AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD THURSDAY April 14, 2011 AT 3:30 P.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
Room 303
LINCOLN, NE 68508

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

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

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

3. Approval of the minutes from the JPA meeting held March 30, 2011 (Chair Snyder)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

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

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

6. Review of the March 2011 Expenditure Reports (Don Herz)
   - Public Comment

7. Mortenson White Paper Update on Davis-Bacon (Dan Marvin)
   - Public Comment

8. Bill No. WH 11-26 Resolution to approve the Land Exchange Agreement between the West Haymarket Joint Public Agency, City of Lincoln, Nebraska, and Star City Federal LLC, pertaining to an exchange of land between the parties to accommodate construction of the 10th and Salt Creek Roadway Project including construction of certain parking lot improvements on property Star City Federal is acquiring in order to make Star City Federal whole from any loss of parking and functionality at its existing parking lot operation. (Peo)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)
   - Motion to Amend #1 to accept a Substitute Agreement

9. Bill No. WH 11-29 Resolution to approve DLR's Schematic Design drawings for the Arena. (Dan Marvin)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

10. Bill No. WH 11-30 Resolution to approve Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

11. Bill No. WH 11-31 Resolution to approve Consultant Agreement with M.A. Mortenson Company to provide additional scheduling services for the overall West Haymarket Project for a lump sum of $500,000.00 including expenses. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

12. Bill No. WH 11-32 Resolution to approve Amendment No. 5 to SAIC Consultant Agreement to amend the Scope of Services to include peer review. (Jim Martin, Dan Marvin)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

13. Set Next Meeting Date: Thursday May 5, 2011 3:30 P.M. (Room 303)

14. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
March 30, 2011

Meeting Began At: 3:34 P.M.

Meeting Ended At: 4:45 P.M.

Members Present: Jayne Snyder, Chris Beutler, Tim Clare

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

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

Item 2 – Public Comment and Time Limit Notification

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

Item 3 – Approval of the minutes from the JPA meeting held March 10, 2011

Snyder asked for any corrections or changes to the minutes from March 10, 2011. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Jim Martin, Program Manager with SAIC, came forward and distributed the midmonth progress report to the Board. Martin is preparing for a meeting next Monday regarding the schematic design budget review for the arena and to pull the costs in line with the budget. Bids were received for the 10th and Salt Creek project and were within the projected estimates. The low bidder and award for that contract is on the agenda today. The Post Office parking lot will be incorporated into the same bid package as Site Preparation for economy and coordination. The bids will be opened on April 20th and awarded at the May 5th JPA Board meeting with work to commence once property issues/ownership has been resolved. There is a slight change to the M and N Street project; it will be split into two phases. M Street and 8th Street will be advertized in early May with construction beginning in early June. N Street will be delayed because the contractor will be hauling dirt across it and Martin doesn't want to repave prior to that.

The Amtrak station platform and canopy are out for first review by the Railroad. It will go out for bid in July with construction in August. The District Energy plant is under design and because it is immediately adjacent to the parking garage just south of Q Street, Davis Design and

Farris Engineering are working to create a shared foundation. Everything is on track for the second closing on June 2nd with Burlington Northern. In regards to the environmental remediation, all of the diesel polluted soil is out. Gravel is going into the base of the excavation and will be covered with a layer of fabric. Once that is done, the contractor will start to refill the site, which will put them a couple weeks ahead of schedule. The critical path items are the design of the festival area and location of the Breslow Ice Center.

Clare inquired if the timing issues outlined in the report are on target. Martin replied that the schedule is tight but they are still on target. Snyder asked if the project would be taking part of the Champions Club parking lot and replacing it. Martin explained that there will be some reworking on the very north tip of the parking lot but the result will either add a parking space or be space neutral. Snyder then asked if individuals from the clubs and ice skating community have been involved in the discussions regarding the ice center. Martin advised that he has attended meetings where many of those people have been present, but it was at the direction of the University Foundation and he was invited to answer design and construction questions.

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

Item 5 – Bill No. WH 11-25 Resolution conditionally authorizing M.A. Mortenson Company (Construction Manager) to commence Construction Related Services and incur costs therefore

Paula Yancey, PC Sports, explained that this resolution is based on the preconstruction agreement that was approved for Mortenson Construction. It will allow them to bring their staff on in May, get their offices set up and get staff up to speed so they are ready to start construction in September.

Clare noted that construction related services is listed as a capitalized item and asked what services that includes. Yancey advised that in addition to the previous items it will include bringing the project managers down and starting the bidding process in preparation for major construction staring in September. These costs will be included in the Guaranteed Maximum Price (GMP).

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

Item 6 – Bill No. WH 11-26 Resolution to approve the Land Exchange Agreement between the West Haymarket Joint Public Agency, City of Lincoln, Nebraska, and Star City Federal LLC, pertaining to an exchange of land between the parties to accommodate construction of the 10th and Salt Creek Roadway Project including construction of certain parking lot improvements on property Star City Federal is acquiring in order to make Star City Federal whole from any loss of parking and functionality at its existing parking lot operation.

Rick Peo informed the Board that he put this item on the agenda last week with the hope that he would have a signed agreement before this meeting. The attorney representing Star City Federal

has agreed to the terms and sent the agreement out to their membership for concurrence, but it has not come back yet. This item will have to be continued until the next meeting unless the Board will give authorization for the Mayor to approve the agreement if it comes in the interim. This is on a fast track as the work is scheduled to begin after the Spring football game on April 16th. If the agreement is not approved until April 14th, it might now allow Star City Federal to get their contractor geared up to start. The Board's approval would have to be with the understanding that the Mayor would be authorized to sign for both the City and the JPA as it is a three party agreement.

Snyder asked if Peo expected Star City Federal to come back with any significant changes to the agreement. Peo stated that they were somewhat concerned about the City requiring a 16' wide sidewalk to be built along the side of the building, primarily to accommodate football pedestrian traffic. They have concerns about who is going to be responsible for the maintenance and upkeep of that sidewalk because it is not a typical sidewalk for a property owner to maintain. They may be asking the City or JPA to be responsible for that.

Beutler inquired about the costs associated with the construction and improvement of the parking lot. Peo explained that the parking lot improvements are estimated to be $250,000 not including the underground wiring which he did not have a number on yet. The cost of the wiring and underground utilities would be a credit that the JPA could potentially deduct from the $172,000 boot payment Star City Federal will receive because they giving more property than they will be receiving back.

Clare indicated that he did not have any objections to the agreement as it stands but he did not think it set good precedence to put Mayor Beutler in a position where he is signing on behalf of the City and the JPA. Therefore, he would oppose going forward. Snyder asked if the contractor has been informed to begin preparing depending on the contract status. Peo advised that the JPA contractor is but he is not sure about the Star City Federal contractor. They have to remove some existing lighting and put down their wiring before the JPA contractor paves the new parking area. The agreement does say that if they don't get this installed in a timely manner then they will have to bore underneath and install it at their expense.

Clare offered to have a short Board meeting next week if Peo gets the contract signed to keep things moving forward.

Item 7 – Bill No. WH 11-27 Resolution to approve Change Order No. 2 to the Agreement with General Excavating, Inc. for additional work associated with diesel plume remediation.

Dan Marvin presented the Board with the amounts budgeted for the environmental remediation of the area north of O Street. At the time of the vote, $7.5 million was budgeted for environmental remediation which was broken out into several areas. The area north of O Street was budgeted at $4.1 million. The expenditures in that area began with environmental insurance which provided an additional $25 million of coverage per occurrence if there had been an unexpected event. The Board then approved $832,000 for Benesch to provide professional services for the environmental analysis. There is also a change order before the Board for work

General Excavating has done and if approved that contract would be for approximately $1.3 million. Marvin is anticipating a Title 200 reimbursement from the State for $809,000 bringing the total expenditures to $1.64 million. This will leave a balance of about $2.5 million which means the work was completed for 40% of the estimated cost.

Miki Esposito informed the Board that there was a huge milestone last week and all of the diesel has been removed from the site. Any impediments to redevelopment are also gone, including liabilities associated with that pollution. The rest of the diesel plume remediation will be accomplished with this change order. There will be some procedural steps to take with NDEQ for a fully clean site.

Ernie Castillo with Urban Development gave a brief update on the work General Excavating has done. Approximately 14,000 yards of bad soil has been removed from an area that measured 130' long by 200' wide by 16' deep. Castillo showed photos of the excavation and the shoring wall on the west side of the hole. The wall provided support and protection to the active railroad lines. He also showed a photo of a bulldozer pushing rock along the bottom of the pit about 2' deep with filler fabric on top. The project manager informed Castillo this morning that everything is on track and they are currently backfilling with clay and compacting. They are going to be working on Saturday and are confident in meeting the May 10th time extension.

Esposito advised that Change Order 2 is essentially for three items. The first is for soil hauling and disposal of approximately 4,500 tons of overburdened soil for a cost of approx $50,000. This item is budget neutral because when they got in the field it was decided they wouldn't do any stock piling as the overburden was not usable on site. There was money identified for stock piling and use of those overburdened soils which will go away when they reconcile at the end of the project. The second item involves geotechnical fabric. As the contractor was excavating, it was determined that the bottom of the hole needed some granular material and fabric to meet geotechnical requirements. Esposito is asking the Board for authorization to put that in as a line item for a cost of $150,000. The final item is for additional sheet piling for the shoring wall that protects the rail line and a man hole in the area. That item will add $312,000 to the contract for a total Change Order of over $500,000.

Clare inquired if the $500,000 is included in the budget figures which show the environmental remediation $2.5 million under budget. Esposito answered that it is included and they would like to preserve the remaining amount for the remediation work south of O Street. Snyder asked if there will be any shoring needed when work starts south of O Street. Esposito noted that shoring will be needed when work starts on the Alter sliver. Those tracks are going to remain active while work is done. The wall will be substantially smaller but there will be costs for that.

Snyder asked for comments from the public. Jane Kinsey came forward and asked about the dirty soil being taken to the landfill in Milford and if it would create an environmental problem there. Esposito explained that the contractor received the lowest quote from the landfill in Milford. The soil taken there is characterized as special waste and the JPA received a special waste permit through the Health Department and also coordinated with NDEQ to comply with landfill disposal requirements. Milford is a landfill that can receive special waste under the law. There are landfill requirements that put safeguards into place to mitigate any problems associated

with long term exposure to the environment. The Environmental Team followed protocols and permit requirements so it now becomes the landfills responsibility to maintain their liners and their own permit at the facility.

Mike Koberlein, representing the Lincoln Independent Business Association (LIBA), came forward and stated that LIBA requests that the West Haymarket JPA review the application of Davis-Bacon wages to the West Haymarket project. LIBA requests the JPA do a study on whether buying back the Recovery Zone Bonds and paying the $10 million penalty would be less expensive than paying Davis-Bacon wages for the entire project. LIBA also requests the JPA to provide access to proposed project documents seven days prior to any JPA meeting to ensure sufficient time to review the documents prior to approval.

Snyder noted that the Board has decided that they are going to try to get the agenda and backup information online eight days prior to the meetings with the knowledge that they don't always have control over other entities and there may be some last minute changes.

Dan Marvin came forward to address the Davis-Bacon concerns expressed by LIBA. The analysis shows that over the life of the bonds there will be a $7 million savings. Mortenson is working on a detailed white paper to analyze the additional costs and will present that information at the April 14th meeting. The preliminary information shows that the project will not incur anywhere near the kind of added costs that it receives in savings by issuing the Recovery Zone Bonds. The Public Works Department has had a substantial amount of experience running projects with Davis-Bacon requirements. Roger Figard has stated that they have not experienced cost impacts from that. Mortenson has reviewed the Lancaster Davis-Bacon wage tables and compared those to what they actually experience when bidding projects. They are not particularly disturbed by the requirements of Davis-Bacon either but they will speak to that issue on April 14th.

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

Item 8 – Bill No. WH 11-28 Resolution to approve a contract with TCW Construction Inc. for construction of the Haymarket Infrastructure Improvement, 10th and Salt Creek Roadway, Project No. 870304 (Bid No. 11-053) for a cost of $2,787,464.22.

Roger Figard explained that this contract represents the first transportation and roadway work for the West Haymarket. This project provides the connection from what will be the new Backbone Road to 8th Street with connections into 9th and 10th Streets. The goal is to complete work this summer so the University and arena site can be accessed without going through the Haymarket itself. This project was advertized on March 4th and bids were received on March 23rd. The low bid came in at $2.78 million by TCW, the second low bid was from Constructors Inc. for $2.88 million and the third bid came from Dobson Brothers for $3.99 million. The engineer's estimate was $2.78 million with the low bid from TCW coming within $10,000 or $11,000 of the estimate. The estimates and bids were reviewed by the Lincoln Haymarket Infrastructure Team (LHIT), SAIC and also Public Works. All found that the bid from TCW is responsible and recommend that the JPA Board award the bid.

The project has been laid out in phases to accommodate the Spring football game, Lincoln Marathon, University Commencement and the first football game in September. The contractor will begin work just following the spring football game and the anticipated completion date is August 27th. This is not the final completion date as there will be clean up to do but the roadways will be open the week before the first football game. Snyder noted that more than one phase will be going on at a time and inquired about the penalties if the contractor does not complete in time. Figard stated that there are both incentives and liquidated damages in order to make sure the contractor understands the seriousness of the completion dates. They understand that they may have to put in extra days and put on extra crews if necessary. There are also different penalties for each phase because the impact to the community is different if some of the work is not completed.

Beutler asked if this project in addition to the land exchange agreement with Star City Federal LLC, is still within the anticipated budget. Figard answered that it is within what has been laid out for this part of the project. Beutler requested that Figard work with the Law Dept to let the Board know if they need to have a special meeting to approve the land exchange agreement in order to avoid a conflict with the first football game.

Clare noted that the Executive Summary says this is the lowest bidder and asked if it should be revised to say lowest responsible bidder. Figard stated that TCW was the lowest bidder and they would not bring forward a recommendation of award if they didn't think the bidder was responsible. Jim Martin wrote the summary and concurred with Figard.

Beutler pointed out that the City is still becoming acquainted with roundabouts and this project involves two roundabouts. He asked Figard to talk about the advantages of roundabouts and how the one at 33rd & Sheridan has worked. Figard explained that today's modern roundabout is more efficient, safer and more economical over the long term. Modern roundabouts have better signing with clear lane markings so people know which lane they need to be in. In many ways a roundabout is operated in much the same way as a signalized intersection. As you approach a signalized intersection to turn right, you stay in the outside lane. A modern roundabout is the same way, you approach and go right. To go straight you stay in the middle or outside lane depending on the markings. In order to turn left, as you approach the roundabout you stay in the inside lane and go around the circle. People will adapt fairly quickly to that. There was a lot of opposition and anxiety when the City put in the first roundabout at 33rd and Sheridan, however, the public quickly realized they simply needed to look to the left and yield to the vehicles in the circle. In the first couple of years, the number of crashes dropped dramatically.

This intersection is unique in that people wanted to access the University and the Haymarket coming from the south and the north. That made some of the turning movements more complicated which is why two roundabouts were necessary. Jon Olsen from Olsson Associates presented a short video showing how people would use them. The video is a simulation that shows PM peak traffic movement in the year 2035 with a volume of about 35,000 vehicles. As shown, the roundabouts can handle that volume very well. There were numerous alternatives that were looked at but none would have allowed full access to Stadium Drive.

Beutler asked if traffic will flow without police directing event traffic. Olsen stated that after UNL football games a police officer will be needed to help direct traffic. If there is too much traffic trying to enter the roundabout from one leg it begins to overtake the roundabout. It will be pretty simple to direct traffic because one leg will be stopped allowing the other legs to go. Arena traffic was studied and post event traffic will flow without event management. Pre-event traffic will be less than football but will have the same issue with traffic entering from the south overtaking the roundabout, so event management will be required to help that situation.

Snyder asked for comments from the public. Jane Kinsey came forward and stated that she belongs to an organization called The Watchdogs of Lincoln Government. She has been contacted by the public that use the roundabouts at peak times and they have stated there is a backup of traffic and they are concerned about safety. In just the last few days there was an accident at one of the roundabouts. She asked that the Board send their staff or friends out to see how it is actually working.

Beutler noted that City staff have done traffic, accident and comprehensive studies of the roundabout's performance showing that roundabouts are safer and faster. Kinsey stated that those that travel the roundabouts at peak times are finding that the backup of traffic is horrendous and comprehensive studies don't always match the real world actuality. Clare added that he routinely drives through the roundabout at 40th and Sheridan to drop kids off at Southeast and has not experienced problems. He asked what sort of data could be provided to help alleviate some of the anxiety and concerns. Kinsey noted that the specific concerns are the backup of traffic and safety. She suggested that Clare to inform the public about his experience and ask them to let him know about theirs.

Figard pointed out that there are traffic cameras at these locations and City staff work day in and day out to manage traffic and make things safer and more efficient. He is certain that during rush time traffic backs up more than it does during the middle part of the day, however, the backup and delay would be more significant at a signalized intersection. They also did a before and after study of the roundabout with staff out there counting, watching and evaluating. Figard hopes that as other roundabouts are built throughout the City the public will have the opportunity to drive them and conclude that they are a good alternative for the future. There are some states that have mandated that any intersection being reconstructed must be studied to determine if a roundabout is a viable alternative because they are greener, safer and much more efficient. He also noted that the new Nebraska Drivers Manual has a couple of pages devoted to driving single and double lane roundabouts. He is confident that information wouldn't be in the manual if the community and industry didn't think it was a safe and reasonable alternative. Snyder asked that Figard release some of the studies and data to the public to calm some of the anxiety.

Snyder asked for any other comments. Hearing none, Clare made a motion to approve the resolution but noted that he had to abstain from the vote due to a conflict of interest with TCW. He has conferred with legal counsel and they have advised that it won't jeopardize moving forward. Beutler seconded the motion. Motion carried 2-0.

Item 9 – Set Next Meeting Date

Bob Caldwell with the Mortenson/Hampton Team came forward to make an announcement. They are having their first Subcontractor and Supplier Outreach Session on April 27th from 5:00 to 6:00 P.M. at the Cornhusker. This is part of their ongoing outreach that was started last fall. There will be more information about project scheduling, the procurement process and the timeline for bidding and subcontracting. He also pointed out that Hampton just completed a new roundabout at their new development at 84th and Glynoaks. They are very happy with it and wanted to thank the City for its effort to make traffic more efficient.

Clare asked Caldwell and Martin to talk about the internship opportunities they have been putting together. Caldwell stated that the Construction Management Program at the University of Nebraska and other institutions in the state have done a great job of preparing students to work with them. They have anywhere from four to five interns working throughout the year that will be assisting the team on the arena and other projects across the state. They will also be working closely with the Lincoln Chamber of Commerce and their intern program to network interns throughout the entire community to get young people excited about staying in Lincoln. Martin added that he has been working with Dr. Ted Weidner to coordinate the intern program and look at the opportunity for some paid internships for the summer. They will also get the schedule up for fall and spring internships. He hopes to have a program rough draft to share in the next 30 days and will work in conjunction with Mortenson/Hampton so that everyone gets the most benefit possible.

Snyder reiterated that that they are going to make an effort to get information out to the public eight days before the Board meetings. There is a lot of material and deadlines to meet, so they may not make it 100% of the time but they will make that effort.

The next meeting will be held on Thursday April 14, 2011 at 3:30 P.M. in Room 303. The public and press will be informed if another meeting is scheduled to address the land exchange agreement.

Beutler made a motion to adjourn, Clare seconded the motion. Meeting adjourned at 4:45 P.M.

Prepared by: Melissa Ramos-Lammli, Engineering Services

BREAKDOWN OF ENVIRONMENTAL REMEDIATION BUDGET (NORTH OF O STREET)

Description	Total
TEUP Budget (North of O Street):	
North Area - R to Tracks (Arena Site)	1,171,563.00
South Area - R to O Street	2,515,625.00
West Area	431,250.00
Total Estimated Budget for Remediation North of O Street	**4,118,438.00**
Environmental Remediation Expenses to Date:	
AON Insurance (environmental insurance)	259,987.00
Benesch – Environmental Consultant	832,038.00
General Excavating – T.200 Plume Remediation	1,357,383.85
T.200 Reimbursement	(809,000.00)
Total Expenses to Date:	1,640,408.85
Balance remaining:	**2,478,029.15**

** Budgeted amount North of O only represents a portion of the overall $7.35 million environmental remediation budget

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To: West Haymarket JPA
From: LIBA Board of Directors
Date: Wednesday, March 30, 2011
Re: Davis-Bacon Wages

The Lincoln Independent Business Association (LIBA) requests that the West Haymarket Joint Public Agency (JPA) review the application of Davis-Bacon wages to the West Haymarket project and do what is in the best interest of Lincoln's taxpayers.

The $32 million in Recovery Zone Economic Development Bonds (RZEDB) triggered the requirement to pay Davis-Bacon wages. According to a 2009 study by the U.S. Bureau of Labor Statistics (BLS), median hourly wages for an electrician in Lincoln, Nebraska, were $17.81.[1] The Davis-Bacon hourly rate in Lancaster County is $25.12, an increase of $7.31.[2] The median hourly wage for sheet metal workers was $18.24.[3] The Davis-Bacon hourly rate is $26.17, an increase of $7.93.[4]

In addition, sheet metal workers are paid fringe benefits of $12.52 an hour under Davis-Bacon.[5] Also, under Davis-Bacon electricians who are in a boatswain and any electricians working beneath the boatswain are paid one and one-half times the rate of pay and fringe benefits of 4.5 percent of their hourly wage, as well as $8.65 an hour more on top of that.[6] These kinds of wage and benefit increases can quickly add up, especially on a proposed $340 million project.

LIBA requests the JPA do a study on whether buying back the RZEDBs and paying what appears to be a $10 million penalty would be less expensive than paying Davis-Bacon wages for the entire project. If the cost to buy the RZEDBs back and pay the penalty is substantially less than paying Davis-Bacon wages, LIBA requests that the JPA do what is in the best interest of Lincoln's taxpayers and buy back the bonds.

LIBA also requests the JPA to provide access to proposed project documents seven days prior to any JPA meeting to ensure sufficient time to review the documents before approval.

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[1] http://bls.gov/oes/current/oes_30700.htm#(3)
[2] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=NE20100005
[3] http://bls.gov/oes/current/oes_30700.htm#(3)
[4] http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=NE20100005
[5] Id.
[6] Id.

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
330309	University of Nebraska Lincoln	Ref#26-0505-0016-001,6/2-9/30	PV	1258279	1,041.31	03/02/11	440476
330309	University of Nebraska Lincoln	Ref#26-0505-0015-001,7/12-9/30	PV	1258278	1,408.00	03/02/11	440476
88022	T J Osborn Construction	Proj 870501	OV	1258291	197,266.11	03/03/11	42927
88022	T J Osborn Construction	Proj 870501	OV	1258220	78,110.74	03/03/11	42927
596743	SAIC Energy, Environ & Infrast LLC	Proj#6001000002, thru 11/30/10	PV	1258281	286,145.69	03/03/11	42991
330309	University of Nebraska Lincoln	Ref#26-0505-0016-001	PV	1258276	3,363.12	03/09/11	1220
330309	University of Nebraska Lincoln	Ref#26-0505-0016-001	PD	1258275	3,363.12-	03/09/11	1220
330309	University of Nebraska Lincoln	Ref#26-0505-0016-001	PV	1258273	1,442.87	03/09/11	1220
330309	University of Nebraska Lincoln	Ref#26-0505-0016-001,Oct'2010	PD	1258270	1,442.87-	03/09/11	1220
77921	County/City Property Management	CITY CONTROLLER-JPA	PV	1260480	322.80	03/09/11	440908
81357	Great Plains Appraisal Inc		OV	1260138	3,500.00	03/09/11	440909
81357	Great Plains Appraisal Inc		OV	1260138	10,250.00	03/09/11	440909
81357	Great Plains Appraisal Inc		OV	1260138	10,750.00	03/09/11	440909
102154	Public Building Commission	Account 10011 03/11	PV	1260474	157.50	03/09/11	440910
366993	Gilmore & Bell PC	Taxable Series 2010B, 2010C	PV	1260484	118,938.75	03/09/11	440911
366993	Gilmore & Bell PC	Taxable Series 2010B, 2010C	PV	1260484	56,061.25	03/09/11	440911
594773	Alfred Benesch & Company		OV	1260132	58,846.74	03/09/11	440912
594773	Alfred Benesch & Company	Proj 00110058.01	PV	1258896	12,408.75	03/09/11	440912
594773	Alfred Benesch & Company	Proj#00110058.00,1/10-2/6/11	PV	1258895	24,170.49	03/09/11	440912
594773	Alfred Benesch & Company	Proj#00110058.00,1/10-2/6/11	PV	1258895	6,286.24	03/09/11	440912
594773	Alfred Benesch & Company	Proj#00110058.00,1/10-2/6/11	PV	1258895	18,822.97	03/09/11	440912
37233	Olsson Associates	Pay on Cont#5699	PD	1260140	18,541.50-	03/10/11	43015
37233	Olsson Associates		OV	1260158	28,475.12	03/10/11	43015
37233	Olsson Associates		OV	1260158	30,215.36	03/10/11	43015
37233	Olsson Associates		OV	1260158	19,189.15	03/10/11	43015
37233	Olsson Associates		OV	1260158	782.10	03/10/11	43015
37233	Olsson Associates		OV	1260158	273.94	03/10/11	43015
37233	Olsson Associates		OV	1260158	1,311.75	03/10/11	43015
37233	Olsson Associates		OV	1260158	765.85	03/10/11	43015
37233	Olsson Associates		OV	1260158	1,938.61	03/10/11	43015
37233	Olsson Associates		OV	1260158	5,097.44	03/10/11	43015
37233	Olsson Associates		OV	1260158	2,945.89	03/10/11	43015
37233	Olsson Associates		OV	1260158	3,269.62	03/10/11	43015
37233	Olsson Associates		OV	1260158	156.17	03/10/11	43015
37233	Olsson Associates	Pay on Cont#5699	PD	1260140	18,562.00-	03/10/11	43015
37233	Olsson Associates	Pay on Cont#5699	PD	1260140	28,172.00-	03/10/11	43015
37233	Olsson Associates	Pay on Cont#5699	PD	1260140	29,145.50-	03/10/11	43015
88022	T J Osborn Construction	Proj 870501	OV	1260177	64,704.05	03/10/11	43058
343450	Fred W Briggs Real Estate PC		OV	1260133	4,100.00	03/10/11	43113
343450	Fred W Briggs Real Estate PC		OV	1260136	2,600.00	03/10/11	43113
343450	Fred W Briggs Real Estate PC		OV	1260135	500.00	03/10/11	43113
591846	Marvin Investment Management Co	Program Admin 1/16/11-2/15/11	PV	1260469	6,800.00	03/10/11	43146
593485	Thought District Inc	10-JPA-0007 On-Going Mgmt	PV	1260483	2,000.00	03/10/11	43153
82368	State of Nebraska	Jan'11 monitoring 10620	PV	1262938	6,174.13	03/16/11	441422
308161	Midwest Right of Way Services Inc	MROW#237,Relocation 11/1-2/28	PV	1261969	1,054.00	03/17/11	43274
324304	BNSF Railway Company	Contr#NC20023364,Jan'11 serv	PV	1262428	1,307.13	03/17/11	43279
595872	CSL Marketing Group		OV	1261968	17,404.00	03/17/11	43334
82368	State of Nebraska	#10620 Febr'11 monitoring	PV	1263665	4,101.16	03/23/11	441857
456171	Qwest Communications Company LLC		OV	1263532	269,270.70	03/23/11	441858
37233	Olsson Associates		OV	1263504	43,979.65	03/24/11	43368
37233	Olsson Associates		OV	1263504	26,498.28	03/24/11	43368
37233	Olsson Associates		OV	1263513	3,507.13	03/24/11	43368
37233	Olsson Associates		OV	1263513	10,154.63	03/24/11	43368

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
37233	Olsson Associates		OV	1263513	8,275.06	03/24/11	43368
37233	Olsson Associates		OV	1263504	33,879.08	03/24/11	43368
37233	Olsson Associates		OV	1263513	19,601.82	03/24/11	43368
37233	Olsson Associates		OV	1263504	60,145.94	03/24/11	43368
37233	Olsson Associates		OV	1263504	9,961.94	03/24/11	43368
37233	Olsson Associates		OV	1263504	2,307.75	03/24/11	43368
37233	Olsson Associates		OV	1263504	1,347.35	03/24/11	43368
37233	Olsson Associates		OV	1263504	3,410.56	03/24/11	43368
37233	Olsson Associates		OV	1263504	8,967.85	03/24/11	43368
37233	Olsson Associates		OV	1263513	20,790.62	03/24/11	43368
37233	Olsson Associates		OV	1263513	2,266.49	03/24/11	43368
37233	Olsson Associates		OV	1263513	4,090.59	03/24/11	43368
37233	Olsson Associates		OV	1263513	20,792.76	03/24/11	43368
37233	Olsson Associates		OV	1263513	70,131.25	03/24/11	43368
37233	Olsson Associates		OV	1263513	41,777.88	03/24/11	43368
37233	Olsson Associates		OV	1263513	119,679.08	03/24/11	43368
37233	Olsson Associates		OV	1263513	9,689.03	03/24/11	43368
37233	Olsson Associates		OV	1263504	5,182.66	03/24/11	43368
37233	Olsson Associates		OV	1263504	430.91	03/24/11	43368
37233	Olsson Associates		OV	1263504	156.17-	03/24/11	43368
37233	Olsson Associates		OV	1263504	5,752.19	03/24/11	43368
77921	County/City Property Management	CITY CONTROLLER-JPA	PV	1264861	12.65	03/30/11	442419
89156	Secretary of State	Filing Biennial for WHJPA	PV	1265256	20.00	03/30/11	442420
108417	Citizen Information Center	JPA Arena Mtg 2-16-11 video	PV	1264860	67.50	03/30/11	442421
131570	Erickson & Sederstrom PC	File#27354 055859	PV	1265257	1,445.09	03/30/11	442422
131570	Erickson & Sederstrom PC	File#27354 055859	PV	1265257	4,829.71	03/30/11	442422
330309	University of Nebraska Lincoln		OV	1265335	833.90	03/30/11	442423
594773	Alfred Benesch & Company		OV	1265297	135.00	03/30/11	442424
596579	SMG		OV	1265344	5,000.00	03/30/11	442425
596579	SMG		OV	1265346	5,000.00	03/30/11	442425
596579	SMG	Balance of Godoy travel exp	PV	1265237	10.74	03/30/11	442425
36863	General Excavating	Proj 870601	OV	1265287	170,060.32	03/31/11	43502
36863	General Excavating	Proj 870601	OV	1264651	217,082.60	03/31/11	43502
38391	Lincoln Journal Star	Cust#60016059	PV	1265267	23.18	03/31/11	43505
249308	DLR Group Inc		OV	1265359	59,250.05	03/31/11	43578
249308	DLR Group Inc		OV	1265355	300,000.00	03/31/11	43578
249308	DLR Group Inc		OV	1265354	300,000.00	03/31/11	43578
Grand total					2,860,737.58		

4/4/2011

Public Works WHJPA Engineering Costs
3/1/11 through 3/31/11

Description	Explanation	Type	Doc Num	Fund	Business Unit	Object	Sub	Amount	G/L Date
Construction Engineering	WH Sanitary Sewer Relocation	EU	311391	00951	870501	6153	320	2,601.50	3/10/2011
Construction Engineering	WH 10th & Salt Ck Road Impr	EU	311391	00951	870304	6153	320	56.26	3/10/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	311391	00951	870302	6153	130	943.28	3/10/2011
Design Engineering	WH Core Area Roadways & Utilty	EU	311391	00951	870305	6153	130	220.14	3/10/2011
Design Engineering	WH HymktPkLot,FestSp&PedGrdStr	EU	311391	00951	870201	6153	130	154.95	3/10/2011
Design Engineering	WH ITS & Dynamic Message Sgns	EU	311391	00951	870951	6153	130	168.49	3/10/2011
Design Engineering	WH Sanitary Sewer Relocation	EU	311391	00951	870501	6153	130	103.30	3/10/2011
Design Engineering	WH USPS Parking Lot Reconstct	EU	311391	00951	870303	6153	130	154.95	3/10/2011
Design Engineering	WH Voluntary Clean-up Progrm	EU	311391	00951	870602	6153	130	464.87	3/10/2011
Design Engineering	WH West Haymarket Park	EU	311391	00951	870000	6153	130	5,506.38	3/10/2011
Design Engineering	WH 10th & Salt Ck Road Impr	EU	311391	00951	870304	6153	130	283.96	3/10/2011
Laboratory & Testing	WH Sanitary Sewer Relocation	EU	311391	00951	870501	6153	350	384.17	3/10/2011
Observer/Inspections	WH Sanitary Sewer Relocation	EU	311391	00951	870501	6153	325	6,148.97	3/10/2011
Construction Engineering	WH NDEQ T-200	EU	312321	00951	870601	6153	320	70.33	3/24/2011
Construction Engineering	WH Sanitary Sewer Relocation	EU	312321	00951	870501	6153	320	1,546.33	3/24/2011
Construction Engineering	WH 10th & Salt Ck Road Impr	EU	312321	00951	870304	6153	320	253.20	3/24/2011
Design Engineering	WH "M"&"N" St,7th to 10th St	EU	312321	00951	870302	6153	130	3,148.27	3/24/2011
Design Engineering	WH Charleston Bridge/Roadway	EU	312321	00951	870301	6153	130	491.96	3/24/2011
Design Engineering	WH Core Area Roadways & Utilty	EU	312321	00951	870305	6153	130	568.20	3/24/2011
Design Engineering	WH Initial Haymrket Site Prep	EU	312321	00951	870703	6153	130	94.66	3/24/2011
Design Engineering	WH ITS & Dynamic Message Sgns	EU	312321	00951	870951	6153	130	168.49	3/24/2011
Design Engineering	WH West Haymarket Park	EU	312321	00951	870000	6153	130	6,528.54	3/24/2011
Design Engineering	WH 10th & Salt Ck Road Impr	EU	312321	00951	870304	6153	130	1,111.92	3/24/2011
Laboratory & Testing	WH Sanitary Sewer Relocation	EU	312321	00951	870501	6153	350	76.01	3/24/2011
Observer/Inspections	WH Sanitary Sewer Relocation	EU	312321	00951	870501	6153	325	6,352.47	3/24/2011
								37,601.60	

City of Lincoln, NE
West Haymarket
Job Cost Report
As of March 31, 2011

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
870000 WH West Haymarket Park		1,871,112	4,704,831	6,575,943-
870100 WH Arena	168,895,600	2,456,065	11,090,417	155,349,118
870201 WH HymktPkLot,FestSp&PedGrdStr	14,089,426	34,108	2,026,062	12,029,256
870202 WH South Parking Garage	13,090,000	19,308	1,301,983	11,768,709
870203 WH Arena Parking Garage	10,352,100	59,250	639,349	9,653,501
870301 WH Charleston Bridge/Roadway	4,835,720	59,348	765,993	4,010,379
870302 WH "M"&"N" St,7th to 10th St	2,280,000	181,138	225,716	1,873,146
870303 WH USPS Parking Lot Reconstct	885,000	75,799	57,822	751,379
870304 WH 10th & Salt Ck Road Impr	3,412,000	212,353	238,428	2,961,219
870305 WH Core Area Roadways & Utilty	14,668,960	18,658	1,173,947	13,476,355
870306 WH Traffic Analysis		31,197	79,662	110,859-
870307 WH Streetscape		7,710	522,333	530,043-
870308 WH Sun Valley Blvd & West "O"	737,400			737,400
870401 WH Plaza	1,200,000			1,200,000
870501 WH Sanitary Sewer Relocation	1,440,000	1,252,268	133	187,599
870502 WH Fiber Optic Comm & Other	650,880	269,271	223,143	158,466
870601 WH NDEQ T-200	978,000	466,374	505,505	6,121
870602 WH Voluntary Clean-up Progrm	2,100,000	113,047	240,936	1,746,017
870603 WH Environmental Contngy Pln	2,400,000	35,886	28,927	2,335,187
870604 WH Other/Miscellaneous	525,600	127,688	140,757	257,155
870701 WH Stmwtr Mtgtn-Sth&WstOfBNSF	2,400,000			2,400,000
870703 WH Initial Haymrket Site Prep	2,088,360	95,449	166,853	1,826,058
870704 WH Other Strmwater Mitigation	3,105,840			3,105,840
870800 WH TIF Improvements	5,515,693			5,515,693
870901 WH BNSF Land Acquisition	1,000,000	1,042,795		42,795-
870902 WH Alter Site Purchase	4,080,000	18,524	41,750	4,019,726
870903 WH Jaylynn Site Purchase	3,080,000	13,672	8,310	3,058,018
870904 WH UP Site Purchase	1,000,000	1,326,248		326,248-
870905 WH BNSF Const, Rehab, Reloc	44,000,000	46,305,770		2,305,770-
870906 WH Amtrak Station	1,440,000	4,380	305,079	1,130,541
870907 WH UP Track Mods West of Brdg	1,236,000	36,772		1,199,228
870908 WH Other Private Prop Acqstns	625,000			625,000

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
870951 WH ITS & Dynamic Message Sgns	2,700,000	4,612	59,164	2,636,224
870952 WH Community Space& Civic Art	1,500,000			1,500,000
870975 WH Miscellaneous	5,160,000			5,160,000
870976 WH Line of Credit		52,500		52,500-
870977 WH Series 1 JPA Debt		1,535,168		1,535,168-
870978 WH Series 2 JPA Debt		1,221,802		1,221,802-
870979 WH Series 3 JPA Debt		577,661		577,661-
	321,471,579	59,525,933	24,547,100	237,398,546
00951 West Haymarket Capital Proj	321,471,579	59,525,933	24,547,100	237,398,546

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

00950 West Haymarket Reven
06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies					240	240-
5261 Postage	5,000			5,000	6,017	1,017-
5323 Bldg Maint Supplies					125	125-
11 Materials & Supplies	5,000			5,000	6,382	1,382-
12 Other Services & Charges						
5621 Misc Contractual Services	330,612			330,612	133,744	196,868
5624 Auditing Service	12,000			12,000	10,000	2,000
5631 Data Processing Service					455	455-
5632 System Develop - I.S.	20,000			20,000		20,000
5633 Software					979	979-
5642 Legal Services	20,000			20,000	4,337	15,663
5643 Management Services	92,043			92,043	47,600	44,443
5725 Mileage - Personal Vehicles	1,000			1,000		1,000
5762 Photocopying	1,000			1,000	472	528
5763 Printing					529	529-
5829 Telephone	1,000			1,000		1,000
5928 Rent of Co/City Bldg Space	1,900			1,900	564	1,336
5931 Parking Rent Bldg Comm					61	61-
5952 Advertising/Media Serv	1,500			1,500	1,097	403
12 Other Services & Charges	481,055			481,055	199,838	281,217
13 Capital Outlay - Equipment						
6069 Data Processing Equipment	4,500			4,500	2,461	2,039
6072 Furniture & Fixtures	11,000			11,000	2,757	8,243
13 Capital Outlay - Equipment	15,500			15,500	5,218	10,282
06095 W Haymarket O & M	501,555			501,555	211,438	290,117

00950 West Haymarket Reven
195011 JPA 2010A Debt Servi

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

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

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6235 Bd Trustee Pmt-Interest			3,165,607	3,165,607		3,165,607
15 Debt Service			3,165,607	3,165,607		3,165,607
195021 JPA 2010B/C Debt Serv			3,165,607	3,165,607		3,165,607
00950 West Haymarket Revenue	501,555		8,747,083	9,248,638	3,467,159	5,781,479

WH 11-26 Introduce: 3-30-11

RESOLUTION NO. WH- _____

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

1. That the attached Land Exchange Agreement between Star City Federal LLC, the City of Lincoln, Nebraska, and the West Haymarket Joint Public Agency is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Land Exchange Agreement on behalf of the JPA. This Land Exchange Agreement commits the JPA to acquire certain property from the City of Lincoln (City Parcel Nos. One and Two), convey certain easements to Lincoln Electric System and other named utility companies and then convey City Parcel One and City Parcel Two to Star City Federal in exchange for certain property owned by Star City Federal (Star City Federal Parcel) along with a boot payment of approximately $172,000.00 due to the difference in land values of the exchange properties. The Land Exchange Agreement further requires the JPA to construct certain parking lot improvements on City Parcel One in order to replace parking being lost by the JPA acquisition of the Star City Federal Parcel.

2. That the Chairperson is hereby further authorized to execute the easements to LES and the other named utility companies and the Right of Entry Agreement to Star City Federal, the forms of which are attached to the Land Exchange Agreement as Exhibits H, I, and P-1.

Adopted this _____ day of March, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____

Jayne Snyder, Chair

_____

Tim Clare

_____

Chris Beutler

WH 11-26

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 11-26 by accepting the attached Substitute Land Exchange Agreement to replace the Land Exchange Agreement currently attached to said Resolution as WH 11-26A.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Requested by: Rick Peo

Reason for Request: The revised agreement makes minor clarifications to the description of the sidewalk improvements and makes installation of the sidewalk improvements discretionary on the part of the JPA. The revision further provides that, if the sidewalk improvements are installed and the improvements are wider than the existing sidewalks, future repair, maintenance, and clearing of snow and ice will be the responsibility of the JPA or City. The revised agreement also includes special construction conditions (Exhibit Q) for construction of the parking lot improvements and sidewalk improvements to avoid adverse impact on the Star City Federal Property.

From Science to Solutions

Executive Summary

This is a motion to adopt Amendment Number 5 to the SAIC contract in an amount not to exceed $25,000. The purpose of this amendment is to allow SAIC to subcontract with Geiger Engineering for a peer review of the arena structural systems and with Thiele Geotechnical for a peer review of the site preparation geotechnical recommendations.

The soil conditions inside the "doughnut" are very difficult and have resulted in preliminary cost estimates for the site preparation and arena foundation systems that are more expensive than originally anticipated prior to the full geotechnical exploration and reports being generated. Now that we have these full reports, a peer review by a second engineering firm to double-check these recommendations is highly desirable to verify that the opinions generated are the most efficient and economical available, given the existing soil conditions.

SAIC recommends approval of this resolution.

James W. Martin
Senior Program Manager
SAIC

6 APRIL 2011
Date

LAND EXCHANGE AGREEMENT
(Star City Federal)

This Land Exchange Agreement is made and entered into as of this 14th day of April, 2011 ("Effective Date") by and between the West Haymarket Joint Public Agency, a political subdivision and body corporate politic of the State of Nebraska ("JPA"), the City of Lincoln, Nebraska, a municipal corporation ("City"), and Star City/Federal, LLC, a Nebraska limited liability company ("Star City Federal").

RECITALS

A. **Existing Star City Federal Property**. Star City Federal presently owns Lots 1 and 2, Cornhusker Shadows 1st Addition. Said Lots 1 and 2 are currently used by Star City Federal for a commercial parking lot and commercial building.

B. **City Property**.

(i) The City presently owns a tract of land composed of a part of Lots 2-7, C.J. Hulls Subdivision, a part of Lot 4, Block 14, North Lincoln Addition, a part of vacated 8th Street, and a part of vacated un-named right-of-way north of C.J. Hulls Subdivision, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("City Parcel One") as legally described and shown on Exhibit "A" which is attached hereto and incorporated herein by this reference.

(ii) The City also owns a tract of land composed of a part of the remaining portion of Lots 2 & 3, Block 14, North Lincoln Addition, a part of the remaining portion of Lot 1, Block 6, Original Town of Lincoln, and a part of the un-named right-of-way south of Block 14, North Lincoln Addition, all being part of land acquired with the 10th Street Viaduct Project, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("City Parcel Two") as legally described and shown on Exhibit "B" which is attached hereto and incorporated herein by this reference.

C. **Lincoln Haymarket Arena Project**. The City of Lincoln voters have approved the implementation of the Lincoln Haymarket Arena project as generally shown on Exhibit "D" which is attached hereto and incorporated herein by this reference. The Lincoln Haymarket Arena Project is located southwest of the Star City Federal property.

D. **Facilities Agreement**. The JPA and the City have entered into a Facilities Agreement dated July 26, 2010 providing that the JPA pay the cost of acquiring and constructing the Lincoln Haymarket Arena project for and on behalf of the City. Pursuant to the Facilities Agreement, the City intends to convey City Parcel One and City Parcel Two to the JPA with the understanding that the JPA will convey those certain easements listed as Permitted Exceptions in paragraph 2.A.(iv)(a) below to the City of Lincoln d/b/a Lincoln Electric System and the other named utility companies.

E. **Land Exchange**. In order to construct street improvements to provide additional access to the Lincoln Haymarket Arena project, the JPA needs to acquire a portion of Lot 2, Cornhusker Shadows 1st Addition ("Star City Federal Parcel") as more particularly described on Exhibit "E" attached hereto and incorporated herein by this reference. Therefore, the City and JPA are requesting Star City Federal to enter into a Land Exchange Agreement which would provide for the exchange of the Star City Federal Parcel for City Parcel One and City Parcel Two. The Star City Federal Parcel, City Parcel One and City Parcel Two are sometimes referred to individually as the "Exchange Property" and when more than one as the "Exchange Properties."

F. Star City Federal is willing to enter into the Land Exchange Agreement subject to (1) receiving a satisfactory report concerning marketable title and the environmental condition of City Parcel One and City Parcel Two based upon a due diligence investigation as described in paragraph 4 below; (2) the JPA, at its cost and expense, making Star City Federal whole from any loss of parking and functionality of its existing parking lot operation by reconfiguring and reconstructing the Star City Federal parking lot as shown on Exhibit "G" which is attached hereto and incorporated herein by this reference (collectively "Parking Lot Improvements"); and (3) the JPA, at its cost and sole discretion, removing the existing sidewalks along the east and south sides of the commercial building, regrading and constructing new sidewalk on the east and south side of the commercial building as shown on Exhibit "L" which is attached hereto and incorporated herein by this reference (collectively "Sidewalk Improvements").

G. The City and JPA are willing to enter into the Land Exchange Agreement subject to (1) receiving a satisfactory report concerning marketable title and the environmental condition of the Star City Federal Parcel based upon a due diligence investigation as described in paragraph 4 below, and (2) Star City Federal granting the City and/or JPA the necessary permanent easements for Sidewalk Improvements and utilities and temporary easements for the construction of the Parking Lot Improvements.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises and covenants contained herein, the parties agree as follows:

1. DEFINITIONS. A party who is intending to convey title to an Exchange Property at Closing is sometimes referred to hereinafter as "Grantor" and a party who is intending to accept title to an Exchange Property at Closing is sometimes referred to hereinafter as "Grantee."

2. THE EXCHANGE TERMS.

A. Land Exchange.

(i) City/JPA Land Exchange. At Closing, City will convey City Parcel One and City Parcel Two to JPA. JPA will convey an Easement for Utility Lines and/or Underground Utility Facilities over City Parcel Two to Lincoln Electric System, Windstream Nebraska, Inc., and Time Warner Entertainment-Advance/Newhouse Partnership and a Right-of-Way Easement over City Parcel One to the City of Lincoln d/b/a Lincoln Electric System.

(ii) Star City Federal/JPA Land Exchange. At Closing, Star City Federal will convey the Star City Federal Parcel to the JPA, and the JPA will convey City Parcel One and City Parcel Two to Star City Federal.

(iii) Exchange Value. The exchange value for each of the Exchange Properties will be its fair market value as determined by the appraisal performed by Great Plains Appraisal, Inc. as adjusted by the review appraisal conducted by Fred Briggs except that the cost of the parking improvements in the appraisal performed by Great Plains Appraisal, Inc. will be $250,800 plus Star City Federal's cost of the "Wiring" in paragraph 2.C(i) below and plus the cost of the "Additional Lighting" in paragraph 2.C(i) below. If the exchange value of the Star City Federal Parcel is greater than the exchange value of the City Parcel One and City Parcel Two, the difference in value will be paid to Star City Federal at closing.

(iv) Deliveries at Closing by the Grantor. At each Closing, the Grantor shall deliver to Grantee, and the Grantee shall accept from the Grantor, the following:

(a) A Warranty Deed conveying to Grantee fee simple title to the Exchange Property, subject to the Permitted Exceptions. For purposes hereof, "Permitted Exceptions" shall mean (1) covenants, conditions and restrictions of record which shall be approved by Grantee if they do not interfere with Grantee's intended use of the Exchange Property; (2) taxes not yet due and payable; (3) public utility easements of record which shall be approved by the Grantee, if they do not interfere with Grantee's intended use of the Exchange Property; (4) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which will be satisfied and released by the payment of money at the time of closing and which Grantor is willing to and does so remove at closing; (5) title exceptions caused by the acts or omissions of the Grantee; (6) easements to be granted and/or reserved under this Agreement; and (7) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by the Grantee.

Permitted exceptions with respect to the JPA's conveyance of City Parcel One and City Parcel Two to Star City Federal shall include but not be limited to (i) an Easement for Utility Lines and/or Underground Utility Facilities to be conveyed by the JPA over City Parcel Two to Lincoln Electric System, Windstream Nebraska, Inc., and Time Warner Entertainment-Advance/Newhouse Partnership; and (ii) a Right-of-Way Easement to be conveyed by the JPA over City Parcel One to Lincoln Electric System; and (iii) a permanent aerial easement granted to the State of Nebraska Department of Roads as filed of record with the Register of Deeds for Lancaster County, Nebraska, as Instrument No. 96-033749. Said Easement for Utility Lines and/or Underground Utility Facilities and the Right-of-Way Easement are more particularly described and shown on Exhibit "H" and Exhibit "I," respectively, which are attached hereto and incorporated herein by reference.

(b) Such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Grantee's Title Commitment. If Star City Federal must request and receive a partial release from any mortgage/deed of trust lien holder as to the Star City Federal's Property, the JPA shall be responsible for payment of any administrative/review fee charged by any such lender for the partial release.

(v) Documents to be Delivered by Grantee. At each Closing, Grantee shall deliver to the Grantor, and the Grantor shall accept from Grantee such affidavits, statements and other documents as are reasonably required by the Title Company in order to issue the Title Policy in accordance with the Grantee's Title Commitment.

B. Grant of Easements to JPA. At Closing, if the Parking Lot Improvements and/or Sidewalk Improvements have not been completed under their respective Right of Entry, Star City Federal, without additional monetary consideration, will convey to the JPA (a) a temporary construction easement to occupy and use for construction of the Parking Lot Improvements a portion of Lots 1 and 2, Cornhusker Shadows 1st Addition and City Parcel One as shown and legally described on Exhibit "K," attached hereto and incorporated herein by this reference, and/or (b) a permanent pedestrian easement to occupy and use that portion of Lot 1, Cornhusker Shadows 1st Addition, as described and shown on Exhibit "L" for pedestrian access, and for the construction, reconstruction, repair and maintenance of sidewalks within said easement.

