

**AGENDA FOR THE WEST HAYMARKET**  
**JOINT PUBLIC AGENCY (JPA)**  
**TO BE HELD FRIDAY, April 20, 2012 AT 3:00 P.M.**

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

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

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

3. Approval of the minutes from the JPA meeting held April 6, 2012 (Chair Beutler)
  - (Staff recommendation is for the JPA Board to approve the minutes as presented)
4. West Haymarket Progress Report (Paula Yancey)
  - Public Comment
5. Approval of Payment Registers (Steve Hubka)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the payment registers)
6. Review of the March 2012 Expenditure Reports (Steve Hubka)
  - Public Comment
7. WH 12-24 Resolution approving the West Haymarket Redevelopment Agreement by and between the City of Lincoln, Nebraska, TDP Phase One, LLC, and the West Haymarket Joint Public Agency, relating to the redevelopment of property generally located between 7th Street and the future Pinnacle Arena Drive and Q and R Streets and authorizing certain administrative actions on behalf of the JPA in accordance with the terms and conditions in said Redevelopment Agreement. (Rick Peo/Hallie Salem)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
8. WH 12-25 Resolution approving a Contract Agreement between Evan Corporation d/b/a Evan Fall Protection Systems Inc. and the West Haymarket Joint Public Agency for construction of the Fall Protection Systems for the Pinnacle Bank Arena. (Paula Yancey)
  - Public Comment
  - (Staff recommendation is for the JPA Board to approve the resolution)
9. Set Next Meeting Date: Friday, May 4, 2012 at 3:00 in City Council Chambers Room 112
10. Motion to Adjourn

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**April 6, 2012**

Meeting Began At: 3:00 P.M.

Meeting Ended At: 3:28 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

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

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

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

Chair Beutler welcomed public comment. He stated that individuals from the audience would be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

**Item 3 -- Approval of the minutes from the JPA meeting held March 16, 2012**

Beutler asked for corrections or changes to the minutes from the March 16, 2012 meeting. Clare requested a correction on page 2, Item 6 to correct Jeff Kirkpatrick's last name. Hearing no further changes, Carroll moved approval of the minutes as amended. Clare seconded the motion. Motion carried 3-0.

**Item 4 -- West Haymarket Progress Report**

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

Yancey indicated that through the end of February there had been 1,018 workers on site, including engineering and professional services. Of that total, 63% or 634 lived in Lincoln/Lancaster County and another 23% or 239 lived in Nebraska. Only 14% or 145 were outside Nebraska. Looking at the information only on construction workers covered by the Davis Bacon Act, there were 454 or 66% of the workers from Lincoln/Lancaster County, 168 or 25% from Nebraska, and 57 or 8% outside of Nebraska. The current total is 679 Davis Bacon workers, which will continue to climb as construction increases and more workers come on site. For company participation, there are 153 firms, including first tier or subcontracting companies receiving contracts on West Haymarket work. Of the total, 112 or 73% were Nebraska firms, and 41 or 27% were outside Nebraska. \$97 million were Nebraska dollars out a total \$148 million expended on company participation.

On the infrastructure projects, work is essentially completed on 'M' and 'N' Street project other than a few punch list items. Some of the barrels currently on the street will remain in place for the next phase of the 'N' Street reconstruction. Regarding 'R' Street, Yancey related that the work in front of the Post Office and the 'R' Street connection recommenced. The street is poured and total completion of this project is expected April 24.

There has been a lot of progress on the Amtrak Station. Steel erection has begun and is progressing quite well. Included is an image of electrical conduit being laid prior to the slab on grade being poured, as well as the actual slab after it has been poured. During the construction of the underground work on the Amtrak project, unsuitable soils were encountered. The team took some necessary steps and all of those soils were removed and replaced with appropriate materials. The building is still on track for completion in June of this year. The platform for Amtrak is substantially complete. The final work is the canopy that will go on top.

The Watson Brickson demolition work is to commence Monday, April 9, with approval of today's resolution to approve selection of the contractor to do this work.

On the DEC Building progress, Hawkins has completed the piling work, nearing completion of pile caps, and started the foundation walls.

Regarding the Pinnacle Bank Arena, the aerial images taken on October 15, 2011 and March 15, 2012 shows the six-month progress made on the arena, which is now almost completely enclosed. The decks are coming up with great progress achieved over the last several months.

Overall project progress as of April 5 shows 419 RFI's submitted and processed between the design team and the contractor, 627 Submittals processed, and 26 CCA's issued.

Reviewing the Mortenson Construction slides for John Hinshaw, Yancey pointed out that they have worked 29 days without a safety incident. The average is 150 craft workers on site per day and over 150,000 man-hours have been worked on the site to date.

The concrete superstructure is in progress. The grade beam, spread footing, and pile cap installation is completed and 9,000 yards of concrete have been placed. Elevated deck placements continue with 75% of the main concourse placed. Additionally, 43,000 SF of the main concourse is completed out of the total 70,000 that will fill the ring. Four of the seven premium level pours are completed and one out of seven upper level concourse pours are completed. The main concourse pour map shows where the pours occurred, starting on the right side of the arena with Area B Pour #1 and going counterclockwise to Area C Pour #3. The images following show all three pours on the main, premium, and upper level and workers actually performing an upper deck pour. The seating bowl is beginning to take shape and within a few months Mortenson will begin precast installation within the bowl. They have also started the underground plumbing work that is being coordinated with the slab on grade pours which will occur soon. The electrical work required a lot of coordination prior to pours to get conduits placed correctly. There is a lot of critical underground work that has to take place.

Clare asked for confirmation that we are on track timing wise, including the rebar issue. Yancey confirmed that we are on track to complete everything as originally anticipated.

Chair Beutler invited public comment. There was none.

**Item 5 -- Bill No. WH 12-19 Resolution approving Amendment No. 12 to the Agreement for Engineering Services between Olsson Associates dba Lincoln Haymarket Infrastructure Team and the West Haymarket Joint Public Agency, for the Haymarket Infrastructure Design Project to include work associated with additional services for the M and N Street – 7th to 9th Street Improvement Project (Paula Yancey)**

Paula Yancey explained that Amendment No. 12 is to provide the construction phase services for the upcoming second phase of the ‘N’ Street improvements, which includes the reconstruction of ‘N’ from 7<sup>th</sup> to ‘N’ Street. It also includes the railroad track removal and subsequent pavement replacement in 8<sup>th</sup> and ‘L’ Streets, and installation of new 16” water mains in ‘N’ Street. This amendment provides for the day-to-day construction management, as well as the testing, inspection, and observation services. The total for the amendment is \$124,600. The original LHIT contract allowed for the inclusion of construction phase services as the project scopes could be more clearly defined. Part of the amendment will be funded by the Railroad Transportation Safety District (RTSD) funds. The JPA approved use of those funds at its October 6 meeting in Resolution 11-23. That approval was for a cost up to \$300,000. The estimate for the construction oversight included in this amendment is approximately \$14,952. This is within the budget and recommended for approval by PC Sports. John Olsson from the LHIT Team is also available to answer any questions.

Responding to a question from Carroll, Yancey confirmed that, although this is with Olsson, Benesch is involved as it is part of the overall LHIT team. Benesch did the design work and will follow through with the construction phase services of this project.

Clare asked for clarification on the amount of the RTSD funding. Yancey explained it is only the \$14,952 which is the amount allocated or estimated related for the rail removal and asphalt replacement. A later item on the agenda will ask for approval of the contractor and that is where the actual removal is covered. Beutler clarified that JPA is actually paying the remaining cost of approximately \$110,000 and Yancey confirmed. She also confirmed for Clare that everything is within the approved budget.

Beutler asked for public comment and no one came forward. Carroll made a motion for approval of Resolution WH 12-19. Clare seconded the motion. Motion carried 3-0.

**Item 6 -- Bill WH 12-20 Resolution approving a Contract Agreement between Haes Contracting Inc. and the West Haymarket Joint Public Agency for the demolition of buildings on the Old Watson Brickson Lumber Yard Site pursuant to Bid No. 12-060 (Paula Yancey)**

This resolution, as presented by Paula Yancey, is to authorize the approval of Haes Contracting for the demolition of the buildings that remain on the Watson Brickson site after procurement of the property. That property was purchased by the JPA in July of 2011. The package was put out for bid with Bid #12-60 through the ebid system. Haes Contracting was the lowest responsible bidder out of seven bidders. Haes is proposed to recycle or salvage over 90% of materials on the current site. The amount of the contract is \$79,675 with work to be completed in May.

Yancey confirmed for Carroll that the price reflects taking the \$1,000 deduct included in the bids, and that Haes was substantially lower than the next bidder. Clare asked for some information on Haes Contracting. Adam Hoebelheinrich with PC Sports reported that Haes is a smaller earth work contractor in the City of Lincoln. They do work primarily in the southeast

Nebraska, Kansas and Missouri area. They had a couple of meetings with Haes and they appear to have a good grasp of the work ahead of them. They seem to be a good contractor and plan to recycle 90% of materials, which is important considering what could be going to the landfill. Haes wanted to attend, but was going out of town due to the holiday weekend so could not be here today.

Hoebelheinrich responded to Beutler that Haes is actually headquartered in Lincoln. Clare asked about the original budget for this work. Yancey stated she had \$200,000 in the line item, so they are well below the anticipated budget for this work.

Inviting and being no public comment, Beutler requested a motion on this item. Carroll made a motion to approve Resolution WH 12-20. Clare seconded the motion. Motion carried 3-0.

**Item 7 -- WH 12-21 Resolution authorizing Chris Beutler, Chair of the Board of representative of the West Haymarket Joint Public Agency, to execute all Third City Closing documents associated with BNSF Railway Company's conveyance of the Third City Closing Replacement Property to the JPA (Rick Peo)**

Rick Peo, City Attorney's Office, explained that this resolution gives the chair, Mayor Beutler, approval to execute the closing documents with the railroad on behalf of the JPA for the third closing. This is the closing that picks up the rest of the festival lot north of the arena and gets us the easement for the pedestrian bridge, along with other various licenses and permits we are requiring. The closing is scheduled for Monday. The form of the documents have previously been approved with approval of the initial agreements. This is just the formality of having those agreements actually printed off and executed for each closing. This is the third of five closings.

Beutler asked for public comment and no one came forward. Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 8 -- WH 12-22 Resolution approving Amendments No. 008, 009 and 010 to the Agreement between DLR Group, Inc. and the West Haymarket Joint Public Agency for a structural engineered model to complete the steel mill order, for the design and engineering of the Pinnacle Bank Arena exterior signs and for the design of the IPTV system in the Arena (Paula Yancey)**

Paula Yancey introduced this resolution for approval of Amendments 8, 9, and 10 to the DLR Group architectural services agreement for the Pinnacle Bank Arena project. Amendment 8 references a Tekla structural engineering model done by our structural engineer of record. It was prepared for the structural mill order prior to being placed to lock in prices early and not pay an escalation. It may have saved up to \$200,000 by having this mill order done early. The cost for Amendment 8 is \$36,000.

Amendment 9 is for the inclusion of engineering necessary for the Pinnacle Bank Arena exterior signs. The amount of this amendment is \$105,775. This includes all the structural, electrical, exterior façade design and engineering required to insure that the structural steel can support the sign. This will be funded from the Pinnacle Bank Sponsorship funds.

Amendment 10 provides for the addition of internet protocol television (IPTV) throughout the arena. This provides the arena the ability to create video and graphics creating more advertising and sponsorship opportunities that are interactive and quickly changed and modified. It is more energetic than a traditional static sign. This will create flexibility for sales and images on the

televisions. The design for these services is \$29,700. All of these amendments are within the approved budget.

Responding to Clare's inquiry, Yancey explained this is to determine how the signs will attach to the building and not where they will be located. Other considerations are the power in order to determine how you light the sign. The signs are still per the approved naming rights agreement. She further confirmed that they have already worked with UNL Athletic Department on placement of signs and the "N". Clare passed along maintenance concerns with the current Devaney facility indicating that the lighting goes out on the signage on the outside of the building. Yancey responded that, although there could be lights go out, the operator should be diligent to be sure those are replaced quickly.

Being no public comment. Carroll made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 9 -- WH 12-23 Resolution approving a Contract Agreement between Constructor's Inc. and the West Haymarket Joint Public Agency for the construction of Water Main Project No. 702724 in N Street from 7th to 9th Streets and N Street Roadway Project No. 870302 from 7th to 9th Streets and Railroad Track Removal (Paula Yancey)**

Chad Blahak, Public Works & Utilities, introduced the resolution that approves the contract between the JPA and Constructor's Inc. for the construction of the remainder of the 'N' Street improvements associated with the West Haymarket. It generally consists of total reconstruction of pavement from 7<sup>th</sup> to 9<sup>th</sup> and some 2,200 feet of abandoned or decommissioned railroad track removal to be funded by RTSD. There is also water main replacement along those alignments as well. Maps, included hereto, show the boundaries of the project and Blahak pointed out locations for some of the track removal on the maps. The contract total including the two major components is \$1.4 million. There were four responsive bidders, with three were quite close and two virtually identical with a difference of approximately \$14,000. They were about 5% higher than the estimate, but we feel these were a good set of bids and recommend approval of the resolution.

Carroll asked amount for rail removal since RTSD has set aside \$300,000. Blahak responded that roughly \$180,000 of the \$1.4 million is directly related to the railroad removal. With the \$14,000 plus approved earlier for construction oversight, costs remain under the \$300,000 set aside for the project.

Beutler asked for public comment. Being none, Carroll made a motion to approve Resolution WH 12-23. Clare seconded the motion. Motion carried 3-0.

**Item 10 -- Set Next Meeting Date**

The next regular meeting date is Friday, April 20, 2012 at 3:00 in City Council Chambers Room 112.

**Item 11 -- Motion to Adjourn**

Carroll made a motion to adjourn the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:28 P.M.



**Pinnacle Bank Arena**



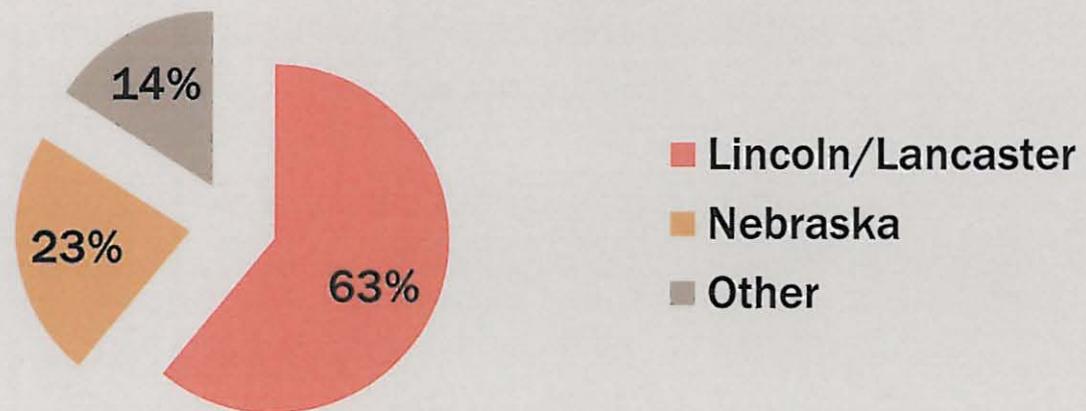
# **PINNACLE BANK ARENA**

**& Associated Infrastructure  
Projects**

**Project Status Update  
April 6<sup>th</sup>, 2012**

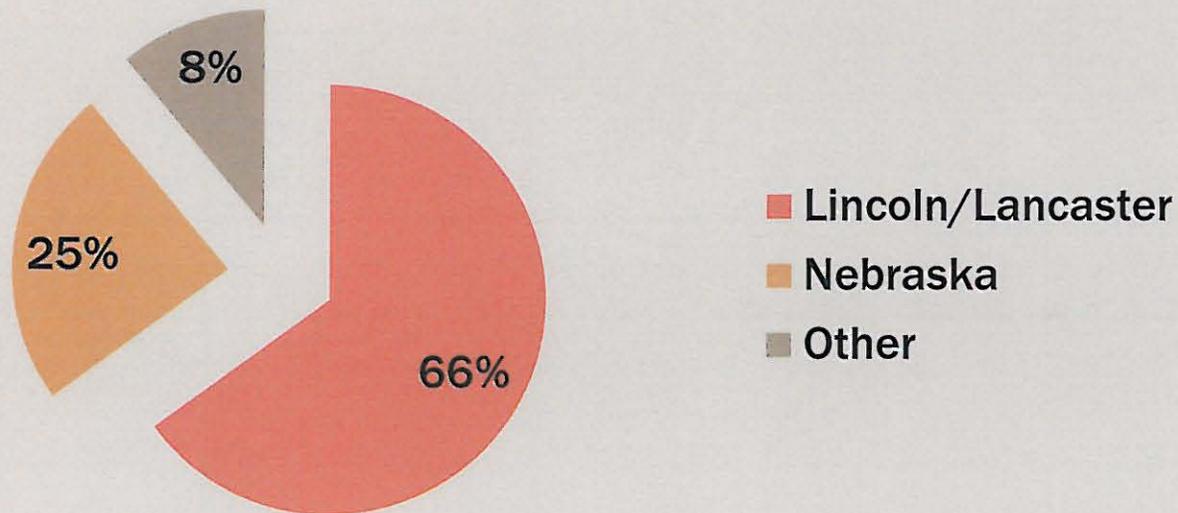
# WEST HAYMARKET LOCAL PARTICIPATION REPORT ALL WORKERS - INCLUDING ENGINEERING AND PROFESSIONAL SERVICES

	Total	Percentage
Lincoln/Lancaster County	634	63%
Nebraska	239	23%
Other	145	14%
	1018	100%



# WEST HAYMARKET LOCAL PARTICIPATION REPORT DAVIS BACON / CONSTRUCTION EMPLOYEES

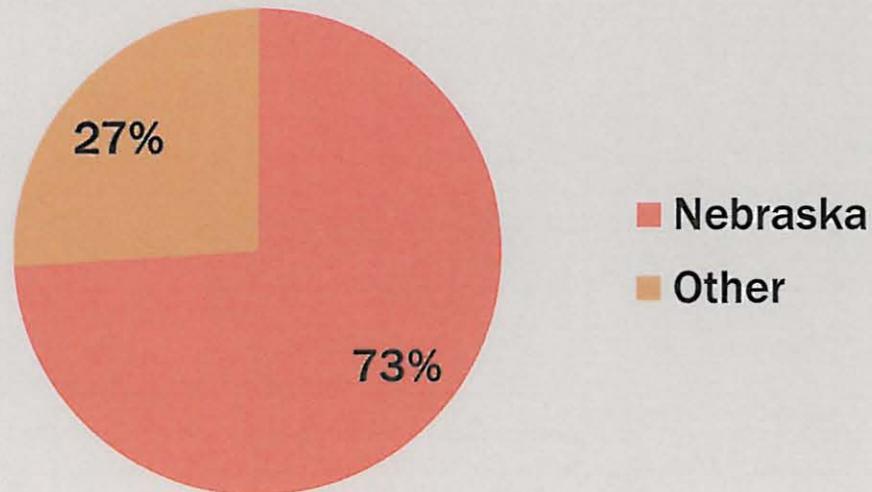
	Total	Percentages
Lincoln/Lancaster County	454	66%
Nebraska	168	25%
Other	57	8%
	679	100%



# WEST HAYMARKET COMPANY PARTICIPATION

	Total	Percentage
Nebraska Firms	112	73%
Other	41	27%
	153	100%

**\$97 Million  
Nebraska Dollars  
out of \$148 Million**



# M&N STREET

9<sup>th</sup> & N Street - Looking East



# R STREET



# AMTRAK STATION



Steel erection taking place at Amtrak

Amtrak Site looking NNW



# LAYING ELECTRICAL CONDUIT IN AMTRAK



# AMTRAK



Pouring Amtrak slab on grade

Amtrak colored slab on grade



# WEST FACE OF PLATFORM LOOKING NORTH



# WATSON BRICKSON PROPERTY

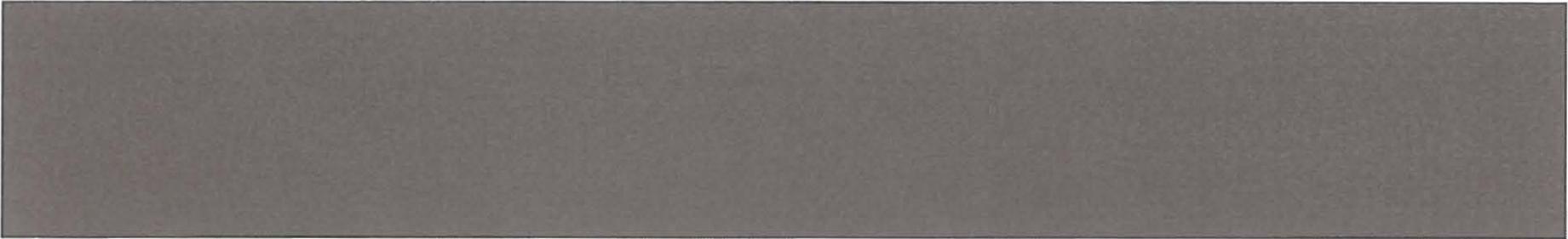


Watson Brickson demolition is schedule to commence on Monday, April 9<sup>th</sup> pending approval of JPA Agenda Item WH 12-20.

# DEC BUILDING



**DEC contractor  
Hawkins has  
completed concrete  
piling work. Hawkins  
is nearing completion  
with pile caps and  
has started  
foundation walls.**



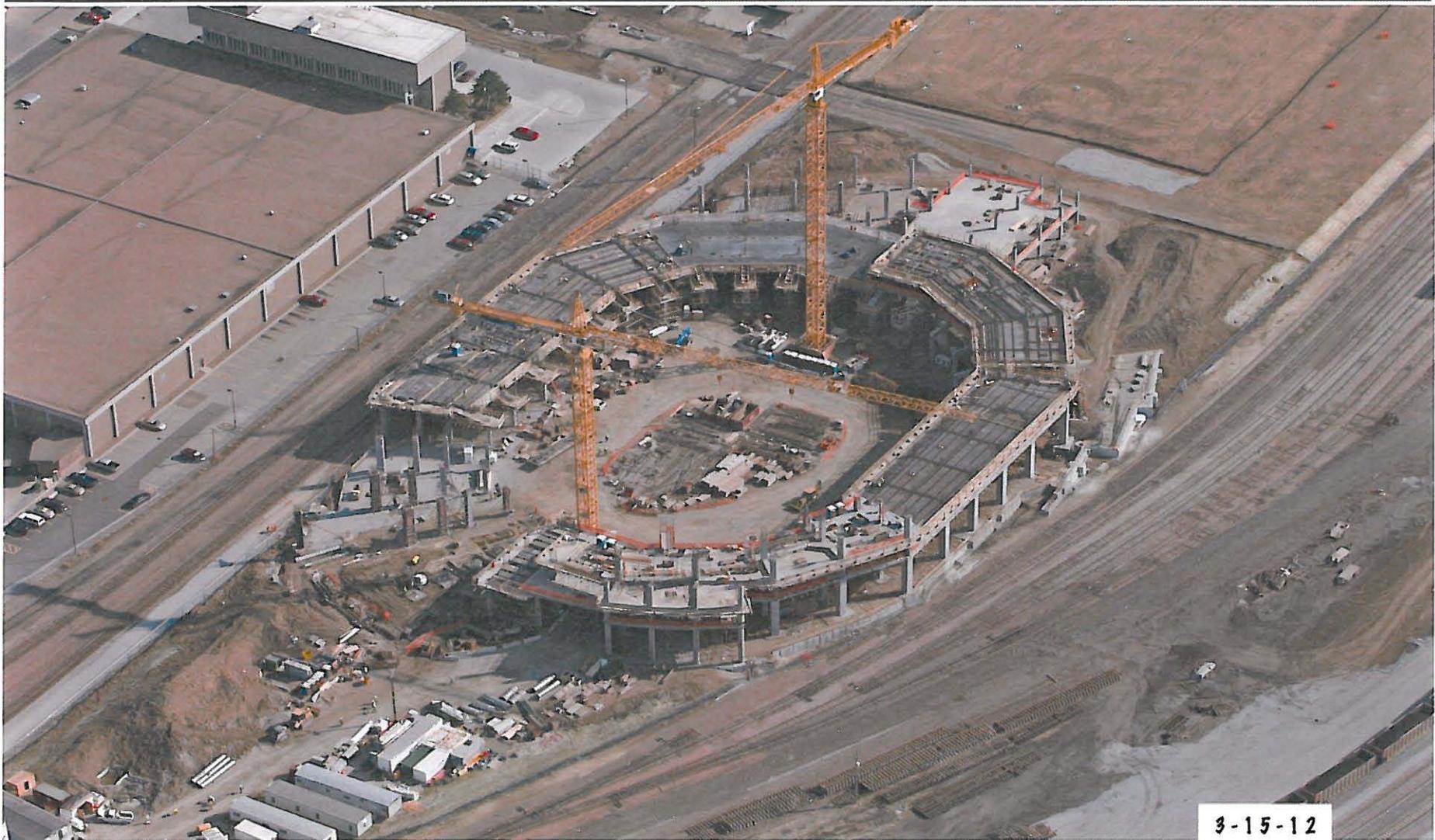
# **Pinnacle Bank Arena Progress Update**

# AERIAL OCTOBER 15<sup>TH</sup>, 2011



10-15-11

# AERIAL MARCH 15<sup>TH</sup>, 2012



# PROJECT PROGRESS

- As of April 5<sup>th</sup>, there have been a total of **419** RFI's submitted
- There have been a total of **627** Submittals as of April 5<sup>th</sup>.
- To date there have been **26** CCA's issued.

# MORTENSON PRESENTATION TO THE JPA



## Pinnacle Bank Arena

■ April 6<sup>th</sup>, 2012

# SAFETY



- Worked **29 days** without a safety incident
- The project averages over **150 craft workers**
- Workers have spent **150,000 hours** onsite

# CONCRETE SUPERSTRUCTURE



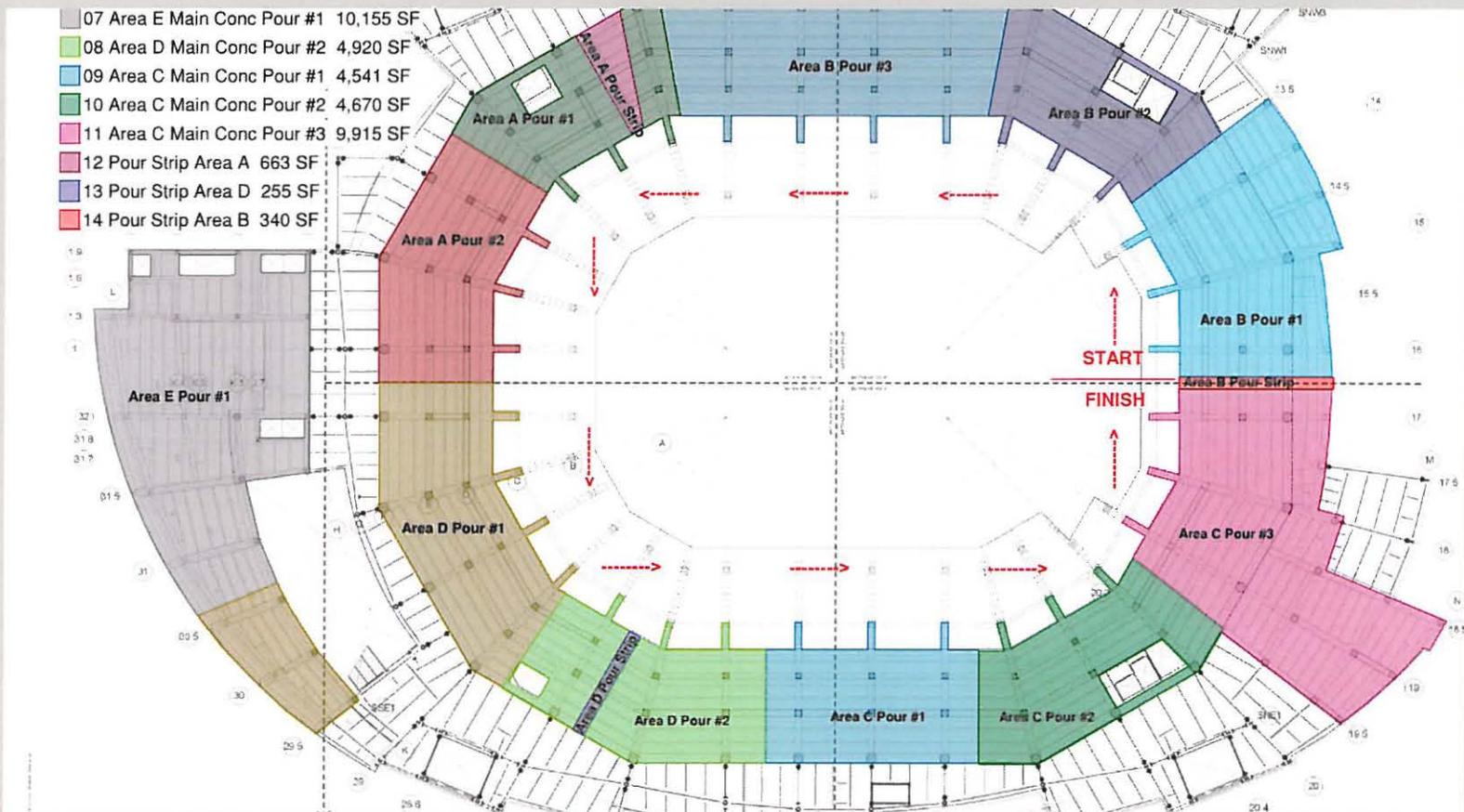
- The team completed grade beam, spread footing, and pile caps installation.
- 9,000 yards of concrete have been placed to-date.

# ELEVATED DECK PLACEMENTS

- 75% of the main concourse placed
- 43,000 SF of the main concourse completed out of 70,000 SF
- 4 of 7 premium level pours completed
- 1 of 7 upper concourse pours completed



# MAIN CONCOURSE POUR MAP



# MAIN, PREMIUM & UPPER LEVEL POURS





# SEATING BOWL



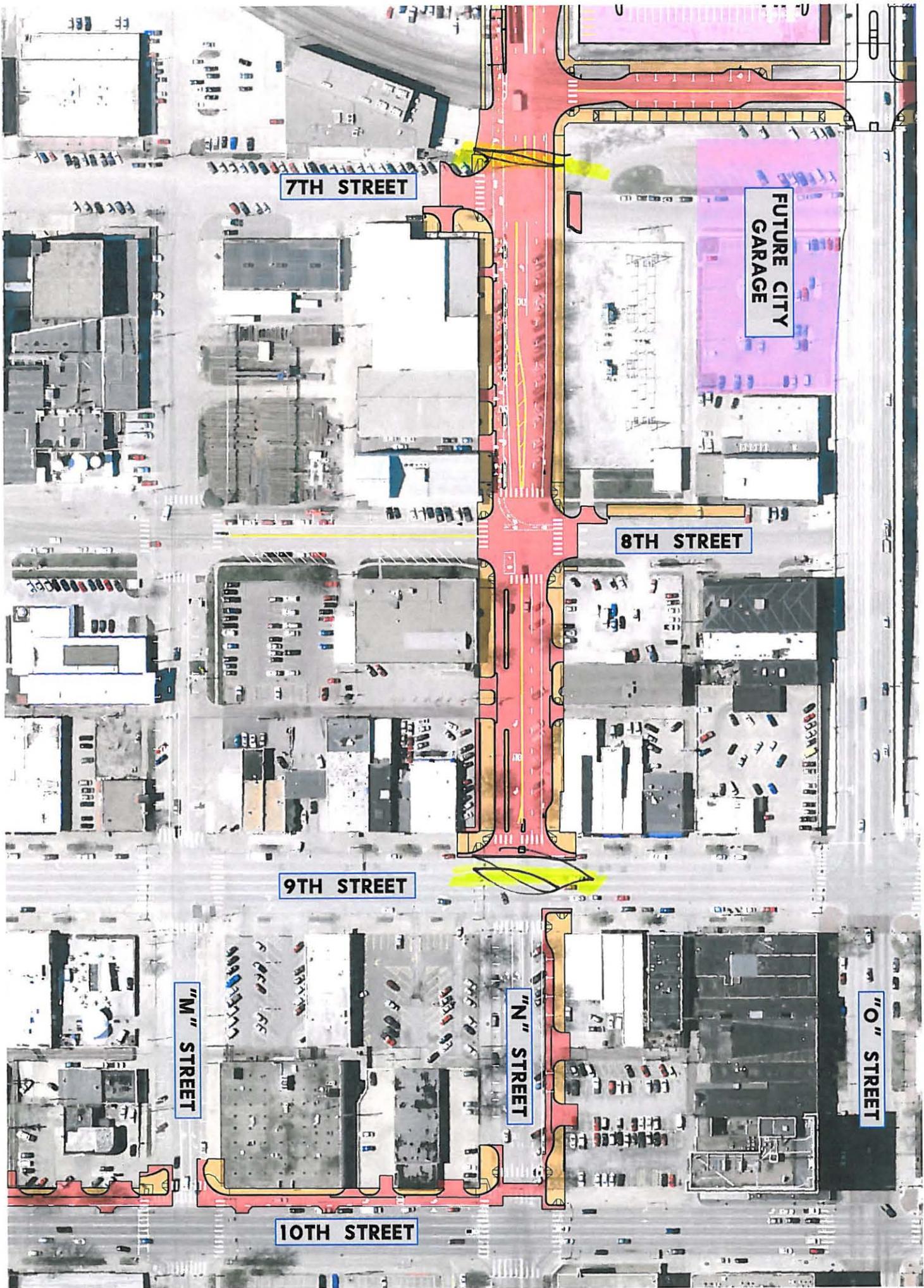


# PLUMBING WORK STARTED



# ELECTRICAL WORK STARTED





7TH STREET

FUTURE CITY GARAGE

8TH STREET

9TH STREET

"M" STREET

"N" STREET

"O" STREET

10TH STREET



West Haymarket JPA  
Payment Register  
3/1/2012 through 3/31/2012

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
53356	Lincoln Electric System	660 N St, 12/31-2/2/12	870903	WH Jaylynn Site Purchase	PV	1345572	75.73	03/01/12	51302
53356	Lincoln Electric System	660 N St, 1/6-2/2/12	870903	WH Jaylynn Site Purchase	PV	1345573	64.07	03/01/12	51302
249308	DLR Group Inc	Jan'2012 Arena signage work	870100	WH Arena	OV	1346467	72,359.66	03/01/12	51374
249308	DLR Group Inc	Jan'2012 Fixed Reimb Exps	870100	WH Arena	OV	1346469	10,000.00	03/01/12	51374
249308	DLR Group Inc	Jan'2012 Arena + fee	870100	WH Arena	OV	1346473	450,000.00	03/01/12	51374
249308	DLR Group Inc	Jan'2012 Ded Wrk Area LNC	870100	WH Arena	OV	1346477	1,504.60	03/01/12	51374
249308	DLR Group Inc	Jan'2012 Arena Parking Garg	870203	WH Arena Parking Garage	OV	1346480	20,964.99	03/01/12	51374
249308	DLR Group Inc	Jan'2012 Ramp & Elev Plz	870100	WH Arena	OV	1346481	5,123.64	03/01/12	51374
249308	DLR Group Inc	Jan'2012 Food Service	870100	WH Arena	OV	1346482	55,000.00	03/01/12	51374
599315	Legends Sales & Marketing LLC	Sales brochure printing	870100	WH Arena	OV	1345580	5,982.85	03/01/12	51438
594458	Ronco Construction Company Inc	Inv.1827,Work thru 1/31/12	870906	WH Amtrak Station	OV	1347455	142,180.20	03/07/12	465899
131481	Public Works Business Office	City Staff-Pam Gadeken	06095	W Haymarket O & M	PV	1347847	314.77	03/07/12	465901
53356	Lincoln Electric System	660 N St, 1/6-2/3/12	870903	WH Jaylynn Site Purchase	PV	1347458	54.95	03/08/12	51483
98079	Black Hills Energy	660 N St,1/18-2/16/12	870903	WH Jaylynn Site Purchase	PV	1347459	75.04	03/08/12	51507
148582	Aon Risk Services Central Inc	PPLG24892682001,11/29/2010-15	870604	WH Other/Miscellaneous	PV	1347460	69,127.00	03/08/12	51520
185050	TCW Construction Inc	Contr#870302	870302	WH "M"&"N" St,7th to 10th St	OV	1346970	9,250.06	03/08/12	51529
185050	TCW Construction Inc	Job#11-170B	870602	WH Voluntary Clean-up Program	OV	1346971	301,967.87	03/08/12	51529
222586	Don Herz	Services for February, 2012	06095	W Haymarket O & M	PV	1347848	2,163.15	03/08/12	51536
593485	Thought District Inc	10-JPA-0007 On-Going Mgmt	06095	W Haymarket O & M	PV	1347850	1,410.00	03/08/12	51572
596579	SMG	Jan'2012 consulting	870100	WH Arena	OV	1347456	5,000.00	03/08/12	51578
596579	SMG	Jan'2012 travel exp-Lorenz	870100	WH Arena	PV	1347457	1,201.46	03/08/12	51578
77921	County/City Property Management	CITY CONTROLLER-JPA	06095	W Haymarket O & M	PV	1350547	83.32	03/14/12	466403
82368	State of Nebraska	Jan'2012 monitoring #10620	870602	WH Voluntary Clean-up Program	PV	1348033	2,865.41	03/14/12	466404
97885	Copy Services	Customer 595381	06095	W Haymarket O & M	PV	1350549	1.53	03/14/12	466405
99258	City of Lincoln - Solid Waste	#1424 Landfill occupation tax	870703	WH Initial Haymarket Site Prep	PV	1348034	3,131.31	03/14/12	466406
99258	City of Lincoln - Solid Waste	#1424 Landfill occupation tax	870703	WH Initial Haymarket Site Prep	PV	1348035	16,103.92	03/14/12	466406
102154	Public Building Commission	Finance- Mark L 03/12	06095	W Haymarket O & M	PV	1350551	22.24	03/14/12	466407
102154	Public Building Commission	Finance- Mark L 03/12	06095	W Haymarket O & M	PV	1350551	204.62	03/14/12	466407
108417	Citizen Information Center	WHJPA Video 2-1-12, 2-28-12	06095	W Haymarket O & M	PV	1350554	157.50	03/14/12	466408
120272	City of Lincoln - Accounting Dept	Reimb Sal/Ben 11/24/11-2/29/12	06095	W Haymarket O & M	PV	1350557	88,761.99	03/14/12	466409
594773	Alfred Benesch & Company	Environmental,1/9-1/22/12	870601	WH NDEQ T-200	OV	1348027	332.50	03/14/12	466410
594773	Alfred Benesch & Company	Environmental,1/9-1/22/12	870604	WH Other/Miscellaneous	OV	1348028	16,894.07	03/14/12	466410
594773	Alfred Benesch & Company	Environmental,1/9-1/22/12	870603	WH Environmental Contngy Pln	OV	1348028	5,187.00	03/14/12	466410
594773	Alfred Benesch & Company	Geotechnical,1/2-1/29/12	870204	WH Parking Garage #2	PV	1348032	1,560.00	03/14/12	466410
38391	Lincoln Journal Star	Cust#60000816	870903	WH Jaylynn Site Purchase	PV	1349997	19.78	03/15/12	51615
38391	Lincoln Journal Star	Cust#60000816	870100	WH Arena	PV	1349999	16.39	03/15/12	51615
596608	M A Mortenson Company	Feb,2012 Arena work	870100	WH Arena	OV	1348029	5,148,049.00	03/15/12	51806
598263	PC Sports LLC	Feb,2012 Arena Mgmt	870100	WH Arena	OV	1348030	30,450.00	03/15/12	51813
598263	PC Sports LLC	Feb'2012 Project Mgmt	870000	WH General Coordination	OV	1348030	68,050.00	03/15/12	51813
599315	Legends Sales & Marketing LLC	Jan'2012 Retainer + exps	870100	WH Arena	OV	1348031	19,019.81	03/15/12	51826
600032	International Sculpture Center	ISC Dedicated email:3/27	870952	WH Community Space & Civic Art	PV	1351753	500.00	03/16/12	23083
74405	City of Lincoln - Building & Safety	525 N St L,Excavate & fill	870602	WH Voluntary Clean-up Program	PV	1351021	300.00	03/21/12	466793
594773	Alfred Benesch & Company	Inspections,1/30-2/26/12	870100	WH Arena	OV	1351165	1,868.15	03/21/12	466794
59029	Cornerstone Printing & Imaging	FINANCE DEPARTMENT	06095	W Haymarket O & M	PV	1351560	56.13	03/22/12	51872
88022	T J Osborne Construction	Final on #870302a	870302	WH "M"&"N" St,7th to 10th St	OV	1351208	72,886.85	03/22/12	51892
90261	Stephens & Smith Construction Co Inc	Platform work to 2/29/12	870906	WH Amtrak Station	OV	1351185	130,050.00	03/22/12	51893
591846	Marvin Investment Management Co	Program Admin 1/16/12-2/15/12	06095	W Haymarket O & M	PV	1351562	7,063.00	03/22/12	51953
593485	Thought District Inc	10-JPA-0007 On-Going Mgmt	06095	W Haymarket O & M	PV	1351563	1,850.04	03/22/12	51955
594458	Ronco Construction Company Inc	Amtrak work to 2/29/12	870906	WH Amtrak Station	OV	1351183	75,254.40	03/22/12	51957
596579	SMG	Cust#889,Rosenblum Jan'12 exps	870100	WH Arena	OV	1351022	629.06	03/22/12	51962
596608	M A Mortenson Company	Feb'2012 scheduling service	870000	WH General Coordination	OV	1350684	16,666.00	03/22/12	51963
599315	Legends Sales & Marketing LLC	Feb'2012 retainer+sal reimb	870100	WH Arena	OV	1350687	20,066.36	03/22/12	51965
74405	City of Lincoln - Building & Safety	313 N 7th St L, Utility lines	870703	WH Initial Haymarket Site Prep	PV	1352954	394.35	03/28/12	467246

