies and practices.

#### **SPILL/INCIDENT RESPONSE REFERRAL SHEET**

##### **SPILL REPORTING**

###### **First Call:**

###### **Environmental Project Management Team Technical Representatives:**

**Frank Uhlarik – Alfred Benesch & Company:** 402-333-5792  
Cell: 402-669-0546

###### **Alternate:**

**Bill Imig – Olsson Associates:** 402-458-5903  
Cell: 402-314-4568

###### **Alternate:**

**Miki Esposito – Environmental Project Management Team:** 402-441-6173

###### **Agencies/Railroad Authorities:**

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

###### **After Hours, Weekends and Holidays:**

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

##### **ALL OTHER INCIDENTS**

**Fire and Police:** Dial 911

## LIST OF ACRONYMS

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

**EXHIBIT D**

**Other Contract Documents**

## COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

### A. GENERAL INFORMATION

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

Construction Performance Bond  
Construction Payment Bond

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

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

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

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

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

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

### B. COMPLETING THE FORMS

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

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

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

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

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

CONSTRUCTION PERFORMANCE BOND

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

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CONTRACTOR (Name and Address):

SURETY (Name and Principal  
Place of Business):

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

CONSTRUCTION CONTRACT

Date:  
Amount:

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

BOND  
Date:  
Amount:  
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company:

(Corp. Seal) SURETY  
Company:

(Corp. Seal)

Signature: \_\_\_\_\_  
Name and Title: Name and Title:

Signature: \_\_\_\_\_

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

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
  - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default and
  - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and
  - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract, or
  - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
  - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default, or
  - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined tender payment therefore to the Owner; or
    2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:
  - 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and
  - 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
  - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
  - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
  - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

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

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CONTRACTOR (Name and Address):

SURETY (Name and Principal Place  
Of Business):

Owner (Name and Address):

**West Haymarket Joint Public Agency  
555 South 10th St.  
Lincoln, NE 68508**

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

**For all labor, material and equipment necessary for (Bid Name and Number)**

BOND

Date:

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

SURETY

Company:

(Corp. Seal)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title:

Name and Title: \_\_\_\_\_

EJCDC NO. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Assoc. of America, Engineers' Joint Contract Documents Committee, The Associated General Contractors of America, and the American Institute of Architects.

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who do not have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof to the Owner, stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
    2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly, and
    3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond.

- By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
  10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
  11. No suite or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.1 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
  12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
  13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
  14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
  15. DEFINITIONS
    - 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials, or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
    - 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and charges thereto.
    - 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

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

**INSURANCE REQUIREMENTS  
FOR ALL WEST HAYMARKET JOINT  
PUBLIC AGENCY CONTRACTS**

**1. GENERAL PROVISIONS**

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, 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:

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

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

- E. **Terminology.** The terms “insurance,” “insurance policy,” or “coverage” as used in this article are used interchangeably and shall have the same meaning as “insurance” unless the context clearly requires otherwise. References to “ISO®” forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)
- F. **Other Requirements.** All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against JPA for loss of its owned or leased property or property under Contractor’s care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor’s insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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

Contractor represents that this Agreement has been thoroughly reviewed by Contractor’s insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Contractor represents and understands that its insurance agent(s)/broker(s) have been informed that the Contractor’s insurance coverage being procured by the Contractor herein is to protect, defend, identify and hold harmless JPA from any and all liabilities, as such term is defined herein, that may arise in connection with this Agreement and the Contractor to the fullest extent allowed by law waives any caps or limitations on legal liability that may result therefrom.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release, defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

**2. INSURANCE REQUIREMENTS**

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

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

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

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

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

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions “a” through “o” and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

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

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

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

- (3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.

- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
- Endorsement to provide the general aggregate per project endorsement.
- Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
- Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
- Separation of insureds.
- Additional insured endorsement in favor of and acceptable to the JPA.

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

**D. Vehicle liability insurance coverage.**

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

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

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

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

**E. Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 2.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

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

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

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.

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

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

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

### 3. CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:

#### INDEMNIFICATION OF JPA.

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

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

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

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

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

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

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

THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF 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.

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

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
  - (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
  - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

#### **4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.**

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

#### **5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.**

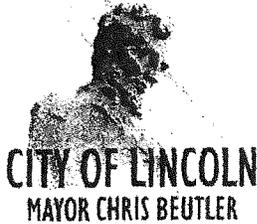
- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The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

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

**6. PROPERTY INSURANCE/ BUILDER'S RISK.**

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

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CITY OF LINCOLN  
EXECUTIVE ORDER

NO. 083319

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

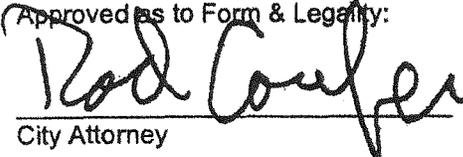
under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period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

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

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

Dated this 28 day of July, 2010.