C. Star City Federal Improvements Parking Lot Improvements.

(i) JPA Requirements. The JPA, at its expense, will construct the Parking Lot Improvements as part of the JPA's 10th & Salt Creek Roadway Project in two phases as shown on Exhibit "G". Construction of the Parking Lot Improvements shall not commence until after the University of Nebraska-Lincoln's 2011 Spring Football Game. The Parking Lot Improvements will be constructed of 8-inch asphalt pavement with concrete curb and gutter along with necessary inlets and storm sewer pipes that are required to drain the new parking area. The Parking Lot Improvements will also include parking lot striping. Construction of the new parking area improvements along the west side of the existing parking lot in City Parcel One and in the existing parking lot as shown on Exhibit "G" as Phase 1 shall be completed prior to the JPA's removal of Star City Federal's existing parking lot improvements located on the Star City Federal Parcel (Phase II on Exhibit "G"). The JPA shall reimburse Star City Federal for Star City Federal's reasonable expenses associated with removal and relocation of existing light poles and lights (collectively "Lighting") from the Star City Federal Parcel to other locations within the new parking area. This reimbursement shall include the cost of relocation, wiring, and reconnection of existing electrical outlets, cable T.V. outlets, satellite dishes, and other accessories (collectively "Accessories") that are attached to the existing light poles and permit costs.

(ii) Star City Federal Requirements. Star City Federal, at JPA's expense, will cause its lighting contractor to wire and install conduits ("Wiring") in the new parking area prior to the JPA's contractor paving the new parking area. In order not to hold up the JPA's paving of the new parking area, Star City Federal agrees to have the Wiring installed between April 25, 2011 and May 1, 2011. Installation of the Wiring will include compacting the backfill at the trench to the requirements outlined in the City of Lincoln Standard Specifications. In the event the Wiring is not timely installed, Star City Federal will be required to bore the conduits for the Wiring under the new pavement at its own cost and expense and without reimbursement. Star City Federal agrees to remove and relocate the existing Lighting and Accessories from the Star City Federal Parcel within three weeks following the University of Nebraska Lincoln's Spring Football Game to be held on April 16, 2011. Star City Federal further understands and agrees that the Lighting and Accessories cannot be installed in the new parking area until after the JPA's construction work associated with

the new parking area is substantially complete. If Star City Federal is required to purchase and install additional light poles ("Additional Lighting") in order to comply the City of Lincoln's design Standards for Parking Lots and Design Standards for Outdoor Lighting, the cost thereof shall be at the JPA's expense.

(iii) Sidewalk Improvements. The JPA, at its expense, may remove the existing sidewalks along the east and south sides of the building, conduct minor grading and install new sidewalks along the east and south sides of the Building. Disturbed grassy areas will be resodded. There will be no retaining walls and no slopes with a steepness greater than 4:1. If the sidewalk on either the south side or east side is replaced with a sidewalk of greater width than now existing, or with a surface other than standard concrete, then repair, maintenance and clearing of snow and ice as to such sidewalk shall be the responsibility and expense of the City or JPA.

(iv) Construction Conditions. The Parking Lot Improvements and Sidewalk Improvements shall be constructed in conformance with the Special Construction Conditions attached hereto as Exhibit "Q" and incorporated herein by this reference.

3. TRANSFERS OF INTEREST IN EXCHANGE PROPERTY PRIOR TO CLOSING. After the date of this Agreement, but prior to Closing, Grantor shall not dedicate, gift, transfer, mortgage or convey any interest in Grantor's Exchange Property without written consent from Grantee, which may be withheld for any reason.

4. DUE DILIGENCE INVESTIGATION OF EXCHANGE PROPERTIES. After the date of this Agreement, but prior to Closing, the JPA shall cause the following activities ("Due Diligence Investigation") to be performed by the below listed applicable contractor or another contractor acceptable to Star City Federal:

A. Title review of the Exchange Properties by Nebraska Title Company for a Title Insurance Commitment to include a review of easements, restrictions and encumbrances of record.

B. An Alta Survey of the Exchange Properties by Olsson Associates to be coordinated with the title commitment.

C. Environmental Investigation of the Exchange Properties by Alfred Benesch. This investigation will consist of a Phase 1 Environmental Audit. The Phase I Environmental Audit will be followed by Phase 2 drilling and testing if deemed necessary by the results of the Phase 1 Audit.

5. RIGHT OF ENTRY.

A. Grant to JPA. Concurrently with the execution of this Agreement, Star City Federal shall grant to the JPA and its contractors a temporary Right of Entry, in the form attached hereto as Exhibit "P" and incorporated herein by reference, to enter upon Lots 1 and 2, Cornhusker Shadows 1st Addition, in order to construct the Parking Lot Improvements and Sidewalk Improvements.

B. Grant to Star City Federal. Concurrently with the execution of this Agreement, City shall grant to Star City Federal and its contractors a temporary Right of Entry in the form attached hereto as Exhibit "P-1" and incorporated herein by reference, to enter upon City Parcel One in order to construct the Wiring and Additional Lighting (if any).

6. TITLE INSURANCE. The JPA shall obtain a title commitment for each Exchange Property ("Title Commitment") for an ALTA owner's title insurance policy ("Title Policy") issued by a title insurance company duly authorized to do business in Nebraska and acceptable to the Grantee ("Title Company") covering title to the Grantor's Exchange Property and showing the condition of title to the Grantor's Exchange Property. The Grantee agrees to review the Title Commitment and advise the Grantor whether the Title Commitment discloses exceptions to title other than Permitted Exceptions or discloses matters that render title to the Grantor's Exchange Property unmarketable. The Grantee shall notify Grantor of such title defects within thirty (30) days after receipt of the Title Commitment and the Grantor shall have thirty (30) days after written notice of such defects from Grantee to have the exceptions removed from the Title Commitment or to have the title insurer commit, in writing in a form and substance that is acceptable to the Grantee, to insure against loss or damage that may be occasioned by such exceptions or defects. In the event that Grantee shall be unable or unwilling to correct such title defects within the thirty (30) day period, Grantee shall have the option, by written notice delivered to Grantor within ten (10) days after expiration of the thirty (30) day period, to either terminate this Agreement or take title to the Grantor's Exchange Property subject to such exceptions or defects. In the event Grantee provides timely notice to terminate this Agreement, the Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event the Grantee elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions. The cost of the Title Policy for each Exchange Property shall be paid by the JPA at the Closing.

7. TAXES. Real estate taxes on the Exchange Property prior to the date of Closing shall be paid by Grantor. Real estate taxes on the Exchange Property after the date of Closing shall be paid by Grantee. The taxes for the year of the date of Closing shall be prorated based upon the then most current property valuations and upon the most current tax rate as determined by law.

8. TERM OF AGREEMENT. This Land Exchange Agreement shall automatically expire and terminate if closing has not occurred as provided in paragraph 9 below.

9. CLOSING. Closing shall occur on or before May 1, 2011; except that either party may extend the Closing as reasonably needed to satisfy a Closing contingency.

Closing is contingent on the Grantee receiving a Phase I Environmental Assessment Report and Phase 2 Environmental Assessment Report (if any) on the Exchange Property satisfactory to Grantee that demonstrates that no Hazardous Materials now exist on the Exchange Property. In the event that the Phase I Environmental Assessment Report is unsatisfactory to the Grantee, the Grantee may request a Phase 2 Environmental Assessment. In the event that the Phase 2 Environmental Assessment Report is unsatisfactory to the Grantee or reveals the suspected presence of Hazardous Materials, either party may rescind this Agreement. For the purposes of this Agreement, Hazardous Materials shall include, but not be limited to, substances defined as

"hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws. The Grantee of an Exchange Property shall have the right to waive the foregoing Phase I Environmental Assessment Report and Phase II Environmental Assessment Report for such Exchange Property.

Closing is further contingent on the City Council for the City of Lincoln adopting an Ordinance(s) vacating the unnamed right-of-way south of Block 14, North Lincoln Addition, to be included in City Parcel Two and declaring City Parcel One and City Parcel Two surplus and authorizing the conveyance thereof.

10. RISK OF LOSS. Risk of loss or damage to the Exchange Property shall rest with Grantor until the time of delivery of possession.

11. NO REAL ESTATE COMMISSION AND FINDER'S FEE. The parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee, in connection with the transaction contemplated by this Agreement. Each party warrants to all other parties that it shall indemnify and hold harmless such parties for any and all claims of any person for broker's or agent's commissions or finder's fees in connection with this transaction.

12. CONDITION OF EXCHANGE PROPERTY. Grantor acknowledges that its representatives or agents have examined the Exchange Properties prior to entering into this Agreement. This Agreement is based upon Grantee's inspection of the Exchange Property and not upon any representation or warranties or conditions by Grantor's agents. Grantee acknowledges Grantor is conveying the Exchange Property on an "as is" basis, except for the warranties and representations as provided in this Agreement.

13. DEFAULT. Time is agreed to be of the essence. In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default and seek any remedy at law or in equity without notice or demand, including specific performance.

14. SEVERABILITY. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, unenforceable, or invalid.

15. FURTHER ASSURANCES. Each undersigned party will, except as otherwise provided herein, whenever it shall be necessary to do so by any other party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants, contingencies and agreements herein provided. Each undersigned party agrees to use its best efforts in cooperation to carry out the intent of this Agreement.

16. INTERPRETATIONS. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

17. CONSTRUCTION. The parties hereto acknowledge and agree that each party has participated in the drafting of this Agreement and that this document has been reviewed by their respective legal counsel and that no inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

18. NON-MERGER. All representations and warranties made herein are intended to survive Closing and shall not be merged in the deed unless otherwise stated in this Agreement. This Agreement shall not be canceled at Closing.

19. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

20. REPRESENTATION AND WARRANTY OF GRANTOR PARTY REGARDING ENVIRONMENTAL HAZARDS. To the best of Grantor's knowledge, the Grantor has not generated, treated, used, or stored, disposed of or deposited in or otherwise caused the release of any hazardous substances or conditions in or on any portion of the Grantor's Exchange Property. The Grantor's Exchange Property is exchanged "as-is" and the Grantor makes no representations as to the fitness, condition, or suitability of the Grantor's Exchange Property for any purposes whatsoever.

21. NOTICE AND DEMANDS. All notices herein provided for shall be in writing and shall be given by personal delivery or by U.S. Mail and shall take effect from the time of personal delivery or the mailing thereof, as the case may be.

22. EXECUTION IN COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

23. GOVERNING LAW. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

24. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and assigns.

25. TIME IS OF THE ESSENCE. The parties agree time is of the essence under this Agreement.

26. GENERAL DUTIES. JPA agrees to cause the Due Diligence Investigation consultant: (a) To timely and professionally complete the Due Diligence Investigation as described above, and to furnish their labor and pay all their own costs, equipment, materials, including any taxes, required to complete their work; (b) To furnish everything reasonably necessary to complete the work unless specifically provided otherwise in this Agreement; (c) To conduct all activities related to the work in a lawful manner; (d) Provide and perform all necessary labor in a professional and workmanlike manner and in accordance with the provisions of this Agreement; and (e) Provide Star City Federal, at no extra cost, a copy of the applicable Due Diligence report when it is completed, reviewed and approved by the JPA.

27. INDEPENDENT CONTRACTOR. The JPA has sole and exclusive charge and control of the manner and means of performance of the Due Diligence Investigation consultant. The Due Diligence Investigation consultant shall perform as an independent contractor of the JPA and it is expressly understood that no Due Diligence Investigation consultant nor any of its staff are employees of Star City Federal and, thus they are not entitled to any benefits from Star City Federal including, but not limited to, overtime, retirement benefits, workers compensation, sick leave, or injury leave.

28. INTEGRATION, AMENDMENTS, ASSIGNMENT, SEVERABILITY, NEBRASKA LAW. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other parties, which consent shall not unreasonably be withheld. Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

29. CAPACITY. The undersigned person representing the undersigned party does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the undersigned party to this Agreement.

IN WITNESS WHEREOF, City, JPA, and Star City Federal do hereby execute this Agreement.

City of Lincoln, Nebraska
a municipal corporation

By:_____
Title: _____
Address: _____
_____
_____

Date of Execution:_____

West Haymarket Joint Public Agency
a political subdivision and body corporate
politic of the State of Nebraska

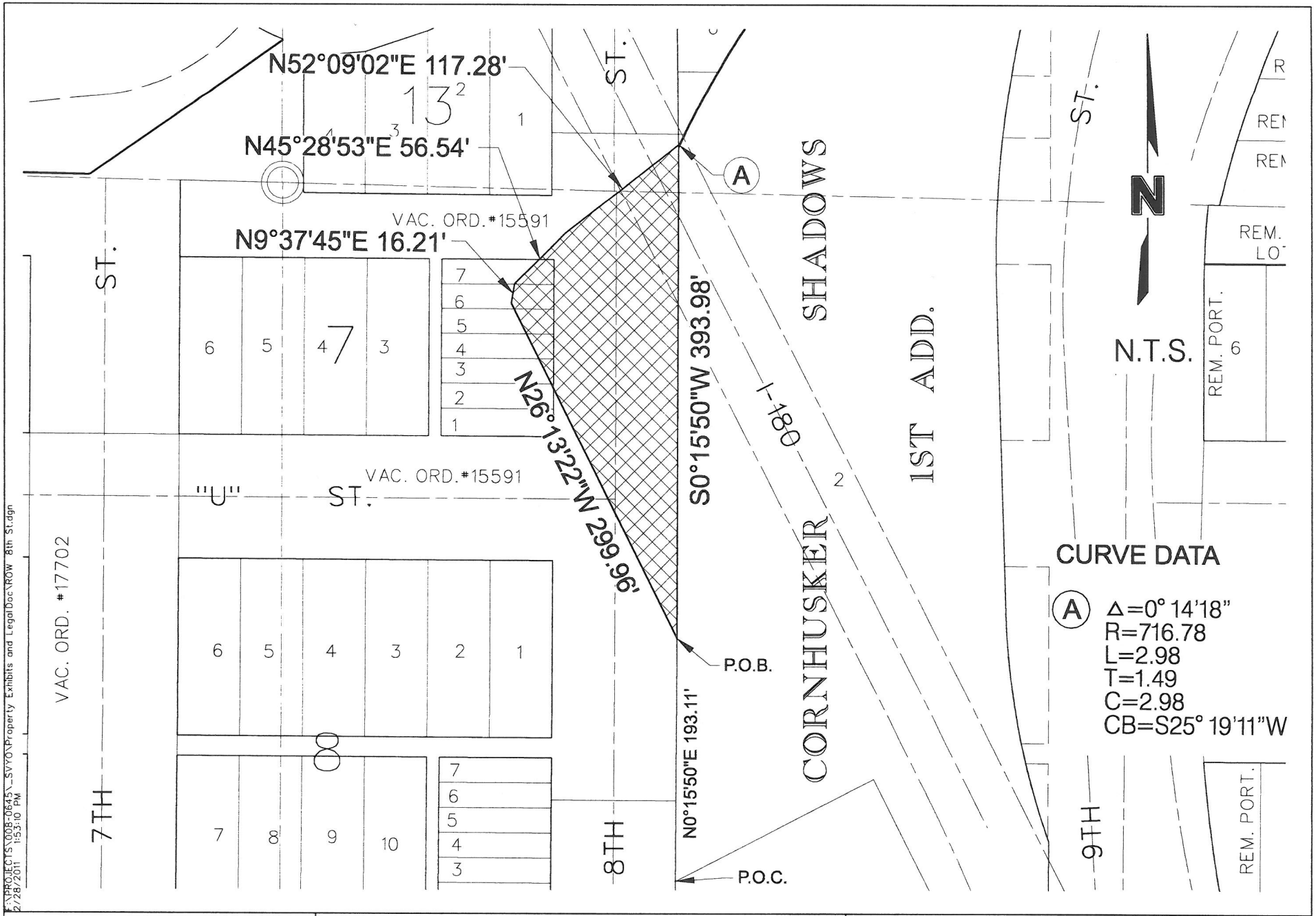
By:_____
Title: _____
Address: _____
_____
_____

Date of Execution:_____

Star City/Federal, LLC
a Nebraska limited liability company

By:_____
Title: _____
Address: _____
_____
_____

Date of Execution:_____



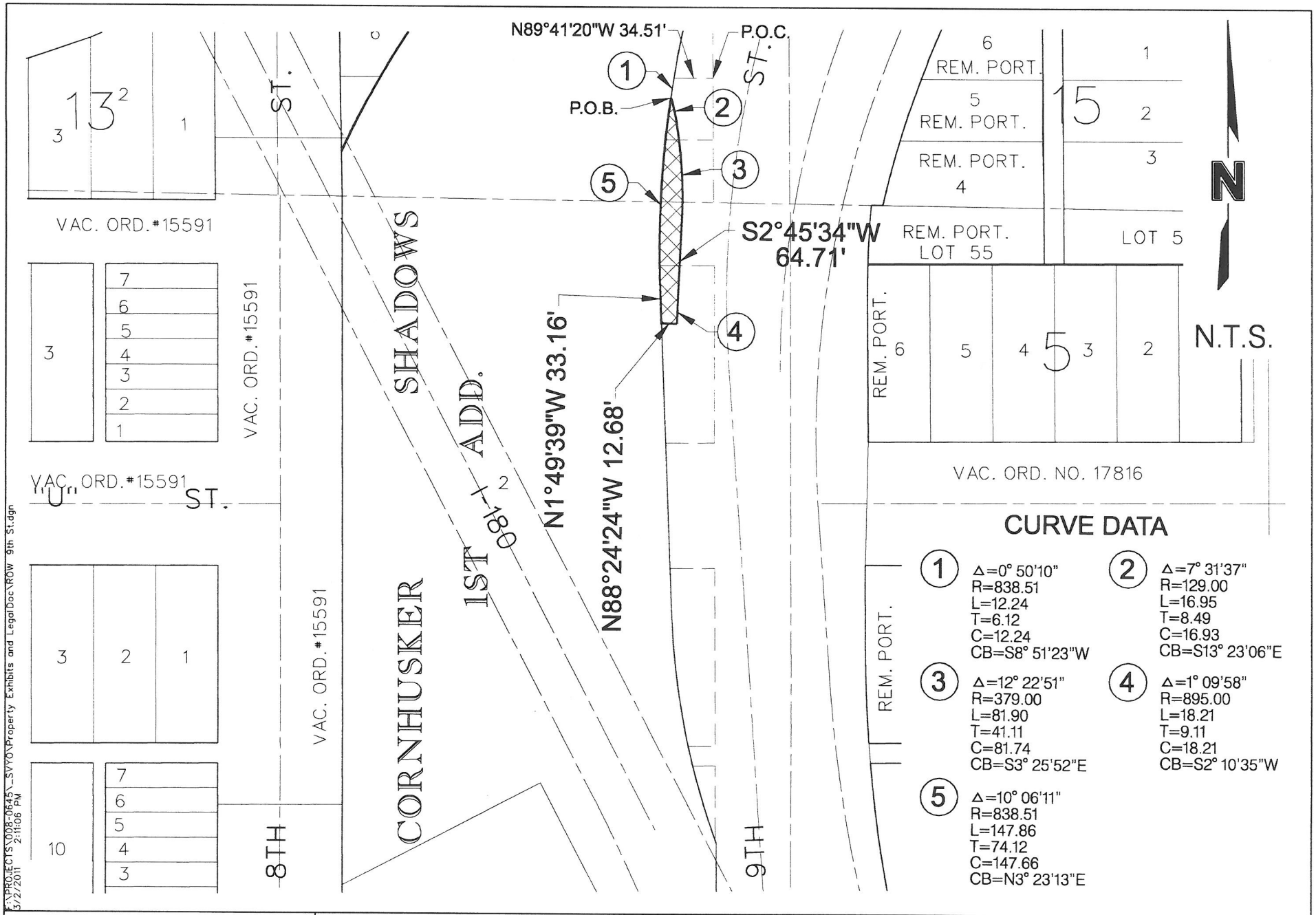
PROJECT NO: 010-2431	CITY PARCEL ONE	OLSSON ASSOCIATES	Exhibit
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	A
DATE: February 28th, 2011			Page 1 of 2

CITY PARCEL ONE

CITY PROPERTY TO BE TRANSFERED
LOTS 2-7, C.J. HULLS SUBDIVISION,
LOT 4, BLOCK 14, NORTH LINCOLN ADDITION,
VACATED 8TH STREET,
VACATED UN-NAMED RIGHT-OF-WAY NORTH OF C.J. HULLS SUBDIVISION

A TRACT OF LAND COMPOSED OF A PART OF LOTS 2-7, C.J. HULLS SUBDIVISION, A PART OF LOT 4, BLOCK 14, NORTH LINCOLN ADDITION, A PART OF VACATED 8TH STREET, AND A PART OF VACATED UN-NAMED RIGHT-OF-WAY NORTH OF C.J. HULLS SUBDIVISION, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF LOT 2, CORNHUSKER SHADOWS 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 2, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET, A DISTANCE OF 193.11 FEET TO THE POINT OF BEGINNING; THENCE NORTH 26 DEGREES 13 MINUTES 22 SECONDS WEST, A DISTANCE OF 299.96 FEET TO A POINT; THENCE NORTH 9 DEGREES 37 MINUTES 45 SECONDS EAST, A DISTANCE OF 16.21 FEET TO A POINT; THENCE NORTH 45 DEGREES 28 MINUTES 53 SECONDS EAST, A DISTANCE OF 56.54 FEET TO A POINT; THENCE NORTH 52 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 117.28 FEET TO A POINT ON THE WEST LINE OF LOT 2, CORNHUSKER SHADOWS 1ST ADDITION, AND A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 2.98 FEET, HAVING A RADIUS OF 716.78 FEET, A CENTRAL ANGLE OF 0 DEGREES 14 MINUTES 18 SECONDS, A CHORD BEARING OF SOUTH 25 DEGREES 19 MINUTES 11 SECONDS WEST, AND A CHORD DISTANCE OF 2.98 FEET TO THE NORTHWEST CORNER OF SAID LOT 2, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST, ALONG THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET, A DISTANCE OF 393.98 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 27,751 SQUARE FEET, (0.64 ACRES) MORE OR LESS.



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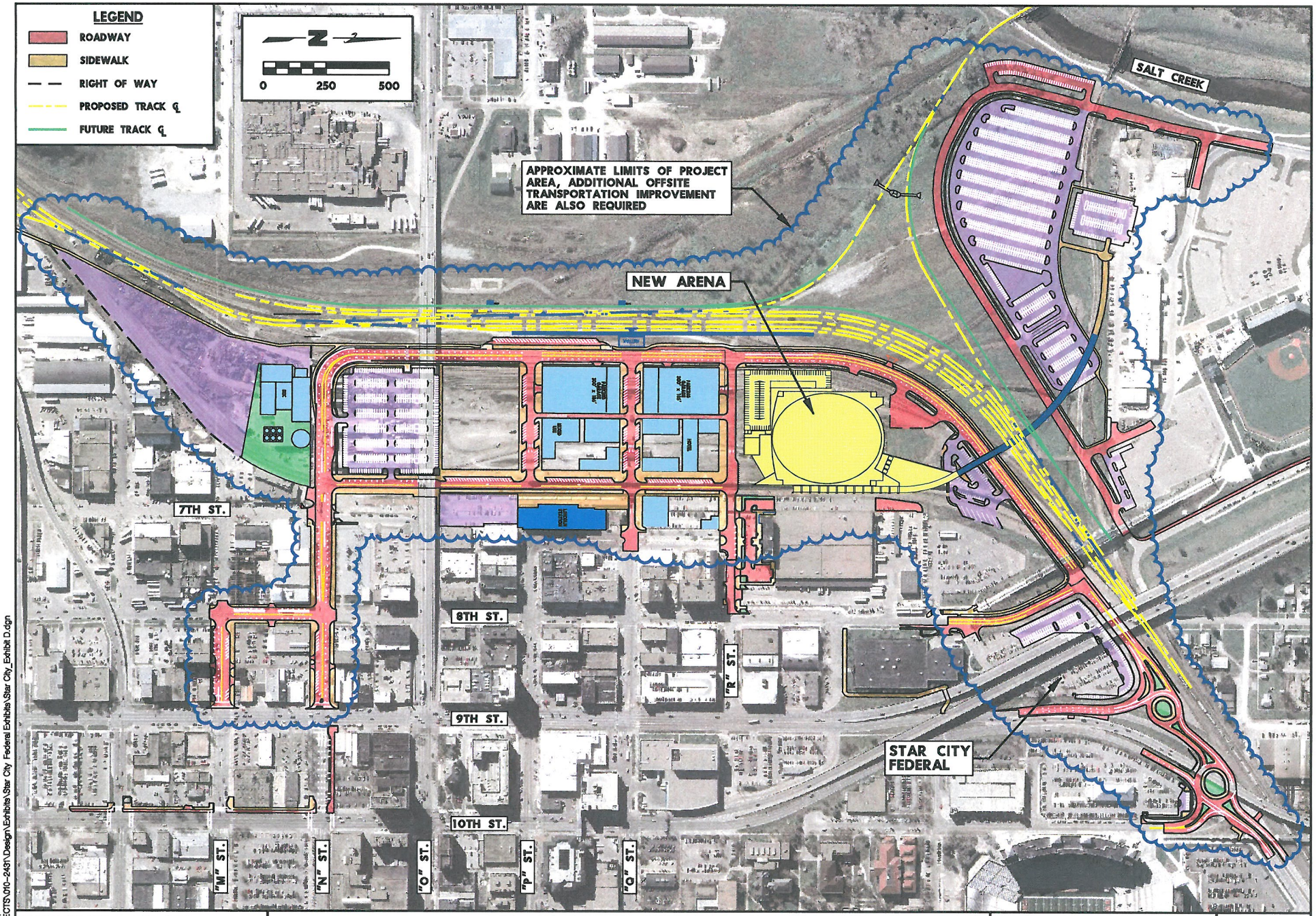
PROJECT NO: 010-2431	CITY PARCEL TWO	OLSSON ASSOCIATES	Exhibit
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	B
DATE: February 28th, 2011			Page 1 of 2

CITY PARCEL TWO

CITY PROPERTY TO BE TRANSFERED
LOTS 2 & 3, BLOCK 14, NORTH LINCOLN ADDITION,
LOT 1, BLOCK 6, ORIGINAL TOWN OF LINCOLN,
THE UN-NAMED RIGHT-OF-WAY SOUTH OF BLOCK 14, N. LINCOLN ADD.

A TRACT OF LAND COMPOSED OF A PART OF THE REMAINING PORTION OF LOTS 2 & 3, BLOCK 14, NORTH LINCOLN ADDITION, A PART OF THE REMAINING PORTION OF LOT 1, BLOCK 6, ORIGINAL TOWN OF LINCOLN, AND A PART OF THE UN-NAMED RIGHT-OF-WAY SOUTH OF BLOCK 14, NORTH LINCOLN ADDITION, ALL BEING PART OF LAND ACQUIRED WITH THE 10TH STREET VIADUCT PROJECT, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF SAID LOT 2, BLOCK 14, NORTH LINCOLN ADDITION; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 41 MINUTES 20 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 34.51 FEET TO A POINT ON THE EASTERLY LINE OF LOT 2, CORNHUSKER SHADOWS 1ST ADDITION, SAID POINT ALSO BEING A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 12.24 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 0 DEGREES 50 MINUTES 10 SECONDS, A CHORD BEARING OF SOUTH 8 DEGREES 51 MINUTES 23 SECONDS WEST, AND A CHORD DISTANCE OF 12.24 FEET A POINT OF CURVATURE AND THE POINT OF BEGINNING; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 16.95 FEET, HAVING A RADIUS OF 129.00 FEET, A CENTRAL ANGLE OF 7 DEGREES 31 MINUTES 37 SECONDS, A CHORD BEARING OF SOUTH 13 DEGREES 23 MINUTES 06 SECONDS EAST, AND A CHORD DISTANCE OF 16.93 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 81.90 FEET, HAVING A RADIUS OF 379.00 FEET, A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 51 SECONDS, A CHORD BEARING OF SOUTH 3 DEGREES 25 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 81.74 FEET TO A POINT; THENCE SOUTH 2 DEGREES 45 MINUTES 34 SECONDS WEST, A DISTANCE OF 64.71 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 18.21 FEET, HAVING A RADIUS OF 895.00 FEET, A CENTRAL ANGLE OF 1 DEGREES 09 MINUTES 58 SECONDS, A CHORD BEARING OF SOUTH 2 DEGREES 10 MINUTES 35 SECONDS WEST, AND A CHORD DISTANCE OF 18.21 FEET TO A POINT; THENCE NORTH 88 DEGREES 24 MINUTES 24 SECONDS WEST, A DISTANCE OF 12.68 FEET TO A POINT ON THE EAST LINE OF SAID LOT 2, CORNHUSKER SHADOWS 1ST ADDITION; THENCE NORTH 1 DEGREES 49 MINUTES 39 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 33.16 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 147.86 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 10 DEGREES 06 MINUTES 11 SECONDS, A CHORD BEARING OF NORTH 3 DEGREES 23 MINUTES 13 SECONDS EAST, AND A CHORD DISTANCE OF 147.66 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 2,477 SQUARE FEET, (0.06 ACRES) MORE OR LESS.



DATE: 2/28/2011
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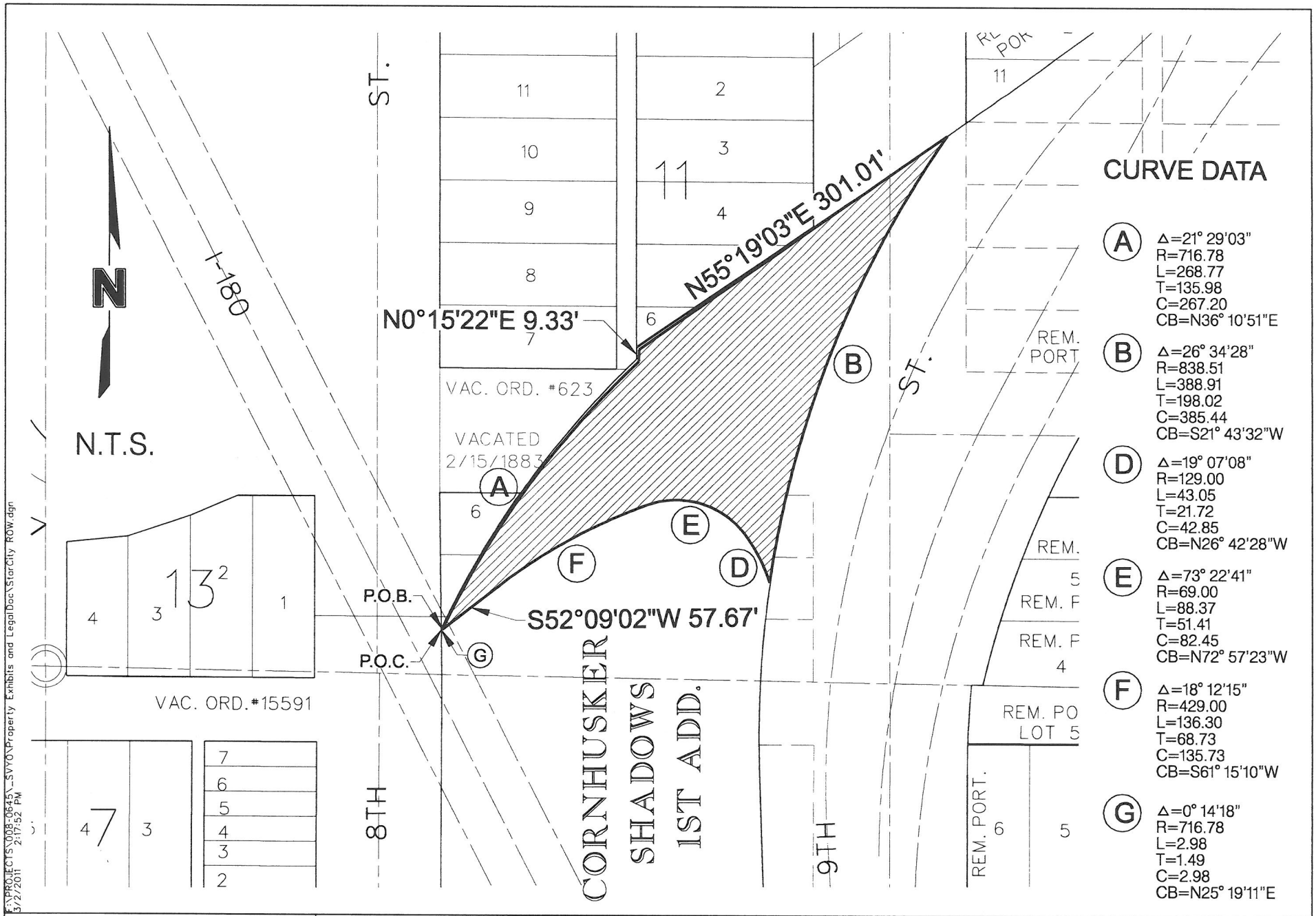
PROJECT NO:	010-2431
DRAWN BY:	JJW
DATE:	2/28/2011

WEST HAYMARKET REDEVELOPMENT AREA

OLSSON ASSOCIATES

EXHIBIT

D



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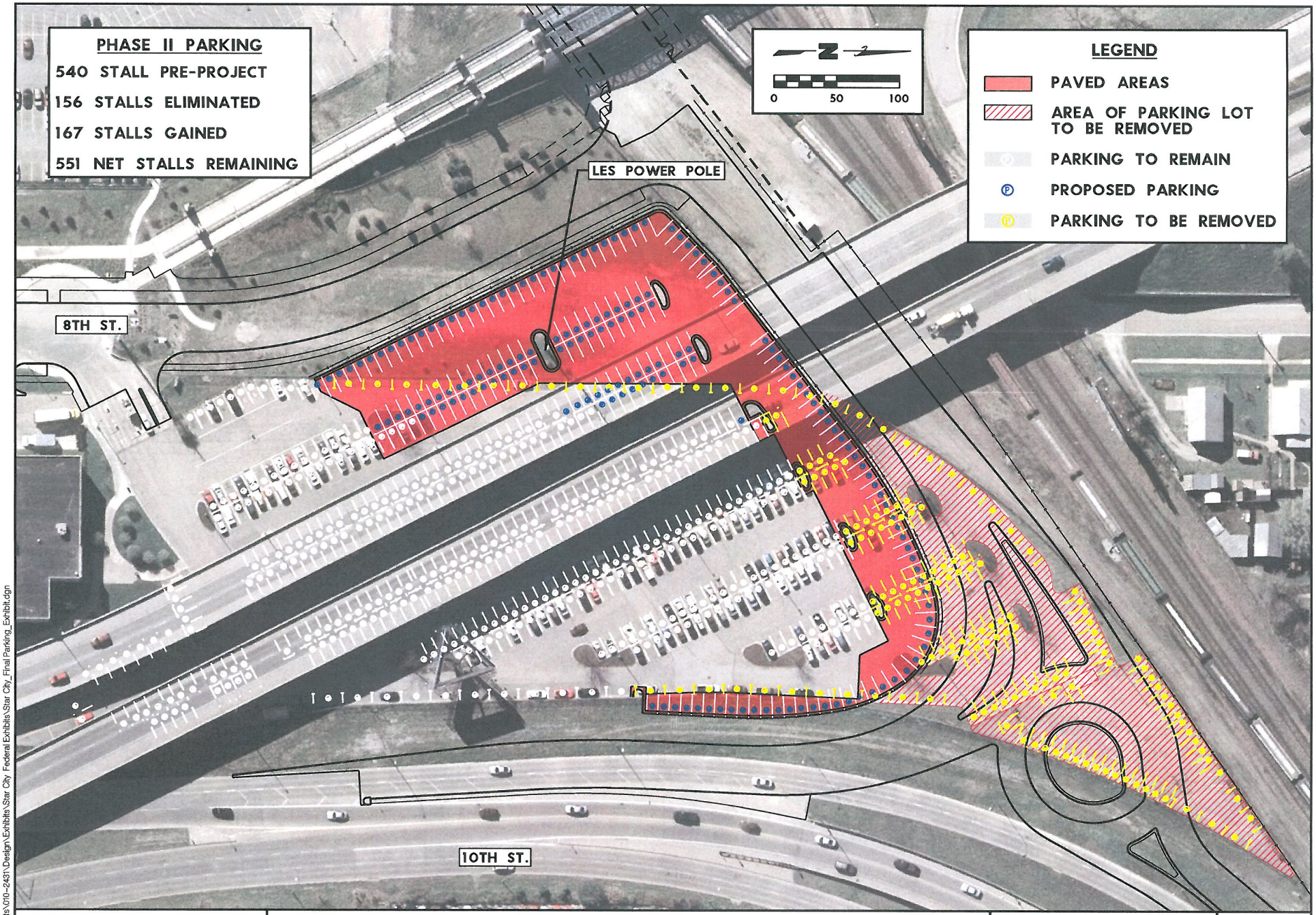
PROJECT NO: 010-2431	STAR/CITY FEDERAL PARCEL	OLSSON ASSOCIATES	Exhibit
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	E
DATE: February 28th, 2011			Page 1 of 2

TRACT NO 4
STAR CITY / FEDERAL, LLC

RIGHT-OF-WAY
A PART OF LOT 2, CORNHUSKER SHADOWS 1ST ADDITION

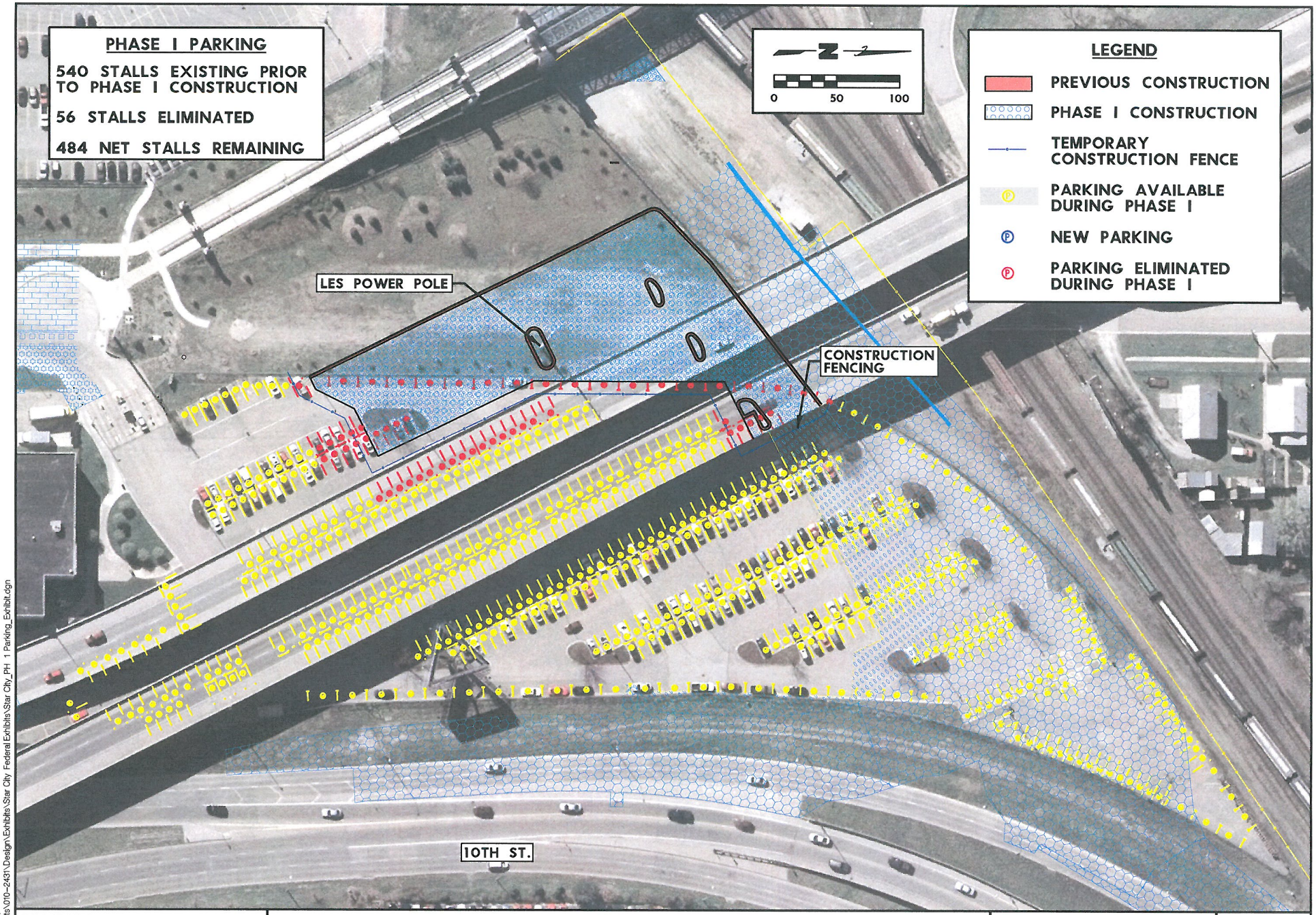
A TRACT OF LAND COMPOSED OF A PORTION OF LOT 2, CORNHUSKER SHADOWS 1st ADDITION, LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2, SAID POINT BEING 50.00 FEET EAST OF THE CENTERLINE OF VACATED 8TH STREET; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, ON A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 716.78 FEET, A CENTRAL ANGLE OF 0 DEGREES 14 MINUTES 18 SECONDS, A CHORD BEARING OF NORTH 25 DEGREES 19 MINUTES 11 SECONDS EAST, AND A CHORD DISTANCE OF 2.98 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 268.77 FEET, HAVING A RADIUS OF 716.78 FEET, A CENTRAL ANGLE OF 21 DEGREES 29 MINUTES 03 SECONDS, A CHORD BEARING OF NORTH 36 DEGREES 10 MINUTES 51 SECONDS EAST, AND A CHORD DISTANCE OF 267.20 FEET TO A POINT ON THE EAST LINE OF THE NORTH/SOUTH ALLEY IN BLOCK 11, NORTH LINCOLN ADDITION; THENCE NORTH 00 DEGREES 15 MINUTES 22 SECONDS EAST, ALONG THE EAST LINE OF SAID NORTH/SOUTH ALLEY, SAID LINE ALSO BEING THE NORTHWESTERLY LINE OF SAID LOT 2, A DISTANCE OF 9.33 FEET TO A POINT; THENCE NORTH 55 DEGREES 19 MINUTES 03 SECONDS EAST, ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, A DISTANCE OF 301.01 FEET TO THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTHWESTERLY ALONG THE EAST LINE OF SAID LOT 2, ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 388.91 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 26 DEGREES 34 MINUTES 28 SECONDS, A CHORD BEARING OF SOUTH 21 DEGREES 43 MINUTES 32 SECONDS WEST, AND A CHORD DISTANCE OF 385.44 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 43.05 FEET, HAVING A RADIUS OF 129.00 FEET, A CENTRAL ANGLE OF 19 DEGREES 07 MINUTES 08 SECONDS, A CHORD BEARING OF NORTH 26 DEGREES 42 MINUTES 28 SECONDS WEST, AND A CHORD DISTANCE OF 42.85 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 88.37 FEET, HAVING A RADIUS OF 69.00 FEET, A CENTRAL ANGLE OF 73 DEGREES 22 MINUTES 41 SECONDS, A CHORD BEARING OF NORTH 72 DEGREES 57 MINUTES 23 SECONDS WEST, AND A CHORD DISTANCE OF 82.45 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 136.30 FEET, HAVING A RADIUS OF 429.00 FEET, A CENTRAL ANGLE OF 18 DEGREES 12 MINUTES 15 SECONDS, A CHORD BEARING OF SOUTH 61 DEGREES 15 MINUTES 10 SECONDS WEST, AND A CHORD DISTANCE OF 135.73 FEET TO A POINT; THENCE SOUTH 52 DEGREES 09 MINUTES 02 SECONDS WEST, A DISTANCE OF 57.67 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 41,075 SQUARE FEET, (0.94 ACRES) MORE OR LESS.



PROJECT NO: 010-2431	FINAL PARKING LOT LAYOUT	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JJW			G
DATE: 2/28/2011			PAGE 1 OF 3

DATE: 2/28/2011
DGN: F:\Projects\010-2431\Design\Exhibits\Star City Federal Exhibits\Star City_Final Parking_Exhibit.dgn



PROJECT NO: 010-2431	PHASE I PARKING LOT CONSTRUCTION	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JJW			G
DATE: 2/28/2011			PAGE 2 OF 3

DATE: 2/28/2011
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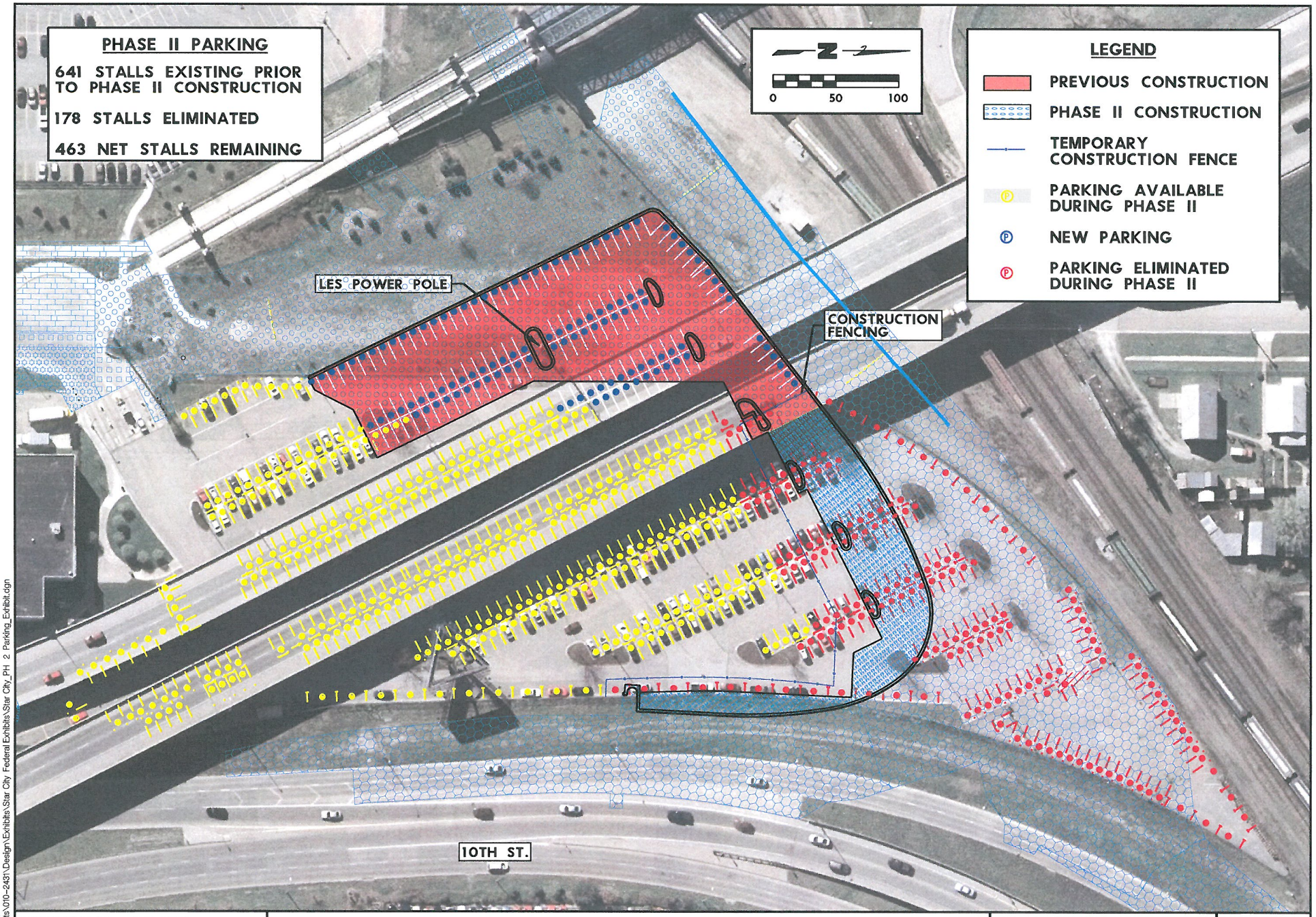

DATE: 2/28/2011
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PROJECT NO: 010-2431	PHASE II PARKING LOT CONSTRUCTION	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JJW			G
DATE: 2/28/2011			PAGE 3 OF 3

(FOR REGISTER OF DEEDS STAMP)

EASEMENT FOR UTILITY LINES AND/OR UNDERGROUND UTILITY FACILITIES

KNOW ALL MEN BY THESE PRESENTS:

That the West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska, of Lancaster County, Nebraska, in consideration of $1.00, receipt of which is hereby acknowledged, and the further payment of a sum to make total payment of $1.00 for all poles and all anchors and other necessary equipment when set on the following described property, do hereby grant and convey unto the LINCOLN ELECTRIC SYSTEM (hereinafter referred to as Grantee, whether one or more)
Windstream Nebraska, Inc.
Time Warner Entertainment -- Advance/Newhouse Partnership

its (their) lessees, successors and assigns, the permanent right, privilege and easement of a right-of-way to construct, reconstruct, operate and remove all necessary underground electric facilities, communications lines and other at grade necessary equipment in connection therewith, on, under, and across the following property situated in Lancaster County, Nebraska, more particularly shown and described on:

Exhibit A, Page 1 of 2 and Page 2 of 2
Attached hereto

The Grantee shall also have the non-exclusive privilege and easement of ingress and egress across that portion of the property to its (their) officers and employees for any purpose necessary in connection with the construction, reconstruction operation, maintenance, inspection and removal of said line and underground utility facilities.

The Grantee shall also have the right at any time to trim or remove such trees and underbrush as may in any way endanger or interfere with the safe operation of the lines, underground electric facilities and equipment used in connection therewith.

The Grantee shall also at all times exercise reasonable effort to avoid injury or damage to the landscaping, and improvements of the Grantor, and the Grantee shall repair any such damage and loss arising or occurring to such property solely by reason of the construction, operation, maintenance and removal of any utility lines, however, in the event that all or part of the underground utility facilities which may be installed on said easement right-of-way becomes defective or unserviceable in the sole judgment of the Grantee, the Grantee shall have the right, to maintain, repair or replace such underground facilities. Since this Easement traverses a parking lot critical to the continued viability of the office building located on Lot 1 Cornhusker Shadows 1st Addition to Lincoln Lancaster Co., NE, LES agrees that the facilities built on this easement shall not reduce the number of allowed parking stalls below 551, and shall not unreasonably interfere with the usual vehicle movements within said parking lot. Grantee shall perform any work in connection with this Easement in a good and workmanlike manner with reasonable effort to minimize interference with the use of the herein described property except as may be reasonably necessary for Grantee to carry out the terms and conditions of this Easement. Grantor, on behalf of itself and its tenants and successors in interest reserves the right to use the surface of the easement area for vehicular parking, landscaping, curbing, paving, signs, and otherwise provided such uses do not interfere with the rights of Grantee and comply with applicable provisions of the National Electrical Safety Code and the Lincoln Municipal Code.

The Grantee agrees that should the utility lines and underground utility facilities constructed hereunder be abandoned for a period of five years, the right-of-way or easement hereby secured shall then cease and terminate, and this easement shall be of no further force and effect.

Signed the _____ day of _____, A.D., 20 _____.

