AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, June 1, 2012 AT 3:00 P.M.

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

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair 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 May 15, 2012 (Chair Beutler)
   - (Staff recommendation is for the JPA Board to approve the minutes as presented)

4. West Haymarket Progress Report (Paula Yancey)
   - Public Comment

5. WH 12-30 Resolution to approve a Management Services Agreement with Marvin Investment Management Co. to provide management oversight of the West Haymarket Redevelopment Project for a term of 18 months commencing on June 15, 2012 and expiring on December 15, 2013. (Rick Peo)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

6. WH 12-32 Resolution to approve a Purchase Agreement between the JPA and Lincoln Depot Limited Partnership for the (1) purchase of fee title to part of Lot 2 and all of Lot 4, Lincoln Station Addition; (2) the acquisition of easements and other rights to Lot 2, Lincoln Station Addition, for additional right-of-way, temporary and permanent access, construction and utility easements, and (3) reimbursement of lost storage. (Dan Marvin/Chris Connolly)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

7. WH 12-33 Resolution to approve a Memorandum of Agreement between the West Haymarket Joint Public Agency and Nebraska Department of Environmental Quality. (Miki Esposito)
   - Public Comment
   - (Staff recommendation is for the JPA Board to approve the resolution)

8. WH 12-34 Resolution to approve Amendment No. 6 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to add previously planned Task 22 and 23 to provide additional required remediation activities. (Miki Esposito)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

9. WH 12-35 Resolution to approve Amendment No. 1 to the Agreement for Construction Observation and Testing Services for the Arena, Arena Garage and Ramp Construction Sites to include Arena floor subgrade testing between Alfred Benesch & Company and the West Haymarket Joint Public Agency. (Paula Yancey)
    - Public Comment
    - (Staff recommendation is for the JPA Board to approve the resolution)

10. Set Next Meeting Date: Tuesday, June 19, 2012 at 3:00 in City Council Chambers Room 112

11. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
May 15, 2012

Meeting Began At: 3:00 P.M.

Meeting Ended At: 3:15 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 will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 3 -- Approval of the minutes from the JPA meeting held April 20, 2012

Beutler asked for corrections or changes to the minutes of the April 20, 2012 meeting. Clare requested a spelling correction to Coby Mach's first name on page 6. Carroll moved approval of the minutes with that correction. 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 status on the Pinnacle Bank Arena and associated infrastructure projects.

Yancey began by reviewing the participation numbers, indicating that through March and April of 2012 there had been 1,117 workers on site to date. This includes both professional and construction workers. Of the total, 60% (or 670) lived in Lincoln/Lancaster County and another 25% (or 277) lived in Nebraska outside Lancaster County. Only 15% (or 170) were outside Nebraska.

Looking at only the Davis Bacon construction workers, there were 490 (or 63%) of the workers from Lincoln/Lancaster County, 206 (or 26%) from Nebraska, and only 82 (or 11%) outside of Nebraska. For company participation, out of 175 firms, 128 (or 73%) were Nebraska firms and only 47 (or 27%) were outside Nebraska. That equates to $109 million out of a total $158 million that was awarded to Nebraska firms and stayed within Nebraska.

On the infrastructure projects, the 'N' Street work has been ongoing over the last few weeks. Yancey referenced the image of the formwork in preparation for the paving that is happening west of 9th Street and moving from 9th to 7th Street.

Another image shows the paving being put in place. In addition, Constructors has started the railroad track removal of the old lines that were in 8th Street as part of the RTSD project. The water main installation is also shown west of 9th Street. Between 9th and 'N' Street the line is complete and has been plugged, chlorinated, and passed inspections.

The exterior brickwork on the Amtrak Station is almost 60% complete. The drywall is being taped and interior finishes will be completed in anticipation of this building being opened and turned over to Amtrak in June.

The Watson Brickson demolition work is completed and final site preparation is done, including grading and seeding. The next activity to occur on this site will be the next round of environmental testing.

On the DEC Plant work, the below grade utilities are being installed. Slab on grade and structural steel activities will begin this month. The piping went out to bid a couple of weeks ago and came in under the estimates. That work will bid soon and will be ongoing.

John Hinshaw, with Mortenson Construction, reported on the Pinnacle Bank Arena progress. Roughly, they have 150 craft workers on site daily. When pouring concrete, that number may reach 175 workers. Overall, there have been 175,000-worker hours onsite, and that number will continue to grow quickly. All the Phase I foundations are done with 11,700 yards of concrete poured to date.