  
Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:  
  
City Attorney

**EMPLOYEE CLASSIFICATION ACT AFFIDAVIT**

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

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

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

PRINT NAME: \_\_\_\_\_  
(First, Middle, Last)

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

State of Nebraska            )  
  ) ss.  
County of \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public



Jamie Stamper  
Manager-Risk Management

BNSF Railway Company  
P.O. Box 961073  
Fort Worth, Texas 76114-0730  
2500 Lou Menk Drive  
Fort Worth, Texas 76131-2828  
Telephone 817-352-3485  
Fax 817-352-7207  
Email Address  
Jamie.Stamper@bnsf.com

RECEIVED

OCT 31 2011

LAW DEPT.

October 21, 2011

WEST HAYMARKET JOINT AGENCY (JPA),

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

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

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

BNSF Railway Company  
PO Box 140528  
Kansas City, MO 64114

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

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

Sincerely,

Jamie Stamper  
Vickie Barnett

Exhibit D

## 29 C.F.R. § 5.5

Code of Federal Regulations Currentness

## Title 29. Labor

## Subtitle A. Office of the Secretary of Labor

Part 5. Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A. Davis-Bacon and Related Acts Provisions and Procedures

**§ 5.5 Contract provisions and related matters.**

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

(1) Minimum wages.

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

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

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

the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

#### (4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

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

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-014
(a)(1)(ii)(C)	1215-014
(a)(1)(iv)	1215-014
(a)(3)(i)	1215-0140, 1215-00:
(a)(3)(ii)(A)	1215-014
(c)	1215-0140, 1215-00:

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

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

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

#### NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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Lancaster County.....	\$ 11.82	
Saunders County.....	\$ 12.37	
Seward County.....	\$ 11.27	
IRONWORKER, REINFORCING.....	\$ 19.35	
LABORER (COMMON OR GENERAL)		
Lancaster County.....	\$ 12.58	
Saunders County.....	\$ 12.55	
Seward County.....	\$ 12.20	
LABORER: Concrete Saw.....	\$ 16.07	6.55
LABORER: Mason Tender (Cement/Concrete).....	\$ 10.44	
LABORER: Traffic Control - Flagger and Cone/Barrel Setter		
Lancaster County.....	\$ 11.87	
Seward County.....	\$ 9.00	
OPERATOR: Asphalt Spreader.....	\$ 18.74	
OPERATOR: Backhoe/Excavator		
Lancaster County.....	\$ 19.91	6.07
Saunders County.....	\$ 19.47	6.07
Seward County.....	\$ 16.15	
OPERATOR: Backhoe/Loader.....	\$ 15.94	
OPERATOR: Bobcat/Skid Loader		
Lancaster County.....	\$ 10.56	
Saunders County.....	\$ 12.51	
Seward County.....	\$ 14.85	
OPERATOR: Broom/Sweeper.....	\$ 11.43	
OPERATOR: Bulldozer		
Lancaster County.....	\$ 16.78	
Seward, Saunders Counties...	\$ 16.34	
OPERATOR: Compactor.....	\$ 13.36	
OPERATOR: Crane.....	\$ 22.38	
OPERATOR: HYDRO HAMMER.....	\$ 17.03	
OPERATOR: Loader		
Lancaster County.....	\$ 17.44	
Saunders County.....	\$ 17.19	
Seward County.....	\$ 16.04	
OPERATOR: Mechanic.....	\$ 19.58	
OPERATOR: Milling Machine.....	\$ 12.80	
OPERATOR: Oiler.....	\$ 16.21	
OPERATOR: Paver		
Lancaster County.....	\$ 14.79	
Seward, Saunders Counties...	\$ 16.13	
OPERATOR: Roller		
Lancaster County.....	\$ 13.00	
Saunders County.....	\$ 13.45	
Seward County.....	\$ 14.04	



characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

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

#### Non-Union Identifiers

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

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

---

#### WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

=====

END OF GENERAL DECISION



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

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

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

#### Union Identifiers

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

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

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-----  
WAGE DETERMINATION APPEALS PROCESS

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

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Administrative Review Board  
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200 Constitution Avenue, N.W.  
Washington, DC 20210

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

=====  
END OF GENERAL DECISION



**CITY OF LINCOLN, NE (2012)  
N STREET WATER MAIN  
7th STREET to 9th STREET  
PROJECT #702724**

The work as detailed on the plans shall be completed in accordance with the requirements of the 2011 City of Lincoln Standard Specifications for Municipal Construction including all amendments, Supplemental Specifications and additions thereto effective at the date of the contract, the Special Provisions, Plans, and all supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project

In case of a discrepancy:

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

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

Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.

Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Engineer and the Engineer's decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work

Any reference to the City, or OWNER, in the City of Lincoln Standard Specifications for Municipal Construction shall be considered reference to the West Haymarket Joint Public Agency (JPA), its employees, or representatives hired by the JPA as a consultant for construction project management, observation or testing services. The JPA's address is 555 South 10<sup>th</sup> Street, Lincoln, Nebraska 68508.

JPA: JPA shall mean the West Haymarket Joint Public Agency, a joint administrative entity under the Interlocal Cooperation Act, comprised of the City of Lincoln and the University of Nebraska – Lincoln for the purpose of implementing and overseeing the operation of the West Haymarket arena and infrastructure improvement projects.

The bid amount for Mobilization cannot exceed ten percent of the total bid amount for the individual contract in which it is bid.

## PROJECT TIES

This project is tied to N Street - 7th to 9th Street Haymarket Infrastructure Improvements- JPA Project #870302.