_____
Chair, West Haymarket JPA Board of Representatives

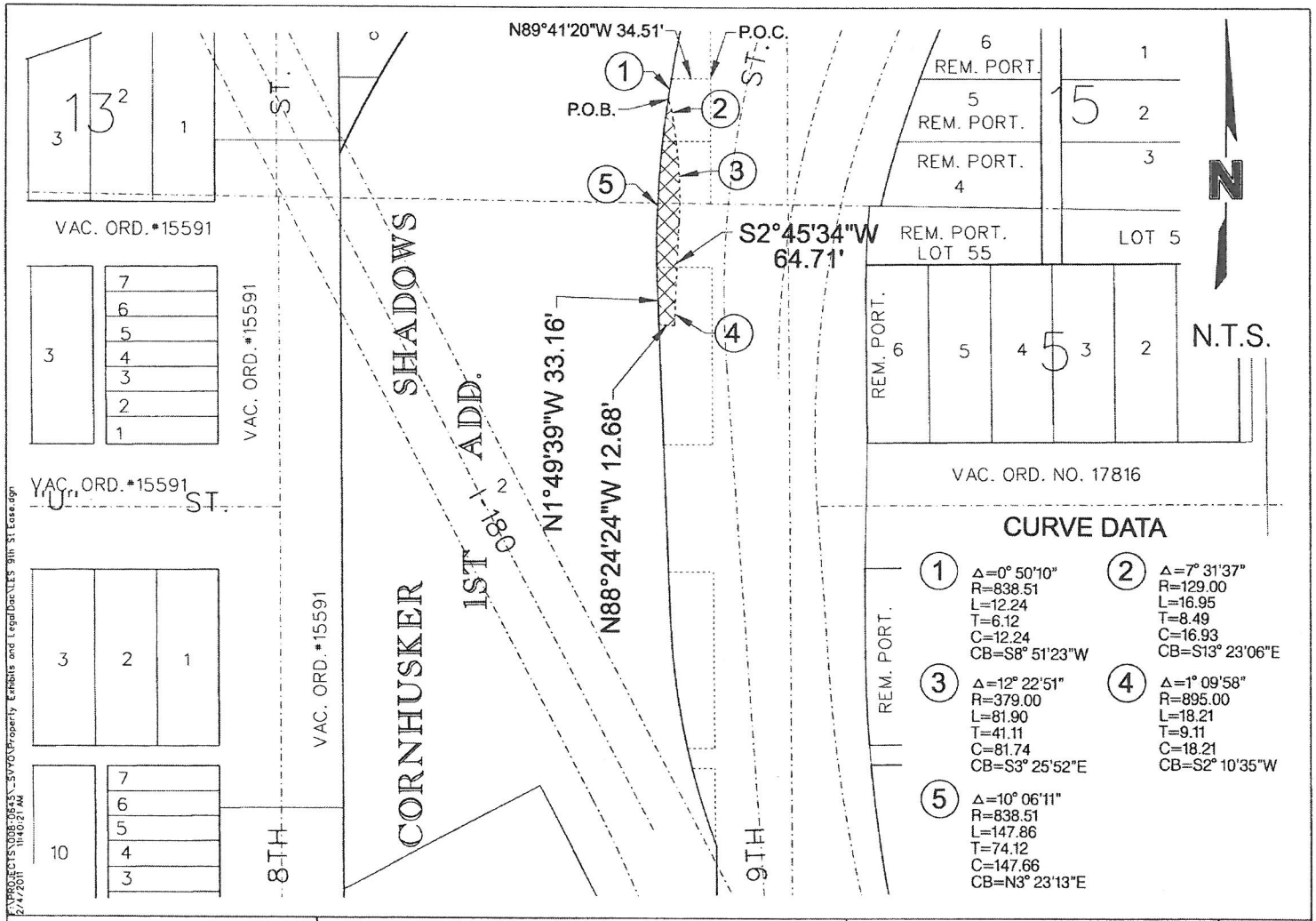
STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

On this _____ day of _____, 20___, before me the undersigned, a Notary Public in and for said County and State, personally appeared _____, Chair of the West Haymarket JPA Board of Representatives, personally to me known to be identical person(s) who signed the foregoing instrument as Grantor and who acknowledged the execution thereof to be a voluntary act and deed for the purpose therein expressed.

WITNESS my hand and notarial seal the date above written.

My Commission expires on the _____ day of _____, 20_____.

_____
Notary Public



PROJECT NO: 010-2431	LES UTILITY EASEMENT WITHIN THE 10TH STREET VIADUCT ROW	OLSSON ASSOCIATES	Exhibit
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	A
DATE: February 2nd, 2011			Page 1 of 2

PERMANENT EASEMENT
LOTS 2 & 3, BLOCK 14, NORTH LINCOLN ADDITION,
LOT 1, BLOCK 6, ORIGINAL TOWN OF LINCOLN,
THE UN-NAMED RIGHT-OF-WAY SOUTH OF BLOCK 14, NORTH LINCOLN ADD.

DESCRIPTION OF A UTILITY EASEMENT ACROSS A TRACT OF LAND COMPOSED OF A PART OF THE REMAINING PORTION OF LOTS 2 & 3, BLOCK 14, NORTH LINCOLN ADDITION, A PART OF THE REMAINING PORTION OF LOT 1, BLOCK 6, ORIGINAL TOWN OF LINCOLN, AND A PART OF THE UN-NAMED RIGHT-OF-WAY SOUTH OF SAID BLOCK 14, NORTH LINCOLN ADDITION, ALL BEING PART OF LAND ACQUIRED FOR RIGHT-OF-WAY WITH THE 10TH STREET VIADUCT PROJECT, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE NORTHEAST CORNER OF LOT 2, BLOCK 14, NORTH LINCOLN ADDITION; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 41 MINUTES 20 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 34.51 FEET TO A POINT ON THE EASTERLY LINE OF LOT 2, CORNHUSKER SHADOWS 1ST ADDITION, SAID POINT ALSO BEING A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 12.24 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 0 DEGREES 50 MINUTES 10 SECONDS, A CHORD BEARING OF SOUTH 8 DEGREES 51 MINUTES 23 SECONDS WEST, AND A CHORD DISTANCE OF 12.24 FEET A POINT OF CURVATURE AND THE POINT OF BEGINNING; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 16.95 FEET, HAVING A RADIUS OF 129.00 FEET, A CENTRAL ANGLE OF 7 DEGREES 31 MINUTES 37 SECONDS, A CHORD BEARING OF SOUTH 13 DEGREES 23 MINUTES 06 SECONDS EAST, AND A CHORD DISTANCE OF 16.93 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 81.90 FEET, HAVING A RADIUS OF 379.00 FEET, A CENTRAL ANGLE OF 12 DEGREES 22 MINUTES 51 SECONDS, A CHORD BEARING OF SOUTH 3 DEGREES 25 MINUTES 52 SECONDS EAST, AND A CHORD DISTANCE OF 81.74 FEET TO A POINT; THENCE SOUTH 2 DEGREES 45 MINUTES 34 SECONDS WEST, A DISTANCE OF 64.71 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 18.21 FEET, HAVING A RADIUS OF 895.00 FEET, A CENTRAL ANGLE OF 1 DEGREES 09 MINUTES 58 SECONDS, A CHORD BEARING OF SOUTH 2 DEGREES 10 MINUTES 35 SECONDS WEST, AND A CHORD DISTANCE OF 18.21 FEET TO A POINT; THENCE NORTH 88 DEGREES 24 MINUTES 24 SECONDS WEST, A DISTANCE OF 12.68 FEET TO A POINT ON THE EAST LINE OF SAID LOT 2, CORNHUSKER SHADOWS 1ST ADDITION; THENCE NORTH 1 DEGREES 49 MINUTES 39 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 33.16 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 147.86 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 10 DEGREES 06 MINUTES 11 SECONDS, A CHORD BEARING OF NORTH 3 DEGREES 23 MINUTES 13 SECONDS EAST, AND A CHORD DISTANCE OF 147.66 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 2,477 SQUARE FEET, (0.06 ACRES) MORE OR LESS.

I HEREBY CERTIFY THE LOCATION OF THE EASEMENT ACROSS THE PROPERTY DESCRIBED ABOVE, WHICH WAS LOCATED BY ME OR UNDER MY DIRECT SUPERVISION.

SIGNED THIS 2ND DAY OF FEBRUARY, 2011

THOMAS D. BRUGGEMAN LS NO 454

NEBRASKA REGISTERED LS-454 2/2/11 LAND SURVEYOR THOMAS D. BRUGGEMAN

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(FOR REGISTER OF DEEDS STAMP)

RIGHT OF WAY EASEMENT

That the West Haymarket Joint Public Agency, a political subdivision of the State of Nebraska, herein called "Grantor", whether one or more, record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar and other valuable consideration ($1.00 and OVC), duly paid the receipt whereof is duly acknowledged, and the further consideration of the performance of the covenants and agreements by Grantee as hereinafter set out and expressed, does hereby GRANT, REMISE, and RELINQUISH unto the CITY OF LINCOLN, NEBRASKA, a municipal corporation, d/b/a/ LINCOLN ELECTRIC SYSTEM, its successors and assigns, herein called "LES" as follows:

The permanent right, privilege, and easement to survey, construct, reconstruct, relocate, maintain, inspect, operate, alter and replace electric transmission lines and appurtenances thereto including structures, structure foundations, poles, pole foundations, down guys, anchors, insulators, underground cables, communication lines, wires and supports upon, above, along, under, in and across the following described real property, more particularly described on:

Exhibit A, Page 1 of 2 and Page 2 of 2
Attached hereto

TO HAVE AND TO HOLD UNTO THE CITY OF LINCOLN, NEBRASKA, d/b/a LINCOLN ELECTRIC SYSTEM, its successors and assigns, forever, or until released by LES.

LES shall have the right of reasonable ingress and egress to and from the easement area from public roads and streets and from adjacent properties for its employees, contractors, vehicles, and equipment, and shall have the right to remove, control, impede the growth of, trim, and clear away any trees, weeds, rocks, shrubs, roots, limbs or other surface materials which now or at any future time are located on, overhang, or extend onto the easement area and which interfere with or jeopardize lines to be constructed or installed by the terms of this easement. Grantor hereby grants to LES the right to top or remove any trees which, in falling would come within 15 feet of the nearest electric line conductor. LES will remove all brush, trimmings and debris at its expense.

It is the intention of the parties hereto that Grantor is hereby granting the uses herein specified without divesting Grantor of title and ownership of the rights to use and enjoy the above-described property for any purpose except the construction of buildings or structures, storage of any flammable material, metal, or other personal property, or use of the area in any way which would, endanger or be a hazard to or interfere with, the rights of LES to use the same for the purpose herein expressed in accordance with the terms hereof and subject to any prior leases or easements of record heretofore granted to other parties. Grantor shall not change or alter the grade of the right-of-way described hereinabove without the prior written approval of LES.

As soon as possible following completion of any construction by LES in the easement area, LES will cause to be removed from the property hereinabove described all debris and construction equipment and restore the premises to the extent practical.

Since this Easement traverses a parking lot critical to the continued viability of the office building located on Lot 1 Cornhusker Shadows 1st Addition to Lincoln Lancaster Co., NE, LES agrees that the transmission line built on this easement shall not reduce the number of allowed parking stalls below 551, and except in connection with maintenance or repair purposes on the transmission line, LES shall not unreasonably interfere with the usual vehicle movements within said parking lot. LES further agrees the relocated pole shall be located in the location shown on Exhibit A, attached hereto.

THIS INSTRUMENT, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, lessees, successors, and assigns of the respective parties, and the easements, rights, obligations, and privileges of LES created by this instrument shall not in any manner be released, waived, or in any way terminated or affected by any delay, failure, or lack of use by LES for any period of time.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20 _____.

X _____ X_____
Chair, West Haymarket JPA Board of Representatives

X _____ X_____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Before me, a Notary Public, qualified for and in said County, personally came _____, Chair of the West Haymarket JPA Board of Representatives, known to me to be the identical person(s) who signed the foregoing instrument and acknowledged the execution thereof to be a voluntary act and deed

WITNESS my hand and notarial seal on this _____ day of _____, 20_____.

_____
Notary Public

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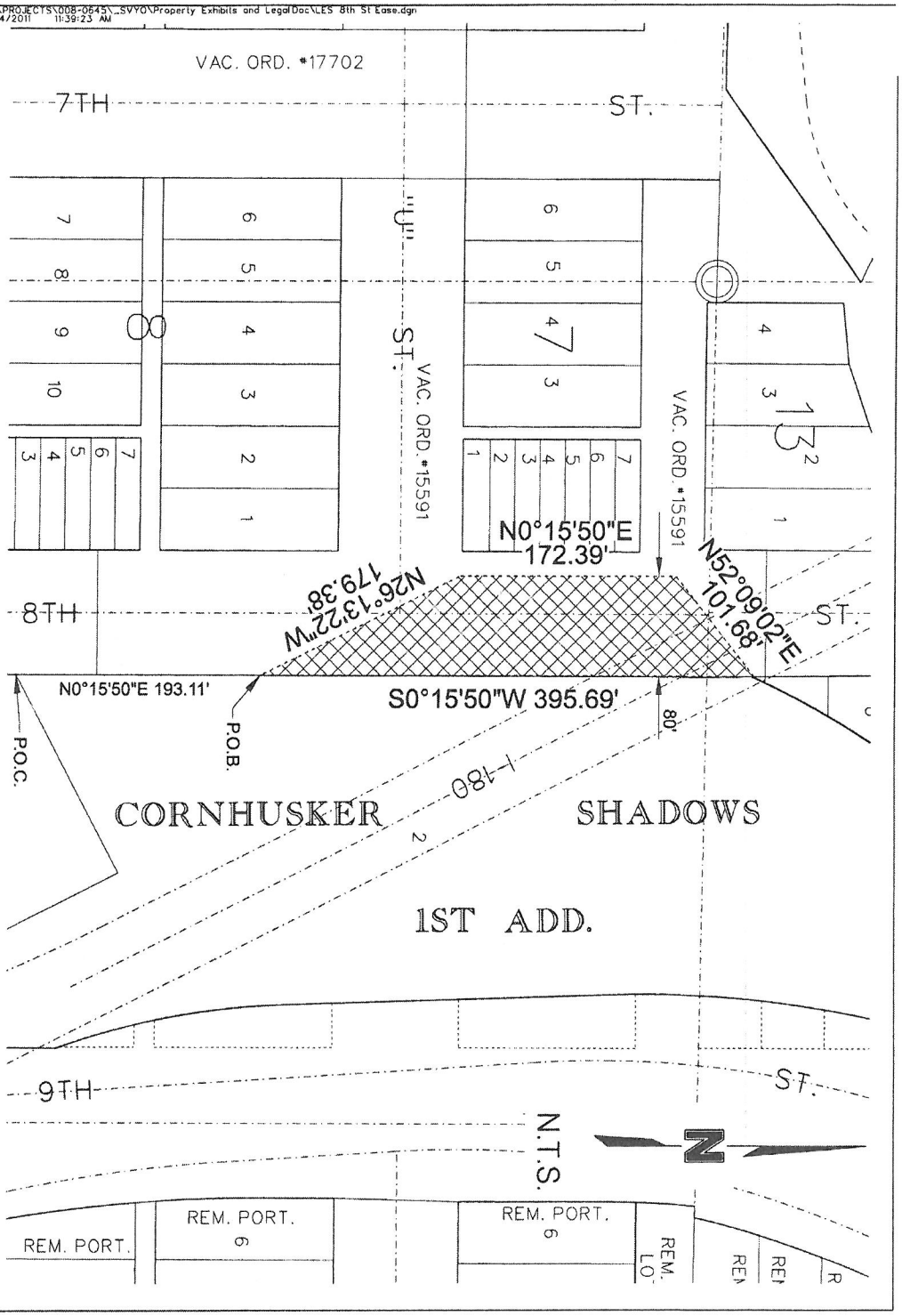

PROJECT NO: 010-2431
DRAWN BY: TDB
DATE: February 2nd, 2011

LES TRANSMISSION LINE EASEMENT
WITHIN VACATED 8TH STREET ROW

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

Exhibit
A
Page 1 of 2

EXHIBIT "A"
PAGE 2 OF 2

PERMANENT EASEMENT
VACATED 8TH STREET,

DESCRIPTION OF A TRANSMISSION LINE EASEMENT ACROSS A TRACT OF LAND COMPOSED OF A PORTION OF VACATED 8TH STREET RIGHT-OF-WAY, LOCATED IN THE EAST HALF OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF LOT 2, CORNHUSKER SHADOWS 1ST ADDITION; THENCE ON AN ASSUMED BEARING OF NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 2, SAID LINE ALSO BEING THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET, A DISTANCE OF 193.11 FEET TO THE POINT OF BEGINNING; THENCE NORTH 26 DEGREES 13 MINUTES 22 SECONDS WEST, A DISTANCE OF 179.38 FEET TO A POINT 80.00 FEET WEST OF THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET; THENCE NORTH 0 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG A LINE 80.00 FEET WEST OF AND PARALLEL WITH THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET, A DISTANCE OF 172.39 FEET TO A POINT; THENCE NORTH 52 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 101.68 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET; THENCE SOUTH 0 DEGREES 15 MINUTES 50 SECONDS WEST, ALONG THE EAST RIGHT-OF-WAY LINE OF VACATED 8TH STREET, A DISTANCE OF 395.69 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 22,723 SQUARE FEET, (0.52 ACRES) MORE OR LESS.

I HEREBY CERTIFY THE LOCATION OF THE EASEMENT ACROSS THE PROPERTY DESCRIBED ABOVE, WHICH WAS LOCATED BY ME OR UNDER MY DIRECT SUPERVISION.

SIGNED THIS 2ND DAY OF FEBRUARY, 2011

THOMAS D. BRUGGEMAN LS NO 454

NEBRASKA REGISTERED LS-454 2/2/11 LAND SURVEYOR THOMAS D. BRUGGEMAN

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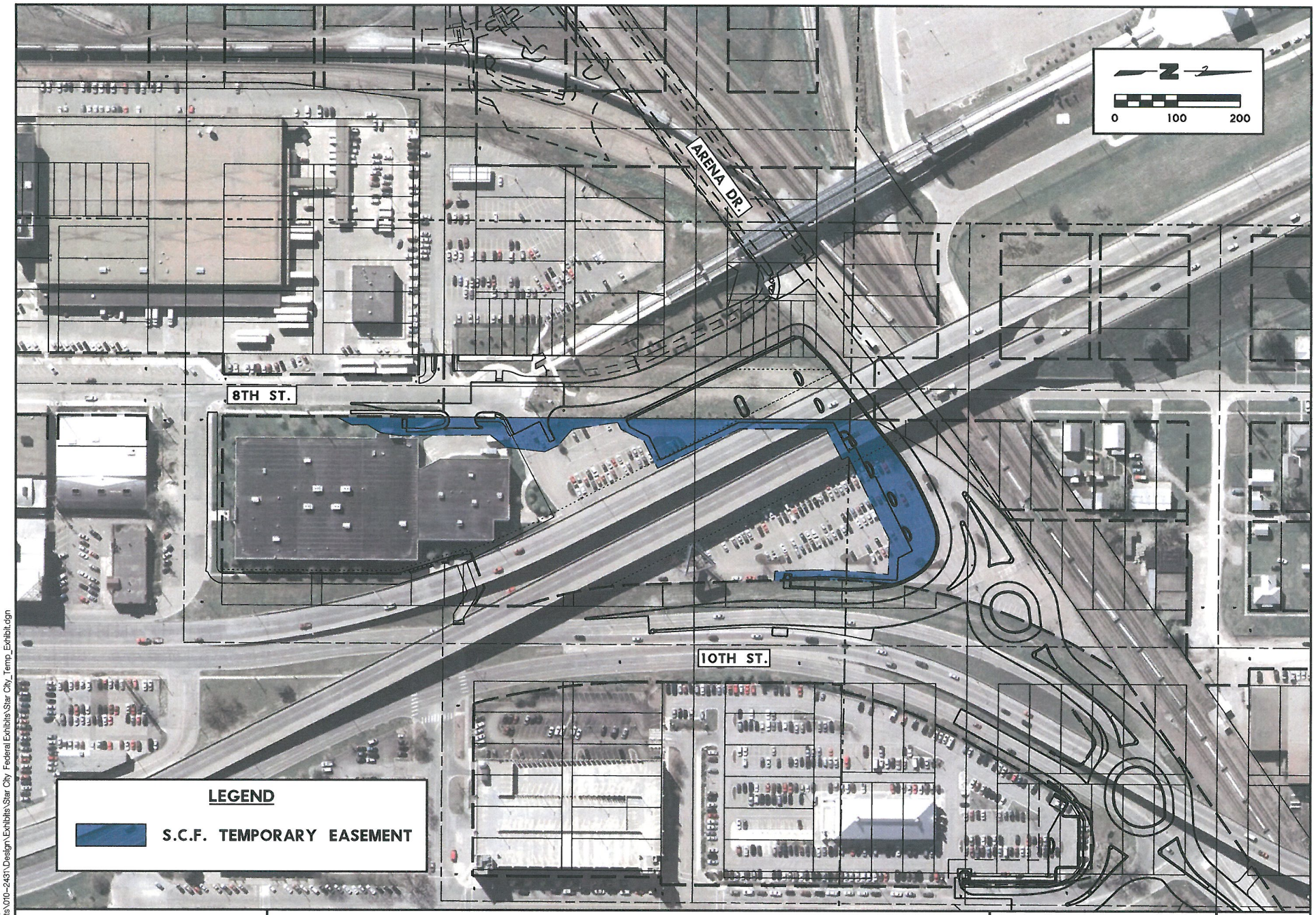

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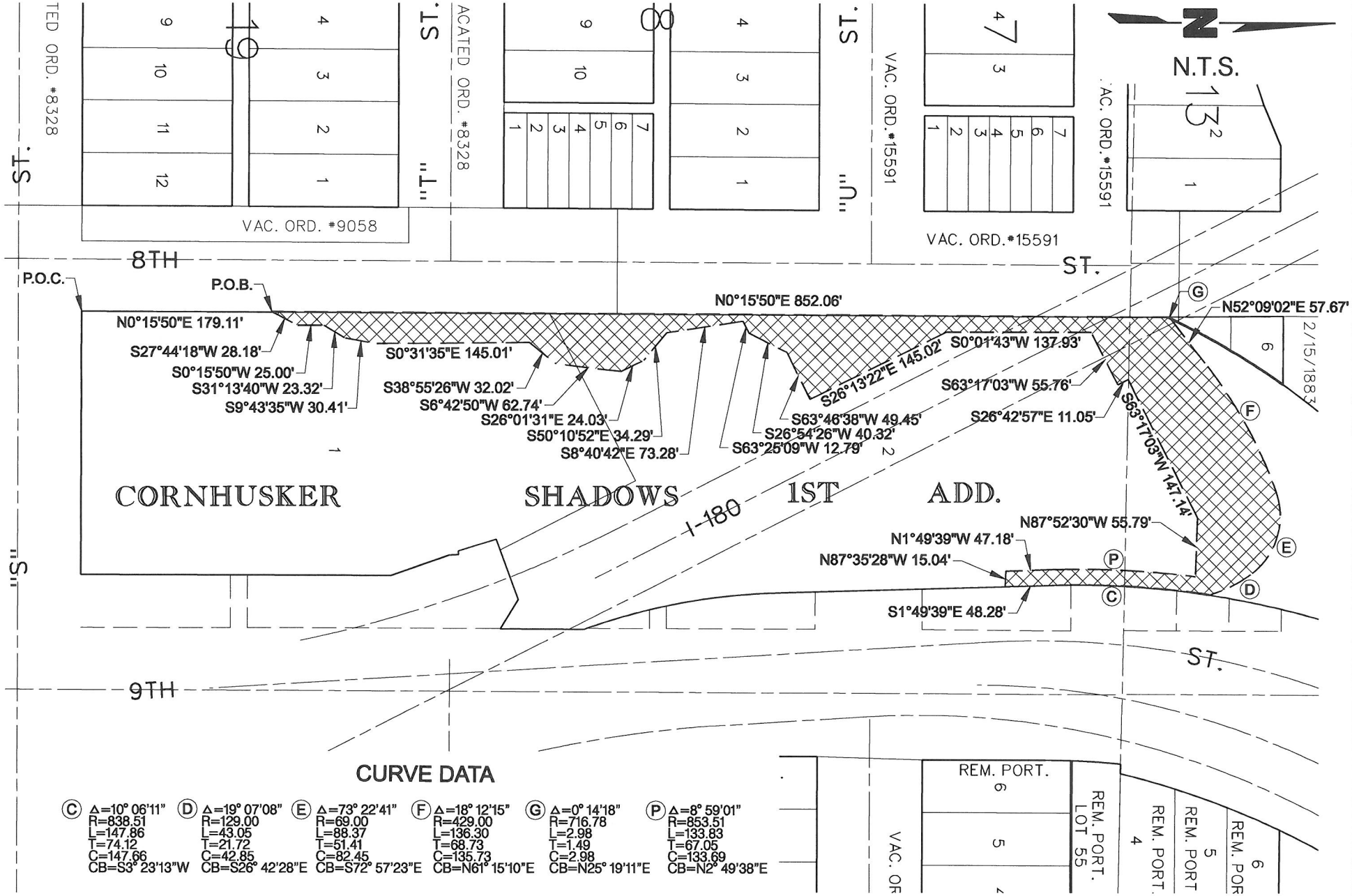
PROJECT NO:	010-2431
DRAWN BY:	JJW
DATE:	3/23/2011

TEMPORARY EASEMENTS

OLSSON ASSOCIATES

EXHIBIT
K
PAGE 1 OF 4



CURVE DATA

(C)	Δ=10° 06'11"	(D) Δ=19° 07'08"	(E) Δ=73° 22'41"	(F) Δ=18° 12'15"	(G) Δ=0° 14'18"	(P) Δ=8° 59'01"
	R=838.51	R=129.00	R=69.00	R=429.00	R=716.78	R=853.51
	L=147.86	L=43.05	L=88.37	L=136.30	L=2.98	L=133.83
	T=74.12	T=21.72	T=51.41	T=68.73	T=1.49	T=67.05
	C=147.66	C=42.85	C=82.45	C=135.73	C=2.98	C=133.69
	CB=S3° 23'13"W	CB=S26° 42'28"E	CB=S72° 57'23"E	CB=N61° 15'10"E	CB=N25° 19'11"E	CB=N2° 49'38"E

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3/2/2011 4:03:16 PM

PROJECT NO: 010-2431	TEMPORARY EASEMENT WITHIN THE STAR/CITY FEDERAL PROPERTY	OLSSON ASSOCIATES	1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	Exhibit
DRAWN BY: TDB				K
DATE: February 28th, 2011				Page 2 of 4

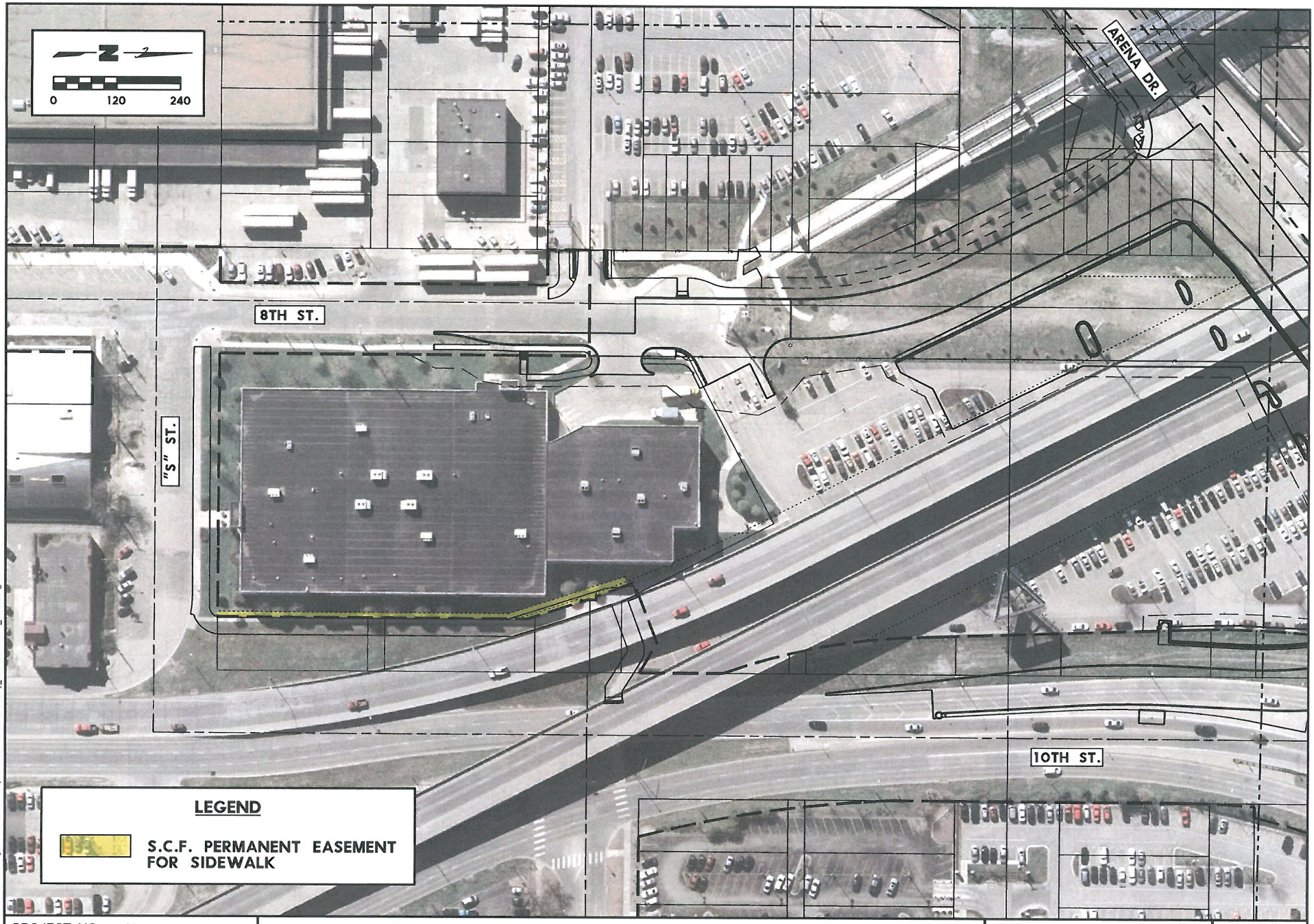
TRACT NO 4
STAR CITY / FEDERAL, LLC

TEMPORARY EASEMENT
A PART OF LOTS 1 & 2, CORNHUSKER SHADOWS 1ST ADDITION

A TRACT OF LAND COMPOSED OF A PORTION OF LOTS 1 & 2, CORNHUSKER SHADOWS 1st ADDITION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FROM THE SOUTHWEST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF NORTH 00 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 179.11 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 15 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID LOTS 1 AND 2, A DISTANCE OF 852.06 FEET TO THE NORTHWEST CORNER OF SAID LOT 2, SAID POINT BEING 50.00 FEET EAST OF THE CENTERLINE OF VACATED 8TH STREET; THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID LOT 2, ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 2.98 FEET, HAVING A RADIUS OF 716.78 FEET, A CENTRAL ANGLE OF 0 DEGREES 14 MINUTES 18 SECONDS, A CHORD BEARING OF NORTH 25 DEGREES 19 MINUTES 11 SECONDS EAST, SAID BEARING BEING ASSUMED, AND A CHORD DISTANCE OF 2.98 FEET TO A POINT; THENCE NORTH 52 DEGREES 09 MINUTES 02 SECONDS EAST, A DISTANCE OF 57.67 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 136.30 FEET, HAVING A RADIUS OF 429.00 FEET, A CENTRAL ANGLE OF 18 DEGREES 12 MINUTES 15 SECONDS, A CHORD BEARING OF NORTH 61 DEGREES 15 MINUTES 10 SECONDS EAST, AND A CHORD DISTANCE OF 135.73 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 88.37 FEET, HAVING A RADIUS OF 69.00 FEET, A CENTRAL ANGLE OF 73 DEGREES 22 MINUTES 41 SECONDS, A CHORD BEARING OF SOUTH 72 DEGREES 57 MINUTES 23 SECONDS EAST, AND A CHORD DISTANCE OF 82.45 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 43.05 FEET, HAVING A RADIUS OF 129.00 FEET, A CENTRAL ANGLE OF 19 DEGREES 07 MINUTES 08 SECONDS, A CHORD BEARING OF SOUTH 26 DEGREES 42 MINUTES 28 SECONDS EAST, AND A CHORD DISTANCE OF 42.85 FEET TO A POINT ON THE EAST LINE OF SAID LOT 2; THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF SAID LOT 2, ON A CURVE IN A COUNTERCLOCKWISE DIRECTION, A DISTANCE OF 147.86 FEET, HAVING A RADIUS OF 838.51 FEET, A CENTRAL ANGLE OF 10 DEGREES 06 MINUTES 11 SECONDS, A CHORD BEARING OF SOUTH 3 DEGREES 23 MINUTES 13 SECONDS WEST, AND A CHORD DISTANCE OF 147.66 FEET TO A POINT; THENCE SOUTH 01 DEGREES 49

MINUTES 39 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 2, A DISTANCE OF 48.28 FEET TO A POINT; THENCE NORTH 87 DEGREES 35 MINUTES 28 SECONDS WEST, A DISTANCE OF 15.04 FEET TO A POINT; THENCE NORTH 1 DEGREES 49 MINUTES 39 SECONDS WEST, A DISTANCE OF 47.18 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ON A CURVE IN A CLOCKWISE DIRECTION, A DISTANCE OF 133.83 FEET, HAVING A RADIUS OF 853.51 FEET, A CENTRAL ANGLE OF 8 DEGREES 59 MINUTES 01 SECONDS, A CHORD BEARING OF NORTH 2 DEGREES 49 MINUTES 38 SECONDS EAST, AND A CHORD DISTANCE OF 133.69 FEET TO A POINT; THENCE NORTH 87 DEGREES 52 MINUTES 30 SECONDS WEST, A DISTANCE OF 55.79 FEET TO A POINT; THENCE SOUTH 63 DEGREES 17 MINUTES 03 SECONDS WEST, A DISTANCE OF 147.14 FEET TO A POINT; THENCE SOUTH 26 DEGREES 42 MINUTES 57 SECONDS EAST, A DISTANCE OF 11.05 FEET TO A POINT; THENCE SOUTH 63 DEGREES 17 MINUTES 03 SECONDS WEST, A DISTANCE OF 55.76 FEET TO A POINT; THENCE SOUTH 0 DEGREES 01 MINUTES 43 SECONDS WEST, A DISTANCE OF 137.93 FEET TO A POINT; THENCE SOUTH 26 DEGREES 13 MINUTES 22 SECONDS EAST, A DISTANCE OF 145.02 FEET TO A POINT; THENCE SOUTH 63 DEGREES 46 MINUTES 38 SECONDS WEST, A DISTANCE OF 49.45 FEET TO A POINT; THENCE SOUTH 26 DEGREES 54 MINUTES 26 SECONDS WEST, A DISTANCE OF 40.32 FEET TO A POINT; THENCE SOUTH 63 DEGREES 25 MINUTES 09 SECONDS WEST, A DISTANCE OF 12.79 FEET TO A POINT; THENCE SOUTH 8 DEGREES 40 MINUTES 42 SECONDS EAST, A DISTANCE OF 73.28 FEET TO A POINT; THENCE SOUTH 50 DEGREES 10 MINUTES 52 SECONDS EAST, A DISTANCE OF 34.29 FEET TO A POINT; THENCE SOUTH 26 DEGREES 01 MINUTES 31 SECONDS EAST, A DISTANCE OF 24.03 FEET TO A POINT; THENCE SOUTH 06 DEGREES 42 MINUTES 50 SECONDS WEST, A DISTANCE OF 62.74 FEET TO A POINT; THENCE SOUTH 38 DEGREES 55 MINUTES 26 SECONDS WEST, A DISTANCE OF 32.02 FEET TO A POINT; THENCE SOUTH 00 DEGREES 31 MINUTES 35 SECONDS EAST, A DISTANCE OF 145.01 FEET TO A POINT; THENCE SOUTH 09 DEGREES 43 MINUTES 35 SECONDS WEST, A DISTANCE OF 30.41 FEET TO A POINT; THENCE SOUTH 31 DEGREES 13 MINUTES 40 SECONDS WEST, A DISTANCE OF 23.32 FEET TO A POINT; THENCE SOUTH 00 DEGREES 15 MINUTES 50 SECONDS WEST, A DISTANCE OF 25.00 FEET TO A POINT; THENCE SOUTH 27 DEGREES 44 MINUTES 18 SECONDS WEST, A DISTANCE OF 28.18 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 47,523 SQUARE FEET (1.09 ACRES) MORE OR LESS.



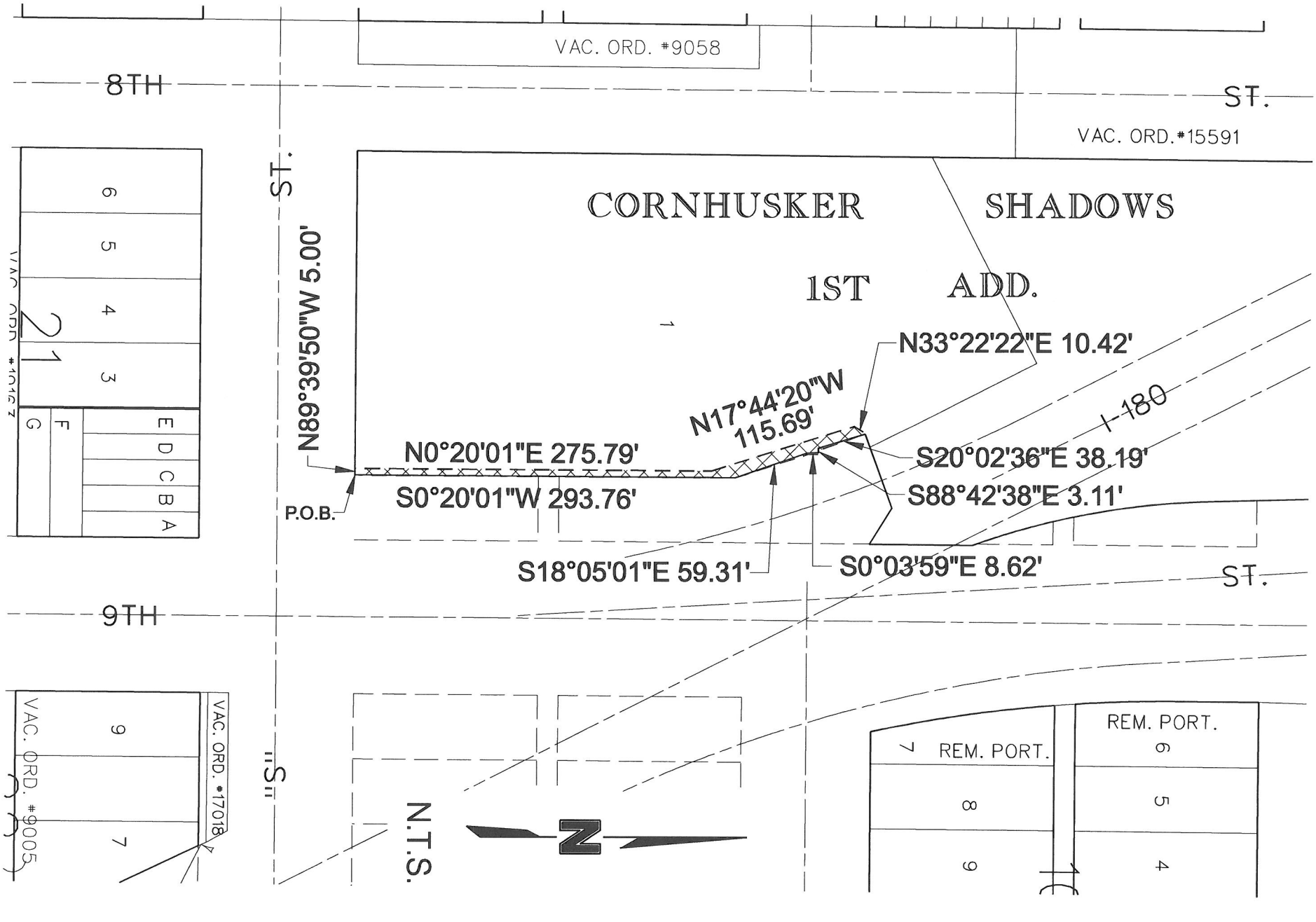
PROJECT NO:	010-2431
DRAWN BY:	JJW
DATE:	3/2/2011

PERMANENT EASEMENT FOR SIDEWALK

OLSSON ASSOCIATES

EXHIBIT L

DATE: 3/2/2011
DGN: F:\Projects\010-2431\Design\Exhibits\Star City Federal Exhibits\Star City_Sidewalk Perm_Exhibit.dgn



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2/28/2011 1:50:21 PM

PROJECT NO: 010-2431	PERMANENT EASEMENT FOR SIDEWALK AT STAR/CITY FEDERAL PROPERTY	OLSSON ASSOCIATES	Exhibit
DRAWN BY: TDB		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	L
DATE: February 28th, 2011			Page 2 of 3

TRACT NO 4
STAR CITY / FEDERAL, LLC

PERMANENT EASEMENT
A PART OF LOT 1, CORNHUSKER SHADOWS 1ST ADDITION

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 1, CORNHUSKER SHADOWS 1st ADDITION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH PRINCIPAL MERIDIAN, LANCASTER COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 39 MINUTES 50 SECONDS WEST, ALONG THE SOUTH LINE OF SAID LOT 1, SAID LINE ALSO BEING THE NORTH RIGHT-OF-WAY LINE OF "S" STREET, A DISTANCE OF 5.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 20 MINUTES 01 SECONDS EAST, ALONG A LINE 5.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1, A DISTANCE OF 275.79 FEET TO A POINT; THENCE NORTH 17 DEGREES 44 MINUTES 20 SECONDS WEST, A DISTANCE OF 115.69 FEET TO A POINT; THENCE NORTH 33 DEGREES 22 MINUTES 22 SECONDS EAST, A DISTANCE OF 10.42 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT 1; THENCE SOUTH 20 DEGREES 02 MINUTES 36 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 38.19 FEET TO A EAST CORNER OF SAID LOT 1; THENCE SOUTH 88 DEGREES 42 MINUTES 38 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 3.11 FEET TO A EAST CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 03 MINUTES 59 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 8.62 FEET TO A EAST CORNER OF SAID LOT 1; THENCE SOUTH 18 DEGREES 05 MINUTES 01 SECONDS EAST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 1, A DISTANCE OF 59.31 FEET TO A EAST CORNER OF SAID LOT 1; THENCE SOUTH 00 DEGREES 20 MINUTES 01 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 293.76 FEET TO THE POINT OF BEGINNING. CONTAINING A CALCULATED AREA OF 2,523 SQUARE FEET, (0.06 ACRES) MORE OR LESS.

RIGHT OF ENTRY AGREEMENT
(Parking Lot & Sidewalk Improvements)

This Right of Entry Agreement is made and entered into this ___day of _____, 2011, by and between the **WEST HAYMARKET JOINT PUBLIC AGENCY,** a political subdivision and corporate body politic of the State of Nebraska ("JPA"), and **STAR CITY FEDERAL LLC,** a Nebraska limited liability company ("Star City Federal").

RECITALS

1. **Existing Star City Federal Property**. Star City Federal presently owns Lots 1 and 2, Cornhusker Shadows 1st Addition. Said Lots 1 and 2 are currently used by Star City Federal for a commercial parking lot and commercial building.

2. **City Property**. The City of Lincoln, Nebraska ("City") presently owns a tract of land composed of a part of Lots 2-7, C.J. Hulls Subdivision, a part of Lot 4, Block 14, North Lincoln Addition, a part of vacated 8th Street, and a part of vacated un-named right-of-way north of C.J. Hulls Subdivision, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("City Parcel One") as legally described and shown on Exhibit "A" to the Land Exchange Agreement (defined below).

The City also owns a tract of land composed of a part of the remaining portion of Lots 2 & 3, Block 14, North Lincoln Addition, a part of the remaining portion of Lot 1, Block 6, Original Town of Lincoln, and a part of the un-named right-of-way south of Block 14, North Lincoln Addition, all being part of land acquired with the 10th Street Viaduct Project, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("City Parcel Two") as legally described and shown on Exhibit "B" to the Land Exchange Agreement (defined below).

3. **Facilities Agreement**. The JPA and the City have entered into a Facilities Agreement dated July 26, 2010 providing that the JPA pay the cost of acquiring and constructing the Lincoln Haymarket Arena project for and on behalf of the City.

4. **Land Exchange**. In order to construct street improvements to provide additional access to the Lincoln Haymarket Arena project, the JPA needs to acquire a portion of Lot 2, Cornhusker Shadows 1st Addition ("Star City Federal Parcel") as more particularly described on Exhibit "E"to the Land Exchange Agreement. Therefore, the City, JPA and Star City Federal have entered into a Land Exchange Agreement which provides for the exchange of the Star City Federal Parcel for City Parcel One and City Parcel Two. The Star City Federal Parcel, City Parcel One, and City Parcel Two are sometimes referred to individually as the "Exchange Property" and when more than one as the "Exchange Properties."

5. Star City Federal entered into the Land Exchange Agreement subject to (1) receiving a satisfactory report concerning marketable title and the environmental condition of City Parcel One and City Parcel Two; (2) the JPA, at its cost and expense, making Star City Federal whole from any loss of parking and functionality of its existing parking lot operation by reconfiguring and reconstructing the Star City Federal parking lot as shown on Exhibit "G" to the Land Exchange Agreement (collectively "Parking Lot Improvements"); and (3) the JPA, at its sole discretion, constructing the Sidewalk Improvements.

6. In order to accommodate the construction schedule for the planned improvements on the Star City Parcel and City Parcel One, it is necessary for the parties to enter into this Right of Entry Agreement in order to allow the Parking Lot Improvements and Sidewalk Improvements to commence prior to transfer of the Exchange Properties.

NOW, THEREFORE, in consideration of and based upon the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

I. Right of Entry.

A. In consideration of the mutual benefits and obligations of this Agreement, Star City Federal hereby grants the JPA the right to enter upon those portions of Lots 1 and 2, Cornhusker Shadows 1st Addition as shown and described on Exhibit K (Parking Lot Improvements) and Exhibit L (Sidewalk Improvements) ("Right of Entry") for the following purposes and no others:

(i) Star City Federal Parking Lot Improvements.

(1) JPA Requirements. The JPA, at its expense, will construct the Parking Lot Improvements as part of the JPA's 10th & Salt Creek Roadway Project in two phases as shown on Exhibit "G". Construction of the Parking Lot Improvements shall not commence until after the University of Nebraska-Lincoln's 2011 Spring Football Game. The Parking Lot Improvements will be constructed of 8-inch asphalt pavement with concrete curb and gutter along with necessary inlets and storm sewer pipes that are required to drain the new parking area. The Parking Lot Improvements will also include parking lot striping. Construction of the new parking area improvements along the west side of the existing parking lot in City Parcel One and in the existing parking lot as shown on Exhibit G as Phase 1 shall be completed prior to the JPA's removal of Star City Federal's existing parking lot improvements located on the Star City Federal Parcel (Phase II on Exhibit G). The JPA shall reimburse Star City Federal for Star City Federal's reasonable expenses associated with removal and relocation of existing light poles and lights (collectively "Lighting") from the Star City Federal Parcel to other locations within the new parking area. This reimbursement shall include the cost of relocation, wiring, and reconnection of existing electrical outlets, cable T.V. outlets, satellite dishes, and other accessories (collectively "Accessories") that are attached to the existing light poles and permit costs.

(2) Star City Federal Requirements. Star City Federal, at JPA's expense, will cause its lighting contractor to wire and install conduits ("Wiring") in the new parking area prior to the JPA's contractor paving the new parking area. In order not to hold up the JPA's paving of the new parking area, Star City Federal agrees to have the Wiring installed between April 25, 2011 and May

1, 2011. Installation of the Wiring will include compacting the backfill at the trench to the requirements outlined in the City of Lincoln Standard Specifications. In the event the Wiring is not timely installed, Star City Federal will be required to bore the conduits for the Wiring under the new pavement at its own cost and expense and without reimbursement. Star City Federal agrees to remove and relocate the existing Lighting and Accessories from the Star City Federal Parcel within three weeks following the University of Nebraska Lincoln's Spring Football Game to be held on April 16, 2011. Star City Federal further understands and agrees that the Lighting and Accessories cannot be installed in the new parking area until after the JPA's construction work associated with the new parking area is substantially complete. If Star City Federal is required to purchase and install additional light poles ("Additional Lighting") in order to comply the City of Lincoln's design Standards for Parking Lots and Design Standards for Outdoor Lighting, the cost thereof shall be at the JPA's expense.

(ii) Sidewalk Improvements. The JPA, at its expense, may remove the existing sidewalks along the east and south sides of the building, conduct minor grading and install new sidewalks along the east and south sides of the Building. Disturbed grassy areas will be resodded. There will be no retaining walls and no slopes with a steepness greater than 4:1. If the sidewalk on either the south side or east side is replaced with a sidewalk of greater width than now existing, or with a surface other than standard concrete, then repair, maintenance and clearing of snow and ice as to such sidewalk shall be the responsibility and expense of the City or JPA.

(iii) The Parking Lot Improvements and Sidewalk Improvements shall be constructed in conformance with the Special Construction Conditions attached as Exhibit "Q" to the Land Exchange Agreement between the parties.

B. It is understood and agreed that JPA shall not be liable for trespass or any other damages or taking of any kind arising out of entering onto the above described portions of Lots 1 and 2, Cornhusker Shadows 1st Addition, for the purposes provided herein, except to the extent caused by negligence or willful misconduct of JPA, its agents, or employees.

C. JPA shall require its contractor or any subcontractors thereof to carry workers' compensation insurance and employer's liability insurance, general liability insurance and automobile liability insurance as specified in the Insurance Requirements for all City Contracts.

D. No work shall commence under this Right of Entry until JPA's contractor and subcontractors thereof have obtained all insurance required under paragraph 1.C. above and such insurance has been approved by the City Attorney for the City of Lincoln.

E. JPA shall require its contractor to conduct all activities in compliance with applicable federal, state, and local laws, rules and regulations including obtaining any necessary permits, approvals, or notifications.

F. This Right of Entry shall be in force and effect from and after the beginning of the work described in paragraph I.A. above and shall terminate upon completion of said work. It is anticipated the work will commence on or about April 18, 2011.

II. Indemnification. JPA agrees to indemnify and hold the Star City Federal harmless against and will reimburse the Star City Federal upon demand for any payment, loss, cost or expense (including reasonable attorney fees) made or incurred by or asserted against the Star City Federal with respect to any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of JPA contained in this Agreement.

III. Severability. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, enforceable or invalid.

IV. Construction. The parties hereto acknowledge and agree that each party has participated in the drafting of this Right of Entry Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that no inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

V. Authority. This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms. Star City Federal is the owner of Lots 1 and 2, Cornhusker Shadows 1st Addition and no other persons have any interest in such real estate which would detrimentally affect the JPA's ability to use the Right of Entry for the purposes stated herein.