In response to Beutler's inquiry, Hinshaw confirmed that there have not been any further incidents on site. Clare asked for a definition of a "craft" worker. Hinshaw explained that was a term used for an onsite worker putting actual work in place – as opposed to a salaried or office employee.

The first two levels, main concourse and premium level, have their structural concrete deck loop completed on the project. In addition, the upper concourse is only lacking one quad so it is three quarters of the way around. Two images show the bowl with the three levels and on the right side the rakers going up to the upper bowl. Another slide shows the upper concourse, the vomitory walls and the rakers on the upper bowl or the highest occupied level.

Slab on grade is the term used to describe the concrete poured on the subgrade. That work has begun on the north end of the job site. There is a lot of electrical work needed, which can be seen occurring in the image showing the future electric room and conduit work that is roughed in underground that will never be seen.

Beutler asked when they would see the actual roof go on. Hinshaw stated that pieces will be going up in July. They will arrive in June and trusses will be built on the ground. It should be enclosed by December or January. Clare expressed his appreciation for the extra work and emphasize given to utilization of local talent.

Chair Beutler invited public comment. There was none.

Item 5 – Approval of Payment Registers

Steve Hubka, City Finance Director, presented the payment registers for the month of April for Board review and approval. The total expended was approximately $7.36 million, including the $12,080 payment to Engineering. Most notably is the payment to Mortenson for $5.8 million. All the vendors have appeared on registers in recent months. In response to Clare, Hubka confirmed that all the costs are within the budget and we are following audit procedures. In the last couple of days, Hubka and Yancey have tightened up procedures on signatures to insure that people most familiar with the work at this point in time sign off, along with Yancey or Swanson.

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

Item 6 – Review of the April 2012 Expenditure Reports

Hubka explained that these reports continue to reflect the amended budget – both the operating and capital budget. Being no public comment or discussion, the Board moved to the next agenda item.

Item 7 -- WH 12-26 Resolution approving Change Order No. 1 to the Agreement with TCW Construction Inc. to perform PCB Remediation of the Alter Sliver approved by Resolution WH 00262. This Change Order is for the final reconciliation of soil quantities that needed to be removed in order to meet the required PCB levels required under the JPA's agreement with BNSF. (Paula Yancey)

Yancey explained that this resolution is to approve a change order to the TCW Construction contract for the Alter Sliver remediation project recently completed. It reconciles the final quantities that were necessary in the excavation of those contaminated soils to meet the BNSF requirements. The total change order amount is $111,846.50 bringing the total contract to $618,904.83. This will finalize all contract requirements with TCW on this project. It is within the environmental budget and the project cost. Even with the change order, TCW still remains $200,000 below the other bidders for this work. Miki Esposito gave the Board the thumbs up on approval of this change order as well.

There was no public comment. Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 -- WH 12-27 Resolution approving Amendment No. 1 to the November 1, 2011 Consultant Agreement for Extended Program Management Services and Extended Project Management Services between P.C. Sports and the West Haymarket Joint Public Agency to amend the Scope of Services to add creative schematic design service for the Pedestrian Bridge for a fee of $9,900. (Paula Yancey)

Yancey introduced this resolution for schematic design creative services from Dimensional Innovations for the pedestrian bridge design. It was determined that the best way to provide this contract vehicle was to amend the P.C. Sports contract. It is for a fixed fee of $9,900 for the Phase I design concepts which they have been working on for the JPA.

Being no public comment, Carroll made a motion to approve Resolution WH 12-27. Clare seconded the motion. Motion carried 3-0.

Item 9 -- WH 12-29 Resolution granting Lincoln Electric System a permanent utility easement on or across certain described JPA Property for underground utility lines and underground utility facilities. (Rick Peo)

Rick Peo, City Attorney's Office, explained that this is for a permanent easement under the same format previously used to affirm that the utilities will be underground. It is for a distribution line that runs from the northeast of the arena south to 'R' street on property east of the arena site. It provides distribution of electrical service to the area.

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

Item 10 – Set Next Meeting Date

The next regular meeting date is Friday, June 1, 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 3:15 P.M.