## BONDING PERIOD

The City of Lincoln Standard Specifications, General Provisions and Requirements has been amended as follows:

1. Award and Execution of Contract.
  - B. Construction Performance and Construction Payment Bonds and Execution of Contract.

Within **five (5) days** after the acceptance of the bid, the successful Bidder must execute a written Contract between the Bidder and the JPA, said Contract will incorporate the JPA's Contract Documents and be on forms provided by the JPA, Construction Performance and Construction Payment Bonds, in a sum not less than the contract price, executed by the Bidder and by a corporate surety company authorized to transact business in the State of Nebraska.

## SUBSTANTIAL AND FINAL COMPLETION

Work on this project includes:

- 16" Water main from 7th to 9th Street. This work is to be completed concurrently with the tied N Street paving project and as such phasing must be coordinated with the paving project so that particular sections of the water main is completed within the phase time lines shown in the paving plans.

Substantial completion for the work means the completion of all work associated with construction of the work identified above including all removal, water main and paving is complete. all work must be completed by August 10, 2012.

**Notice to Proceed** with the work on this project is anticipated to be given to the Contractor on or before April 9, 2012. It is imperative that the Contractor is ready to begin work upon receipt of the notice to proceed.

## SPECIAL BIDDING CONDITIONS (Disincentives)

If the Contractor fails to complete all work associated with the substantial completion of the project by August 10, 2012, considering approved extensions, disincentives will be charged for each calendar day that the items of work required for the substantial completion remain unfinished. Disincentives shall be \$1,000 per day for each day that the work specified in the plans and special provisions is not completed.

### **STATUS OF RIGHT-OF-WAY**

All work to be completed shall be performed in existing public right-of-way, new right-of-way or private properties where a right-of-entry or temporary or permanent construction easements have been obtained.

### **STATUS OF UTILITIES**

The following information is current as of February 24, 2012. The Contractor should request a utility status update at the project pre-construction conference, and/or prior to starting work. The Contractor shall coordinate all construction activities with affected utilities that have identified relocations which are to be completed concurrent with the utility/roadway construction.

Utilities known to have facilities in the project area:

#### **City of Lincoln**

The City of Lincoln has existing water mains and sanitary sewers within the limits of the project. All necessary adjustments, relocations and extension of water mains or sanitary sewers shall be completed by the Contractor as part of the project as shown on the plans.

All work within this area which may impact public water or sewer facilities will require coordination with the City of Lincoln Water System, City of Lincoln Wastewater System, and the Engineer to minimize impact to daily activities.

City of Lincoln Water System

Contact: Steve Owen

Phone: (402) 441-5925

City of Lincoln Wastewater System

Contact: Brian Kramer

Phone: (402) 441-7987

#### **Private Utilities**

The following utilities are known to exist within the Project limits, and may be relocated as a result of the project. The Contractor shall take into consideration the associated durations of utility relocations, and these associated durations should be considered in the baseline schedule, and prosecution of the work. The Contractor shall conduct ongoing coordination meetings with all utility owners to facilitate these relocations.

Black Hills Energy – Black Hills Energy has a 4” line along the North side of N Street that will be abandoned and a new 2" gas line will be constructed on the South side of N Street, possibly before the M & N Street project begins. The Contractor shall coordinate with Black Hills Energy during the project.

Contact: Randy Kreifels  
Phone: (402) 437-1715

Lincoln Electric System - Lincoln Electric System (LES) will relocate some electrical overhead power at various locations along the project. LES plans to begin relocation work on the electrical facilities in ...?; they will likely be concurrent with street construction. Good coordination will be needed.

Contact:  
Lighting – Larry Kathol  
Phone: (402) 467-7642  
Distribution - Al Cameron  
Phone: (402) 467-7603

#### Windstream

Contact: Ken Adams  
Phone: (402) 467-7680

#### Time Warner Cable

Contact: Lou Kipper  
Phone: (402) 421-0393

#### Galaxy Cablevision

Contact: Randy Vanderheiden  
Phone: (402) 362-3334

#### Unite

Contact: Joe Melvin  
Phone: (402) 617-4787

## UTILITIES

The CONTRACTOR shall notify the Digger's Hotline of Nebraska, Phone Number 1-800-331-5666, at least 48 hours in advance of the commencement of work at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities

The CONTRACTOR acknowledges that some (or all) of the utility companies, with facilities shown on the drawings may not be members of the Hotline and, therefore, not automatically contacted by the above-referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the Hotline, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of underground utilities. The CONTRACTOR shall also be responsible for verifying that each utility has responded to such notification

### **WORKER VISIBILITY**

Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:

Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

High-visibility safety apparel is defined to mean personal protective safety clothing that:

- 1 - is intended to provide conspicuity during both daytime and nighttime usage, and
- 2 - meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standards for High-Visibility Safety Apparel and Headwear."

If the Contractor fails to comply with the worker visibility requirements and as a result, Federal and State authorities withhold Federal Funds, then JPA reserves the right to seek reimbursement from the Contractor for the loss of federal funds that are attributed to the Contractor's non-compliance.

### **TECHNICAL PROVISIONS**

The following Special Provisions amend or supplement the 2006 City of Lincoln Standard Specifications for Municipal Construction and the State of Nebraska Standard

Specifications for Highway Construction, 2007 Edition. All provisions which are not so amended or supplemented remain in full force and effect.