VI. Integration and Amendments. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended or modified only in writing signed by both parties.

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska

By: _____
Jayne Snyder, Chair
West Haymarket Joint Public Agency
Board of Representatives

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Jayne Snyder, Chairperson of the West Haymarket Joint Public Agency Board of Representatives, on behalf of the West Haymarket Joint Public Agency.

_____
Notary Public

STAR CITY/FEDERAL, LLC
a Nebraska limited liability company

By:_____
Title:_____
Address: _____
_____
_____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, managing member of Star City Federal, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

_____
Notary Public

RIGHT OF ENTRY AGREEMENT
(Wiring and Additional Lighting)

This Right of Entry Agreement is made and entered into this ___day of _____, 2011, by and between the **CITY OF LINCOLN, NEBRASKA,** a municipal corporation ("City"), and **STAR CITY FEDERAL LLC,** a Nebraska limited liability company ("Star City Federal").

RECITALS

1. **Existing Star City Federal Property**. Star City Federal presently owns Lots 1 and 2, Cornhusker Shadows 1st Addition. Said Lots 1 and 2 are currently used by Star City Federal for a commercial parking lot.

2. **City Property**. The City presently owns a tract of land composed of a part of Lots 2-7, C.J. Hulls Subdivision, a part of Lot 4, Block 14, North Lincoln Addition, a part of vacated 8th Street, and a part of vacated un-named right-of-way north of C.J. Hulls Subdivision, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("City Parcel One") as legally described and shown on Exhibit "A" to the Land Exchange Agreement (defined below).

The City also owns a tract of land composed of a part of the remaining portion of Lots 2 & 3, Block 14, North Lincoln Addition, a part of the remaining portion of Lot 1, Block 6, Original Town of Lincoln, and a part of the un-named right-of-way south of Block 14, North Lincoln Addition, all being part of land acquired with the 10th Street Viaduct Project, located in the East Half of Section 23, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska ("City Parcel Two") as legally described and shown on Exhibit "B" to the Land Exchange Agreement (defined below).

3. **Facilities Agreement**. The West Haymarket Joint Public Agency ("JPA") and the City have entered into a Facilities Agreement dated July 26, 2010 providing that the JPA pay the cost of acquiring and constructing the Lincoln Haymarket Arena project for and on behalf of the City.

4. **Land Exchange**. In order to construct street improvements to provide additional access to the Lincoln Haymarket Arena project, the JPA needs to acquire a portion of Lot 2, Cornhusker Shadows 1st Addition ("Star City Federal Parcel") as more particularly described on Exhibit "E"to the Land Exchange Agreement. Therefore, the City, JPA and Star City Federal have entered into a Land Exchange Agreement which provides for the exchange of the Star City Federal Parcel for City Parcel One and City Parcel Two. The Star City Federal Parcel, City Parcel One, and City Parcel Two are sometimes referred to individually as the "Exchange Property" and when more than one as the "Exchange Properties."

5. Star City Federal entered into the Land Exchange Agreement subject to (1) receiving a satisfactory report concerning marketable title and the environmental condition of City Parcel One and City Parcel Two; (2) the JPA, at its cost and expense, making Star City Federal whole from any

loss of parking and functionality of its existing parking lot operation by reconfiguring and reconstructing the Star City Federal parking lot as shown on Exhibit "G" to the Land Exchange Agreement (collectively "Parking Lot Improvements"); and (3) the JPA, at its sole discretion, constructing the Sidewalk Improvements. The Land Exchange Agreement further requires Star City Federal to install the Wiring and Additional Lighting associated with the Parking Lot Improvements.

6. In order to accommodate the construction schedule for the planned improvements on the Star City Parcel and City Parcel One, it is necessary for the parties to enter into this Right of Entry Agreement in order to allow the Wiring and Additional Lighting to commence prior to transfer of the Exchange Properties.

NOW, THEREFORE, in consideration of and based upon the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

I. Right of Entry.

A. In consideration of the mutual benefits and obligations of this Agreement, the City hereby grants Star City Federal the right to enter upon City Parcel One as shown on Exhibit G ("Right of Entry") to install the Wiring and Additional Lighting as provided below:

(i) Star City Federal Parking Lot Improvements.

(1) JPA Requirements. The JPA, at its expense, will construct the Parking Lot Improvements as part of the JPA's 10th & Salt Creek Roadway Project in two phases as shown on Exhibit "G". Construction of the Parking Lot Improvements shall not commence until after the University of Nebraska-Lincoln's 2011 Spring Football Game. The Parking Lot Improvements will be constructed of 8-inch asphalt pavement with concrete curb and gutter along with necessary inlets and storm sewer pipes that are required to drain the new parking area. The Parking Lot Improvements will also include parking lot striping. Construction of the new parking area improvements along the west side of the existing parking lot in City Parcel One and in the existing parking lot as shown on Exhibit G as Phase 1 shall be completed prior to the JPA's removal of Star City Federal's existing parking lot improvements located on the Star City Federal Parcel (Phase II on Exhibit G). The JPA shall reimburse Star City Federal for Star City Federal's reasonable expenses associated with removal and relocation of existing light poles and lights (collectively "Lighting") from the Star City Federal Parcel to other locations within the new parking area. This reimbursement shall include the cost of relocation, wiring, and reconnection of existing electrical outlets, cable T.V. outlets, satellite dishes, and other accessories (collectively "Accessories") that are attached to the existing light poles and permit costs.

(2) Star City Federal Requirements. Star City Federal, at JPA's expense, will cause its lighting contractor to wire and install conduits ("Wiring") in the new parking area prior to the JPA's contractor paving the new parking area. In order not to hold up the JPA's paving of the new parking area, Star City Federal agrees to have the Wiring installed between April 25, 2011 and May 1, 2011. Installation of the Wiring will include compacting the backfill at the trench to the

requirements outlined in the City of Lincoln Standard Specifications. In the event the Wiring is not timely installed, Star City Federal will be required to bore the conduits for the Wiring under the new pavement at its own cost and expense and without reimbursement. Star City Federal agrees to remove and relocate the existing Lighting and Accessories from the Star City Federal Parcel within three weeks following the University of Nebraska Lincoln's Spring Football Game to be held on April 16, 2011. Star City Federal further understands and agrees that the Lighting and Accessories cannot be installed in the new parking area until after the JPA's construction work associated with the new parking area is substantially complete. If Star City Federal is required to purchase and install additional light poles ("Additional Lighting") in order to comply the City of Lincoln's design Standards for Parking Lots and Design Standards for Outdoor Lighting, the cost thereof shall be at the JPA's expense.

(ii) Sidewalk Improvements. The JPA, at its expense, may remove the existing sidewalks along the east and south sides of the building, conduct minor grading and install new sidewalks along the east and south sides of the Building. Disturbed grassy areas will be resodded. There will be no retaining walls and no slopes with a steepness greater than 4:1. If the sidewalk on either the south side or east side is replaced with a sidewalk of greater width than now existing, or with a surface other than standard concrete, then repair, maintenance and clearing of snow and ice as to such sidewalk shall be the responsibility and expense of the City or JPA.

(iii) The Parking Lot Improvements and Sidewalk Improvements shall be constructed in conformance with the Special Construction Conditions attached as Exhibit "Q" to the Land Exchange Agreement between the parties.

B. It is understood and agreed that Star City Federal shall not be liable for trespass or any other damages or taking of any kind arising out of entering onto City Parcel One for the purposes provided herein, except to the extent caused by negligence or willful misconduct of Star City Federal, its agents, or employees.

C. Star City Federal shall require its contractor or any subcontractors thereof to carry workers' compensation insurance and employer's liability insurance, general liability insurance and automobile liability insurance as specified in the Insurance Requirements for all City Contracts.

D. No work shall commence under this Right of Entry until Star City Federal's contractor and subcontractors thereof have obtained all insurance required under paragraph 1.C. above and such insurance has been approved by the City Attorney for the City of Lincoln.

E. Star City Federal shall require its contractor to conduct all activities in compliance with applicable federal, state, and local laws, rules and regulations including obtaining any necessary permits, approvals, or notifications.

F. This Right of Entry shall be in force and effect from and after the beginning of the work described in paragraph I.A. above and shall terminate upon completion of said work. It is anticipated the work will commence on or about April 18, 2011.

II. Indemnification. Star City Federal agrees to indemnify and hold the City harmless against and will reimburse the City upon demand for any payment, loss, cost or expense (including reasonable attorney fees) made or incurred by or asserted against the City with respect to any and all damages or deficiencies resulting from any omission, misrepresentation, breach of warranty, or nonfulfillment of any term, provision, covenant, or agreement on the part of Star City Federal contained in this Agreement.

III. Severability. If for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any of the other provisions of this Agreement inoperative, enforceable or invalid.

IV. Construction. The parties hereto acknowledge and agree that each party has participated in the drafting of this Right of Entry Agreement and that this document has been reviewed by the respective legal counsel for the parties hereto and that no inference in favor of, or against, any party shall be drawn by the fact that one party has drafted any portion hereof.

V. Authority. This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms. City is the owner of City Parcel One and no other persons have any interest in such real estate which would detrimentally affect the Star City Federal's ability to use the Right of Entry for the purposes stated herein.

VI. Integration and Amendments. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended or modified only in writing signed by both parties.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

By: _____
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

STAR CITY/FEDERAL, LLC
a Nebraska limited liability company

By:_____
Title:_____
Address: _____
_____
_____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____, managing member of Star City Federal, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

_____
Notary Public

Exhibit Q

Special Construction Conditions

JPA/Star City Federal Exchange Agreement

1. All work shall be completed in a good and workman-like manner.

2. Drainage shall be into storm inlets so that ponding does not occur in the Star City Federal parking lot.

3. Any damage to the underground sensor loops at the entrance to the Star City Federal parking lot as a result of the work by or on behalf of JPA shall be repaired at JPA's expense. Any concrete replacement involving the sensor loops shall be jointless, for the purpose of avoiding damage to the loops by moisture and heaving. Any concrete replacement shall not have more joints than currently exist. The current concrete thickness of the entrance lanes is eight inches with a twelve inch subgrade and any replacement concrete shall be a minimum eight inches in thickness.

4. JPA's construction, during all phases, shall be performed in such a manner to keep reasonable access into and from the Star City Federal parking lot by at least two lanes (one in and one out) at all times. A temporary closing of such lanes for construction may be done during one weekend between 6:00 a.m. Saturday and 6:00 a.m. on Monday rebuilding/repairing the lanes upon at least 72 hours notice to Star City Federal.

5. The loading dock on the west side of the Star City Federal Building is used for truck deliveries and shipments on a daily basis, and will be kept continuously open during construction with access in and out to the fullest extent reasonably possible. Any temporary period during which the dock cannot be kept open shall be for the shortest duration reasonably possible.

7. Any underground lawn irrigation facilities removed or damaged during JPA's construction shall be replaced at JPA's expense as soon as reasonably practicable.

8. All construction work relating to the Star City Federal property shall be accomplished in accordance with the West Haymarket Joint Public Agency (2011) Haymarket Intra-structure Improvements, 10th and Salt Creek Roadway Project No. 870304 construction plans, under seal of John G. Olsen, Professional Engineer, dated March 2, 2011, except as stated herein or in the Exchange Agreement or exhibits thereto.

Dated:_____, 2011

_____	_____
West Haymarket Joint Public Agency	Star City/ Federal LLC

WH 11-29 Introduce: 4-14-11

RESOLUTION NO. WH- _____

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

That the attached Schematic Design drawings from DLR for the Arena are hereby accepted and approved.

Adopted this _____ day of April, 2011.

Introduced by:

_____

Approved as to Form & Legality:

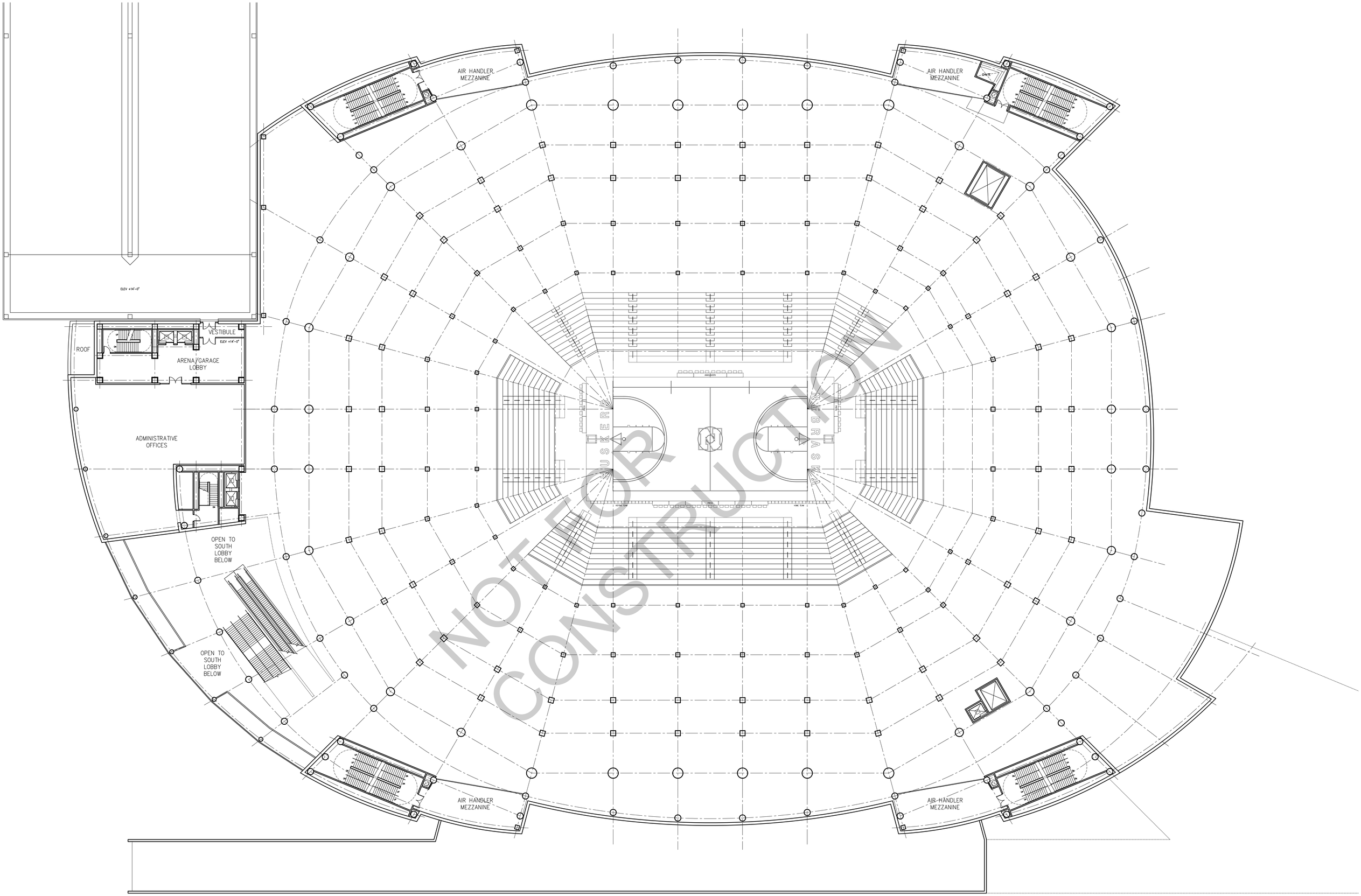
_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler



DLR Group

BVH

The Clark Enersen Partners

FLOOR PLAN - ADMIN / MEZZANINE LEVEL

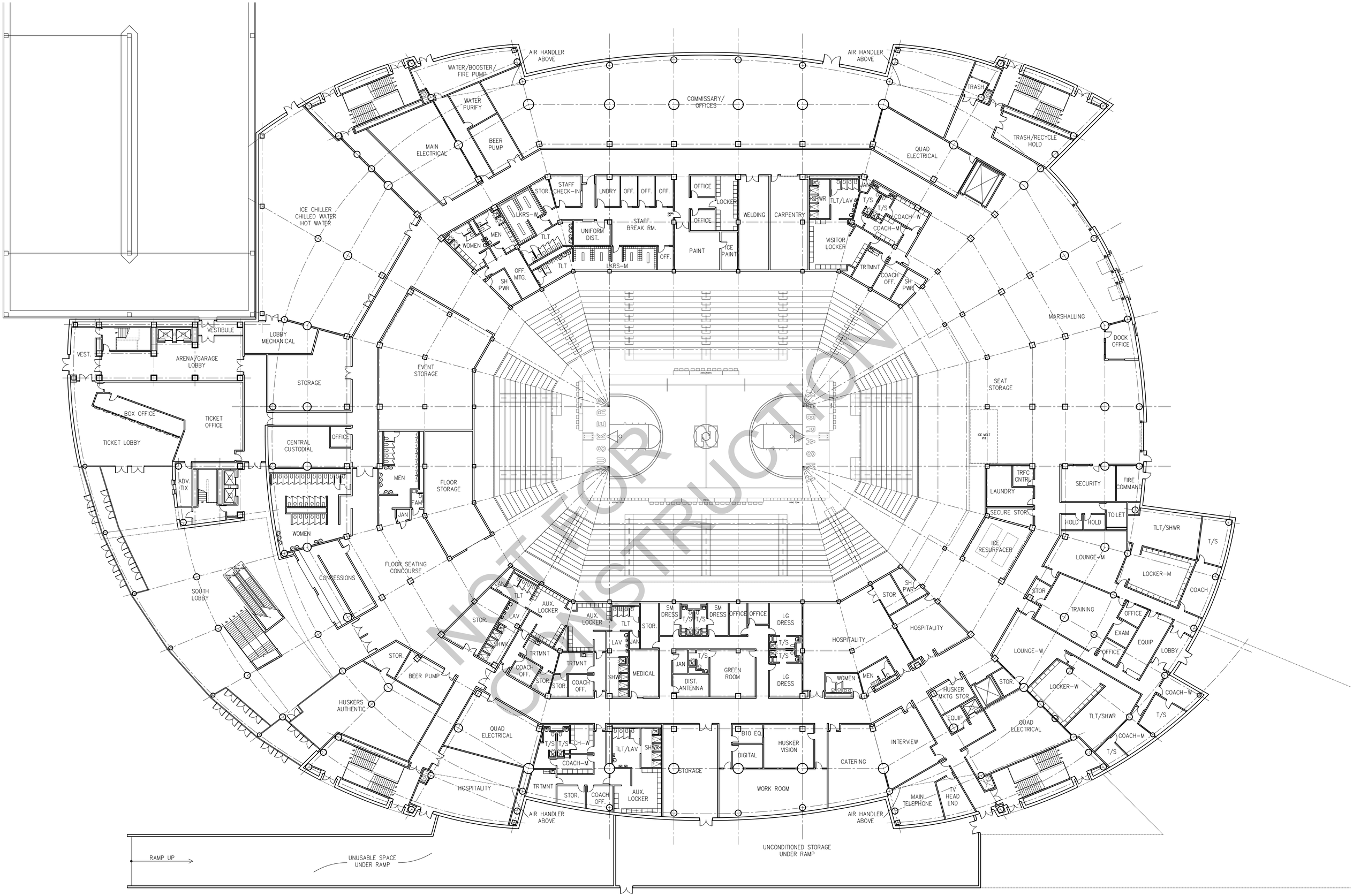
WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

North

0 10 20 40

SCALE: 1/16" = 1'-0"

17 MARCH 2011



DLR Group

BVH

The Clark Enersen Partners

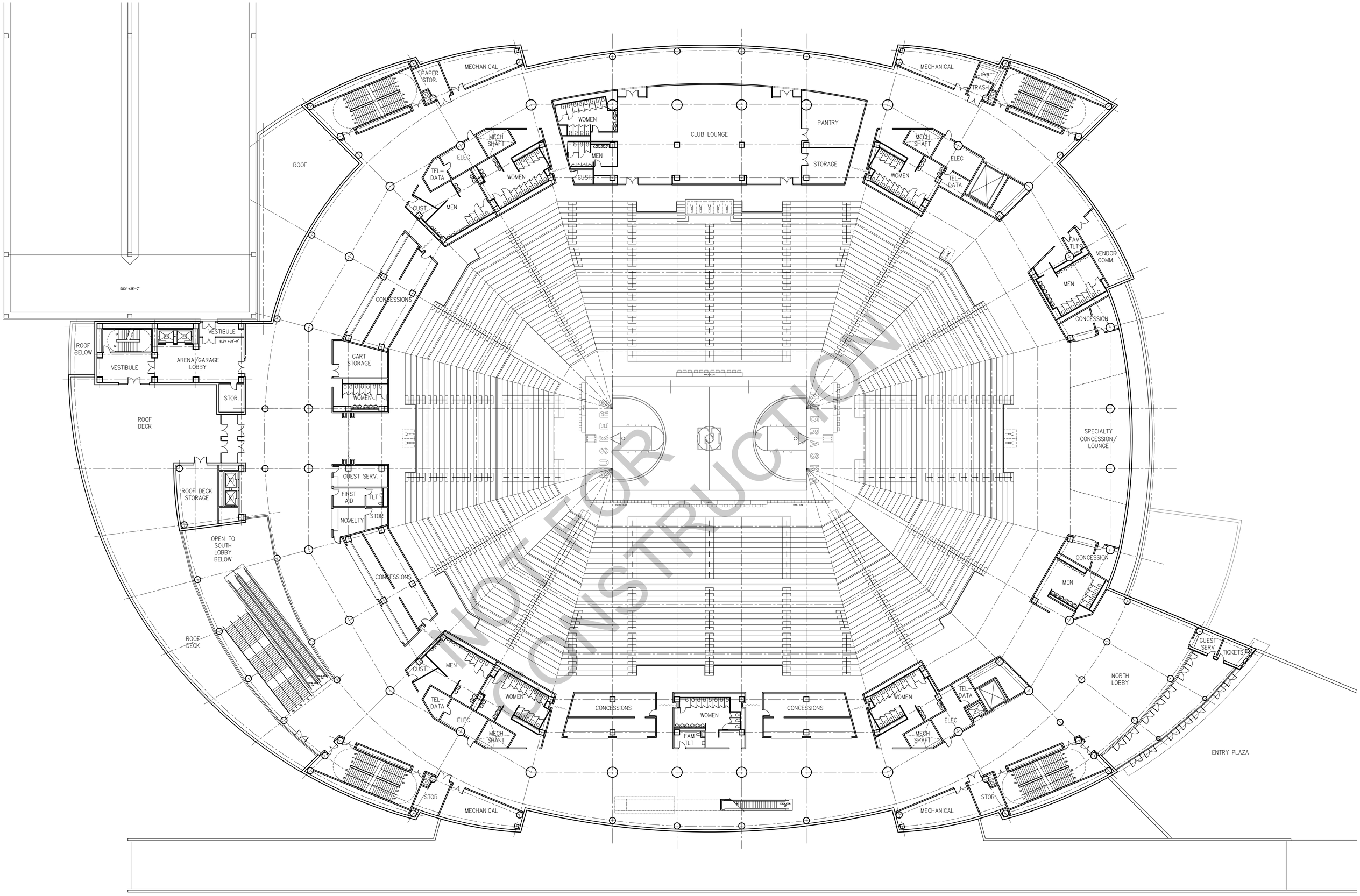
FLOOR PLAN - EVENT LEVEL

WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

North

SCALE: 1/16" = 1'-0"

17 MARCH 2011



NOT FOR CONSTRUCTION

DLR Group

BVH

The Clark Enersen Partners

FLOOR PLAN - MAIN CONCOURSE

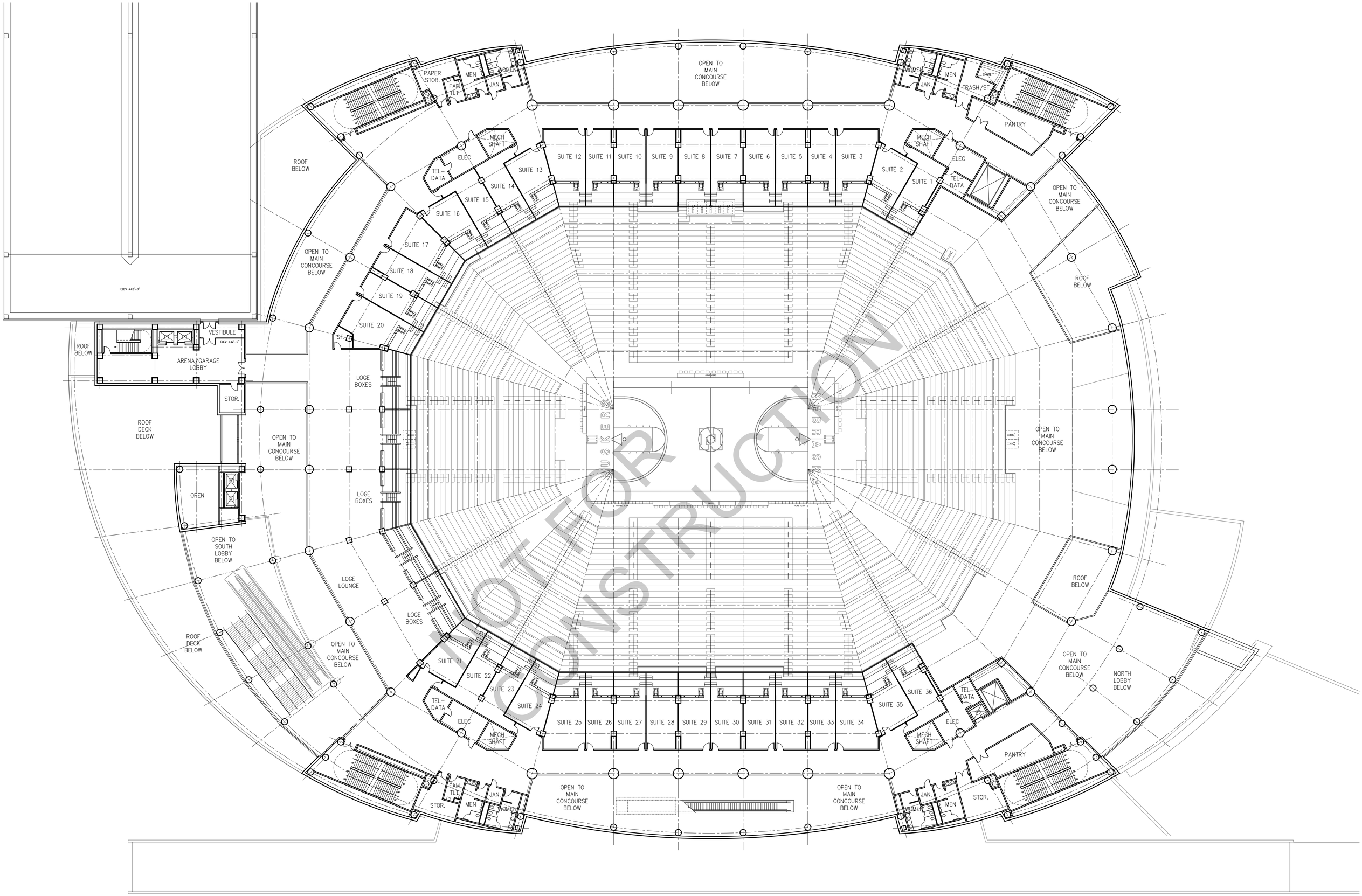
WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

North

0 10 20 40

SCALE: 1/16" = 1'-0"

17 MARCH 2011



FLOOR PLAN - PREMIUM LEVEL

WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

17 MARCH 2011

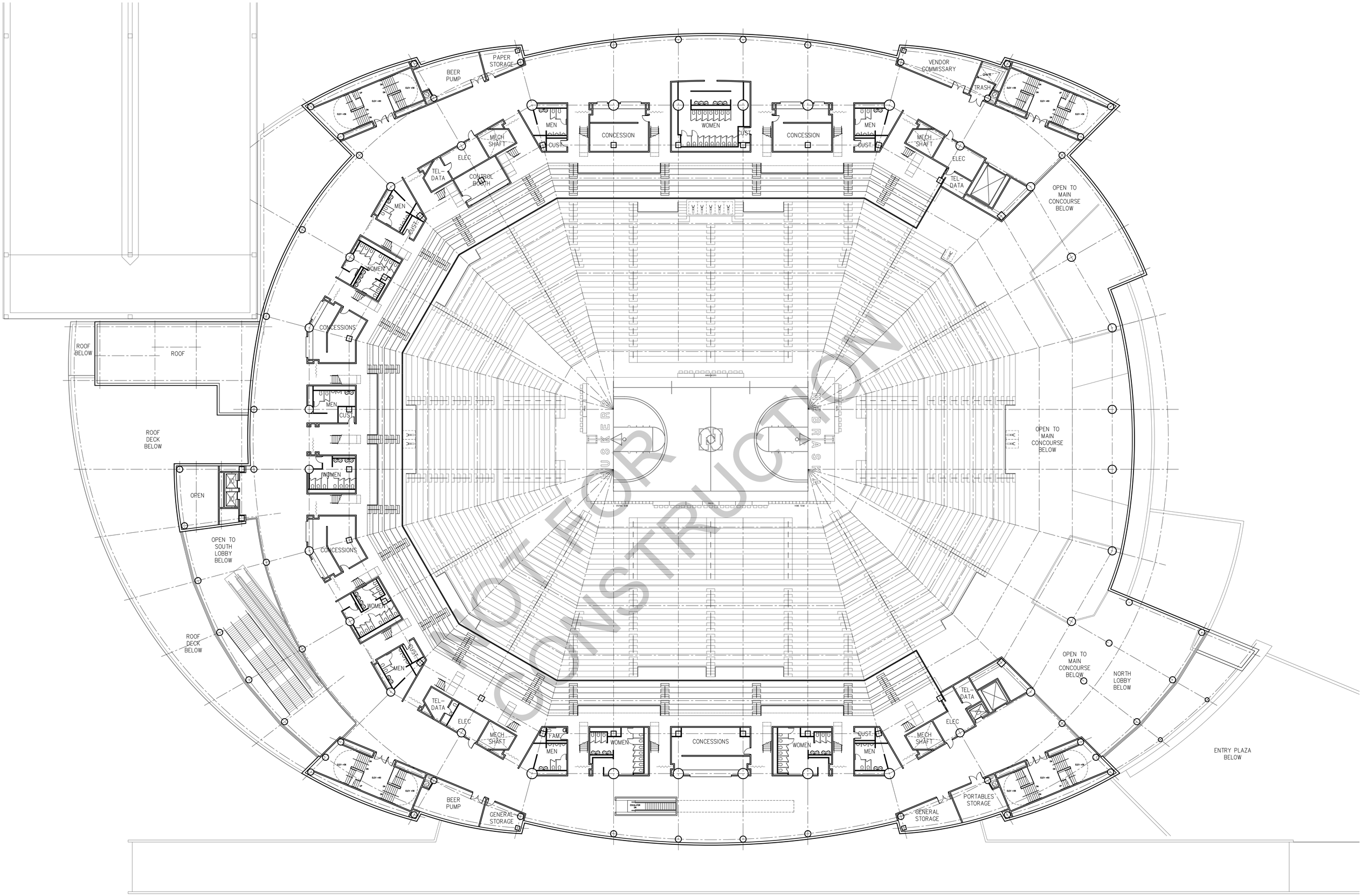
DLR Group

BVH Architects

The Clark Enersen Partners

North

SCALE: 1/16" = 1'-0"



DLR Group

BVH ARCHITECTS

The Clark Enersen Partners

FLOOR PLAN - UPPER CONCOURSE

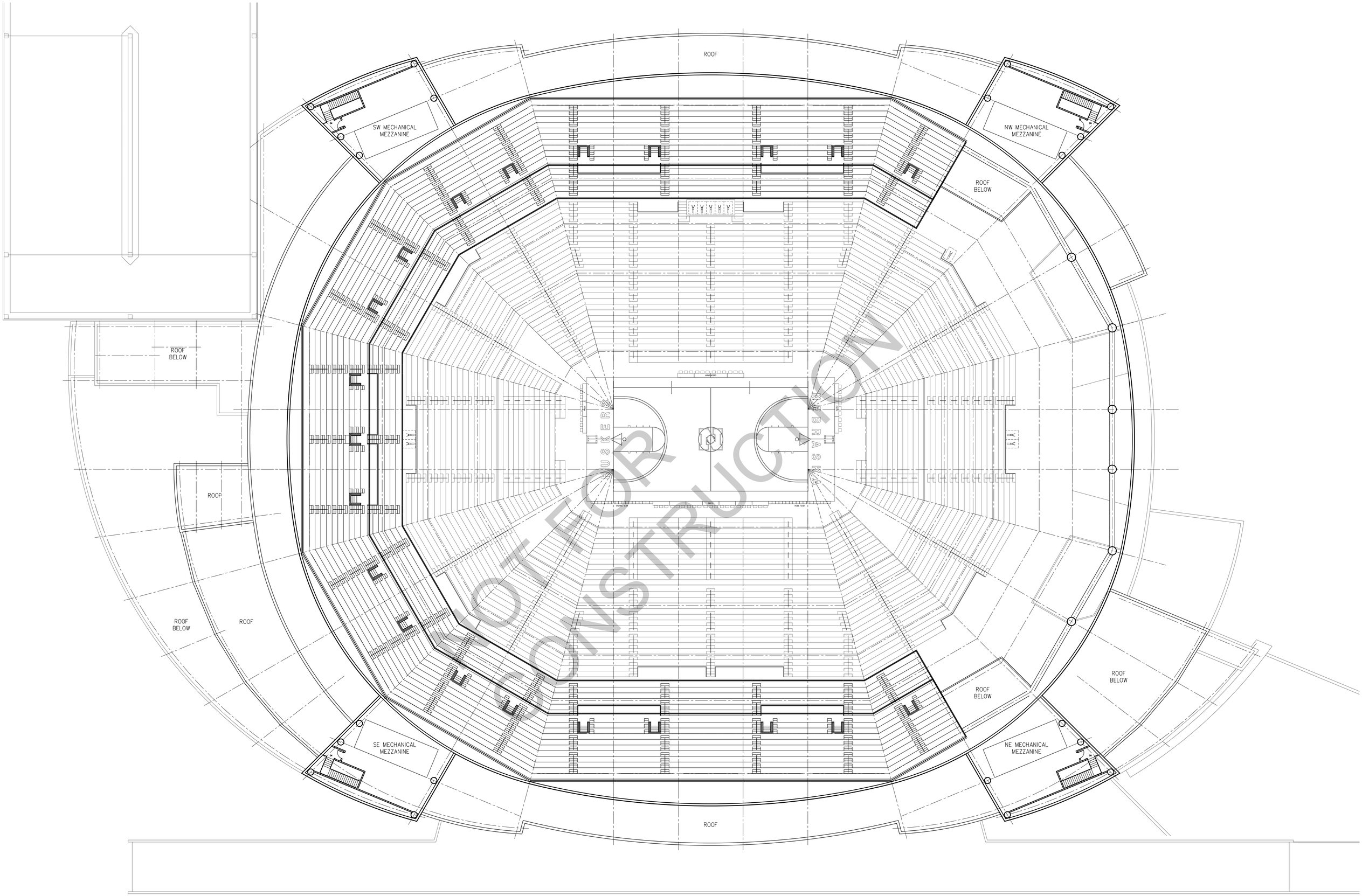
WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

North

0 10 20 40

SCALE: 1/16" = 1'-0"

17 MARCH 2011



DLR Group

BVH

The Clark Enersen Partners

FLOOR PLAN - UPPER DECK / MECH. MEZZANINE

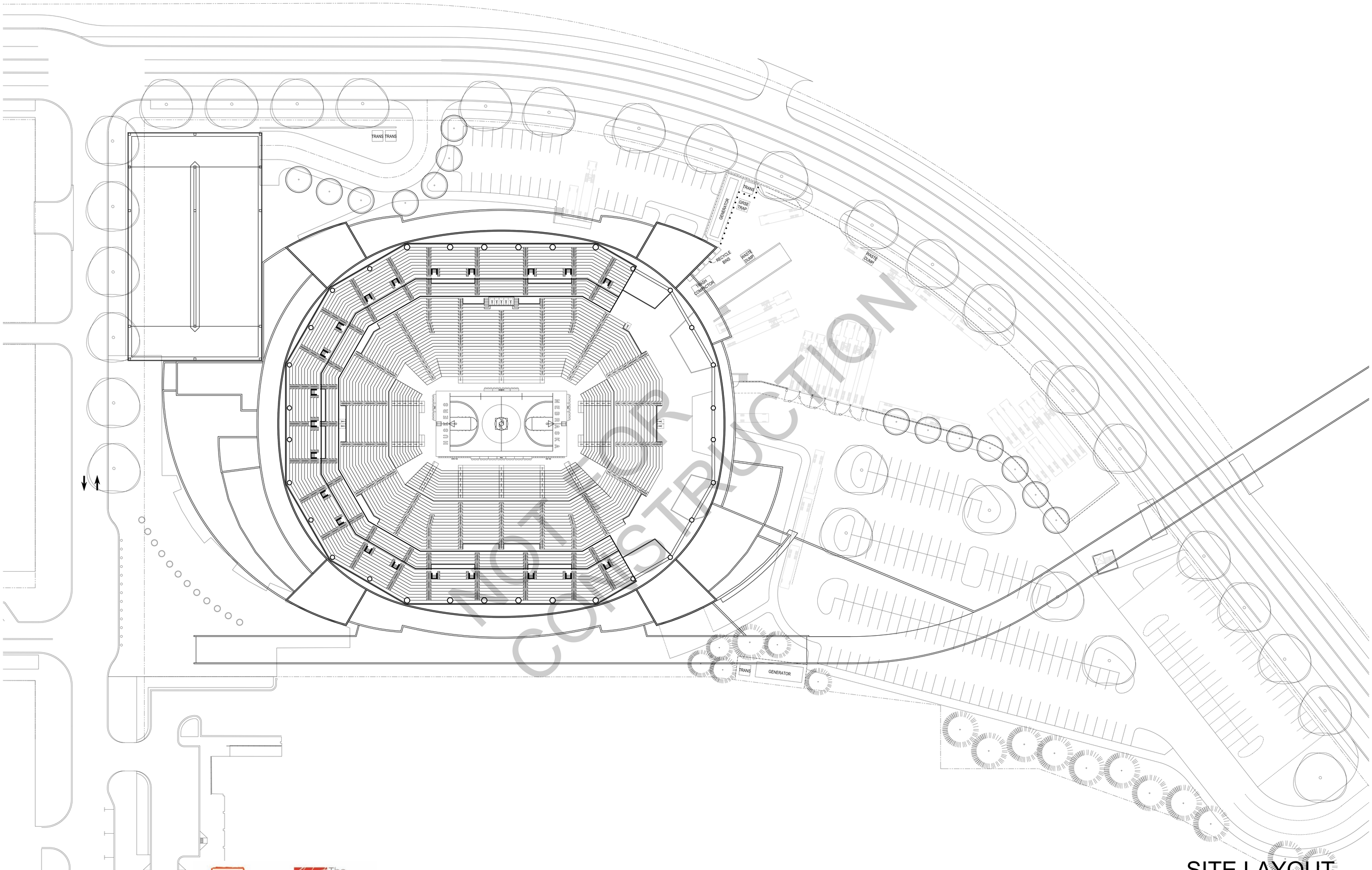
WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

North

0 10 20 40

SCALE: 1/16" = 1'-0"

17 MARCH 2011



DLR Group

BVH ARCHITECTS

The Clark Enersen Partners

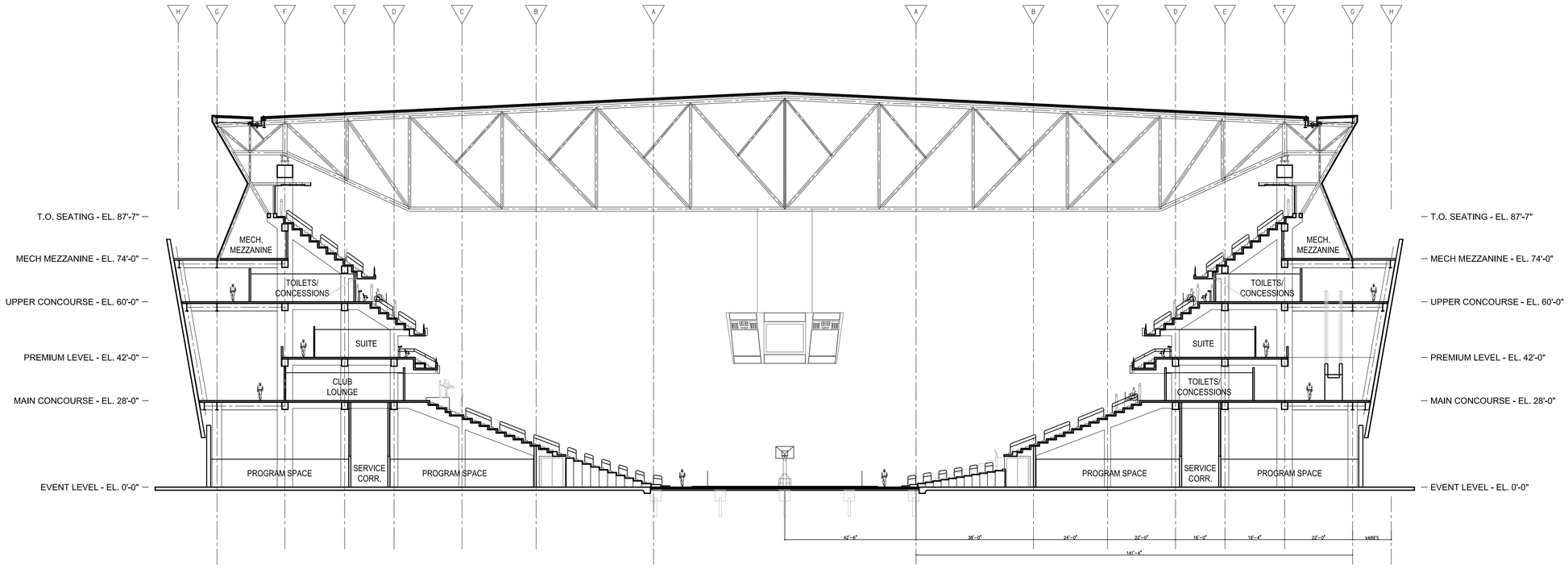
North

SCALE: 1" = 30'-0"

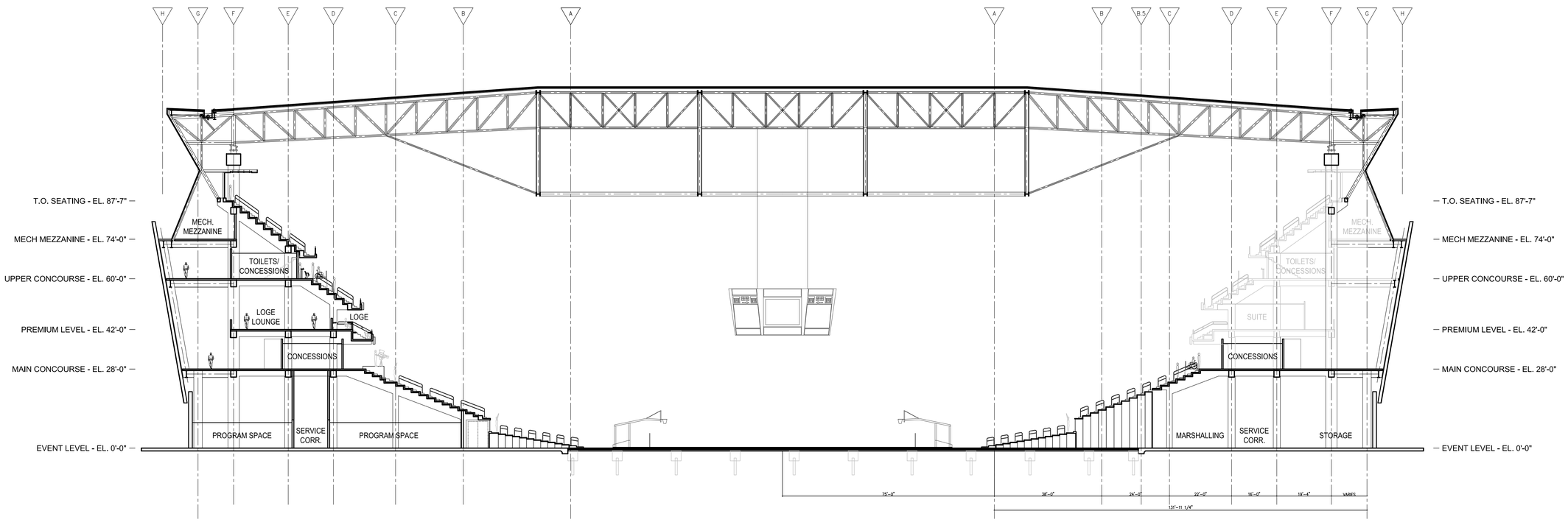
SITE LAYOUT

WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

17 MARCH 2011



TRANSVERSE SECTION - LOOKING NORTH



LONGITUDINAL SECTION - LOOKING WEST

DLR Group

BVH

The Clark Enersen Partners

BUILDING SECTIONS

WEST HAYMARKET CIVIC ARENA - LINCOLN, NEBRASKA

SCALE: 1/16" = 1'-0"

9 MARCH 2011

WH 11-30 Introduce: 4-14-11

RESOLUTION NO. WH- _____

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

That the attached Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson Company is hereby accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract on behalf of the JPA.

Adopted this _____ day of April, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

[City Revisions 4-6-2011]
AMENDED AND RESTATED AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

West Haymarket Joint Public Agency ("JPA"), a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

and the Construction Manager:
(Name, legal status and address)

M. A. Mortenson Company
700 Meadow Lane North
Minneapolis, MN 55422

for the following Project:
(Name and address or location)

Haymarket Arena and attached structures, the Parking Garage, and the Arena Plaza as defined by the Owner

The Architect:
(Name, legal status and address)

DLR Group, Inc., a Nebraska corporation
400 Essex Court
Regency Park
Omaha, NE 68114

The Owner's Designated Representative:
(Name, address and other information)

Program Manager
Paula Yancey
SAIC / PC Sports
140 North 8th Street
Suite 220
Lincoln, NE 68508
(402) 474-0155

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (1129665900)

The Construction Manager's Designated Representative:
(Name, address and other information)

Derek Cunz
Mortenson Construction
700 Meadow Lane North
Minneapolis, MN 55422

The Architect's Designated Representative:
(Name, address and other information)

John Badami
DLR Group, Inc.
1111 Lincoln Mall, Suite 201
Lincoln, NE 68508

RECITALS

A.

Owner and Construction Manager have previously entered into a modified Standard Form of Agreement Between Owner and Construction Manager as Contractor (AIA Document A133 - 2009) as of November 15, 2010 (the "Preconstruction Services Agreement"). Under the Preconstruction Services Agreement, Construction Manager agreed to provide Preconstruction Phase Services for the Project and certain construction-related services which are required to commence prior to the commencement of actual construction (the "Construction-Related Services"). In addition, under said agreement Owner and Construction Manager agreed to seek to enter into an amended agreement to provide for "Construction Phase Services for the Project" (other than Construction-Related Services described above).

B.

A portion of the Project will be carried out on BNSF Railway Company ("BNSF") property pursuant to a Temporary Access License for Initial Construction, the form of which is attached as Exhibit EE to the Master Development Agreement between BNSF and the City of Lincoln as assigned to the JPA. A copy of Exhibit EE is attached hereto as Exhibit A and incorporated herein by reference. The Project work performed under the License is subject to 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, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference.

C.

Construction Manager possesses certain skills, experience, education and competency to perform the Construction Phase Services on behalf of the Owner and the Owner desires to engage Construction Manager for such services on the terms and conditions provided herein.

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D.

Construction Manager hereby represents that Construction Manager is willing and able to perform the Construction Phase Services in accordance with this Agreement. Construction Manager hereby understands and acknowledges that Construction Manager will be required to comply with restrictions on the Work imposed on the Owner as Licensee in the License, subject to the provisions of this Agreement. Construction Manager hereby further understands and acknowledges that Construction Manager is deemed to be the Owner's Contractor under the C&M Agreement and in such capacity is required to comply with the Contractor Requirements in the C&M Agreement, subject to the terms of this Agreement

E.

The use of the term "City of Lincoln" in the License and the C&M Agreement shall be deemed to refer to the Owner.

In consideration of the above Recitals and the mutual obligations of the parties hereto, the Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

3 OWNER'S RESPONSIBILITIES

4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

6 COST OF THE WORK FOR CONSTRUCTION PHASE

7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

8 INSURANCE AND BONDS

9 DISPUTE RESOLUTION

10 TERMINATION OR SUSPENSION

11 MISCELLANEOUS PROVISIONS

12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

Construction Manager and Owner acknowledge and agree that this Amended and Restated Agreement supersedes and replaces the Preconstruction Phase Service Agreement (including Construction-Related Services). The Contract Documents consist of the License (which is applicable to the extent provided in this Agreement), the C&M Agreement including, but not limited to, Exhibits C and C-1(A) attached to the C&M Agreement (which are applicable to the extent provided in this Agreement), this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated

Init.

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herein. Upon the Owner's acceptance of the Construction Manager's Partial and Final Guaranteed Maximum Price proposals, the Contract Documents will also include the documents described in Section 2.2.3 and Section 2.2.4 and identified in the Limited Notice to Proceed and the Guaranteed Maximum Price Amendment, the form of which is attached hereto as Exhibit C, and revisions to the Drawings and Specifications prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and any other consultants or project representatives of the Owner and to exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and consistent with the Contract Document to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager. For the purposes of this Agreement, the term AIA Document A201-2007 shall mean the Modified AIA Document A201-2007 attached hereto as Exhibit D. AIA Document A201-2007 at times may be referred to in this Agreement as the "General Conditions."

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the Preconstruction Phase responsibilities set forth in Sections 2.1 and 2.2. The Construction Manager shall perform the Construction Phase responsibilities set forth in Section 2.3. Subject to Section 2.1.1, the Owner and Construction Manager may agree, in consultation with the Architect, to commence the Construction Phase prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Preconstruction Phase shall include certain construction-related services which are required to commence prior to the commencement of actual construction (the "Construction-Related Services"). These Construction-Related Services include the Procurement (defined below) of certain subcontractors, site logistics planning, establishment of survey controls and other similar services that are not specifically identified as Preconstruction Services under this Agreement. Procurement is defined as the process of selecting subcontractors and supplier through a defined process that includes bidding or competing the work through a request for qualifications and request for proposals as outlined in the attached Exhibit E. The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall jointly schedule and attend meetings with the Architect, Program Manager, and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall consult with and provide recommendations to the Owner, Program Manager, and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner, Program Manager, and Architect on constructability; availability of materials and labor; time requirements for procurement (especially for long-lead items), installation and construction; and factors related to construction cost including, but

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not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. As design proceeds the updated Project schedule shall include the following: submission of the Partial and Final Guaranteed Maximum Price proposals; components of the Work; times of commencement and completion required of each Subcontractor; Procurement; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations to the Owner, Program Manager, and Architect with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager's recommendations shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 When the preliminary design and other design criteria have been prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, input from competent subcontractors, or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Program Manager, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Final Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Program Manager's review and the Owner's approval. The Construction Manager shall inform the Program Manager and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 All estimates shall be broken down by individual trades and cost components and include quantities and unit prices associated with the various identifiable elements of each trade. Estimates shall also include descriptions of limitations, scope, conditions, assumptions, quality standards, and other considerations used. Construction Manager shall provide such other information reasonably requested by the Owner to evaluate and understand the estimates provided.