Prepared by: Pam Gadeken, Public Works and Utilities

Pinnacle Bank Arena

PINNACLE BANK ARENA

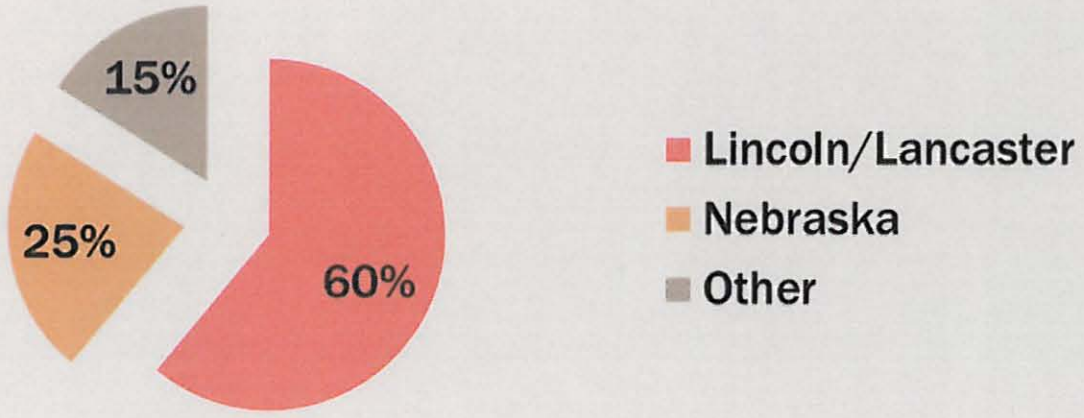
& Associated Infrastructure Projects

Project Status Update
May 15th, 2012

WEST HAYMARKET LOCAL PARTICIPATION REPORT

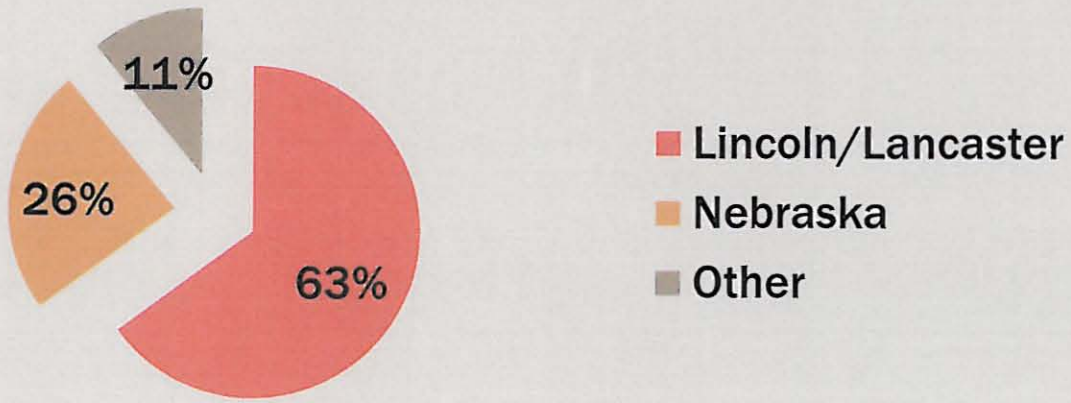
ALL WORKERS – INCLUDING ENGINEERING AND PROFESSIONAL SERVICES THROUGH MARCH/APRIL 2012

	Total	Percentages
Lincoln/Lancaster County	670	60%
Nebraska	277	25%
Other	170	15%
	1117	100%



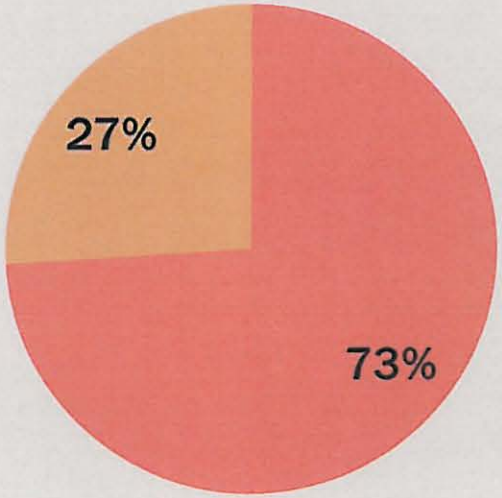
WEST HAYMARKET LOCAL PARTICIPATION REPORT
DAVIS BACON / CONSTRUCTION EMPLOYEES
THROUGH MARCH / APRIL 2012

	Total	Percentages
Lincoln/Lancaster County	490	63%
Nebraska	206	26%
Other	82	11%
	778	100%



WEST HAYMARKET COMPANY PARTICIPATION

	Total	Percentage
Nebraska Firms	128	73%
Other	47	27%
	175	100%



$109 Million
Nebraska Dollars
out of $158 Million

N STREET

Formwork in preparation for street paving west of 9th Street. Paving operation is moving from 9th to 7th street.

N STREET PAVING WEST OF 9TH STREET

WATER MAIN INSTALLATION

Water main installation west of 9th Street. Water main is complete between 9th & N Street.