## **MODIFICATIONS TO CHAPTER 15 –TRAFFIC CONTROL**

### **Add the following:**

The Contractor shall be responsible for providing the traffic control plan, stamped and signed by a registered professional engineer, licensed in Nebraska, and submitting to the owner for approval for each phase of the work. The Contractor shall also be responsible for supplying all temporary construction signs and traffic control devices for the project as outlined in the City of Lincoln Standard Specifications for Municipal Construction.

The Contractor shall not close any portion of the public roads or begin any work which may impact drive access to adjacent properties without the permission of the Engineer. The Contractor shall at all times, to the extent practical, provide facilities of ingress and egress to and from the public street to maintain access to adjacent properties throughout the duration of the project as noted on the plans or as directed by the Engineer.

This may require the Contractor to construct new drives or pavement in phases to allow access from the public street during construction, use high early strength concrete for drive construction, or to provide temporary drives as shown on the plans or as directed by the Engineer. All temporary drives and approaches to provide ingress and egress at adjacent properties shall be provided and maintained by the Contractor. All temporary drives which have active sidewalks (permanent or temporary sidewalks) crossing the drive shall be constructed using temporary hard surfacing and shall be ADA compliant. Crushed rock surfacing shall not be used at temporary drives that have permanent or temporary pedestrian access routed across the drives.

Sidewalk closures and detours shall be clearly posted and maintained throughout the course of the project to direct pedestrians around the construction site. The Contractor will be required to maintain pedestrian access to the adjacent properties as directed by the Engineer throughout the duration of the project. All temporary pedestrian pathways shall be a continuous hard surface throughout the entire length of the temporary facility and shall be ADA compliant. Temporary sidewalks shall be 4" concrete or 4" asphalt and shall be paid in accordance with the appropriate pay item shown in the proposal. Removal of temporary sidewalk shall be paid for as Pavement and Sidewalk Removal. Temporary sidewalks shall be constructed as directed by the Engineer to facilitate pedestrian access.

- Temporary surfacing shall be paid for at the contract unit price per ton for the appropriate material used and shall include all costs for grading and shaping, installation and removal of temporary materials.
- Where temporary roadways need to be constructed to maintain access to specific locations, the temporary roadway surface shall be surfaced with temporary surface course or asphalt millings as directed by the Engineer.

## **MODIFICATIONS TO CHAPTER 20 – CONSTRUCTION FOR UTILITIES AND STRUCTURES**

SECTION 20.02 MATERIALS Add the following:

The approved foundation material shall be wrapped in filter fabric to prevent migration of fines through the system. The Engineer shall approve the filter fabric used by the Contractor. If filter fabric is necessary, then the price for filter fabric will be negotiated during construction.

### **CONSTRUCTION STAKING**

The Contractor shall use the horizontal and vertical control points as shown on the plans for use in establishing the exact location and elevations for the project. The Contractor shall be responsible for preserving (or reestablishing) these control points if necessary. The Contractor shall use this control to provide all construction staking that is required for the project. This shall include staking for utility construction and all other survey work to complete the project in accordance with the details shown on the plans.

The Contractor shall be responsible for the placement and preservation of adequate ties and references necessary to complete his work. Any additional stakes, templates and other materials necessary for marking and maintaining all reference points and lines shall be the responsibility of the Contractor. The Contractor shall be solely and completely responsible for the accuracy of the line and grade for all features of the work. All work shall be completed to the lines, grades, and elevations indicated on the drawings. The Contractor shall remove and reconstruct work that is improperly located at his expense.

The Contractor shall be required to coordinate with the private and public utilities and shall stake all needed reference points or lines needed for the private utilities to adequately construct or relocate their utilities to avoid conflicts with the proposed construction. This shall include all needed finished elevations, tie-in points, line and grades for proposed utilities to be installed by the Contractor or any other points approved by the Engineer. Construction staking for utilities that are not to be relocated as part of this contract shall be approved by the Engineer prior to performing the work.

The Contractor's staking records shall be recorded in a bound notebook, in a format approved by the Engineer. Record notebooks will be submitted to the City of Lincoln at the completion of the project.

#### **Basis of Payment**

Construction staking shall not be measured, but shall be paid for at the Contract Lump Sum amount bid for the pay item "Construction Staking". The amount of the lump sum

to be included in each partial payment shall be in proportion to the value of the work completed with respect to the total amount of the original bid.

Construction staking to facilitate relocation of public or private utilities not included as part of the project shall be measured by the survey crew hour required to stake the work. The time shall be based upon the amount of time the survey crew is on site to complete the work including an allowance for reasonable travel time to the site (travel time allowance to the site shall not exceed one half hour per trip). The final measured time for the work shall be as measured by the construction site manager and shall be subject to the approval of the Engineer. Payment for the utility staking shall be paid for in accordance with the amount bid per hour for the item "Construction Staking for Utilities". Said payment shall include all costs associated with office preparation, reasonable travel time to the site and completion of the staking work by a survey field crew including all labor, equipment, materials and incidentals.