§ 2.1.5.4 Subject to Construction Manager's right under the Contract Documents to an adjustment in the Guaranteed Maximum Price and the Substantial Completion Date, Owner reserves the right to change the project scope, the character and quality of building finishes, size, and structural, mechanical, electrical, or other building systems and finishes in order to bring project costs in alignment with the Owner's construction budget or to otherwise make adjustments as may be deemed necessary by the Owner to achieve Owner's desired purposes.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop subcontractors' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's and Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be procured well in advance of construction. The Construction Manager shall expedite and coordinate the procurement, ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of

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the Final Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Final Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. In advance of the establishment of the Final Guaranteed Maximum Price ("GMP"), the Construction Manager may with Owners approval procure Subcontracts for the following scopes of work and for any other scope of work agreed to by the Owner and the Construction Manager: mechanical electrical & plumbing (MEP) systems structural steel, precast concrete, cast-in-place concrete, exterior enclosure systems, and vertical transportation systems. Subcontracts shall be procured in accordance with Exhibit E. Any subcontracts that may be procured before commencement of the Construction Phase Services shall be contingent on such commencement.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Partial and/or Final Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall insure that its subcontractors are responsible for their respective performance specifications. The Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. The Construction Manager's recommendations concerning the Project will be made based upon the Construction Manager's experience as a construction manager or general contractor, not as an architect or engineer, and the ultimate responsibility for the performance or aesthetic characteristics inherent in the design shall remain with the Architect. Nothing in this Agreement, or elsewhere in the Contract Documents, shall be construed to create any responsibility of or liability upon the Construction Manager for the accuracy, adequacy, sufficiency, or safety of the design of the Project.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, the Davis Bacon Act, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Partial and Final Guaranteed Maximum Price Proposals and Contract Time

§ 2.2.05 Partial Guaranteed Maximum Price Proposal

At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Partial Guaranteed Maximum Price proposal for underground utilities, footings, and foundation, associated work, and design assist/Subcontractors ("Limited Notice to Proceed Work"). The Partial Guaranteed Maximum Price proposal for the Limited Notice to Proceed Work shall be submitted to the Owner for the Owner's review and acceptance. The Partial Guaranteed Maximum Price proposal shall be the sum of the Construction Manager's estimate of the cost of the Limited Notice to Proceed Work plus the cost of the General Conditions plus the construction Manager's Fee. The Cost of the Limited Notice to Proceed Work shall include a Cost of Work Contingency for the Construction Manager's exclusive use to cover those costs reimbursable as a Cost of Work attributable to the Limited Notice to Proceed Work. The amount of the Cost of the Work Contingency for the Limited Notice to Proceed Work shall be a percentage of the aggregate value of the cost of the Limited Notice to Proceed Work. Following Owner's acceptance of the Partial Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Owner's Limited Notice to Proceed which shall set forth the agreed upon Partial Guaranteed Maximum Price with the information and assumptions upon which it is based, provided in accordance with the requirements for the Final Guaranteed Maximum Price Proposal in Sections 2.2.3 and 2.2.4 below.

§ 2.2.1 Final Guaranteed Maximum Price Proposal

At such time as the Drawings and Specifications for construction are deemed to be sixty percent (60%) complete as mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Final Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Final Guaranteed Maximum Price proposal shall be submitted to the Owner within six weeks of the time on which the Design and Specifications for construction are deemed to be sixty percent complete. The Final

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Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, the cost of the General Conditions, and the Construction Manager's Fee, provided that the Cost of the Work for the Limited Notice to Proceed Work shall not exceed the Partial Guaranteed Maximum Price or the actual cost thereof, whichever is lesser.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Final Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager's Final Guaranteed Maximum Price proposal shall include a written statement of its basis, including but not limited to the following:

- **.1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract upon which the Final Guaranteed Maximum Price is based;
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Final Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- **.3** The proposed Guaranteed Maximum Price, including a detailed statement of the estimated amount of the Cost of the Work organized by trade categories or systems and allowances, a detailed statement of the Cost of Work Contingency, and a detailed statement of the Cost of the General Conditions, and the Construction Manager's Fee;
- **.4** The anticipated date of Substantial Completion upon which the proposed Final Guaranteed Maximum Price is based; and
- **.5** A time limit by which the Owner and Construction Manager must reach agreement upon the Final Guaranteed Maximum Price proposal (which shall not be less than 30 days).

§ 2.2.4 In preparing the Construction Manager's Final Guaranteed Maximum Price proposal, the Construction Manager shall include a Cost of Work Contingency for the Construction Manager's exclusive use. The term "Cost of Work Contingency" shall mean the line item included by the Construction Manager in the Final Guaranteed Maximum Price proposal that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the Construction Manager awards a Subcontract or the parties execute the Final Guaranteed Maximum Price Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the Work. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- **.1** Unanticipated cost overruns on the Construction Manager's General Condition, self-performed work, and procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the Construction Manager or any Subcontractor;
- **.2** Expediting or acceleration costs required to meet the date of Substantial Completion, as long as the same are not made necessary by the fault or negligence of the Construction Manager or any Subcontractor.

The Cost of Work Contingency may also be applied towards Liquidated Damages up to a maximum of One Million and No/100ths Dollars ($1,000,000.00) by reducing the Final Guaranteed Maximum Price and the Cost of Work Contingency in lieu of paying Liquidated Damages to the extent of such reduction. The amount of the Cost of the Work Contingency to be included in the Final Guaranteed Maximum Price proposal shall be a percentage of the aggregate value of the Cost of the Work. The detailed statement of the Cost of Work Contingency shall contain backup documentation and separate values for encumbered versus invoiced Cost of Work.

§ 2.2.4.1 The Cost of Work Contingency is not available for use by or for the benefit of the Owner or any other party, and shall not be used to cover: changes to the work; design revisions or problems; interference of the Owner/Architect or third parties for which Construction Manager is not responsible; matters related to land use proceedings; unknown conditions; allowance adjustments; unusually severe weather; or items for which Construction Manager is not responsible. The Cost of Work Contingency shall be managed by the Construction Manager.

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§ 2.2.4.2 The Construction Manager shall provide Program Manager and Architect with a report on the status of the Cost of Work Contingency on a monthly basis throughout the duration of the Project after the Final Guaranteed Maximum Price has been established. In each such monthly report on the status of the Cost of Work Contingency, the Construction Manager shall identify (i) any amounts added to the Cost of Work Contingency which are a result of positive variances or savings in the components of the Cost of the Work, (ii) any amount allocable up to the date of the report which are a result of negative variances in components of the Cost of the Work, and (iii) any amounts reserved from the Cost of Work Contingency for anticipated negative variances in components of the Cost of the Work which have been identified but not fully evaluated. After being adjusted for items (i) through (iii) above, the remaining amount of the Cost of Work Contingency shall be designated as the unallocated portion of the Cost of Work Contingency.

§ 2.2.4.3 If, at the time Owner makes the final payment to the Construction Manager, there is a balance in the Cost of Work Contingency, it shall be retained by Owner.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Final Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Final Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Following Owner's acceptance of a Final Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Final Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Final Guaranteed Maximum Price Amendment shall set forth the agreed upon Final Guaranteed Maximum Price with the information and assumptions upon which it is based. In the event that the Owner and Construction Manager are not able to reach agreement upon a Final Guaranteed Maximum Price by the date specified in the Final Guaranteed Maximum Price proposal, Owner may (1) terminate this Agreement in accordance with the applicable provisions thereof, and make payment for all pre-construction services (including approved Construction-Related Services); or (2) incorporate alternate systems, equipment, finishes or other changes working in conjunction with Architect and Construction Manager to achieve reductions in the Final Guaranteed Maximum Price proposal. Construction Manager grants to Owner the right to use any plans, details, estimates, cost breakdowns, or any other information provided by the Construction Manager as part of its preconstruction services (including Construction-Related Services) for purposes related to the Project, Owner shall further retain the right to disclose such information to other parties or construction managers, but only after full or partial termination of this Agreement, and in such event shall indemnify and hold harmless the Construction Manager from and against any claims by any party arising out of the use of such information. In order to protect the Construction Manager's proprietary information, Owner agrees that except for information which would be mandatorily disclosed pursuant to a public records request, such information shall not be disclosed to other parties or construction managers without first receiving the approval of the Construction Manager, which approval shall not be unreasonably withheld. All submittals of documents and other information to the Owner shall clearly identify all matters which Construction Manager believes to be proprietary.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to reflect the agreed-upon assumptions and clarifications contained in the Final Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Final Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Final Guaranteed Maximum Price all non-exempt sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Final Guaranteed Maximum Price Amendment is executed.

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§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's and Construction Manager's execution of the Final Guaranteed Maximum Price Amendment or the Owner's issuance of a Limited Notice to Proceed, subject to Construction Manager's Partial Guaranteed Maximum Price in Section 2.2.05, whichever occurs earlier.

§ 2.3.1.2.1 As part of said Construction Phase Services, Construction Manager agrees to enter into the Contractor's Right of Entry with BNSF (Exhibit C-1(A) to the C&M Agreement) and to abide by the terms and conditions of the Contractor's Right of Entry. Construction Manager further agrees to abide by the terms and conditions imposed upon Owner as Licensee in the License as such terms apply to the Work, and to abide by the terms and conditions imposed upon the Contractor in the Contractor Requirements attached to the C&M Agreement, but as respects either the obligations of the License or the obligations of the C&M Agreement, the Construction Manager will not be financially responsible for changes to the Work for improvements or changes to any property other than as included in the Work that may be required (except as may be provided in the Final Guaranteed Maximum Price Amendment), shall not be responsible for Hazardous Substances except as provided in Section 10.3 of the General Conditions, and shall not be responsible for the payment and discharge of any liens related to amounts for which the Owner is responsible.

§ 2.3.2 Administration

§ 2.3.2.1 Except for those portions of the Work performed by the Construction Manager's own personnel the Work or portions of the Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids or proposals. The Construction Manager shall obtain bids or proposals from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work through the City of Lincoln's E-bid process and in accordance with the Subcontractor Procurement process set forth in Exhibit E.

§ 2.3.2.1.1 Proposals shall be requested from subcontractors with respect to portions of the Work that Construction Manager customarily performs with the Construction Manager's own personnel. Unless Construction Manager can demonstrate to the Owner that the Project will be materially affected otherwise where such proposals are less than the Construction Manager's proposal, the Construction Manager must either utilize the services of such subcontractor or reduce the Construction Manager's proposal to an amount equal to the lowest proposal received.

§ 2.3.2.1.2 Once Drawings and Specifications are completed to an appropriate level for any given bid or proposal package as determined by the Construction Manager and approved by the Owner, Construction Manager shall procure Subcontractors in accordance with Exhibit E, Subcontractor Procurement.

§ 2.3.2.1.3 In the event the final bids and/or proposals are less than the amounts allocated to the same component of work in the Final Guaranteed Maximum Price, the difference will be considered additional Cost of the Work Contingency.

§ 2.3.2.2 If the Final Guaranteed Maximum Price has been established and when a specific bidder or proposer (1) is selected by the Construction Manager, (2) is, in the judgment of the Construction Manager, qualified to perform that portion of the Work, and (3) has submitted a bid or proposal that conforms to the requirements of the Contract Documents, but the Owner does not approve the bidder or proposer selected, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Final Guaranteed Maximum Price by the difference between the bid or proposal of the person or entity originally selected by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity subsequently selected by the Construction Manager and approved by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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§ 2.3.2.4 If the Construction Manager recommends a specific bidder or proposer that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Final Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007, including Owner's occupancy requirements. Construction Manager shall notify all Subcontractors of the Project Schedule.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner, Program Manager and Architect, showing percentages of completion and other information required by the Owner. The monthly reports shall include a report of amounts paid or to be paid by the Owner that are or have been billed, budgeted, and committed. The Construction Manager shall also keep, and make available to the Owner, Program Manager and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner, Program Manager and Architect and shall provide this information in its monthly reports to the Owner, Program Manager and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager shall administer the Subcontracts, generally direct the Work of all Subcontractors, and take steps to ensure that the Work is being performed by the Subcontracts in accordance with the requirements of the subcontracts and the Contract Documents. The Contract Manager will keep the Owner informed of the progress of the Work and will guard the Owner against defects and deficiencies in the Work. The Construction Manager will schedule, coordinate, inspect, and generally direct the Work, activities, and progress of the Subcontractors. The Construction Manager will require that Subcontractors perform their work in a good and workmanlike manner so as to permit completion in accordance with the Drawings, Specifications, and Project schedule.

§ 2.3.2.10 The Construction Manager shall develop and maintain a program based upon industry standards, acceptable to the Owner and the Architect, to assure quality of the construction in accordance with the Contract Documents. The Construction Manager shall generally direct the Work of all Subcontractors, providing appropriate direction to each when its Work does not conform to the requirements of the Construction Documents and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as not to affect the overall progress of the Work.

§ 2.3.2.11 The Construction Manager shall maintain competent full-time management and supervisory staff at or near the Project Site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the Subcontractors, and all of Construction Manager's on-site management and supervisory personnel. Construction Manager shall not change, remove or replace any of its supervisory personnel committed to the Project without the approval of the Owner. Such approval by the Owner will not be unreasonably withheld. At the direction of the Owner, the Construction Manager shall remove and replace any on-site member whose performance is reasonably determined by the Owner to be unacceptable. Construction Manager shall make such replacement immediately and without consideration of any additional costs for making the replacement. Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

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§ 2.3.2.12 The Construction Manager shall establish and maintain on-site organization and lines of authority for its personnel and shall provide this delineation to the Owner and Program Manager. The Construction Manager shall be the sole interface with all Subcontractors for the Owner and all of its agents and representatives. The Construction Manager shall identify and authorize an on-site management or supervisory staff member to negotiate change orders and contract modifications.

§ 2.3.2.13 The Construction Manager shall develop and maintain an orderly process of arranging the smooth and efficient execution of the Work among the Owner, Architect, Construction Manager, and Subcontractors.

§ 2.3.2.14 The Construction Manager shall work with the Architect to create and implement orderly procedures for submittal and transmittal of shop drawings and samples for action, and closely monitoring and expediting the submittal and approval of shop drawings and samples.

§ 2.3.1.15 The Construction Manager shall closely monitor, generally direct, and evaluate the performance of the Subcontractors and the availability of materials and supplies to ensure the Project is completed on schedule. When a Subcontractor fails to perform the responsibilities, requirements, or duties of a Subcontract, or a Subcontractor fails to meet a schedule, the Construction Manager shall take appropriate action to correct the situation.

§ 2.3.2.16 All of Construction Manager's books, accounting records, receipts, vouchers, and other documents relating to the Construction Manager's right to payment or to the Construction Manager's compliance with the Contract Documents shall be subject to audit and Owner shall have access to all such records at any reasonable time upon reasonable notice by the Owner during the performance of the Work and for a period of four (4) years after final acceptance of the Work. If upon an auditor's review, costs are overstated in excess of one point zero percent (1.0%) of the Final Contract Sum, the Construction Manager shall pay the Owner's costs for auditing Construction Manager's records. Notwithstanding the above, Construction Manager may object to auditor's report, in which case the parties shall informally mediate any objections. Construction Manager's obligation to pay the costs of audits where overstated shall not apply to any audits performed by the State under Nebraska law. In any case, the Final Contract Sum will be adjusted for any overstatements of costs. The Construction Manager shall maintain all such records in a system and manner that is consistent with generally accepted accounting principles. The Construction Manager shall preserve all such records for a period of four (4) years after final acceptance of the Work.

§ 2.3.2.17 The Construction Manager shall provide the Owner, Program Manager, and Architect with written detailed cost estimates and supporting documentation, including cost estimates from Subcontractors, for proposed changes to the Work.

§ 2.3.2.18 The Construction Manager shall safeguard and protect the Project site, equipment at the site, and materials stored off-site against theft, vandalism, fire, and accidents.

§ 2.3.2.19 The Construction Manager shall use commercially reasonable efforts to maximize savings opportunities for cut and fill, reuse of remediated soils, fill brought in for utility relocation and final grading, and other potential coordination savings to achieve overall cost savings for the Owner.

§ 2.3.2.20 The Construction Manager shall establish, maintain and coordinate a safety program. A written copy of the safety program shall be provided to the Program Manager.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria,

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including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems such as scoreboard and sound systems, furniture, fixtures and equipment sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. However, the Construction Manager shall be responsible for immediately notifying Program Manager and Architect of any inaccuracy in the information furnished that the Construction Manager discovers.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Notwithstanding, prior to the commencement of any construction or excavation, the Construction Manager shall give notice to BNSF (for excavations on BNSF Property or within 25 feet of any track) and Diggers Hotline of Nebraska to locate and mark underground facilities on or adjoining the site and Project area. Furthermore, Construction Manager and each subcontractor shall be required to visit, inspect and learn as much about the site as may reasonably be learned from such inspection, but this provision shall not be deemed to require the Construction Manager to perform borings, excavation, or destructive testing. Subject to Section 3.7.4 of AIA Document A201-2007, no change order or claim for additional cost and/or additional time will be allowed with respect to any existing conditions that are not shown on surveys or other documentation if such conditions are visible or could have been determined by the exercise of reasonable observation of the site and Project area.

§ 3.1.4.3 During the Construction Phase, the Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Report(s) of the geotechnical engineer will be attached as an exhibit to this Agreement.

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§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information under the Owner's control and relevant to the Construction Manager's performance of the Work.

§ 3.2 Owner's Designated Representative

SAIC, acting through Paula Yancey of PC Sports, has been designated as the Owner's representative and is authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall have authority to make decisions on behalf of the Owner as are separately agreed to in writing between Program Manager and Owner. Program Manager shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority.

§ 3.2.1 Legal Requirements. The Owner shall provide all legal and accounting services with respect to Owner's obligations, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Construction Manager shall provide all accounting services reasonably necessary to track and document project costs. In addition, the Construction Manager shall provide all insurance policies required of the Construction Manager in Article 8.

§ 3.3 Architect

The Owner has retained Architect to provide services, duties and responsibilities as described in AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect, as amended by amendments dated September 1, 2010, January 7, 2011 and January 16, 2011 that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon the Construction Manager's request, the Owner shall provide the Construction Manager a copy of the executed agreement as amended between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be:

A Fixed Lump Sum of One Hundred Forty Thousand Dollars ($140,000). Such lump sum amount includes all of the Construction Manager's costs of travel, local and long-distance telephone charges, computer and electronic copying and transmission expenses, delivery charges, Construction Manager's personnel expenses and overhead, and photocopying and reproductions (except for the cost of plan reproduction associated with Subcontractor procurement and determination of the Guaranteed Maximum Price).

In addition to the lump sum fee described in the preceding paragraph, the Construction Manager shall be entitled to reimbursement for Construction-Related Services specifically approved by Owner at the hourly rates set forth in Exhibit F and at the actual cost of the services of third parties. Compensation for all Construction-Related Services performed during the Construction Phase shall be included in the Guaranteed Maximum Price.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within nine (9) months of the date of the Preconstruction Services Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Intentionally Omitted.

§ 4.2 Payments

§ 4.2.1 Payment of the $140,000 for Preconstruction Phase services shall be made in nine (9) monthly payments of $15,555.56. Payments for Owner approved Construction-Related Services shall be made monthly in proportion to services performed.

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§ 4.2.2 Each monthly payment is due and payable within 30 days following approval of the Construction Manager's Application for Payment, which may be made on or after the first day of each month beginning December 1, 2010. *(Insert rate of monthly or annual interest agreed upon.)*

1 % per month prorated for each day after which payment is due

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the General Conditions as defined in Section 5.1.6 plus the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

To be one and ninety-five hundredths percent (1.95%) of the Cost of the Work included in the Final Guaranteed Maximum Price, to be fixed as a lump sum at the time of execution of the Final Guaranteed Maximum Price Amendment.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

A fee of one and ninety-five hundredths percent (1.95%) of any net increase in the Cost of the Work will be added to change orders.

§ 5.1.3 Intentionally Omitted

§ 5.1.4 Intentionally Omitted.

§ 5.1.5 Intentionally Omitted.

§ 5.1.6 The General Conditions: Payment for the Costs of the General Conditions set forth in the Limited Notice to Proceed and/or Final Guaranteed Price Amendment shall be made in equal monthly installments beginning as of the date Construction Manager receives a Notice to Proceed and commences actual work at the jobsite to the scheduled date of Substantial Completion. The category of cost to be included in the Cost of the General Conditions are attached hereto marked as Exhibit F and incorporated herein by this reference.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Final Guaranteed Maximum Price set forth in the Final Guaranteed Maximum Price Amendment, as it is amended from time to time. Any costs or fees which would cause the Final Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Final Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The

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Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Final Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Final Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Final Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 Intentionally Omitted.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.2 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 *Intentionally Omitted.*

§ 6.2.3 Intentionally Omitted.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section 6.2.1.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools included in the "Mortenson Provided Equipment and Tools Master Billing Rate Schedule" not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item included in the "Mortenson Provided Equipment and Tools Master Billing Rate Schedule" may not exceed the purchase price of any comparable item. Said Master Billing Rate Schedule is attached hereto as Exhibit G and incorporated herein by this reference.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Intentionally Omitted.

§ 6.5.5 Intentionally Omitted.
§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs
§ 6.6.1 Premiums for insurance, exclusive of worker's compensation insurance and any Project Management Protective Liability Insurance, at the rate of $8.68 per thousand dollars of the Cost of the Work; premiums for Railroad Protective Liability Insurance in the amount of $188,960, and premiums for any bonds required under the Contract Documents. The rate for insurance shall be subject to annual adjustment in accordance with the Construction Manager's normal process of adjustment to account for changing insurance costs. The premiums for Railroad Protection Liability Insurance are based upon the following assumptions:

Railroad Protective Liability Assumptions
- West tracks only used by BNSF
- East tracks used by both BNSF and Amtrak
- Work within 50 feet of west tracks: $10,000,000
- Work within 50 feet of east tracks: $10,000,000

BNSF

Limits:	$5,000,000/$10,000,000
Work within 50 ft.:	$20,000,000 (east & west tracks)
Estimated Premium:	$121,110

Amtrak

Limits:	$5,000,000/$10,000,000
Work within 50 ft.:	$10,000,000 (east track only)
Estimated Premium:	$67,850

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§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay (but it is the intention of the parties that the Owner will pay for the building permit separate and apart from the Final Guaranteed Maximum Price).

(Paragraph deleted)
§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.
§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Final Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Intentionally Omitted.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' and expert's fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Intentionally Omitted.

§ 6.7 Other Costs and Emergencies
§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific non-warranty responsibility of the Construction Manager by and through its own personnel, only to the extent there are available funds in the Cost of Work Contingency and only to the extent that the cost of repair or correction is not paid for or recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 Costs associated with Construction Manager's Zero Injury and safety programs.

§ 6.7.5 Compensation to any consultants retained by Construction Manager to assist in or advise concerning the performance of the Work.

§ 6.7.6 Costs for document record retention to be reimbursed at the rate of Zero and Twenty-five Hundredths Dollars ($0.25) per thousand dollars of the Cost of the Work not to exceed a total of Thirty Thousand Dollars ($30,000.00).

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§ 6.7.7 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs without reimbursement, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as provided in Section 6.2, or as may be provided in Article 11;
- **.2** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.3** Overhead and general expenses, except as may be expressly included in the Cost of the Work in Sections 6.1 to 6.7;
- **.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.5** Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.6** Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- **.7** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Final Guaranteed Maximum Price to be exceeded; **.8** Costs for services incurred during the Preconstruction Phase, except for the Construction-Related Services;
- **.9** Cost for the General Conditions in excess of the fixed sum established pursuant to Section 5.1.6;
- **.10** Except as provided in Section 6.7.3, Costs in repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Construction Manager or any subcontractor;
- **.11** Except as provided in Section 6.7.3, Costs in correcting defective or nonconforming work performed or supplied by a Subcontractor or material supplier;
- **.12** Any costs not specifically and expressly described in Costs of Work Costs To Be Reimbursed; and
- **.13** Unimproved costs which would cause the Final Guaranteed Maximum Price, if any, to be exceeded.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

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§ 6.11 Accounting Records
(Paragraph deleted)
§6.11.1 Intentionally Omitted.

§ 6.11.2 If any amount requested by Construction Manager in an approved pay application is overstated, the amount of the following pay application shall be reduced by the overpayment. If there are no remaining pay applications to be made, or if the amount of any overstatement exceeds the aggregate amount of any remaining pay applications, the Construction Manager shall reimburse the Owner for the difference between the overstatement and such remaining amounts of remaining pay applications.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect and Program Manager by the Construction Manager and Certificates for Payment issued by the Architect and the Program Manager based approved schedules of value, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect and Program Manager not later than the Twenty-fifth (25th) day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the Twenty-fifth day of the following month. If an Application for Payment is received by the Architect after the Twenty-fifth (25th) day of the month, payment shall be made by the Owner not later than thirty (30) days after the Architect and Program Manager approve the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit certified payrolls of the craft workers of the Construction Manager and Subcontractors.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Final Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Final Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Final Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

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.2 That portion of the Final Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be paid in equal monthly payments over the duration of the project from commencement of the construction phase to Substantial Completion;

.4 Subtract retainage of ten percent (10 %) applied to the Cost of the Work exclusive of Construction Manager's General Conditions Cost, Cost of Work Performed pursuant to Section 2.3.2.1.1, and fee;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007; and

.8 When the Work of the Contract or a Subcontract is fifty percent (50%) complete, additional retainage will not be required on the remaining Work of the Contract or Subcontract under the Contract or Subcontract, excepting that the total retainage shall in no case be less than an aggregate five percent (5%) of the Contract or Subcontract or as otherwise provided in AIA Document A201-2007.

§ 7.1.8 Except with the Owner's prior approval and except as provided in Section 7.1.7.8, payments to subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and Construction Manager may agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) for the percentage of retainage held on Subcontracts to be less or for a portion of the retainage to be paid earlier where a substantial inequity to a Subcontractor may exist,, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Owner, and such certificate shall not be unreasonably withheld.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

_____

§ 7.2.2 The Owner's auditors/accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors/accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will,

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within seven days after receipt of the written report of the Owner's auditors/accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors/accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request resolution of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors/accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Final Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

(Paragraphs deleted)

ARTICLE 8 INSURANCE

§ 8.1 Insurance For all phases of the Project, the Construction Manager shall purchase and maintain insurance and furnish Performance and Labor and Material Payment Bonds as set forth in Article 11 of AIA Document A201–2007.

(Table deleted)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[X] Litigation in a court of competent jurisdiction
(Paragraphs deleted)

§ 9.3 Initial Decision Maker
The Program Manager will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Paula Yancey

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Final Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Final Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination and, with respect to demobilization and wind down costs, after the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Final Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

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§ 10.2.1 If the Owner terminates the Contract after execution of the Final Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Final Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension
(Paragraph deleted)
§ 10.3.1 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Final Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.3.2 Notwithstanding anything to the contrary in the General Conditions or Supplementary General Conditions of the Contract for Construction, Owner may, by giving written notice to the Construction Manager, suspend, delay, or interrupt the Work at any time for such period as the Owner may determine. In the event of such a delay that does not exceed thirty (30) days, all contracts and subcontracts will remain in full force and effect. In the event of a suspension in the Work, the Construction Manager shall be entitled to an equitable adjustment in the Final Guaranteed Maximum Price and the Contract Time to the extent Construction Manager can demonstrate that its costs, and the costs of its Subcontractors, have increased, and to the extent the time of performance has been delayed.

§ 10.4 Notwithstanding anything to the contrary in Article 10, the provisions of AIA Documents A201-2007 General Conditions of the Contract for Construction with respect to termination and suspension of this Agreement shall apply to all sections of this Article 10.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents
Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:
§ 11.5.1 The Parties acknowledge that time is of the essence of this Agreement and that Owner will sustain damages as a result of Construction Manager's failure to achieve Substantial Completion by the dates indicated herein, which damages include, but are not limited to, loss of revenue, service charges, interest charges, breaches of rental contracts, utility charges, labor and employee expenses. Construction Manager does hereby agree, as a part consideration for the award of this Contract, to pay to the Owner, as liquidated damages and not as a penalty, the sums indicated herein for each calendar day beyond the dates set forth in the Agreement that the Construction Manager fails to achieve Substantial Completion of the Project as indicated herein and as may be extended in accordance with the Contract Documents. The indicated amount is fixed and agreed on by and between the

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Construction Manager and the Owner because of the impracticability and extreme difficulty of ascertaining the actual value of the damages, some of which are indefinite and not susceptible of easy proof, which the Owner will sustain by failure of the Construction Manager to achieve Substantial Completion of the Work by the date indicated. Said amount of damages is agreed to be a reasonable value which the Owner will sustain. The indicated amount shall be deducted from any monies due or that may become due to the Construction Manager and, if said monies are insufficient to cover said damages, then the Construction Manager shall pay the amount of the difference. The liquidated damages set forth in this Section 11.5.1 shall be the sole remedy of the Owner for delay by the Construction Manager in the performance of the Work.

For failure to achieve Substantial Completion of the Arena by the date established for Substantial Completion in the Final Guaranteed Maximum Price Amendment, as said date may be adjusted under the Contract Documents, the liquidated damages shall be $0.00 per calendar day for the first fourteen (14) calendar days and $5,000.00 per calendar day thereafter.

At least four (4) months, but not more than six (6) months, prior to the then-current date established for Substantial Completion of the Arena, the Construction Manager shall give the Owner written notice stating whether the Construction Manager anticipates achieving Substantial Completion before, on, or after the current anticipated date established and the date Construction Manager anticipates Substantial Completion will be achieved ("Anticipated Substantial Completion Date"). In the event the Anticipated Substantial Completion Date is at least fourteen (14) days earlier than the required date of Substantial Completion, and the Construction Manager actually achieves Substantial Completion on or before the Anticipated Substantial Completion Date, Construction Manager shall be entitled to an early completion bonus of $100,000, plus an additional $2,500 per day for each day Substantial Completion is achieved over and above fourteen (14) calendar days prior to the required Substantial Completion Date. In the event Construction Manager does not achieve Substantial Completion on or before the Anticipated Substantial Completion Date, the Owner shall be entitled, in addition to the liquidated damages provided above, a lump sum of $150,000 for each event (defined below) (not to exceed two events within the first fifteen (15) days following the Anticipated Substantial Completion Date) the Owner has scheduled and is unable to hold or conduct due to the failure of the Construction Manager to achieve Substantial Completion of the Arena by the Anticipated Substantial Completion Date; provided that Owner has given Construction Manager no less than ninety (90) days written notice of intent to schedule such event or events prior to the Anticipated Substantial Completion Date. For the purposes of this section, the term "event" shall mean any amateur or professional sporting contest, exhibition contest, or tournament; any musical or theatrical performance; and any other form of live or broadcasted education, entertainment, convention, market or shows for which tickets or concessions are sold to those in attendance and for which cancellation charges shall be imposed on the Owner if the event is not held. Liquidated damages shall be capped at a combined (daily plus event) maximum of $1,000,000.

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

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

§ 11.5.4 Federal Immigration Verification.

§ 11.5.4.1 If Construction Manager is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Construction Manager agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Construction Manager agrees to have each applicant for employment attest that he or she is a U.S. Citizen or qualified alien using the form attached hereto as Exhibit H. Construction Manager shall not discriminate against any employee or applicant for employment to be employed in

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the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. Construction Manager 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.

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

§ 11.5.5 Virtual Design and Construction Services. The Virtual Design and Construction Services set forth in Exhibit I attached hereto shall apply to this Agreement when AIA Document E202-2008, Building Information Modeling Protocol Exhibit is completed and included as part thereof.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The Contract Documents listed in Section 1.1 comprise the Agreement. The parties recognize that the Contract Documents are not complete as of the date of execution of this Agreement. The Contract Documents shall be described with particularity in the Final Guaranteed Maximum Price Amendment.

This Agreement is entered into as of the day and year first written above.

CONTRACTOR: **M. A. MORTENSON COMPANY**

By:_____

OWNER: **WEST HAYMARKET JOINT PUBLIC AGENCY**

By:_____
Jayne Snyder, Chair

(Table deleted)

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TABLE OF EXHIBITS FOR AIA DOCUMENT A133-2009

Exhibit	Section	Description
A	Recital A	Temporary Access License for Initial Construction (Exhibit EE to Master Development Agreement between BNSF and the City of Lincoln as assigned to the JPA)
B	Recital B	Construction and Maintenance Agreement (between BNSF and the City of Lincoln as assigned to the JPA)
C	1.1	Limited Notice to Proceed [NEED TO PREPARE]
C-1	1.1	Final Guaranteed Maximum Price Amendment
D	1.3	Modified AIA Document A201-2007
E	2.1.1	Subcontractor Procurement
F	5.1.6	List of items to be included in Cost of General Conditions (including Supervisory Staff Billing Rate Schedule)
G	6.5.2	Master Billing Rate Schedule
H	11.5.4.2	U.S. Citizen or Qualified Alien Attestation
I	11.5.5	Virtual Design Services

EXHIBIT EE

TEMPORARY CONSTRUCTION AND ACCESS LICENSE

THIS TEMPORARY CONSTRUCTION AND ACCESS LICENSE ("**License**") is made to be effective as of the ____ day of _____, 20__ ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**Licensee**").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. GENERAL.

1.1 Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to use those three (3) areas of Licensor's property each labeled as "Temporary Access Road", generally located at Q, R, and T streets and shown as blue on **Exhibit J-2** attached hereto and incorporated herein by reference, situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (collectively, the "**Premises**") for the purposes specified in **Section 1.3** below (the "**Permitted Uses**").

1.2 In the event the Permitted Uses will affect any improvements or facilities of Licensor or Licensor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "**Other Improvements**"), if any, or interfere with the use of the Other Improvements, Licensee will be responsible at Licensee's sole risk to locate and make any adjustments necessary to such Other Improvements. Licensee must contact the owner(s) of the Other Improvements notifying them of any work that may damage and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses.

1.3 Licensee shall use the Premises exclusively as a site for ingress and egress, site preparation approved by Licensor in writing in advance, and initial construction approved by Licensor in writing in advance (collectively, the "**Advance Construction**"). Licensee shall not use the Premises for any other purpose whatsoever. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("**CERCLA**") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

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

1.5 In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Licensor shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.

1.6 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

2. TERM. This License shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until completion of the Permitted Uses, but in no event later than the date that is the earliest to occur of: (i) the end of the Development Period (as defined in the Master Agreement), or (ii) December 31, 2014.

3. COMPENSATION.

3.1 Licensee shall pay Licensor, prior to the Effective Date, the sum of No Dollars ($0) as compensation for the use of the Premises.

3.2 Subject to the provisions of the C&M Agreement (as defined below) concerning Licensee's reimbursement of costs and expenses, including without limitation flagging costs, incurred by Licensor in connection with Licensee's use of the Premises, Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all other costs and expenses incurred by Licensor in connection with Licensee's use of the Premises. All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

4.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the use of the Premises.

4.2 Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all of Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Website "http://contractororientation.com". This program must be completed no more than one year in advance of Licensee's entry on the Premises.

4.3 Licensee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Licensor and Licensee dated _____, 2010 (the "**C&M Agreement**"). In the event of conflicts between the terms of this License and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

5. DEFINITION OF COST AND EXPENSE. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

6. RIGHT OF LICENSOR TO USE. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

6.1 to maintain, renew, use, operate, change, modify and relocate any existing pipe,

power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

6.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

6.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the Permitted Uses.

7. LICENSEE'S OPERATIONS.

7.1 Licensee shall notify Licensor's Project Engineer, Gerald Maczuga, at 201 N. 7th Street, Lincoln, NE 68508, telephone (402) 458-7537, at least ten (10) business days prior to initially entering the Premises and prior to entering the Premises for any subsequent maintenance thereon (if applicable). After completion of use of the Premises for the Permitted Uses, Licensee shall notify Licensor in writing that such use has been completed.

7.2 In performing the Permitted Uses, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other. In the event Licensee must cross from one side of Licensor's tracks to the other at a location or locations other than a public roadway, and such location or locations are approved by Licensor in advance, then Licensee shall enter into Licensor's Agreement for Private Crossing for each such private crossing location, each such Agreement for Private Crossing to be in the form attached to the Master Agreement (defined below) as Exhibit UU.

7.3 Under no conditions shall Licensee be permitted to 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 the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to stop using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

7.4 Licensee shall, at its sole cost and expense and subject to the supervision of Licensor's Roadmaster, complete the Advance Construction in such a manner that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Licensor, or the safe operation of Licensor's railroad. If at any time Licensee shall, in the judgment of Licensor, fail to perform properly its obligations under this **Section 7.4**, Licensor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

7.5 During the completion of the Advance Construction, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with

the operation of its railroad. The Advance Construction shall be completed within one (1) year of the Effective Date.

7.6 If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Advance Construction, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Advance Construction as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor.

7.7 Prior to Licensee conducting any excavating or boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (*e.g*., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested entry on the Premises, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines on the Premises. Prior to conducting any such boring work, Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

7.8 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

7.9 Any open hole, boring or well constructed upon Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

7.9.1 filled in to surrounding ground level with compacted bentonite grout; or

7.9.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on the Premises for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

7.10 Upon completion of Licensee's work on the Premises or upon termination of this License, whichever shall occur first, Licensee shall, at its sole cost and expense:

7.10.1 remove all of its equipment from the Premises;

7.10.2 report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;

7.10.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

7.10.4 leave the Premises in the condition which existed as of the Effective Date.

7.11 Licensee's on-site supervisors shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

8. LIABILITY. During the term of this License, Licensee shall comply with all provisions contained in Sections 3.6 and 3.7 of the C&M Agreement, and all such provisions contained in Sections 3.6 and 3.7 of the C&M Agreement are hereby incorporated herein by reference.

9. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF LICENSOR.

10. INSURANCE. During the term of this License, Licensee shall comply with all provisions contained in Section 3.8 of the C&M Agreement, and all such provisions contained in Section 3.8 of the C&M Agreement are hereby incorporated herein by reference; provided, however, if any portion of the operation is to be subcontracted by Licensee, Licensee must require that Licensee's contractors provide and maintain the insurance coverages set forth in the C&M Agreement, naming Licensor as an additional insured; provided further, however, that policy limits for Commercial General Liability Insurance may be reduced to $2,000,000 per occurrence and an aggregate limit of $4,000,000, but in no event less than the amount otherwise carried by Licensee's contractors. In addition, Licensee must require that Licensee's contractors release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor in the C&M Agreement.

11. ENVIRONMENTAL.

11.1 Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, 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**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

11.2 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

11.3 In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Advance Construction which occurred or may occur during the term of this License, Licensor may require Licensee, at

Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

11.4 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

12. ALTERATIONS. Licensee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

13. NO WARRANTIES. LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. QUIET ENJOYMENT. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

15. DEFAULT. If default shall be made in any of the covenants or agreements of Licensee contained in this License, Licensor may pursue any and all remedies set forth in Section 24 of the Master Agreement. The remedy set forth in this **Section 15** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

16. LIENS. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 16** or any other Section of this License.

17. TERMINATION. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

18. ASSIGNMENT. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this License or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion. Notwithstanding any contrary provision herein; Licensee shall have the right to assign this License to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further

consent of Licensor provided (i) Licensee delivers prior written notification to Licensor of the assignment, (ii) Licensee and JPA enters into Licensor's then-standard Consent to Assignment form, pursuant to which Licensee will remain jointly and severally liable for all of Licensee's obligations hereunder, including without limitation Licensee's liability and indemnification obligations; provided that Licensor agrees it will first send any claim or notice of default to JPA and will not pursue any action against Licensee until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against Licensee during such time would otherwise prejudice Licensor's rights, and (iii) Licensee's entire interest under that certain Master Development Agreement between Licensor and Licensee dated _____, 2010 (the "**Master Agreement**"), the Exchange Agreement (as defined in the Master Agreement), the C&M Agreement, and all Rights of Entry agreements (as defined in the Master Agreement) are assigned at the same time to JPA.

19. NOTICES. 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 Licensor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

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

20. SURVIVAL. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

21. RECORDATION. It is understood and agreed that this License shall not be filed of record with the Lancaster County, Nebraska Register of Deeds Office or otherwise recorded in the official records of Lancaster County, Nebraska.

22. APPLICABLE LAW. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

23. VENUE. To the fullest extent permitted by law any dispute arising under or in connection with this License or related to any subject matter which is the subject of this License 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 Licensor and Licensee to be mandatory and not permissive. Licensor and Licensee each 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.

24. SEVERABILITY. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

25. INTEGRATION. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

26. MISCELLANEOUS.

26.1 In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

26.2 The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

26.3 All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26.4 Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

[*Signature page follows*]

IN WITNESS WHEREOF, this License has been duly executed by the parties as of the date below each party's signature; to be effective, however, as of the Effective Date above.

LICENSOR:

BNSF Railway Company

By: Jones Lang LaSalle Global Services – RR, Inc.

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

City of Lincoln, Nebraska

By: _____

Name: _____

Title: _____

Date: _____

Sample

EXHIBIT J-2

Premises

[See attached]

CONSTRUCTION AND MAINTENANCE AGREEMENT

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

RECITALS

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

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

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

AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Construction and Contractor Requirements.

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

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

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

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

3.3.4 Safety/Security.

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

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

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

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

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

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

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

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

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

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

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

3.4 Environmental Compliance and Notification.

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

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

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

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

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

3.5 Timing.

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

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

3.6 Indemnifications.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8 Insurance Obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8.1.5 Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV – MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[*Signature page follows*]

Signature Page - C&M Agreement

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

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

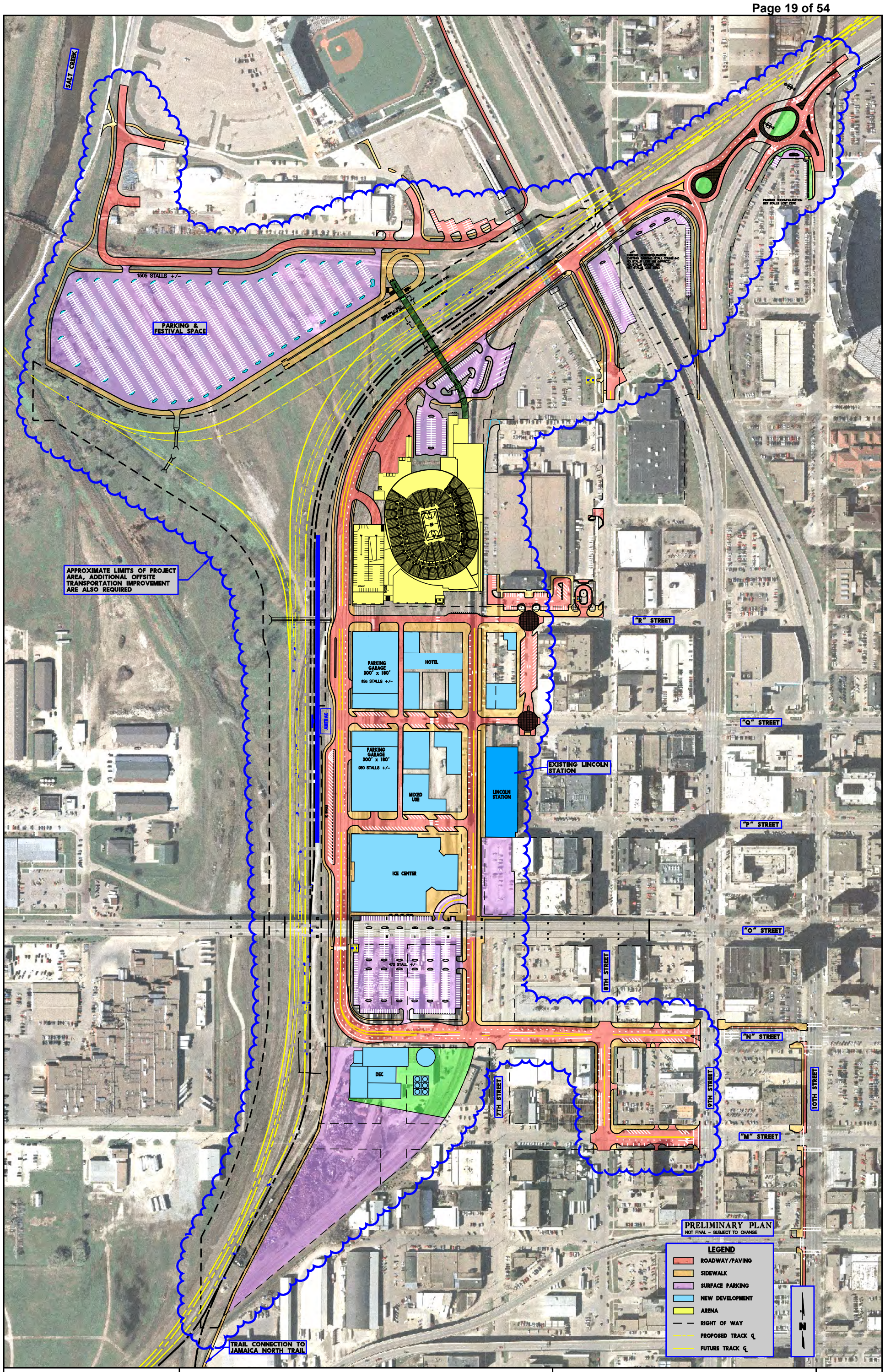
By: _____
David L. Freeman, Vice President – Engineering

Date: _____

EXHIBIT A

Project Area

[See attached]



DATE: 8/23/2010
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PROJECT NO: 008-0645	WEST HAYMARKET REDEVELOPMENT AREA	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: JGO		1111 Lincoln Mall, Suite 111 P.O. Box 84608 Lincoln, NE 68501-4608 TEL 402.474.6311 FAX 402.474.5160	A
DATE: 8/23/2010			

EXHIBIT B

Form of BNSF Plan Approval

Gerald Maczuga
Project Engineer

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

Date: _____

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

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

Dear Mr. Peo:

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

Regards,

Gerald Maczuga
Project Engineer

EXHIBIT C

Contractor Requirements

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 <u>www.contractororientation.com</u>. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any C&M Work is performed. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway's Engineering Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway's Engineering Contractor Safety Orientation. The Contractor must renew the Railway's Engineering Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Project Engineer.**

1.03 Railway Requirements

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

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

- **1.03.02** The Contractor must notify Railway's Project Engineer, telephone number (402) 458-7537, and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:

  - 15’ Horizontally from centerline of nearest track
  - 21’-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

- **1.03.04** Upon completion of construction, the following clearances shall be maintained:

  - 25’ Horizontally from centerline of nearest existing or future track to the face of the pier or abutment structure
  - 31’ Vertically above top of rail to the bottom of the Pedestrian Bridge

- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City and must not be undertaken until approved in writing by the Railway, and until the City has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's C&M Work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Contractor.

- **1.03.07** The details of construction affecting the Railway Property and tracks not included in the City Work Final Design or Approved Plans for the C&M Work must be submitted to the Railway by the City for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited

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

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

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

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

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

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Project Engineer, telephone number (402) 458-7537, a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Engineer, Railway flagger will be required and furnished when Contractor's C&M Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- **1.05.02a** When, upon inspection by Railway's Project Engineer, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's Project Engineer, track or other Railway facilities may be subject to movement or settlement.

- **1.05.02c** When C&M Work in any way interferes with the safe operation of trains at timetable speeds.

- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by Railway's Project Engineer.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by City. The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE GOVERNMENTAL FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is 65 freight trains per 24-hour period at a timetable speed of 40 MPH and 2 passenger trains at a timetable speed of 15 MPH.

1.06 Contractor General Safety Requirements

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

- **1.06.02 Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the**

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

- **1.06.03 Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by Railway's Project Engineer. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.**

- **1.06.04 When Contractor employees are required to work on Railway Property after normal working hours or on weekends, Railway's Project Engineer must be notified. A minimum of two employees must be present at all times.**

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's Project Engineer. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway's Project Engineer and to the Railway's Resource Operations Center at 1 (800) 832-5452. Local emergency numbers are to be obtained from Railway's Project Engineer prior to the start of any C&M Work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, **www.contractororientation.com,** however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's Project Engineer is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF**

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

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any C&M Work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the C&M Work area. The Contractor must determine whether excavation on Railway Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact Railway's Project Engineer, telephone number (402) 458-7537. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on Railway Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway

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

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

1.08 Hazardous Waste, Substances and Material Reporting

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

1.09 Personal Injury Reporting

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

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

1. Accident City/St
2. Date: _____ Time: _____ County:
3. Temperature:
4. Weather
   (if non-Railway location)

5. Social Security #

6. Name (last, first, mi)

7. Address: Street: _____ City: St._____ Zip:

8. Date of Birth: _____ and/or Age _____ Gender:
   (if available)

9. (a) Injury: _____ (b) Body Part:
   (i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
    __ First Aid Only
    __ Required Medical Treatment
    __ Other Medical Treatment

13. Dr. Name _____ 30. Date: _____

14. Dr. Address:
    Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name:

16. Hospital Address:
    Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis:

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

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

EXHIBIT C-1(A)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

BNSF RAILWAY COMPANY
Attention: Project Engineer

Gentlemen:

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

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

Section 1. RELEASE OF LIABILITY AND INDEMNITY

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. TERM

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

Section 3. INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

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

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

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

[Signature page follows]

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

_____
(**Contractor**)

By:_____
Printed Name: _____
Title:_____

BNSF Railway Company

By:_____
Name:_____
Project Engineer

Contact Person: _____
Address: _____
_____
City:_____ State:___ Zip:____
Fax: _____
Phone: _____
E-mail:_____

Accepted and effective this _____day of 20__.

EXHIBIT C-1(B)

CONTRACTOR'S RIGHT OF ENTRY
For C&M Work

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. EXHIBIT C CONTRACTOR REQUIREMENTS

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

Section 5. TRAIN DELAY

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

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

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

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

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

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

[Signature page follows]

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

_____	
(**Contractor**)	**BNSF Railway Company**
By:_____	By:_____
Printed Name: _____	Name:_____
Title:_____	*Project Engineer*

Contact Person: _____
Address: _____
_____
City:_____ State:___ Zip:____
Fax: _____
Phone: _____
E-mail:_____

Accepted and effective this _____day of 20__.

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 C
LIMITED NOTICE TO PROCEED

1. Pursuant to Section 2.2.05 of the Agreement, the Owner hereby accepts and approves Construction Manager's Partial Guaranteed Maximum Price proposal dated _____. The Partial Guaranteed Maximum Price consists of the Construction Manager's Fee, plus the Cost of the Work for the Limited Notice to Proceed Work, plus the Cost of the Work for the General Conditions for the Limited Notice to Proceed Work as those items are defined in the Agreement.

2. The Owner hereby authorizes Construction Manager to commence the Work described in the Partial Maximum Price proposal ("Limited Notice to Proceed Work"). Construction Manager hereby agrees to commence and complete said Work for the Partial Guaranteed Maximum Price by the Anticipated Date of Completion (defined below).