West Haymarket JPA  
 Payment Register  
 3/1/2012 through 3/31/2012

Vendor Number	Name	Remark	Project	Description	Do Ty	Doc Number	Amount	Payment Date	Payment Number
98642	Information Services	02/12 Data Processing	06095	W Haymarket O & M	PV	1352179	88.42	03/28/12	467247
40521	A to Z Printing	Finance Job 3081Z	06095	W Haymarket O & M	PV	1352177	59.00	03/29/12	52002
98079	Black Hills Energy	660 N St, 2/16-2/28/12	870903	WH Jaylynn Site Purchase	PV	1352956	23.06	03/29/12	52043
249308	DLR Group Inc	Feb,2012 billing Arena +	870100	WH Arena	OV	1352923	442,500.00	03/29/12	52068
249308	DLR Group Inc	Feb,2012 Ded Wrk Area LNC	870100	WH Arena	OV	1352926	1,504.59	03/29/12	52068
249308	DLR Group Inc	Feb,2012 Arena Signage	870100	WH Arena	OV	1352927	59,430.53	03/29/12	52068
253930	Clean Harbors Env Services	Cust#LI1770, WH870603	870603	WH Environmental Contngy Pln	PV	1352957	190,935.80	03/29/12	52069
253930	Clean Harbors Env Services	Cust#LI1770, WH870603	870603	WH Environmental Contngy Pln	PV	1352958	45,516.00	03/29/12	52069
Grand total							7,622,372.17		

West Haymarket JPA  
Public Works Engineering Costs  
3/1/2012 through 3/31/2012

Description	Fund	Project	Description	Do Ty	Document Number	Object	Sub	Amount	G/L	Date
Design Engineering	00951	870000	WH General Coordination	EU	335588	6153	130	2,036.15		03/08/12
Observer/Inspections	00951	870302	WH "M"&"N" St,7th to 10th St	EU	335588	6153	325	1,200.33		03/08/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	335588	6153	130	1,682.48		03/08/12
Construction Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	335588	6153	320	976.90		03/08/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	335588	6153	130	1,326.64		03/08/12
Design Engineering	00951	870703	WH Initial Haymarket Site Prep	EU	335588	6153	130	234.35		03/08/12
Design Engineering	00951	870906	WH Amtrak Station	EU	335588	6153	130	115.35		03/08/12
Design Engineering	00951	870000	WH General Coordination	EU	336617	6153	130	1,368.20		03/22/12
Observer/Inspections	00951	870302	WH "M"&"N" St,7th to 10th St	EU	336617	6153	325	2,118.22		03/22/12
Design Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	336617	6153	130	1,945.67		03/22/12
Construction Engineering	00951	870302	WH "M"&"N" St,7th to 10th St	EU	336617	6153	320	781.54		03/22/12
Design Engineering	00951	870305	WH Core Area Roadway & Utility	EU	336617	6153	130	4,648.28		03/22/12
Grand total								18,434.11		

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
-----							
00951	West Haymarket Capital Proj						
70090	West Haymarket Park						
	870000 WH General Coordination	6,674,522	4,085,191	2,861,272	271,941-		271,941-
-----							
70090	West Haymarket Park	6,674,522	4,085,191	2,861,272	271,941-		271,941-
-----							
70091	Arena						
	870100 WH Arena	178,107,742	30,480,179	141,143,236	6,484,327		6,484,327
	870101 WH Arena Contingency	5,143,925			5,143,925		5,143,925
	870203 WH Arena Parking Garage	698,599	516,215	209,579	27,195-		27,195-
-----							
70091	Arena	183,950,266	30,996,394	141,352,815	11,601,057		11,601,057
-----							
70092	Parking						
	870201 WH HymktPkLot,FestSp&PedGrdStr	13,080,079	338,238	1,244,112	11,497,729		11,497,729
	870202 WH Parking Garage #1	15,066,244	303,494	707,923	14,054,827		14,054,827
	870204 WH Parking Garage #2	232,000	195,968	35,746	286		286
-----							
70092	Parking	28,378,323	837,700	1,987,781	25,552,842		25,552,842
-----							
70093	Roads						
	870301 WH Charleston Bridge/Roadway	264,403	252,015	390,766	378,378-		378,378-
	870302 WH "M"&"N" St,7th to 10th St	2,818,574	1,697,264	239,944	881,366		881,366
	870303 WH USPS Parking Lot Reconstctn	713,947	638,569	28,176	47,202		47,202
	870304 WH 10th & Salt Creek Road Impr	3,420,647	3,415,232	7,927	2,512-		2,512-
	870305 WH Core Area Roadway & Utility	13,531,642	389,568	573,489	12,568,585		12,568,585
	870306 WH Traffic Analysis	125,095	57,270	28,148	39,677		39,677
	870307 WH Streetscape	405,706	141,773	263,933			
	870308 WH Sun Valley Blvd & West "O"	40,000	22,938	16,433	629		629
-----							
70093	Roads	21,320,014	6,614,629	1,548,816	13,156,569		13,156,569
-----							
70094	Pedestrian Ways						
	870401 WH Plaza						

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
-----							
00951	West Haymarket Capital Proj						
70094	Pedestrian Ways						
	870402 WH Canopy Phase II	1,000,000			1,000,000		1,000,000
-----							
70094	Pedestrian Ways	1,000,000			1,000,000		1,000,000
-----							
70095	Utilities						
	870501 WH Sanitary Sewer Relocation	1,492,905	1,492,905				
	870502 WH Fiber Optic Comm & Other	650,880	506,035	31,547	113,298		113,298
-----							
70095	Utilities	2,143,785	1,998,940	31,547	113,298		113,298
-----							
70096	Environmental						
	870601 WH NDEQ T-200	2,276,402	1,544,418	59,961	672,023	80,945	752,968
	870602 WH Voluntary Clean-up Program	1,725,156	941,840	257,970	525,346		525,346
	870603 WH Environmental Contngy Pln	2,124,947	516,005	32,687	1,576,255		1,576,255
	870604 WH Other/Miscellaneous	525,600	399,172	342,424	215,996		215,996
	870605 WH Canopy Phase I-Lead Abatent	80,000			80,000		80,000
-----							
70096	Environmental	6,732,105	3,401,435	693,042	2,637,628	80,945	2,718,573
-----							
70097	Dirt Moving						
	870701 WH Stmwtr Mtgtn-Sth&WstOf BNSF	2,305,770			2,305,770		2,305,770
	870703 WH Initial Haymarket Site Prep	6,730,240	5,833,712	850,600	45,928		45,928
	870704 WH Other Stormwater Mitigation						
-----							
70097	Dirt Moving	9,036,010	5,833,712	850,600	2,351,698		2,351,698
-----							
70098	TIF Improvements						
	870800 WH TIF Improvements						
-----							
70098	TIF Improvements						
-----							
70099	Site Purchase						

		Total Budget	Expend.	Encumb.	Available Balance	Accounts Receivable	Adjusted Avail Bal
870901	WH BNSF Land Acquisition	1,051,078	1,051,078				
870902	WH Alter Site Purchase	4,860,881	3,577,101		1,283,780		1,283,780
870903	WH Jaylynn Site Purchase	1,796,652	1,602,236		194,416		194,416
870904	WH UP Site Purchase	1,326,248	1,326,248				
870905	WH BNSF Const. Rehab. Reloc	47,961,214	50,224,360		2,263,146-		2,263,146-
870906	WH Amtrak Station	2,338,345	757,225	1,452,862	128,258		128,258
870907	WH UP Track Mod West of Bridge	1,236,000	1,166,994		69,006		69,006
870908	WH Other Private Prop Acqstns	1,880,587	603,342		1,277,245		1,277,245
70099	Site Purchase	62,451,005	60,308,584	1,452,862	689,559		689,559
70100	Other Costs						
870951	WH ITS & Dynamic Message Signs	1,826,827	75,837	99,688	1,651,302		1,651,302
870952	WH Community Space & Civic Art	1,500,000	500		1,499,500		1,499,500
70100	Other Costs	3,326,827	76,337	99,688	3,150,802		3,150,802
70105	Bond Related Costs						
870975	WH Miscellaneous	5,160,000			5,160,000		5,160,000
870976	WH Line of Credit		53,227		53,227-		53,227-
870977	WH Series 1 JPA Debt		1,535,168		1,535,168-		1,535,168-
870978	WH Series 2 JPA Debt		1,221,802		1,221,802-		1,221,802-
870979	WH Series 3 JPA Debt		577,661		577,661-		577,661-
870980	WH Series 4 JPA Debt		1,243,825		1,243,825-		1,243,825-
70105	Bond Related Costs	5,160,000	4,631,683		528,317		528,317
00951	West Haymarket Capital Proj	330,172,857	118,784,605	150,878,423	60,509,829	80,945	60,590,774

City of Lincoln, NE  
 West Haymarket JPA  
 Operating Expenditure Report  
 As of March 31, 2012

00950 West Haymarket Reven  
 06095 W Haymarket O & M

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket O & M						
11 Materials & Supplies						
5221 Office Supplies	250			250		250
5261 Postage	1,000			1,000	1,176	176-
11 Materials & Supplies	1,250			1,250	1,176	74
12 Other Services & Charges						
5621 Misc Contractual Services	428,698			428,698	197,025	231,673
5624 Auditing Service	15,000			15,000	15,000	
5631 Data Processing Service	10,855			10,855	619	10,236
5633 Software	1,000			1,000		1,000
5637 Engineering & Design	1,828,566			1,828,566	546,523	1,282,043
5643 Management Services	95,043			95,043	53,673	41,370
5762 Photocopying	500			500	67	433
5763 Printing	500			500	171	329
5794 Public Officials	30,000			30,000		30,000
5928 Rent of Co/City Bldg Space	2,456			2,456	1,432	1,024
5931 Parking Rent Bldg Comm	267			267	156	111
5952 Advertising/Media Serv	2,850			2,850	1,181	1,669
12 Other Services & Charges	2,415,735			2,415,735	815,847	1,599,888
06095 W Haymarket O & M	2,416,985			2,416,985	817,023	1,599,962

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket JPA  
Operating Expenditure Report  
As of March 31, 2012

2  
04/11/12  
09:37:39

00950 West Haymarket Reven  
195011 JPA 2010A Debt Servi

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
195011 JPA 2010A Debt Servic						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg					524	524-
6235 Bd Trustee Pmt-Interest	4,651,510			4,651,510	2,325,755	2,325,755
-----	-----	-----	-----	-----	-----	-----
15 Debt Service	4,651,510			4,651,510	2,326,279	2,325,231
-----	-----	-----	-----	-----	-----	-----
195011 JPA 2010A Debt Servic	4,651,510			4,651,510	2,326,279	2,325,231

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket JPA  
Operating Expenditure Report  
As of March 31, 2012

3  
04/11/12  
09:37:39

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

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----						
195021 JPA 2010B/C Debt Serv						
15 Debt Service						
6233 Bd Trustee Pmt-Serv Chg					424	424-
6235 Bd Trustee Pmt-Interest	5,874,323			5,874,323	2,937,161	2,937,162
-----						
15 Debt Service	5,874,323			5,874,323	2,937,585	2,936,738
-----						
195021 JPA 2010B/C Debt Serv	5,874,323			5,874,323	2,937,585	2,936,738

83410  
MARK  
JPAADMIN

City of Lincoln, NE  
West Haymarket JPA  
Operating Expenditure Report  
As of March 31, 2012

4  
04/11/12  
09:37:39

00950 West Haymarket Reven  
195031 JPA 2011 Debt Servic

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
-----	-----	-----	-----	-----	-----	-----
195031 JPA 2011 Debt Service						
15 Debt Service						
6235 Bd Trustee Pmt-Interest	3,711,614			3,711,614	1,415,770	2,295,844
-----	-----	-----	-----	-----	-----	-----
15 Debt Service	3,711,614			3,711,614	1,415,770	2,295,844
-----	-----	-----	-----	-----	-----	-----
195031 JPA 2011 Debt Service	3,711,614			3,711,614	1,415,770	2,295,844
-----	-----	-----	-----	-----	-----	-----
00950 West Haymarket Revenue	16,654,432			16,654,432	7,496,657	9,157,775

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

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

3           That the attached West Haymarket Redevelopment Agreement by and between the City of  
4 Lincoln, Nebraska, a municipal corporation (“City”), TDP Phase One, LLC, a Nebraska limited  
5 liability company (“TDP”), and the West Haymarket Joint Public Agency, a political subdivision  
6 and corporate body politic of the State of Nebraska (“JPA”) is hereby approved and the  
7 Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby  
8 authorized to execute said Redevelopment Agreement on behalf of the JPA.

9           The West Haymarket Redevelopment Agreement provides for, among other things: (1)  
10 the JPA’s sale of Redevelopment Area A on the superblock between R and Q Streets (“Block A  
11 south of the Arena”) and Redevelopment Area C on the festival block north of the Lincoln  
12 Station Building (“Festival Block Southeast of Arena”) to TDP; (2) TDP’s construction of (i)  
13 approximately 92,500 square feet of residential space, approximately 15,000 square feet of office  
14 space and approximately 49,500 square feet of retail space on the north half for Redevelopment  
15 Area A and Redevelopment Area C (the “Residential, Retail and Office Improvements” or the  
16 “RROI Improvements”) and (ii) a multi-story approximately 110 room hotel and related facilities  
17 which shall include some first floor retail space along the street facade of the hotel and two  
18 floors of office or residential space above the hotel (“Hotel Improvements”) on the south half of  
19 Redevelopment Area A; (3) the JPA’s construction of one or more multi-level parking garages  
20 south of the Arena and other Public Improvements defined to include the design and construction  
21 of Canopy Street, R Street, Q Street, P Street, Arena Drive and Trails/Bike facility

1 improvements; and (4) the City's issuance of TIF indebtedness in the estimated amount of the  
2 tax increment to be generated from the RRO Improvements and Hotel Improvements,  
3 \$3,500,000 and \$2,250,000 of which are to be purchased by the JPA, as TIF Note A and TIF  
4 Note B, respectively.

5 BE IT FURTHER RESOLVED that the City Finance Director is hereby authorized, on  
6 behalf of the JPA, to purchase the City's TIF Note A and TIF Note B from the City's issuance of  
7 City of Lincoln, Nebraska West Haymarket Redevelopment Project Tax Allocation Bonds.

8 BE IT FURTHER RESOLVED that the Chair of the JPA Board of Representatives is  
9 hereby authorized to execute, on behalf of the JPA, all closing documents associated with the  
10 conveyance of the TPD Redevelopment Areas to TDP.

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

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

**WEST HAYMARKET  
REDEVELOPMENT AGREEMENT**

THIS WEST HAYMARKET REDEVELOPMENT AGREEMENT (“Redevelopment Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2012, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as “City”), the WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and corporate body politic of the State of Nebraska (hereinafter referred to as “JPA”), and TDP PHASE ONE, LLC, a Nebraska limited liability company (hereinafter referred to as “TDP” or “Redeveloper”).

**RECITALS**

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan as amended (the “Redevelopment Plan”) providing for the West Haymarket Redevelopment Project in an area generally bounded on the west by the BNSF and UP railroad lines, by approximately 7th Street on the east, the south interior roadway of Haymarket Park and the Bereuter Pedestrian Bridge on the north, and “M” Street on the south (“West Haymarket Redevelopment Area”), a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the “City Clerk”).

B. TDP has submitted a proposal to redevelop a portion of the West Haymarket Redevelopment Area (“TDP Project”) on real property generally described as (1) Redevelopment Area A, on the Superblock between R and Q Streets (Block A South of Arena); and (2) Redevelopment Area C, on the festival block north of the Lincoln Station Building (Festival Block Southeast of Arena) (collectively “TDP Redevelopment Areas”).

C. The planned construction for the TDP Project includes, but is not limited to, one or more buildings containing approximately 92,500 square feet of residential space; approximately 15,000 square feet of office space; and approximately 49,500 square feet of retail space (collectively, the “Residential, Retail, and Office Improvements” or the “RRO Improvements”) and a multi-story approximately 110-room hotel and related facilities which shall include some first floor retail space along the street façade of the hotel and two floors of office or residential space above the hotel (the “Hotel Improvements”). (The RRO Improvements and the Hotel Improvements are collectively hereinafter referred to as the “Private Improvements”).

D. The JPA has been created and established by and between the University of Nebraska and the City pursuant to the Nebraska Joint Public Agency Act, Neb. Rev. Stat. § 13-2501, et seq. (Reissue 2007). Specifically, the JPA was created to function as the coordinating entity to finance and provide for the contract, design and construction of the West Haymarket Arena as well as necessary land acquisitions/remediation and supporting infrastructure and facilities for the larger scope of the West Haymarket facilities including, but not limited to, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots.

E. The JPA has acquired or will acquire the TDP Redevelopment Areas along with other real estate generally identified as: (1) Redevelopment Area B, on the Superblock between Q and P Streets (Block B South of Arena); (2) Redevelopment Area D, on the Super block between O and P Streets (Block D South of Arena); and (3) Redevelopment Area E, should it become available for redevelopment, on the Super block between N and O Street (Block E South

of the Arena). Redevelopment Areas A, D and E are shown on the map attached hereto as Exhibit A-2 and are incorporated herein by this reference. The West Haymarket Redevelopment Project Area is shown on the map attached hereto as Exhibit A-3 and the Redevelopment Area is incorporated herein by reference.

F. This Redevelopment Agreement implements the TDP Project and sets forth the terms and conditions for the TDP Project.

G. *Neb. Rev. Stat.* §18-2107 (Reissue 2007) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

H. The City and JPA are willing to support the above described redevelopment of the TDP Redevelopment Areas provided TIF Proceeds (defined below) are available to be used (1) to reimburse the JPA for the JPA Priority Expenses (defined below), and (2) to reimburse the Redeveloper for Redeveloper Priority Expenses (defined below); provided Redeveloper is willing (1) to restrict the use of the TDP Redevelopment Areas to certain approved uses, and (2) to agree to covenants and conditions regarding compulsory maintenance and upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions. The JPA Priority Expenses and Redeveloper Priority Expenses are more particularly described Section 601 below and summarized on the Sources and Uses of TIF on Exhibit B attached and incorporated by this reference.

I. Pursuant to *Neb. Rev. Stat.* §18-2147, et seq., the Redevelopment Plan contains a provision which provides that any ad valorem tax levied upon real property in the TDP Project

for the benefit of any public body shall be divided, for a period not to exceed fifteen (15) years after the Effective Date as identified herein as follows:

- That portion of the ad valorem tax which is produced by the levy at the rate fixed each year by or for each such public body upon the TDP Project valuation as of January 1 of the year prior to the year that the ad valorem taxes are to be divided shall be paid into the funds of each such public body in the same proportion as are all other taxes collected by or for the body; and
- That portion of the ad valorem tax on real property as provided in the redevelopment contract or bond resolution in the TDP Project in excess of such amount, if any, shall be allocated to and, when collected, paid into a special fund of the authority to be used solely to pay the principle and the interest on, and any premiums due in connection with the bonds of, loans, notes, or advances of money to, or indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such authority (“TIF Indebtedness”) for financing or refinancing in whole or in part, the Redevelopment Project. When such bonds, loans, notes, advances of money, or indebtedness, including interest and premiums due, have been paid, the authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon taxable real property in such Redevelopment Project shall be paid into the funds of the respective public bodies.

Said provision is hereinafter referred to as the “Ad Valorem Tax Provision” or the “Tax Increment Provision.”

J. In order to reimburse Redeveloper for Redeveloper Priority Expenses and JPA for JPA Priority Expenses, the City intends to issue tax increment financing indebtedness (“TIF Note”) to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision (“TIF Tax Revenues”).

K. The parties mutually agree that the redevelopment of the TDP Redevelopment Areas is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable

consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## **ARTICLE I.**

### **REDEVELOPER'S RESPONSIBILITIES**

#### **Section 101.        Evidence of Redeveloper's Ability**

A. Evidence of Financial Ability of Redeveloper. Redeveloper shall within thirty (30) days following execution of this Redevelopment Agreement provide to the City evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitments of the Redeveloper in connection with the Private Improvements. To the extent allowed by law, the City agrees to keep such information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to Redeveloper for use of the TDP Project. Redeveloper shall, prior to closing of the RRO Project Parcels and the Hotel Project Parcel, state the amount and source of debt financing which is available, or irrevocably committed, to Redeveloper for use in completing the RRO Project and Hotel Project. Such information shall be provided in a form satisfactory to the Finance Director of the City, and evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the borrower, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Timely submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Redevelopment Agreement.

B. Evidence of Ability of Redeveloper to Timely Commence Construction of the Private Improvements. Redeveloper shall, prior to closing of the RRO Project Parcels and the

Hotel Project Parcel, provide satisfactory documentation to the City that Redeveloper is ready, willing and able to timely commence construction of the applicable RRO Improvements or Hotel Improvements as provided in Section 103.C and Section 103.D below, respectively. Submittal of such information and documentation in a form satisfactory to the City shall be a condition precedent to the requirement of the City to proceed with its obligation to convey the RRO Project Parcels and/or Hotel Project Parcel to Redeveloper under this Redevelopment Agreement.

**Section 102. Schematic Drawings; Preliminary Plans & Specifications; Final Construction Documents; Approval; Changes.**

A. Conceptual Plans and Drawings. Overall conceptual plans and drawings (“Project Schematic Drawings”), shall be based upon the West Haymarket Integrated Development Plan - July 30, 2009 (“IDP”), a copy of which is on file in the office of the City's Director of Planning, and specific guidelines for signage, design, and exterior building guidelines (“Exterior Design Criteria”), a copy of which is attached to this Redevelopment Agreement as Exhibit C and is incorporated by this reference. The Project Schematic Drawings and Exterior Design Criteria shall serve as the basis for development of the plans and specifications for the Private Improvements. The Project Schematic Drawings attached as Exhibit D and incorporated by this reference have been reviewed and approved by the Mayor as in conformance with the Exterior Design Criteria.

B. Preliminary Plans. Preliminary plans and specifications (“Preliminary Plans”) will be prepared by Redeveloper for the Private Improvements to be constructed by Redeveloper on the TDP Redevelopment Areas. Such Preliminary Plans shall be based upon the Project Schematic Drawings and shall show all the Private Improvements to be constructed by Redeveloper as part of the TDP Project and shall also provide elevation views of the exterior of

the Private Improvements (“Exterior Drawings”) and the construction materials to be used for such exterior walls.

The Preliminary Plans, and in particular the Exterior Drawings, of the Private Improvements shall be submitted to the Historic Preservation Commission and the Urban Design Committee, in accordance with the submittal requirements in Section 4.36.040 of the Lincoln Municipal Code, for their joint review and submittal of their recommendation to the City no later than thirty (30) days following Redeveloper’s submittal of the Preliminary Plans. In addition, ingress and egress to and from the TDP Redevelopment Areas from the public streets as shown on the Preliminary Plans shall be subject to City approval based upon City access design standards and the Lincoln Municipal Code. The Preliminary Plans shall also be submitted to the Mayor for his review and approval. The Preliminary Plans shall be approved if they are in substantial conformity with the Project Schematic Drawings, the Exterior Design Criteria, and this Agreement.

C. Exterior Construction Documents. Upon approval of the Preliminary Plans by City, taking into account the recommendations of the Historic Preservation Commission and the Urban Design Committee, Redeveloper shall prepare or have prepared the exterior construction documents (“Exterior Construction Documents”) which shall be submitted to the Mayor for his review and approval. The Exterior Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Preliminary Plans, and in substantial conformity with this Redevelopment Agreement.

D. Historic Preservation Commission/Urban Design Committee Failure to Act. In the event the Historic Preservation Commission and/or the Urban Design Committee fail to submit their recommendation to the City as provided for in subparagraph B above within thirty

(30) days after receipt of the submittal, then Redeveloper may submit such documents directly to the City for its review and approval.

E. Approval. City shall so approve or reject the Preliminary Plans and Exterior Construction Documents within fourteen (14) days after receipt of the applicable documents and/or any report and recommendation of the Historic Preservation Commission and/or Urban Design Committee. Such Preliminary Plans and Exterior Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Project Schematic Drawings, and in substantial conformity with this Redevelopment Agreement. Failure of the City to reject the applicable documents within said fourteen (14) days shall be deemed as approval. If the City rejects the applicable plans, the City shall deliver to Redeveloper notice thereof accompanied by an explanation of the reasons for such rejection based on the standards for this TDP Project. If rejected, Redeveloper shall work with the Architect to submit corrected Preliminary Plans and Exterior Construction Documents, as applicable, within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Preliminary Plans and Exterior Construction Documents shall be approved or rejected as provided above for original submittals.

F. Approval Limitation. Approval of the Preliminary Plans and Exterior Construction Documents is not a substitute for and does not eliminate the requirement that Redeveloper apply for and receive necessary building permits for construction of the Private Improvements.

G. Changes. If the Preliminary Plans or Exterior Construction Documents are substantially and materially modified after City approval, any such modification shall be resubmitted to the City in accordance with this Section 102.

**Section 103. Construction of Private Improvements.**

A. Construction. Redeveloper at its own cost and expense shall, through a minimum investment of Twenty Million and No/100 Dollars (\$20,000,000.00) and an anticipated investment of approximately Thirty-One Million and No/100 Dollars (\$31,000,000.00), construct the RRO Improvements as described in Recital C above in conformity with the approved Exterior Construction Documents, building permits and this Redevelopment Agreement. Redeveloper at its own cost and expense shall, through an aggregate minimum investment (including the actual investment made in the RRO Improvements) of Forty Million and No/100 Dollars (\$40,000,000.00) and an anticipated aggregate investment of approximately Fifty Million and No/100 (\$50,000,000.00), construct the Hotel Improvements in conformity with the approved Exterior Construction Documents, building permits and this Agreement. All Private Improvements shall be constructed in compliance with all applicable local, state, and federal building and construction laws or codes.

Redeveloper understands and agrees that if the Private Improvements are carried out on BNSF Property or within fifty feet (50') of BNSF Railway Company ("BNSF") Property, the Work must be performed in accordance with: (i) the terms and conditions of the applicable Temporary License and amendments thereto, if any ("License") to perform the Work between BNSF and the JPA; and (ii) 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. The License and C&M Agreement are on file in the office of the city Clerk for the City of Lincoln. The City shall cooperate with the Redeveloper to identify those areas of the Project Parcels affected by the License and the C&M Agreement and those procedures which must be followed before Redeveloper and its Contractor(s) may enter BNSF Property.

1. Architecture. All Private Improvements shall have consistent architectural features, detailing, and design elements in accordance with the Project Schematic Drawings Exterior Design Criteria and the IDP. All accessory building walls, screening walls or fences, and canopy columns shall use the same primary material, color, and detailing as on the main building.

2. Energy Efficiency. Construction of the Private Improvements shall utilize energy efficient building practices and shall be connected to the District Energy Corporation Plant, provided that such connection of Private Improvements located on Redevelopment Area C shall only be required if such connection is reasonably available on a cost-effective basis. Redeveloper shall use the standard established by U.S. Green Building Council through its Leadership in Energy and Environmental Design (“LEED”) Green Building Rating Systems as a guideline for the design and construction of the Private Improvements.

3. Height of Private Improvements. Private Improvements constructed in the Redevelopment Area A shall have a maximum height of 100 feet. Private Improvements constructed in Redevelopment Area C shall have a maximum height of 50 feet. The minimum height of the Private Improvements in Redevelopment Area C will be determined by mutual agreement of the parties during the design planning stage.

4. Landscaping. All mechanical units and condensing units shall be visually screened from public view. Large trash receptacles for business use and any outside storage areas shall be screened on three sides with a masonry screen wall. Redeveloper shall submit a landscape plan to the Mayor for his review and approval which will not be unreasonably withheld.

5. Signage. Signage shall be regulated in conformance with the B-4 zoning district requirements in Chapter 27.69 of the Lincoln Municipal Code. In addition, all signage in the TDP Redevelopment Areas shall be in conformance with the Exterior Design Criteria. Any commercial advertising for uses outside the TDP Redevelopment Areas or for products that are not manufactured or assembled in the TDP Redevelopment Areas, or any wall and freestanding signs and video displays (except those included in the Exterior Design Criteria) shall be approved by the Mayor of the City of Lincoln or his designee.

6. Historic Preservation. Redeveloper shall preserve, restore as necessary, and maintain elements of historic value that are determined by the City to remain on or be relocated to private land in the TDP Redevelopment Areas, including any existing canopies, the train engine, and other property as applicable.

7. Staging. Redeveloper, City, and JPA agree to assist and cooperate to provide adequate staging for each project within the Redevelopment Area. A preliminary staging plan and staging area for the Project and the West Haymarket Redevelopment Project as a whole is reflected in the Map of Redevelopment Areas attached as Exhibit A.

B. Permits and Approvals. Redeveloper agrees to secure all permits and licenses necessary for its intended use of the TDP Redevelopment Areas including, but not limited to, necessary building permits and inspections.

C. Commencement and Completion Deadline for Private Improvements.

1. Completion Deadline for RRO Improvements. The Redeveloper shall commence the RRO Improvements on the north half of Redevelopment Area A and all of Redevelopment Area C within sixty (60) days following acquisition of the RRO Project Parcels and shall substantially complete the RRO Improvements: (a) on the north half of Redevelopment

Area A within twelve (12) months from the date of delivery of possession of Redevelopment Area A to Redeveloper; and (b) on Redevelopment Area C within twelve (12) months from the date of delivery of possession of Redevelopment Area C to Redeveloper (the “RRO Project Completion Deadlines”). Provided, however, the RRO Project Completion Deadlines is dependent on the JPA delivering possession of the RRO Redevelopment Parcels (as defined below) on or before the delivery date of July 1, 2012, for the north half of Redevelopment Area A and November 1, 2012 for all of Redevelopment Area C (the “RRO Project Delivery Dates”) as required by Section 202(A). If the JPA does not deliver possession of the RRO Project Parcels (defined below) on or before the RRO Project Delivery Dates, the RRO Project Completion Deadlines shall be adjusted pursuant to Section 103(C)(2), below.

2. Adjustment to Project Completion Deadline. Redeveloper intends to construct the RRO Improvements on the north half of Redevelopment Area A and all of Redevelopment Area C (collectively, the “RRO Project Parcels”). If the JPA does not deliver possession of the north half of Redevelopment Area A on or before July 1, 2012, the RRO Project Completion Deadline shall be deferred for twelve (12) months to August 15, 2014 for of the RRO Improvements on the north half of Redevelopment Area A. If the JPA does not deliver possession of Redevelopment Area C by November 1, 2012, Redeveloper will substantially complete the Plaza Improvements and the office component on Redevelopment Area C twelve (12) months after the new delivery date.

D. Commencement and Completion Deadline for Hotel Improvements. The Redeveloper shall commence construction of the Hotel Improvements within sixty (60) days following acquisition of the Hotel Project Parcel (defined below) and shall complete the Hotel Improvements within eighteen (18) months of the JPA’s conveyance of the south half of

Redevelopment Area A (the “Hotel Project Parcel”) to the Redeveloper (the “Hotel Project Completion Deadline”). The Redeveloper shall have the right to assign this Redevelopment Agreement as it pertains to the development of the Hotel Improvements to an entity affiliated with Redeveloper subject to the City’s review and approval based on the financial ability of the assignee in accordance with Section 101 above, which consent shall not be unreasonably withheld or delayed. The RRO Project Parcels and the Hotel Project Parcel are sometimes individually referred to as the “Project Parcel” and collectively referred to as the “Project Parcels.”

E. Condominium Regime. Redeveloper reserves the right to subject the Private Improvements to be constructed by Redeveloper to a condominium regime to facilitate the separation and financing of the various components. Redeveloper shall obtain the City’s consent to the condominium declaration, which consent shall not be unreasonably withheld or delayed.

**Section 104. Redeveloper’s Certificate of Completion of Improvements.**

A. Promptly upon substantial completion by Redeveloper of the Private Improvements in accordance with all provisions of the this Redevelopment Agreement, and promptly after the Redeveloper provides the City with the proper documentation that Redeveloper’s contractor or his or her subcontractors who performed labor or supplied materials, equipment or supplies in the prosecution of the Private Improvements have been properly paid, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private Improvements. If the work has been completed in conformance with this Redevelopment Agreement, the City shall execute and deliver to Redeveloper the City's acceptance to the Redeveloper's Certificate of Completion of Improvements, the form of which is attached hereto as Exhibit E and incorporated herein by this reference. The acceptance to the Redeveloper’s

Certificate of Completion of Improvements by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Redevelopment Agreement with respect to the obligations of Redeveloper and its successors and assigns to construct the Private Improvements. As used herein, the term “completion” shall mean substantial completion of the required Private Improvements. Substantial completion is the stage in the construction progress of the Private Improvements when they are sufficiently complete in accordance with the Contract Documents and when the Redeveloper has secured a temporary or permanent certificate of occupancy so that the Redeveloper can occupy or utilize the Private Improvements for their intended use. With respect to the retail and office components of the RRO Improvements, substantial completion need not include the tenant finish improvements required for occupancy by such tenants.