### **DIVERSION AND CARE OF WATER**

Methods and details for care and diversion of water are not detailed on the plans. Full responsibility for the diversion and care of water from whatever source, including, but not limited to, direct rainfall, groundwater, surface runoff and sources outside of the construction area shall be borne by the Contractor until completion of work under this contract. The Contractor shall provide all materials, labor, and equipment, and perform all work necessary to facilitate construction and to protect the work in progress from damage by water. The Contractor shall make his own investigation and determination of existing and anticipated conditions concerning care of water. Plans for diversion and care of water during construction shall be submitted to the Engineer, for information only, within 10 calendar days after receipt of Notice to Proceed, and shall show location, material, and method for dewatering the work area and disposal of the water. Direct payment will not be made for diversion and care of water. Work associated with diversion and care of water shall be considered incidental to the work.

### **GENERAL CLEARING AND GRUBBING**

General clearing and grubbing of the site in accordance with the requirements outlined in the Standard Specification for Municipal Construction as amended by these Special Provisions shall be measured and paid for as one lump sum. Such payment shall be full compensation for furnishing all labor, equipment, tools and materials to complete the work.

**CITY OF LINCOLN, NE (2012)**  
**N STREET PROJECT #870302**  
**BID PACKAGE 3**  
**N STREET, 7th STREET TO 9th STREET**  
**Miscellaneous Railroad Track Removal**

The work as detailed on the plans shall be completed in accordance with the requirements of the 2011 City of Lincoln Standard Specifications for Municipal Construction, as supplemented by the Nebraska Department of Road's 2007 Standard Specifications for Highway Construction. The 2011 City of Lincoln Standard Specifications for Municipal Construction and the Nebraska Department of Road's 2007 Standard Specifications for Highway Construction (NDOR Standard Specifications), including all amendments, Supplemental Specifications and additions thereto effective at the date of the contract, the Special Provisions, Plans, and all supplementary documents are essential parts of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete project

In case of a discrepancy:

1. Special Provisions shall govern over the City of Lincoln Standard Specification for Municipal Construction.
2. The Special Provisions shall govern over the Plans.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications. Upon discovery of such an error or omission, the Contractor shall notify the Engineer immediately. The Engineer will then make such corrections or interpretations as necessary to fulfill the intent of the plans and specifications.

Materials or work described in words which, so applied, have known technical or trade meaning shall be held to refer to such recognized standards.

Figured dimensions on the plans shall be taken as correct but shall be checked by the Contractor before starting construction. Any errors, omissions, or discrepancies shall be brought to the attention of the Engineer and the Engineer's decision thereon shall be final. Correction of errors or omissions on the drawings or specifications may be made by the Engineer when such correction is necessary for the proper execution of the work

Any reference to the City, or OWNER, in the City of Lincoln Standard Specifications for Municipal Construction shall be considered reference to the West Haymarket Joint Public Agency (JPA), its employees, or representatives hired by the JPA as a consultant for construction project management, observation or testing services. The JPA's address is 555 South 10<sup>th</sup> Street, Lincoln, Nebraska 68508.

JPA: JPA shall mean the West Haymarket Joint Public Agency, a joint administrative entity under the Interlocal Cooperation Act, comprised of the City of Lincoln and the

University of Nebraska – Lincoln for the purpose of implementing and overseeing the operation of the West Haymarket arena and infrastructure improvement projects.

The bid amount for Mobilization cannot exceed ten percent of the total bid amount for the individual contract in which it is bid.

### **PROJECT TIES**

This project is tied to City Water Main Project Number 702724. This is a 16" Water Main Which runs from the west side of 7th street to the west side of 9th Street.

### **BONDING PERIOD**

The City of Lincoln Standard Specifications, General Provisions and Requirements has been amended as follows:

1. Award and Execution of Contract.
  - B. Construction Performance and Construction Payment Bonds and Execution of Contract.

Within **five (5) days** after the acceptance of the bid, the successful Bidder must execute a written Contract between the Bidder and the JPA, said Contract will incorporate the JPA's Contract Documents and be on forms provided by the JPA, Construction Performance and Construction Payment Bonds, in a sum not less than the contract price, executed by the Bidder and by a corporate surety company authorized to transact business in the State of Nebraska.

### **SUBSTANTIAL AND FINAL COMPLETION**

Work on this project includes:

- Pavement widening on N Street from 7th to 9th Streets.
- Removal of railroad track in the public ROW as shown on the plans
- Traffic signals at 9th & N Streets

The project is to be constructed in phases to maintain access to area businesses.

Phase 1 work must be complete, including the tied water main work by June 1, 2012. Phase 1 is broken up into phase 1A and 1B to maintain access to Alter Metals and the BNSF railroad property. Substantial completion for the Phase 1 work means the

completion of all work associated with construction of the work identified above including all removal, paving, storm sewers and utilities.

Phases 2 is phased so that the north side of N Street is removed and constructed first. There are large concrete box storm sewers under the southerly pavement lanes with little to no cover under the pavement. Caution is needed to not damage these boxes when removing the existing pavement and no direct loads will be allowed to drive on the boxes when pavement is removed. Substantial completion for the phase 2 work means the completion of all work associated with construction of the work identified above including all removal, paving, storm sewers and utilities. The work must be completed by July 3, 2012.