AMTRAK STATION
MASONRY NORTH FACE

Exterior brickwork on the north end of the building.
Exterior brick is approximately 60 percent complete.

AMTRAK

TAPED DRYWALL BEHIND TICKET WINDOW

Drywall finishing is ongoing. Interior finishes will follow in the coming weeks.

WATSON BRICKSON

Final site grading and seeding has been completed.

The next activity on this site will be additional environmental testing.

DEC

DEC contractor is currently installing below grade utilities. Slab on grade and structural steel will be starting this month.

PINNACLE BANK ARENA
PROGRESS UPDATE

Pinnacle Bank Arena

SAFETY

- The project averages over 150 craft workers
- Workers have spent 175,000 hours onsite

CONCRETE SUPERSTRUCTURE

Mortenson | Hampton
May 15, 2012

- The team completed grade beam, spread footing, and pile caps installation.
- 11,700 yards of concrete have been placed to date.

ELEVATED DECK PLACEMENTS

- Main Concourse and Premium Concourses are placed
- 5 of 7 upper concourse pours completed

MAIN, PREMIUM & UPPER LEVEL

Mortenson | Hampton
May 15, 2012

SEATING BOWL

Mortenson | Hampton
May 15, 2012

VOMITORY WALLS

SLAB ON GRADE PREPARATION

ELECTRICAL WORK IN PROGRESS

Mortenson | Hampton
May 15, 2012

WH 12-30 Introduce: 6-1-12

RESOLUTION NO. WH- _____

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

That the attached Management Services Agreement between the West Haymarket Joint Public Agency ("JPA") and Marvin Investment Management Co. to render professional assistance in management oversight of the West Haymarket Redevelopment Project for an 18 month term from June 15, 2012 through December 15, 2013, upon the terms and conditions set out in said Agreement, is hereby accepted and approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the JPA.

The City Clerk is directed to transmit one fully executed original of said Agreement to Marvin Investment Management, Attention: Daniel K. Marvin, 2523 Woods Boulevard, Lincoln, NE 68502.

Adopted this _____ day of June, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of June, effective June 15, 2012 by and between the West Haymarket Join Public Agency, a municipal corporation, hereinafter referred to as "JPA" and Marvin Investment Management Co., a Nebraska corporation, hereinafter referred to as "Project Manager."

RECITALS

A.

The JPA proposes to engage Project Manager, in accordance with the terms and conditions set forth herein, to render professional assistance in management oversight of the West Haymarket Redevelopment Project ("Project Manager Services").

B.

Project Manager possesses certain skills, experience, education and competency to perform the Project Manager Services on behalf of the JPA.

C.

The City of Lincoln (City) and the Regents of the University of Nebraska have created the West Haymarket Joint Public Agency ("JPA"), a joint public agency of the State of Nebraska under Neb. Rev. Stat. §§ 13-2501 et seq., to facilitate construction and financing of the West Haymarket Redevelopment Project and Project Manager has been selected by the City and the JPA to serve as the Project Manager and Secretary of the JPA.

D.

Project Manager hereby represents that Project Manager is willing and able to perform Project Manager Services in accordance with the Scope of Services attached to this Agreement as Attachment A and incorporated herein by this reference.

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

I.

SERVICES OF PROJECT MANAGER

The JPA hereby agrees to hire, and Project Manager hereby agrees to perform, Project Manager Services under the terms and conditions provided herein.

II.

SCOPE OF SERVICES

Project Manager agrees to perform the Project Manager Services set forth in Attachment A in accordance with accepted business practices and with the full commitment to achieve the goals and objectives set forth by the JPA. Project Manager agrees to fully support the JPA and the City as they participate in the planning activities for the West Haymarket Redevelopment Project. Project Manager agrees to perform its obligations under this Agreement to the best of its abilities. However, the Project Manager in no way guarantees, nor can it be held liable or accountable for, the ultimate success of the West Haymarket Redevelopment Project.

The JPA agrees to cause the City to provide Project Manager with: appropriate on-site City workspace; PC; access to City IS; telephone; FAX; file space; copier; etc. in order to carry out the Project Manager Services. In the event there is a conflict between the terms of Attachment A and this Agreement, the terms of this Agreement shall control.

III.

TERMS OF AGREEMENT

The term of this Agreement shall be for eighteen (18) months commencing June 15, 2012 and shall expire on-December 15, 2013.

IV.

COMPENSATION

The City agrees to pay Project Manager for the services set forth in Attachment "A" a lump sum of Seventy-Two Thousand and no/100 ($72,000.00) plus expenses of up to Five Thousand and no/100 Dollars ($5,000.00). Payments shall be payable monthly to the Project Manager. Payment of expenses shall require supporting documentation acceptable to the City that such expenses have been incurred.