B. The Redeveloper’s Certificate of Completion of Improvements shall be recorded by Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska against the RRO Project Parcels and the Hotel Project Parcel. If the City shall refuse or fail to execute the acceptance to a Redeveloper’s Certificate of Completion of Improvements after a final inspection has been requested and performed, the City shall, within thirty (30) days provide Redeveloper with a written statement indicating in what particulars Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Redevelopment Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such acceptance.

C. If the Redeveloper completes the RRO Improvements, as set forth in Section 104(A), substantially prior to the Hotel Project Completion Deadline, then the City shall execute separate acceptances to the Certificates of Completion of Improvements for the RRO

Improvements and the Hotel Improvements, subject to the conditions of Section 104 of this Redevelopment Agreement.

**Section 105. Duty to Maintain.** Redeveloper shall, following construction of the Private Improvements, keep the same in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain, in good order and condition and state of repair, all interior and exterior portions of the buildings including the routine and reasonable preventive maintenance of the buildings and their service facilities such as the wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass including plate glass, exterior doors and automatic doors, and (b) maintain the grounds in a safe and sanitary condition including but not limited to sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, and parking areas, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes.

**Section 106. Business Improvement District.** Redeveloper understands and acknowledges that the City intends to create, pursuant to Neb. Rev. Stat. §§ 19-4015 to 19-4038 (Business Improvement District Act), one or more business improvement districts, similar to the Downtown Business Improvement District and the Core Business Improvement District Overlay approved by Ordinance Nos. 18684 and 18683, respectively, within the West Haymarket Redevelopment Area, the boundaries of which include Redevelopment Areas A and C. Redeveloper is supportive of the City's intention and as an inducement for the City to proceed with creation of said business improvement district(s), the Redeveloper agrees to and does hereby waive its right to protest the creation of the district(s), provided the work to be performed

and the specific improvements proposed to be made or maintained for such districts and the method of assessment to pay the cost and expenses thereof are substantially the same as the Downtown Business Improvement District and the Core Business Improvement District Overlay.

**Section 107. Construction Administration.** Redeveloper shall be responsible for all components of the Private Improvements constructed by Redeveloper including construction management, coordination of contractors and regulatory permitting and other requirements. Redeveloper and its contractor(s) shall reasonably cooperate with other JPA contractors performing work in the West Haymarket Redevelopment Area including, but not limited to, Redeveloper's scheduling of its work to provide for a smooth sequence of operations. The JPA shall insert a similar duty of cooperation in its contracts for construction of the JPA's West Haymarket Project improvements. The Redeveloper will be solely responsible for payment of all construction costs for the Private Improvements. With the City's consent and approval, which shall not be unreasonably withheld, Redeveloper and its general contractor shall be entitled, subject to the terms and conditions of the Staging Plan (Exhibit A), to make use of the designated Redevelopment Areas not needed for the staging or construction of other JPA West Haymarket Projects and/or City Public Improvements as staging areas for construction of the Private Improvements.

**Section 108. Cost Certification.** Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to reimbursement for the cost to construct the Redeveloper Priority Expenses. Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for reimbursement of Redeveloper Priority Expenses. The City shall approve or reject the request for reimbursement with reasons stated, based on the review within ten (10) days of receipt of the same; provided,

however, the City shall generally approve requests for reimbursement made by Redeveloper that are consistent with Section 601 of this Redevelopment Agreement. Once the Redeveloper Priority Expense evidence or invoices have been approved by the City, the City shall pay such expense to Redeveloper within two (2) business days from the Project Account (defined below) established by the City for the Project.

**Section 109. Grant of Easements to City.** Redeveloper will grant or convey to the City without additional consideration any necessary permanent and/or temporary construction easements on, over or across the TDP Redevelopment Areas as may be required to construct any of the Public Improvements being constructed by the JPA and/or City. Any permanent easements required by the JPA and/or City shall, to the extent possible, be reflected in the final plat for the TDP Project.

## **ARTICLE II.**

### **CLOSING**

**Section 201. Conveyance of Redevelopment Areas.** The JPA agrees to sell and Redeveloper agrees to buy the RRO Project Parcels and the Hotel Project Parcel prior to the start of construction of the RRO Improvements and Hotel Improvements, respectively. The purchase price for the RRO Project Parcels shall be Eight Hundred and Twenty Four Thousand Four Hundred Seventy Dollars and no/100 (\$824,470.00) (“RRO Parcel Purchase Price”), and the purchase price for the Hotel Project Parcel shall be Four Hundred Twenty-Seven Thousand Nine Hundred Ninety Dollars and no/100 (\$427,990.00) (“Hotel Parcel Purchase Price”) (collectively, the “Purchase Price”). If the Project Parcels are conveyed from the JPA to Redeveloper on multiple closing dates, then the references herein to the TDP Purchase Price shall be references

to the purchase price of the specific Project Parcel being conveyed, and the terms and provisions of this Article II shall apply to each separate conveyance and closing.

**Section 202. Closing.**

A. Closing Date. The conveyance and delivery of the Project Parcels by the JPA to the Redeveloper shall occur at Closing which shall be as soon as possible after the expiration of the thirty (30) day remonstrance period following the approval of this Redevelopment Agreement by the City and the JPA, acquisition of the Project Parcels from BNSF, and the recording of the West Haymarket Subdivision (defined below) and shall be no later than: (a) July 1, 2012 for the North Half of Redevelopment Area A; (b) November 1, 2012 for the Redevelopment Area C; and (c) November 1, 2012 for the South Half of Redevelopment Area A for the Hotel Project Parcel (the "Closing Date"). Provided, however, if the City is able to close early on the sale of the North Half of Block A, the closing on this portion of the Project Parcels shall occur on or about June 1, 2012 to facilitate the schedule described in Section 103(C). Provided, however, if Redeveloper determines that conveyance of the Hotel Project Parcel can be delayed to better implement the timing of the construction of the Hotel Improvements, then the parties agree that the JPA shall convey the Hotel Project Parcel to Redeveloper at a mutually agreeable later closing date which shall not be later than November 1, 2013. Said delayed conveyance of the Hotel Project Parcel shall not be a default of this Agreement; provided, however, if the Closing on the Hotel Project Parcel does not occur by November 1, 2013, neither party shall have any further obligations with respect to the Hotel Project.

B. Closing Documents.

1. Deliveries at Closing by the JPA. At Closing for each Project Parcel as they may be scheduled, the JPA shall deliver to Redeveloper, and Redeveloper shall accept from the JPA, the following:

(a) A Special Warranty Deed conveying to Redeveloper fee simple title to each Project Parcel, subject to the Permitted Exceptions. For purposes hereof, "Permitted Exceptions" shall mean (i) covenants, conditions and restrictions of record which shall be approved by Redeveloper if they do not interfere with Redeveloper's intended use of the Project Parcels; (ii) taxes not yet due and payable; (iii) public utility easements of record which shall be approved by Redeveloper, and which do not interfere with Redeveloper's intended use of the Project Parcels; (iv) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing and which JPA is willing to and does so remove at closing; (v) title exceptions caused by the acts or omissions of Redeveloper; (vi) easements, licenses and use restrictions granted under this Redevelopment Agreement; and (vii) any other title exceptions shown on the Title Commitment and which are not properly and timely objected to by Redeveloper.

(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 Redeveloper's Title Commitment.

2. Documents to be Delivered by Redeveloper. At each Closing, Redeveloper shall deliver to the JPA, and the JPA shall accept from Redeveloper 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 Redeveloper's Title Commitment.

3. Evidence of Title. The JPA shall deliver or cause to be delivered to Redeveloper a title commitment (the “Title Commitment”) from Nebraska Title Company for an ALTA owner’s title insurance policy issued by Chicago Title Insurance Company, or another title insurance company duly authorized to do business in Nebraska acceptable to Redeveloper (the “Title Company”) covering title to the Project Parcels and showing fee simple title in the JPA. The Title Commitment shall be delivered to Redeveloper upon completion of the West Haymarket subdivision but in no event later than thirty (30) days prior to Closing and shall include copies of the underlying exception documents which affect the Project Parcels. Redeveloper agrees to review the Title Commitment and advise the JPA whether the Title Commitment discloses exceptions to title other than Permitted Exceptions or discloses matters that render title to the Project Parcels unmarketable. Redeveloper shall notify JPA of such title defects within fifteen (15) days after receipt of the Title Commitment. JPA shall have ten (10) days after written notice of such defects from Redeveloper to have the exceptions removed from the Title Commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or defects. Provided, however, in the event that JPA shall be unable or unwilling to correct such title defects within the ten (10) day period, Redeveloper shall have the option, by written notice delivered to JPA to either terminate this Redevelopment Agreement or take title to the Project Parcels subject to such exceptions or defects. In the event Redeveloper provides timely notice to terminate this Redevelopment Agreement, the Agreement shall be deemed terminated, and the parties shall have no further obligation to one another. In the event Redeveloper elects to take title to such exceptions or defects, said exceptions or defects shall be deemed to be Permitted Exceptions.

Redeveloper and the JPA shall each pay one-half of the cost of the owner's title insurance policy.

C. Inspection and Testing. The JPA, prior to acquiring title to the Project Parcels, conducted ASTM Phase I and II Environmental Site Assessments in order to satisfy the "All Appropriate Inquiry" requirement under CERCLA Section 9601(40)(B)(i) for qualification as a bona fide prospective purchaser pursuant to 42 USC § 9601(40). These Site Assessment reports are available at: [http://www.haymarketnow.com/documents/reports/environmental\\_reports](http://www.haymarketnow.com/documents/reports/environmental_reports).

**Section 203. Property Taxes and Assessments.** All real and personal property taxes and assessments, if any, for the year in which Closing occurs shall be prorated as of the Closing Date, and all prior years' taxes, interest and other charges, if any, shall either be exempt or paid in full by the JPA at or prior to Closing. If no tax values have been established by the Lancaster County Assessor for the Project Parcels created by the West Haymarket subdivision, the tax proration shall be based on the respective purchase prices for the Project Parcels and the most recent Lancaster County tax levy.

**Section 204. Title and Possession of Project Parcels.** At the Closing, title to and possession of the Project Parcels shall be conveyed by the JPA to Redeveloper under the terms and conditions set forth herein.

**Section 205. City's Option to Purchase Project Parcels.** In the event Redeveloper fails to timely commence construction of the RRO Improvements and/or Hotel Improvements in accordance with Section 103.C.1 and Section 103.D, respectively, the City, subject to the Redeveloper's right to cure in Section 701 and/or for delay of performance for cause beyond the control of the Redeveloper pursuant to Section 703, shall be entitled, at its option, to a purchase

said applicable Project Parcel or Parcels upon payment to the Redeveloper the purchase price for such Project Parcel set forth in Section 201.

### **ARTICLE III.**

#### **JPA RESPONSIBILITIES**

##### **Section 301. Parking.**

A. Parking Garage Improvements. The JPA, at its own cost and expense, shall construct on Block A and/or Block B south of the Arena (said areas depicted on Exhibit A as “Deck A” and “Deck B”, respectively) one or more multi-level parking garage(s) (each a “Parking Garage” or “Deck”) to help satisfy the parking needs of the Arena and the Private Improvements. Notwithstanding the above, the JPA may elect to satisfy parking needs of the Arena and the Private Improvements through the use of surface parking lots in the West Haymarket Redevelopment Area, provided that the location and design of any such surface lot shall be subject to Redeveloper’s review and approval, which shall not be unreasonably withheld, and provided that the structured and/or surface parking is completed no later than the Completion Deadline for the Private Improvements. The JPA shall cause the number of stalls it deems necessary in the Parking Garages and/or surface parking lots to be devoted to accommodate short-term parkers for retail and commercial uses in the area.

B. Operation of Parking Garages. The City, acting through its parking garage operator, shall operate the Parking Garages on behalf of the JPA.

C. Nested Parking For Residential Tenants. On each floor of Deck A there is approximately sixty two (62) leveled parking stalls that can be segregated by an access gate without disturbing the ingress or egress of Deck A (collectively “Nested Parking Area”). Redeveloper shall have the right, but not the obligation, to secure the Nested Parking Area on

floors 3-5 (186 stalls total) on Deck A for the exclusive use of Redeveloper's residential tenants. If the Redeveloper exercises its right to secure the Nested Parking Area on floors 3-5 (186 stalls total), the City and Redeveloper shall work together to establish a procedure for Redeveloper's tenants to lease said parking stalls. If the Tenants of Redeveloper do not collectively fully lease the Nested Parking Area, Redeveloper shall be responsible to pay to the City, on a monthly basis following receipt of an invoice from the City, any shortfall for those un-leased residential parking stalls in the Nested Parking Area. Thereafter, the Redeveloper, at its expense, will assist in maintaining and monitoring its reserved Nested Parking Area on a daily basis. The City, at its expense, will be responsible for operating the Nested Parking Area as part of its on-going responsibilities for operation of the Parking Garage, including providing access at all times to the Nested Parking Area. The City, at its expense, shall be responsible for capital maintenance and repair of the Nested Parking Area. The City and Redeveloper will work together to coordinate and provide proper access controls to the Nested Parking Area.

D. Residential Parking; Redeveloper's Right to Lease. Upon opening of the Deck A and after completion of the Private Improvements, Redeveloper shall have the right to lease for residential use, one (1) stall per one and one-half (1.5) bedrooms constructed by Redeveloper (collectively "Residential Parking"). The tenants of Redeveloper shall pay a parking rate reasonably equivalent to the market rate charged by the City for similarly situated in similar parking garages in downtown Lincoln. The Residential Parking which shall be located in the Nested Parking Area in Deck A and available to the residential tenants of Redeveloper at all times, including Husker Football, Husker Basketball, and arena events. In the event the residential space within the RRO Improvements are completed prior to completion of Deck A, the City agrees to work with Redeveloper to provide Redeveloper with alternate parking from

available space in other garages (including the Arena Garage) and surface parking in reasonable proximity to the residential space until such time as Deck A is completed. In the event that Redeveloper requests more Residential Parking than available in the Nested Parking Area, the City shall work with the Redeveloper to designate reserved parking stalls outside the Nested Parking Area for exclusive use of the residential tenants.

E. Hotel Parking; Redeveloper's Right to Lease. Upon opening of the Parking Garage(s) and after completion of the Private Improvements, Redeveloper's hotel operator shall have the right to lease for hotel use, one (1) parking stall for every hotel room constructed by Redeveloper (collectively "Hotel Parking"). The hotel owner or operator shall pay market rates for monthly parking which shall be available to hotel operator at all times, including Husker Football, Husker Basketball, and arena events. Since Hotel Parking is not located in the Nested Parking Area, the City and Redeveloper agree to assist and coordinate with each other to insure that there is adequate parking for hotel guests when needed.

F. Office & Retail Monthly Parking; Redeveloper's Right to Lease. Upon opening of the Parking Garage(s) and/or surface parking lots and after completion of the Private Improvements, Redeveloper shall have the right to lease: (i) for office use, four (4) parking stalls per one thousand (1,000) square feet of leasable office space constructed by Redeveloper; and (ii) for retail use, two (2) parking stalls for every one thousand (1,000) square feet of leasable retail space constructed by Redeveloper ("Monthly Parking"). Monthly Parking shall be leased under parking permits issued by the City at the then-current monthly rates charged to other monthly parkers in similarly situated garages or surface parking lots. Except as herein stated, the rights granted hereunder shall be similar to the monthly parking rights granted to monthly parkers in similar City garages and in particular shall be subject to regular and timely payment of

the monthly parking charges as the same may from time to time be established or revised by the City.

Redeveloper understands and acknowledges that the total number of permits issued for at-large monthly parking stalls in the Parking Garages and/or surface parking lots in the future may exceed the physical number of at-large stalls designated for monthly parking as the City uses a shared parking methodology in calculating overall parking demand. The City's shared parking methodology is based upon national parking garage standards and local market usage and as a result, parking will generally be available on a regular basis throughout each day of the month except for Husker Home Football or Basketball game days and certain Arena events, but on rare occasions, may not be available in the Parking Garages and/or surface parking lots. If space is not available, every effort will be made to accommodate monthly parking in the next available facility. The parking rights outlined in this Section 301 shall survive the expiration of the 15 year tax increment capture period and shall continue so long as the Private Improvements continue in the Redevelopment Area.

G. Failure to Exercise Parking Rights. If Redeveloper does not exercise any or all of the above rights to lease parking stalls upon opening of the Parking Garage(s) and/or surface parking lots, Redeveloper shall have the following continuing right to lease parking stalls:

If monthly parking permits are not available when requested to meet any or all requests by Redeveloper, the City shall place any such unfilled request for monthly parking permits at the head of a waiting list to be compiled by the City or its agent operating the Parking Garages and/or surface parking lots ("Waiting List"). Notwithstanding the above, Redeveloper understands and agrees that City has no duty or obligation to convert any hourly parking stalls to monthly parking stalls and/or to terminate any existing monthly parking permit to accommodate Redeveloper's request for parking permits.

**Section 302. Platting, Streets.** JPA shall prepare and file the necessary final plat(s) of the West Haymarket Project Area to plat, among other things, the Project Parcels, and the adjacent public rights-of-way for public streets (the “Subdivision”). Prior to recording, the Subdivision shall be subject to the review and approval of the Redeveloper, which consent shall not be unreasonably withheld.

**Section 303. Zoning.** The JPA shall cause all the Redevelopment Areas to be rezoned as B-4 Business District.

**Section 304. Construction of Public Improvements and Plaza Improvements.**

A. **JPA Construction.** The JPA shall, at its own cost and expense, subject to reimbursement with available TIF revenues as set forth in this Redevelopment Agreement, construct the Public Improvements defined to include the design and construction of Canopy Street, R Street, Q Street, P Street, Arena Drive, and Trails/Bike facility improvements as shown on Exhibit A and in accordance with the Project Schedule attached hereto as Exhibit F.

B. **Redeveloper Construction.** Redeveloper shall, at its own cost and expense, subject to reimbursement with available TIF revenues as set forth in this Redevelopment Agreement, construct the Plaza Improvements as part of the RRO Improvements on Redevelopment Area C by the Project Completion Deadline. The Plaza Improvements are defined to consist of and include all the common public areas and amenities that are subject to the Plaza/Cube Use License Agreement in the form attached hereto as Exhibit G and incorporated by this reference. The Plaza Improvements are public enhancements for the greater good of the community and which are beyond the requirements of City standards, regulations and codes. For purposes of this Agreement, the Plaza Improvements shall include, but not be limited to the concourse, landscaping, hardscape, bike racks, “Cube”, permanent seating,

permanent furnishings, and related improvements and equipment more particular described in the Plaza/Cube Use Agreement.

**Section 305. Environmental.**

A. Site Preparation. The City and/or the JPA shall complete all site improvements necessary to provide Redeveloper with a pad site on the RRO Project Parcels and Hotel Project Parcel that is ready for financing and construction (“Site Improvements”). To the extent any remediation activities of the City or JPA delay Redeveloper’s construction activities, there shall be a corresponding delay in the RRO Project Completion Deadline and/or Hotel Project Completion Deadline. Said Site Improvements shall include but not be limited to, causing the existing BNSF tracks and other improvements from the RRO Project Parcels and the Hotel Project Parcel, conducting all remedial actions in compliance with the State of Nebraska Voluntary Cleanup Program in order to insure that the U.S. Environmental Protection Agency (EPA) is barred from any administrative or judicial enforcement action under CERCLA Sections 106 and 107. *See* 42 USC 9628(b).

B. Redeveloper Bona Fide Prospective Purchaser Status. Notwithstanding A above, Redeveloper understands, acknowledges and agrees that in order to qualify as a bona fide prospective purchaser for the purposes of CERCLA and other environmental laws, Redeveloper must perform the CERCLA "all appropriate inquiry" before acquiring the Project Parcels and thereafter comply with the post acquisition due diligence requirements in 42 USC § 9601(40) including, but not limited to, the following land use restrictions and institutional controls:

(1) Project Parcels shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) As you begin vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use with no ground floor dwelling units, will require the approval of NDEQ. (Collectively "Environmental Use Restrictions").

It is intended that the above Environmental Use Restrictions shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the RRO Project Parcels and Hotel Project Parcel and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The Environmental Use Restrictions set forth in this Section shall survive Closing. At Closing, the Redeveloper shall record permanent covenants against the RRO Project Parcels and Hotel

Project Parcel with respect to the Environmental Use Restrictions set forth in this Section in the form attached hereto as Exhibit I and incorporated herein by this reference.

C. Indemnification. The JPA shall, from and after the conveyances described in Article IV below, indemnify and hold Redeveloper harmless from and against any claim, demand, cost or liability arising out of or attributable to the environmental condition of any land conveyed to Redeveloper by the JPA, except to the extent such claim, demand, cost or liability arises out of or is attributable to the Redeveloper's failure to comply with the post acquisition due diligence requirements in 42 USC § 9601(40) and/or the above Environmental Use Restrictions. The City shall reasonably cooperate with the Redeveloper to obtain, at the City's cost, a "No Further Action" letter from the Nebraska Department of Environmental Quality ("NDEQ") pertaining to the Redevelopment Area stating that the remediation of the Project Parcels by the JPA is sufficient and accepted by the NDEQ.

#### **ARTICLE IV.**

#### **REPRESENTATIONS**

**Section 401. Development of RRO Project Parcels and Hotel Project Parcel.**

Redeveloper represents and agrees that its undertakings, pursuant to this Redevelopment Agreement, have been, are, and will be, for the purpose of redevelopment of the RRO Project Parcels and Hotel Project Parcel and not for speculation in land holding.

**Section 402. Restrictions on Assignments of Rights or Obligations.** Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion by the City, there shall be no sale or transfer of Redeveloper or assignment of its rights or obligations under this Redevelopment Agreement to any party without the prior written approval of the City Administration, other than mortgages and involuntary transfers by reason of death, insolvency,

or incompetency. The City shall be entitled to require, except as otherwise provided in this Redevelopment Agreement, as conditions to any such approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Redevelopment Agreement by Redeveloper;

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Redevelopment Agreement and agreed to be subject to all of the conditions and restrictions to which Redeveloper is subject. No transfer of, or change with respect to ownership in Redeveloper's interest in the RRO Project Parcels or Hotel Project Parcel or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Phase One Redevelopment Agreement with respect to the RRO Project Parcels and Hotel Project Parcel and the construction of the Private Improvements that would have occurred, had there been no such transfer or change;

C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to Redeveloper in writing; and

D. Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of the Proposal for Redevelopment; provided that in the absence of a specific written agreement by the

City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

Except for the Plaza Project Parcel and Plaza Improvements, nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion. The restrictions set forth in this Section 402 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion by the City.

**Section 403. Change in Scope, Termination of Project.** City and Redeveloper agree that any material change in the scope of the TDP Project including termination of the entire TDP Project for any reason, except as specifically set forth herein, shall require mutual written agreement considering the established Uses and Sources of Funds for the TDP Project and, if applicable, the costs incurred by the respective parties to date. Notwithstanding the foregoing, in the event that Redeveloper is unable through no fault of Redeveloper to obtain the necessary governmental approvals and permits from the City prior to Closing to construct the Private Improvements as reflected on the Approved Plans, Redeveloper may terminate this Redevelopment Agreement by delivering written notice to the City of default pursuant to Section 804 including the opportunity to cure the same.

**Section 404. Use Restrictions of the Property.** Redeveloper hereby represents and agrees that neither all nor any portion of the RRO Project Parcels and Hotel Project Parcel shall be used, directly or indirectly, for the following uses:

(1) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof and except as may comply with the Exterior Design Criteria;

(2) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises), except that up to 50% of the overall retail space contained in the RRO Improvements (subject to a not to exceed maximum of 66 2/3% of such retail space abutting the outdoor public plaza (“Yard”) on the Plaza Project) Parcel may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales, provided such restaurants have a licensed kitchen and offer a full menu during the hours of 5:00 p.m. to 8:00 p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(3) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

(4) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic

dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(5) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products; (6) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law; or

(7) at least 85% of the first floor leasable retail square footage on any block face will have users whose minimum normal hours of operation, Monday through Saturday, are from 11:00 a.m. to 8:00 p.m.

It is intended that each of the restrictions set forth herein shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the RRO Project Parcels and Hotel Project Parcel and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The use restrictions set forth in this Section shall survive Closing. At Closing, the Redeveloper shall record permanent covenants against the RRO Project Parcels and Hotel Project Parcel with respect to the use restrictions set forth in this Section in the form attached hereto as Exhibit I and incorporated herein by this reference.

**Section 405. Redeveloper's Penal Bond.** Pursuant to *Neb. Rev. Stat.* §18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to Redeveloper's commencement of construction of any of the Private Improvements or Plaza Improvements, a penal bond in an amount equal to the sum of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) with a corporate surety authorized to do business in the State of

Nebraska and a lien waiver from Redeveloper's general contractor upon completion. Such penal bond shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements and/or Plaza Improvements. Proof of such penal bond shall be supplied to the City prior to commencement of construction of the Private Improvements and/or Plaza Improvements. The City shall accept, in lieu of said penal bond, a similar payment and performance bond supplied by Redeveloper's general contractor in an amount equal to the costs of the Private Improvements and/or Plaza Improvements and a lien waiver from the general contractor. If this alternative is used, proof of said payment and performance bond and lien waiver shall be provided to the City prior to the start of construction of the Private Improvements and/or Plaza Improvements.

**Section 406. Indemnification.** Redeveloper agrees to indemnify and hold City harmless to the extent of any payments in connection with Redeveloper's carrying out construction of any Private Improvements and/or Plaza Improvements or Redeveloper's contractor to make payments of all amounts lawfully due to all persons firms, or organizations who performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements and/or Plaza Improvements.

## **ARTICLE V.**

### **MORTGAGE FINANCING; RIGHTS OF MORTGAGEES**

**Section 501. Limitation Upon Encumbrance of Property.** Prior to issuance of the Redeveloper's Certificate of Completion by the City for the Private Improvements, neither Redeveloper nor any successors in interest to Redeveloper shall engage in any financing or any other transaction creating any mortgage or any other monetary encumbrance or monetary lien

upon the RRO Project Parcels and Hotel Project Parcel and Private Improvements, whether by express agreement or operation of law, or suffer any monetary encumbrance or monetary lien to be made on or attached to such Project Parcels and Private Improvements, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Private Improvements on the RRO Project Parcels and Hotel Project Parcel, and to finance, operate, maintain, repair, replace and insure said Private Improvements. All such mortgages, financial encumbrances, or monetary liens shall be subject to the terms and conditions of this Redevelopment Agreement and shall be recorded in the appropriate public records in a timely manner following their execution.

Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to the RRO Project Parcels and Hotel Project Parcel and Private Improvements, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to the RRO Project Parcels and Hotel Project Parcel and Private Improvements whether by voluntary act of any of Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to the RRO Project Parcels and Hotel Project Parcel and Private Improvements and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the Clerk of the district court pursuant to Neb. Rev. Stat. § 52-142 to avoid or prevent foreclosure of such encumbrance or lien.

**Section 502. Mortgage Holder Obligations.** Each mortgage holder who obtains title to the RRO Project Parcels and Hotel Project Parcel or any part thereof as a result of

foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempted from those provisions of this Redevelopment Agreement which require construction and completion of the Private Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than the holder of the mortgage; nor in favor of any person who subsequently obtains title to the RRO Project Parcels and Hotel Project Parcel or any part thereof from the holder of the mortgage; provided, however, no person, including the holder of a mortgage authorized by this Redevelopment Agreement, may devote the Private Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Redevelopment Agreement.

**Section 503. Copy of Notice of Default to Mortgage Holder.** Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Redevelopment Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Redevelopment Agreement at the last address of such holder as shown in the records of the Register of Deeds of Lancaster County, Nebraska or as provided to the City by such mortgage holder.

**Section 504. Mortgage Holder's Option to Cure Defaults.** If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 503, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) have the right, at its option, to cure or remedy such breach or default

within sixty (60) days after the notice or demand as referred to in Section 503, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Redevelopment Agreement.

**Section 505. City's Option to Purchase Property.** In any case where the holder of any mortgage obtains title to any Project Parcel and Private Improvements as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper's Certificate of Completion for such Private Improvements, the City shall (and any additional mortgage instrument made after the date of this Redevelopment Agreement with respect to the RRO Project Parcels and Hotel Project Parcel prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) be entitled, at its option, to a conveyance to it of said applicable Project Parcel upon payment to such holder of an amount equal to the sum of:

- (1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (2) All expense with regard to foreclosure;
- (3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of the Project Parcel;
- (4) The depreciated cost of any improvement made by such holder;
- (5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and

(6) All other reasonable holding costs actually incurred as to the Project Parcel.

The City's option shall remain in force for ninety (90) days after the date the holder of any mortgage obtains title to said Redevelopment Area and notifies the City, unless the City waives the option prior to the end of such 90 day period.

**Section 506. Mortgage Rights Applicable to Other Forms of Encumbrance.**

The rights and obligations of this Redevelopment Agreement relating to mortgages of any Project Parcel prior to issuance of the Redeveloper's Certificate of Completion for the Private Improvements thereon shall apply to any other type of encumbrance on the Project Parcel, and any of the stated rights, obligations, and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance, all of which shall be as duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

**Section 507. Termination of Provisions.** The provisions of Article V shall terminate upon issuance by the City to the Redeveloper the Redeveloper's Certificate of Completion for all the Private Improvements.

**ARTICLE VI.**

**TAX AGREEMENT**

**Section 601. Issuance of TIF Indebtedness.** As soon as is practicable following the execution of this Redevelopment Agreement and as set forth in this Section 601, the City shall issue TIF Indebtedness in the estimated amount of the tax increment to be generated on the TDP Project (the "TIF Bonds") to be purchased by the JPA and receive TIF Bond Proceeds from

the JPA to be deposited into a fund account (the “Project Account”) and expended in the priority set forth in this Redevelopment Agreement.

A. RRO TIF Indebtedness. On or after thirty (30) days following the approval and execution of this Redevelopment Agreement, which date is after the remonstrative period of this Redevelopment Agreement or as soon thereafter as is practicable, the City shall issue TIF Indebtedness as follows: i) RRO TIF Note A in the sum of Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) to be purchased by the JPA and receive TIF Proceeds from the JPA to be deposited into a fund account for payment of the City’s TIF Bond cost of issuance and the Eligible Project Costs (the “Project Account”); and ii) RRO TIF Note B in the sum of One Million and No/100 Dollars (\$1,000,000.00) to be purchased by Redeveloper entitling the Redeveloper, as the holder of RRO TIF Note B, to receive the incremental tax revenue created by the RRO Improvements after making debt service payments on RRO TIF Note A. The total dollar amounts of the RRO TIF Note A and RRO TIF Note B is the estimated amount of the tax increment to be generated on the RRO Redevelopment Parcels and the RRO Improvements based upon a taxable valuation of \$24,800,000 after completion of the RRO Improvements.

B. Hotel TIF Proceeds. At a mutually agreeable date on or after the remonstrative period of this Redevelopment Agreement, the City shall issue TIF Indebtedness as follows: i) the Hotel TIF Note A in the sum of Two Million Two Hundred Fifty Thousand and No/ 100 Dollars (\$2,250,000.00) to be purchased by the JPA and receive TIF Proceeds from the JPA to be deposited into the Project Account; and ii) the Hotel TIF Note B in the sum of Six Hundred Thirty Five Thousand and No/100 Dollars (\$635,000.00) to be purchased by Redeveloper entitling the Redeveloper, as the holder of the Hotel TIF Note B, to receive the incremental tax

revenue created by the Hotel Improvements after making debt service payments on Hotel TIF Note A. The total dollar amounts of the Hotel TIF Note A and Hotel TIF Note B is the estimated amount of the tax increment to be generated on the Hotel Redevelopment Parcel and the Hotel Improvements based upon a taxable valuation of \$16,000,000 after completion of the Hotel Improvements.

C. Use of TIF Proceeds.

1. RRO TIF Notes A and B. TIF Proceeds of the RRO TIF Notes A and B shall be expended in the following priority in accordance with those cost estimates listed on Exhibit “B”:

FIRST PRIORITY: Reimburse the City for cost of issuance of the TIF Indebtedness including bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves;

SECOND PRIORITY: Reimburse the JPA for the cost of relocating the sanitary sewer line that is currently in Redevelopment Area C.

THIRD PRIORITY: Reimburse the Redeveloper for the cost of the Cube Improvements including, but not limited to, the footing and foundations, exterior, mezzanine, rooftop deck, audio/visual, and lighting;

FORTH PRIORITY: Reimburse the Redeveloper for the costs of the Plaza Space Improvements including, but not limited to, grading, drainage, utilities, decorative hardscape, landscaping, pedestrian lighting, art, street controls, signage, ice rink, public restrooms, staging, and rigging;

FIFTH PRIORITY: Reimburse the Redeveloper for a portion of the costs of the Public Market including the exterior shell and interior improvements;

SIXTH PRIORITY: Reimburse the Redeveloper for a portion of the Energy Efficiency Enhancements as an aid to construction for the capital costs of the DEC plant to serve the RRO Improvements;

SEVENTH PRIORITY: Reimburse the Redeveloper for a portion of Plaza Block Façade Enhancements for the use of those materials which exceed the requirements of the applicable Downtown Design Standards; and

EIGHTH PRIORITY: Reimburse the Redeveloper for a portion of the Residential Façade Enhancements for the use of those materials which exceed the requirements of the applicable Downtown Design Standards.

The priority of the use of the proceeds of the RRO TIF Notes A and B and the cost estimates thereto are listed on the Sources and Uses of TIF attached as Exhibit “B”.

2. Hotel TIF Notes A and B. The proceeds of the Hotel TIF Notes A and B shall be expended in the following priority:

FIRST PRIORITY: Reimburse the City for cost of issuance including bond counsel fees, fiscal advisory fees, placement fees, capitalized interest and reserves;

SECOND PRIORITY: Reimburse the City for the Public Improvements and Enhancements of streetscape, Plaza, parking garage, or other public space enhancements as determined by the City;

THIRD PRIORITY: Reimburse the Redeveloper for a portion of the Energy Efficiency Enhancements as an aid to construction for the capital costs of the DEC Plant to serve the Hotel Improvements; and

FOURTH PRIORITY: Reimburse the Redeveloper for a portion of the Hotel Façade Enhancements for the use of materials which exceed the requirements of the applicable Downtown Design Standards.

The priority of the use of the proceeds of the Hotel TIF Notes A and B and the cost estimates thereto are listed on the Sources and Uses of TIF attached as Exhibit “B”.

D. City Inducement. In order to support redevelopment of this TDP Project and as an inducement for Redeveloper to construct the Private Improvements, the City agrees to the extent allowed by law and then only to the extent funds are lawfully available from issuance of the TIF Indebtedness (“TIF Proceeds”), to make a grant of funds to Redeveloper in the total amount of the TIF Proceeds, less the amounts expended on the First and Second Priority items, to reimburse Redeveloper for the cost of these Redeveloper Priority Expenses. In order to receive reimbursement from Grant Funds, the Redeveloper shall submit authentic and satisfactory documentation to the City to verify the Private Improvements have been substantially completed and that the expenditures were made for eligible Redeveloper Priority Expenses. The City shall maintain a record of all expenditures of the TIF Proceeds to determine the total amount of TIF Proceeds expended on Redeveloper Priority Expenses and the amount of TIF Proceeds expended on JPA Priority Expenses, for the purposes of Section 602, below.

E. Shortfall in TIF Proceeds.

To the extent TIF proceeds are insufficient to pay all the costs of the Redeveloper, Priority Expenses in Subsection C.1 and C.2 above, the Redeveloper shall be responsible for completion of each Priority and for the payment of any shortfall therefor.

F. Authority of City Finance Director.

Subject to the terms of this Redevelopment Agreement, the City Finance Director on behalf of the City shall have the authority to determine the timing of issuance of the TIF Indebtedness and all other details of the TIF Indebtedness.

**Section 602. Tax Increment Deficiency on TIF Bond.**

A. RRO and Hotel TIF Notes A - Payment of Tax Increment Deficiency. Any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a taxable valuation less than \$24,800,000 for the RRO Project Parcels and RRO Project Improvements and \$16,000,000 for the Hotel Project Parcel and Hotel Improvements, which impedes the City's ability to pay debt service on RRO TIF Note A and/or Hotel TIF Note A, shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the RRO TIF Note A and the Hotel TIF Note A, Redeveloper agrees to pay the amount of the deficiency to the City within thirty (30) days following receipt of a written request for said payment from the City and shall pay the same for each year that there exists a deficiency in such TIF Tax Revenues. The Redeveloper's obligation under this Section 602A shall be guaranteed jointly and severally by WRK, LLC and Chief Industries, Inc. which guaranty shall be evidenced by the execution and delivery at closing of the Guaranty form, attached as Exhibit H and incorporated by this reference.

B. RRO and Hotel TIF Notes A - Adjustments for any Payments of Tax Increment Deficiency. If Redeveloper makes one or more payments to cover a deficiency in the required debt service payments on RRO TIF Note A and the Hotel TIF Note A as provided in paragraph A of Section 602, the City shall maintain a record of the aggregate amount of said payments, which shall include interest ("Redeveloper's Aggregate Deficiency Payments"). If the TIF Tax

Revenues from the Tax Increment Provision for any year exceeds the amount necessary to meet current debt service of the TIF Indebtedness, then the excess TIF Tax Revenues shall be paid to Redeveloper and deducted from the Redeveloper's Aggregate Deficiency Payments until Redeveloper's Aggregate Deficiency Payments have been fully reimbursed.