Phases 3 is phased so that the north side of N Street is removed and constructed first. There are large concrete box storm sewers under the southerly pavement lanes with little to no cover under the pavement. Caution is needed to not damage these boxes when removing the existing pavement and no direct loads will be allowed to drive on the boxes when pavement is removed. Substantial completion for the phase 3 work means the completion of all work associated with construction of the work identified above including all removal, paving, storm sewers and utilities. The work must be completed by August 10, 2012.

Phase 4 work includes the removals of all railroad tracks and reconstruction of pavements in those areas in locations as shown on the plans. Substantial completion for the phase 4 work means the completion of all work associated with construction of the work identified above including all removal, paving, storm sewers and utilities. The work must be completed by August 10, 2012.

**Notice to Proceed** with the work on this project is anticipated to be given to the Contractor on or before April 9, 2012. It is imperative that the Contractor is ready to begin work upon receipt of the notice to proceed.

### **SPECIAL BIDDING CONDITIONS (Disincentives)**

This project has three substantial completion dates

If the Contractor fails to complete all work associated with the substantial completion of the phase 1 paving and tied water main work in the phase 1 area of the project by June 1, 2012, considering approved extensions, disincentives will be charged for each calendar day that the items of work required for the substantial completion remain unfinished. Disincentives shall be \$1,000 per day for each day that the work specified in the plans and special provisions is not completed.

If the Contractor fails to complete all work associated with the substantial completion of the phase 2 paving by July 3, 2012, considering approved extensions, disincentives will

be charged for each calendar day that the items of work required for the substantial completion remain unfinished. Disincentives shall be \$1,000 per day for each day that the work specified in the plans and special provisions is not completed.

If the Contractor fails to complete all work associated with the substantial completion of the phase 3 paving and traffic signal work in 9th Street and N Street of the project by August 10, 2012, considering approved extensions, disincentives will be charged for each calendar day that the items of work required for the substantial completion remain unfinished. Disincentives shall be \$1,000 per day for each day that the work specified in the plans and special provisions is not completed.

If the Contractor fails to complete all work associated with the substantial completion of the phase 4 railroad track removal and pavement replacement of the project by August 10, 2012, considering approved extensions, disincentives will be charged for each calendar day that the items of work required for the substantial completion remain unfinished. Disincentives shall be \$1,000 per day for each day that the work specified in the plans and special provisions is not completed.

#### **STATUS OF RIGHT-OF-WAY**

All work to be completed shall be performed in existing public right-of-way, new right-of-way or private properties where a right-of-entry or temporary or permanent construction easements will be obtained. The JPA is currently negotiating with the adjacent property owners to acquire the additional right-of-way and easements to construct the project. The status of the un-acquired right-of-way tracts is estimated as follows.

<b>TRACT NO.</b>	<b>CONTRACT APPROVAL DATE</b>	<b>HEARING DATE</b>	<b>ANTICIPATED ACQUISITION DATE</b>
T-3	Negotiating		Negotiating
T-4	Negotiating		Negotiating

#### **STATUS OF UTILITIES**

The following information is current as of February 24, 2012. The Contractor should request a utility status update at the project pre-construction conference, and/or prior to starting work. The Contractor shall coordinate all construction activities with affected utilities that have identified relocations which are to be completed concurrent with the utility/roadway construction.

Utilities known to have facilities in the project area:

### **City of Lincoln**

The City of Lincoln has existing water mains and sanitary sewers within the limits of the project. All necessary adjustments, relocations and extension of water mains or sanitary sewers shall be completed by the Contractor as part of the project as shown on the plans.

All work within this area which may impact public water or sewer facilities will require coordination with the City of Lincoln Water System, City of Lincoln Wastewater System, and the Engineer to minimize impact to daily activities.

City of Lincoln Water System  
Contact: Steve Owen  
Phone: (402) 441-5925

City of Lincoln Wastewater System  
Contact: Brian Kramer  
Phone: (402) 441-7987

### **Private Utilities**

The following utilities are known to exist within the Project limits, and may be relocated as a result of the project. The Contractor shall take into consideration the associated durations of utility relocations, and these associated durations should be considered in the baseline schedule, and prosecution of the work. The Contractor shall conduct ongoing coordination meetings with all utility owners to facilitate these relocations.

Black Hills Energy – Black Hills Energy has a 4” line along the North side of N Street that will be abandoned and a new 2" gas line will be constructed on the South side of N Street. This work will be performed concurrently with the N Street construction. during the project. Some existing gas lines have shallow burry depths and Black Hills Energy may request Stan By observations by BHE representatives during certain project activities. The Contractor shall coordinate with Black Hills Energy

Contact:  
Randy Kreifels  
Phone: (402) 437-1715

Lincoln Electric System - Lincoln Electric System (LES) will relocate some electrical overhead power at various locations along the project. LES work will likely be concurrent with street construction. Good coordination will be needed.