3. The Partial Guaranteed Maximum Price for the Limited Notice to Proceed Work is guaranteed by the Construction Manager not to exceed _____ Dollars ($_____) subject to additions and deductions by Change Order as provided in the Contract Documents. Attached hereto marked as Attachment A is an itemized statement of the Partial Guaranteed Maximum Price organized by the Cost of the Work for the Limited Notice to Proceed Work, Cost of the Work for the General Conditions, and the Construction Manager's Fee.

4. The Partial Guaranteed Maximum Price is based upon the following Assumptions, if any, on which the Partial Guaranteed Maximum Price is based: *(Insert Assumptions)*

5. The Partial Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: *(Insert Supplementary and other Conditions)*

6. The Partial Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications or refer to an exhibit to be attached)

7. The Partial Guaranteed Maximum Price is based upon the following Drawings:
(List the Drawings or refer to an exhibit to be attached)

8. The Partial Guaranteed Maximum Price is based upon the following other documents and information:
(List the any other documents or information or refer to an exhibit to be attached)

9. The anticipated date for completion of the Limited Notice to Proceed Work is _____ ("Anticipated Date of Completion").

10. The terms of this Limited Notice to Proceed will be superseded by the terms of the Final Guaranteed Maximum Price Amendment.

_____	_____
OWNER *(Signature)*	**CONSTRUCTION MANAGER (***Signature)*
_____	_____
(Printed Name and Title)	*(Printed Name and Title)*

AIA® Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

EXHIBIT C-1

Final Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)

West Haymarket Arena

THE OWNER:
(Name, legal status and address)

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ARTICLE A.1
§ A.1.1 Final Guaranteed Maximum Price
Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Final Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Final Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, plus the Cost of the General Conditions, as those terms are defined in the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed ($), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Final Guaranteed Maximum Price. Attached hereto marked as Attachment A is an itemized statement of the Final Guaranteed Maximum Price organized by Cost of the Work, Cost of the General Conditions and the Construction Manager's Fee.
(Provide below or reference an attachment.)

§ A.1.1.3 The Final Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of

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User Notes: (1464094051)

this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

§ A.1.1.4 Allowances included in the Final Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price ($0.00)

§ A.1.1.5 Assumptions, if any, on which the Final Guaranteed Maximum Price is based:

§ A.1.1.6 The Final Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.1.1.7 The Final Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages

§ A.1.1.8 The Final Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Number	Title	Date

§ A.1.1.9 The Final Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

ARTICLE A.2
§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

City Rev. 4-07-11

for the following PROJECT:
(Name and location or address)
West Haymarket Arena

THE OWNER:
(Name, legal status and address)
West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

THE ARCHITECT:
(Name, legal status and address)
DLR Group, Inc.
400 Essex Court
Regency Park
Omaha, NE 68114

THE PROGRAM MANAGER:
(Name, legal status and address)
SAIC

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

For the purpose of these General Conditions the Contract Documents consist of the Amended and Restated Agreement [AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager (as modified)] between the Owner and Construction Manager (hereinafter the Agreement) and , Conditions of the Contract (General, Supplementary and other Conditions), [BNSF] Temporary Access License for Initial Construction ("License") (which is applicable to the extent provided in the Agreement), [BNSF] Construction and Maintenance Agreement (C&M Agreement), including BNSF's Contractor's Requirements (which is applicable to the extent provided in the Agreement), BNSF's Contractor's Right of Entry for C&M Work (which is applicable to the extent provided in the Agreement), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services necessary to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction related to the Work performed under the Contract Documents and which may include construction by the Owner and/or by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, including performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Program Manager is designated as the Initial Decision Maker to render initial decisions on Claims in accordance with Section 15.2.

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§ 1.1.9 CONTRACTOR
Wherever the term "Contractor" is used herein, it shall mean Construction Manager unless specifically indicated otherwise.

§ 1.1.10 LAWS AND REGULATIONS
All laws, ordinances, rules, regulations and orders of any public authority, all standard specifications, manuals and codes, and all manufacturer's specifications, directions, recommendations and publications referred to for the performance of the Work or for the establishment of construction, materials or equipment standards, whether or not specifically made a part of or incorporated by reference into Contract Documents, shall mean and refer to the latest revisions or editions thereof n effect on the date of the Contract Specifications, or as to Change Orders, on the date of the Change Order.

§ 1.1.11 MANUFACTURER'S SPECIFICATIONS
All references to the Manufacturer's Specifications"," Manufacturer's Directions or "Manufacturer's Recommendations" shall mean and refer to the referenced manufacturer's published specification or manuals. Upon written approval of the Architect and Program Manager, such publications shall be made a part of and incorporated into the Contract Specifications as though repeated therein in full, and all manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned accordingly, unless specified to the contrary by the Architect.

§ 1.1.12 MISCELLANEOUS DEFINITIONS
"Furnish', unless specifically limited to context, means furnishing to project site items specified, to include unpacking and assembly if necessary. "Install" means incorporation in the Work, including all necessary labor, materials, equipment and connections necessary to complete installation.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all labor and materials, except that which is specifically designated to be supplied by others, all tools and equipment and any other items necessary for the proper execution and completion of the Work by the Contractor. The Contractor shall perform all necessary and incidental work and furnish any such materials as if they were particularly delineated or described in the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 Work not particularly detailed, marked or specified subject to Architect's concurrence shall be the same as similar parts that are detailed, marked or specified such that all details, ornament, moldings, repeated features, etc. are constructed alike and continue throughout.

§ 1.2.1.2 Owner has retained SAIC Energy Environment and Infrastructure, LLC ("Program Manager") to provide West Haymarket Redevelopment Program Manager Services and Project Management Services for the New Arena ("Arena Project Services") relating to the Work. Program Manager has designated P.C. Sports as Program Manager's designated representative. P.C. Sports has designated Paula Yancey as its designated representative.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor is solely responsible for coordination of bidding, procurement and scope of work of Subcontractors and shall assume full responsibility for complete coordination of Subcontractors.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Whenever references to specification sections and details are preceded by the word "see" any such reference is to be interpreted to include the phrase "and comply with."

§ 1.3 CAPITALIZATION
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

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§ 1.4 INTERPRETATION
In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, except that ownership of the Instruments of Service, not including the right of copyright, shall become the property of the Owner as soon as payment for the same has been completed. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner, Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER
§ 2.1 GENERAL
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner hereby designates Program Manager as the Owner's authorized representative who shall have authority to make such decisions on behalf of the Owner as are separately agreed to in writing between the Owner and the Project Manager. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.
§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding anything to the contrary herein, Contractor will be responsible for notifying BNSF (for

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excavations on BNSF property) and Diggers Hotline of Nebraska prior to excavation to identify the location of all overhead and underground utilities. Contractor shall not proceed with such excavation until verifying that the locators have performed their investigations or that observation of the excavation does not require the presence of BNSF and/or utility company representatives. Contractor will be responsible for the cost of repair of any existing utilities and/or other property damaged as a result of the failure of the Contractor to comply with the preceding sentence.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor hereby designates Derek Cunz as Contractor's authorized representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 The Owner shall furnish Contractor with a survey of the Project site following completion of the site work by others that will precede the Work. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor accepts all visible local requirements and existing conditions of the site, except that Contractor is not responsible for conditions that differ from those indicated on the site survey to be furnished by the Owner under the first sentence of this Section 3.2.1 unless such conditions could have been ascertained through exercise of reasonable diligence by Contractor.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and/or Program Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Prior to commencing any excavation required by the Work, the Contractor shall notify BNSF's Project Engineer (for excavation on BNSF property or within 25 feet of a track) and Diggers Hotline of Nebraska and shall not proceed with the excavation until such entities have marked the location of such facilities or verified that none exist. Any charges resulting from damaged facilities or utilities because of any failure on the part of the Contractor to comply with the preceding sentence shall be borne by the Contractor.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor has an affirmative duty to promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 For all equipment furnished by others to be installed by the Contractor, the Contractor shall use manufacturer's detail drawings, as furnished by others, as approved by the Architect or Owner, to establish rough-in dimensions and locations of services.

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§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

(Paragraph deleted)

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The entire Work shall be warranted against defects in material and workmanship for a period of one (1) year, or such longer time as may be required by the Contract Documents, from the date of Substantial Completion except with respect to any "punch list" items noted at the time of Substantial Completion or occupancy by Owner if prior to date of Substantial Completion. All defects in material and workmanship appearing during the warranty period will be remedied to the reasonable satisfaction of the Architect at no additional cost to the Owner. Contractor, Program Manager, and Architect shall conduct an inspection approximately eleven (11) months after the Date of Substantial Completion to identify warranty defects. During such warranty period, if the Architect and/or Program Manager discover that any of the Work is not in accordance with the Contract Documents, the Architect and/or Program Manager shall notify the Owner and Contractor in writing. The Architect and/or Program Manager shall give such notice promptly after discovery of the condition. Upon receipt of such notice, the Contractor shall promptly correct the work, at the Contractor's expense. The Contractor shall extend the guarantee period for any portions of Work first performed after Substantial Completion. The Contractor shall extend the guarantee period for the number of days between Substantial Completion and the actual completion of such Work. All obligations shall survive acceptance of the Work under the Contract and termination of the Contract. If at any time within the period of guarantee, any of the Work included in the guarantee shall require any repair or reconstruction, the Owner shall notify the Contractor to make the repairs required. Upon receipt of such notice, the Contractor shall proceed with such repairs and shall complete the same within a time fixed by the Owner at the Contractor's cost and expense. If the Contractor shall neglect or fail to proceed with such repairs, then the Owner shall have the right to cause such repairs to be made in a reasonable manner and the whole cost thereof shall be paid directly by the Contractor or reimbursed by him to the Owner; and if the Contractor neglects or refuses to do so, such cost shall be paid by the Contractor's Surety on the performance bond required by the Contract Documents.

§ 3.5.3 Notwithstanding Contractor's warranty as required under Paragraph 3.5.2, Contractor will be responsible for the correction of any hidden or latent defects discovered after the initial warranty period, subject to applicable Nebraska Statutes and law.

§ 3.5.4 Where a greater warranty is called for in the Specifications and is required to be separate from the Specifications themselves, the warranty will be provided by the party or parties required in the Specifications to furnish the warranty. Such warranties shall be in a form consistent with the requirements of the Specifications.

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§ 3.5.5 The Contractor shall secure and furnish to the Owner through the Architect, as a condition precedent to final acceptance and prior to application for final payment, all written guarantees and warranties required in the Specifications to be furnished separate from the warranties set forth in the Specifications.

§ 3.6 TAXES

The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Since the Owner is a governmental entity, it is anticipated that sales and use taxes on tangible personal property to be incorporated into the Work will be excluded under the following procedure: The Owner will issue a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the City of Lincoln. The Contractor performing the work for the Owner, except for work performed for the Lincoln Water System, will be issued a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the Owner. The Purchasing Agent Appointment and Exempt Sales Certificate is to be used by the Contractor and his Subcontractors when purchasing tangible personal property to be actually incorporated into the Contract work, including materials incidental but necessary to the performance of the Contract, provided that such materials are actually incorporated into the contract work. It does not apply to either (1) the purchase of materials to be used but not incorporated into the contract work, including but not limited to form lumber, scaffolding, etc., or (2) the purchase or rental of machinery, equipment, or tools owned or leased by the Contractor or his Subcontractors and used in performing the Contract work.

Purchases qualifying as aforesaid shall be considered as being made by the Owner. The Owner shall be obligated to the vendor for the purchase price, but the Contractor or Subcontractor, as the case may be, shall handle all payments therefore on behalf of the Owner. The vendor shall agree to make demand or claim for payment of the purchase price from the Owner by submitting an invoice to the Contractor or Subcontractor. Title to all materials and supplies so qualifying shall vest in the Owner directly from the vendor. Regardless of the method of payment, title shall vest immediately in the Owner. The Contractor or Subcontractor shall not acquire title to any materials incorporated into the project. All invoices shall bear the Contractor's or Subcontractor's name as agent for the Owner.

The Contractor may reproduce copies of this Contract Agreement and of the original of the aforesaid Appointment and Certificate to furnish to his suppliers on each invoice or order. The Contractor shall enter the supplier's (the vendor's) name and address, the date, the invoice or order number, a description of the items, and the amount, in the spaces provided and shall sign the certificate on the line provided for the "Purchaser's Agent."

The Contractor shall provide each Subcontractor with a copy of this Contract Agreement and of said Appointment and Certificate, and on each Subcontractor's copy of said Appointment and Certificate the Contractor shall add the Subcontractor's name and address in the places provided therefor. Each Subcontractor is hereby given the authority to reproduce copies of the copy of said Appointment and Certificate thus provided him by the Contractor and to furnish the same to his (the Subcontractor's) suppliers on each invoice or order; and the Subcontractor shall complete and sign the same for his purchases in like manner as above set forth for the Contractor.

In the event that Contractor and any Subcontractors and suppliers follows the process described in this Section 3.6, the Owner shall be responsible for any sales and uses taxes required to be paid and the Owner shall also be responsible to make any necessary appeals of any tax assessments with which it disagrees and chooses to contest (or if such an appeal must be made by the Contractor, to reimburse the Contractor for its costs incurred in doing so).

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities required to perform the Work.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Program Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and/or Program Manager will promptly investigate such conditions and, if the Architect and/or Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, Program Manager will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect and/or Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect and/or Program Manager shall promptly notify the Contractor in writing, stating the reasons. If Contractor disputes the Architect's and/or Program Manager's determination or recommendation, the Contractor may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Program Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Subject to Section 3.7.4, the Contractor shall secure all applicable permits (including the building permit) and certificates, pay all fees (except the Owner shall pay the building permit fee), and arrange for necessary inspections required by State, County, City or other authorities and pay all expenses for repairing highways, streets, sidewalks alley, etc. occasioned by execution of its Work.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

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§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Program Manager the name and qualifications of a proposed superintendent. The Owner and Program Manager may reply within 14 days to the Contractor in writing stating (1) whether said party has reasonable objection to the proposed superintendent or (2) that said party requires additional time to review. Failure of the Owner and/or Program Manager to reply within the 14 day period shall constitute said party's notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Contractor shall build into the schedule time delays due to adverse weather conditions as indicated in Section 15.1.5.4.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 Contractor in conjunction with Major Subcontractors shall provide a Bar Chart or CPM Schedule of work to Architect, Owner and Subcontractors. Contractor and its subcontractors are responsible for adherence to this schedule and shall supply sufficient new equipment, tools, and workmen to complete work within time limits specified in this schedule.

§ 3.10.5 Contractor shall within 15 calendar days of start of construction submit to Owner and Architect a copy of the Bar Chart or CPM Schedule, indicating the scheduled dates that various phases of work will start and finish. Contractor shall keep Owner apprised of any delays or changes in this schedule. The schedule shall be updated to current conditions and submitted with each pay request. No approval of a pay request will be given unless this updated schedule is submitted.

§ 3.10.6 Contractor shall on a daily basis prepare a report in which all events affecting the job and occurring that day are recorded. When requested by Owner, copies of these reports shall be submitted to the Owner for information and review.

§ 3.10.7 Contractor shall maintain a Shop Drawing and submittal log, which shall be updated to current conditions, reviewed at each progress meeting, and submitted with each request for payment.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked and updated weekly to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples, Warranties, Owner Manuals, Parts List, and similar required submittals (collectively "Record Documents"). These shall be

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available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Architect shall provide the Program Manager with signed submittals approved by the Architect.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria

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that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Upon Substantial Completion of the Work, the Contractor shall compile for and deliver to the Owner a set of corrected Specifications and Drawings conforming to the construction records of the Contractor and showing the recorded location of the changes in the Work. Within 15 days upon completion of all Work, the Contractor shall furnish to Architect one (1) complete set of final Specifications and Drawings in electronic format (PDF or agreed upon alternative) that have been corrected to show all revisions, deletions and additions. These final Specifications and Drawings shall bear the Contractor's and Subcontractor's signatures and date. The Architect shall then forward an electronic copy of the final Specifications and Drawings to the Owner. No final payment will be issued to the Contractor until the final set of Specifications and Drawings and other Record Documents are delivered to the Architect.

§ 3.13 USE OF SITE

(Paragraph deleted)

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor and each Subcontractor shall provide their own security against theft and vandalism and protection against the elements for suitable storage of their materials or equipment delivered to the site or delivered to some other location agreed upon in writing, which are to be incorporated into this Project, and shall provide their own trailers or sheds for storage of their materials, equipment, tools, etc., if not otherwise provided by the Contractor. Areas for general storage and storage trailers or sheds shall be approved by the Owner. The Contractor and each Subcontractor shall deliver all cement, caulking materials, paint materials, lime, plaster, adhesives for resilient floors, acoustical materials, and all similar materials to the job or to the off- site storage location in original sealed containers, unopened, with seals unbroken and with labels plainly indicating manufacturer's name, brand, type and grade of materials. Containers which are broken, opened, water- marked or otherwise damaged and/or which contain caked, lumpy or otherwise damaged materials are unacceptable and shall be immediately removed from the premises. All the above-mentioned materials shall be stored above ground and protected from dampness, weather, and other damage.

§3.13.3 The Contractor shall enforce the Owner's instructions regarding use of the site, any designated offsite staging areas, and surrounding public streets regarding signage, advertisement, noise, clean-up, smoking, parking, deliveries, etc., and other reasonable rules of conduct and procedures for minimizing the impact of the Work on surrounding properties and public rights-of-way.

§3.13.4 All utilities, curbs, drives, streets, buildings, mechanical and electrical equipment which are damaged or cut during construction and are to be used after construction shall be repaired such that the condition of the repaired item equals or exceeds its condition prior to construction.

§ 3.13.5 The construction, placement of barricades, and posting of warning signs in the area of construction will be the responsibility of the Contractor. This shall include the placement of construction equipment and any obstacles which are created as a result of the construction project. The placement of barricades and warning signs shall be in compliance with the Manual on Uniform Control Devices and the 2007 edition of the Nebraska Department of Roads "Standard Specifications of Highway Construction" and approval by the City of Lincoln, Nebraska. To the

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extent permitted by law, the Contractor expressly accepts control of the construction equipment and any obstacles created during construction of the project. This Section does not alleviate Owner from statutory or common law duties related to landowners.

§ 3.13.6 The Contractor shall supply and maintain adequate sanitary facilities by providing temporary and portable units on the work site to comply with current City-County Health Department and State Department of Health requirements and regulations. These facilities are to be made available for the Contractor's employees and project personnel.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Permission to patch any areas or items of work does not imply a waiver of the Architect's and/or Program Manager's right to require complete removal and replacement in said areas and of said items if, in Program Manager's opinion, after review and concurrence by Architect and/or other authority having jurisdiction in appropriate circumstances, patching does not satisfactorily restore the quality and appearance of the work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall at all times keep the site of the Work free from accumulations of waste materials or rubbish caused by his employees or work, and at the completion of the Work he shall remove all rubbish from and about the Work and all tools, equipment, scaffolding and surplus materials and shall leave the site clean and ready for use. All sewers, conduits, pipes and appurtenances, and all tanks, pump wells, chambers, buildings and other structures shall be kept clean during construction; and as the Work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish, at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar and foreign substances. The Owner may remove or cause the removal of the rubbish and surplus materials and deduct the cost from the final estimate or charge the cost to the Contractor if the cleanup is not properly performed by the Contractor within three (3) days of written notice from the Owner.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Program Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner, Program Manager, and Architect.

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Program Manager, Architect, and the consultants, and agents and employees of any of them (collectively "indemnitees") from and against all third party claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of this Agreement that results in any claim for damages whatsoever including without limitation any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity in any of the other Contract Documents which would otherwise exist as to a party or person described in this Section 3.18. Contractor must require in its contracts with its Subcontractors that said Subcontractors release, defend and indemnify Owner, Program Manager, and Architect to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Owner, Program Manager and Architect herein.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 Indemnification of BNSF. Construction Manager understands and acknowledges that the Indemnification requirements of BNSF found in the C&M Agreement and the Contractor's Right of Entry are in addition to, and not in lieu of, the above obligations of Construction Manager to indemnify and hold harmless the Owner.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner has retained DLR Group, Inc., a firm lawfully practicing architecture in the jurisdiction where the Project is located. DLR Group, Inc. is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Program Manager will provide administration of the Contract and have authority to act on behalf of the Owner to the extent provided in the Owner's agreements with Program Manager. . The Architect will provide administration of the Contract and have authority to act on behalf of the Owner only to the extent provided in the Owner's agreement with Architect.

§ 4.2.2 The Architect and Program Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect and Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and Program Manager will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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§ 4.2.3 On the basis of the site visits, the Architect and Program Manager will keep the Owner and each other reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect and Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and Program Manager will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor will generally communicate with each other through Program Manager about matters arising out of or relating to changes or modifications to the Drawings and Specification or the interpretation thereof. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Program Manager. Notwithstanding, Owner and Contractor may communicate directly with Architect's consultants where Architect is not immediately available or where, in the judgment of the Owner or Contractor, Architect has been unresponsive.

§ 4.2.5 Based on the Architect's and Program Manager's review and evaluations of the Contractor's Applications for Payment, the Architect will certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect and/or Program Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever the Program Manager and/or Architect considers it necessary or advisable, the Program Manager and/or Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or Program Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Program Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Contractor shall promptly notify the Owner if the Program Manager and/or Architect rejects work or requests additional inspection/testing.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and submit the same to the Program Manager for review and subsequent approval by the Owner and the Architect. The Architect and/or Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect and Program Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Program Manager shall act as the Owner's representative concerning performance under, and requirements of, the Contract Documents on written request of the Contractor. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect shall decide matters relating to aesthetic effect consistent with the intent expressed in the Contract Documents.

§ 4.2.12 Advisory interpretations and final decisions of the Program Manager or Architect, respectively, will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Program Manager and Architect will endeavor to secure faithful performance by both Owner and Contractor and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Program Manager will review and respond to requests for information about the Contract Documents. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 Subcontractors, sub-subcontractors, and material suppliers shall not contact the Architect, Program Manager, or Owner directly. Any information they might need shall be obtained through the Contractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Subcontracts shall be procured in accordance with Exhibit E attached to the Agreement.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

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§ 5.3 SUBCONTRACTUAL RELATIONS

(Paragraph deleted)

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 The Contractor is fully responsible to the Owner for acts and omissions of its Subcontractors and persons employed by them or under their control including sub-subcontractors.

§ 5.3.3 Nothing in Contract Documents shall create a contractual relationship between any Subcontractor and the Owner, Project Manager, or the Architect.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension, but with respect to price escalation only to the extent that Subcontractor can prove that cost increases are a result of material cost or wage rate increases.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them; however, Contractor will coordinate the scheduling of the Work of the Contractor's separate subcontractors. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 The Contractor shall reasonably cooperate with all separate contractors, including all reasonable coordination of Contractor's own Subcontractors. It is understood that reasonable cooperation in all phases of the work is to be expected by all separate contractors. Scheduling of their portions of work shall be arranged between them and the Contractor by Owner's Program Manager for smooth sequence of operations.

§ 6.1.6 Contractor shall permit any separate contractors to reasonably utilize its temporary facilities, telephone, power, water or other facilities available for use by its subcontractors in the execution of their work. Contractor may not charge any fees to separate contractors for permitting the reasonable use of Contractor's facilities, except for the actual out-of-pocket cost resulting to the Contractor (such as long-distance telephone charges, equipment rental, extraordinary utility usage, etc.).

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs resulting from delays caused by improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Program Manager alone in accordance with Section 7.4 below.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect, reviewed by the Program Manager and, if approved by the Owner, signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of the adjustment, if any, in the Contract Sum; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect, reviewed by the Program Manager and, if approved by the Owner, signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Program Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

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§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Program Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the
(Paragraphs deleted)
allowable Cost of the Work under A133, as modified by the parties.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Program Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Program Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Program Manager and Architect determine, in their professional judgment, to be reasonably justified. The Program Manager's and Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either Owner or Contractor to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reaches agreement with Owner upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 Contractor will not delay the progress of the Work, pending final determination of value of the Change in the Work, in the event of the issuance of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK
The Program Manager has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Program Manager and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME
§ 8.1 DEFINITIONS
§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION
§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be

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furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 By executing the Construction Contract, Contractor acknowledges that the fixing of the Contract Time, Completion Date, and amount of Liquidated Damages in the Contract Documents is fair and reasonable and has taken the following factors, among others, into consideration:

- **.1** The urgent need of the Owner to have the project completed by the time specified in order to fulfill its commitments to bond holders, tenants, employees, and other building occupants, invitees, or users;
- **.2** The size, general design, and location of the project;
- **.3** The quantity, quality, and probable availability of labor and materials involved in the construction of the project;
- **.4** The total dollar amount of the Construction Contract;
- **.5** The average climatic range, the customary weather for the time period of the Construction Contract and the usual customs and practices prevailing in the construction industry in this area;
- **.6** The impossibility of ascertaining and fixing the actual damages the Owner would sustain the event of delay in the completion of the project;
- **.7** The applicable laws and governmental rules and regulations;
- **.8** The weather conditions customarily encountered in the area of the Project and as described in Section 15.1.5.

Nothing in this Section 8.2.4 shall be deemed to limit Contractor's right to an adjustment in the Contract Time or the Contract Sum pursuant to other terms of the Contract Documents.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 The time for completion of the Work shall be extended or the contract otherwise adjusted upon written request from the Contractor to Owner, provided the request is based on delays or suspensions for causes beyond the control and are not the fault of the Contractor. Such delays shall include, but not be limited to, acts or neglects of the Owner, Program Manager or the Architect or other contractors of the Owner (including BNSF) or any other party under the control of the Owner or others performing additional work, or to fires, floods, labor disputes, unusual delay in deliveries, epidemics, vandalism, abnormal weather conditions or acts of God; or the request is based upon a change in the scope of the work which has been approved by the Owner. The length of such extension shall be the equivalent number of working days, if the contract time is expressed in working days, or the equivalent number of calendar days, if the contract time is expressed in calendar days or is expressed as a specific completion date, during which the Work was suspended or delayed. Requests for extensions in completion dates shall be in accordance with Section 15.1.2.

Certain delays will not be justified for extension of time. Such delays, shall include, but not limited to:

1. Delays caused by a Subcontractor, unless ultimately caused by circumstances otherwise permitting an extension of time under this Section 8.3.1.
2. Inadequate construction force.
3. Failure to place orders for equipment or materials in a timely manner.
4. Normal periods of adverse weather.
5. Subsurface or otherwise concealed subsurface conditions for which the Contractor is not entitled to relief under Section 3.7.4.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents or under the law. If the Contractor is delayed any time in the commencement or progress of the Work by an act or neglect of the Owner, Program Manager, or Architect, or a separate contractor (including BNSF), then, in addition to an extension of time, the Contractor shall be entitled to an equitable adjustment in the Contract Sum for costs associated with such delay.

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ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

The Contractor shall submit to the Owner, Program Manager, and Architect, before the first Application for Payment, a detailed and approved schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect, Program Manager, and/or Owner may require. This schedule, unless objected to by the Architect. Program Manager, and/or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Program Manager and the Architect an itemized Application for Payment prepared in accordance with the schedule of values required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Program Manager and/or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, which have been approved by the Program Manager but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored by the Contractor at the site for subsequent incorporation in the Work. Notwithstanding the Owner having title to such material and equipment, pursuant to Paragraph 9.3.3, Contractor shall be responsible for the entire cost of any replacement, theft, repair, or other damage which make the materials unsuitable for incorporation in the Work, except to the extent caused by the Owner or parties under its control.. Contractor will be held completely responsible for the materials until they are fully incorporated into the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Nothing in this Section 9.3.2 shall be deemed to limit Contractor's rights to seek recovery of its costs from the proceeds of builder's risk insurance applicable to the Project.

§ 9.3.2.1 The Owner may approve payment for materials and equipment stored off the site under the following conditions:

The Contractor shall furnish and maintain a safe, secure, and suitable insured storage site and proper storage conditions, which must be approved in advance by the Owner. Equipment and materials covered by an application for payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft and other hazards as the material may require. All protection must be provided by the Contractor, at his own expense, and must be maintained throughout the storage period. Materials and equipment must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled, "PROPERTY OF WEST HAYMARKET JOINT PUBLIC AGENCY", with project name. Materials and equipment stored at the site must be stored so that they may be readily inspected, measured, and counted, at all times, by the Program Manager. Application for Payment for materials and equipment stored off the site must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to the Owner. The bill of sale must be accompanied by an inventory of stored materials or equipment, together with a description of the storage site by street number and city, or by a legal description of the premises.

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The Contractor agrees that in accepting payment for the materials or equipment stored off the site, it is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with Drawings and Specifications. The Contractor further agrees that acceptance by the Owner of a bill of sale for stored materials or equipment does not imply acceptance of the same for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance by the Owner.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Contractor shall provide conditional lien waivers to the Owner for all Work covered by an Application for Payment (to the extent of payment) no later than the time of payment. Contractor shall provide a final unconditional lien waiver for all Work covered by the payment with the Contractor's next Application for Payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Program Manager and Architect shall promptly review each Application for Payment and will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment for such amount as the Program Manager and Architect determine is properly due, or notify the Contractor and Owner in writing of the Program Manager's and Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment to Owner will constitute a representation by the Architect and Program Manager to the Owner, based on the Architect's and Program Manager's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Program Manager and Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Program Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Program Manager may withhold a Certificate for Payment in whole or in part, for the reasons set forth below. The Program Manager may, because of subsequently discovered evidence, nullify the whole or a part of a Certificate for Payment previously issued for the reasons set forth below:

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, Owner shall make payment of amounts previously withheld.

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§ 9.5.3 Intentionally Omitted.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Program Manager and Architect have issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 Intentionally Omitted.

§ 9.6.3 Intentionally Omitted.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 The Contractor shall provide the Owner with a payment bond in the full penal sum of the Contract Sum.

§ 9.7 FAILURE OF PAYMENT

If the Program Manager and Architect do not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's approved Application for Payment, or if the Owner does not pay the Contractor within thirty days after the date established in the Contract Documents the amount owed under the Contract Documents or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner, Program Manager, and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Approval of the Contractor's Application for Payment shall not be unreasonably withheld.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when the Contractor has secured a temporary or permanent certificate of occupancy so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Program Manager and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Program Manager and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Program Manager's and Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Program Manager and/or Architect. In such case, the Contractor shall then submit a request for another inspection by the Program Manager and/or Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and

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insurance, and shall fix the time not exceeding ninety (90) days within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Program Manager and Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, Program Manager and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Program Manager, and Architect will promptly make such inspection and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect and Program Manager will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Program Manager's and Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Program Manager and Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Program Manager and

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Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Program Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Program Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents;
- **.4** latent and hidden defects discovered after final completion subject to Nebraska statutes and law; or
- **.5** unrepaired items which were listed on a "punch list" prepared at time of Substantial Completion or at Final Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY OWNER
Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of Owner for the purpose of payment of the Contract Sum or any part thereof.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. More specifically, the Contractor shall give notice to all operators by calling the One Call Diggers Hotline (#811) pursuant to the One-Call Notification Act (Neb. Rev. State §76-2301 to 76-2330) before commencing excavation. Contractor shall also give notice to BNSF if the execution is on BNSF property or within twenty-five feet (25') of any track.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. In addition, the Contractor shall:

- **.1** Provide and maintain, required amount of, portable fire-fighting equipment including fire extinguishers. All persons working on the project shall be familiarized with the locations and operation of fire extinguishers.

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.2 Provide, erect, and maintain all required planking, barricades, guardrails, temporary sidewalks, etc., streets, drives adjoining property and the new building, as well as to prevent accidents to the public and the workmen at the jobsite.

.3 Provide and maintain proper shoring and bracing to prevent earth from caving or washing into the building excavation.

.4 Provide and maintain proper shoring and bracing for existing underground utilities, sewers, etc., encountered during excavation work, to protect them from collapse or other type of damage until such time as they are to be removed, incorporated into the new work, or can be properly backfilled upon completion of new work.

.5 Provide heavy plank covering over walks, curbs, drives, etc., and heavy wood cribbing around all trees within the construction area and at corners of the new building to protect them from possible damage by trucking or otherwise.

.6 Provide and maintain protection against rain, snow, wind, ice, storms and heat so as to maintain all Work, materials, apparatus, and fixtures, incorporated in the Work, free from injury or damage. At the end of the day's work, cover all Work subject to damage. Remove snow and ice as necessary for safety and proper execution of the Work.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. Notwithstanding anything to the contrary herein, the Contractor shall assume the responsibility for the protection of all finished construction under this Contract and shall repair and restore any and all damage to his finished construction to its original state, except that Contractor shall not be responsible for damage caused by the Owner or parties under its control.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. The Contractor shall not be responsible for any Hazardous Substance uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Document with specificity as to type and location to be within the scope of the Work. The Contractor shall be responsible for a Hazardous Substance created with any materials or equipment brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible.

If the Contractor encounters a Hazardous Substance or suspected Hazardous Substance or if the Contractor or anyone for whom the Contractor is responsible releases a Hazardous Substance, the Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area

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affected thereby; and (iii) notify the Program Manager AND any regulatory agency required by law. The Program Manager shall promptly determine the necessity for the Owner to retain a qualified expert to evaluate such conditions or take corrective action, if any.

The Owner shall be deemed to be the generator of all Hazardous Substances that existed at the Project site prior to the commencement of the Contractor's Work (including for Hazardous Substances that are specifically identified by type and location to be part of the Work), and the Owner shall sign all manifests (as owner or generator, as indicated on the manifest) required to accompany the transportation and disposal of such Hazardous Substances. The Owner agrees that the Contractor is not responsible for any pre-existing Hazardous Substances at the Project site that are not specifically identified by type and location in the Contract Documents to be part of the Work or any Hazardous Substances brought to the Project site by anyone other than Contractor or its subcontractors.

The Contractor shall be responsible for any and all civil or criminal penalties, fines, damages, or other charges imposed by any regulatory agency or court for all Hazardous Substances created or released for which the Contractor is responsible that are in violation of applicable statutes and laws and that are a result, direct or indirect, of work performed under this Contract. The Contractor shall also be responsible for reimbursement to the Owner for administration, reporting, and tracking expenses required as a result of any Hazardous Substances for which the Contractor is responsible. In the event the regulatory agency or court imposes a probationary period, the Contractor shall post bond for the probationary period to ensure that all such costs are reimbursed to the Owner. This responsibility shall apply whether penalties are imposed directly on the Contractor or any of its subcontractors, or the Owner. The Contractor shall defend and indemnify the Owner against such penalties. Regulatory agencies may include, but are not limited to, the Department of Environmental Quality and the US EPA.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the Hazardous Substance reported by the Contractor and, in the event such Hazardous Substance is found to be present, to cause it to be rendered harmless (which shall be deemed to mean remediated, removed or otherwise addressed as required by applicable regulations or authorities). Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Program Manager, and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous Substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, Program Manager, and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Program Manager, or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, Program Manager, and the Architect have no reasonable objection. When the Hazardous Substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Owner shall procure and maintain insurance to cover the obligations in this paragraph. Contractor shall not incorporate in the Work any materials containing asbestos, PCB's, or other hazardous materials. Contractor shall not use, produce, store, release, dispose, or handle, in or about the project, or transfer to or from the project (or permit any other party to do such acts), any Hazardous Substance except in compliance with all applicable environmental laws.

§ 10.3.4 "Hazardous Substances" shall mean all substances, materials, and waste that are or become regulated or classified in the handling, storage, remediation, or disposal as hazardous or toxic under any Environmental Law, including but not limited tto any hazardous, ignitable, corrosive, caustic, reactive, toxic, or polluting waste or substance; a "hazardous waste" (as defined in the regulations adopted under the Resource Conservation and Recovery Act of 1976); oil or petroleum products; asbestos; polychlorinated biphenyls; formaldehyde compounds,

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explosives, and radioactive materials. "Environmental Laws" shall mean any federal, state, or local statute, ordinance, rule, regulation, order, decree or guideline (or that of any quasi-governmental entity having jurisdiction over the Project or the Project site) pertaining to health, industrial hygiene or the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation, and Liability Act.

§ 10.3.5 Intentionally Omitted.

§ 10.3.6 If the Contractor is held liable by a government agency for the cost of remediation of a Hazardous Substance by reason of performing Work as required by the Contract Documents, the Owner shall defend, indemnify and hold harmless the Contractor for all cost and expense (including attorneys' fees, fines, judgments, and penalties) thereby incurred, except to the extent that such damage, loss or expense is due to the negligence of the Contractor.

§ 10.3.7 The Owner shall not be responsible under Section 10.3 for Hazardous Substances brought to the site by the Contractor.

§ 10.3.8 The Contractor agrees to indemnify, defend, and hold harmless, to the fullest extent allowed by law, the Owner, and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorney's fees of any and every kind or character, known or unknown) arising out of or resulting from the acts or omissions of the Contractor regarding a Hazardous Substance for (1) any Hazardous Substance brought to the site by the Contractor or (2) any release, leak, spill, disposal of, or other handling in, on or about the site of any Hazardous Substance brought to the site by someone other than the Contractor, if the Contractor knew that such material was a Hazardous Substance at the time of the release, leak, spill, disposal or other handling, that results in any claim for damage whatsoever including any bodily injury, sickness, disease, cost of remediation, or damage to or destruction of tangible property, including loss of use resulting therefrom. Contractor further agrees to require that its Subcontractors release, defend and indemnify Owner to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Owner herein.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 WATER PRECAUTIONS

§ 10.5.1 The Contractor shall take all reasonable precautions to keep all parts of Site, including excavations, free from any accumulation of water, no matter what the source or cause.

§ 10.5.2 The Contractor shall dispose of water and waste water in such manner as will not endanger public health and safety or cause damage or expense to property. The Contractor shall comply with any law, or administrative regulatory, rule or local ordinance which is applicable to the disposal of water and waste water. If sewers and streets are allowed to be used for drainage or disposal of water during construction, they shall be maintained and left satisfactorily clean upon completion of Work.

§ 10.5.3 The Contractor shall not be responsible for contaminated ground water, unless the contamination of ground water shall be caused by the Contractor or any of it Subcontractors.

§ 10.6 SIGNS

§ 10.6.1 The display of signs at the Project Site other than those required by law shall be limited to those required by Contract Documents and for safety and for the orderly management of the site, and signs that identify Contractor as the construction manager on the site. Subject to Owner's written approval, signage identifying, Architect, Owners or other primary parties may be erected on-site. Contractor shall submit a drawing showing the size, message and location of any such requested signs prior to the fabrication and installation thereof. Notwithstanding any provision to the contrary, the size, message and location of all signs must comply with Title 22 (Outdoor Signs and Structures) and Chapter 27.69 (Signs) of the City of Lincoln's Municipal Code and shall be subject to the approval of the Owner.

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§ 10.6.2 The Contractor shall furnish and maintain all signs required for prosecution of the Work and as required by law and for public safety the control of vehicular and pedestrian traffic around the site typical for projects of similar scope and locale as deemed prudent by Contractor and Owner.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by 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 and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the following limits of liability:

Workers Compensation	Statutory Limits
Employers Liability	$500,000 each accident $500,000 disease policy limit $500,000 disease each employee
Commercial General Liability	$2,000,000 each occurrence $4,000,000 aggregate (applicable on a per project basis)
Umbrella/Excess Liability	$23,000,000 each occurrence and $50,000,000 aggregate
Automobile Liability	$1,000,000 each accident
Railroad Protective Liability	$5,000,000 each occurrence $10,000,000 in the aggregate

Coverages shall be maintained without interruption from date of commencement of the Work until date of final payment. Contractor shall endorse its Commercial General Liability and Automobile Liability policies to add the Owner, Program Manager, Architect and BNSF Railway Company as additional insureds. The Commercial General Liability and Automobile Liability policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Owner or BNSF Railway Company.

The definition of insured contract in the Commercial General Liability policy shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property, and shall include a waiver of subrogation in favor of BNSF Railway Company. The Automobile Liability policy shall include a similar waiver of subrogation in favor of BNSF Railway Company. Said waivers of subrogation shall not apply in the event that the claim or suit arises wholly out of the sole negligence of BNSF Railway Company or to the extent caused by the gross negligence or willful misconduct of BNSF Railway Company.

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Workers' Compensation coverage shall include a waiver of subrogation in favor of the Owner and BNSF Railway Company, where allowed by law.

Railroad Protective Liability insurance shall be issued on a standard ISO form CG 00 35 10 93 and shall include (1) a Pollution Exclusion Amendment (ISO form CG 28 31 10 93), (2) the Limited Seepage and Pollution Endorsement, and (3) no exclusion for punitive damages (where allowed by law).

All insurance policies must be written by an insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the State of Nebraska.

§ 11.1.3 Certificates of insurance acceptable to the Owner and BNSF Railway Company shall be filed with the Owner and BNSF Railway prior to commencement of the Work. The applicable policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and/or BNSF Railway Company. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.1.4 Intentionally Omitted

§ 11.2 OWNER'S LIABILITY INSURANCE
The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 Optionally, in lieu of the above, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.**11.3.1** Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.2.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.**11.3.2** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.2.3 If the Owner requires Contractor to purchase and maintain Project Management Protective Liability Insurance, the Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.**11.3.3** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

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§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk," with normal and customary exclusions, or equivalent policy form in the amount of the initial Contract Sum, except for normal and customary sublimits, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are insureds of such insurance, until substantial completion or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include the Contractor, Subcontractors and Sub-subcontractors in the Project as additional insureds.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form with normal and customary exclusions and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism, rigging and hoisting, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit with sublimits that will cover the maximum values at any one location or conveyance, excluding ocean and air transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. This coverage may be included in the Property Insurance.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. In the event such insurance is purchased and maintained, the Owner waives all rights of action against the Contractor for loss of use of the Owner's property to the extend covered by such insurance, including consequential losses due to fire or other hazards however caused. However, in the event that loss of use is covered by such loss of use insurance, and in the event that loss of use was caused by negligence of the Contractor, Contractor will be liable for any deductible incurred, subject to a maximum of $50,000.**11.4.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of

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use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance, or if after final payment property insurance is to be provided on the completed Project, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All policies shall provide this waiver of subrogation by endorsement or otherwise. However, in the event of such a covered loss, and in the event such covered loss was caused by the negligence of Contractor, Contractor will be liable for any deductible incurred, subject to a maximum of $50,000.**11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall provide the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice, except ten days for nonpayment of premium, has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 Intentionally Omitted

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish Performance and Labor and Material Payment Bond in the amount of one hundred percent (100%) of the Contract Sum. Such bonds shall be executed by the Contractor and by a corporate

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surety company authorized to transact business in the State of Nebraska. Such bonds shall be conditioned upon the faithful performance of all the terms and conditions of the Contract Document, and payment obligations arising thereunder, including holding harmless the Owner from failure to do so and including the making good of any guarantees or warranties which the Contract Documents may require. The Payment Bond shall be further conditioned upon the payment of all laborers and materialmen who provide labor, materials, etc. actually used or rented in the performance of the Contract, including insurance premiums and interest. The Contractor shall deliver the required bonds to the Owner at least three (3) days before commencement of any Work at the Project site.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 Should the principal amount of the Construction Performance Bond and Construction Payment Bond be modified as a result of a Change Order, the Contractor shall provide to the Owner written confirmation from the Surety indicating that the bond has been modified and to what extent it has been modified.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Program Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Program Manager, be uncovered for the Program Manager's or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Program Manager or Architect has not specifically requested to examine prior to its being covered, the Program Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. Contractor shall be responsible for all costs associated with uncovering and recovering any Work that requires special inspection where such inspections were not performed

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Program Manager or Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year warranty period or any extended warranty period required by the Contract for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Neither the one-year warranty period nor acceptance of premises by the Owner shall relieve the Contractor of liability as to "latent defects" in workmanship or material discovered after the warranty period, subject to Nebraska statutes and law.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Nebraska.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Program Manager timely notice of when and where tests and inspections are to be made so that the Program Manager may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Program Manager or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Program Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner. The Contractor, prior to performing such Work, shall give timely notice to the Program Manager, Architect, and/or public authorities having jurisdiction of when and where tests and inspections are to be made so that the Program Manager, Architect and/or public authorities having jurisdiction may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Program Manager and Architect.

§ 13.5.5 If the Program Manager and/or Architect are to observe tests, inspections or approvals required by the Contract Documents, the Program Manager and/or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 CODES AND ORDINANCES

When the specifications or drawings call for work or materials of higher standard than those required by codes or ordinances, the specifications and drawings shall govern.

§ 13.9 TRADE SECTIONS

The specifications are generally divided into trade sections for the purpose of ready reference, consistent with the Construction Specifications Institute's format. The division of the Work among his subcontractors is the Contractor's responsibility and the Architect assumes no responsibility to act as arbiter to establish subcontract limits of work.

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§ 13.10 SAFETY REGULATIONS
All work on this project will be done in accordance with the applicable regulations of the Federal Register, Occupation Safety and Health Administration, Occupation Safety and Health Act and other applicable State and Federal regulations. Compliance with these regulations shall be the responsibility of the Contractor.

§ 13.11 CONSTRUCTION AND GRADING STAKING
The Contractor shall be responsible and pay for all construction staking and layout (working from building corners, boundary corners, and elevation reference datum point established by Owner's Engineer) including, but not limited to establishing the location of all gridlines, curbs and finish floor elevations. Contractor shall not begin paving operations until Owner and Architect have approved grades. Owner reserves the right to have an independent Registered Civil Engineer, employed by the Owner, verify any or all locations, grades or elevations. The Contractor shall make all corrections as required at no extra cost to the Owner.

§ 13.12 FEES FOR TESTS AND INSPECTIONS
§ 13.12.1 All testing and inspection consultants shall be approved by the Contractor and Owner. The Contractor shall be solely responsible for having all tests and special inspections required by the Contract Documents performed, and shall notify the Consultant when inspections are required. No work requiring inspections under the Contract Documents shall be covered or enclosed until such inspections have been performed.

§ 13.12.2 The frequency of testing required will be as indicated in the Specifications section.

§ 13.12.3 The cost of all quality control testing shall be paid by the Owner; provided that any excessive retesting (as reasonably determined by Owner) required for quality control as a result of deficient initial tests shall be paid for by the Contractor.

§ 13.12.4 Testing of utility systems, water and gas piping, electrical and alarm systems, fire sprinkler systems, and other systems customarily requiring testing pursuant to mechanical, plumbing or electrical codes, or acceptance by municipalities or utility companies shall be performed and paid for by Contractor.

§ 13.13 TIME
Time is of the essence in each Subcontract Agreement between the Contractor and Subcontractor, and the above provisions shall be included in all subcontractors contracts.

§ 13.14 NEBRASKA FAIR EMPLOYMENT PRACTICE ACT
Neither the Contractor nor any Subcontractor or Sub-subcontractor shall discriminate against any employee or applicant for employment to be employed in the performance of the Contract, with respect to hire, tenure, terms, conditions, or privileges or employment, because of race, color, religion, sex or nationa origin, as prohibited by the Nebraska Fair Employment Practive Act. The Contractor hereby warrants and represents that it is in compliance with said Act. The Contractor shall receive from each Subcontractor warranties and representations similar in substance to those contained in this paragraph.

§ 13.15 RELATIONSHIP OF PARTIES TO THE CONTRACT
It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor, or the Subcontractor, or the Sub-subcontractor, shall not be deemed to be employees of Owner, and employees of Owner shall not be deemed to be employees of the Contractor or the Subcontractors. The Contractor, Subcontractor, Sub-subcontractor and Owner shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees, the Subcontractor's employees, the Sub-subcontractor's employees nor Owner's employees shall be entitled to any salary, wages or benefits from any other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any

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other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may only terminate after giving seven (7) days written notice of Contractor's intent to terminate. If the Owner is unable to satisfy or remove the cause for termination within seven (7) days after Contractor's notice of intent to terminate, Contractor may, upon seven (7) days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit. Contractor shall perform all tasks described in Section 14.4.2 as a condition precedent to the receipt of payments to which Contractor is entitled.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

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the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Program Manager or Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders;
- **.4** obtain materials from Subcontractors and suppliers for which payment has been made and deliver them to the jobsite or such other location as designed by Owner. Also, move stockpiled materials at the site to locations within the building or other locations designated by Owner; and
- **.5** where orders have been placed, determine to what extent and at what cost the orders may be canceled. Provide such information to Owner so Owner can decide whether to cancel or accept delivery and make payment. Deliver all such materials to the jobsite or to other location designed by Owner.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Program Manager as the Initial Decision Maker with a copy sent to the Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Change Orders shall be prepared and Certificates for Payment issued in accordance with the decisions of the Initial Decision Maker.

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§ 15.1.4 CLAIMS FOR ADDITIONAL COST
If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work pertaining to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME
§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.5.3 The Contractor shall take due note of the fact that its failure to place orders for specified equipment or material sufficiently in advance of his scheduled date of installation will not be considered by the Architect or Owner as a valid reason upon which the Contractor may base his request for an extension of contract time, for any substitutes, or for any deviations from the drawings and/or specifications.

§ 15.1.5.4 No additional time will be allowed as a result of adverse weather unless all the following conditions are met:

.1 The Contractor shall provide a written justification why Work could not effectively be performed under the weather conditions. The written justification shall include the project schedule of work and identify how the weather occurrence adversely affected the critical path of construction. If the critical path Work is indoors, temperature, wind speed, and precipitation will not be justifications for additional time unless the structure was not substantially enclosed or minimum indoor working temperature were not able to be maintained.

.2 Claims for weather delay must be made in writing within twenty-one (21) working days from the end of the event occurrence except with respect to precipitation which shall be based on Paragraph (3) below.

.3 Local Climatological Data from the US Department of Commerce, NOAA, National Climatic Data Center at the Municipal Airport, Lincoln, Nebraska will be used as the weather data for determining weather delay claims. The following will constitute factors for weather delay claims:

(1) Temperature: Any three hour period during working hours that is reported in the above referenced Climatological Data as being below zero degrees Fahrenheit.

(2) Wind Speed: Any three hour period during working hours that is reported in the above referenced Climatological Data as being in excess of 20 mph.

(3) Precipitation: Will be based on the number of days per month when precipitation exceeds .01 inch and the number of such days exceed the median number of days per month when the precipitation exceeds .01 inch as shown in the table below:

Median No. of Days when Precipitation Exceeds .01 inch by Month

Jan	8	Feb	6	Mar	8	Apr	10	May	11
Jun	9	Jul	8	Aug	9	Sep	7	Oct	6
Nov	5	Dec	5						

Notwithstanding the foregoing, it is understood and agreed by the parties that depending upon the circumstances certain amounts of precipitation may affect the project schedule. The Contractor shall notify the Architect and Owner in writing any time the Contractor believes that precipitation warrants an extension in the Contract Time. Any such notice shall be delivered to the Architect and Owner within twenty-one (21) days of occurrence of the precipitation believed by the Contractor to warrant an extension of the Contract Time.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES
Except as provided below, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This waiver of consequential damages includes

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User Notes: (944789575)

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This waiver of consequential damages is applicable, without limitation, to all consequential damages due to either party's termination of this Contract in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Program Manager as the Initial Decision Maker for initial decision. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. In the event Owner fails to authorize retention of such persons, the Initial Decision Maker shall render a decision based on his experience and belief, or advise the Parties he is unable to resolve the claim because he lacks sufficient information to evaluate the merits.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be binding on the Parties but subject to mediation, and if the parties fail to resolve their dispute through mediation, to binding dispute resolution as provided in Section 15.3.3.