C. RRO and Hotel TIF Notes B – Deferral/Forgiveness of Tax Increment Deficiency.

Redeveloper Purchased RRO and Hotel TIF Notes B. If the Redeveloper purchases the RRO TIF Note B and/or the Hotel TIF Note B, any shortfall in the TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the RRO Project Parcels and Hotel Project Parcel which impedes the City's ability to pay debt service on RRO TIF Note B and Hotel TIF Note B, shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on RRO TIF Bond Note B and/or the Hotel TIF Note B, the Redeveloper as purchaser of said RRO TIF Bond Note B and/or said Hotel TIF Note B agrees to defer payment of the same for each year that there exists a deficiency during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred if and when TIF Tax Revenues do become available from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the RRO TIF Note B and/or Hotel TIF Note B are not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness on such Notes shall be forgiven.

**Section 603. Reimbursement of TIF Proceeds.** Redeveloper agrees to repay the City the TIF Note Proceeds in the event Redeveloper fails to substantially complete the Private Improvements as provided in Section 103 above and, upon such repayment of the TIF Proceeds,

this Redevelopment Agreement shall upon thirty (30) days written notice to the Redeveloper and opportunity to cure be null and void in regards to the Redeveloper and the RRO Project Parcels and Hotel Project Parcel.

**Section 604. Debt Service for TIF Indebtedness.** The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the JPA the principal of and/or interest on the RRO TIF Note A and the Hotel TIF Note A with interest as provided in the TIF Bond Ordinance(s). Any debt service on the TIF Indebtedness (including interest) to be paid from TIF Tax Revenues shall not constitute a general obligation or debt of the City. Only costs incurred after the execution of this Redevelopment Agreement by all parties hereto shall be eligible for payment. Similarly, the City shall, to the extent allowed by law, and then only to the extent funds are available from TIF Tax Revenues, or the holders thereof, the principal and/or interest on the RRO TIF Note B and the Hotel TIF Note B.

**Section 605. Excess TIF Tax Revenues.** Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Project Parcels not needed or required to pay for the TIF Indebtedness or for the repayment of Redeveloper's Aggregate Deficiency Payments, as set forth in Section 602, shall be maintained in the Project Account and shall be used to reimburse JPA for eligible public expenditures.

**Section 606. Valuation of Property Within the Project Parcels.** The City intends to use the Tax Increment Provision to generate approximately Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) on the RRO Redevelopment Parcels and approximately Two Million Eight Hundred Eighty Five Thousand and No/100 Dollars (\$2,885,000.00) on the Hotel Redevelopment Parcels (collectively, the "TIF Proceeds") which

shall be used to finance the issuance of the TIF Indebtedness and the reimbursements to JPA and Redeveloper in accordance with this Redevelopment Agreement. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Act which will be attributable to the construction of the Private Improvements and redevelopment contemplated under this Redevelopment Agreement. The TIF Tax Revenues which are to be used to pay debt service for the TIF Indebtedness will be derived from the increased valuation from redeveloping the RRO Project Parcels and Hotel Project Parcel as provided in this Redevelopment Agreement.

A. RRO Redevelopment Parcels. Redeveloper agrees to protest any taxable valuation assessed for the RRO Redevelopment Parcels below Twenty-Four Million Eight Hundred Thousand and No/100 Dollars (\$24,800,000.00) commencing the first tax year following the completion of the RRO Improvements and continuing for a period of not to exceed fifteen (15) years after the RRO Effective Date (defined in Section 814 of this Agreement) or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter. Redeveloper further agrees not to contest any taxable valuation assessed for the RRO Redevelopment Parcels which does not exceed Twenty-Four Million Eight Hundred Thousand and No/100 Dollars (\$24,800,000.00) commencing the first tax year following the completion of the RRO Improvements and continuing for a period of not to exceed fifteen (15) years after the RRO Effective Date (defined in Section 814 of this Agreement) or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter.

B. Hotel Redevelopment Parcels. Redeveloper agrees to protest any taxable valuation assessed for the RRO Redevelopment Parcels below Twenty-Four Million Eight Hundred Thousand and No/100 Dollars (\$24,800,000.00) commencing the first tax year

following the completion of the RRO Improvements and continuing for a period of not to exceed fifteen (15) years after the RRO Effective Date (defined in Section 814 of this Agreement) or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter. Redeveloper further agrees not to contest any taxable valuation assessed for the Hotel Redevelopment Parcel which does not exceed Sixteen Million and No/100 Dollars (\$16,000,000.00) commencing the first tax year following the completion of the Hotel Improvements and continuing for a period not to exceed fifteen (15) years after the Hotel Effective Date (defined in Section 814 of this Agreement) or so long as any portion of the TIF Indebtedness remains outstanding and unpaid, whichever period of time is shorter.

**Section 607. Restriction on Transfer.** Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to Redeveloper the Redeveloper's Certificate of Completion of the Private Improvements, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "Tax Increment Period"), convey the RRO Project Parcels and/or Hotel Project Parcel to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions or subsidiaries. Redeveloper reserves the right to transfer the Hotel Parcels to an affiliate for the development of the Hotel Project with the consent of the City, which shall not be unreasonably withheld.

**Section 608. Agreement to Pay Taxes.** Redeveloper agrees to pay all real property taxes levied upon the RRO Project Parcels and Hotel Project Parcel and Private Improvements prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay

real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of the Redevelopment Area(s) and improvements for tax purposes except as provided in Section 606.

**Section 609. Damage or Destruction of Redeveloper's Property.** During the Tax Increment Period, Redeveloper agrees to keep the RRO Project Parcels and Hotel Project Parcel and the Private Improvements (during construction and after completed) insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value thereof based upon an estimate of insurable value (less footings and foundations) but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section 609 may, at Redeveloper's option, be carried under an insurance policy or pursuant to a master policy of insurance or so called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to restore the Private Improvements to their prior condition within thirty six (36) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

**Section 610. Condemnation.** In the event that during the Tax Increment Period all or a substantial portion of the RRO Project Parcels and Hotel Project Parcel and Private Improvements is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the condemning

authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

**Section 611. Termination of Provisions.** The provisions of Article VI shall terminate upon the end of the Tax Increment Period.

## **ARTICLE VII.**

### **REMEDIES**

**Section 701. In General.** Except as otherwise provided in this Redevelopment Agreement, in the event of any default in or breach of this Redevelopment Agreement, or any of its terms or conditions by the City, the JPA, Redeveloper, or any successors to such parties, such party (or successor) shall, upon written notice from the aggrieved party, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such 30 day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

**Section 702. Other Rights and Remedies; No Waiver by Delay.** The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Redevelopment Agreement. Any delay in instituting or

prosecuting any action or proceeding or otherwise asserting its rights under this Redevelopment Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

**Section 703. Delay in Performance For Causes Beyond Control of Party (“Force Majeure”).** For the purpose of any provisions of this Redevelopment Agreement, the City, the JPA, and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within twenty (20) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

**Section 704. Rights and Remedies Cumulative.** The rights and remedies of the parties to this Redevelopment Agreement, whether provided by law or by this Redevelopment Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party

conferred by this Redevelopment Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

## **ARTICLE VIII.**

### **MISCELLANEOUS**

#### **Section 801. Conflicts of Interest; City Representatives Not Individually Liable.**

No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Redevelopment Agreement.

**Section 802. Persons Authorized to Issue Approvals.** For purposes of this Redevelopment Agreement and the approvals and disapprovals required hereunder, Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, or the Mayor, or the Director of the Department of Urban Development or its successor as authorized in this Redevelopment Agreement, as constituting the approval or disapproval required by the City. The Mayor is hereby authorized to amend or modify the Order of Priority and TIF Proceeds for the Priority items as shown in Section 601. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of William D. Scott as constituting the approval or disapproval of Redeveloper.

**Section 803. Equal Employment Opportunity.** Redeveloper, for itself and its successors and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Redevelopment Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Redeveloper because of

race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment without regard to their race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

**Section 804. Notices and Demands.** A notice, demand, or other communication under this Redevelopment Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, in the case of Redeveloper, to TDP Phase One, LLC, 440 N. 8th Street, Suite 140, Lincoln, Nebraska 68508; in the case of the City, to the Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, *with a copy* to City Attorney, 555 South 10th Street, Suite 300, Lincoln, Nebraska 68508; and, in the case of the JPA, to City Attorney, 555 South 10th Street, Suite 300, Lincoln, Nebraska 68508; or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

**Section 805. Approval Not Unreasonably Withheld and Timely Approval.** Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Redevelopment Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall

promptly advise the requesting party as to whether all necessary information has been received. If any party to this Redevelopment Agreement submits any item to another party to this Redevelopment Agreement for approval pursuant to this Redevelopment Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

**Section 806. Access to Project Parcels.** Redeveloper shall permit the representatives of the City to enter all of the RRO Project Parcels and Hotel Project Parcel and at any and all reasonable times, as the City may deem necessary for the purposes of this Redevelopment Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements. Similarly, the City shall permit Redeveloper such entry upon the public rights of way for such purposes. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided for in this section. The City's right of access granted under this section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

**Section 807. Termination of Provisions; Provisions Run With the Land.** This Redevelopment Agreement shall run with the RRO Project Parcels and Hotel Project Parcel and shall inure to and bind the parties and their successors in interest. Except as otherwise provided herein, the provisions and covenants of this Redevelopment Agreement shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion for all the Private

Improvements except for the Plaza Project Parcel and the Plaza Improvements contemplated herein, except as otherwise set forth herein.

**Section 808. Federal Immigration Verification System Requirements.** In accordance with *Neb. Rev. Stat.* §§ 4-108 through 4-114, the Redeveloper 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 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The Redeveloper 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 USC 1324b. The Redeveloper shall require any contractor constructing the Private Improvements on behalf of Redeveloper to comply with the provisions of this section.

**Section 809. Titles of Articles and Sections.** Any titles of the several parts, articles and sections of this Redevelopment Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 810. Mutual Cooperation.** The parties agree to mutually cooperate in constructing the various improvements each is to construct in the RRO Project Parcels and Hotel Project Parcel so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time.

**Section 811. Integrated Contract; Severance of Provisions; Interpretation; Governing Law.** It is intended by the parties that this Redevelopment Agreement and the

incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Redevelopment Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Redevelopment Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The parties agree that any grant paid hereunder to the Redeveloper as reimbursement for the cost of the Public Improvements are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the Redeveloper and should not be construed as income to the Redeveloper under the Internal Revenue Code Section 61 (I.R.C. § 61). This Redevelopment Agreement shall be construed and governed by the laws of the State of Nebraska.

**Section 812. Definitions.**

A. For the purpose of this Redevelopment Agreement, the term “holder” in reference to a mortgage shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.

B. The term “mortgage” shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

C. The term “minimum investment” shall include all costs incurred by Redeveloper when constructing the Private Improvements, including but not limited to construction costs, fees, financing costs, and land costs.

D. The term “residential tenant” shall include the inhabitant of any residential apartment, condominium or similar dwelling. Residential Tenant shall not include hotel guests.

**Section 813. Audit.** Redeveloper 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 Redevelopment Agreement, as allowed by law. City shall be subject to audit by Redeveloper with regard to the collection, disbursement, and/or funding of any of the sales and uses set forth in Section 601(C) and shall make available to Redeveloper and/or any auditor working on behalf of Redeveloper copies of all financial and performance-related records and materials germane to this Redevelopment Agreement and the use of the Tax Increment Financing Proceeds for the Priority Expenses described in Section 601(C).

**Section 814. Effective Date of Ad Valorem Tax Provision.** The Effective Date of the Ad Valorem Tax Provision of the RRO Improvements portion of the Project shall be the date of the City's issuance of its Consent to the Certificate of Completion for the Private Improvements or the RRO Improvements if issued separately under Section 104 above (the “RRO Effective Date”). The Effective Date of the Ad Valorem Tax Provision of the Hotel portion of the Project shall be the date of the City's issuance of its Consent to the Certificate of Completion for the Private Improvements or for the Hotel Improvements if issued separately under Section 104 above (the “Hotel Effective Date”).

**Section 815. Expiration.** This Redevelopment Agreement shall expire upon the expiration of the Tax Increment Period.

**Section 816. Recording.** A Memorandum of this Redevelopment Agreement (in the form attached hereto as Exhibit J shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Redeveloper's Property, at the Redeveloper's expense.

**Section 817. Representations and Warranties of Parties.**

A. Redeveloper represents and warrants to City as follows:

i. **Organization; Power; Good Standing.** Redeveloper is a Nebraska limited liability company duly organized and validly existing in good standing under the laws of Nebraska. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Redevelopment Agreement and perform the obligations hereunder.

ii. **Authority Relative to Agreement.** This Redevelopment Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

iii. **Effect of Agreement.** The execution, delivery and performance of this Redevelopment Agreement by Redeveloper has been duly authorized by all necessary action by Redeveloper and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Redeveloper, and will not violate any instrument,

agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Redeveloper is a party.

B. City represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by City has been duly authorized by all necessary action by the City and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to the City, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the City is a party.

C. JPA represents and warrants to Redeveloper as follows:

i. Authority Relative to Agreement. This Redevelopment Agreement has been duly executed and delivered by JPA and constitutes a legal, valid and binding obligation of JPA, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

ii. Effect of Agreement. The execution, delivery and performance of this Redevelopment Agreement by JPA has been duly authorized by all necessary action by JPA and except as provided in this Redevelopment Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to JPA, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which JPA is a party.

**Section 818. Counterparts.** This Redevelopment Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

**Section 819. Successors and Assigns.** The provisions of this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Redevelopment Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

**Section 820. Purpose of Agreement.** This Redevelopment Agreement has been entered into by the City to provide financing for the Project, an approved project within the Lincoln Center Redevelopment Plan.

[SIGNATURE AND NOTARY PAGES TO FOLLOW]

Executed by City this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a municipal corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Chris Beutler, Mayor

WEST HAYMARKET JOINT PUBLIC AGENCY

\_\_\_\_\_  
Chris Beutler  
Chairperson of the 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 \_\_\_\_\_, 2012, by Chris Beutler, Mayor of the City of Lincoln.

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

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives.

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

Executed by Redeveloper this \_\_\_\_ day of \_\_\_\_\_, 2012.

TDP PHASE ONE, LLC

By: From Lincoln For Lincoln I, LLC,  
Manager of TDP Phase One, LLC

By: WRK Management, LLC, Manager  
of From Lincoln for Lincoln I, LLC

By: WRK, LLC, Manager of WRK  
Management, LLC

By: \_\_\_\_\_  
William D. Scott, Co-Manager of WRK, LLC

By: \_\_\_\_\_  
Robert E. Scott, Co-Manager of WRK, LLC

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by William D. Scott, Co-Manager of WRK, LLC on behalf of TDP Phase One, LLC, a Nebraska limited liability company.

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

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Robert E. Scott, Co-Manager of WRK, LLC on behalf of TDP Phase One, LLC, a Nebraska limited liability company.

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

## EXHIBITS

Exhibit A - Map of the Redevelopment Areas

Exhibit B – Sources and Uses of TIF

Exhibit C – Exterior Design Criteria

Exhibit D – Project Schematic Drawings

Exhibit E – Certificate of Completion

Exhibit F – Project Schedule for JPA Construction

Exhibit G – Plaza/Cube Use License Agreement

Exhibit H – Corporate Guarantee

Exhibit I – Environmental Use Restrictions

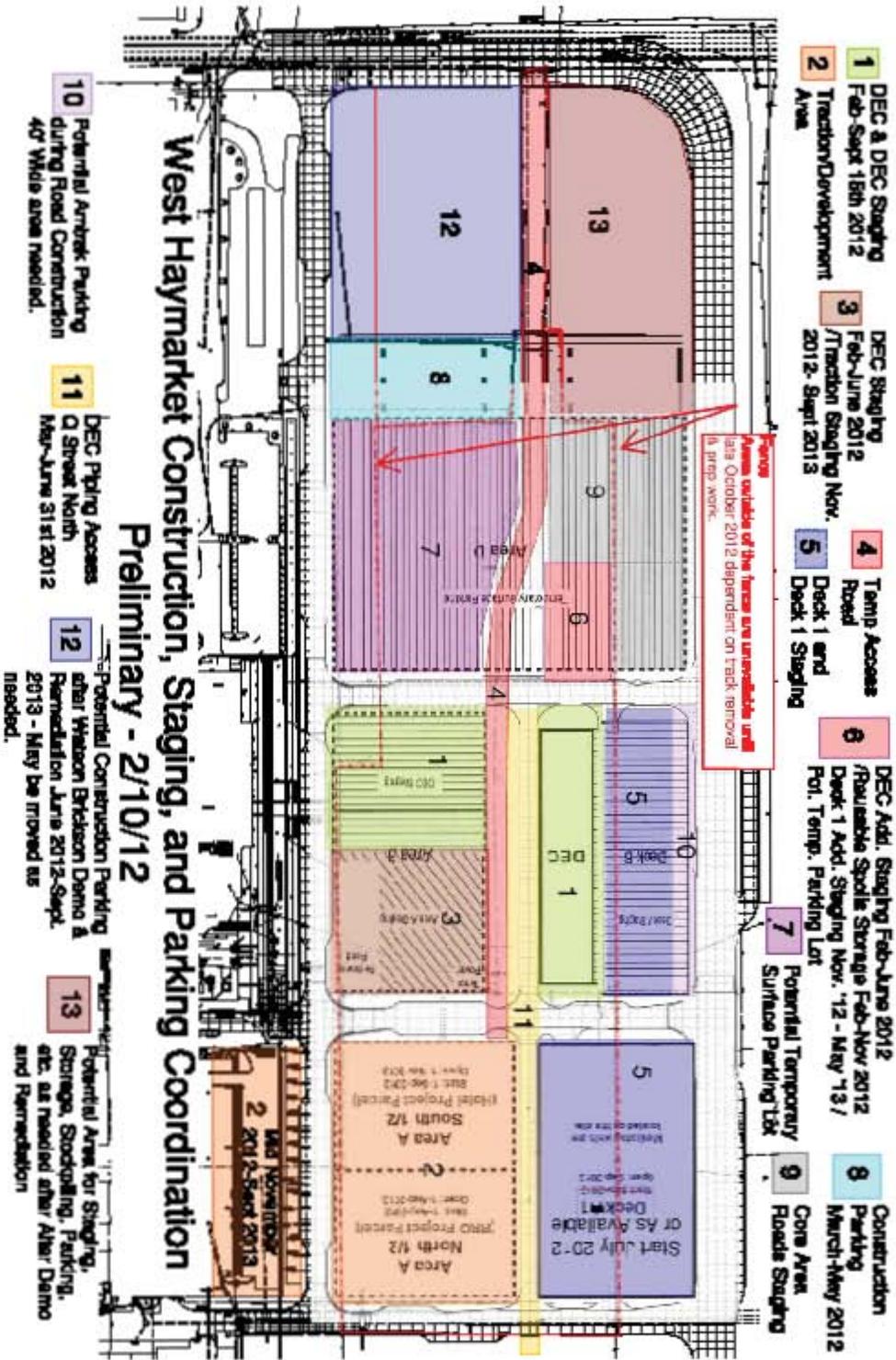
Exhibit J – Memorandum of Redevelopment Agreement and Use Restrictions

**EXHIBIT A**  
**Staging Plan and Map**

**STAGING PLAN – TERMS AND CONDITIONS**

1. This is not considered a final document but a working drawing. If changes are needed consideration will be made to all projects in order to limit impacts to those involved.
2. There will need to be a high level of coordination and teamwork in order to accomplish all projects in the area. It is not an ideal situation for any project.
3. All non-building site areas (roads, staging areas, parking lots, etc.) are to be left in the same or better condition vs. before their use.
4. The dirt access road has been installed for everyone's use and should be maintained as such. The road was shown on the initial site prep drawings and if required to move it will be the responsibility of those requesting it's relocation to move it and provide an alternate similar route. This will need to be coordinated with all projects on the site.
5. If additional rock /material is requested for the dirt access road the project needing it will be required to provide it up until such time that it is considered to be a shared road. At that time those projects requesting additional rock and/or those causing damage to it will be required to repair the road and/or add additional rock.
6. The temp power location is meant to serve the DEC, Deck 1, and Traction Projects. It will remain in place until no longer needed by any project.
7. Useable soil spoils from foundation and utilities work are to be stockpiled in area 6 on the drawing. When the Core Area Roadway project commences it will be moved and reused for fill.
8. The West fence can be considered the current boundary for the DEC project up until the tracks are removed and that area begins to get filled by the Core Area Project. At that time coordination will be need to reduce any impact to either project.
9. If any fences, job trailers, or items that are not easily moved are located in the staging or building areas please coordinate their location with the Core Area Roadways Project. Or they can be located with the understanding that they may need to move, at no additional cost to the JPA, in order to complete the utilities and street work.
10. Prior to moving to the site a proposed site laydown plan is to be sent to PC Sports for concurrence and approval.

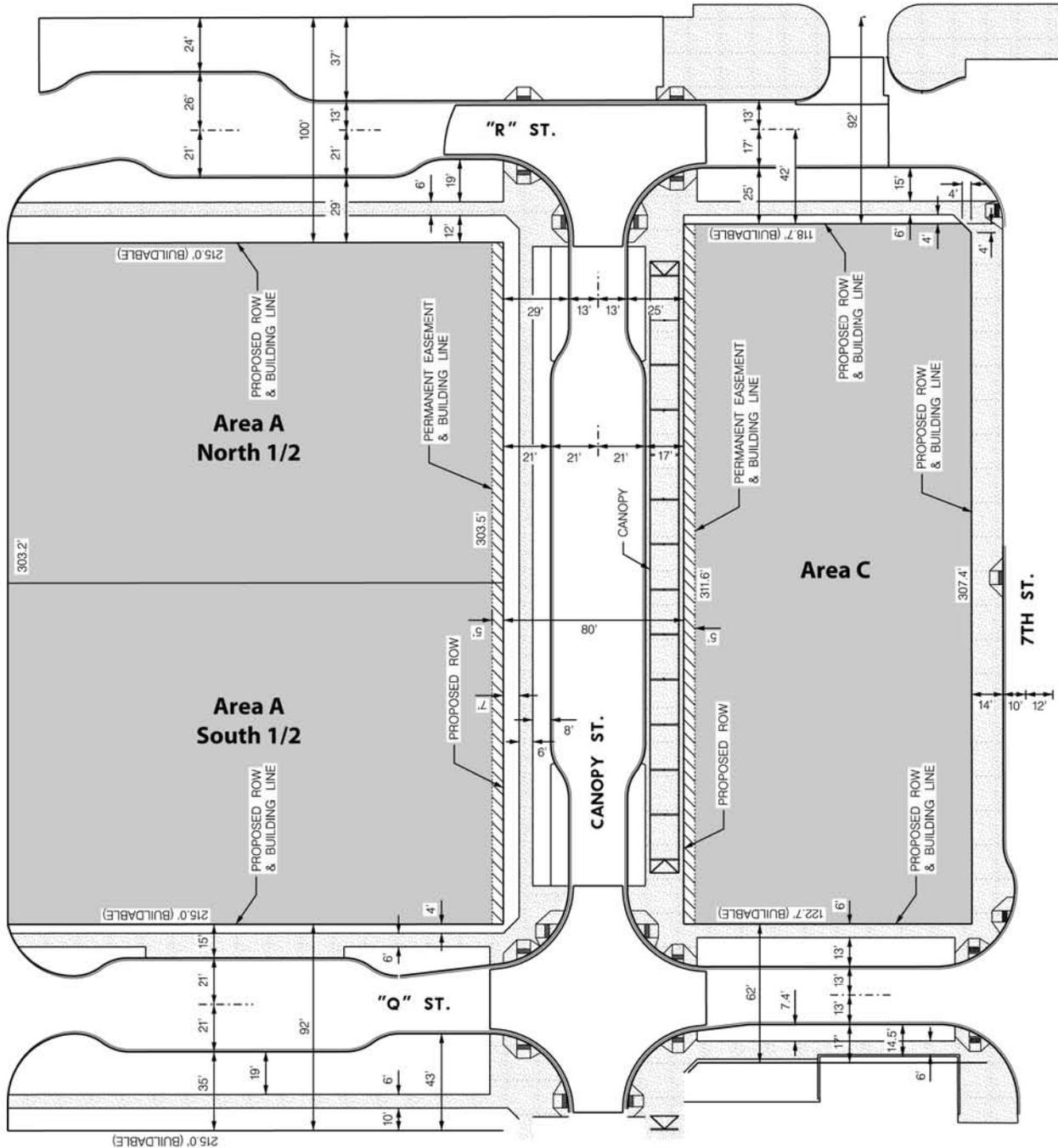
PC Sports along with LHIT and the City will work to coordinate all projects located in this small area.



## EXHIBIT A-2 MAP OF THE REDEVELOPMENT AREAS

- LEGEND**
- DEVELOPMENT AREA FOR NEW BUILDING
  - PERMANENT EASEMENT FOR UTILITIES (MAXIMUM 2' FOOTING ENCROACHMENT INTO THE EASEMENT)
  - SIDEWALK

NOTE: THE BUILDING LINES AS SHOWN MATCH THE ROW & ASSUME ALL CONSTRUCTION (INCLUDING FOUNDATIONS) STAY WITHIN THE GRAY SHADED AREAS UNLESS OTHERWISE APPROVED BY THE CITY.





**EXHIBIT B**

**SOURCES AND USES OF TIF**

<b>Residential Retail Office Project</b>	<b>Total</b>	<b>Series A</b>	<b>Series B</b>	<b>Detailed Expenses</b>
FIRST PRIORITY - Cost of Issuance	\$15,000	\$15,000		Cost of issuing TIF indebtedness.
SECOND PRIORITY - Sanitary Sewer	\$100,000	\$100,000		Relocated sanitary sewer from Area C to Q Street.
THIRD PRIORITY - Cube Improvements	\$1,125,000	\$1,125,000		Exterior of Cube, footings, and foundations, mezzanine, rooftop deck, audio/visual, and stage lighting, etc.
FOURTH PRIORITY - Plaza Space Improvements	\$1,030,000	\$1,030,000		Earthwork & grading, drainage & utilities, decorative hardscape, landscaping, ped lighting, art, street controls, signage, ice rink, public restrooms, staging, rigging, etc.
FIFTH PRIORITY - Public Market	\$400,000	\$400,000		Construction of public market, interior tenant finish, etc.
SIXTH PRIORITY - Energy Efficiency Enhancements	\$175,000	\$175,000		DEC Aid to Construction
SEVENTH PRIORITY - Plaza Block Façade Enhancements	\$715,000	\$280,000	\$435,000	Difference between use of quality materials and use of materials that would satisfy Downtown Design Standards and Integrated Development Plan.
EIGHTH PRIORITY - Residential Façade Enhancements	\$940,000	\$375,000	\$565,000	Difference between use of quality materials and use of materials that would satisfy Downtown Design Standards and Integrated Development Plan.
<b>Total</b>	<b>\$4,500,000 (100%)</b>	<b>\$3,500,000 (78%)</b>	<b>\$1,000,000 (22%)</b>	
<b>Hotel Project</b>				
<b>Total</b>	<b>Total</b>	<b>Series A</b>	<b>Series B</b>	<b>Detailed Expenses</b>
FIRST PRIORITY - Cost of Issuance of TIF	\$10,000	\$10,000		Cost of issuing TIF indebtedness.
SECOND PRIORITY - Other City Identified Public Improvements/Enhancements	\$770,000	\$770,000		The City will make the determination of funding (streetscape, garage, plaza)
THIRD PRIORITY - Energy Efficiency Enhancements	\$1,100,000	\$1,100,000		DEC Aid to Construction
FOURTH PRIORITY - Hotel Façade Enhancements	\$1,005,000	\$370,000	\$635,000	Difference between use of quality materials and use of materials that satisfy Downtown Design Standards and Integrated Development Plan.
<b>Total</b>	<b>\$2,885,000</b>	<b>\$2,250,000</b>	<b>\$635,000</b>	
<b>Total Residential, Plaza, and Hotel</b>	<b>\$7,385,000</b>	<b>\$5,750,000 (78%)</b>	<b>\$1,635,000 (22%)</b>	

## **EXHIBIT C EXTERIOR DESIGN CRITERIA**

In addition to the underlying signage requirements of the B-4 Downtown Business Zone, Redeveloper agrees to the following Exterior Design Criteria. Exceptions to the following criteria are permitted with written approval of Landlord. Nationally or regionally recognized merchants may be given further latitude to creatively integrate their prototype designs with these criteria.

### **1. SIGN REQUIREMENTS**

- a. Tenant must submit an Application for Sign Permit to the City of Lincoln Building and Safety. For information on conforming signs, please refer to Chapter 27.69 of City of Lincoln Zoning Ordinances.
- b. All signage (including menu boards and sandwich boards) must be submitted to Landlord for their review and approval prior to City approval (one set of complete shop drawings). Sign shop drawings must include, at a minimum, mounting details, transformer location and access, dimensions, light types used, lettering styles and sizes, colors, materials used on sign, and sign location(s). Drawings must be drawn to scale and show the proposed placement of the sign on the building facade.
- c. No exterior sign or sign panel will be permitted to extend above any roof line and must stay within the boundaries of the tenant's space. Tenant's signage shall not occupy more than two walls of any building without prior written approval from the Landlord.
- d. The average height and area of Tenant's sign shall be based on a percentage of each building facade area. Landlord shall work with Tenant to provide the maximum height and area for Tenant's sign, taking into consideration Tenant's use and percentage of total building. Signs on each building facade must individually and cumulatively meet City of Lincoln Sign Code.
- e. Tenants are encouraged to use the following signage:
  - Internally illuminated individual dimensional channel letters mounted on the building (the use of a colored or frosted Plexiglas face is required).
  - Illuminated reverse channel letter (open or translucent back). Also referred to as halo lighting or silhouette lighting.
  - Double faced, blade signage with individual channel letters
  - Exterior illuminated metal standoff letters.
  - Highly durable fabric awnings/marquee signs.
- f. The following types of signs shall not be permitted:

- Signs such as die cut vinyl, gold or silver leaf, or paint.
  - Boxed pillow or cabinet type. Boxed signs with raised letters will be considered on an individual basis and are subject to approval.
  - Translucent backlit awnings.
  - Horizontal banners or pennants.
  - Animated, moving, rotating, flashing, or noise making.
  - Electronic “Sale” signs, “Special Announcement” sign or other advertisement of any other kind on the exterior.
  - Mobile Signs
- g. All conductors and transformers shall be concealed from public areas. No exposed raceways, crossovers or conduits will be permitted. All signage returns shall either match face color of sign or blend with adjacent building color.
- h. Threaded rods or anchor bolts shall be used to mount sign letters, which are spaced out from the background panel. Angle clips attached to letter sides will not be permitted.
- i. All electric signs and installation methods must meet UL standards and contain a UL label.
- j. All illuminated signs must be turned on during the shopping center’s normal operating hours. The use of time clocks for sign and show window lighting is required.
- k. Temporary construction signs must comply with city requirements.
- l. Tenant shall install vinyl adhesive address numerals at the top of the storefront entrance door or as required by the local fire marshal. Address signs are not included in the wall sign calculation.

## 2. STOREFRONT DESIGN REQUIREMENTS

- a. The Storefront and Bulkhead shall have standard retail finishes, provided and maintained by the Landlord on the outside of the Lease Premises. The Tenant cannot change or modify the Storefront or Bulkhead, nor is the Tenant responsible for its maintenance, except for patching and repair of any damage caused by the Tenant during construction or sign installation.
- b. Except as provided herein, no advertising placards, banners, pennants, names, insignia, trademarks or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the storefront windows and doors, without prior written approval of the Landlord.

- c. Display areas shall not be obstructed by window signage. Small stenciled letters, addresses or logos can be appropriate signage in windows, but the painting of large areas of glass is prohibited.
- d. At no time will hand-lettered, non-professional signs, or newspaper advertisements be displayed on the storefronts.
- e. Prior written approval, which shall be at Landlord's sole discretion, must be obtained for installation of window shades, blinds, drapes or any other window treatment of any kind whatsoever.
- f. Tenant shall not permit or suffer any advertising medium to be placed on walls or exterior windows, on the sidewalks or on the parking lot areas or light poles.
- g. No sale of merchandise by tent sale, truck load sale or the like shall be permitted on the parking areas, Plaza, or sidewalks.
- h. Without the permission of Landlord, Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios, or television. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Premises, unless Landlord has previously given its written consent.

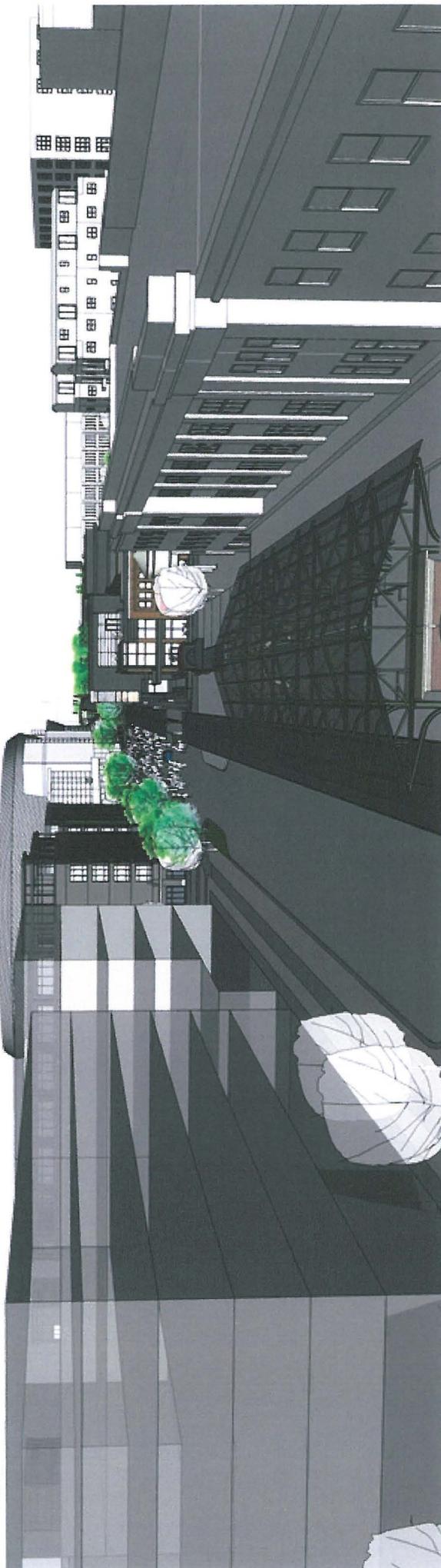
### 3. OUTDOOR SEATING REQUIREMENTS

- a. Tenants with outdoor seating located in the public right-of-way shall be required to apply for a Sidewalk Café Permit through the City of Lincoln Outdoor Dining Committee, at Tenant's expense.
- b. Tenants with outdoor seating located on private property shall not be required to apply for a Sidewalk Café Permit.
- c. All outdoor seating designs, heat lamps, enclosure structures, furniture, fixtures, valet stands, menu boards, and equipment must be submitted to Landlord for their review and approval.
- d. All tenant exterior seating areas shall conform to the Lease Agreement and shall be reviewed and approved by Landlord.
- e. Tenants are encouraged to invest in durable and well-designed street furniture. Plastic furniture or plastic mesh furniture will not be permitted.