Contact:  
Lighting – Larry Kathol  
Phone: (402) 467-7642

Distribution - Al Cameron  
Phone: (402) 467-7603

Windstream

Contact: Ken Adams  
Phone: (402) 467-7680

Time Warner Cable

Contact: Lou Kipper  
Phone: (402) 421-0393

Galaxy Cablevision

Contact: Randy Vanderheiden  
Phone: (402) 362-3334

Unite

Contact: Joe Melvin  
Phone: (402) 617-4787

BNSF Railway

Contact: Gerald Maczuga – BNSF Project Engineer  
Phone: (402) 458- 7537

## UTILITIES

Add the following paragraphs to Article II, Section A (EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK):

The CONTRACTOR shall notify the Digger's Hotline of Nebraska (HOTLINE), Phone Number 1-800-331-5666, at least 48 hours in advance of the commencement of work at any site to allow the member utilities to examine the construction site and mark the location of the utilities' respective facilities. The CONTRACTOR shall also notify the BNSF Railway as stipulated in the Contractor Requirements for work on the BNSF property that is included with these Special Provisions.

The CONTRACTOR acknowledges that some (or all) of the utility companies, with facilities shown on the drawings may not be members of the Hotline and, therefore, not automatically contacted by the above-referenced telephone number. The CONTRACTOR shall be responsible for making itself aware of utility company facilities not reported by the Hotline, and shall be liable for any and all damages stemming from repair or delay costs or any other expenses resulting from the unanticipated discovery of

underground utilities. The CONTRACTOR shall also be responsible for verifying that each utility has responded to such notification

### **PERMITS AND LICENSES**

Add the following to Article VI, Section M. (PERMITS AND LICENSES):

The OWNER will provide the following permits:

- 1) NPDES Construction Storm Water Permit
- 2) Floodplain Permit

The CONTRACTOR shall be responsible for complying with the requirements of all permits acquired by the JPA.

The CONTRACTOR shall acquire all permits required by Laws or Regulations, including, without limitation, the following specific permits (if applicable):

- 1) Certificates and permits are required for uses such as, but not limited to:
  - a) Fuel burning equipment
  - b) Gasoline and petroleum distillate storage containers
  - c) Land disturbing activities
  - d) Odors
- 2) All associated building demolition permits
- 3) City, State, and County Transportation Encroachment permits
- 4) Permit-Required Confined Space  
The workplace in which the WORK is to be performed may contain permit-required confined spaces (permit spaces) as defined 29 CFR 1910.146 and, if so, permit space entry is allowed only through compliance with a confined space entry program meeting the requirements of 29 CFR 1910.146. Contractor shall submit a confined space entry program or submit in writing that compliance with the City's program will be made.
- 5) Dewatering Permits or notifications as required by the Lower Platte South Natural Resources District.
- 6) Fugitive Dust Control Permit

## STORMWATER POLLUTION PREVENTION PLAN

The Contractor shall understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with the industrial activity from the construction site. For reference the general permit is posted on the City's web site, [www.lincoln.ne.gov](http://www.lincoln.ne.gov); keyword: NPDES.

Additionally, the Contractor, as evidenced by their signature on this proposal, agrees and understands that, if awarded the contract on this project, he/she:

1. becomes a co-permittee, along with the owner(s), to the Nebraska Department of Environmental Quality NPDES General Permit for Stormwater Discharge from construction sites on this project; and
2. is legally bound to comply with the Clean Water Act to ensure compliance with the terms and conditions of the stormwater pollution prevention plan as developed under the NPDES permit and the terms of the NPDES permit; and
3. will hold owners harmless for damages and fines arising as a result of noncompliance with the terms of the stormwater permits and authorizations associated with the work on this project; and
4. shall be responsible for the maintenance of the sediment control measures until permanent stabilization and cover crop is established; and
5. shall complete permanent or temporary stabilization within seven (7) calendar days of soil disturbance to the surface of all perimeter controls, topsoil stockpiles, and any other disturbed or graded areas on the project site which are not being used for material storage, or on which actual earth moving activities are not being performed; and
6. shall complete the approved inspection forms and inspect/maintain all sediment or erosion control practices required under this contract at least once every seven (7) calendar days and after any storm event of greater than 0.5 inches of precipitation, on the site, during any 24-hour period; any necessary repairs or cleanup to maintain the effectiveness of the best management practices shall be made by contractor immediately; and
7. shall update the approved SWPPP plan immediately following any changes or additions to the plan, keep all inspection forms with the SWPPP plan, preferably on site in a mailbox, and provide copies of all inspection forms and modifications to the SWPPP plan to the City's Construction Project Manager, within 48 hours of inspection.

## **SPECIAL PROSECUTION AND PROGRESS**

The following prosecution and progress of work shall be used in developing the baseline schedule for the project. The Contractor will be required to generally proceed with sequencing the construction work as shown on the phasing plans unless otherwise approved by the Engineer.

The Contractor shall be responsible for providing the traffic control plan, stamped and signed by a registered professional engineer, licensed in Nebraska, and submitting to the owner for approval for each phase of the work. The Contractor shall also be responsible for supplying all temporary construction signs and traffic control devices for the project as outlined in the City of Lincoln Standard Specifications for Municipal Construction.

The Contractor shall not close any portion of the public roads or begin any work which may impact drive access to adjacent properties without the permission of the Engineer. The Contractor shall at all times, to the extent practical, provide facilities of ingress and egress to and from the public street to maintain access to adjacent properties throughout the duration of the project as noted on the plans or as directed by the Engineer.