§ 15.2.6 Except as mutually determined otherwise by the Owner and Contractor, all claims, disputes and other matters in question between the Contractor and the Owner arising out of or relating to the Contract Documents or breach thereof, that cannot be mutually resolved between the Contractor and/or any of its Subcontractors and/or the Owner by a decision of the Initial Decision Maker, or mediation and ,except for claims which have been waived by the making or acceptance of final payment, shall be decided by the courts of law unless the Parties mutually agree to arbitration.

(Paragraph deleted)

Init.
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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 Subject to Section 9.7, pending final resolution of any claims including legal proceedings, the Contractor shall carry on the Work and maintain its progress, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents except for items specifically in dispute.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event the Parties are unable to agree on the decision reached by mediation, a request for arbitration may be made within twenty-one (21) days thereafter. If the Parties do not mutually agree to arbitration within ten (10) days after a written request, then the dispute shall be decided by legal action and the courts of law.

§ 15.4 Intentionally Omitted.
(Paragraphs deleted)

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Project Name: Project No.:

Bond No.: _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the West Haymarket Joint Public Agency (the "JPA") has awarded to M.A. MORTENSON COMPANY as Principal a contract dated the _____ day of _____, 2011 (the "Contract"), which Contract is by this reference made a part hereof, for the work described as follows:

AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

NOW, THEREFORE, we, the undersigned Principal and _____, as Surety, are held and firmly bound unto the JPA in the sum of _____ Dollars ($_____), to be paid to The JPA or its successory and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by the JPA, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by the JPA, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless the JPA as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by the JPA to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

1. Undertake through its agents or independent contractors, reasonably acceptable to the JPA, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages, or, at Surety's election, or, if required by the JPA.

Project Name: Project No.:

2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by the JPA of the lowest responsible bidder, arrange for a contract between such bidder and the JPA and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by the JPA to the Principal under the Contract and any amendments thereto, less the amount paid by the JPA to Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the JPA's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the JPA or its successors or assigns.

Surety may join in any arbitration proceedings brought under the Contract and shall be bound by any arbitration award.

In the event suit is brought upon this bond by the JPA, Surety shall pay reasonable attorney's fees and costs incurred by the JPA in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2011.

Principal: _____
(Name of Firm)

By: _____
(Signature)

_____
(Printed Name)

Title: _____

Surety: _____
(Name of Firm)

By: _____
(Signature)

_____
(Printed Name)

Title: _____

Address for Notices:

_____

_____

_____

NOTE: Notary acknowledgment for Surety and Surety's Power of Attorney must be attached.

Project Name: Project No.:

Bond No.: _____

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the West Haymarket Joint Public Agency (the "JPA") has awarded to M.A. MORTENSON COMPANY as Principal a contract dated the _____ day of _____, 2011 (the "Contract") for the work described as follows:

AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

NOW, THEREFORE, we, the undersigned Principal and _____, as Surety, are held and firmly bound unto the JPA in the sum of _____ Dollars ($_____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by the JPA, or its subcontractors shall fail to pay any of the persons named in the state statutes, or amounts due with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of Nebraska from the wages of employees of Principal and subcontractors with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall become and be null and void.

Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the JPA's rights against the other.

Project Name: Project No.:

In the event suit is brought upon this bond, the parties not prevailing in such suit shall pay reasonable attorneys' fees and costs incurred by the prevailing parties in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2011.

Principal: _____
(Name of Firm)

By: _____
(Signature)

_____
(Printed Name)

Title: _____

Surety: _____
(Name of Firm)

By: _____
(Signature)

_____
(Printed Name)

Title: _____

Address for Notices:

_____

_____

_____

NOTE: Notary acknowledgment for Surety and Surety's Power of Attorney must be attached.

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 rewriting 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.

Exhibit E
Subcontractor Procurement

1.1 All subcontracts shall be procured on the basis of best value offered to the Project and shall be lump sum subcontracts. There will be two processes utilized for the best value selection of subcontractors: one-step RFP and two-step RFQ/RFP. The complexity of the work package, completeness of the Contract Documents at the time of procurement, and the size of the package will determine if one-step or two-step procurement will be utilized.

1.2 One-step process: Construction Manager shall, for each scope package: (1) draft a request for proposal specific to the scope of work (RFP) that includes the evaluation criteria from Section 1.4 that will be considered for the scope in question; (2) publish an RFP as an open invitation to offer a proposal; (3) advertise the RFP and conduct public outreach to prospective subcontractors; (4) conduct an advertised pre-proposal meeting with prospective subcontractors; (5) publish RFP addenda as necessary; (6) receive proposals utilizing the City of Lincoln's eBid system; (7) conduct a private opening of proposals; (8) review and reconcile proposals to the extent possible based on the proposals themselves; (9) create a short-list of proposers to be interviewed (generally between three to five proposers); (10) conduct interviews of the short-listed proposers; (11) further reconcile and evaluate the proposals based on the criteria established under Section 1.4 below; (12) provide a recommendation of award by Construction Manager for the best value subcontractor; (13) subject to approval of Owner, award a lump sum subcontract to the proposer that offers the best value to the Project, which may or may not be the proposer offering the lowest price; and (14) after award, publish a scorecard that includes the resultant evaluation of all the proposers. Reconciliation of proposals may include requiring proposers to make adjustments to correct for unacceptable proposal clarifications, scope omissions, insufficient commitment to the project goals, and/or scope ambiguities. The purpose of the reconciliation is to ensure the proposals are comparable in all respects so that they can be fairly evaluated.

1.3. Two-step process: Construction Manager shall, for each scope package: (1) draft a request for qualifications (RFQ) that includes some or all of the qualitative items included in Section 1.4, and a request for proposal (RFP) instructions tailored to the scope of work and level of development of the Construction Documents that includes some or all of the qualitative items included in Section 1.4 and specifically including price. The RFQ and RFP will include the evaluation criteria from Section 1.4 that will be considered for the scope in question; (2) publish the RFQ as an open invitation to offer qualifications; (3) advertise the RFQ and conduct public outreach to prospective subcontractors; (4) conduct an advertised pre-submission meeting with prospective subcontractors; (5) publish RFQ addenda as necessary; (6) receive RFQ responses utilizing the City of Lincoln's eBid system; (7) conduct a private opening of RFQ responses; (8) review and evaluate the qualifications based on the criteria established under Section 1.4 below; (9) create a short-list of proposers to be invited to advance in the selection process and provide a proposal (generally between three to five proposers); (10) notify both the unsuccessful and successful proposers of the short list (11) publish the RFP to the short listed firms to offer a proposal; (12) publish RFP addenda as necessary; (13) receive proposals utilizing the City of Lincoln's eBid system and publish the names of the proposers and the scoring criteria to be used in the evaluation; (14) conduct a private opening of proposals; (15) review and reconcile proposals to the extent possible based on the proposals themselves; (16) conduct interviews of the firms submitting RFP's; (17) further reconcile and evaluate the proposals based on the criteria established under Section 1.4 below; (18) provide a recommendation of award by Construction Manager for the best value subcontractor; (19) subject to approval of Owner, award a lump sum

subcontract to the proposer that offers the best value to the Project, which may or may not be the proposer offering the lowest price; and (20) after award of the subcontract, publish a scorecard that includes the resultant evaluation of all the proposers. Reconciliation of proposals may include requiring proposers to make adjustments to correct for unacceptable proposal clarifications, scope omissions, insufficient commitment to the project goals, and/or scope ambiguities. The purpose of the reconciliation is to ensure the proposals are comparable in all respects so that they can be fairly evaluated.

1.4 Construction Manager will, for each scope package, prepare weighted criteria to be used to determine the proposer offering the best value to the Project. These criteria may include price, project approach, qualifications, technical competence, key personnel, relevant experience, resource capacity, financial strength and bonding capacity, community participation, local workforce and business utilization, responses of references, safety approach and safety record, quality approach and quality record, commitment to schedule, and other criteria to be determined by Construction Manager. Proposals will be required to include a proposed lump sum price and information that will permit the Construction Manager to evaluate the proposal based on the criteria established.

1.5 At all times during the evaluation process, a member, or staff member, of the JPA may observe the Construction Manager in subcontractor procurement.

Staffing

Salaried and Hourly Supervisory and Administrative Personnel
Pre-Construction Services

Site Requirements

Mobilization
Office Trailer and Setup
Office Supplies
Temp Office and Office Equipment
Field Drinking Water and Coolers
Mail & Overnight Expenses
Project Photos
Project Sign
Temp Toilets
Temp Power
Temp Power Set-Up/Facilities
Temp Water and Set-Up
Temp Communications (Telephone/Internet)
Safety Supplies/Extinguishers, etc.
Temp Barricades/Fencing
Temp Walkways
Traffic Control and Barricades
Plan Reproduction and Record Drawings
Garbage Services/Dumpsters
Cleanup Jobsite (External)
Progress Cleaning
Final Cleanup

Miscellaneous

Supervisory Personnel Vehicles
Fuel, Oil, Maintenance
Travel, Related to the Prosecution of the Work
Computers, Software, and Data Access
Relocation, Subsistence, and Living Allowances
Warranty
Finish Work Protection
Survey and Layout
Security
Storm Water Pollution Prevention Facilities & Maintenance
Weather Protection (Allowance)
Temp Heaters
Temp Heater Fuel and Supplies
Weather Protection Materials
Weather Protection Labor

EXHIBIT B

SUPERVISORY STAFF BILLING RATE SCHEDULE

POSITION	2011
VICE PRESIDENT	$ -
DIRECTOR OF OPERATIONS	$ 177.00
PROJECT EXECUTIVE	$ 140.00
SENIOR PROJECT MANAGER	$ 105.00
PROJECT MANAGER II	$ 83.00
SENIOR MEP COORDINATOR	$ 85.00
PROJECT MANAGER I	$ 72.00
ASSISTANT PROJECT MANAGER	$ 69.00
CONSTRUCTION MANAGER	$ 55.00
MEP COORDINATOR	$ 62.00
FIELD ENGINEER II	$ 47.00
FIELD ENGINEER I	$ 45.00
GENERAL SUPERINTENDENT	$ 125.00
SENIOR SUPERINTENDENT	$ 92.00
SUPERINTENDENT II	$ 83.00
SUPERINTENDENT I	$ 76.00
ASSISTANT SUPERINTENDENT	$ 73.00
AREA SUPERINTENDENT II	$ 66.00
AREA SUPERINTENDENT I	$ 60.00
SAFETY DIRECTOR	$ 114.00
SENIOR SAFETY COORDINATOR	$ 68.00
SAFETY COORDINATOR	$ 51.00
ACCOUNTANT MANAGER	$ 114.00
ACCOUNTANT	$ 63.00
COMMUNITY PARTICIPATION DIRECTOR	$ 114.00
ADMINISTRATIVE ASSISTANT	$ 30.00
QUALITY DIRECTOR	$ 114.00
QUALITY CONTROL MANAGER	$ 92.00
SCHEDULING DIRECTOR	$ 114.00
SCHEDULING ENGINEER	$ 67.00
BIM MANAGER	$ 114.00
BIM COORDINATOR	$ 56.00
RISK MANAGER	$ 114.00

Billing rates adjusted annually at a rate of 4% per year.
Includes salary, taxes, benefits, and bonus.
Excludes relocation, subsistence, data access, and vehicles.

Off-site staff

Mortenson construction

Specific to Lincoln Nebraska

MORTENSON PROVIDED EQUIPMENT & TOOLS
MASTER BILLING RATE SCHEDULE

Effective January 1, 2011

CLASS	DESCRIPTION	DAY	WEEK	MONTH
10	AERIAL LIFTS			
	PERSONNEL LIFT 10-20' DC (SELF PROPELLED)	$ 65.58	$ 196.74	$ 590.22
	SCISSORS LIFT 0-15' DC	$ 91.81	$ 230.62	$ 630.66
	PERSONNEL LIFT 10-20' DC (PUSH AROUND)	$ 59.02	$ 158.49	$ 440.48
	BOOM LIFT 61-70' STR	$ 336.64	$ 1,044.91	$ 3,110.68
	BOOM LIFT 81-90' STR	$ 710.45	$ 1,849.36	$ 5,273.73
	SCISSORS LIFT 10-14' DC HYBRID	$ 91.81	$ 230.62	$ 586.94
	SCISSORS LIFT 19-20' DC	$ 91.81	$ 241.55	$ 630.66
	BOOM LIFT 120-125' STR	$ 983.70	$ 3,115.05	$ 8,998.67
	BOOM LIFT 31-40' ART-TOWABLE	$ 191.28	$ 491.85	$ 1,448.23
	BOOM LIFT 41-50' STR	$ 272.16	$ 762.91	$ 2,153.21
	BOOM LIFT 61-70' STR - TRACKED	$ 413.15	$ 1,239.46	$ 3,718.39
	BOOM LIFT 81-90' ART	$ 929.05	$ 2,415.53	$ 6,845.46
	PERSONNEL LIFT 21-30' DC (PUSH AROUND)	$ 65.58	$ 184.72	$ 498.41
	PERSONNEL LIFT 31-40' DC (PUSH AROUND)	$ 84.16	$ 232.81	$ 661.27
	SCISSORS LIFT 21-30' DC	$ 118.04	$ 318.06	$ 803.36
	SCISSORS LIFT 31-40' DC	$ 161.76	$ 467.80	$ 1,367.34
	SCISSORS LIFT 41-50' RT	$ 242.65	$ 739.96	$ 2,097.47
	BOOM LIFT 21-30' ART DC	$ 185.81	$ 538.85	$ 1,427.46
	BOOM LIFT 31-40' ART DC	$ 214.23	$ 630.66	$ 1,641.69
	BOOM LIFT 31-40' STR DC	$ 200.02	$ 661.27	$ 1,983.80
	BOOM LIFT 31-40' ATR	$ 232.81	$ 683.13	$ 1,910.56
	BOOM LIFT 31-40' STR	$ 245.93	$ 792.43	$ 2,205.67
	BOOM LIFT 41-50' ART DC	$ 210.95	$ 591.31	$ 1,710.55
	BOOM LIFT 41-50' ART	$ 254.67	$ 697.33	$ 1,941.17
	BOOM LIFT 51-60' ART DC	$ 260.13	$ 779.31	$ 2,322.63
	BOOM LIFT 51-60' ART	$ 278.72	$ 965.12	$ 2,723.76
	BOOM LIFT 51-60' STR	$ 321.34	$ 879.87	$ 2,448.32
	BOOM LIFT 71-80' ART	$ 513.71	$ 1,530.20	$ 4,590.60
	BOOM LIFT 71-80' STR	$ 579.29	$ 1,883.24	$ 5,257.33
	BOOM LIFT 120-125' ART	$ 1,606.71	$ 4,590.60	$ 11,476.50
	SCISSORS LIFT 21-30' RT	$ 185.81	$ 621.92	$ 1,675.57
	SCISSORS LIFT 30-40' RT	$ 185.81	$ 621.92	$ 1,675.57
	BOOM LIFT 130-135' ART	$ 1,606.71	$ 4,590.60	$ 11,476.50
	BOOM LIFT 130-135' STR	$ 1,606.71	$ 4,590.60	$ 11,476.50
	BOOM LIFT 41-50' ART TOWABLE	$ 245.93	$ 737.78	$ 1,748.80
	SCISSORS LIFT 51-60' RT	$ 287.46	$ 1,011.03	$ 3,033.08
	BOOM LIFT 61-70' ART	$ 513.71	$ 1,530.20	$ 4,590.60
12	AIR COMPRESSORS			
	AIR COMPRESSOR 125-249 CFM	$ 94.44	$ 309.54	$ 871.95
	AIR COMPRESSOR 600-899 CFM	$ 163.69	$ 526.74	$ 1,517.26
	AIR COMPRESSOR 250-599 CFM	$ 281.21	$ 873.00	$ 2,581.23
	AIR COMPRESSOR 6-8 HP	$ 48.27	$ 165.79	$ 457.49
	AIR COMPRESSOR UNDER 3 HP	$ 32.53	$ 108.08	$ 288.55
	AIR COMPRESSOR 3-5 HP	$ 41.97	$ 132.21	$ 374.59
	AIR COMPRESSOR 0-124CFM	$ 61.91	$ 219.30	$ 610.68
	AIR COMPRESSOR 9-11 HP	$ 30.43	$ 125.91	$ 338.92
14	CLEANING EQUIPMENT			
	VACUUM DUST REMOVAL SYSTEMS (HILTI DRS)	$ 4.37	$ 13.12	$ 38.26
	VACUUM SOFT CUT	$ 249.20	$ 747.61	$ 2,240.65
	FLOOR POLISHER 17"	$ 33.88	$ 99.46	$ 298.39
	TILE STRIPPER W/B ELE 100#	$ 52.46	$ 155.21	$ 465.62
	PRESSURE WASHER COLD	$ 63.92	$ 241.57	$ 667.39
	DUST COLLECTOR (WOOD DUST)	$ 17.49	$ 50.28	$ 149.74
	VACUUM (HEPA)	$ 30.08	$ 101.52	$ 262.25
	VACUUM SHOP WET/DRY	$ 30.08	$ 101.52	$ 262.25
	PRESSURE WASHER TOWABLE COLD	$ 268.88	$ 805.54	$ 2,416.62
	PRESSURE WASHER TOWABLE HOT	$ 299.48	$ 898.45	$ 2,695.34
	FLOOR SCRUBBER WB DC	$ 186.90	$ 558.52	$ 1,673.38
	FLOOR SWEEPER WB DC	$ 94.00	$ 279.81	$ 837.24

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	POWER BROOM W/B	$ 131.16	$ 390.20	$ 1,169.51
	PRESSURE WASHER HOT	$ 93.06	$ 350.61	$ 940.92
	FLOOR POLISHER 20"	$ 52.46	$ 155.21	$ 465.62
	TILE STRIPPER S/P ELE 400#	$ 113.67	$ 341.02	$ 1,023.05
	TILE STRIPPER R/O	$ 310.41	$ 930.14	$ 2,789.34
16	COMMUNICATION EQUIPMENT			
	RADIO BASE STATION	$ 17.49	$ 50.28	$ 149.74
	CHARGER GANG TWO WAY RADIOS	$ 5.47	$ 16.40	$ 47.00
	COMMUNICATION BOX	$ 17.49	$ 52.46	$ 156.30
	RADIO TWO WAY PORTABLE	$ 8.31	$ 24.92	$ 73.72
	RADIO REPEATER	$ 31.70	$ 94.00	$ 279.81
	COMMUNICATION BOX SKIP	$ 17.49	$ 52.46	$ 156.30
	RADIO TOWER CRANE	$ 17.49	$ 50.28	$ 149.74
	PORTABLE PA SYSTEM	$ 26.23	$ 77.60	$ 232.81
18	COMPACTION EQUIPMENT			
	PLATE COMPACTOR 0-95 KG	$ 62.96	$ 207.76	$ 567.66
	RAMMER - JUMPING JACK	$ 69.25	$ 226.64	$ 633.77
	ROLLER R/O 1.5 - 2.9 MTON	$ 163.69	$ 535.13	$ 1,568.67
	ROLLER R/O 3.0 - 4.9 MTON	$ 231.89	$ 705.12	$ 2,011.47
	ROLLER R/O 8.0 - 11.2 MTON	$ 697.77	$ 2,098.56	$ 5,692.34
	PLATE COMPACTOR 96 - 255 KG	$ 82.89	$ 275.96	$ 808.99
	PLATE COMPACTOR 251 - 500 KG	$ 145.85	$ 477.42	$ 1,402.89
	PLATE COMPACTOR 500 - 1000 KG	$ 198.31	$ 618.03	$ 1,848.83
20	CONCRETE EQUIPMENT			
	BENDERS, REBAR	$ 26.32	$ 120.32	$ 338.39
	MIXER CONCRETE SILO	$ 227.34	$ 682.03	$ 2,045.00
	PLANER,CONCRETE, ELE (HAND HELD)	$ 33.88	$ 99.46	$ 298.39
	MIXER CONCRETE 2 CUFT ELE	$ 13.12	$ 38.26	$ 112.58
	MIXER MORTAR 7-9CUFT	$ 57.39	$ 194.55	$ 545.72
	MIXER MORTAR 10CUFT & OVER	$ 72.96	$ 236.38	$ 788.92
	MIXER CONCRETE 0-4CUFT	$ 35.99	$ 135.22	$ 367.71
	MIXER CONCRETE 5-6CUFT	$ 51.56	$ 189.69	$ 571.02
	SCARIFIER W/B ELE	$ 73.23	$ 217.51	$ 651.43
	MIXER CONCRETE 7-9CUFT	$ 57.39	$ 213.04	$ 602.14
	PUMP,GROUT,MANUAL	$ 91.44	$ 285.02	$ 799.62
	PLANER,CONCRETE,SELF PROPEL	$ 159.53	$ 512.65	$ 1,397.87
	MIXER MORTAR 0-4CUFT	$ 35.99	$ 127.43	$ 310.31
	SCREED BAR	$ 17.49	$ 50.28	$ 149.74
	FLOOR GRINDER,CONCRETE	$ 86.58	$ 294.75	$ 787.94
	GENERATOR HIGH CYCLE	$ 39.35	$ 118.04	$ 354.13
	CONCRETE BUGGY MANUAL 6-8 CUFT (GEORGIA)	$ 56.42	$ 212.06	$ 586.58
	PLANER,CONCRETE,PUSH	$ 122.57	$ 415.37	$ 1,244.17
	POWER BUGGY,CONCRETE, UP TO 15 CUFT	$ 79.77	$ 286.97	$ 783.08
	SCREED POWER UNIT	$ 62.26	$ 209.15	$ 618.68
	POWER BUGGY,CONCRETE,16 - 23 CUFT	$ 92.41	$ 313.23	$ 940.67
	SPRAYER,CONCRETE	$ 2.19	$ 5.47	$ 14.21
	POWER TROWEL 4' W/B	$ 61.28	$ 211.09	$ 591.44
	POWER TROWEL 3' W/B	$ 47.67	$ 177.04	$ 460.12
	POWER TROWEL EDGER	$ 62.26	$ 209.15	$ 460.12
	VIBRATOR,FLEXIBLE SHAFT,CONCRETE (ELECTRIC)	$ 35.99	$ 124.51	$ 321.99
	VIBRATOR HIGH CYCLE (ELECTRIC)	$ 20.00	$ 134.24	$ 383.27
	VIBRATOR PNEUMATIC	$ 57.39	$ 174.13	$ 461.09
	VIBRATOR GAS	$ 66.67	$ 198.93	$ 595.69
	POWER TROWEL R/O	$ 206.23	$ 665.37	$ 1,918.30
	SCALER CONCRETE	$ 47.00	$ 139.90	$ 418.62
	BENDER,REBAR,MANUAL	$ 7.65	$ 21.86	$ 63.39
	CONCRETE CYLINDER CASE	$ 2.19	$ 4.37	$ 13.12
	CORD HIGH CYCLE 50'	$ 8.74	$ 25.14	$ 75.42
	CORD HIGH CYCLE 100'	$ 8.74	$ 25.14	$ 75.42
	CONCRETE BLANKET 6' X 25'	$ 2.19	$ 6.56	$ 19.67

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	SNOW TARPS 20' X 30'	$ 8.74	$ 25.14	$ 75.42
22	CONTAINERS			
	CONTAINER STORAGE 8' X 40'	$ 30.60	$ 60.12	$ 120.23
	CONTAINER ELECTRICAL	$ 130.07	$ 388.02	$ 1,161.86
	CONTAINER WALKWAY	$ 33.88	$ 68.86	$ 136.63
	CONTAINER STORAGE 8' X 10'	$ 27.33	$ 49.19	$ 97.28
	CONTAINER OFFICE	$ 89.63	$ 178.16	$ 355.23
	CONTAINER STORAGE 8' X 20'	$ 27.33	$ 49.19	$ 97.28
24	CRANES			
	CRANE 65 TON R/T HYDRO	$ 1,065.68	$ 3,348.95	$ 9,370.29
	CRANE 75 TON R/T HYDRO	$ 1,459.16	$ 4,098.75	$ 12,197.88
	CRANE 80 TON R/T HYDRO	$ 1,459.16	$ 4,098.75	$ 12,197.88
	CRANE 90 TON R/T HYDRO	$ 3,552.25	$ 7,104.50	$ 16,558.95
26	EARTHMOVING EQUIPMENT			
	TRACK LOADER COMPACT W/B (DINGO)	$ 156.39	$ 575.20	$ 1,684.90
	TRACK LOADER COMPACT R/O (BOXTER)	$ 156.39	$ 575.20	$ 1,684.90
	SKID LOADER 1751-2200 LBS	$ 231.37	$ 725.16	$ 2,115.50
	BACKHOE STANDARD	$ 282.78	$ 889.05	$ 2,582.52
	TRENCHER WB 0-14HP	$ 145.68	$ 491.65	$ 1,423.55
	TRENCHER WB 15-19HP	$ 193.88	$ 681.25	$ 1,951.62
	LOADER TRACK 1751-2200 LBS	$ 318.13	$ 1,031.51	$ 3,061.32
	LOADER TRACK 976-1250 LBS	$ 281.71	$ 872.98	$ 2,576.09
	LOADER TRACK 1601-1750 LBS	$ 297.78	$ 940.46	$ 2,774.25
	SKID LOADER 220-UP	$ 258.14	$ 815.14	$ 2,356.51
	SKID LOADER 976-1250 LBS	$ 166.03	$ 571.99	$ 1,502.81
	SKID LOADER 1251-1350 LBS	$ 191.73	$ 637.33	$ 1,787.73
	SKID LOADER 1351-1600 LBS	$ 193.88	$ 630.90	$ 1,861.64
	SKID LOADER 1601-1750 LBS	$ 206.73	$ 682.32	$ 1,958.04
	SKID LOADER 0-700 LBS	$ 156.39	$ 575.20	$ 1,684.90
	LOADER TRACK 0-700 LBS	$ 157.46	$ 529.14	$ 1,531.73
	LOADER TRACK 2201-UP	$ 365.26	$ 1,149.33	$ 3,414.79
	LOADER TRACK 1351-1600 LBS	$ 268.86	$ 829.06	$ 2,433.63
	EXCAVATOR COMPACT 1.1 - 2.0 MT	$ 209.94	$ 663.04	$ 1,951.62
	EXCAVATOR COMPACT 2.1 - 3.0 MT	$ 215.30	$ 682.32	$ 2,006.25
	EXCAVATOR COMPACT 3.1 - 4.0 MT	$ 246.36	$ 787.29	$ 2,338.30
	EXCAVATOR COMPACT 4.1 - 5.0 MT	$ 287.07	$ 901.90	$ 2,681.06
28	ELECTRICAL EQUIPMENT			
	SIGN,TOWER CRANE	$ 50.28	$ 150.83	$ 450.32
	DISCONNECT,FUSED,600-800 AMP	$ 22.95	$ 67.77	$ 201.11
	DISCONNECT,FUSED,300-400 AMP	$ 186.90	$ 558.52	$ 1,673.38
	SERVICE,400AMP	$ 186.90	$ 558.52	$ 1,673.38
	SERVICE,800AMP	$ 206.58	$ 619.73	$ 1,859.19
	METERING CENTER	$ 103.84	$ 310.41	$ 930.14
	DISCONNECT,NF	$ 14.21	$ 41.53	$ 124.60
	POWER SUPPLY	$ 14.21	$ 41.53	$ 124.60
	TRANFORMER,POWER	$ 31.70	$ 94.00	$ 279.81
	CABINET,JUNCTION,RISER	$ 25.14	$ 73.23	$ 217.51
	TRANSFORMER LARGE	$ 275.44	$ 826.31	$ 2,478.92
	TRANSFORMER 150 KVA	$ 206.58	$ 619.73	$ 1,859.19
	CABINET,TRANSITION	$ 19.67	$ 57.93	$ 173.79
	TEMP POWER BOX (TURTLE / SPIDER BOX)	$ 10.93	$ 31.70	$ 94.00
	PDU,45KVA	$ 94.00	$ 279.81	$ 837.24
	TRANSFORMER,STAGING	$ 206.58	$ 619.73	$ 1,859.19
	PANEL BOARD	$ 15.30	$ 43.72	$ 131.16
	PDU,75KVA	$ 103.84	$ 310.41	$ 930.14
	LIGHT-TOWER,TOWABLE	$ 93.50	$ 299.38	$ 832.51
	CABINET,TRANSITION,2000AMP	$ 33.88	$ 100.56	$ 300.58
	LIGHT,BALLOON	$ 31.70	$ 94.00	$ 279.81
	SERVICE,600AMP	$ 157.39	$ 469.99	$ 1,409.97
	TIMER,LIGHT,CRANE	$ 17.49	$ 50.28	$ 149.74

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	SERVICE,4000AMP	$ 482.01	$ 1,446.04	$ 4,338.12
	POLE,FLOOD LIGHT	$ 10.93	$ 31.70	$ 94.00
	CORD,TURTLE,100'	$ 13.12	$ 39.35	$ 118.04
	CORD,TURTLE,25'	$ 6.56	$ 17.49	$ 51.37
	CORD,TURTLE,50'	$ 7.65	$ 21.86	$ 65.58
	CORD,RISER,50'	$ 37.16	$ 109.30	$ 325.71
	CORD,RISER,25'	$ 18.58	$ 54.65	$ 162.86
	PIGTAIL,TURTLE,CORD,20 AMP	$ 6.56	$ 19.67	$ 56.84
	RECEPTICLE 50 AMP Y	$ 2.19	$ 6.56	$ 19.67
	CORD,RISER,250'	$ 90.72	$ 272.16	$ 814.29
	CORD,RISER,150'	$ 61.21	$ 181.44	$ 543.22
	CORD,RISER,100'	$ 51.37	$ 151.93	$ 455.78
	CORD,RISER,200'	$ 78.70	$ 235.00	$ 704.99
	CORD,TURTLE,75'	$ 8.74	$ 26.23	$ 76.51
	LIGHT,WOBBLE	$ 16.40	$ 47.00	$ 139.90
30	FANS AND BLOWERS			
	FAN 30" HIGH VELOCITY	$ 29.07	$ 98.64	$ 265.82
	FAN,BOX,	$ 30.11	$ 93.45	$ 264.78
	CARPET FAN	$ 19.67	$ 59.02	$ 177.07
	NEGATIVE AIR FAN 2000 CFM	$ 65.58	$ 196.74	$ 590.22
	FAN PEDESTAL 30-36"	$ 29.07	$ 98.64	$ 265.82
	FILTER CART (WELDING FAN)	$ 56.84	$ 170.51	$ 511.52
	FAN,DRUM,	$ 30.11	$ 93.45	$ 264.78
	FAN,PORTACOOL(MISTING)	$ 39.35	$ 118.04	$ 354.13
	FAN,DUCTED BLOWER	$ 29.07	$ 98.64	$ 265.82
	NEGATIVE AIR FAN 500 CFM	$ 38.26	$ 112.58	$ 335.55
	FAN AIR PURIFIER	$ 25.96	$ 77.88	$ 233.63
	BLOWER DUCT	$ 33.23	$ 105.91	$ 311.51
32	FORKLIFTS			
	TELEHANDLER 6-6.9K	$ 274.34	$ 839.42	$ 2,431.93
	TELEHANDLER 5-5.9K	$ 235.00	$ 696.24	$ 2,023.14
	TELEHANDLER 8-8.9K	$ 328.99	$ 978.24	$ 2,851.64
	TELEHANDLER 9-9.9K	$ 347.57	$ 1,071.14	$ 3,105.21
	TELEHANDLER 10-10.9K	$ 417.53	$ 1,289.74	$ 3,836.43
	INDUSTRIAL FORKLIFT 8-8.9K	$ 244.83	$ 839.42	$ 2,428.65
	INDUSTRIAL FORKLIFT 5-5.9K	$ 182.53	$ 579.29	$ 1,741.15
	INDUSTRIAL FORKLIFT 10-10.9K	$ 343.20	$ 1,370.62	$ 4,013.50
	TELEHANDLER 12-12.9K	$ 522.45	$ 1,687.59	$ 4,556.72
34	CONCRETE FORMWORK			
	GATES CAMLOCK	$ 0.36	$ 1.09	$ 3.28
	STEEL WEDGE HAIR PINS	$ 0.36	$ 1.09	$ 3.28
	1/4" ROD CLAMP (cat head)	$ 0.36	$ 1.09	$ 3.28
	3/8" ROD CLAMP (cat head)	$ 0.36	$ 1.09	$ 3.28
	FLAT STEEL WASHER	$ 0.36	$ 1.09	$ 3.28
	GANG FORM PICKING EYE	$ 0.36	$ 1.09	$ 3.28
	SHEAR WALL FORM BRACKETS	$ 0.36	$ 1.09	$ 3.28
	WEDGE BOLTS	$ 0.12	$ 0.36	$ 1.09
	BASE TIE BOLT	$ 0.12	$ 0.36	$ 1.09
	LONG BOLTS	$ 0.24	$ 0.73	$ 2.19
	1 PIECE WALER CLAMP	$ 1.09	$ 1.09	$ 1.09
	WALER TIE 2 X 4	$ 1.09	$ 1.09	$ 1.09
	J-STRONGBACK HOOK 2 X 6	$ 1.09	$ 1.09	$ 1.09
	SCAFFOLD BRACKET	$ 1.34	$ 4.01	$ 12.02
	GANG FORM BOLT (PORK CHOP)	$ 1.09	$ 1.09	$ 1.09
	DD LIFTING BRACKET (PICKING EYE)	$ 1.09	$ 3.28	$ 7.65
	TURN BUCKLE	$ 0.61	$ 1.82	$ 5.47
	J WALER HOOK A 2 X 4	$ 0.24	$ 0.73	$ 2.19
	BRACE PLATES SYMONS	$ 0.24	$ 0.73	$ 2.19
	STEEL SHORING POST	$ 2.06	$ 6.19	$ 18.58
	ELLIS CLAMPS SGL	$ 0.24	$ 0.73	$ 2.19

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	4 X 4 W/ ELLIS CLAMPS	$ 0.36	$ 1.09	$ 3.28
	4 X 4 ADJUSTABLE SCREW JA	$ 1.21	$ 3.64	$ 10.93
	SYMONS L - BRACKET	$ 0.36	$ 1.09	$ 3.28
	S/P COLUMN HINGE	$ 1.09	$ 1.09	$ 2.19
	1 1/4" X 24-36" SHE BOLT	$ 1.09	$ 1.09	$ 1.09
	STEEL SHORING POST	$ 1.09	$ 3.28	$ 9.84
	20" X 8' FILLER	$ 3.28	$ 9.84	$ 29.51
	24" X 8' PANEL	$ 3.28	$ 8.74	$ 25.14
	22" X 8' FILLER	$ 4.37	$ 10.93	$ 31.70
	18" X 8' FILLER	$ 3.28	$ 9.84	$ 28.42
	16' X 8' FILLER	$ 3.28	$ 9.84	$ 27.33
	14" X 8' FILLER	$ 3.28	$ 8.74	$ 26.23
	12" X 8' FILLER	$ 3.28	$ 8.74	$ 25.14
	10" X 8' FILLER	$ 3.28	$ 8.74	$ 24.05
	8" X 8' FILLER	$ 3.28	$ 7.65	$ 22.95
	6" X 8' FILLER	$ 3.28	$ 7.65	$ 22.95
	4" X 8' FILLER	$ 3.28	$ 7.65	$ 22.95
	2" X 8' FILLER	$ 1.09	$ 3.28	$ 9.84
	1 1/2" X 8' FILLER	$ 1.09	$ 3.28	$ 9.84
	1" X 8' FILLER	$ 1.09	$ 3.28	$ 8.74
	8' X 6" INSIDE CORNER	$ 3.28	$ 7.65	$ 21.86
	8' OUTSIDE CORNER	$ 1.09	$ 3.28	$ 7.65
	8' FILLER ANGLE	$ 1.09	$ 2.19	$ 4.37
	30" X 8' PANEL	$ 8.74	$ 25.14	$ 73.23
	24" X 6' PANEL	$ 3.28	$ 7.65	$ 21.86
	22" X 6' FILLER	$ 3.28	$ 8.74	$ 26.23
	20" X 6' FILLER	$ 3.28	$ 8.74	$ 24.05
	18" X 6' FILLER	$ 3.28	$ 7.65	$ 22.95
	16" X 6' FILLER	$ 3.28	$ 7.65	$ 22.95
	14" X 6' FILLER	$ 3.28	$ 7.65	$ 21.86
	12" X 6' FILLER	$ 2.19	$ 6.56	$ 19.67
	10" X 6' FILLER	$ 2.19	$ 6.56	$ 19.67
	8" X 6' FILLER	$ 2.19	$ 6.56	$ 18.58
	6" X 6' FILLER	$ 2.19	$ 6.56	$ 17.49
	4" X 6' FILLER	$ 2.19	$ 6.56	$ 17.49
	2" X 6' FILLER	$ 1.09	$ 3.28	$ 8.74
	1 1/2" X 6' FILLER	$ 1.09	$ 3.28	$ 7.65
	1" X 6' FILLER	$ 1.09	$ 3.28	$ 7.65
	6' X 6" INSIDE CORNER	$ 3.28	$ 7.65	$ 20.77
	6' OUTSIDE CORNER	$ 1.09	$ 2.19	$ 5.47
	6' FILLER ANGLE	$ 1.09	$ 2.19	$ 4.37
	30" X 6' PANEL	$ 7.65	$ 20.77	$ 61.21
	24" X 5' PANEL	$ 3.28	$ 7.65	$ 20.77
	22" X 5' FILLER	$ 3.28	$ 8.74	$ 24.05
	20" X 5' FILLER	$ 3.28	$ 7.65	$ 22.95
	18" X 5' FILLER	$ 3.28	$ 7.65	$ 21.86
	16" X 5' FILLER	$ 3.28	$ 7.65	$ 20.77
	14" X 5' FILLER	$ 2.19	$ 6.56	$ 18.58
	12" X 5' PANEL	$ 2.19	$ 6.56	$ 17.49
	10" X 5' FILLER	$ 2.19	$ 6.56	$ 17.49
	8" X 5' FILLER	$ 2.19	$ 5.47	$ 16.40
	6" X 5' FILLER	$ 2.19	$ 5.47	$ 15.30
	4" X 5' FILLER	$ 2.19	$ 5.47	$ 15.30
	2" X 5' FILLER	$ 1.09	$ 3.28	$ 7.65
	1 1/2" X 5' FILLER	$ 1.09	$ 3.28	$ 7.65
	1" X 5' FILLER	$ 1.09	$ 2.19	$ 6.56
	5' X 6" INSIDE CORNER	$ 2.19	$ 6.56	$ 18.58
	5' FILLER ANGLE	$ 1.09	$ 1.09	$ 3.28
	30" X 5' PANEL	$ 5.47	$ 16.40	$ 47.00
	24" X 4' PANEL	$ 2.19	$ 5.47	$ 15.30

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	22" X 4' FILLER	$ 2.19	$ 6.56	$ 19.67
	20" X 4' FILLER	$ 2.19	$ 6.56	$ 18.58
	18" X 4' FILLER	$ 2.19	$ 5.47	$ 16.40
	16" X 4' FILLER	$ 2.19	$ 5.47	$ 16.40
	14" X 4' FILLER	$ 2.19	$ 5.47	$ 15.30
	12" X 4' FILLER	$ 2.19	$ 5.47	$ 15.30
	10" X 4' FILLER	$ 2.19	$ 5.47	$ 14.21
	8" X 4' FILLER	$ 2.19	$ 4.37	$ 13.12
	6" X 4' FILLER	$ 2.19	$ 4.37	$ 13.12
	4" X 4' FILLER	$ 2.19	$ 4.37	$ 13.12
	2" X 4' FILLER	$ 1.09	$ 2.19	$ 5.47
	1 1/2" X 4' FILLER	$ 1.09	$ 2.19	$ 5.47
	1" X 4' FILLER	$ 1.09	$ 2.19	$ 5.47
	4' X 6" INSIDE CORNER	$ 2.19	$ 5.47	$ 14.21
	4' OUTSIDE CORNER	$ 1.09	$ 2.19	$ 4.37
	4' FILLER ANGLE	$ 1.09	$ 1.09	$ 3.28
	30" X 4' PANEL	$ 5.47	$ 15.30	$ 43.72
	24" X 3' PANEL	$ 2.19	$ 5.47	$ 14.21
	22" X 3' FILLER	$ 2.19	$ 5.47	$ 16.40
	20" X 3' FILLER	$ 2.19	$ 5.47	$ 15.30
	18" X 3' FILLER	$ 2.19	$ 5.47	$ 14.21
	16" X 3' FILLER	$ 2.19	$ 5.47	$ 14.21
	14" X 3' FILLER	$ 2.19	$ 4.37	$ 13.12
	12" X 3' FILLER	$ 2.19	$ 4.37	$ 12.02
	10" X 3' FILLER	$ 2.19	$ 4.37	$ 12.02
	8" X 3' FILLER	$ 2.19	$ 4.37	$ 10.93
	6" X 3' FILLER	$ 2.19	$ 4.37	$ 10.93
	4" X 3' FILLER	$ 2.19	$ 4.37	$ 10.93
	2" X 3' FILLER	$ 1.09	$ 2.19	$ 5.47
	1 1/2" X 3' FILLER	$ 1.09	$ 2.19	$ 5.47
	1" X 3' FILLER	$ 1.09	$ 2.19	$ 4.37
	3' X 6" INSIDE CORNER	$ 2.19	$ 4.37	$ 13.12
	3' OUTSIDE CORNER	$ 1.09	$ 1.09	$ 3.28
	3' FILLER ANGLE	$ 1.09	$ 1.09	$ 2.19
	30" X 3' PANEL	$ 4.37	$ 12.02	$ 34.98
	5' X 4" INSIDE CORNER	$ 2.19	$ 5.47	$ 15.30
	5" X 8' FILLER	$ 3.28	$ 7.65	$ 22.95
	6' X 4" INSIDE CORNER	$ 2.19	$ 5.47	$ 15.30
	8' X 4" INSIDE CORNER	$ 3.28	$ 7.65	$ 21.86
36	GENERATORS			
	GENERATOR HIGH CYCLE	$ 66.67	$ 200.02	$ 600.06
	GENERATOR 30-39 KW (38-49KVA)	$ 174.44	$ 458.95	$ 1,334.28
	GENERATOR 0-4KW	$ 47.76	$ 168.21	$ 457.91
	GENERATOR 40-49 KW (50-61KVA)	$ 174.44	$ 458.95	$ 1,334.28
	GENERATOR 50-59 KW (62-74KVA)	$ 253.36	$ 789.15	$ 2,314.48
	GENERATOR 60-69 KW (75-86KVA)	$ 253.36	$ 789.15	$ 2,314.48
	GENERATOR 5-6KW	$ 47.76	$ 168.21	$ 457.91
	GENERATOR 70-79 KW (88-99KVA)	$ 253.36	$ 789.15	$ 2,314.48
	GENERATOR 15-25 KW (25-31KVA)	$ 174.44	$ 458.95	$ 1,334.28
	GENERATOR 80-89 KW (100-111KVA)	$ 253.36	$ 789.15	$ 2,314.48
	GENERATOR 90-99 KW (112-124KVA)	$ 253.36	$ 789.15	$ 2,314.48
	GENERATOR 100-129 KW (125-161KVA)	$ 402.88	$ 1,215.91	$ 3,342.45
	GENERATOR 130-169 KW (162-211KVA)	$ 402.88	$ 1,215.91	$ 3,342.45
	GENERATOR 170-199 KW (213-249KVA)	$ 402.88	$ 1,215.91	$ 3,342.45
	GENERATOR 200-299 KW (250-374KVA)	$ 402.88	$ 1,215.91	$ 3,342.45
	GENERATOR 300-399 KW (375-499KVA)	$ 698.81	$ 2,028.94	$ 5,941.44
	GENERATOR 400-499 KW (500-624KVA)	$ 996.82	$ 2,894.92	$ 8,359.76
	GENERATOR 500-599 KW (625-749KVA)	$ 996.82	$ 2,894.92	$ 8,359.76
	GENERATOR 600-999 KW (750-874KVA)	$ 1,332.20	$ 3,491.97	$ 9,881.98
38	HEATING & COOLING			

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	HEATER F/A 300K BTU	$ 30.11	$ 157.83	$ 379.00
	HEATER F/A 600K BTU	$ 74.76	$ 265.82	$ 675.97
	HEATER F/A 1000K BTU	$ 66.45	$ 249.20	$ 702.96
	DEHUMIDIFIER 650 CFM	$ 78.70	$ 236.09	$ 710.45
	HEATER ELECTRIC 50K BTU	$ 47.00	$ 142.09	$ 426.27
	AIR CONDITIONER 2 TON	$ 113.67	$ 341.02	$ 1,023.05
	AIR CONDITIONER 3 TON	$ 170.51	$ 511.52	$ 1,534.57
	AIR CONDITIONER 5 TON	$ 224.07	$ 672.20	$ 2,016.59
	AIR CONDITIONER 10 TON	$ 377.09	$ 1,131.26	$ 3,393.77
	AIR CONDITIONER 15 TON	$ 396.76	$ 1,190.28	$ 3,570.83
	AIR CONDITIONER 20 TON	$ 497.32	$ 1,491.95	$ 4,475.84
	AIR CONDITIONER 25 TON	$ 513.71	$ 1,541.13	$ 4,623.39
	AIR CONDITIONER 30 TON	$ 656.89	$ 1,970.68	$ 5,912.04
	AIR CONDITIONER 50 TON	$ 961.84	$ 2,885.52	$ 8,656.56
	AIR CONDITIONER 60 TON	$ 1,060.21	$ 3,180.63	$ 9,541.89
	AIR CONDITIONER 75 TON	$ 1,182.63	$ 3,547.88	$ 10,643.63
	HEATER 300K BTU MUA	$ 84.16	$ 254.67	$ 762.91
	HEATER 400K BTU MUA	$ 84.16	$ 254.67	$ 762.91
	HEATER 500K BTU MUA	$ 99.46	$ 296.20	$ 888.61
	HEATER 550K BTU MUA	$ 110.39	$ 330.09	$ 989.17
	HEATER 750K BTU MUA	$ 138.81	$ 416.43	$ 1,249.30
	HEATER 990K BTU MUA	$ 153.02	$ 459.06	$ 1,377.18
	HEATER 1100K BTU MUA	$ 177.07	$ 531.20	$ 1,593.59
	HEATER 1400K BTU MUA	$ 214.23	$ 640.50	$ 1,921.49
	HEATER 2000K BTU MUA	$ 261.23	$ 782.59	$ 2,347.76
	HEATER 3000K BTU MUA	$ 384.74	$ 1,154.21	$ 3,463.72
	HEATER 4000K BTU MUA	$ 417.53	$ 1,251.49	$ 3,754.46
	HEATER 4500K BTU MUA	$ 432.83	$ 1,300.67	$ 3,903.10
	DEHUMIDIFIER 1000 CFM	$ 205.48	$ 616.45	$ 1,849.36
	DEHUMIDIFIER DESICCANT 2000 CFM	$ 480.92	$ 1,442.76	$ 4,328.28
	DEHUMIDIFIER 4000 CFM	$ 377.09	$ 1,131.26	$ 3,393.77
	DEHUMIDIFIER DESICCANT 5000 CFM	$ 927.96	$ 2,783.87	$ 8,351.61
	DEHUMIDIFIER 6000 CFM	$ 396.76	$ 1,190.28	$ 3,570.83
	DEHUMIDIFIER 10,000 CFM	$ 513.71	$ 1,541.13	$ 4,623.39
	GAS HOSE 1"	$ 14.21	$ 41.53	$ 124.60
	GAS HOSE 1/2"	$ 5.47	$ 14.21	$ 40.44
40	**HOISTING EQUIPMENT**			
	HOIST,CHAIN FALL, MANUAL,UP TO 9.9T	$ 36.66	$ 125.02	$ 302.67
	HOIST,CHAIN FALL, ELECTRIC	$ 31.96	$ 96.82	$ 214.32
	HOIST,RATCHET LEVER	$ 5.64	$ 16.92	$ 49.82
	HOIST,CRANE	$ 47.00	$ 117.50	$ 281.99
	WINCH,COME ALONG,MANUAL,UP TO 9.9T	$ 3.28	$ 8.74	$ 24.05
42	**LADDERS**			
	LADDER EXTENSION 16'	$ 19.73	$ 57.11	$ 193.13
	LADDER STEP 4'	$ 10.38	$ 31.15	$ 77.88
	LADDER STEP 6'	$ 10.38	$ 31.15	$ 77.88
	LADDER EXTENSION 24'	$ 20.77	$ 67.49	$ 174.44
	LADDER EXTENSION 28'	$ 22.84	$ 72.68	$ 212.86
	LADDER STEP 12'	$ 23.88	$ 70.61	$ 174.44
	LADDER EXTENSION 32'	$ 25.96	$ 78.91	$ 224.28
	LADDER EXTENSION 36'	$ 25.96	$ 78.91	$ 224.28
	LADDER EXTENSION 40'	$ 34.27	$ 112.14	$ 298.01
	LADDER EXTENSION 18'	$ 19.73	$ 57.11	$ 193.13
	LADDER STEP 8'	$ 12.46	$ 38.42	$ 85.14
	LADDER EXTENSION 20'	$ 19.73	$ 57.11	$ 193.13
	LADDER STEP 10'	$ 16.61	$ 37.38	$ 112.14
	LADDER STEP 14'	$ 30.11	$ 88.26	$ 197.29
	LADDER STEP 16'	$ 30.11	$ 88.26	$ 197.29
44	**MATERIAL HANDLING**			
	BUCKET CONCRETE 3/4 YD	$ 43.77	$ 129.38	$ 360.90