**EXHIBIT D**  
**PROJECT SCHEMATIC DRAWINGS**



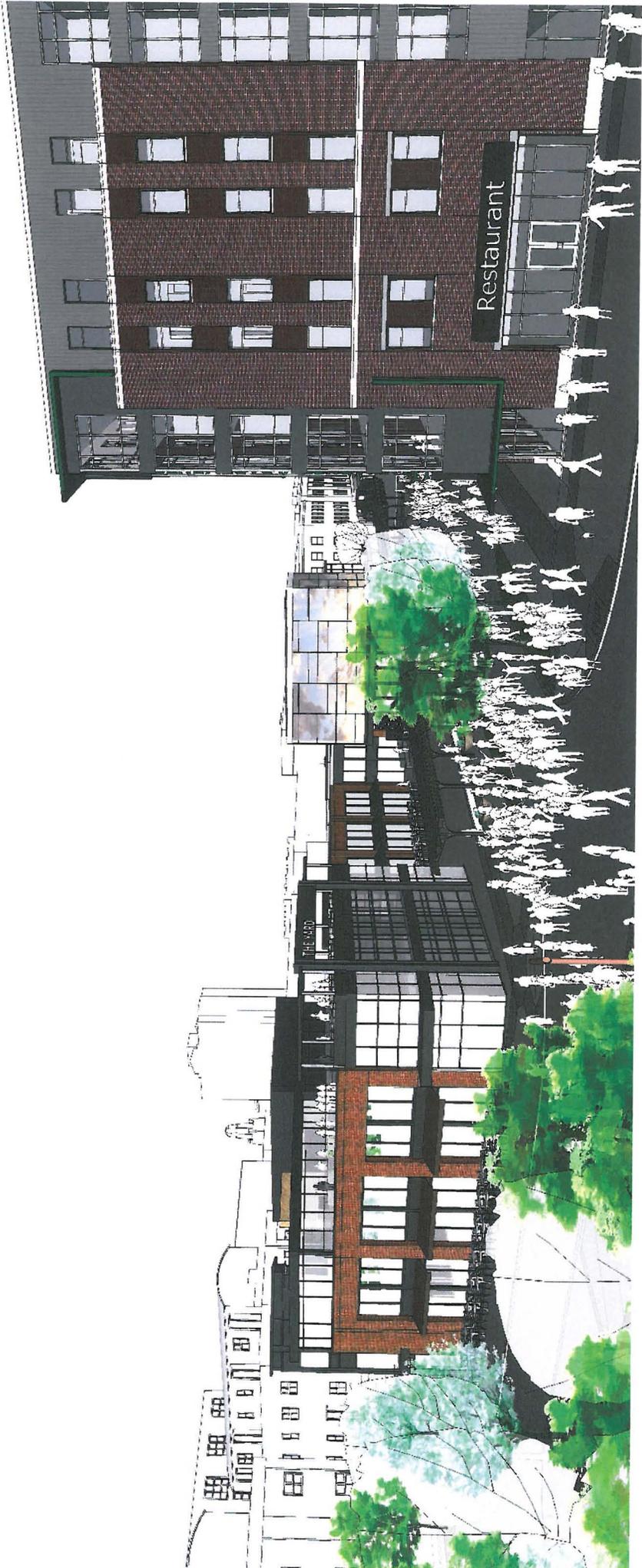


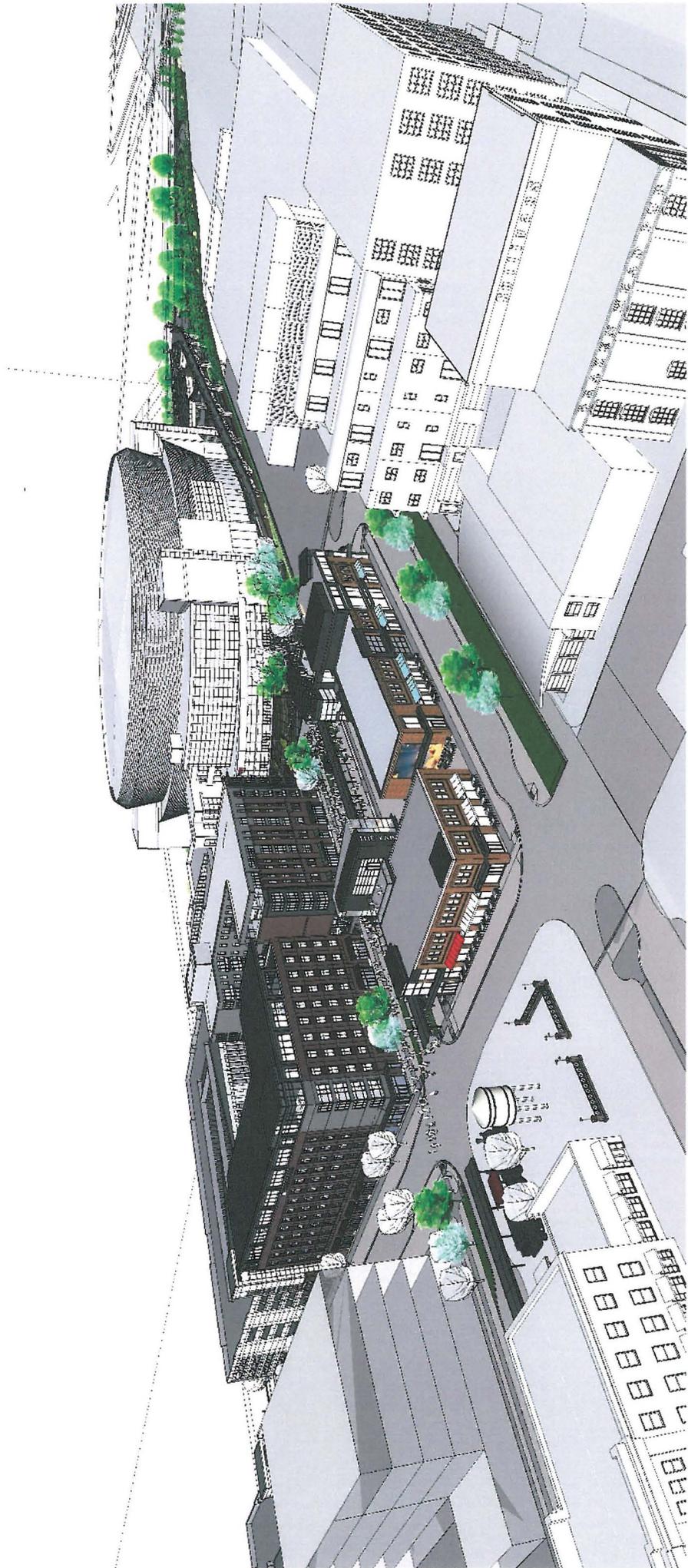












**EXHIBIT E**  
**CERTIFICATE OF COMPLETION OF IMPROVEMENTS**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned certifies, represents and warrants to the City of Lincoln, Nebraska, the conclusive determination and certification with regard to the following real property situated in the City of Lincoln, Lancaster County, Nebraska, to wit:

[INSERT LEGAL DESCRIPTION], Lincoln, Lancaster County, Nebraska,

that the Private Improvements required to be constructed by the Redeveloper upon the above described property have been satisfactorily completed in accordance with the requirements of the Redevelopment Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2012, and recorded as Instrument No. \_\_\_\_\_ in the office of the Register of Deeds for Lancaster County, Nebraska.

TDP PHASE ONE, LLC, a Nebraska limited liability company

By: From Lincoln For Lincoln I, LLC,  
Manager of TDP Phase One, LLC

By: WRK Management, LLC, Manager  
of From Lincoln for Lincoln I, LLC

By: WRK, LLC, Manager of WRK  
Management, LLC

By: \_\_\_\_\_  
William D. Scott, Co-Manager of WRK, LLC

By: \_\_\_\_\_  
Robert E. Scott, Co-Manager of WRK, LLC

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by William D. Scott, Co-Manager of WRK, LLC on behalf of TDP Phase One, LLC, a Nebraska limited liability company.

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



**EXHIBIT F  
PROJECT SCHEDULE FOR JPA CONSTRUCTION**

1-Apr-12	Redevelopment Agreement Executed
1-May-12	Title Commitment Delivered to Redeveloper for Area A
1-Aug-12	Title Commitment Delivered to Redeveloper for Area C
1-Jun-12	Closing North 1/2 Area A
1-Sep-12	Closing Area C
TBD	Closing South 1/2 Area A – Not Later than 1 November 2013
1-Jul-12	Temporary Utilities to Area A
1-Oct-12	Temporary Utilities to Area C
1-Aug-12	Construction Start North 1/2 Area A
1-Nov-12	Construction Start Area C
1-Sep-12	Construction Start South 1/2 Area A
1-Aug-13	Completion of Permanent Utilities & Roads to North 1/2 Area A
1-Sep-13	Completion of Permanent Utilities & Roads to Area C
1-Sep-13	Completion of Permanent Utilities & Roads to South 1/2 Area A
1-Aug-13	Completion of Surface Parking on Area B/D
1-Aug-13	Temporary Parking in Arena Garage for Residents
1-Sep-13	Completion of Parking Garage Deck A
1-Aug-13	Completion of Area A North 1/2
1-Nov-13*	Completion of Area C (Retail & Office) *12 months after delivery of land
TBD*	Completion of Area A South 1/2 *18 months after purchase of land

## EXHIBIT G

### PLAZA/CUBE LICENSE AGREEMENT

THIS PLAZA/CUBE LICENSE AGREEMENT (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between TDP Phase One, LLC, a Nebraska limited liability ("Grantor"), and the City of Lincoln, Nebraska, a municipal corporation ("Grantee").

#### RECITALS

- A. Grantor owns or will own certain real estate located in Lincoln, Lancaster County, Nebraska, legally described on the attached Exhibit A which is incorporated herein by this reference (the "Property").
- B. Grantor has identified areas of the Property that are accessible by the general public for nonexclusive limited uses, as defined in this Agreement. Such areas include, but are not limited to an outdoor public plaza ("The Yard") and an indoor public market space and public restrooms ("The Public Market"), located on the Property as described on the attached Exhibit A.
- C. Grantor entered into the West Haymarket Redevelopment Agreement (the "Redevelopment Agreement") with the Grantee and the West Haymarket Joint Public Agency for, inter alia, the redevelopment of certain Redevelopment Areas in the West Haymarket, including the Property.
- D. Pursuant to the Redevelopment Agreement, and to ameliorate the blighted and substandard conditions of the Property, Grantor agrees to grant a nonexclusive limited license for the Grantee and its permittees to use The Yard and The Public Market. Under the Redevelopment Agreement, Grantor is utilizing tax increment financing facilitated by Grantee to improve The Yard and The Public Market provided that the general public is granted certain rights to have access to The Yard and The Public Market.

- E. Grantor and Grantee also wish to define the use of Grantor's digital art display located on the Property ("The Cube") which is properly described on the attached Exhibit A.
- F. This Agreement sets forth the parties' rights and obligations with respect to the license of The Yard, The Public Market and The Cube.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Grantor and Grantee do now hereby agree as follows:

1. General Conditions of Use.

- a. Subject to the terms of this Agreement, Grantor hereby grants to Grantee for the benefit of the public a permanent limited, nonexclusive license to use the Property including The Yard and The Public Market. This license shall permit the Grantee and the general public rights for use of The Yard, The Public Market, and The Cube in a manner that does not unreasonably interfere with Grantor's or any other permittee or authorized person's nonexclusive use of The Yard, The Public Market, and The Cube.
- b. Nothing in this Agreement is intended to permit any of the following enumerated or similar activities by the permittees in The Yard or The Public Market: loitering, demonstrating, picketing, soliciting, begging, camping, littering, sunbathing, carrying firearms, engaging in any illegal, offensive, indecent, obscene, vulgar, lewd or disorderly speech, dress or conduct, or otherwise disturbing the peace ("Prohibited Activities").
- c. Grantor shall have the right to implement use restrictions or regulations, subject to City approval which shall not be unreasonably withheld, which may include the right to deny access to The Yard and The Public Market to persons who are disorderly or intoxicated or engaging in any of the Prohibited Activities.
- d. Grantor shall have the right, subject to City approval which shall not be unreasonably withheld, to establish hours of operation of the The Yard and The Public Market ("Authorized Hours") and to deny access to The Yard and The Public Market during the hours that do not constitute the Authorized Hours.
- e. Grantor shall not deny access to The Yard or The Public Market to any persons based on their age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability or veteran status.
- f. Grantor shall have the ability to deny access to The Yard to any persons under the legal drinking age during certain hours or Special Events where The Yard constitutes a licensed premises for liquor license purposes.
- g. Grantor shall have the ability to prohibit persons from bringing animals, birds, or other living creatures into The Yard or The Public Market with the exception of guide dogs or other animals specifically trained to assist persons utilizing The Yard or The Public Market.

- h. The Yard, The Public Market, and The Cube shall at all times remain the private property of the Grantor and nothing in this Agreement or the granting of this License shall be deemed to create or constitute a public forum, limited or otherwise.
- i. Grantor shall, at its own cost and expense, perform all ordinary and/or necessary maintenance and repairs on The Yard, The Public Market, and The Cube.

2. Special Events. A Special Event shall be defined as any organized activity that requires additional personnel or barriers to restrict or control access to The Yard or The Public Market. Special events may include, but are not strictly defined to: concerts, tailgating events, festivals, rides, exhibitions, theatre presentations, movies, fairs, celebrations, and sales events or similar gatherings utilizing the Property. The following terms and conditions shall apply to Special Events:

- a. Grantor and Grantee shall communicate on an annual basis to create a calendar that outlines Special Events, their date, and duration.
- b. Grantor and Grantee shall clearly identify the organizer of each Special Event (the “Event Organizer”). The Event Organizer shall cover all costs and expenses associated with each Special Event and shall indemnify and hold harmless the Grantor and Grantee from and against any liability, claims, suits, demands, judgments (including costs, expenses and attorney’s fees), resulting from actions or claims by third parties during such Special Events. The Event Organizer shall procure and maintain broad form Commercial General Liability Insurance coverage in an amount of at least \$2,000,000 per occurrence and an aggregate limit of \$3,000,000. The Grantor and Grantee shall be named as additional insureds. Notwithstanding any other provision of this Agreement, but subject to the control of Grantor, the Event Organizer shall be entitled to collect revenue from Special Events and use it at their own discretion.
- c. Grantor shall have the right to serve as the Event Organizer for up to twenty five (25) Special Events per year to be held with a private audience who may or may not be charged an admission fee which events need not be open to the general public.
- d. Grantor shall have the right to serve as the Event Organizer for up to fifty (50) Special Events per year that are open to the general public but require an admission fee to help offset certain expenses that are unique to that Special Event.
- e. Grantee shall be permitted to serve as Event Organizer for up to twenty five (25) Special Events per year to be held with a private audience or where admission is charged to help offset certain expenses that are unique to that Special Event.
- f. When selecting vendors for Special Events, Grantor and Grantee agree make all reasonable efforts to utilize tenants located in the buildings surrounding The Yard.

3. The Yard. The primary purpose of The Yard is to serve as a community gathering and entertainment space for the general public. The setup of The Yard is anticipated to change from season to season and year to year but will initially provide the following amenities: indoor restrooms, public ice rink, outdoor fire pit, outdoor seating areas, public art, stage, The Cube, and flex-space for Special Events. The following terms and conditions shall apply to The Yard:

- a. Grantor shall be responsible for the daily costs of maintaining and organizing The Yard. Grantor except for Special Events in which the City serves an Event Organizer shall be entitled to collect rent from vendors operating inside The Yard. All vendors located within The Yard must meet the same Use Restrictions outlined in Section 404 of the Redevelopment Agreement.
- b. The Yard shall serve as the primary location for Special Events.
- c. If financial assistance is received from Grantee to install an ice rink in The Yard, then Grantor shall be prohibited from charging an admission for the use of such rink on an hourly or daily basis. Grantor shall be allowed to charge for skate rentals as long as Grantor does not restrict the general public from using their own skate equipment.
- d. Surrounding The Yard will be outdoor seating for Grantor's tenants ("Tenant Outdoor Seating"), as properly defined on Exhibit A. Grantor's tenants shall have the exclusive right to use Tenant Outdoor Seating for their patrons.
- e. Both Grantor and Grantee agree to assist and cooperate with each other in creating an Entertainment District in which The Yard and possibly Canopy Street may be used as a Commons Area pursuant to the Legislature of Nebraska One Hundred Second Legislature - Second Session Legislative Bill 1130 relating to amendments to the Nebraska Liquor Control Act. Grantor shall be required to pay for the costs to implement an Entertainment District within the Yard.
- f. The rights and the license granted herein for The Yard shall be in effect from 6:00 a.m. to 12:00 midnight each day (the "The Yard Authorized Hours"). Provided, however, Grantor reserves the right to extend or decrease the Authorized Hours on certain specific days or for specific events if Grantor has a reasonable necessity or justifiable cause to do so.

4. The Public Market. The primary purpose of The Public Market is to serve as a community gathering space and a venue for the sale and consumption of local or Nebraska-based products or goods. Fast food restaurants and the sale of services shall be prohibited. The Public Market will be designed to for small tenant spaces that provide smaller businesses an opportunity to sell their products without incurring large overhead capital and rent expenses. Suggested tenant uses include, but are not limited to: consumable goods, tenants of the Farmer's Market, fresh produce, meats, cheeses, wine, deli, deserts, snacks, soups and sandwiches. The following terms and conditions shall apply to The Public Market:

- a. Consumable food products must make up for a minimum of 65% of The Public Market unless otherwise approved by the Mayor.
  - b. The rights and the license granted herein for The Public Market shall be in effect from 8:00 a.m. to 9:00 p.m. each day (the “The Public Market Authorized Hours”). Provided, however, Grantor reserves the right to extend or decrease the Authorized Hours based on the tenant’s hours of operations and for Special Events.
  - c. The Public Market use restrictions and Authorized Hours shall terminate on that date which is 15 years following the effective date of the Tax Increment Provision for the Private Improvements or the RRO Improvements if issues separately in the West Haymarket Redevelopment Agreement.
  - d. No one vendor can occupy more than twenty-five percent (25%) of the floor area of the Public Market unless otherwise approved by the Mayor.
5. The Cube. The primary purpose of The Cube is to serve as a digital canvas to display motion graphic and still picture art installations. The following terms and conditions shall apply to The Cube on a permanent and continuous basis:
- a. No vulgar or obscene language or graphics shall be displayed on The Cube at any time.
  - b. Hours of operation for The Cube may vary depending on the amount of ambient light and the technology used to illuminate The Cube.
  - c. The Cube shall not be illuminated nor sound activated between the hours of 2:00 a.m. to 9:00 a.m..
  - d. The luminosity and sound activation of The Cube shall be controlled by Grantor so that it does not negatively affect surrounding tenants.
  - e. The projection screens/faces of the Cube shall have northerly and westerly orientations in order to limit visibility to persons walking in the Haymarket Landmark District.
  - f. Notwithstanding any provision herein, The Cube shall be available for use by Grantor and Grantee for Special Events, provided the content displayed on The Cube can be reasonably modified to compliment the Special Event.
  - g. Grantor shall be prohibited from displaying any advertising on the Cube except that distinguishable trademarks, logos, insignias are allowed on The Cube identifying Special Events. No more than five (5) minutes of each hour of operational time of The Cube shall be allocated for Special Event sponsor recognition. Half of the revenue earned from Special Events sponsorship utilizing The Cube will go towards the ongoing operations, maintenance, and artist fees necessary to run The Cube. The other half of the revenue will go to the Event Organizer.

- h. Grantee agrees to assist and cooperate in creating a special sign district, if necessary, to identify the Cube as a sign and to allow The Cube to operate in its intended function. If a special sign district is not approved for the installation and use of The Cube, Grantor shall be allowed to reallocate TIF Proceeds earmarked for The Cube to other TIF eligible improvements subject to the City's approval which shall not be unreasonably withheld.
- i. If proven technology is not available to economically operate The Cube in accordance with its intended purpose, then Grantee shall be allowed to reallocate TIF Proceeds designated for The Cube to other eligible uses of TIF.

6. Canopy Street. It is anticipated that Canopy Street will be closed down to vehicular traffic on certain days to better guide pedestrian and vehicular traffic to and from the Pinnacle Bank Arena and The Yard. It is also anticipated that Grantor or Grantee may wish to close down Canopy Street to host Special Events on Canopy Street that are too large to host in The Yard. Therefore, Grantor and Grantee agree:

- a. To assist and cooperate with each other in closing down Canopy Street for large downtown events such as Pinnacle Bank Arena events.
- b. To assist and cooperate with each other in closing down Canopy Street for Special Events where additional room is needed above and beyond the space available in The Yard.

7. Mutual Cooperation. The parties agree that the successful design, development and construction of The Yard and The Public Market and related activities are dependent upon the continued cooperation and good faith of the parties. Every covenant, agreement and restriction herein stated shall be construed in recognition of its interdependence and need for continued mutual cooperation. The parties specifically agree to mutual cooperation in modifying the terms and conditions of this License to avoid unintended consequences for all parties. The parties agree to prepare and adopt a policy and procedure under this Plaza/Cube License Agreement addressing Special Event management activities such as staffing, security, cleanup, fencing/barriers and protocol to follow for street closures.

8. Binding Effect. Unless defined within, this Agreement shall be appurtenant to and run with the property. The grant of this easement shall be binding upon the heirs, executors, administrators, successors and assigns of Grantor.

[SIGNATURE PAGES TO FOLLOW]



STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Robert E. Scott, Co-Manager of WRK, LLC on behalf of TDP Phase One, LLC, a Nebraska limited liability company.

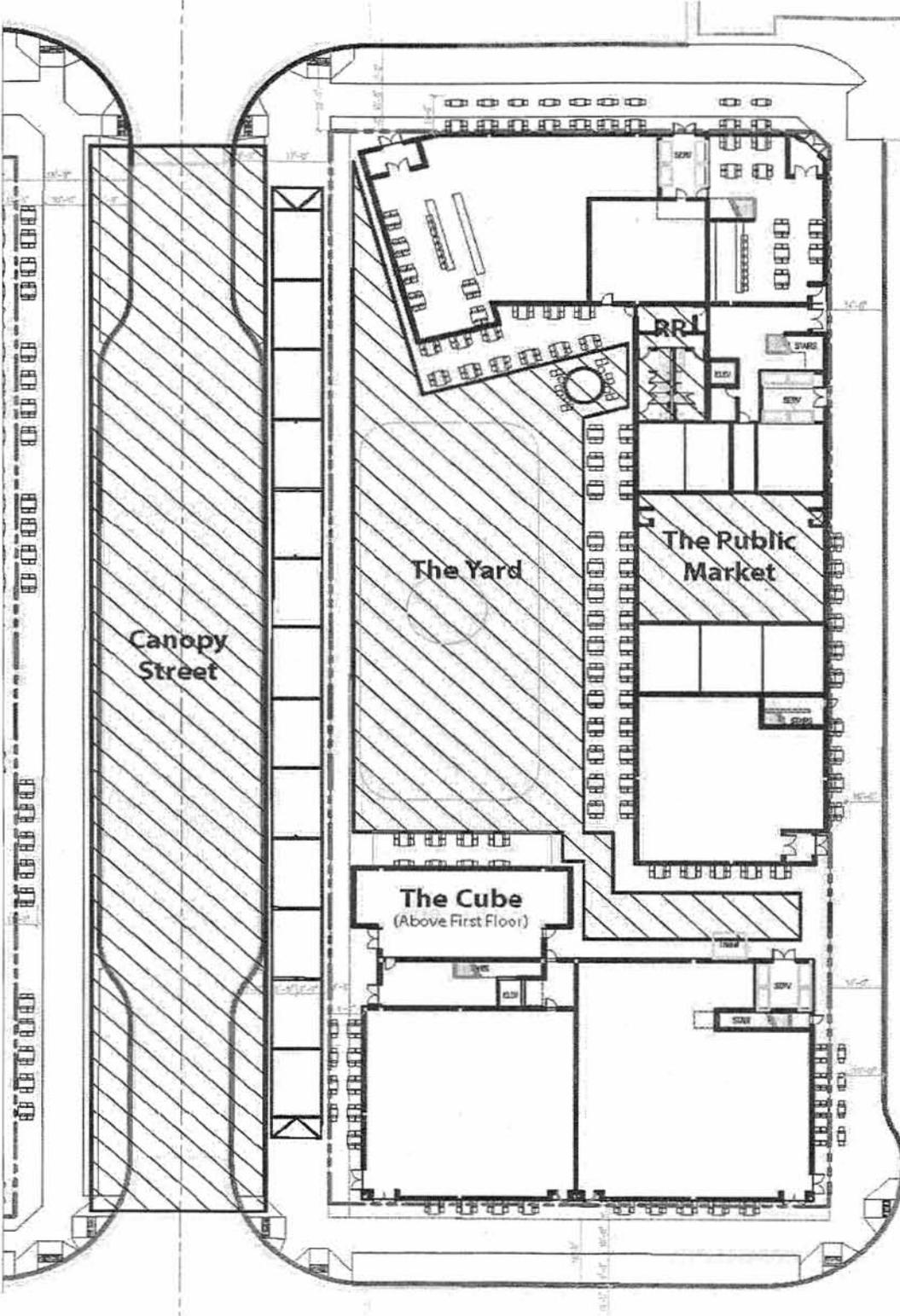
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Chris Beutler, Mayor of the City of Lincoln.

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

**EXHIBIT A**  
**To the Plaza/Cube Agreement**



**EXHIBIT H**  
**CORPORATE GUARANTEE**

This Corporate Guaranty (“Guaranty”) is jointly and severally made on this \_\_\_\_\_ day of \_\_\_\_, 2012, by WRK, LLC, a Nebraska limited liability company, and Chief Industries, Inc., a Delaware corporation (each a “Guarantor” or jointly and severally the “Guarantors”).

For value received and in consideration of the promises and benefits set forth in that certain Redevelopment Agreement dated as of \_\_\_\_\_, 2012 between the City of Lincoln, Nebraska, a municipal corporation ("City"), the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska (“JPA”), and TDP Phase One, LLC, a Nebraska limited liability company (“Redeveloper”), as the same may be supplemented and amended from time to time (the “Redevelopment Agreement”), afforded or to be afforded to the Redeveloper by the JPA and the City, which the Guarantors acknowledge to be of substantial benefit to the Guarantors, and the detrimental reliance on this Guaranty by the City and JPA, the Guarantors hereby jointly and severally guarantee the full and prompt payment to the City when due and at all times thereafter, any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provisions for required debt service to the JPA on the RRO TIF Note A and the Hotel TIF Note A, as described in Section 602.A. of the Redevelopment Agreement (said deficiency hereinafter referred to as the "Indebtedness"); and the Guarantors further jointly and severally agree to pay all expenses, legal and/or otherwise (including court costs and reasonable attorneys' fees), paid or incurred by the City in endeavoring to collect the Indebtedness, or any part thereof, and in protecting, defending or enforcing this Guaranty in any litigation, bankruptcy or insolvency proceedings or otherwise.

The Guarantors further jointly and severally acknowledge and agree with the City that:

1. This Guaranty is an irrevocable and unconditional guaranty of payment, and shall remain in full force and effect until the termination of the Redevelopment Agreement, and also until any and all of the Indebtedness shall be fully paid.
2. In case of dissolution, liquidation or insolvency (howsoever evidenced) of, or the institution of bankruptcy or receivership proceedings against the Redeveloper or either Guarantor, all of the Indebtedness then existing shall, at the option of the City, immediately become due and payable from the Guarantors.
3. The liability hereunder shall not be affected or impaired by any acceptance by any failure, neglect or omission on the part of the City to collect any of the Indebtedness or to realize upon or to protect any collateral or security therefor, or to exercise any lien upon or right of appropriation of any moneys, credits or property of the Redeveloper, possessed by the City, toward the liquidation of the Indebtedness, or by any application of payments or credits thereon or failure to obtain, maintain and/or enforce any other guaranty of the Indebtedness. The City shall have the right to determine how, when and what application of payments and credits, if any, shall be made on the Indebtedness, or any part thereof. In order to hold the Guarantors liable hereunder, there shall be no obligation on the part of the City, at any time, to resort for payment to the Redeveloper or to any other guaranty, or to any other persons or corporations, their

properties or estates, or resort to any collateral, security, property, liens or other rights or remedies whatsoever, and the City shall have the right to enforce this guaranty irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

4. All diligence in collection or protection, and all presentment, demand, protest and/or notice, as to any and everyone, whether or not the Redeveloper or the Guarantors or others, of dishonor and of default and of non-payment and of the creation and existence of any and all of the Indebtedness, and of any security and collateral therefor, and of the acceptance of this guaranty, and of any and all extensions of credit and indulgence hereunder, are waived. No act of commission or omission of any kind, or at any time, upon the part of the City in respect to any matter whatsoever, shall in any way affect or impair this guaranty.

5. Neither Guarantor will exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to the Guarantors against any person liable for payment of the Indebtedness, or as to any security therefor, unless and until the full amount owing to the City on the Indebtedness has been paid, and the payment by the Guarantors of any amount pursuant to this guaranty shall not entitle the Guarantors to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the Indebtedness or any proceeds thereof or any security therefor unless and until the full amount owing to the City on the Indebtedness has been paid and the City has no further obligation to make further advances to or on behalf of the Redeveloper.

6. The Guarantors further agree that, to the extent any waiver of its rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation the Guarantors may have against the Redeveloper or against any collateral or security, and any rights of contribution the Guarantors may have against any other Guarantor, shall be junior and subordinate to the rights the City has in any such collateral or security, and to the rights the City has against such other Guarantor. If any amount shall be paid to the Guarantors on account of such subrogation or contribution rights at any time when all of the Indebtedness shall not have been paid in full, such amount shall be held by the Guarantors in trust for the City, segregated from other funds of the Guarantors, and shall, forthwith upon receipt by the Guarantors, be turned over to the City in the exact form received by the Guarantors (duly indorsed by the Guarantors to the City, if required), to be applied against the Indebtedness, whether matured or unmatured, in such order as the JPA may elect.

7. If any payment applied by the City to the Indebtedness is thereafter set aside, recovered, rescinded, or required to be returned for any reason (including, without limitation, bankruptcy, insolvency or reorganization of the Redeveloper or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application, and this Guaranty shall be enforceable as to such portion of the Indebtedness as fully as if such application had never been made.

8. The City is hereby irrevocably authorized at any time, after an Event of Default by Redeveloper under the Agreement and from time to time without notice to the Guarantors,

any such notice being hereby waived by the Guarantors, to set off and appropriate and apply any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the City, to or for the credit or the account of the Guarantors, or any part thereof, in such amounts as the City may elect, against any of the liabilities of the Guarantors hereunder, as the City may elect, whether or not the City has made any demand for payment and although such liabilities and claims may be contingent or unmatured. The rights of the City under this paragraph are in addition to other rights and remedies (including, without limitation, other rights of setoff) which the City may have.

9. Each Guarantor represents and warrants with respect to itself, but not with respect to the other Guarantor, that:

(a) The Guarantor has full power and legal right to execute and deliver, and to perform its obligations under, this guaranty;

(b) This Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms;

(c) The execution, delivery and performance of this Guaranty will not violate any provision or any requirement of law or contractual obligation and will not result in or require the creation or imposition of any lien on any of the properties or revenues of the Guarantor pursuant to any provision or requirement of law or contractual obligation;

(d) No consent of any other person (including, without limitation, any creditor of the Guarantor), and no consent or authorization of, filing with, or other act by or in respect of, any court, arbitrator or governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this guaranty;

(e) The Guarantor has filed or caused to be filed all tax returns required to be filed by it, and has paid all taxes due on said returns or on any assessments made against it.

The foregoing representations and warranties shall be deemed to have been made by each Guarantor with respect to itself, but not with respect to the other Guarantor, as of the date of this guaranty, and all of the representations and warranties shall survive the execution and delivery of this Guaranty.

10. The liability of each Guarantor under this Guaranty is independent of and in addition to and shall be cumulative with all other liabilities of the Guarantors to the City, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

11. Any invalidity or unenforceability of any provision or application of this Guaranty shall not affect other lawful provisions and applications hereof, and to this end the provisions of this Guaranty are declared to be severable. This Guaranty shall be construed

according to the internal law of the State of Nebraska, in which State it shall be performed by the Guarantors and may not be waived, amended, released or otherwise changed except by a writing signed by the City.

12. This Guaranty and every part thereof shall be effective upon delivery to the City, without further act, condition or acceptance by the City, shall be jointly and severally binding upon the Guarantors, and upon the legal representatives, successors and assigns of the Guarantors, and shall inure to the benefit of the City.

Dated as of the date first above written.

**GUARANTORS**

WRK, LLC, a Nebraska limited liability company

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

Name: \_\_\_\_\_

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

Chief Industries, Inc., a Delaware corporation

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

Name: \_\_\_\_\_

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

**EXHIBIT J**  
**MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS**

This Memorandum of Redevelopment Agreement & Use Restrictions (“Memorandum”) is made this \_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Lincoln, Nebraska, a municipal corporation (“City”), the West Haymarket Joint Public Agency, a political subdivision and corporate body politic of the State of Nebraska (“JPA”), and TDP Phase One, LLC, a Nebraska limited liability company (“Redeveloper”).

1. **Redevelopment Agreement.** The City, JPA, and Redeveloper have entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements being made by the City in the Redevelopment Area and the private improvements being made to real property owned by Redeveloper and legally described as:

\_\_\_\_\_ City of Lincoln, Lancaster  
County, Nebraska (the “Project Site”).

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the City of the private improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Project Effective Date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to make the public improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Redevelopment Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

4. **Use Restrictions of the Property.** Redeveloper hereby represents and agrees that neither all nor any portion of the RRO Project Parcels and Hotel Project Parcel shall be used, directly or indirectly, for the following uses:

(a) any outdoor off premises advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot

is for sale or lease by the owner thereof and except as may comply with the Exterior Design Criteria;

(b) any business whose predominant operation is the retail sale of alcoholic beverages for consumption on and off the premises (predominant shall mean retail gross sales of alcoholic beverages in excess of 50% of gross sales on the premises), except that up to 50% of the overall retail space contained in the RRO Improvements subject to a not to exceed maximum of 66 2/3% of such retail space abutting the outdoor public plaza (“Yard”) on the Plaza Project Parcel may be used for restaurants wherein the gross sales of alcoholic beverages exceed 50% of gross retail sales provided that such restaurants have a licensed kitchen and offers a full menu during the hours of 5:00 p.m. to 8:00 p.m. or any such business that has an unreasonable pattern of unlawful disturbances or liquor law violations (does not include micro-breweries, wine bars, pharmacies, or grocery stores);

(c) any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations (does not include pharmacies, cigar bars, or grocery stores);

(d) any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;

(e) any ground floor use by a business for which a majority of its ground floor area displays adult-oriented products;

(f) any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off site pari mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law; or

(g) at least 85% of the leasable retail square footage on any block face will have users whose minimum normal hours of operation, Monday through Saturday, are from 11:00 a.m. to 8:00 p.m.

**5. Environmental Use Restrictions on the Property.** Redeveloper hereby represents and agrees that the RRO Project Parcels and Hotel Project Parcel are subject to the following Environmental Use Restrictions:

(1) The RRO Project Parcels and Hotel Project Parcel shall not be used or developed in any manner that impairs, degrades or compromises the remediation performed by the JPA.

(2) Groundwater use is strictly prohibited as the entire redevelopment area is classified under Nebraska law as a RAC-III groundwater site. The only exception is for the

drilling, operation or maintenance of groundwater monitoring wells by the JPA for environmental purposes.

(3) The clean soil capping system of three (3) feet that was put into place by the JPA during site preparation must be maintained in both the short and long term. This cap serves as a protective barrier to any residual environmental contaminants that remain in the ground, and is required to meet federal, state and local floodplain regulations.

(4) As you begin vertical development of the site and prior to planned penetration of the soil capping system, any impacted soils leaving the area must be managed appropriately and in accordance with the JPA Environmental Contingency Plan. If impacted, those soils must be separately disposed at a permitted landfill.

(5) Changes in use or development to the property to any use other than industrial, commercial, office, multi-functional hotel, public park or plaza, open or green space, recreational area, or residential use with no ground floor dwelling units, will require the approval of the Nebraska Department of Environmental Quality (“NDEQ”).

It is intended that each of the restrictions set forth herein shall extend beyond the expiration of the Tax Increment Period, shall run with the land and shall bind every person having any fee or other interest in the RRO Project Parcels and Hotel Project Parcel and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

[SIGNATURE PAGES TO FOLLOW]

Executed by the City this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a municipal corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Chris Beutler, Mayor

WEST HAYMARKET JOINT PUBLIC AGENCY

\_\_\_\_\_  
Chris Beutler  
Chairperson of the 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 \_\_\_\_\_, 2012, by Chris Beutler, Mayor of the City of Lincoln.

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

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Chris Beutler, Chairperson of the Joint Public Agency Board of Representatives.

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

Executed by Redeveloper this \_\_\_\_ day of \_\_\_\_\_, 2012.

TDP PHASE ONE, LLC

By: From Lincoln For Lincoln I, LLC,  
Manager of TDP Phase One, LLC

By: WRK Management, LLC, Manager  
of From Lincoln for Lincoln I, LLC

By: WRK, LLC, Manager of WRK  
Management, LLC

By: \_\_\_\_\_  
William D. Scott, Co-Manager of WRK, LLC

By: \_\_\_\_\_  
Robert E. Scott, Co-Manager of WRK, LLC

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by William D. Scott, Co-Manager of WRK, LLC on behalf of TDP Phase One, LLC, a Nebraska limited liability company.

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

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Robert E. Scott, Co-Manager of WRK, LLC on behalf of TDP Phase One, LLC, a Nebraska limited liability company.

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

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

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

3           That the attached Agreement between Evan Corporation d/b/a Evan Fall Protection Systems  
4 Inc. and the West Haymarket Joint Public Agency for construction of the Fall Protection Systems for  
5 the Pinnacle Bank Arena is hereby accepted and approved and the Chairperson of the West  
6 Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said  
7 Contract Agreement on behalf of the West Haymarket Joint Public Agency.

8           Adopted this \_\_\_\_\_ day of April, 2012.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

West Haymarket Joint Public Agency  
Board of Representatives

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

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

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

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

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)  
RFP 12-033**

**CONTRACT AGREEMENT**

THIS JPA CONTRACT AGREEMENT ("Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between **EVAN CORPORATION d/b/a EVAN FALL PROTECTION SYSTEMS, INC.**, hereinafter called Contractor, and the **WEST HAYMARKET JOINT PUBLIC AGENCY**, hereinafter called JPA.

**RECITALS**

WHEREAS, JPA has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published a request for proposal ("RFP 12-033") advertisement for and in connection with said Work, to wit:

Pinnacle Bank Arena  
Fall Protection Systems

WHEREAS, the Contractor, in response to such advertisement, has submitted to the JPA, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said RFP 12-033 advertisement.

WHEREAS, JPA, in the manner prescribed by law, has publicly advertised, opened, examined, and canvassed the Proposals submitted in response to such RFP 12-033 advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest and best bidder for the said Work for the sum or sums named in the Contractor's Proposal. Copies of the RFP 12-033 advertisement, the Instructions to Proposers, RFP 12-033 addendums, if any, and the Contractor's Proposal (collectively "Bid Documents") are attached hereto as Exhibit A.

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

WHEREAS, Contractor understands and acknowledges that the Contractor is required to pay Davis-Bacon Act prevailing wages in accordance with the Building Construction General Wage Decision NE120065 dated 01/20/2012 ("NE65 Wage Decision").

WHEREAS, Contractor understands and acknowledges that if the NE65 Wage Decision is modified or superseded by another Building Construction General Wage Decision for Lancaster County, Nebraska which is in effect (i.e., published on the Wage Determinations On-

Line (WDOL) website: www.wdol.gov) on the date of contract award ("New Wage Decision"), the Contractor shall pay prevailing wages in accordance with said New Wage Decision.

WHEREAS, the applicable NE65 Wage Decision or New Wage Decision is hereinafter referred to as the "Effective Wage Decision."