This may require the Contractor to construct new drives or pavement in phases to allow access from the public street during construction, use high early strength concrete for drive construction, or to provide temporary drives as shown on the plans or as directed by the Engineer. All temporary drives and approaches to provide ingress and egress at adjacent properties shall be provided and maintained by the Contractor. All temporary drives which have active sidewalks (permanent or temporary sidewalks) crossing the drive shall be constructed using temporary hard surfacing and shall be ADA compliant. Crushed rock surfacing shall not be used at temporary drives that have permanent or temporary pedestrian access routed across the drives.

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## WORKER VISIBILITY

Pursuant to Part 634, Title 23, Code of Federal Regulations, the following modified rule is being implemented:

Effective on January 1, 2008, all workers within the right-of-way who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel.

High-visibility safety apparel is defined to mean personal protective safety clothing that:

- 1 - is intended to provide conspicuity during both daytime and nighttime usage, and
- 2 - meets the Performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standards for High-Visibility Safety Apparel and Headwear."

If the Contractor fails to comply with the worker visibility requirements and as a result, Federal and State authorities withhold Federal Funds, then JPA reserves the right to seek reimbursement from the Contractor for the loss of federal funds that are attributed to the Contractor's non-compliance.

## TECHNICAL PROVISIONS

The following Special Provisions amend or supplement the 2011 City of Lincoln Standard Specifications for Municipal Construction and the State of Nebraska Standard Specifications for Highway Construction, 2007 Edition. All provisions which are not so amended or supplemented remain in full force and effect.

### **MODIFICATIONS TO CHAPTER 15 –TRAFFIC CONTROL**

#### **Add the following:**

The Contractor shall not close any portion of the public roads or begin any work which may impact drive access to adjacent properties without the permission of the Engineer. The Contractor shall at all times, to the extent practical, provide facilities of ingress and egress to and from the public street to maintain access to adjacent properties throughout the duration of the project as noted on the plans or as directed by the Engineer.

- Temporary surfacing shall be paid for at the contract unit price per ton for the appropriate material used (Asphaltic Concrete type 3 or Crushed Rock Roadway Surfacing) and shall include all costs for grading and shaping, installation and removal of temporary materials.

- Where temporary roadways need to be constructed to maintain access to specific locations, the temporary roadway surface shall be surfaced with temporary surface course or asphalt millings as directed by the Engineer.

## **MODIFICATIONS TO CHAPTER 20 – CONSTRUCTION FOR UTILITIES AND STRUCTURES**

### SECTION 20.02 MATERIALS Add the following:

The approved foundation material shall be wrapped in filter fabric to prevent migration of fines through the system. The Engineer shall approve the filter fabric used by the Contractor. If filter fabric is necessary, then the price for filter fabric will be negotiated during construction.

### **CONSTRUCTION STAKING**

The Contractor shall use the horizontal and vertical control points as shown on the plans for use in establishing the exact location and elevations for the project. The Contractor shall be responsible for preserving (or reestablishing) these control points if necessary. The Contractor shall use this control to provide all construction staking that is required for the project. This shall include staking for utility construction and all other survey work to complete the project in accordance with the details shown on the plans.

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The Contractor's staking records shall be recorded in a bound notebook, in a format approved by the Engineer. Record notebooks will be submitted to the City of Lincoln at the completion of the project.

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Construction staking shall not be measured, but shall be paid for at the Contract Lump Sum amount bid for the pay item "Construction Staking". The amount of the lump sum to be included in each partial payment shall be in proportion to the value of the work completed with respect to the total amount of the original bid.

Construction staking to facilitate relocation of public or private utilities not included as part of the project shall be measured by the survey crew hour required to stake the work. The time shall be based upon the amount of time the survey crew is on site to complete the work including an allowance for reasonable travel time to the site (travel time allowance to the site shall not exceed one half hour per trip). The final measured time for the work shall be as measured by the construction site manager and shall be subject to the approval of the Engineer. Payment for the utility staking shall be paid for in accordance with the amount bid per hour for the item "Construction Staking for Utilities". Said payment shall include all costs associated with office preparation, reasonable travel time to the site and completion of the staking work by a survey field crew including all labor, equipment, materials and incidentals.

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Methods and details for care and diversion of water are not detailed on the plans. Full responsibility for the diversion and care of water from whatever source, including, but not limited to, direct rainfall, groundwater, surface runoff and sources outside of the construction area shall be borne by the Contractor until completion of work under this contract. The Contractor shall provide all materials, labor, and equipment, and perform all work necessary to facilitate construction and to protect the work in progress from damage by water. The Contractor shall make his own investigation and determination of existing and anticipated conditions concerning care of water. Plans for diversion and care of water during construction shall be submitted to the Engineer, for information only, within 10 calendar days after receipt of Notice to Proceed, and shall show location, material, and method for dewatering the work area and disposal of the water. Discharge of water shall comply with all provisions outlined in the NPDES Permits that have been issued for the project. Direct payment will not be made for diversion and care of water. Work associated with diversion and care of water shall be considered incidental to the work.

## **GENERAL CLEARING AND GRUBBING**

General clearing and grubbing of the site in accordance with the requirements outlined in the Standard Specification for Municipal Construction as amended by these Special Provisions shall be measured and paid for as one lump sum. Such payment shall be full compensation for furnishing all labor, equipment, tools and materials to complete the work.