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	ATTACHMENT CRANE HOOK TELEHANDLER	$ 28.42	$ 83.07	$ 248.11
	BUCKET CONCRETE 2YD	$ 58.37	$ 173.15	$ 478.60
	ATTACHMENT FORKS SKIDSTEER	$ 42.85	$ 130.68	$ 364.19
	BUCKET CONCRETE 1YD	$ 43.77	$ 129.38	$ 360.90
	ATTACHMENT AUGER SKIDSTEER	$ 42.85	$ 130.68	$ 790.50
	CART TRASH 1/2 CUYD	$ 12.02	$ 36.07	$ 108.21
	CART TRASH 1 CUYD	$ 17.49	$ 51.37	$ 154.11
	MATERIAL LIFT 10'	$ 17.49	$ 50.28	$ 149.74
	ATTACHEMNT FORKS WB SKIDSTEER(DINGO)	$ 42.85	$ 130.68	$ 364.19
	ATTACHMENT AUGER HEAD WB SKIDSTEER(DINGO)	$ 85.69	$ 282.78	$ 790.50
	MATERIAL LIFT 12'	$ 25.14	$ 75.42	$ 224.07
	MATERIAL LIFT 18'	$ 31.70	$ 94.00	$ 279.81
	ATTACHMENT FORKS BLOCK SET OF 4	$ 20.77	$ 62.30	$ 186.90
	MATERIAL LIFT 24'	$ 38.26	$ 112.58	$ 335.55
	BASKET FLYABLE	$ 31.70	$ 94.00	$ 279.81
	SNOW BLADE PICKUP	$ 47.00	$ 139.90	$ 418.62
	ATTACHMENT FORK CARRIAGE ASSY	$ 49.19	$ 145.37	$ 433.92
	SANDER PICKUP	$ 47.00	$ 139.90	$ 418.62
	CART BRICK & BLOCK	$ 10.93	$ 32.79	$ 98.37
	BUGGY CONCRETE MANUAL (HOD)	$ 62.13	$ 233.51	$ 645.90
	CART FLAT BRICK	$ 10.93	$ 31.70	$ 94.00
	DRYWALL CART	$ 9.84	$ 27.33	$ 80.88
	PALLET JACK ELECTRIC - 3,000LB	$ 71.05	$ 213.14	$ 638.31
	PALLET JACK MANUAL - 5,000LB	$ 17.49	$ 51.37	$ 154.11
	CART UTILITY	$ 10.93	$ 31.70	$ 94.00
	LANDING PLATFORM	$ 62.30	$ 186.90	$ 558.52
	SKIDSTEER GRAPPLE BUCKET	$ 87.83	$ 293.49	$ 871.91
	HOPPER TRASH CLAMSHELL 3.25 -5 CUYD	$ 44.81	$ 133.35	$ 398.95
	HOPPER TRASH SELF DUMPING UP 5 CUYD	$ 41.53	$ 124.60	$ 372.71
	HOPPER TRASH SELF DUMPING UP TO 2 CUYD	$ 20.77	$ 62.30	$ 186.90
	BANDING MACHINE-MANUAL	$ 15.30	$ 45.91	$ 136.63
	BARREL 55 GAL	$ 2.19	$ 5.47	$ 16.40
	WATER TANK	$ 10.93	$ 31.70	$ 94.00
	WHEELBARROW	$ 13.50	$ 39.46	$ 104.87
	COLUMN SPREADER	$ 13.12	$ 37.16	$ 110.39
	PALLET BOTTLE	$ 2.19	$ 5.47	$ 16.40
	BARREL LIFTING CAGES	$ 5.47	$ 14.21	$ 42.63
	ATTACHMENT TRUSS BOOM TELEHANDLER	$ 49.19	$ 145.37	$ 433.92
	CLAMP CONCRETE BARRIER	$ 47.00	$ 139.90	$ 418.62
	ATTACHMENT LIFTING BEAM	$ 124.60	$ 372.71	$ 1,115.95
	BARRIER LIFT (J-BARRIER PICKER)	$ 47.00	$ 139.90	$ 418.62
	CHUTE,SIDE,CONCRETE BUCKET	$ 9.84	$ 29.51	$ 87.44
	SNOW BLOWER W/B	$ 31.70	$ 94.00	$ 279.81
	ATTACHMENT AUGER BITS SKID STEER	$ 6.56	$ 17.49	$ 51.37
	HAND TRUCK (BULK)	$ 2.19	$ 6.56	$ 19.67
	CART UTILITY (BULK)	$ 10.93	$ 31.70	$ 94.00
	CART FLAT (BULK)	$ 10.93	$ 31.70	$ 94.00
	CART FURNITURE DOLLY (BULK)	$ 2.19	$ 6.56	$ 19.67
	TRASH CHUTE, INTAKE HOPPER	$ 6.56	$ 17.49	$ 51.37
	TRASH CHUTE SECTIONS	$ 3.28	$ 8.74	$ 24.05
	TRASH CHUTE,MOUNTING BRACKET ASSEMBLY	$ 15.30	$ 45.91	$ 135.53
	TRASH CHUTE,WINCH ASSEMBLY	$ 15.30	$ 43.72	$ 130.07
	PALLET - CONCERETE BLANKET (BULK)	$ 1.09	$ 3.28	$ 9.84
48	**OFFICE EQUIPMENT**			
	COFFEE MAKER	$ 2.19	$ 5.47	$ 15.30
	TENT	$ 124.60	$ 372.71	$ 1,115.95
	TV DVD COMBO	$ 6.56	$ 19.67	$ 56.84
	CHAIRS	$ 1.09	$ 2.19	$ 5.47
	TABLES	$ 2.19	$ 4.37	$ 13.12
	PRINTER, ALL IN ONE HIGH SPEED LG (11 X 17) BW (plus $.0125/copy)	$ 37.00	$ 112.00	$ 336.00

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	PRINTER, ALL IN ONE HIGH SPEED LG (11 X 17) COLOR (plus $.135/copy)	$ 39.00	$ 118.00	$ 355.00
	PRINTER, ALL IN ONE, LG (11 X 17) BW (plus $.0125/copy)	$ 20.00	$ 60.00	$ 180.00
	PRINTER, ALL IN ONE, STD (8.5 X 11) B/W (plus $.0125/copy)	$ 15.00	$ 44.00	$ 132.00
	PRINTER, ALL IN ONE, STD (8.5 X 11) COLOR (plus $.0125/copy)	$ 25.00	$ 76.00	$ 229.00
	PRINTER, LG (11 X 17) B/W LASER (plus $.0125/copy)	$ 8.00	$ 25.00	$ 75.00
	PRINTER, LG (11 X 17) COLOR (plus $.135/copy)	$ 23.00	$ 70.00	$ 211.00
	PRINTER, STD (8.5 X 11) B/W LASER (plus $.0125/copy)	$ 5.00	$ 15.00	$ 50.00
50	PHONES			
	PHONE SMART	$ 20.77	$ 61.21	$ 181.44
	PHONE CELL	$ 17.49	$ 52.46	$ 155.21
	AIR CARDS	$ 12.02	$ 33.88	$ 100.56
52	PUMPS & HOSES			
	PUMP DIAPHRAM 3"	$ 70.83	$ 227.23	$ 658.10
	PUMP SUBMERSIBLE 2"	$ 39.35	$ 118.04	$ 354.13
	PUMP DIAPHRAM 4"	$ 70.83	$ 227.23	$ 658.10
	PUMP WATER 2"	$ 120.01	$ 361.02	$ 1,082.07
	PUMP DIAPHRAM 6"	$ 208.54	$ 649.24	$ 1,948.71
	PUMP TRASH 2"	$ 43.28	$ 146.57	$ 416.11
	PUMP TRASH 3"	$ 73.78	$ 244.94	$ 708.26
	PUMP TRASH 4"	$ 73.78	$ 244.94	$ 708.26
	PUMP SUBMERSIBLE 3/4"(PUDDLE SUCKER)	$ 2.19	$ 6.56	$ 19.67
	HOSE SUCTION 2"X20'	$ 1.20	$ 3.61	$ 10.82
	HOSE DISCHARGE 2"X50'	$ 1.97	$ 5.90	$ 18.69
	HOSE DISCHARGE 3"X50'	$ 10.82	$ 31.48	$ 86.57
	HOSE DISCHARGE 4"X50'	$ 21.64	$ 65.91	$ 179.03
	HOSE DISCHARGE 6"X50'	$ 21.64	$ 65.91	$ 179.03
	HOSE SUCTION 2"X20'	$ 9.84	$ 29.51	$ 79.68
	HOSE SUCTION 3"X20'	$ 9.84	$ 29.51	$ 79.68
	HOSE SUCTION 4"X20'	$ 22.63	$ 66.89	$ 173.13
	HOSE SUCTION 6"X 20'	$ 22.63	$ 66.89	$ 173.13
54	SAFETY EQUIPMENT			
	DEFRIBULATOR - AED	$ 26.23	$ 77.60	$ 231.72
	FUEL TANK 500 GAL	$ 31.70	$ 94.00	$ 279.81
	STOKE BASKET (BASKET LITTER)	$ 22.95	$ 68.86	$ 205.48
	MONITOR DOSIMETER NOISE	$ 5.47	$ 14.21	$ 41.53
	RETRACTABLE LANYARD 0-30'	$ 19.67	$ 56.84	$ 168.32
	AIR PACK	$ 25.14	$ 75.42	$ 224.07
	DUST CONTAINMENT UNIT	$ 73.23	$ 217.51	$ 651.43
	MONITOR ATMOSPHERIC(GAS)	$ 17.49	$ 52.46	$ 155.21
	RESPIRATORS	$ 15.78	$ 48.09	$ 142.09
	SUSPENDED PERSONEL PLATFORM (CAGE)	$ 60.12	$ 180.35	$ 539.94
	RETACTABLE LANYARD 31-60'	$ 31.70	$ 94.00	$ 279.81
	MONITOR 4 GAS	$ 30.60	$ 91.81	$ 273.25
	RESCUE KITS	$ 41.53	$ 124.60	$ 372.71
	FALL PROTECTION MOBILE	$ 48.09	$ 143.18	$ 428.46
	MONITOR LIGHTNING	$ 4.37	$ 12.02	$ 33.88
	MONITOR PARTICLE	$ 12.02	$ 34.98	$ 102.74
	MONITOR DECIBEL(SOUND LEVEL)	$ 12.02	$ 33.88	$ 101.65
	PIPE & CABLE LOCATOR (LINE TRACER)	$ 6.56	$ 19.67	$ 56.84
	DYNAMOMETER 25TON (LOAD CELL)	$ 56.84	$ 170.51	$ 510.43
	CYLINDER CABINET (VERTICLE & HORIZONTAL) W/LIFT EYES	$ 19.67	$ 59.02	$ 177.07
	MONITOR RELATIVE HUMIDITY(MOISTURE)	$ 15.30	$ 43.72	$ 130.07
	HOBO DATA LOGGER	$ 31.70	$ 94.00	$ 279.81
	FLAMABLE CABINET	$ 15.30	$ 45.91	$ 137.72
	MOISTURE TEST KIT(CONCRETE)	$ 8.74	$ 25.14	$ 75.42
	FERRO(REBAR) SCANNER	$ 408.78	$ 1,226.35	$ 3,679.04
	FALL PROTECTION RETRACTABLE LANYARD 100'	$ 13.12	$ 38.26	$ 112.58
	MONITOR PRESSURE DIFFERENTIAL	$ 15.30	$ 43.72	$ 130.07
	ANEMOMETER - WIND GAUGE	$ 4.37	$ 10.93	$ 30.60
	WATER SPILL KIT 90 GAL	$ 19.67	$ 56.84	$ 168.32

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	FIRE EXTINGUISHER STAND	$ 2.19	$ 4.37	$ 10.93
	FALL PROTECTION SAFETY GUARD RAIL BASES	$ 6.56	$ 18.58	$ 53.56
	FALL PROTECTION DEBRIS SAFETY NET (SECTION)	$ 26.23	$ 77.60	$ 232.81
	FALL PROTECTION RETRACTABLE ANCHOR BRACKET	$ 9.84	$ 28.42	$ 84.16
	FALL PROTECTION PERSONAL SAFETY NET (SECTION)	$ 26.23	$ 77.60	$ 232.81
	FIRE EXTINGUISHER 20LB	$ 3.28	$ 7.65	$ 21.86
	FIRE EXTINGUISHER 10LB	$ 2.19	$ 4.37	$ 13.12
	FALL PROTECTION SAFETY GUARD RAIL BASES	$ 2.19	$ 5.47	$ 16.40
	FALL PROTECTION SAFETY GUARD RAIL	$ 1.09	$ 2.19	$ 5.47
	FALL PROTECTION SAFETY GUARD RAIL 8'	$ 2.19	$ 4.37	$ 10.93
	FALL PROTECTION SAFETY GUARD RAIL 6'	$ 1.09	$ 3.28	$ 9.84
	FALL PROTECTION SAFETY GUARD RAIL 10'	$ 2.19	$ 4.37	$ 13.12
	FALL PROTECTION SAFETY HANDRAIL POST	$ 1.09	$ 3.28	$ 8.74
	FALL PROTECTION SLAB GRAB STANDARD	$ 1.09	$ 3.28	$ 8.74
	FALL PROTECTION PARAPIT CLAMP	$ 2.19	$ 6.56	$ 19.67
	ROAD PLATES (VARIOUS)	$ 38.26	$ 112.58	$ 335.55
	ROAD PLATES 8' X 12'	$ 41.53	$ 124.60	$ 372.71
	ROAD PLATES 5' X 8'	$ 17.49	$ 50.28	$ 149.74
	ROAD PLATES 5' X 12'	$ 29.51	$ 87.44	$ 261.23
	ROAD PLATES 6' X 8'	$ 5.47	$ 16.40	$ 47.00
	ROAD PLATES 6' X 12'	$ 25.14	$ 75.42	$ 224.07
	ROAD PLATES 8' X 20'	$ 124.60	$ 372.71	$ 1,115.95
	FLAMABLE CABINET (BULK)	$ 15.30	$ 45.91	$ 137.72
	FALL PROTECTION SAFETY GUARD RAIL (LNFT)	$ 1.09	$ 2.19	$ 5.47
	FALL PROTECTION LADDER SAFETY RAIL	$ 4.37	$ 10.93	$ 31.70
55	**SAWS**			
	SAW,MITER COMPOUND	$ 31.70	$ 94.00	$ 279.81
	SAW,RADIAL ARM, 10"	$ 43.91	$ 166.62	$ 390.65
	SAW TILE 10" ELE	$ 55.16	$ 191.38	$ 534.75
	SAW,RADIAL ARM, 12"	$ 43.91	$ 166.62	$ 390.65
	SAW,RADIAL ARM, 14"	$ 43.91	$ 166.62	$ 390.65
	SAW,TABLE	$ 47.28	$ 154.23	$ 457.07
	SAW CIRCULAR (ELE & CORDLESS)	$ 27.02	$ 92.31	$ 255.55
	SAW,JIG	$ 18.01	$ 60.79	$ 148.60
	SAW,SOFT CUT, ELECTRIC	$ 111.49	$ 334.46	$ 1,003.37
	SAW,CONCRETE, W/B, ELECTRIC UP TO 18"	$ 67.55	$ 239.79	$ 661.96
	SAW,SOFT CUT, 0-8.5HP 6"	$ 167.23	$ 501.69	$ 1,505.06
	SAW MASONARY 14" ELE	$ 58.54	$ 200.39	$ 616.93
	SAW,SOFT CUT, 9-15HP 8"	$ 194.55	$ 583.66	$ 1,750.99
	SAW,SOFT CUT, 20-25HP 10"	$ 222.97	$ 668.92	$ 2,006.75
	SAW,PORTABLE BAND	$ 34.90	$ 113.70	$ 308.47
	SAW,SOFT CUT, 27-30HP 14"	$ 222.97	$ 668.92	$ 2,006.75
	SAW,CHOP,ELECTRIC, 14"	$ 5.47	$ 16.40	$ 47.00
	SAW,CUTOFF, ELECTRIC TO 14"	$ 54.04	$ 193.64	$ 489.72
	SAW,CUTOFF, GAS 12-14"	$ 54.04	$ 193.64	$ 489.72
	SAW,RECIPROCATING	$ 18.01	$ 60.79	$ 148.60
	SAW,BAND,LARGE	$ 34.90	$ 113.70	$ 308.47
	SAW,PANEL	$ 32.79	$ 96.18	$ 288.55
	SAW CIRCULAR METAL CUT	$ 27.02	$ 92.31	$ 255.55
	SAW,CONCRETE,W/B 11-18HP	$ 83.31	$ 293.83	$ 834.21
	SAW,CONCRETE,W/B 19-36HP	$ 1,016.59	$ 363.63	$ 1,016.59
	SAW,CONCRETE,W/B TO 10HP	$ 67.55	$ 239.79	$ 661.96
	SAW MASONARY 14" GAS	$ 58.54	$ 200.39	$ 743.02
	STAND,MITRE SAW	$ 3.28	$ 8.74	$ 24.05
	STAND,TABLE SAW	$ 3.28	$ 8.74	$ 24.05
	SAW CIRCULAR WORM DRIVE	$ 27.02	$ 92.31	$ 255.55
	STUD CUTTERS	$ 12.51	$ 37.52	$ 112.58
56	**SCAFFOLDING**			
	BAKERS SCAFFOLD	$ 20.77	$ 62.30	$ 186.90
	SCAFFOLD BRACE 7' X 4'	$ 2.08	$ 3.12	$ 6.23

Mortenson construction

Specific to Lincoln Nebraska

MORTENSON PROVIDED EQUIPMENT & TOOLS
MASTER BILLING RATE SCHEDULE

Effective January 1, 2011

CLASS	DESCRIPTION	DAY	WEEK	MONTH
	PERIMETER GUARD RAIL POST	$ 1.09	$ 2.30	$ 6.89
	SCAFFOLD BRACE HORIZONTAL 7'	$ 1.09	$ 3.28	$ 7.65
	SCAFFOLD CASTER 8"	$ 3.12	$ 5.19	$ 12.46
	SCAFFOLD OUTRIGGER	$ 1.09	$ 3.28	$ 9.84
	SCAFFOLD BRACKET (SIDE)	$ 1.09	$ 2.19	$ 5.47
	SCAFFOLD SCREW JACK	$ 1.09	$ 3.28	$ 9.84
	JAHN A CLAMPS	$ 2.19	$ 4.37	$ 13.12
	JAHN A BRACKETS	$ 1.09	$ 1.93	$ 5.79
	SCAFFOLD GUARD RAIL 5'	$ 2.08	$ 4.15	$ 9.35
	SCAFFOLD GUARD RAIL 7'	$ 2.08	$ 4.15	$ 9.35
	GATE PANEL 5'	$ 1.09	$ 1.93	$ 5.79
	ACCESS GATE PANEL 5'	$ 1.09	$ 1.93	$ 5.79
	BASE PLATE	$ 2.08	$ 3.12	$ 5.19
	SCAFFOLD BRACKET (END)	$ 1.09	$ 3.28	$ 8.74
	6' STAIR ACCESSWAY W/ RAIL	$ 2.19	$ 4.37	$ 10.93
	SCAFFOLD FRAME 5' X 29"	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD CLIMBERS	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD FRAME 5' X 2' (NARROW)	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD FRAME 3' X 5' (MASON)	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD FRAME 4' X 5' (MASON)	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD FRAME 5' X 5' (MASON)	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD FRAME 6'4" X 5' (MASON)	$ 5.19	$ 13.50	$ 50.88
	SCAFFOLD FRAME 6'6" X 29"	$ 5.19	$ 13.50	$ 50.88
	OPEN END FRAME 6'4" X 5'	$ 1.09	$ 3.28	$ 9.84
	CANOPY FRAME 7' 6" X 6'	$ 3.28	$ 7.65	$ 20.77
	SCAFFOLD PLANK 16' WOOD (OSHA)	$ 6.23	$ 9.35	$ 40.50
	SCAFFOLD PLANK 7' ALUMINUM	$ 6.23	$ 9.35	$ 40.50
	16' ALUMINUM PLATFORMS	$ 22.47	$ 67.41	$ 202.21
	24' ALUMINUM PLATFORMS	$ 22.47	$ 67.41	$ 202.21
	PLANK,SCAFFOLD,32' ALUMINUM	$ 22.95	$ 68.86	$ 205.48
	STAIR TOWER (lnft)	$ 3.28	$ 8.74	$ 26.23
58	**SURVEY EQUIPEMNT**			
	LINE LASER	$ 8.74	$ 26.23	$ 78.70
	LASER RANGE METER	$ 21.86	$ 63.39	$ 190.18
	LEVEL,AUTO	$ 18.58	$ 54.65	$ 162.86
	LEVEL,LASER	$ 77.88	$ 240.90	$ 679.08
	LEVEL,TRANSIT	$ 17.49	$ 52.46	$ 155.21
	LEVEL,TRANSIT, ELECTRONIC	$ 49.84	$ 157.83	$ 427.80
	TOTAL STATION ROBOTIC	$ 433.92	$ 1,301.76	$ 3,904.20
	TOTAL STATION	$ 155.21	$ 465.62	$ 1,394.67
	GPS UNIT	$ 361.78	$ 1,085.35	$ 3,253.86
	DATA COLLECTOR	$ 57.93	$ 173.79	$ 521.36
	ROD EYE DETECTOR	$ 19.67	$ 56.84	$ 169.42
	TRIPOD WOOD/FIBERGLASS	$ 12.02	$ 36.07	$ 107.11
	TRIPOD ALUMINUM	$ 7.65	$ 21.86	$ 65.58
	GRADE ROD,FIBERGLASS	$ 7.65	$ 21.86	$ 65.58
	PRISM POLE	$ 6.56	$ 18.58	$ 54.65
	PRISM OPTIMA	$ 13.12	$ 38.26	$ 112.58
	PRISM MINI	$ 8.74	$ 25.14	$ 74.32
	TRIBRACH W/ OPTICAL PLUMB	$ 13.12	$ 39.35	$ 118.04
62	**SMALL TOOLS**			
	NAILER FINISH (AIR & CORDLESS)	$ 31.48	$ 102.83	$ 267.57
	NAILER FRAMING (AIR & CORDLESS)	$ 31.48	$ 102.83	$ 267.57
	DOOR BUTT TEMPLATE GUIDE	$ 14.21	$ 42.63	$ 126.79
	PLANER,WOOD	$ 15.30	$ 45.91	$ 135.53
	SPRAYER,AIRLESS PAINT	$ 71.65	$ 282.43	$ 696.73
	ROUTER	$ 10.93	$ 31.70	$ 92.91
	DRILL,1/2",ELECTRIC	$ 15.04	$ 54.52	$ 140.06
	DRILL,1/2",CORDLESS	$ 15.04	$ 48.88	$ 145.70
	HEAT GUN	$ 6.56	$ 19.67	$ 56.84

Mortenson construction

Specific to Lincoln Nebraska

MORTENSON PROVIDED EQUIPMENT & TOOLS
MASTER BILLING RATE SCHEDULE

Effective January 1, 2011

CLASS	DESCRIPTION	DAY	WEEK	MONTH
	DRILL,3/8" ELECTRIC	$ 15.04	$ 54.52	$ 140.06
	GRINDER,ANGLE,9"	$ 19.74	$ 62.98	$ 168.26
	CORDLESS TOOL KIT	$ 41.53	$ 124.60	$ 372.71
	GRINDER,ANGLE,7"	$ 19.74	$ 62.98	$ 168.26
	SANDER,FINISH (PALM)	$ 20.68	$ 69.56	$ 198.34
	DRILL,1/2",HOLE HOG	$ 15.04	$ 54.52	$ 140.06
	SANDER,BELT	$ 16.92	$ 56.40	$ 158.86
	DRILL,3/8",CORDLESS	$ 15.04	$ 48.88	$ 145.70
	DRILL,DRYWALL,SCREW GUN	$ 15.98	$ 62.98	$ 156.98
	GUN,TAPPING	$ 28.42	$ 83.07	$ 248.11
	HAMMER ROTARY ELE SDS (BOSCH BULLDOG)	$ 36.66	$ 125.96	$ 341.21
	MULTI TOOL ELE (FEIN MULTIMASTER)	$ 20.77	$ 62.30	$ 186.90
	ROUTER,LAMINATE	$ 3.28	$ 8.74	$ 25.14
	SAW,SPIRAL	$ 4.37	$ 13.12	$ 37.16
	BREAKER,ELECTRIC,30LB	$ 50.73	$ 168.09	$ 406.80
	BREAKER,ELECTRIC,60LB	$ 60.67	$ 205.89	$ 556.00
	DRILL,CORE,DIAMOND	$ 64.86	$ 222.78	$ 645.77
	DRILL,MAGNETIC	$ 54.52	$ 189.88	$ 495.37
	HAMMER ROTARY ELE SDS MAX	$ 36.66	$ 125.96	$ 341.21
	HAMMER ROTARY CORDLESS SDS	$ 36.66	$ 125.96	$ 341.21
	GRINDER,CEILING	$ 20.77	$ 62.30	$ 186.90
	PUMP,HYDRAULIC,HAND (ENERPAC)	$ 8.74	$ 25.14	$ 75.42
	PULLER,CARPET	$ 55.74	$ 165.04	$ 492.94
	NAILER CONCRETE (POWDER ACTUATE & CORDLESS)	$ 33.88	$ 101.65	$ 304.95
	SANDBLASTER	$ 33.88	$ 99.46	$ 298.39
	GANG BOX,CHEST	$ 20.77	$ 62.30	$ 186.90
	GANG BOX,CABINET	$ 20.77	$ 62.30	$ 186.90
	GANG BOX,FIELD STATION	$ 54.65	$ 161.76	$ 484.20
	GRINDER,ANGLE,4-1/2"	$ 19.74	$ 62.98	$ 168.26
	WRENCH,IMPACT,ELECTRIC 1/2""	$ 25.38	$ 85.54	$ 214.32
	IMPACT DRIVER CORDLESS (ALL)	$ 17.49	$ 52.46	$ 155.21
	GANG BOX,PIANO	$ 31.70	$ 94.00	$ 279.81
	WATER INTRUSION TEST KITS	$ 22.95	$ 68.86	$ 205.48
	PLATE JOINER	$ 6.56	$ 19.67	$ 56.84
	WRENCH,IMPACT,ELECTRIC 3/4"	$ 25.38	$ 85.54	$ 214.32
	SHEAR,ELECTRIC	$ 8.74	$ 24.05	$ 72.14
	BARRIER,DUST,ZIP WALL	$ 3.28	$ 9.84	$ 28.42
	VACUMN,BACKPACK	$ 17.49	$ 52.46	$ 157.39
	BLOWER,BACKPACK	$ 7.65	$ 22.95	$ 67.77
	BLOW PIPE (AIR BLOW GUN)	$ 7.52	$ 22.56	$ 51.70
	HAND TOOLS	$ 5.47	$ 14.21	$ 40.44
	VISE	$ 3.28	$ 9.84	$ 28.42
	DOOR BUCK BRACE	$ 1.09	$ 2.19	$ 5.47
	CUTTER,REBAR	$ 42.30	$ 156.98	$ 423.93
	GRINDER,BENCH	$ 10.93	$ 31.70	$ 94.00
	JACK,HYDRAULIC 0-20TON	$ 19.74	$ 58.28	$ 154.16
	JACK,HYDRAULIC 21TON& UP	$ 30.08	$ 104.34	$ 307.37
	METER,WATER	$ 2.19	$ 6.56	$ 19.67
	WEED BURNER	$ 2.19	$ 6.56	$ 18.58
64	AIR TOOLS			
	BREAKER,PNEUMATIC	$ 41.97	$ 110.17	$ 314.78
	BREAKER,PNEUMATIC 60-65LB	$ 41.97	$ 110.17	$ 314.78
	BREAKER,PNEUMATIC,90-95LB	$ 41.97	$ 110.17	$ 314.78
	BREAKER,PNEUMATIC,15LB	$ 31.48	$ 92.34	$ 253.93
	DRILL,ROCK,PNEUMATIC	$ 48.97	$ 146.90	$ 440.70
	RIVET BUSTER,PNEUMATIC	$ 33.58	$ 109.13	$ 294.85
	HOSE,AIR, 3/4" X 50'	$ 2.92	$ 8.74	$ 26.23
	HOSE,AIR,3/8" X 50'	$ 3.15	$ 8.39	$ 26.23
	OILER,AIR LINE	$ 7.34	$ 18.89	$ 41.97
	BIT,ASPHALT CUTTER	$ 3.15	$ 9.44	$ 28.33

Mortenson construction

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MORTENSON PROVIDED EQUIPMENT & TOOLS
MASTER BILLING RATE SCHEDULE

Effective January 1, 2011

CLASS	DESCRIPTION	DAY	WEEK	MONTH
	BIT,CHISEL	$ 6.30	$ 18.89	$ 37.77
	BIT,MOIL POINT	$ 6.30	$ 18.89	$ 37.77
66	TORQUING TOOLS			
	TORQUE WRENCH 1/2"	$ 8.74	$ 25.14	$ 75.42
	TORQUE WRENCH 3/4"	$ 8.74	$ 25.14	$ 75.42
	TORQUE WRENCH 3/8"	$ 8.74	$ 25.14	$ 75.42
68	TRAFFIC CONTROL			
	AUTO BOOT	$ 3.28	$ 8.74	$ 25.14
	SOLOR MESSAGE BOARD	$ 52.46	$ 155.21	$ 465.62
	BARRICADE,FOLDING	$ 3.98	$ 5.97	$ 17.90
	BARRICADE,BARREL	$ 3.98	$ 5.97	$ 17.90
	FENCE PANEL	$ 2.19	$ 4.37	$ 12.02
	BARRIER,JERSEY	$ 4.37	$ 12.02	$ 34.98
	CONCRETE DEADMAN	$ 8.74	$ 24.05	$ 69.95
	SIGN,DIRECTIONAL	$ 1.09	$ 2.19	$ 6.56
	SIGN,TRAFFIC	$ 1.09	$ 2.19	$ 6.56
	SIGN,STOP	$ 1.09	$ 2.19	$ 6.56
	SIGN,SPEED LIMIT	$ 1.09	$ 2.19	$ 6.56
	DELINEATOR	$ 2.19	$ 4.37	$ 12.02
	J-BARRIER FENCE CLAMP	$ 2.19	$ 4.37	$ 13.12
	FENCE BASE PLATE	$ 3.28	$ 9.84	$ 27.33
	BARRIER,WATERFILLED	$ 16.40	$ 47.00	$ 139.90
70	TRAILERS			
	TRAILER SEMI / TOOL	$ 41.53	$ 124.60	$ 372.71
	TRAILER EQUIPMENT	$ 52.46	$ 155.21	$ 465.62
	TRAILER ENCLOSED	$ 37.16	$ 109.30	$ 325.71
	OFFICE TRAILER (EA)	$ 54.65	$ 163.95	$ 491.85
	TRAILER STAIRS	$ 2.19	$ 6.56	$ 19.67
71	VEHICLES - UTILITY			
	UTILITY VEHICLES	$ 77.88	$ 233.63	$ 700.89
	UTILITY VEHICLE 4WD	$ 77.88	$ 233.63	$ 700.89
72	VEHICLES - TRUCKS			
	PICKUP TRUCK / SITE TRUCK	$ 110.00	$ 330.00	$ 990.00
73	VEHICLES - PROGRAM			
	EXECUTIVE VEHICLES	$ 110.00	$ 330.00	$ 990.00
	PROGRAM VEHICLES	$ 72.00	$ 215.00	$ 645.00
74	WELDING AND CUTTING			
	WELDER WIRE FEED	$ 48.88	$ 181.42	$ 482.21
	WELDER ELECTRIC	$ 48.88	$ 181.42	$ 482.21
	WELDER GAS	$ 96.82	$ 261.31	$ 673.03
	TORCH CUTTING	$ 10.93	$ 31.70	$ 94.00
	TORCH KIT W/ CART	$ 16.40	$ 47.00	$ 139.90
	PLASMA CUTTER	$ 98.70	$ 294.21	$ 512.29
	CYLINDERS	$ 2.19	$ 6.56	$ 19.67
6S	FREIGHT CHARGE			
	EQUIPMENT FACILITY TRUCKING		PER HOUR	

Items with a purchase of less than $500.00 are considered Small Tools (these are hand tools not customarily owned by construction workers that are provided by the Contractor)

The above pricing does not reflect equipment operation expenses, or FCC regulatory changes. An Annual escalation rate of 5% will apply to all equipment items and go into effect on or about January 1st of the current year. consumables such as bits and blades are not included in rental

UNITED STATES CITIZENSHIP ATTESTATION FORM
FOR INDIVIDUAL CONSULTANT
(to be used pursuant to Section XXIV.A)

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

☐ I am a citizen of the United States.

OR

☐ I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of the USCIS (United States Citizenship and Immigration Services) documentation upon request required to verify Benesch's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States. I understand and agree that lawful presence in the United States is required and Benesch may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT
(to be used pursuant to Section XXIV.B)

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

☐ I am a citizen of the United States.

OR

☐ I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of my USCIS (United States Citizenship and Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

Exhibit I
Virtual Design & Construction (VDC) Services

I. INTRODUCTION AND GENERAL TERMS

A. The intent of this exhibit (the "VDC Exhibit") is to:
   1. Support the project team's desire to create building information models (BIM) of the Project and to use them to enhance the collaborative efforts of the Project team.
   2. Define the scope of the BIM modeling effort, including the collaborative efforts of the Project team associated with the modeling.

B. The Owner will cause the Owner-Architect Agreement (B103) to be amended to include a VDC exhibit with terms consistent with this VDC Exhibit in all material respects.

C. The Owner will cause the Architect to work with the Construction Manager to develop a version of AIA E202 to address level of development and other related terms (the "LOD Document"). Upon agreement of the Owner, the Architect, and the Construction Manager, the LOD Document will be incorporated into this VDC Exhibit and into the VDC exhibit in the Owner-Architect Agreement. In the event of any conflict between the terms of this VDC Exhibit and the LOD Document, the terms of this VDC Exhibit shall control.

D. Nothing in this Exhibit shall be deemed to give Construction Manager or its subcontractors any responsibility for the design of the Project. Nothing in this Exhibit shall be construed as (a) making Construction Manager or its Subcontractors in any way responsible for the accuracy, adequacy, sufficiency, compliance with applicable law, or any error or omission in, any information contained in any Design Models, or (b) making the Architect or the Design Consultants in any way responsible for the accuracy, adequacy, sufficiency, compliance with applicable law, or safety of, or any error or omission in, any means and methods employed by the Construction Manager, or any information contained in any Construction Model that is different from the Design Model content received from Architect.

II. DEFINITIONS

A. "**2D**" means two dimensional.
B. "**3D**" means three dimensional..
C. "**As-Built Model**" has the meaning given in Section IX.
D. "**Construction Model**" means a model prepared by any member of the Construction Team.
E. "**Construction Team**" means the [Contractor/Construction Manager] and all of its subcontractors and suppliers at any tier.
F. "**Data Hosting Site**" means the Internet-accessed data hosting site described in Section Viii.A below.
F. "**Design Model**" means a Model prepared by any member of the Design Team.
G. "**Design Team**" means the Architect and all of its consultants at any tier.
H. "**LOD**" means level of development, as defined in the LOD Document.
I. The "**LOD Document**" to be prepared pursuant to Section I.C above.
J. "**Model**" mean a 3D electronic model created pursuant to this VDC Exhibit.
K. The "**VDC Exhibit**" means this Exhibit C, VDC Services.

L. The "**VDC Protocol Manual**" has the meaning given in Section VI of this VDC Exhibit.
M. The "**Derivative Model**" means a 3D electronic model that contains information in the physical geometry that can be derived or extracted for other uses.
N. The "**Model Manager**" means the person responsible for central housing, maintaining, updating, and releasing for use of the 3D electronic model. Since the "Model Manager" changes during the course of the project, the individual and timing are outlined in the "VDC Protocol Manual".

III. MODELING SERVICES

A. Deliverables. Architect shall provide, for the collaborative use of the Project team and for use in accordance with this VDC Exhibit by the Construction Team:

1. 3D Models of the information defined in the LOD Document, at the points in time identified in the LOD Document in the form of separate 3D background model files by discipline in Revit 2011 format, and/or any other format agreed to in the VDC Protocol Manual.

2. In addition to the 3D models, 2D electronic representation of the contract documents, in PDF format will be issued when traditional 2D documents are issued.

B. Point of Origin. Architect will establish a common point of origin (X, Y, Z = 0, 0, 0) for use in all Models prepared for use at the Project.

C. Posting of Models. At each stage described in the LOD Document, and as otherwise required under this VDC Exhibit, Architect and Construction Manager shall post, or cause other members of the Design Team and the Construction Team (as applicable) to post each of the Models required to be prepared by members of the Design Team or Construction Team under the LOD Document at the times required in the LOD Document. The Models will be posted as .rvt files, to the Data Hosting Site for use as described in this VDC Exhibit.

D. Collaborative Process. During the design and constructions phases of the Project, the Architect and Construction Manager will participate in regular collaboration meetings, as more particularly described in the VDC Protocol Manual, and will cause the other members of the Design Team and Construction Team (as applicable) to participate in such meetings.

IV. CONSTRUCTION DOCUMENTS

A. The construction drawings required to be delivered by the Architect as part of the Contract Documents under the Agreement shall consist of printouts from any Design Model on which they are based, to the extent reasonably possible.

V. RIGHT OF RELIANCE

A. At each stage of development of the Models, the Models shall include the elements identified in the LOD Document and those elements shall be modeled to the degree of accuracy set forth in the LOD Document.

B. Irrespective of the LOD or reliance rights identified in the LOD Document, at such time as contract documents are issued, any information in the model that is also

contained in the contract documents shall be consistent with such information in the contract documents. This is subject to modeling software capabilities.

VI. VDC PROTOCOL MANUAL

A. The Architect and the Construction Manager will work together in good faith to develop a VDC Protocol Manual that will describe the work plan to deliver the work product required herein, and will cause other members of the Design Team and the Construction Team (as applicable) to participate in such efforts.

B. The VDC Protocol Manual will include, among other things:

1. Additional details concerning the BIM scope of work
2. Standards guidelines for Model development
3. Communication and file exchange process between Owner, Design team, CM/Contractor.
4. BIM work flow for the design and construction phases
5. Additional details concerning the submittals and deliverables

A. Additional details concerning the interoperability of electronic files.

VII. EXTENT OF MODELS

A. The Design Model will extend to the following minimum limits:

1. Architectural and structural content: In plan view, the Design Model shall extend to five (5) feet beyond the exterior walls of the building, or where applicable, to five (5) feet beyond (i) additional architectural or structural portions of the Project such as screen walls, canopies, or overhangs, or (ii) the point of interconnection of the Project with any existing structures or infrastructures. Where portions of the Work connect to existing structures/infrastructure, the plan limits shall extend to five feet beyond the point of connection. Vertically, the Design Model shall extend from the lowest extent of the foundations of the Project up through (and including) the roof of the topmost floor, the highest overhead utility, or adjacent structure (and all attachments to the structure, including those that extend above the roof), whichever is the highest. To the extent that the scope of the Design Models includes building systems, those systems shall be included to the full horizontal and vertical extents of the Design Models, including underground utilities and rooftop-mounted items.

VIII. SHARING OF ELECTRONIC INFORMATION

A. Data Hosting Site (Collaboration): The Construction Manger shall arrange and pay for an internet-accessed data hosting site. The hosting site purpose is to allow the Design Team to post design models at milestones outlined in the VDC Protocol Manual. The site also shall accommodate the exchange and management of electronic information, allowing individuals and systems to identify, access, use and integrate information across multiple systems. Type of hosting site, host location and security measures, will be defined in the VDC Protocol Manual. The Owner shall cause the Contractor to provide, to the extent available on commercially reasonable terms, valuable papers insurance coverage for the data hosting site's content.

IX. CHANGE MANAGEMENT

A. Through completion of the Project, the Design Team will update the Design Models with information from RFI's, ASI's, CCD's and design changes that alter the physical architecture of the Project.

X. RIGHTS OF USE

A. The Owner shall cause the Architect to grant, and cause the other members of the Design team that prepare Models to grant, to the Owner, the Construction Team, and the other members of the Design Team the right to use any Models delivered under this agreement for any purpose contemplated under this VDC Exhibit, including the preparation of derivative models for use in providing services or materials for the Project, and the right to use any such derivative Models for the purpose of marketing and education.

WH 11-31 Introduce: 4-14-11

RESOLUTION NO. WH- _____

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

That the Consultant Agreement between M.A. Mortenson Company and the West Haymarket Joint Public Agency for professional assistance in providing scheduling services for the West Haymarket Project, upon the terms and conditions set out in said Agreement attached hereto and incorporated herein by this reference, is hereby accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Contract on behalf of the Joint Public Agency.

Adopted this _____ day of April, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

CONSULTANT AGREEMENT

THIS AGREEMENT is entered into this 14th day of April, 2011 , by and between the West Haymarket Joint Public Agency, hereinafter referred to as "JPA" and M.A. Mortenson Company, hereinafter referred to as "Consultant."

RECITALS

A.

The JPA proposes to engage Consultant in accordance with the terms and conditions set forth herein to render professional assistance in providing scheduling services for the West Haymarket Project, as more fully set forth in Attachment "A" (hereinafter referred to as "Consultant Services").

B.

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

C.

Consultant hereby represents that Consultant is willing and able to perform the Consultant Services in accordance with the proposed Consultant Services submitted with this Agreement.

D.

The City of Lincoln, Nebraska, a municipal corporation and member of the JPA, shall provide support and administrative services under this Agreement with the Lincoln Municipal Code as the source of several clauses in this Agreement.

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

I.
ADMINISTRATOR OF AGREEMENT

The Project Manager of the JPA shall be the JPA's representative for the purposes of administering this Agreement and shall have authority on behalf of the JPA to give approvals under this Agreement. A representative to be designated by the Consultant, will supervise all services and be in charge of performance of the Consultant Services as set forth in this Agreement.

II.
SCOPE OF SERVICES

Consultant agrees to perform the Consultant Services in accordance with standard of care normally exercised by consultants offering similar services on similar projects. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III.
TERM OF AGREEMENT

The term of this Agreement shall commence effective March 1, 2011 upon execution of this Agreement by both parties and shall continue until August 31, 2013.

IV.
COMPENSATION

The JPA agrees to pay Consultant for the services set forth in Attachment "A" the Professional Fees (includes expenses) set forth in Attachment "A".

V.
SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval

of the JPA or by order of a court of competent jurisdiction. The provisions in this section shall survive any termination of this Agreement.

VI.
NON-RAIDING CLAUSE

Consultant shall not engage the services of any person or persons presently in the employ of the City of Lincoln, Nebraska for work covered by this Agreement without the written consent of the City of Lincoln, Nebraska.

VII.
TERMINATION OF AGREEMENT

A. This Agreement may be terminated by the Consultant if the JPA fails to adequately perform any material obligation required by this Agreement ("Default"). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from the Consultant specifying the nature of the Default.

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

If the Agreement is terminated by either the JPA or Consultant as provided in A or B above, Consultant shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination. In either such event, JPA agrees to compensate or assume payment for any outstanding lease agreements (including office space and apartments) Consultant signed in performing its work for the JPA.

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

VIII.

ADDITIONAL SERVICES

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

IX.

FAIR EMPLOYMENT

In connection with the performance of work under this Agreement, Consultant agrees that it shall not discriminate against any employee or applicant for employment with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status in accordance with the requirements of Lincoln Municipal Code Chapter 11.08 and *Neb. Rev. Stat.* § 48-1122, as amended.

X.

FAIR LABOR STANDARDS

The Consultant shall maintain Fair Labor Standards in the performance of this Agreement as required by Chapter 73, Nebraska Revised Statues, as amended.

XI.

ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, except for the work of the Subconsultants identified in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the JPA thereto; provided, however, that claims for money due or to become

due to the Consultant from JPA under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the JPA.

XII.

OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Consultant agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Consultant without the express written consent of JPA.

The JPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the JPA deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials. Notwithstanding the above, the JPA agrees to maintain confidential information Consultant deems to be proprietary to the extent allowed by law.

XIII.

COPYRIGHTS, ROYALTIES & PATENTS

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

XIV.
COPYRIGHT; CONSULTANT'S WARRANTY

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

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

XV.
INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the JPA, its members, representatives of the members, officers, agents, and employees, as indemnitees, from and against all third party claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, to the extent caused by the negligent acts or omissions of the Consultant or anyone directly or indirectly employed by Consultant or anyone for whose acts any of the them may be liable.

XVI.
INSURANCE

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

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Consultant and JPA from any and all claims under any Worker's Compensation

Act or Employer's Liability Law. Consultant shall exonerate, indemnify and hold harmless the JPA from and against, and shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Consultant or any such employees of Consultant as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

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

2. Automobile Liability Insurance. For all of the Consultant's automobiles, including owned, hired and non-owned automobiles, Consultant shall keep in full force and effect such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in an capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by a such Automobile Liability Insurance shall be as follows:

i. Bodily Injury Limit $500,000 Each Person/$1,000,000 Each Occurrence

ii. Property Damage Limit $500,000 Each Occurrence

iii. Combined Single Limit $1,000,000 Each Occurrence

3. General Liability Insurance. General Liability Insurance, naming and protecting Consultant and the JPA and the City of Lincoln, its officials, employees and volunteers as additional insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury,

including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Consultant and Consultant's employees, students, or those directly or indirectly employed by Consultant. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

i. All Acts or Omissions - $2,000,000 Aggregate;

ii. Bodily Injury/Property Damage - $2,000,000 Aggregate;

iii. Personal Injury and Advertising - $1,000,000 each Occurrence;

iv. Contractual Liability (Subject to policy term and conditions) - $1,000,000 each Occurrence;

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

vi. Medical Expenses (any one person) - $10,000.

If the Consultant does not possess General Liability Insurance in the amounts as provided in this Agreement, the Consultant may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. Professional Liability Insurance. Professional Liability Insurance, naming and protecting Consultant against claims for damages resulting from the Consultant's errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than Two Million Dollars ($2,000,000) per claim and aggregate.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an "occurrence" basis only, except for professional liability insurance which may be based upon a "claims-made" basis. All insurance coverages 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 not less than A:VIII unless specific approval has been granted by the JPA.

C. Deductibles. All deductibles on any policy shall be the responsibility of the Consultant.

D. Memorandum of Insurance. All Memoranda of Insurance shall be filed with the City showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA and the City of Lincoln as additional insureds for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. The Consultant may present evidence of equivalent self-insurance, satisfactory to the JPA, in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as if the Consultant possessed General Liability Insurance. The Consultant shall provide the JPA thirty (30) days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

XVII.
NOTICE

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

West Haymarket Joint Public Agency
Attn: Dan Marvin
555 South 10th Street, Suite 301
Lincoln NE 68508
(402) 441-7511

M.A. Mortenson Company
700 Meadow Lane North
Minneapolis, MN 55422

XVIII.
INDEPENDENT CONTRACTOR

The JPA is interested only in the results produced by this Agreement. Consultant has sole and exclusive charge and control of the manner and means of performance. Consultant shall perform as an independent contractor and it is expressly understood and agreed that Consultant is not an employee of the JPA and is not entitled to any benefits to which JPA employees are entitled,

including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or and injury leave.

XIX.
NEBRASKA LAW

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

XX.
INTEGRATION

This Agreement represents the entire agreement between the parties related to the Consultant Services and all prior negotiations and representations are hereby expressly excluded from this Agreement.

XXI.

AMENDMENT

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

XXII.
SEVERABILITY

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

XXIII.

WAIVER OF CONTRACTUAL RIGHT

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

XXIV.

AUDIT AND REVIEW

The Consultant 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 this Agreement to the extent applicable to Consultant's right to payment or compliance with the terms of this Consultant Agreement, as allowed by law. The Consultant shall also be subject to audits required by the State and shall make available to any authorized auditor.

XXV.

FEDERAL IMMIGRATION VERIFICATION

A. If the Consultant is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the Consultant agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Consultant 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 Consultant 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.

XXVI.

REPRESENTATIONS

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

XXVII.

WAIVER OF CONSEQUENTIAL DAMAGES

Neither party shall be liable under this Consultant Agreement for any consequential damages.

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

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Jayne Snyder, Chair
Board of Representatives

M.A. MORTENSON COMPANY,

By: _____
Title: _____

ATTACHMENT "A"

Additional Scheduling for the JPA

At the request of the JPA Mortenson proposes to provide additional scheduling services for areas of the overall JPA project that are not related to Mortenson's contractual obligation for the Arena and Arena Garage. The following is to be included in these additional services: USPS Parking Lot Reconstruction; 10th and Salt Creek Roadway; Initial Haymarket Site Preparation; M and N Street; 7th to 10th Streets; Amtrack Station and Relocation; Charleston Street Bridge and Roadway; Festival Space and Grade Separation Structures; Core Area Roadway and Utilities; South Parking Garage; DEC Distribution System; DEC plant; Bridge connecting arena to festival space; JPA environmental work; and JPA real estate closings. This additional schedule information will be incorporated into an overall schedule including the Arena and Arena Garage.

Mortenson will provide the following deliverables to the city:
1.) A Primavera P6 schedule baseline
2.) Schedule updates performed every two weeks
3.) An overall updated schedule issued monthly
4.) A summary of schedule updates issued every two weeks
5.) Assistance in the form of preparing specific schedules for each project when requested by the stakeholders.

Mortenson will attend all necessary meetings to review and update the schedule.

For these additional services, Mortenson shall be compensated a lump sum of $500,000. These services will be billed monthly from March of 2011 to August of 2013. The payments will be in thirty equal installments of $16,666.

It is understood that the stakeholders involved in the overall schedule that are outside of the Arena and the Arena Garage do not have a contractual obligation with Mortenson Construction. Mortenson Construction is providing these additional schedule services as an informational tool that will need to be administered by the JPA. The information in the schedule for the areas outside of Mortenson's scope will be based on information provided by others. While Mortenson will make every reasonable effort to ensure the information is as accurate as possible, it is based on the input of parties not contractually tied to Mortenson Construction and therefore, Mortenson is not responsible for its accuracy.

WH 11-32 Introduce: 4-14-11

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 5 to Consultant Agreement between SAIC Energy Environment and Infrastructure LLC and the West Haymarket Joint Public Agency to amend the Scope of Services to provide professional services in connection with the peer review of the Arena structural design and peer review of the site preparation geotechnical recommendations for the West Haymarket Redevelopment Project for a sum not to exceed $25,000.00 is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 5 on behalf of the JPA.

Adopted this _____ day of March, 2011.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

From Science to Solutions

Executive Summary

This is a motion to adopt Amendment Number 5 to the SAIC contract in an amount not to exceed $25,000. The purpose of this amendment is to allow SAIC to subcontract with Geiger Engineering for a peer review of the arena structural systems and with Thiele Geotechnical for a peer review of the site preparation geotechnical recommendations.

The soil conditions inside the "doughnut" are very difficult and have resulted in preliminary cost estimates for the site preparation and arena foundation systems that are more expensive than originally anticipated prior to the full geotechnical exploration and reports being generated. Now that we have these full reports, a peer review by a second engineering firm to double-check these recommendations is highly desirable to verify that the opinions generated are the most efficient and economical available, given the existing soil conditions.

SAIC recommends approval of this resolution.

James W. Martin
Senior Program Manager
SAIC

6 APRIL 2011
Date

AMENDMENT NO. 5 TO
CONSULTANT AGREEMENT

THIS AMENDMENT NO. 5 is entered into this 14th day of April, 2011, by and between the **West Haymarket Joint Public Agency**, hereinafter referred to as "JPA" and **SAIC Energy Environment and Infrastructure**, **LLC**, hereinafter referred to as "Consultant."

The parties hereby agree that the Scope of Services attached to Amendment No. 4 to Consultant Agreement be amended to add Task 1.29 to read as follows:

1.29 Provide peer review of the Arena structural design and peer review of the site preparation geotechnical recommendations for the West Haymarket Redevelopment Project for a sum not to exceed $25,000.00.

IN WITNESS WHEREOF, Consultant and the City do hereby execute this Amendment No. 5 to Consultant Agreement as of the Execution Date set forth above.

WEST HAYMARKET
JOINT PUBLIC AGENCY

By: _____
Chair

SAIC

By: _____
Title: _____