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

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

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

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

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

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

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

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

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

A. **INDEMNIFICATION OF JPA.**

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

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

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

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

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

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

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

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

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

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

B. **Special Insurance Requirements.** Contractor shall at all times during the term of this Contract purchase and maintain in place additional and increased insurance coverage as required by the Quality Assurance provisions in Subparagraphs 6.1.1, 6.2.4, and 6.3.1 of the Arena Fall Protection Systems Specifications.

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

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

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

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

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

1. Bid Documents (Exhibit A).
2. Exhibit B – Intentionally Omitted.
3. Exhibit C – Intentionally Omitted.
4. Other Attached Contract Documents (Exhibit D).
  - a. Commentary to Accompany Construction Bonds.
  - b. Construction Performance Bond.
  - c. Construction Payment Bond.
  - d. Insurance Requirements for all West Haymarket Joint Public Agency Contracts (approved March 2012).
  - e. Executive Order. No. 83319.
  - f. 29 C.F.R. § 5.5(a) Contract Provisions.
  - g. Effective Wage Decision.
  - h. Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323
5. Other Non-Attached Contract Documents.
  - a. City of Lincoln Standard Specifications for Municipal Construction (2011 Edition). References to City in the Standard Specifications shall mean JPA, references to City Project Manager shall mean PC Sports. Notwithstanding any provisions to the contrary in the Standard Specifications, Change Orders shall be approved in accordance with the JPA’s Change Order Process adopted by JPA Resolution No. WH00195.
  - b. Lincoln Standard Plans 2010.
  - c. Project Plans, Specifications, and Profile Detail Sheets.
  - d. Any executed Addenda or Change Orders.
  - e. Sales Tax Exempt Forms (to be provided upon award of the Special Purchase).

- i. Form of Nebraska Resale or Exempt Sales Certificate.
- ii. Form of Purchasing Agent Appointment.

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

Note: The remainder of this project, including items exclusively used for providing fire protection, such as fire hydrants, is exempt from sales and use tax.

- f. Requirements in 29 C.F.R. parts 1, 3 and 5.

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

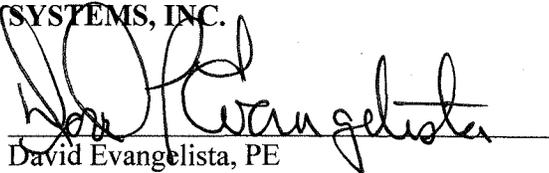
The Contractor and JPA hereby agree that all the terms and conditions of this Contract shall, by these presents, be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

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

**CONTRACTOR:**

**EVAN CORPORATION, a Rhode Island Corporation, d/b/a EVAN FALL PROTECTION SYSTEMS, INC.**

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

  
David Evangelista, PE  
President

**JPA:**

**WEST HAYMARKET JOINT PUBLIC AGENCY**

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

Chris Beutler, Chairperson of the West Haymarket Joint Public Agency Board of Representatives

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



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

## Bid Opportunity Detail

Bid Information		Contact Information	
<b>Bid Type</b>	RFP (Sealed)	<b>Contact Name</b>	Vince Mejer Purchasing Agent
<b>Issue Date &amp; Time</b>	2/24/2012 2:48:22 PM Central	<b>Address</b>	Purchasing\City & County 440 S. 8th St. Lincoln, NE 68508 USA
<b>Close Date &amp; Time</b>	3/16/2012 12:00:00 PM Central	<b>Contact Phone</b>	1 (402) 441-8314
<b>Bid Status</b>	Unsealed	<b>Contact Fax</b>	1 (402) 441-6513
<b>Bid Notes</b>	This is to notify you that RFP 12-033 for RFP for a Fall Protection System at the Pinnacle Bank Arena is available. Please prepare your written response and return to our office as noted in the RFP according to the specifications. Also, you must respond to the Attribute and Line Item sections of this electronic bid and submit before the closing date and time.		<b>Contact Email</b> vmejer@lincoln.ne.gov

### Event Activities

No Event Activities

### Bid Documents

Document	Format	Description
Bid Tabulation by Supplier Spreadsheet	Spreadsheet (XLS)	Bid Tabulation by Supplier Spreadsheet
Bid Tabulation by Line Item Spreadsheet	Spreadsheet (XLS)	Bid Tabulation by Line Item Spreadsheet

### Bid Attachments

Header 12-033 adv.pdf (7KB)	Notice to Proposers
Header Instruction to Proposers, JPA 09-11.pdf (22KB)	Instructions to Proposers - JPA
Header Ex.D - Other Doc.pdf (2.23MB)	Exhibit D - Other Documents
Header JPA Contract Agr-PinnacleBankArenaFallProtectionSystems.pdf (73KB)	Sample Contract
Header 12-033_spec.pdf (36KB)	Specifications
Header 12-033_ftp.pdf (127KB)	Plans/Drawings

**EXHIBIT A**

**Advertise 1 time  
Friday, February 24, 2012**

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

Sealed proposals will be received by the Purchasing Agent of the City of Lincoln/Lancaster County, Nebraska **BY ELECTRONIC BID PROCESS** until: **12:00 pm, Friday, March 16, 2012** for providing the following:

**JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033**

Submitters must be registered on the City/County's E-Bid site in order to respond to the above Bid. To Register go to: [lincoln.ne.gov](http://lincoln.ne.gov) (type: e-bid - in search box, then click "Supplier Registration"). Upon e-mail notification of registration approval, you may go to the E-Bid site to respond to this bid. Questions concerning this submittal process may be directed to City/County Purchasing at (402) 441-8314 or (402) 441-7410 or [vmejer@lincoln.ne.gov](mailto:vmejer@lincoln.ne.gov)

**INSTRUCTIONS TO PROPOSERS**  
**JOINT PUBLIC AGENCY (JPA)**  
**PURCHASING DIVISION**

**1. PROPOSAL PROCEDURE**

- 1.1 All responses to electronic RFP's will be completed as outlined in this document and the specifications using a two step process.
  - A) Proposers shall respond electronically to all attributes and addendums as required.
  - B) All written responses and information shall be mailed or delivered to the office of the Purchasing Division as outlined in the specifications.
- 1.2 Proposer shall submit complete sets of the RFP documents and all supporting material as indicated in the specifications. Any interlineation, alteration or erasure on the specification document shall be initialed by the proposer. Proposer shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the proposer's letterhead and firmly attached to the response/offer document.
- 1.3 Proposed prices shall be submitted on company letterhead with the proposal if the specifications indicate that price will be evaluated as part of the award criteria.
- 1.4 Failure to complete the electronic and written portions of the RFP may cause the proposal to be rejected.
- 1.5 Response by a firm / organization other than a corporation must include the name and address of each member.
- 1.6 A response by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.7 Any person signing a response for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.8 Proposals received after the time and date established for receiving offers will be rejected.

**2. EQUAL OPPORTUNITY**

- 2.1 Each proposer agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, proposer shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, disability, national origin, age, or marital status.

**3. DATA PRIVACY**

- 3.1 Proposer agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 3.2 The proposer agrees to hold the JPA harmless from any claims resulting from the proposer's unlawful disclosure or use of private or confidential information.
- 3.3 Proposer agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations pertaining to confidentiality of health information.
  1. If applicable to the work requested a sample "Business Associate Contract" will be included, which will be part of the contract and incorporated by this reference.

**4. PROPOSER'S REPRESENTATION**

- 4.1 Each proposer by signing and submitting an offer, represents that he/she has read and understands the proposal documents, and the offer has been made in accordance therewith.
- 4.2 Each offer represents the proposer is familiar with the local conditions under which the work will take place and has correlated observations with the RFP requirements

**5. INDEPENDENT PRICE DETERMINATION**

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

**6. SPECIFICATION CLARIFICATION**

- 6.1 Proposers shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of specification documents.
- 6.2 Proposers desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to date and time for response receipt.
- 6.3 Interpretations, corrections and changes made to the specification documents will be made by electronic addenda.
- 6.4 Oral interpretations/changes to Specification Documents made in any other manner than written form, will not be binding on the JPA; proposers shall not rely upon oral interpretations.

## **7. ADDENDA**

- 7.1 Addenda are instruments issued by the JPA prior to the date for receipt of offers which modify or interpret the specification document by addition, deletion, clarification or correction.
- 7.2 Changes made to the specification documents will be made by electronic addenda to all bidders via e-mail notice.
- 7.3 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of offers, except an addendum withdrawing the RFP, or addendum including postponement.
- 7.4 Proposers shall verify addendum receipt electronically prior to bid closing or RFP may be rejected.

## **8. ANTI-LOBBYING PROVISION**

- 8.1 During the period between the advertised date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their proposal with any member of the JPA except in the course of JPA-sponsored inquiries, briefings, interviews, or presentations, unless requested by the JPA.

## **9. SITE VISITATION**

- 9.1 Proposers shall inform themselves of the conditions under which work is to be performed, including: site of work, the structures or obstacles which may be encountered and all other relevant matters concerning work performance.
- 9.2 The proposer will not be allowed any extra compensation by or for any condition which he/she might fully have informed themselves of prior to submitting the offer.

## **10. EVALUATION AND AWARD**

- 10.1 The signed proposal shall be considered an offer on the part of the proposer. Such offer shall be deemed accepted upon issuance by the of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 10.2 No offer shall be withdrawn for a period of ninety (90) calendar days after the time/ date established for receiving offers, and each proposer agrees in submitting an offer.
- 10.3 **Fee envelopes MAY be opened** and evaluated as part of the criteria for ranking interested proposers.
- 10.4 The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor; also the JPA has the flexibility to negotiate with a select firm or selected firms to arrive at a mutually agreeable relationship.
- 10.5 A committee will be assigned the task of reviewing the proposals received.
  - 1. The committee may request documentation from Proposer(s) of any information provided in their proposal response, or require the Proposer to clarify or expand qualification statements.
  - 2. The committee may also require a site visit and/or verbal interview with a Proposer or select group of Proposers to clarify and expand upon the proposal response.
- 10.6 The RFP will be awarded to the most responsible proposer whose proposal will be most advantageous to the JPA, and deemed to best serve JPA requirements.
- 10.7 The JPA reserves the right to accept or reject any or all offers, parts of offers; request rebids; waive irregularities and technicalities in offers; such as shall best serve the requirements and interests of the JPA.

## **11. TERMINATION/ASSIGNMENT**

- 11.1 The JPA may terminate the Contract if the Contractor:
  - 1. Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide/ complete the work as requested.
  - 2. Disregards laws, ordinances, or regulations or orders of a public authority having jurisdiction over the Contract.
  - 3. Otherwise commits a substantial breach of any provision of the Contract Document.
- 11.2 *By mutual agreement both parties of the contract agreement*, upon receipt and acceptance of not less than a thirty (30) calendar days written notice, the contract may be terminated on an agreed upon date, prior to the end of the contract period, without penalty to either party.
  - 1. Upon any such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof, and as the sole right and remedy of the Contractor, the JPA shall pay Contractor in accordance with this section.
  - 2. Upon such termination, the obligations of the Contract shall continue as to options of the work already performed and as to bona fide obligations the Contractor assumed prior to the date of termination.
- 11.3 In the event of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or trustee for the benefit of creditors, of the property of the Contractor, the JPA may cancel this contract or affirm the contract and hold the Contractor responsible for damages.
- 11.4 The contract established as a result of this RFP process shall not be transferred to/or assigned without prior written consent of the JPA.

## **12. INDEMNIFICATION**

- 12.1 The proposer shall indemnify and hold harmless the JPA, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any 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 goods, materials and equipment furnished under this contract, including the loss of use resulting therefrom; is caused in whole or in part by any one of them or anyone for whose acts made by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

- 12.2 In any and all claims against the JPA or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 9.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**13. TERMS OF PAYMENT**

- 13.1 Unless other specification provisions state otherwise, payment in full will be made by the JPA within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

**14. LAWS**

- 14.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

**15. LIVING WAGE**

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

**16. AFFIRMATIVE ACTION**

- 16.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

**17. TAXES AND TAX EXEMPT CERTIFICATE**

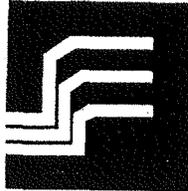
- 17.1 The JPA is generally exempt from any taxes imposed by the State or Federal Government. A Tax Exemption Certificate will be provided as applicable.
- 17.2 Materials, supplies, labor & service used for the Water Division of the City of Lincoln are taxable per Reg. 066.14A and no exemption certificate will be issued.

**18. CITY AUDIT ADVISORY BOARD**

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

**19. E-VERIFY**

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



# **JPA-PINNACLE BANK ARENA FALL PROTECTION - RFP**

**BID NUMBER 12-033**

**BID DATE: MARCH 16, 2012**

**SUBMITTED BY:  
EVAN CORPORATION DBA EVAN FALL PROTECTION  
SYSTEMS, INC.**

**EVAN CORPORATION**  
Engineered Fall Protection Systems

22 Southwest Avenue  
Jamestown, RI 02835  
Tel: 401-423-2230  
Fax: 401-423-2785  
E-mail: [info@evancorp.com](mailto:info@evancorp.com)  
[www.evancorp.com](http://www.evancorp.com)

**EXHIBIT A**

<b>1</b>	4.2.1 Cost of the complete installed work
<b>2</b>	4.2.2 Sample Certificate of Insurance Engineer's Registration Contractor License
<b>3</b>	4.2.3 Bill of Materials and Conceptual Design Report
<b>4</b>	4.2.4 Manufacturer's Data Sheets
<b>5</b>	4.2.5 Conceptual Plan
<b>6</b>	6.4 Additional Qualifications
<b>7</b>	6.5.1 Legal Disputes 6.5.2 Construction Delays
<b>8</b>	6.5.3 Engineer's Certification

**JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033**

**4.2.1 Cost of the complete installed work.**

The cost of the complete installed work is:

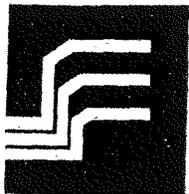
**One hundred thirty six thousand seven hundred fifty dollars and no cents (\$ 136,750.000).**

Please note that there is a conflict in the insurance requirements for this project which has a monetary impact. The Contract Agreement, Insurance Section, makes reference to JPA Insurance Requirements of \$10,000,000 Aggregate. The Quality Assurance Section of the Specifications also makes reference to insurance requirements however they are only \$5,000,000 aggregate. In an RFI of February 27, 2012, we requested clarification of the insurance requirements. This RFI has not been answered. The above price reflects the lower insurance requirements indicated in the Specifications. Should the higher limits be required, there will be an increase in price of \$6,120.00 per year for this additional expense.

Submitted by:

Evan Corporation dba Evan Fall Protection Systems, Inc.

  
David P. Evangelista, PE  
President

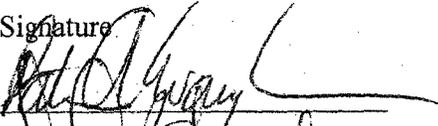
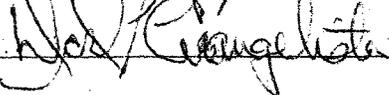


EVAN CORPORATION

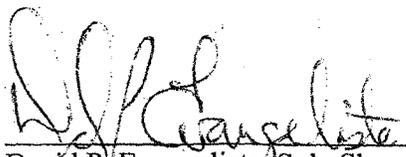
CONSENT OF SOLE SHAREHOLDER

As of the 14th day of March, 2012, the undersigned, being the sole shareholder of Evan Corporation, a Rhode Island corporation (the "Corporation"), in accordance with the applicable provisions of the Rhode Island Business Corporation Act and the articles of incorporation and bylaws of the Corporation, do hereby consent to the following action being taken by the Corporation in lieu of the annual meeting:

RESOLVED: That each and any of the following persons be, and is hereby authorized and empowered in the name and behalf of this Corporation to execute contracts and/or purchase orders and submit bids in connection with any transactions between this Corporation and the City of Lincoln NE.

Name	Signature	Title
Patricia A. Evangelista		Treasurer
David P. Evangelista		President

IN WITNESS WHEREOF, the undersigned have executed this consent as of the day and year first written above.

  
David P. Evangelista, Sole Shareholder

## Tricia Evangelista

---

**From:** Tricia Evangelista [pae@evancorp.com]  
**Sent:** Tuesday, March 13, 2012 12:00 PM  
**To:** 'vmejer@lincoln.ne.gov'  
**Subject:** RE: Lincoln Bidding Bid Addendum Notification: 12-033 Addendum 1

This acknowledges receipt of Addendum 1 for the above referenced project. We no longer find the Addendum posted on the City of Lincoln Purchasing web site and as such see no way of acknowledging receipt within the system.

Please confirm that this email is sufficient evidence of acknowledgement.

\*\*\*\*\*

Patricia A. Evangelista  
Evan Corporation dba Evan Fall Protection, Inc.  
22 Southwest Ave.  
Jamestown RI 02835  
PH: 401-423-2230  
FX: 401-423-2785  
[www.evancorp.com](http://www.evancorp.com)

-----Original Message-----

**From:** [purchasing@lincoln.ne.gov](mailto:purchasing@lincoln.ne.gov) [mailto:[purchasing@lincoln.ne.gov](mailto:purchasing@lincoln.ne.gov)]  
**Sent:** Friday, March 02, 2012 11:13 AM  
**To:** [pae@evancorp.com](mailto:pae@evancorp.com)  
**Subject:** Lincoln Bidding Bid Addendum Notification: 12-033 Addendum 1

Dear Supplier,

An addendum has been issued on the following bid opportunity. To view the amended bid opportunity, login to the site at: <https://customer.ionwave.net/Col>

Any response data you have entered has been automatically copied to the addended bid, however it has been unsubmitted at the buyer's request. \*YOU MUST LOGIN AND RE-SUBMIT YOUR BID\*.

Addendum Reason: Attached Addendum No. 1 and revised plan sheet.

### Bid Opportunity Information:

Original Bid Number: 12-033

New Bid Number: 12-033 Addendum 1

Bid Title: JPA-Pinnacle Bank Arena Fall Protection - RFP

Bid Notes: This is to notify you that RFP 12-033 for RFP for a Fall Protection System at the Pinnacle Bank Arena is available. Please prepare your written response and return to our office as noted in the RFP according to the specifications. Also, your must respond to the Attribute and Line Item sections of this electronic bid and submit before the closing date and time.

Issue Date: 2/24/2012 2:48:22 PM Central

Close Date: 3/16/2012 12:00:00 PM Central

It is your responsibility to determine if the changes made by the buyer warrant changes in your response. To view the list of changes, select the bid request and click on 'History'.

If you have questions about this bid opportunity or the system, please contact Purchasing.  
Phone: 402-441-7410

EXHIBIT A





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/5/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Affiliated Insurance Managers, Inc. 935 Jefferson Blvd Suite 2001 Warwick RI 02886	<b>CONTACT NAME:</b> Heidi Forte <b>PHONE (A/C, No, Ext):</b> 401-352-3000 <b>E-MAIL ADDRESS:</b> heidi@aiminsco.com <b>PRODUCER CUSTOMER ID #:</b>		<b>FAX (A/C, No):</b> 401-352-0020													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Interstate Fire &amp; Casualty Co.</td> <td>22829</td> </tr> <tr> <td>INSURER B: Selective Ins Co of S. Carolin</td> <td>19259</td> </tr> <tr> <td>INSURER C: Underwriters at Lloyds, London</td> <td>15792</td> </tr> <tr> <td>INSURER D: Harleysville Mutual Ins Co</td> <td>14168</td> </tr> <tr> <td>INSURER E: National Union Fire Ins Co PA</td> <td>19445</td> </tr> <tr> <td>INSURER F: Liberty Surplus Ins Corp.</td> <td>10725</td> </tr> </tbody> </table>			INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Interstate Fire & Casualty Co.	22829	INSURER B: Selective Ins Co of S. Carolin	19259	INSURER C: Underwriters at Lloyds, London	15792	INSURER D: Harleysville Mutual Ins Co	14168	INSURER E: National Union Fire Ins Co PA	19445	INSURER F: Liberty Surplus Ins Corp.
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<b>INSURED</b> Evan Corporation dba Evan Fall Protection Inc. dba Evan Fall Protection Systems, Inc. 22 Southwest Avenue Jamestown RI 02835																

**COVERAGES**                      **CERTIFICATE NUMBER:** 1467769343                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
F	<b>GENERAL LIABILITY</b>			1000000762-01	12/19/2011	10/12/2012	EACH OCCURRENCE	\$1,000,000	
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$100,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	excluded	
	GEN'L AGGREGATE LIMIT APPLIES PER:							PERSONAL & ADV INJURY	\$1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$2,000,000	
							PRODUCTS - COMP/OP AGG	\$2,000,000	
								\$	
B B	<b>AUTOMOBILE LIABILITY</b>			S1995719 S2010392	12/20/2011 1/4/2012	10/12/2012 10/12/2012	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000	
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$	
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$	
	<input checked="" type="checkbox"/> HIRED AUTOS							\$	
	<input checked="" type="checkbox"/> NON-OWNED AUTOS							\$	
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b>			PFX00048494868	10/12/2011	10/12/2012	EACH OCCURRENCE	\$5,000,000	
	<input type="checkbox"/> <b>EXCESS LIAB</b>						AGGREGATE	\$5,000,000	
	<input type="checkbox"/> DEDUCTIBLE							\$	
	<input type="checkbox"/> RETENTION \$							\$	
E	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			WC005867915	10/12/2011	10/12/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	<input type="checkbox"/> OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT	\$1,000,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$1,000,000	
							E.L. DISEASE - POLICY LIMIT	\$1,000,000	
D C	Equipment Floater			CIM00000075352G	10/12/2011	10/12/2012	Rented Equipment	100,000	
	Professional Liability			1127500328/011	10/12/2011	10/12/2012	2,000,000	2,000,000	

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Coverage for Additional Insured does not apply to Worker's Compensation coverage or Professional Liability Coverage.  
Project: Pinnacle Bank Arena Fall Protection System installation, Lincoln, NE. Certificate Holder is named as additional insured for work performed.

<b>CERTIFICATE HOLDER</b>  West Haymarket Joint Public Agency c/o City Attorney, City of Lincoln, Nebraska 555 South 10th Street Lincoln NE 68508	<b>CANCELLATION 30</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  



## Print This Page for Your Records

Your submission has been successfully completed and sent to the Nebraska Board of Engineers and Architects. If you find any incorrect information on this document please contact us at the address below. **This page is your receipt and renewal card. Please print a copy of this page for your records.**

Your identification card is to the right; cut it out and carry it with you. Should you need another, notify the Board of Engineers and Architects, P.O. Box 95165; Lincoln, NE 68509. Phone: (402) 471-2021; Fax: (402) 471-0787; Email: [nbea.office@nebraska.gov](mailto:nbea.office@nebraska.gov).

**David P Evangelista**  
is licensed to practice  
**Civil Engineering**  
In the State of Nebraska  
Until **December 31, 2013**  
License Number: **E-10247**



Secretary, Board of Engineers and Architects

Receipt for payment of your biennial fee to practice **Civil Engineering** in Nebraska:

**Renewal Fee:** \$90  
**Total Paid:** \$90  
**Payment Date:** 12/15/2011 11:17 AM  
**Payment Conf #:** 1956802  
**License #:** E-10247

**Licensee:** David P Evangelista  
**Business Name:** DAVID P EVANGELISTA PE  
**Work Address 1:** 28 COULTER DR  
**City:** JAMESTOWN  
**State:** RI **Zip:** 02835-1616  
**Country:** United States

### ----- Please Note -----

You have *not* been selected for a continuing education audit for this renewal period.

Print this page for your records.

Please [click here](#) to exit the renewal system.

EXHIBIT A

Nebraska Department of Labor  
Contractor Registration  
550 So. 16th Street, Lincoln, NE 68508  
(402) 471 - 2239

Date Issued  
09/01/2011

Date Expires  
09/01/2012

CONTRACTOR REGISTRATION CERTIFICATE

This certificate is non-transferable

Fee Paid: \$40.00

Registration #  
23735

Year  
11

Business:  
EVAN FALL PROTECTION SYSTEMS, INC.  
22 SOUTHWEST AVENUE  
JAMESTOWN, RI 02835

*Catherine D. Long*  
Commissioner of Labor

11-CRA

EXHIBIT A

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
 FALL PROTECTION SYSTEM  
 REQUEST FOR PROPOSAL BID NO. 12-033

**4.2.3 Complete list of products to be incorporated within the Work (Bill of Materials).**

<b>PINNACLE BANK</b>		
<b>PRELIMINARY BILL OF MATERIAL</b>		
<b>ITEM DESCRIPTION</b>	<b>QTY</b>	<b>U.M.</b>
8mm System Tag	24	EA
8mm 7x7 Stainless Steel cable (per FT)	3356	LF
8mm Intermediate MultiSafe	64	EA
8mm Hex Swage Toggle	24	EA
8mm Hex Tensioner	24	EA
Unieye	16	EA
ZORBIT	4	EA
"D" RING ANCHORAGE	20	EA
Intermediate Stanchion	38	EA
End Stanchion	34	EA
SHUTTLE - LARGE RING	4	EA
6 FT SHOCK WAVE II - 100 %	4	EA
HARNESS	4	EA
SRL - REBEL 33 FT	2	EA
CARABINER (3600 lb gate)	2	EA
RESCUE POSITIONING DEVICE @ 125ft	1	EA
D Ring Extension	1	EA
First Man Up - RESCUE POLE	1	EA

**4.2.3.1 With the list of products provide a written description of how the products function as a system.**

**Conceptual Design Report**

Our design for the Fall Protection System at the Pinnacle Bank Arena meets, and exceeds, the requirements of the Specification "Arena Fall Protection Systems". The enclosed plans indicate our proposed concept. Please note that any aspects of this design may be modified as a result of discussions and negotiations with the owner and design team.

Our engineered fall protection system design incorporates components that are produced by Capital Safety, an international manufacturer of fall protection systems. The components that we have selected for use in this facility are from the following Capital Safety product lines:

- DBI/Sala
- Protecta
- Evolution
- Uniline

Our proposed system consists of engineered, multi-span horizontal lifelines, designed for use by two workers per cable sub span. In-line energy absorbers have been incorporated into our design to limit the maximum applied cable tension, where required. Additionally, tension indicators are provided to ensure proper line tension. Main cables will be equipped with "hands free by-pass capability" that will essentially allow workers to bypass intermediate brackets without detaching from the system.

There are four major design elements to our system. They are:

1. **Rigging Grid Fall Protection.** In general, these are stanchion support systems. To accomplish this, we will design, furnish and install structural steel stanchions that will support the horizontal lifelines. These cables will be mounted at 6'-6" and 6'-9" above the grid top of steel. As indicated in our plans, we propose to run the cables over the catwalks at 6'-9" +/- above the walking surface. This is a practice that has been successfully employed on other project and results in a cost savings as it reduces the number of stanchions required for the installation. If however, the cables cannot be installed over the catwalks due to overhead obstructions, additional stanchions can be provided that will allow us to terminate cables at the catwalks. It is also important to note that the grid fall protection cables will cross over the truss bottom chords at approximately 4'-6" above the walking surface, as we have indicated on the enclosed plans. While this is not an ideal situation, we find it acceptable, and better than the alternative which is to start and stop the cables at each truss crossing.
2. **Main Truss Bottom Chord Fall Protection.** Fall protection is provided along the bottom chord of the four main load carrying trusses. The cable systems along these trusses will be mounted approximately 6'-6" above the bottom chord walking surface and will be attached at the truss verticals by means of drilling and bolting. These cables will extend beyond the limits of the catwalk and cover a length of approximately 245' linear feet each.
3. **Platform Fall Protection.** There are ten catwalks platforms around the rigging grid. These are typically used as spot light platforms, and sometimes for equipment such as dimmer racks. Under the presumption that they are spotlight platforms, there are typically removal rail sections that will allow the operator pan and tilt the spotlight. Fall protection must be provided for spotlight operators that are working on these platforms when the rail section is removed. While there are a variety of options that can be employed for this type application, we have determined that the installation of engineered "D" ring anchors are best suited based on the platform design. Our plans indicate that we will furnish and install two "D" ring anchors at each platform. We have also

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

included in our proposal the cost for ten sets of user equipment for spotlight operators including harnesses, 20 ft. SRL's, carabiner and choker strap.

4. **High Truss Fall Protection and Access Ladders.** Current arena rigging fall protection systems provided coverage for a width that varies from 125 feet to 225 feet depending on the arena size. While the rigging grid is adequate at 100 feet wide, fall protection should extend beyond these limits, not only along the main trusses, but along the bracing trusses as well. The protection we have shown on our plan will extend the protected width to approximately 175 feet. While we recognize that the bracing trusses may not have been designed for rigging loads, it is common practice for items with nominal load to be rigged at these locations. The bracing truss coverage that we have shown is the minimum that should be considered. If the budget permits, coverage should be provided at the next bracing truss also. The cable systems along these trusses will be mounted approximately 6'-6" above the bottom chord walking surface and will be attached at the truss verticals by means of drilling and bolting. Wire rope ladders with SRL's for vertical fall protection have been shown on our plan to provide access to the bracing truss systems.

We have reviewed our proposed coverage as it relates to the curtain systems. While most of the arena reduction curtains fall within the limits of our proposed coverage, and the nearly all of the bowl reduction curtains fall without, we do not recommend increasing the fall protection coverage. Typically, initial installation of these systems will be performed from man lifts and/or temporary fall protection. In that these systems require little, if any maintenance, permanent fall protection to these locations is not warranted. Maintenance or repairs can be performed by workers utilizing man lifts and temporary fall protection.

We have also reviewed the HVAC and electrical drawings that we included in this bid package and do not anticipate any conflicts with our proposed design.

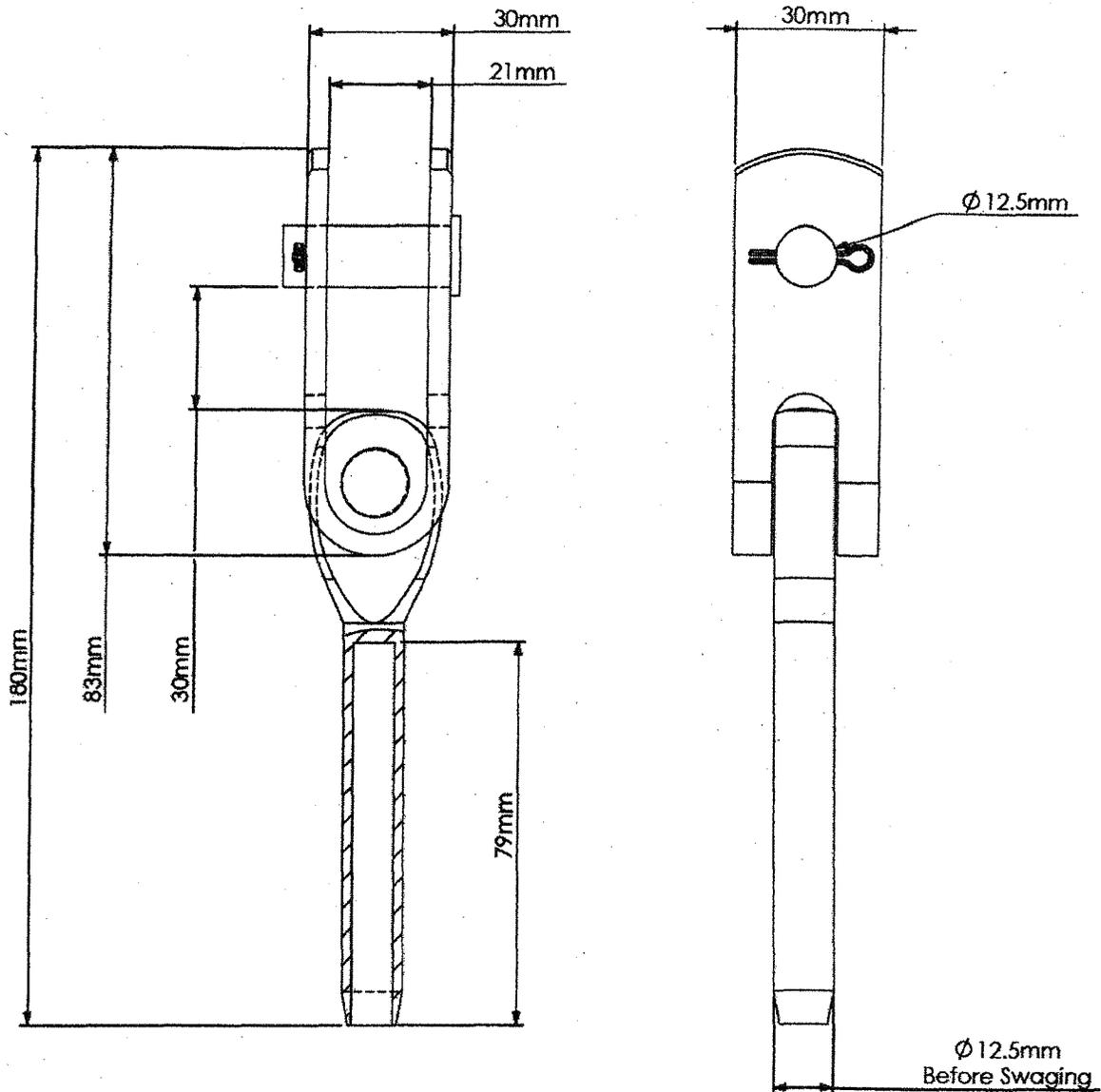
In addition to the systems we have described herein, we will provide the user and rescue equipment as required by the contract specification along with manuals, inspections and training.

# Technical Datasheet No: 906



## Uni 8 - Hex Swage Toggle

Part: U8S0403



\* Refer to Datasheet 1008 for hex swaging instructions

### Component Specification

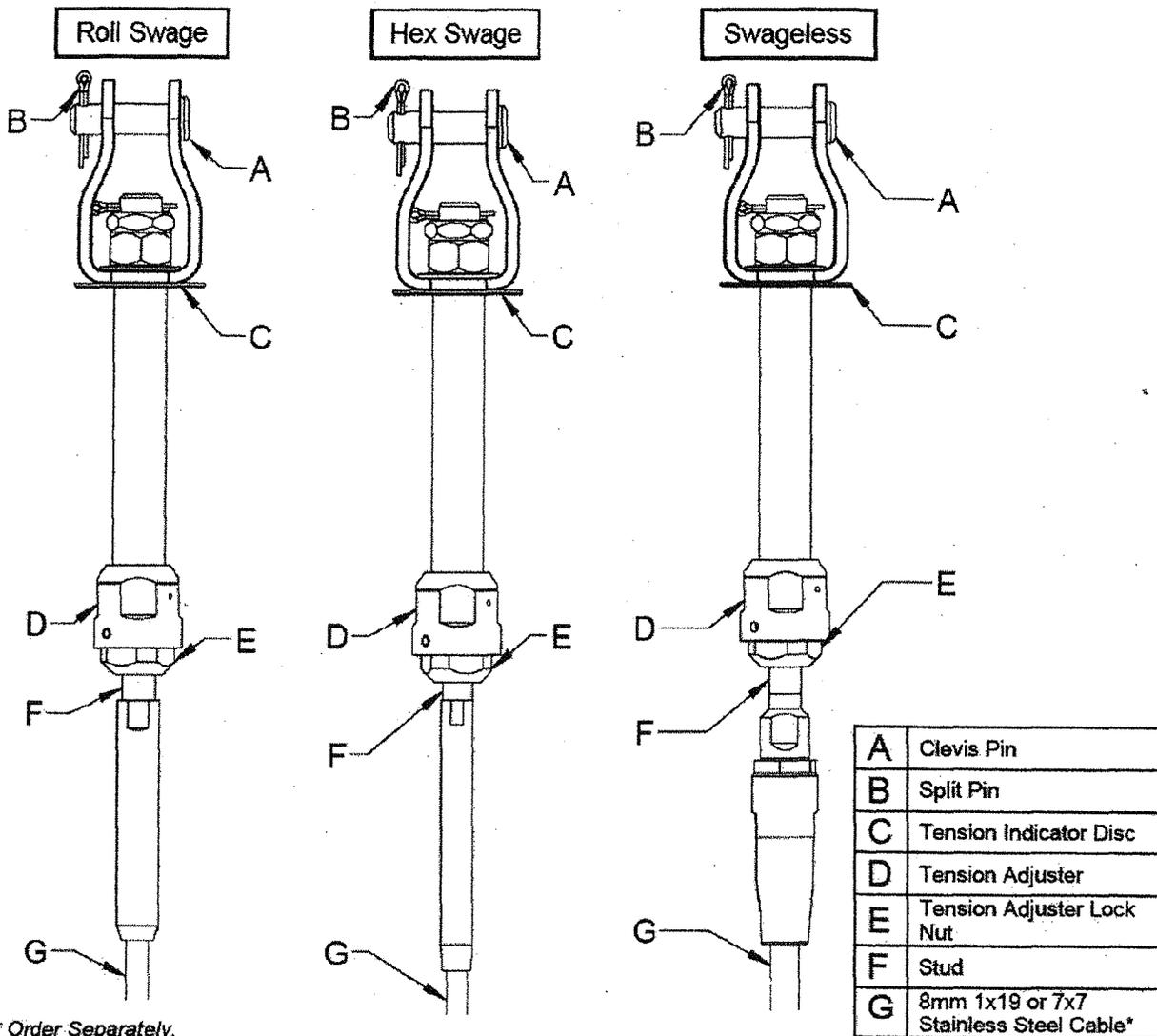
Material	316 Stainless Steel
Finish	Self Colour
Quality	100% Visual Inspection
Strength	19kN max permitted arrest load, min break strength 38kN
Approvals	EN795 Class C & EN353-1
Application	For use with $\phi 8\text{mm}$ 1 x 19 or 7 x 7 wire only

# Technical Datasheet No: 0915



## Uni8 Tensioning Components

- Uni8 Roll Swage 0.8kN Tensioner - U8T0400
- Uni8 Hex Swage 0.8kN Tensioner - U8T0402
- Uni8 Swageless 0.8kN Tensioner - U8T0405
- Uni8 Roll Swage 5kN Tensioner - U8T0400-5
- Uni8 Hex Swage 5kN Tensioner - U8T0402-5
- Uni8 Swageless 5kN Tensioner - U8T0405-5

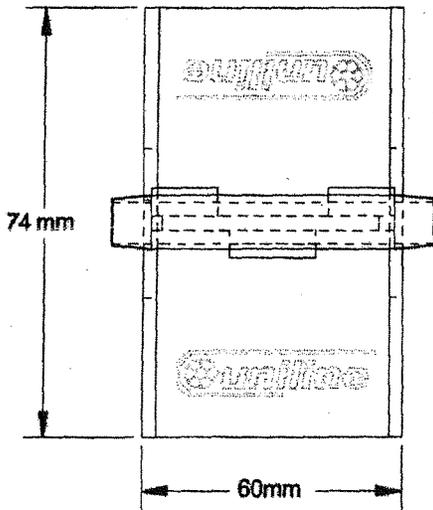
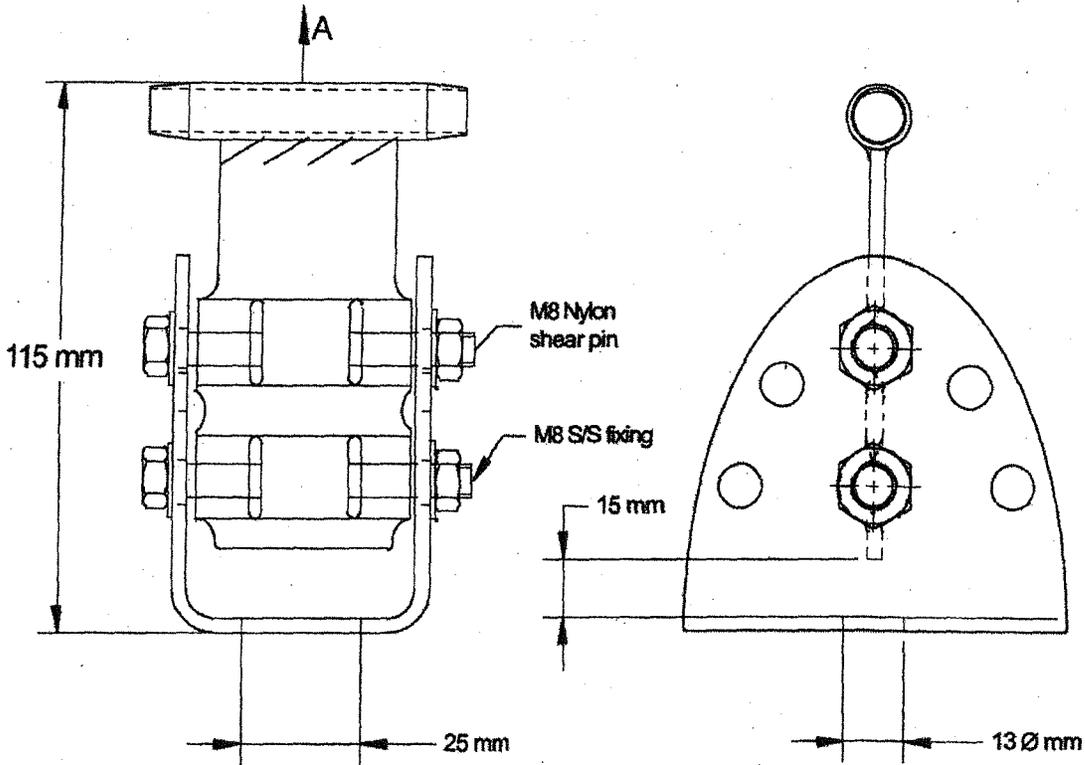


### Application

The tensioner unit is attached to the anchor point using the clevis pin and split pin. It is used to set the tension of the cable in horizontal applications. Refer to installation instructions for information on assembly and installation.

### Component Specification

<b>Material</b>	316 Stainless Steel
<b>Finish</b>	Natural
<b>Quality</b>	100% Visual Test. 100% Functional Test.
<b>Strength</b>	19kN Maximum permitted arrest load, minimum break strength 38kN
<b>Approvals</b>	EN 795 Class C



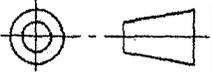
**MATERIALS:**  
 316 Stainless steel  
 Nuts and bolts - A4/70 (min grade) torque 15Nm

**FINISH:** Electropolished

**LOADING:** Proof load direction A - 16kN

**QUALITY CONTROL:**  
 Sample operational check  
 100% visual inspection  
 Batch numbered

**NOTES:**  
 Minimum grade A4/70 M12 fastening  
 should be used to fix bracket to structure  
 at a recommended torque of 50 Nm

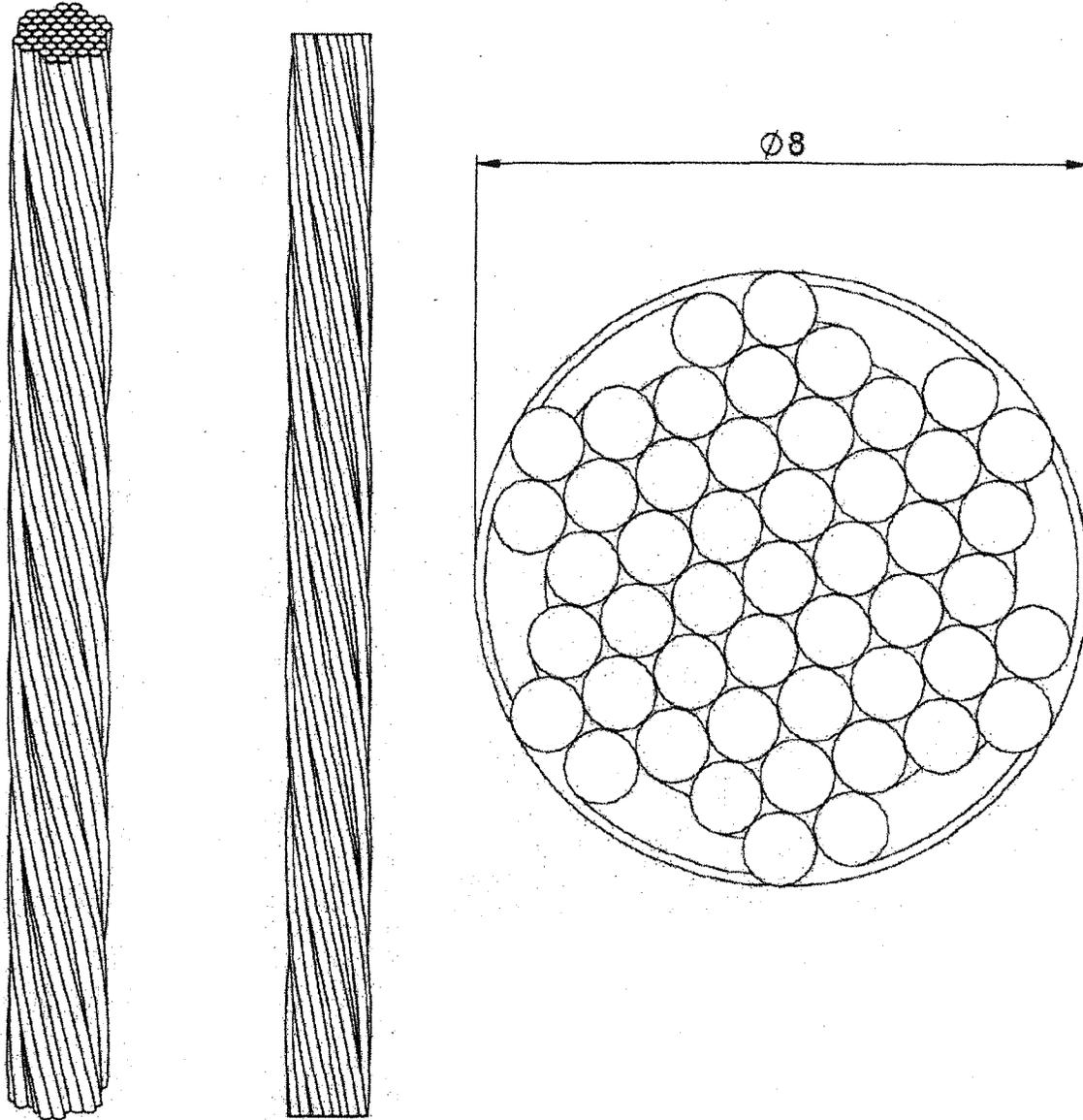
	ISSUE TYPE: Technical manual		PROJECTION 
	DATA SHEET No: 0909		
ITEM: Intermediate Bracket	REVISION No : 2	Sheet 1 OF 2	DO NOT SCALE
PART No: UIO404	APPROVED: 	Digitally signed by Simon Luke Date: 2003.02.11 10:08:22 Z	<b>EXHIBIT A</b> 29/01/2003

# Technical Datasheet No: 0901

7x7 8mm Stainless Steel Cable



Part No: U80800

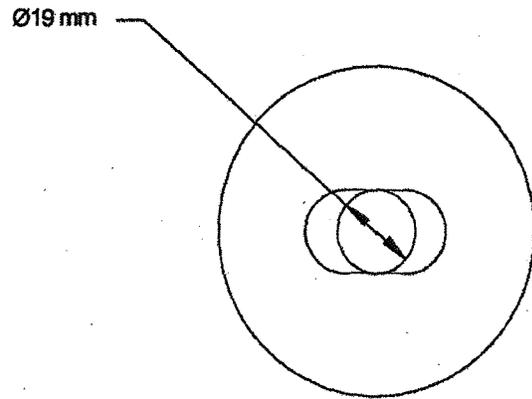
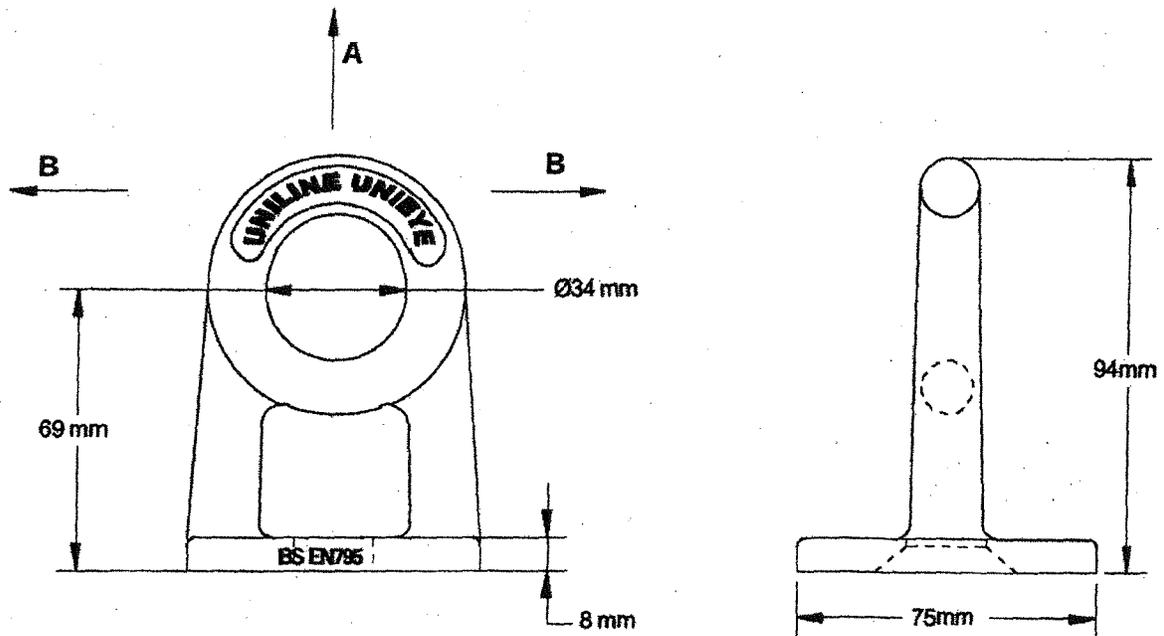


## Application

Recommended for use in Uni8 horizontal lifeline systems.

## Component Specification

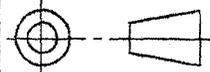
Material	316 Stainless Steel
Finish	Natural
Quality	100% Visual Inspection, 100% Molybdenum Tested.
Strength	Minimum Break Strength 38.7kN
Approvals	EN10264-4:2002



ISSUE TYPE: Technical manual

DATA SHEET No: 0837

PROJECTION



ITEM: Unieye™

REVISION No : 2

Sheet 1 OF 2

DO NOT SCALE

PART No: UEO100A

APPROVED:

Digitally signed by Simon Luke  
Date: 2003.02.11 10:08:22 Z

DATE: 29/07/2005

EXHIBIT A



**VEST-STYLE HARNESSES**

Vest-style harnesses are the most universal, with multiple configurations and connection point options. They're used across a wide variety of industries.

FULL BODY HARNESSES



**1102008**

**DELTA™ VEST-STYLE HARNESS**

Side and back D-ring, tongue buckle leg straps. (Universal Size)

1102008 (pictured)  
Tongue Buckles

1110625  
Quick Connect Buckles  
1103875  
Pass Thru Buckles



**1102090**

**DELTA™ VEST-STYLE HARNESS**

Back and front D-rings, quick connect buckles. (Universal Size)

1102090 (pictured)  
Quick Connect Buckles

11107807  
Tongue Buckles  
1112126  
Pass Thru Buckles

QTY = 12 EACH



**1101781**

**DELTA™ VEST-STYLE HARNESS**

Back and shoulder D-rings, pass thru buckles. (Universal Size)

1101781 (pictured)  
Pass Thru Buckles

1101254  
Tongue Buckles  
1110602  
Quick Connect Buckles

**1102000**

**DELTA™ VEST-STYLE HARNESS**

Back D-ring, tongue buckle leg straps. (Universal Size)

1102000 Tongue Buckles (pictured)  
1110600 Quick Connect Buckles  
1103321 Pass Thru Buckles

**DELTA™ VEST-STYLE HARNESSES**

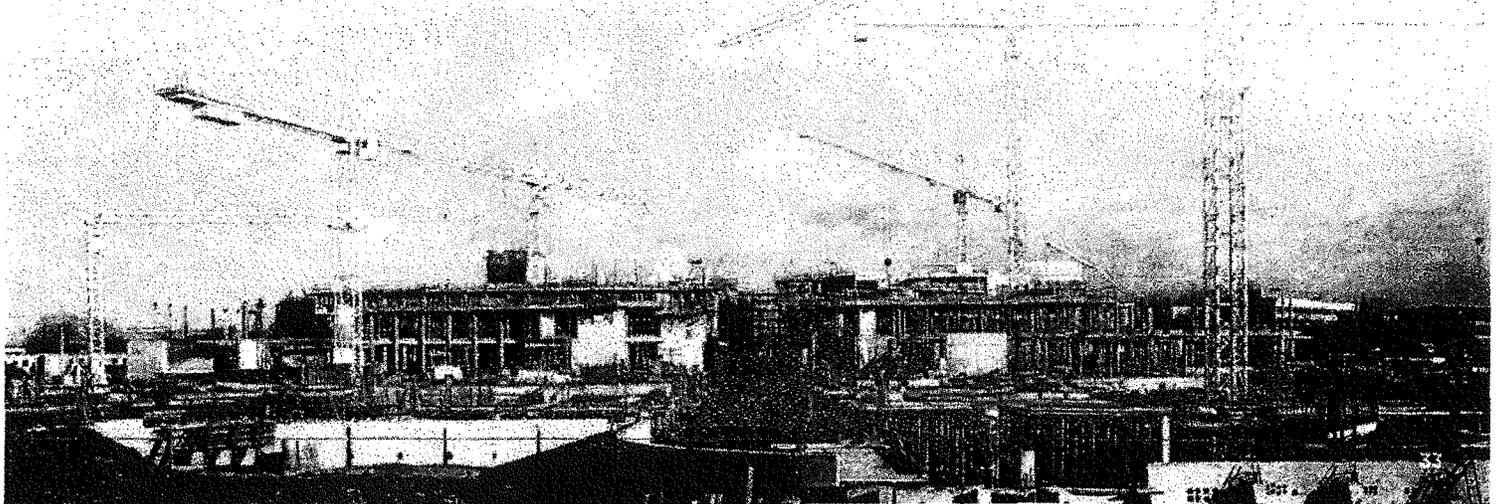
1107813 Front and back D-rings, Hi-Vis web, loops for belt, quick connect buckles. (XLarge) (1107804 LG) ↙

1102001 Back D-rings, parachute adjuster leg straps. (Universal Size)

1101828 Back D-rings, parachute adjuster leg straps, shoulder retrieval D-rings. (Universal Size)

1105400 Back and side D-rings, parachute adjuster leg straps. (Universal Size)

1104725 Back D-ring, with belt loops, non-conduct/sparking hardware, pass thru buckle leg straps. (Universal Size)



## SHOCK ABSORBING LANYARDS

### ShockWave™2

ShockWave™2 is uniquely designed to extend and contract (6 ft. to 4-1/2 ft.), in reaction to a worker's movements. The tubular webbing folds out of your way when not in use, avoiding trip and snag hazards. A built-in impact indicator provides easy visual evidence if the shock has been impacted or loaded through a fall or improper use. It limits the average fall arresting forces to 900 lbs. (41 kN).

#### 1244306

##### SHOCKWAVE™2 LANYARD

Single-leg with snap hooks at each end x 6 ft. (1.8m).



#### 1244321

##### SHOCKWAVE™2 LANYARD

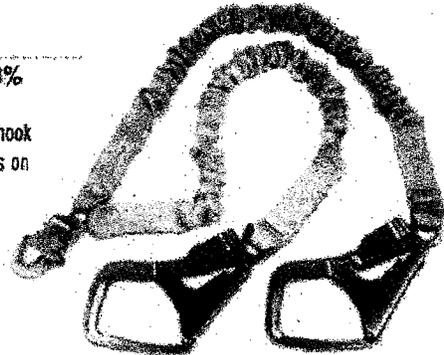
Single-leg with snap hook and steel rebar hook x 6 ft. (1.8m).



#### 1244448

##### SHOCKWAVE™2 100% TIE-OFF LANYARD

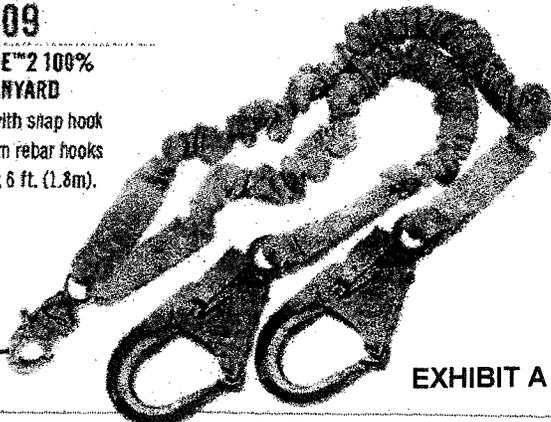
Double-leg with snap hook and Saflok Max™ hooks on leg ends x 6 ft. (1.8m).



#### 1244409

##### SHOCKWAVE™2 100% TIE-OFF LANYARD

Double-leg with snap hook and aluminum rebar hooks on leg ends x 6 ft. (1.8m).



### SHOCKWAVE™2 LANYARDS

1244311 Single-leg with snap hook and aluminum rebar hook x 6 ft. (1.8m).

1244360 Single-leg with snap hook and Saflok Max™ hook x 6 ft. (1.8m).

1244406 Double-leg with snap hooks at each end x 6 ft. (1.8m).

1244412 Double-leg with snap hook and flat steel rebar hooks x 6 ft. (1.8m).

EXHIBIT A

# Rescue Positioning

## Rescue Positioning System

Use this simple, extremely reliable rescue or positioning system to raise and/or lower yourself or someone else, providing a stable way to reach a working level, even in tight quarters. After reaching the working level, you can lock out the RPD without needing a tie-off. Backup safety is provided through an inertial speed break that activates automatically if you lose control or become unconscious. A slight tug on the rope will resume the raising or lowering. Meets OSHA and ANSI standards, not CSA.



### 3600000

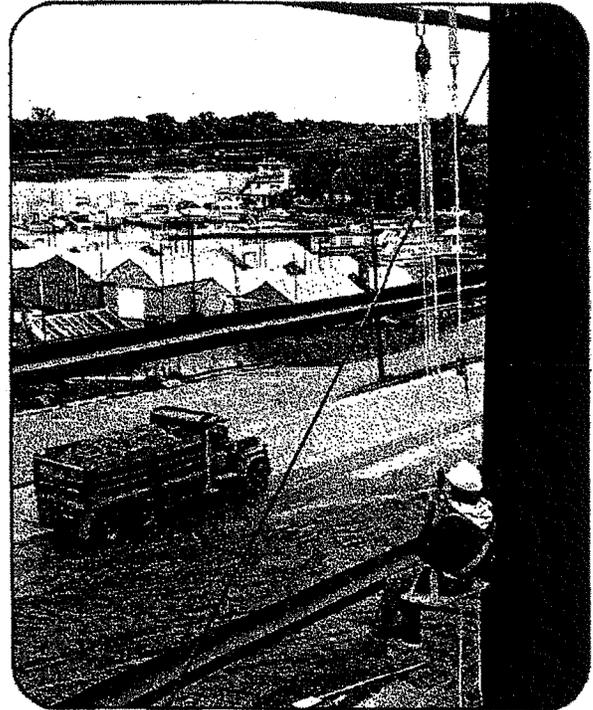
- Rescue positioning device with 3:1 gear ratio
- Connecting sling (3620001)
- Rescue sling (3302002)
- Two carabiners (2000523)
- 3/8" low stretch static kernmantle rope. (Order separately. Last three digits in part number signify length.)
- Storage bag

### Similar Model:

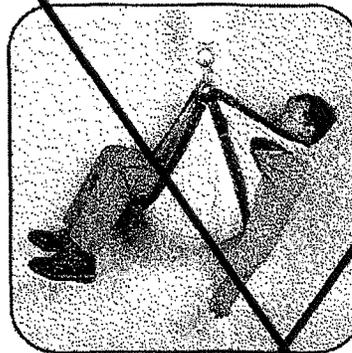
3602000: 4:1 ratio

## Ordering Data for Rescue-Positioning Device Systems

1. Specify model:  
**3600000:** featuring 3:1 ratio  
**OR 3602000:** featuring 4:1 ratio.
2. Specify correct rope footage; calculate required rope length as follows:  
For **3600000:** featuring 3:1 ratio: Multiply working travel length by 4 and add 10 feet for the total.  
For **3602000:** featuring 4:1 ratio: Multiply working travel length by 5 and add 10 feet for the total.
3. Specify accessories needed (optional items), if any.



## Optional Accessories



### 3610000 Rescue Cradle

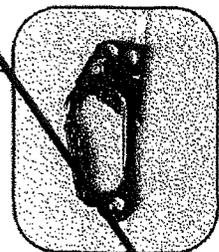
- For safe and quick removal of injured personnel
- Treated canvas with polyester web
- Self-closing/locking carabiner (2000523)
- Steel connecting ring
- 300 lb. capacity
- 3/16" polypropylene guideline rope

### 9503008 Rope Gripping Handle

- Right handed
- Aids in pulleying rope

### Similar Model:

9503037: left handed



### 9503110

Storage box for 300 ft. of rope and more

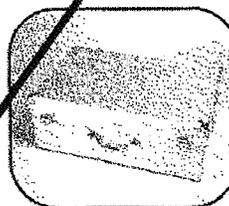


EXHIBIT A

**Conceptual Plan drawings  
are attached to the back of  
this manual.**

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

**6.4 With the bid, the potential Installer shall provide documentation that they have:**

**6.4.1 Form of corporation.**

See attached Nebraska Secretary of State confirmation of Active Account Status.

**6.4.2 Adequate plant capacity and equipment to complete the work.**

Evan Corporation dba Evan Fall Protection Systems, Inc. (Evan Fall Protection) has installed rigging and rooftop fall protection systems in more than 130 public assembly facilities nationwide. Acting as the Installer, Evan Fall Protection purchases engineered fall protection system components manufactured by Capital Safety Group, an international fall protection equipment manufacturer. Equipment used to perform the installation is limited to an aerial lift which will be rented locally.

**6.4.3 Adequate regional service organization in to meet warranty response requirements for the project—8 hour phone call response, with 24 hour repair window during the season.**

Emergency warranty response can be provided by personnel located in our Farmington MN regional sales office. Replacement parts are available from the manufacturer located in Red Wing MN.

**6.4.4 Adequate staff to perform work on schedule proposed with commensurate technical experience.**

**6.4.4.1 Provide key staff resumes.**

See attached resumes

**6.4.5 Suitable financial status (i.e.; bonding and materials purchase capacity) to meet the obligations of the work.**

See attached bonding letter and confidential financial statement in sealed envelope attached to back of proposal

**6.4.6 Provide references of three or more users for previously furnished and/or installed systems (within the last 24 months for similar scale project).**

Reference	Contact Information	Project(s)
Michael Godoy Executive Director of Operations	SMG 300 Conshohocken State Road Ste. 400 W. Conshohocken, PA 19428 PH: (610)729-7900 mgodoy@smgworld.com	Various arenas nationwide including Oracle Arena, ShoWare Center, Dunkin Donuts Center, Lucas County Events Center, INTRUST Bank Arena
Glenn Nelson Director of Operations	Oracle Arena/SMG 7000 Coliseum Way Oakland, CA 94621-1918 PH: (510)383-4805 gnelson@coliseum.com	Oracle Arena
Dan Rubino Director of Projects	Global Spectrum 3601 S. Broad Street Philadelphia PA 19148 PH: (215)952-4138 drubino@global-spectrum.com	Ed Fry Arena, Indiana University of Pennsylvania and other Global Spectrum managed facilities
Scott Griffith Director of Operations	Mass Mutual Center 1277 Main Street Springfield, MA 01103 PH:(413)271-3243 sgriffith@massconvention.com	MassMutual Center

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

**6.4.7 List of structural, electrical, sound and other subcontractors intended to do the work.**

N/A No subcontractors

**6.4.7.1 Subcontractors shall be appropriately state licensed in their specialty.**

N/A No subcontractors

**6.4.8 Completed current version of AIA Contractor's Qualification form.**

Attached

**6.4.9 Provide with bid, the name and relevant experience of the proposed project manager.**

See resume for David P. Evangelista, PE in section 6.4.4.1. As founder and president of Evan Fall Protection, David has overseen the installation of rigging and rooftop fall protection systems in more than 130 arenas, stadia and convention centers nationwide.

**6.4.9.1 Also provide the name and qualifications of the site superintendent.**

See resumes for Robert E. McKinney, Jr. and Stephen McCourry, Jr. in section 6.4.4.1. Robert and Stephen have supervised the installation of rigging and rooftop fall protection systems in more than 130 arenas, stadia and convention centers nationwide and are members of IATSE.

# Nebraska Secretary of State

- John A. Gale

## Business Services

Home » Corporation and Business Entity Searches

Wed Mar 14 10:43:08 2012

For Letters of Good Standing (\$6.50), Certificates of Good Standing (\$10.00), and/or images (\$0.45 per page) of documents filed with the Secretary of State please click the corresponding service below:

**NEW SEARCH**

[Back to Search Results](#)

### Pay Services:

[Online Images of Filed Documents](#) | [Good Standing Documents](#)

Entity Name

EVAN FALL PROTECTION SYSTEMS, INC.

SOS Account Number

10027717

### Principal Office Address

22 SOUTHWEST AVE  
JAMESTOWN, RI 02835

### Registered Agent and Office Address

CSC-LAWYERS INCORPORATING SERVICE  
COMPANY  
SUITE 1900  
233 SOUTH 13TH STREET  
LINCOLN, NE 685080000

Nature of Business

INSTALL FALL PROTECTION  
SYSTEMS

Entity Type

Foreign Corp  
Qualifying State:  
RI

Date Filed

Sep 24 2001

Account Status

Active

Corporation Position

**President**

Name

DAVID P EVANGELISTA

Address

22 SOUTHWEST AVE  
JAMESTOWN, RI 02835

**Secretary**

PATRICIA A EVANGELISTA

22 SOUTHWEST AVE  
JAMESTOWN, RI 02835

**Treasurer**

PATRICIA A EVANGELISTA

22 SOUTHWEST AVE.  
JAMESTOWN, RI 02835

### Pay Services:

To add an item to your shopping cart, please check the check box and click "Add Items to Cart" button at the bottom of the page.

### - Images of Filed Documents

If a check box is visible, the document may be retrieved online, otherwise you must contact the

EXHIBIT A



Evan Fall Protection, Inc.  
22 Southwest Ave.  
Jamestown, RI 02835

Phone: 401.423.2230  
Fax: 401.423.2785  
E-mail: dpe@evancorp.com

# David P. Evangelista, PE

---

## Experience

1995–Present	Evan Corporation dba Evan Fall Protection, Inc.	Jamestown RI
1986–Present	David P. Evangelista, PE	Jamestown RI

### Owner/President

- Overall responsibility for design and contracting of engineered fall protection systems for a variety of public and private sector clients.
- Supervision of fall protection installations throughout the country including arenas and other public assembly facilities, railcars, aircraft hangars, bridges, building rooftops and industrial applications.

1986–1995                      Coken Company                      Providence RI

### Vice President

- Sole responsibility for operations of outside division of a contracting firm
- Responsible for bidding, supervision and administration of contracts
- Managed staff of 35 union and non-union employees

1981–1986                      Pare Engineering, Inc.                      Lincoln RI

### Chief Structural Engineer

- Responsible for structural design work for municipal and private projects, including bridges, highways and public works facilities
- Managed department of eight professional engineers

1980 –1981                      Stone & Webster                      Boston MA

### Design Engineer

- Responsible for structural steel design of portions of various power plant facilities including turbine buildings and reactor containment structures.
- 

1979 –1980                      Charles Gojer & Associates                      Dallas TX

### Design Engineer

- Responsible for structural analysis and design of bridges and low rise buildings including pre-tensioned structures and foundations.

1975 –1979                      Showco, Inc.                      Dallas TX

### Design Engineer and Production Manager

- Managed design and production departments of international producer of entertainment rigging, sound and lighting.



Evan Corporation  
22 Southwest Ave.  
Jamestown, RI 02835

Phone: 651-463-7133  
Fax: 651-463-1203  
E-mail: bad@evancorp.com

# Bruce Duden

---

- Experience**                      2000--Present                      Evan Corporation                      Jamestown, RI
- Business Development Manager**
- Responsible for turnkey fall protection projects including site assessment, system design, contracting, project management and training.
- 1993--2000                      DB Industries, Inc.                      Red Wing, MN
- General Manager - USA Division - Sala Engineered Systems**
- Responsible for sales, engineering, project management, installation support and office administration functions.
- Horizontal Systems Manager**
- Responsible for overall performance of the department
  - Responsible for sales, engineering, project management, installation support and office administration functions.
  - Managed staff of 10 union and non-union employees
- Sayfglida Systems Specialist**
- Responsible for the development of sales within the Sayfglida Department
- Professional Affiliations**
- National Safety Council
  - International Facility Management Association
- Education**                      1980--1984                      Red Wing Area Technical College Red Wing, MN
- Industrial Engineering Technology
- Publications**                      "Engineered Fall Protection Systems", *Occupational Health & Safety*,  
March 2001
- Professional Development**                      Fall Protection Detailed Skills, DBI/Sala



Evan Fall Protection, Inc.  
22 Southwest Ave.  
Jamestown, RI 02835

Phone: 401.423.2230  
Fax: 401.423.2785  
E-mail: sim2@evancorp.com

# Stephen L. McCourry, Jr.

---

## Experience

2004–Present

Evan Corporation  
Evan Fall Protection, Inc.

Jamestown, RI

### Field Supervisor

- Responsible for supervision of turnkey fall protection projects including site surveys, crew management, inspection, system re-certification and training in the "Use, Care and Maintenance" of the equipment. Recently completed projects include North Charleston Coliseum, CTTRANSIT, Rimrock Auto Arena, Little Rock Air Force Base, Ohio State University Prior Health Science Building, North Collier Water Reclamation Facility, Eglin Air Force Base JSF OPS/AMU Hangars, March Air Reserve Base C17 General Maintenance Facility, University of Wisconsin New South Campus Union, various State Farm Insurance facilities, Fairchild Air Force Base Hangars 2,4 & Bldg. 2050, DeSoto Civic Center, Bombardier LearJet Global Express Hangar

1997-2004

Self Employed

### Theatrical Rigger

## Safety/Training

- OSHA 30-Hour Construction Safety
- Red Cross CPR/First Aid
- DBI/Sala Fall Protection Detailed Skills

## Union Affiliations

- International Alliance of Theatrical Stage Employees (IATSE)

Evan Corporation  
22 Southwest Ave.  
Jamestown, RI 02835

Phone: 401.423.2230  
Fax: 401.423.2785  
E-mail: pae@evancorp.com

# Patricia A. Evangelista, CPA

---

<b>Experience</b>	1995–Present	Evan Corporation	Jamestown, RI
	<b>Vice President, Secretary, Treasurer</b>		
	▪ Responsible for finance and administration including contracts administration, insurance and bonding, marketing		
	1986–1999	Providence College	Providence, RI
	<b>Assistant Professor of Accountancy</b>		
	▪ Full time professor teaching courses in financial accounting, auditing and accounting information systems		
	1990–1995	Price Waterhouse, LLP	Providence, RI
	<b>Technology Consultant</b>		
	▪ Part-time consultant acting as liaison between client service and technology staff including providing user training and development of technology implementation plan		
	1980–1986	Price Waterhouse, LLP	Providence, RI
	<b>Audit Manager</b>		
	▪ Responsible for financial audits of public and privately held clients in the government, not-for-profit and private industry sectors		
<b>Professional Certification</b>	1982	Certified Public Accountant	State of RI
<b>Professional Affiliations</b>	▪ American Institute of Certified Public Accountants		
	▪ Rhode Island Society of Certified Public Accountants		
<b>Education</b>	1982–1987	University of Rhode Island	Kingston, RI
	▪ Master of Business Administration		
	1976–1980	Boston College	Chestnut Hill, MA
	▪ Bachelor of Science, Accounting – Magna Cum Laude		



# Western Surety Company

December 20, 2011

Re: Principal: Evan Corporation dba Evan Fall Protection Systems, Inc.

Project: Fall Protection for Haymarket Arena

To Whom It May Concern:

It has been the privilege of Affiliated Insurance Managers and Western Surety Company to provide surety bonds on behalf of Evan Corporation dba Evan Fall Protection Systems, Inc. (Evan Fall Protection) for over fifteen years, during which time we have issued performance and payment bonds for contracts valued in the range of \$100,000 to \$1,500,000.

At the present time, Western Surety Company provides a \$3,000,000 single project/\$6,000,000 aggregate surety program to Evan Fall Protection. As always, Western Surety reserves the right to perform normal underwriting at the time of any bond request, including, without limitation, prior review and approval of relevant contract documents, bond forms, and project financing. We assume no liability if for any reason we do not execute such bonds.

Western Surety Company is listed on the U.S. Treasury Department's Listing of Approved Sureties (2005 Department Circular 570), and is rated A (Excellent) by A.M. Best Company.

Very truly yours,

Western Surety Company

By:   
Ronald A. Cruff, Attorney-in-Fact

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Richard V Rheinberger, Ronald A Cruff, Donna M Gelsomino, Michelle S Crabtree, Individually**

of Warwick, RI, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 15th day of July, 2002.



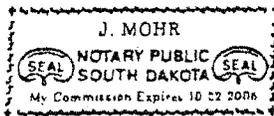
WESTERN SURETY COMPANY

Paul T. Bruflat  
Paul T. Bruflat, Senior Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 15th day of July, 2002, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal, that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
October 22, 2005



J. Mohr  
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 20th day of December 2011.



WESTERN SURETY COMPANY

L. Nelson EXHIBIT A  
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7: All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

# AIA<sup>®</sup> Document A305<sup>™</sup> – 1986

## *Contractor's Qualification Statement*

The Undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

**SUBMITTED TO:**

City of Lincoln/Lancaster NE

**ADDRESS:**

440 S. 8th Street  
Lincoln NE 68508

**SUBMITTED BY:**

Evan Corporation dba Evan Fall Protection Systems, Inc.

**NAME:**

Patricia A. Evangelista, CPA

**ADDRESS:**

22 Southwest Ave.  
Jamestown RI 02835

**PRINCIPAL OFFICE:** 22 Southwest Ave. Jamestown RI 02835

- Corporation
- Partnership
- Individual
- Joint Venture
- Other: *(Specify)*

**NAME OF PROJECT:** *(If applicable)*

JPS-Pinnacle Bank Arena Fall Protection

**TYPE OF WORK:** *(File a separate form for each Classification of Work.)*

- General Construction
- HVAC
- Electrical
- Plumbing
- Other: *(Specify)*

Furnish and install rigging fall protection systems

This form is approved and recommended by the American Institute of Architects (AIA) and The Associated General Contractors of America (AGC) for use in evaluating the qualifications of contractors. No endorsement of the submitting party or verification of the information is made by AIA or AGC.

**§ 1 ORGANIZATION**

**§ 1.1** How many years has your organization been in business as a Contractor?

16

**§ 1.2** How many years has your organization been in business under its present business name?

16

**§ 1.2.1** Under what other or former names has your organization operated?

Evan Fall Protection, Inc.

**§ 1.3** If your organization is a corporation, answer the following:

**§ 1.3.1** Date of incorporation: 11/03/1995

**§ 1.3.2** State of incorporation: Rhode Island

**§ 1.3.3** President's name:

David P. Evangelista, PE

**§ 1.3.4** Vice-president's name(s):

Patricia A. Evangelista, CPA

**§ 1.3.5** Secretary's name:

Patricia A. Evangelista, CPA

**§ 1.3.6** Treasurer's name:

Patricia A. Evangelista, CPA

**§ 1.4** If your organization is a partnership, answer the following:

**§ 1.4.1** Date of organization:

**§ 1.4.2** Type of partnership, if applicable:

**§ 1.4.3** Name(s) of general partner(s):

**§ 1.5** If your organization is individually owned, answer the following:

**§ 1.5.1** Date of organization:

**§ 1.5.2** Name of owner:

§ 1.6 If the form of your organization is other than those listed above, describe it and name the principals:

**§ 2 LICENSING**

§ 2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

See attached list.

§ 2.2 List jurisdictions in which your organization's partnership or trade name is filed.

See attached list.

**§ 3 EXPERIENCE**

§ 3.1 List the categories of work that your organization normally performs with its own forces.

Furnish and install rigging fall protection systems

**§ 3.2 Claims and Suits**

*(If the answer to any of the questions below is yes, please attach details.)*

§ 3.2.1 Has your organization ever failed to complete any work awarded to it?

No

§ 3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

No

§ 3.2.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

No

**§ 3.3** Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?  
(If the answer is yes, please attach details.)

No

**§ 3.4** On a separate sheet, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

See attached list

**§ 3.4.1** State total worth of work in progress and under contract:

\$3,281,000

**§ 3.5** On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

See attached list

**§ 3.5.1** State average annual amount of construction work performed during the past five years:

\$4,082,000

**§ 3.6** On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

See resumes included previously in response to Item 6.4.4.1 of the RFP

#### **§ 4 REFERENCES**

##### **§ 4.1 Trade references:**

Dave Denny Capital Safety Group 3833 Sala Way Red Wing MN PH:(203)823-9415

Brian Knospe B&B Steel PO Box 7 Knapp WI PH:(715)665-2900

Greg Kenton Bluewater Manufacturing 4064 Peavey Road Chaska MN PH: (866)933-2935

Dave Moulthrop South County Steel 192 Waites Corner Road West Kingston RI PH: (401)789-5570

##### **§ 4.2 Bank references:**

Sara Hiebner BankNewport PO.Box 450 Newport RI PH:401-846-3400

##### **§ 4.3 Surety**

###### **§ 4.3.1 Name of bonding company:**

Wwestern Surety Company

**§ 4.3.2 Name and address of agent:**

Ronald A. Cruff  
Affiliated Insurance Managers  
935 Jefferson Blvd., Suite 2001  
Warwick RI 02886

**§ 5 FINANCING**

**§ 5.1 Financial Statement**

**§ 5.1.1** Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

- .1 Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses);
- .2 Net Fixed Assets;
- .3 Other Assets;
- .4 Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes); and
- .5 Other Liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

**§ 5.1.2** Name and address of firm preparing attached financial statement, and date thereof:

DiSanto Priest & Co.  
117 Metro Center Blvd. Suite 3000  
Warwick RI 02886

December 31, 2010

**§ 5.1.3** Is the attached financial statement for the identical organization named on page one?

Yes

**§ 5.1.4** If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsidiary).

**§ 5.2** Will the organization whose financial statement is attached act as guarantor of the contract for construction?

Yes

§ 6 SIGNATURE

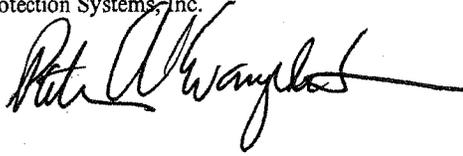
§ 6.1 Dated this 14

day of March, 2012

Name of organization:

Evan Corporation dba Evan Fall Protection Systems, Inc.

By: Patricia A. Evangelista, CPA



Title: Treasurer

§ 6.2

M Patricia A. Evangelista

being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this 14

day of March, 2012

Notary Public: Jennifer Young



My commission expires: 10/21/2013

Evan Corporation  
Evan Fall Protection Systems, Inc.  
Evan Fall Protection, Inc.  
Licenses and Registrations

Alabama		38642	5/19/2004	9/30/2012	BD-Fall Prot		0029496780	
California		806439	4/10/2002	4/30/2012	C51-Structural Steel	100-123235	256-1555-0	2339702
Connecticut						1605260-000	94-229-70	1605260-000
Delaware	Evan Fall Protection Systems, Inc.	2005205852	6/7/2005	12/31/2012		1-050487275-001		
Florida						78-8012952354-0	2281137-1	
Georgia	Evan Fall Protection, Inc.					214-788437		20110536005
Illinois						3563-0647	4587742	3583-0847
Indiana						105226793	605358	105226793
Iowa	Evan Fall Protection Systems, Inc.	90058-04	5/4/2004	5/4/2012		200149029		
Kansas						004-050487275F-01		
Louisiana		36026	12/3/1999	12/3/2012	Fall Protection			2004281001
Maryland						10866544		F06702617
Massachusetts	Evan Fall Protection Systems					050487275	96-28124-0	96-28124-0
Minnesota						4950977	1586114-000	4950977
Mississippi		17116	8/7/2008	7/11/2012	Scaffolding	083-43827-5		
Missouri						18691463	18691463	18691463
Montana	Evan Fall Protection, Inc.	159328	4/14/2009	4/13/2013		F056607		
Nebraska	Evan Fall Protection Systems, Inc.	23735		9/1/2012		4 8826064 1		24-8826064
Nevada	Evan Fall Protection Systems, Inc.	57486	6/25/2004	6/30/2012	C40 Fall Protection Systems			
New Jersey	Evan Fall Protection Systems, Inc.					050-487-274/000	050-487-275/000	100853195
New Mexico	Evan Corporation (Rhode Island Corporation)	360867	3/30/2009	3/31/2013	GS29 Specialty	03-113301-00-0		03-113301-00-0
New York							46-74851 5	TF-1856404
North Carolina						600481091		
North Dakota		28446		3/1/2013		165042		
Ohio	Evan Fall Protection Systems, Inc.					Use 97-146429		
Oregon	Evan Corporation a Corp of Rhode Island dba Evan Fall Protection, Inc.	174393	3/5/2007	3/5/2013	Specialty	1305424-0	1305424-0	1305424-0
Pennsylvania	Evan Fall Protection, Inc.					4029438		
Rhode Island							0001608649	
South Carolina	Evan Fall Protection Systems, Inc.	110008	5/18/2004	10/31/2012	SS4 Structural Shapes	05180103-1	406711-1	051 801031
South Dakota	Evan Fall Protection, Inc.					FB034642		1023-7265-ET
Tennessee		00052046	3/30/2004	3/31/2013	S Fall Protection	104227927		
Texas	Evan Fall Protection Systems, Inc.					1-05-0487275-4		32004635622
Utah	Evan Fall Protection, Inc.	7570653-5501	2/4/2010	11/30/2013	S420 General Fencing, Ornamental Iron & Guardrail	12838378-003-STC	E0-442749-0	1238378-002-CPT
Virginia		2705 060738A	2/28/2002	2/28/2013	A			19303497
Washington	Evan Fall Protection, Inc.	EVANFPI930QL	4/8/2004	4/8/2013	Specialty	602-383-817	602-383-817	602-383-817
Wisconsin	Evan Fall Protection, Inc.					456-0002857958-05	855187-000-6	200-1027058863-02

Evan Corporation dba Evan Fall Protection Systems, Inc.  
 JPA Pinnacle Bank Arena Fall Protection  
 AIA A305 Contractor Qualification Statement 3.4

Project / Type	Location	Owner	Architect	Contract Value	Percent Complete	Estimated Completion Date	Percent Own Forces
Alliant Energy Center Rigging fall protection	Madison WI	County of Dane WI	N/A	\$196,800.00	0%	Jul-12	100%
Davis-Monthan AMARG Hangar Hangar fall protection	Tucson AZ	US Army Corps of Engineers	USACE	\$84,343.00	0%	Jun-13	100%
Pinnacle Bank Arena Rooftop fall protection	Lincoln NE	West Haymarket Joint Public Agency	DLR Group	\$10,578.00	0%	Apr-12	100%
HP Pavilion at San Jose Rigging fall protection	San Jose CA	HP Pavilion at San Jose	N/A	\$87,400.00	0%	Aug-12	100%
Harvard School of Public Health SPH-2 Rooftop fall protection	Boston MA	Harvard School of Public Health	N/A	\$32,160.00	10%	Apr-12	100%
Watonwan Farm Service Wells Grain Railcar fall protection	Wells MN	Watonwan Farm Services	N/A	\$53,905.00	10%	Apr-12	50%
Watonwan Farm Service Clarks Grove Railcar fall protection	Clarks Grove MN	Watonwan Farm Services	N/A	\$106,290.00	10%	Apr-12	50%
Harvard School of Public Health SPH-1 Rooftop fall protection	Boston MA	Harvard School of Public Health	N/A	\$48,237.00	10%	Apr-12	100%
Bangor Event Center Rigging fall protection	Bangor ME	City of Bangor	Sink Combs Dethiefs	\$88,510.00	0%	Jun-13	100%
Harvard School of Public Health FXB Rooftop fall protection	Boston MA	Harvard School of Public Health	N/A	\$87,555.00	10%	Apr-12	100%
NH Regional Training Institute & Barracks Rooftop fall protection	Pembroke NH	State of New Hampshire	Oak Point Associates	\$115,000.00	10%	Jun-12	100%
US Steel North Sheet Mill Annealing Area Exposed walkway fall protection	Gary, IN	US Steel	N/A	\$43,970.00	10%	Jun-12	100%
US Steel North Sheet Mill Coil Warehouse Exposed walkway fall protection	Gary, IN	US Steel	N/A	\$62,955.00	10%	Jun-12	100%
Cedar Rapids Convention Center Arena Rigging fall protection	Cedar Rapids IA	City of Cedar Rapids	OPN Architects	\$38,020.00	0%	Sep-12	100%
Robins AFB Aircraft hangar fall protection	Robins AFB GA	Robins Air Force Base	N/A	\$491,919.00	10%	Jun-12	50%
Eglin AFB F-35 Fuel Cell Maintenance Hangar Hangar fall protection	Eglin AFB FL	Eglin Air Force Base	N/A	\$46,000.00	10%	Dec-12	100%
Barclays Center Rooftop and rigging fall protection	Brooklyn NY	Brooklyn Events Center LLC	Ellerbe Becket	\$374,809.00	35%	Sep-12	100%
Hamilton College Wellin Museum Rooftop fall protection	Clinton NY	Trustees of Hamilton College	Machado & Silveti Associates Inc.	\$35,000.00	10%	Sep-12	100%
URJ Hillside Residence Hall Rooftop fall protection system	Kingston RI	University of Rhode Island	Lerner Ladds + Bartels, Inc.	\$60,000.00	92%	Sep-12	90%
Auburn University Wellness Center Rooftop fall protection system	Auburn AL	Auburn University	Three Sixty Architecture, Inc.	\$41,800.00	10%	Dec-12	100%
Cannon Air Force Base CV-22 AMU Addition Aircraft hangar fall protection	Clovis NM	Cannon Air Force Base	N/A	\$64,825.00	10%	Dec-12	100%
US Steel Hot Strip Mill Slab Processing J & K Exposed walkway fall protection	Gary, IN	US Steel	N/A	\$32,385.00	10%	Jun-12	100%
KSU Basketball Training Facility Rooftop fall protection	Manhattan KS	Kansas State University	N/A	\$31,435.00	57%	Jun-12	100%
SUNY Potsdam Performing Arts Rooftop fall protection systems	Potsdam NY	State University of New York	Pfeiffer Partners Architects, Inc.	\$55,000.00	9%	Dec-13	100%
Bucks County Justice Center Rooftop fall protection system	Doylestown PA	Bucks County	HOK	\$65,000.00	10%	Dec-12	100%
NAVFAC P-268 Waterfront Dry Dock #3 Portsmouth Naval Shipyard Rooftop fall protection	Kittery ME	NAVFAC	N/A	\$39,675.00	10%	Aug-12	100%
NAS Oceana Aircraft hangar fall protection	Virginia Beach VA	US Navy	N/A	\$23,623.00	98%	Jun-12	100%
State Farm ISC Central Rooftop fall protection	Dallas TX	State Farm Mutual Auto Insurance Company	N/A	\$89,225.00	10%	Sep-12	90%
Arcelor Mittal E. Chicago Steel Foundry Teem East Chicago IN	East Chicago IN	Arcelor Mittal	N/A	\$44,160.00	86%	Jun-12	100%

**Evan Corporation dba Evan Fall Protection Systems, Inc.**  
**JPA Pinnacle Bank Arena Fall Protection**  
**AIA A305 Contractor Qualification Statement 3.5**

<b>Project / Type</b>	<b>Location</b>	<b>Value</b>	<b>Complete</b>	<b>Owner</b>	<b>Architect</b>	<b>Own Forces</b>
Nova Southeastern Univ. - 4 locations Rigging & walkway fall protection system	Davie, FL	\$126,440	Jan-12	Nova Southeastern University	N/A	100%
<b>CTTRANSIT</b> Vehicle maintenance fall protection systems	Hartford CT Stamford CT	\$145,835	Jan-12	CT Transit PO Box 66 Hartford CT 06141	N/A	100%
<b>MetraPark Rimrock Auto Arena Storm Repair</b> Rigging fall protection systems	Billings MT	\$112,910	Mar-11	Yellowstone County 210 North 28th Street Billings MT 59101	N/A	100%
<b>Watowan Farm Service</b> Railcar fall protection	Various MN locations	\$202,680	Oct-11	Watowan Farm Service PO Box 68 Truman MN 56088	N/A	75%
<b>Ed Fry Arena</b> Indiana University of Pennsylvania (IUP) Rigging fall protection	Indiana PA	\$121,840	Feb-11	Indiana University of Pennsylvania 711 Pratt Drive Indiana PA 15705	N/A	100%
<b>Mass Mutual Center</b> Rigging fall protection	Springfield MA	\$135,655	Sep-10	Massachusetts Convention Center Authority 415 Summer Street South Boston, MA 02210	N/A	100%
<b>Oracle Arena</b> Arena rigging fall protection	Oakland CA	\$216,140	Jun-11	City of Oakland and Alameda County	N/A	100%
<b>U Wisconsin New South Campus Union</b> Rooftop fall protection	Madison WI	\$122,949	Apr-11	WI Dept of Administration Madison WI	Moody Nolan	100%
<b>Collier County NCWRF Compliance Assurance P</b> Exposed walkway	Naples FL	\$117,494	Feb-11	Collier County Naples FL	N/A	100%
<b>Exxon Mobil Mont Belvieu</b> Railcar fall protection	Mont Belvieu, TX	\$122,980	Apr-11	Exxon Mobil	N/A	100%
<b>University of Oregon Arena</b> Rigging fall protection	Eugene OR	\$133,725	Aug-10	National Championship Properties LLC		100%
<b>Fairchild AFB Hangars 2 &amp; 4</b> Aircraft hangar fall protection	Spokane WA	\$185,400	Mar-10	Department of the Air Force 92 Contracting Squadron Fairchild AFB WA	N/A	100%
<b>Amway Center (Orlando Events Center)</b> Rigging and rooftop fall protection systems	Orlando FL	\$457,449	Jul-10	Events Center Development LLC 8701 Maitland Summit Blvd. Orlando FL 32810	HOK Sport	100%
<b>MetraPark</b> Rigging fall protection systems	Billings MT	\$136,320	Sep-09	Yellowstone County MT Billings MT 59101	N/A	100%
<b>Monsanto Muscatine Plant - Piperack</b> Piperack fall protection	Muscatine, IA	\$124,765	Apr-10	Monsanto Muscatine Plant 2500 Wiggins Road Muscatine, IA 52761	N/A	100%
<b>Elmendorf AFB Hangar 18</b> Hangar fall protection	Anchorage AK	\$133,150	Jun-10	Alaska Army National Guard PO Box B Building 49-140 Ft. Richardson AK 99505	N/A	100%
<b>IDS Center</b> Rooftop fall protection	Minneapolis MN	\$667,004 \$17,500	Dec-09	IDS	N/A	70%
<b>Lucas County Events Center</b> Rigging fall protection	Toledo OH	\$142,500	Jul-09	Lucas County Commissioners One Government Center Toledo OH 43604	N/A	100%
<b>Wichita Arena</b> Rigging and rooftop fall protection	Wichita KS	\$208,810	Nov-09	Sedgwick County Facilities Dept. 525 N. Main, Suite 135 Wichita KS 67203	N/A	100%
<b>Cessna Mesa Hangar</b> Aircraft hangar fall protection system	Mesa AZ	\$109,244	Jan-09	Cessna Aircraft Company 5835 S. Sossaman Road Mesa AZ 85212	N/A	100%
<b>Fairchild AFB Bldg 2050</b> Aircraft hangar fall protection	Spokane WA	\$224,000	Apr-09	Department of the Air Force 92 Contracting Squadron Spokane WA	N/A	100%
<b>Bradley University Arena</b> Rigging fall protection	Peoria IL	\$125,100	Apr-10	Bradley University Peoria IL	PSA-Dewberry Inc. 401 SW Water Street, Ste. 701 Peoria IL 61602	100%

Evan Corporation dba Evan Fall Protection Systems, Inc.  
 JPA Pinnacle Bank Arena Fall Protection  
 AIA A306 Contractor Qualification Statement 3.5

Project / Type	Location	Value	Complete	Owner	Architect	Own Forces
General Electric Rooftop Rooftop fall protection	Fairfield CT	\$106,815	Oct-08	General Electric Company 3135 Easton Turnpike Fairfield CT 06828	N/A	100%
Ontario Events Center Install (Citizens Business Rigging and rooftop fall protection	Ontario CA	\$106,885	Oct-08	City of Ontario 303 East B Street, Civic Center Ontario CA 91764	Rossetti Associates	100%
Agua Caliente Casino Rigging fall protection	Rancho Mirage CA	\$118,035	Dec-08	Agua Caliente Band of Cahuilla Indians 32-250 Bob Hope Drive Rancho Mirage CA 92270	N/A	100%
ArcelorMittal Hennepin Inc.-Downey Exposed walkway fall protection	Hennepin IL	\$210,000	Jan-09	ArcelorMittal Hennepin Inc. 10726 Steel Drive Rt. 71 & I-80 Hennepin IL 61327-9610	N/A	100%
US Steel South Sheet Mill Warehouses - Gary IN Exposed walkway fall protection	Gary, IN	\$350,438	Jul-10	United States Steel Corporation USS-Gary Works 1 N. Broadway TS-759-G Gary IN 46404	N/A	100%
UNLV Thomas & Mack Center and Cox Pavilion Rigging fall protection	Las Vegas NV	\$179,366	Aug-09	University of Nevada, Las Vegas 4505 Maryland Parkway Las Vegas NV 89154-1033	N/A	100%
Johnson Controls - Harvard Medical School C Bt Exposed walkway fall protection	Boston, MA	\$135,445	Sep-08	Harvard Medical School 180 Longwood Avenue Boston, MA 02115	N/A	75%
State Farm - Frederick Operations Center Rooftop fall protection systems	Frederick MD	\$124,650	Jun-09	State Farm Automobile Insurance Company 112 East Washington Street Bloomington, IL 61710-1001	N/A	90%
Tulsa Events Center (BOK Center) Rigging fall protection	Tulsa OK	\$115,475	May-08	City of Tulsa Tulsa OK 74107	Odell	100%
State Farm - Kalamazoo Operations Center Rooftop fall protection systems	Portage MI	\$112,950	Nov-08	State Farm Automobile Insurance Company 112 East Washington Street Bloomington, IL 61710-1001	N/A	90%
C17 General Maintenance Facility, March ARB Aircraft hangar fall protection system	Riverside County CA	\$163,600	Jan-10	U.S. Army Corps of Engineers	N/A	100%
Dallas Cowboys Stadium Stadium fall protection	Arlington TX	\$432,744	Jul-09	Blue Star Development Inc.	HKS, Inc.	100%
Indianapolis Colts Stadium Exposed walkway fall protection	Indianapolis IN	\$138,100	Jun-08	Indiana Stadium and Convention Building Authori 425 West South Street Indianapolis IN 46225	HKS, Inc. 1919 McKinney Ave. Dallas TX 75201	100%
State Farm - Corporate South Rooftop fall protection	Bloomington IL	\$212,480	Aug-08	State Farm Automobile Insurance Company 112 East Washington Street Bloomington, IL 61710-1001	N/A	90%
Jacksonville Naval Air Station P302V Hangar Aircraft hangar	Jacksonville, FL	\$109,000	Mar-09	Naval Air Station Jacksonville, FL	N/A	100%
Saint Louis University Arena (Chalfetz Arena) Rigging fall protection	St. Louis MO	\$116,530	Jan-08	St. Louis University 221 N. Grand Blvd. St. Louis MO 63103	Mackey Mitchell 800 St. Louis Union Station St. Louis MO 63103	100%
State Farm Mutual Automobile Ins. - Winter Haven Rooftop fall protection	Winter Haven, FL	\$143,150	Mar-08	State Farm Automobile Insurance Company 112 East Washington Street Bloomington, IL 61710-1001	N/A	75%
MUDD/LHRRB/Countway Library-Harvard Medical Rooftop fall protection	Boston, MA	\$140,575	Jun-07	Harvard Medical & Dental School 180 Longwood Avenue Boston, MA 02115	N/A	90%
Santa Barbara Bowl Pavilion Rigging fall protection system	Santa Barbara, CA	\$101,500	Aug-07	Santa Barbara Bowl Foundation 1122 N. Milpas Street Santa Barbara, CA 93103	Design Arc, Inc. 29 W. Calle Laureles Santa Barbara, CA 93105	100%

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

**6.5.1 Listing with appropriate explanation regarding the status of Manufacturer's or Contractor's resolved or unresolved legal disputes within the last six calendar years.**

Evan Corporation dba Evan Fall Protection Systems, Inc. (Installer) has had no material resolved or unresolved legal disputes within the last 6 calendar years.

See attached letter from Capital Safety Group (Manufacturer)

**6.5.2 Listing with appropriate explanation regarding any projects within the last 3 years, where the Installer or Manufacturer has failed to meet construction schedules, due to Installer or Manufacturer's cause.**

Evan Corporation dba Evan Fall Protection Systems, Inc. (Installer) and Capital Safety Group (manufacturer) have no projects within the last 3 years where the Installer or Manufacturer has failed to meet construction schedules due to Installer or Manufacturer's cause.

capital

SAFETY

Capital Safety - USA • 3833 SALA Way • Red Wing, MN 55066-5005 • Ph: 651.388.8282 • Fax: 651.388.5065

Date: March 2, 2012

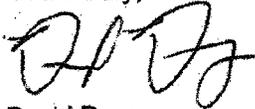
To: Vince Mejer  
Purchasing Agent  
City of Lincoln, NE

Re: JPA Pinnacle Bank Arena  
Request for Proposal Bid No. 12-033  
Evan Fall Protection Systems, Inc. Proposal submittal

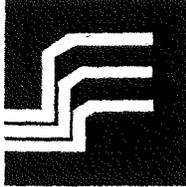
To whom it may concern:

Regarding paragraph 6.5.1 of the referenced Proposal, please note that Capital Safety has no material resolved or unresolved legal disputes relevant to this proposal within the last 6 calendar years.

Yours truly,



David Denny  
Business Development Director, Uniline  
Capital Safety  
3833 Sala Way  
Red Wing, MN 55066



March 14, 2012

West Haymarket Joint Public Agency  
440 South 8<sup>th</sup> Street, Suite 200  
Lincoln NE 68508

RE: Pinnacle Bank Arena Rigging Fall Protection System

To Whom It May Concern:

This certifies that the fall protection systems described in this proposal will meet the "Performance Requirements" under Description of Work included in the JPA-Pinnacle Bank Arena Fall Protection – RFP, Bid Number 12-033.

  
David P. Evangelista, PE  
Nebraska Professional Engineer E-10247



**EVAN CORPORATION**  
Engineered Fall Protection Systems  
22 Southwest Avenue  
Jamestown, RI 02835  
Tel: 401-423-2230  
Fax: 401-423-2785  
E-mail: [info@evancorp.com](mailto:info@evancorp.com)  
[www.evancorp.com](http://www.evancorp.com)

**EXHIBIT A**

**Rick R. Peo**

---

**From:** Vince Mejer  
**Sent:** Thursday, April 05, 2012 7:55 AM  
**To:** Rick R. Peo  
**Cc:** 'Paula Yancey'; 'Todd Lorenz' (tlorenz@oaconsulting.com); Steve D. Hubka  
**Subject:** FW: Pinnacle Supplemental Information  
**Attachments:** Evan- Pinnalce Supplemental Information April 4, 2012.pdf; Evan - Pinnacle Revised List of Products.pdf

This info needs to be include in the fall protection contract. As I understand it the additional \$18,635.00 will be an optional add at a later date.

---

**From:** David Evangelista [<mailto:dpe@evancorp.com>]  
**Sent:** Wednesday, April 04, 2012 10:53 AM  
**To:** Vince Mejer  
**Cc:** Paula Yancey  
**Subject:** Pinnacle Supplemental Information

Vince

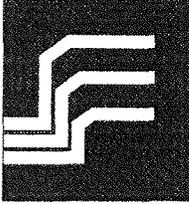
It was nice meeting you yesterday.

Attached herewith is the additional information that you requested.

Please let me know if you need anything else at this time .

---

David P. Evangelista, PE  
Evan Fall Protection, Inc.  
22 Southwest Ave.  
Jamestown RI 02835  
PH:401-423-2230  
FX:401-423-2785  
Email: [dpe@evancorp.com](mailto:dpe@evancorp.com)  
[www.evancorp.com](http://www.evancorp.com)



April 4, 2012

Vince Mejer  
Purchasing Agent  
Lincoln Purchasing

Re: JPA-Pinnacle Bank Arena  
Fall Protection RFP

Dear Mr. Mejer,

Thank you for taking the time to meet with me yesterday. In follow-up to our discussions we offer the following:

1. Transmitted herewith is a revised list of products reflecting the correct quantity of harnesses, lanyards and shuttles.
2. The price to add two additional up-down stage cable systems along the bracing trusses, thereby extending the width of fall protection coverage is \$18,635.00 lump sum. Included in this price is the addition of two access ladders and self-retracting lifelines along with bond premium. In preparing a cost comparison per linear foot we find that the price for this additional work is virtually identical to the base contract. As I previously indicated, the cost to add this protection after initial construction is complete would be significantly more.
3. Our estimate was prepared based on the presumption that our work would take place in 2012. Nevertheless, we will hold our pricing without further adjustment for work to be performed in summer 2013.

Thank you for your consideration and please let me know if you need additional information.

Respectfully,

David P. Evangelista, P.E.  
President

cc Paula Yancey

EVAN CORPORATION  
EVAN FALL PROTECTION, INC.  
22 Southwest Ave.  
Jamestown, RI 02835  
Tel 401-423-2230  
Fax 401-423-2785  
E-mail info@evancorp.com  
www.evancorp.com

EXHIBIT A

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

**4.2.3 Complete list of products to be incorporated within the Work (Bill of Materials).**

<b>PINNACLE BANK</b>		
<b>PRELIMINARY BILL OF MATERIAL</b>		
ITEM DESCRIPTION	QTY	U.M.
8mm System Tag	24	EA
8mm 7x7 Stainless Steel cable (per FT)	3356	LF
8mm Intermediate MultiSafe	64	EA
8mm Hex Swage Toggle	24	EA
8mm Hex Tensioner	24	EA
Unieye	16	EA
ZORBIT	4	EA
"D" RING ANCHORAGE	20	EA
Intermediate Stanchion	38	EA
End Stanchion	34	EA
SHUTTLE - LARGE RING	6	EA
6 FT SHOCK WAVE II - 100 %	6	EA
HARNESS	6	EA
SRL - REBEL 33 FT	2	EA
CARABINER (3600 lb gate)	2	EA
RESCUE POSITIONING DEVICE @ 125ft	1	EA
D Ring Extension	1	EA
First Man Up - RESCUE POLE	1	EA

**REVISED April 4, 2012**

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

**4.2.3.1 With the list of products provide a written description of how the products function as a system.**

### Conceptual Design Report

Our design for the Fall Protection system for the Pinnacle Bank Arena meets and exceeds the requirements of the Specification "Arena Fall Protection Systems". The enclosed plans indicate our proposed concept. Please note that any aspects of this design may be modified if required and as a result of discussions and negotiations with the owner and the design team.

All engineered components are produced by Capital Safety, an international manufacturer of fall protection systems. The systems we have selected for use in this facility are from the following Capital Safety product lines:

- DBI/Sala
- Protecta
- Evolution
- Uniline

Our proposed system consists of engineered, multi-span horizontal lifelines, designed for use by 2 workers per cable sub span. Where appropriate, in-line energy absorbers have been incorporated into our design. Additionally, in line tension indicators are provided to ensure proper line tension.

There are Four major design elements to our system. They are:

1. Rigging Grid Fall Protection. In general, these are stanchion support system. To accomplish this, we will design, furnish and install structural steel stanchions that will support the horizontal lifelines. These cables will be mounted at 6'-6" and 6'-9" above the grid top of steel. As indicated in our plans, we propose to run the cables over the catwalks at 6'-9" +/- above the walking surface. This is a practice that has been successfully employed on other project and results in a cost savings as it reduces the number of stanchions required for the installation. If however, the cable cannot be installed over the catwalks due to overhead obstructions, the additional stanchions can be provided to intercept the cables at the catwalks. It is also important to note that the Grid Fall Protection Cables will cross over the truss bottom chords at approximately 4'-6" above the walking surface. While this is not an ideal situation, we find it acceptable, and better than the alternative which is to start and stop the cables at each truss crossing.
2. Main Truss Bottom Chord Fall Protection, in general conformance with the contract details, to

The proposed fall protection system consists of the 8mm stainless steel cable supported on the Multi Safe Intermediate brackets. Cable ends are terminated with Hex Swage Toggles and Hex Swage Tensioners.

Grid mounted systems are supported from End and Intermediate stanchions, which are fabricated structural steel supports.

Truss mounted systems are supported directly from the roof steel and are terminated to Unieye end anchors.

"D" Ring Anchors are provided at all expanded catwalks under the assumption that these areas are for spot lights and have removable railing sections. Under this assumption, workers will need to be protected any time the rails are removed. These anchors are provided for this purpose.

The user equipment that is being furnished is as specified and includes shuttles, harnesses and 6 ft shock wave "Y" lanyards for use by the workers. Rescue equipment consists of the Rescue-Positioning Device, D ring Extension and First Man Up Rescue Pole.

Evan Corporation dba Evan Fall Protection Systems, Inc.

JPA PINNACLE BANK ARENA  
FALL PROTECTION SYSTEM  
REQUEST FOR PROPOSAL BID NO. 12-033

Self Retracting lifelines will be installed as vertical fall protection at the top of the wire rope ladders.

**EXHIBIT B**

**Intentionally Omitted**

**EXHIBIT C**

**Intentionally Omitted**

**EXHIBIT D**

**Other Contract Documents**

## COMMENTARY TO ACCOMPANY CONSTRUCTION BONDS

### A. GENERAL INFORMATION

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

Construction Performance Bond  
Construction Payment Bond

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

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

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

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

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

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

### B. COMPLETING THE FORMS

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

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

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

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

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

CONSTRUCTION PERFORMANCE BOND

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

---

CONTRACTOR (Name and Address):

SURETY (Name and Principal  
Place of Business):

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

CONSTRUCTION CONTRACT

Date:  
Amount:

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

BOND  
Date:  
Amount:  
Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company:

(Corp. Seal) SURETY  
Company:

(Corp. Seal)

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

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

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

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

CONSTRUCTION PAYMENT BOND

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

---

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place  
Of Business):

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

CONSTRUCTION CONTRACT

Date:  
Amount:

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

BOND  
Date:  
Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL  
Company: (Corp. Seal)

SURETY  
Company: (Corp. Seal)

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

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

Name and Title:

Name and Title:

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

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

By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to the funds for the completion of the work.

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

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

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

**1. INDEMNIFICATION**

**A. Indemnification of JPA**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, DEATH, OR CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

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

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

## 2. INSURANCE GENERAL PROVISIONS

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

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

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

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

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

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

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

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

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

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

### 3. INSURANCE REQUIREMENTS

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

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

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

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

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

**C. Commercial General Liability Insurance.**

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

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

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

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

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

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

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

**D. Vehicle liability insurance coverage.**

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

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

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

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

**E. Umbrella/Excess Insurance.** At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

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

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

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

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

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

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

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

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

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

- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

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

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

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**CITY OF LINCOLN  
EXECUTIVE ORDER**

NO. 083319

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

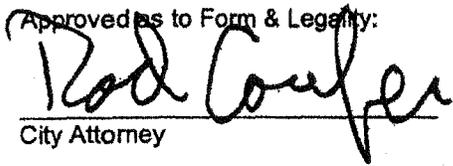
(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision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

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

Dated this 28 day of July, 2010.

  
Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

  
City Attorney

**EMPLOYEE CLASSIFICATION ACT AFFIDAVIT**

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

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

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

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

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

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

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

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

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

## 29 C.F.R. § 5.5

Code of Federal Regulations Currentness

## Title 29. Labor

## Subtitle A. Office of the Secretary of Labor

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

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

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

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

(1) Minimum wages.

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

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

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

EXHIBIT D

the following criteria have been met:

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

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

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

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

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

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

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

**EXHIBIT D**

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

(3) Payrolls and basic records.

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

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

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

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

**EXHIBIT D**

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

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

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

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

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

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

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

**EXHIBIT D**

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

EXHIBIT D

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

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

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

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

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

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

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

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

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

**EXHIBIT D**

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

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

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

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

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

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

#### NOTES OF DECISIONS

29 C. F. R. § 5.5, 29 CFR § 5.5

Current through December 15, 2011; 76 FR 77913.

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END OF DOCUMENT

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EXHIBIT D

General Decision Number: NE120065 01/20/2012 NE65

Superseded General Decision Number: NE20100075

State: Nebraska

Construction Type: Building  
 BUILDING CONSTRUCTION INCLUDING WORK ON INDUSTRIAL SITES

County: Lancaster County in Nebraska.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/06/2012
1	01/13/2012
2	01/20/2012

CARPO444-002 06/01/2011

	Rates	Fringes
CARPENTER (Drywall Hanging Only).....	\$ 19.48	8.18

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ELEC0265-003 09/01/2011

	Rates	Fringes
ELECTRICIAN		
Zone 1.....	\$ 25.57	4.5%+8.75
Zone 2.....	\$ 25.87	4.5%+8.75
Zone 3.....	\$ 26.17	4.5%+8.75
Zone 4.....	\$ 26.57	4.5%+8.75

ZONE DEFINITIONS:

- Zone 1: 0 to 35 miles from the main Post Office in Lincoln, NE
- Zone 2: 36 to 50 miles from the main Post Office in Lincoln, NE
- Zone 3: 51 to 75 miles from the main Post Office in Lincoln, NE
- Zone 4: 76 miles and over from the main Post Office in Lincoln, NE

\* ELEV0028-001 01/01/2012

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 38.86	23.535+a+b

FOOTNOTE:

- a. Vacation Pay: 8% for persons with 5 or more years of service, 6% for persons with less than 5 years of service.
- b. Paid Holidays: New Year's Day, Memorial Day, Independence

Day, Labor Day, Thanksgiving Day, Friday after  
Thanksgiving, and Christmas Day.

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ENGI0571-004 10/01/2011

	Rates	Fringes
OPERATOR: Crane.....	\$ 26.31	9.59
OPERATOR: Forklift.....	\$ 21.04	9.59

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IRON0021-002 06/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 25.95	11.62

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LABO1140-003 01/01/2011

	Rates	Fringes
LABORER: Mason Tender (Brick & Hod).....	\$ 18.13	7.85

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PLUM0464-007 06/01/2011

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe Installation).....	\$ 31.76	14.07

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SHEE0003-002 07/01/2010

	Rates	Fringes
SHEET METAL WORKER (Excludes Installation of HVAC Duct).....	\$ 26.17	12.52

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SUNE2011-032 10/27/2011

	Rates	Fringes
BRICKLAYER.....	\$ 24.44	0.00
CARPENTER.....	\$ 18.50	1.80
CEMENT MASON/CONCRETE FINISHER...\$	15.73	2.06
ELECTRICIAN (Alarm Installation Only).....	\$ 19.68	4.12
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 20.15	4.84
FORM WORKER.....	\$ 14.97	2.06
LABORER: Common or General.....\$	12.03	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.68	4.93

EXHIBIT D

OPERATOR: Bobcat/Skid Loader....\$ 21.72	2.10
OPERATOR: Loader.....\$ 19.27	4.00
PAINTER: Brush, Roller, and Spray.....\$ 14.26	0.00
PLUMBER, Excluding HVAC Pipe Installation.....\$ 22.89	6.04
ROOFER.....\$ 13.57	0.77
SHEET METAL WORKER (Installation of HVAC Duct Only).....\$ 21.89	6.30
TRUCK DRIVER: Dump and Tandem Truck.....\$ 14.09	2.49

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

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

rate.

#### Non-Union Identifiers

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

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

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#### WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