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

V.

SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the JPA, without the prior written approval of the JPA.

VI.

NON-RAIDING CLAUSE

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

VII.

TERMINATION OF AGREEMENT

A. This Agreement may be terminated by either party for substantial breach by the other party upon at least ten days' written notice.

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

C. The Project Manager may terminate this Agreement, in whole or part, for any reason for the Project Manager's own convenience upon at least thirty days' written notice to the JPA.

If the Agreement is terminated by either the JPA or Project Manager as provided in A, B or C above, Project Manager shall be paid for all services performed, and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

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

In the event of such termination, Project Manager agrees that all work performed and all information provided by Project Manager to the JPA or by the JPA to the Project Manager shall remain confidential and shall not be provided to any person, firm, association or corporation without the consent of the JPA. Further, Project Manager agrees that, upon termination as provided in this paragraph, it shall not be employed by any developer or other party who is or may be interested in the work effort as defined in Article III, or interested in the decisional process relating to the application of such findings as may result from the tasks performed as defined in Article III for a period of one (1) year after such termination, without prior approval of the JPA.

VIII.

ADDITIONAL SERVICES

The JPA may from time to time, require additional services from the Project Manager including but not limited to, special reports, graphics, attendance at meetings or presentations. Such additional services, including the amount of compensation for such

additional services, which are mutually agreed upon by and between the JPA and Project Manager shall be effective when incorporated in written amendments to this Agreement.

IX.

EQUAL EMPLOYMENT AND FAIR LABOR PRACTICES

In connection with the performance of work under this Agreement, Project Manager 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, Project Manager shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, national origin, age or marital status. Project Manager shall maintain fair labor standards in the performance of this Agreement as required by Chapter 73, Nebraska Reissue Revised Statutes of 1943 (as amended).

X.

ASSIGNABILITY

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

XI.

INTEREST OF PROJECT MANAGER

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

XII.

OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

Project Manager agrees to and hereby transfers all rights, including those of a property or copyright nature, in any reports, studies, information, data, digital files, imagery, metadata, maps, statistics, forms and any other works or materials produced under the terms of this Agreement. No such work or materials produced, in whole or in part, under this Agreement, shall be subject to private use or copyright by Project Manager without the express written consent of JPA.

JPA shall have the unrestricted rights of ownership of such works or materials and may freely copy, reproduce, broadcast, or otherwise utilize such works or materials as the JPA deems appropriate. The JPA shall also retain all such rights for any derivative works based on such works or materials.

XIII.

COPYRIGHTS, ROYALTIES & PATENTS

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

XIV.

COPYRIGHT; PROJECT MANAGER'S WARRANTY

A. Project Manager warrants that all materials, processes, or other protected rights to be used in the Project Manager Services have been duly licensed or authorized by the appropriate parties for such use.

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

XV.

GENERAL LIABILITY

INSURANCE AND HOLD HARMLESS

To the fullest extent permitted by law, not to exceed the extent and the amount of the general liability insurance coverage required herein, Project Manager shall indemnify and hold harmless JPA, its elected official, officers, agents, 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 this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting there from that is caused in whole or in part by the wrongful act or negligence of the Project Manager or anyone directly or indirectly employed by Project Manager or anyone for whose acts any of them may be liable. This section will not require Project Manager to indemnify or hold harmless the JPA for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the JPA. This section survives any termination of this Agreement.

The minimum acceptable limits of liability to be provided by such insurance shall be as follows: (1) all acts or omissions, $500,000 each occurrence; and (2) bodily injury/property damage, $500,000 each occurrence; and (3) personal injury liability, $500,000 each occurrence; and (4) contractual liability, $500,000 each occurrence; and (5) medical expenses (any one person), $10,000. The required general liability insurance shall include contractual liability coverage for the above-described indemnification and hold harmless agreement clause.

The obligations of indemnification herein shall not include or extend to any claims arising out of the negligence of the JPA to the extent the same is the sole and proximate cause of the injury or damage so claimed. This section survives any termination of this Agreement.

To the fullest extent permitted by law, the JPA shall indemnify and hold harmless the Project Manager, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney fees arising out of or resulting from performance of this Agreement that results in any claims for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death or any injury to or construction of tangible or intangible property, including any loss of use resulting there

from that is caused in whole or part by the JPA or anyone directly or indirectly employed by the JPA, or anyone whose acts any of them may be liable or for claims made by the public against the Project Manager in the performance of its duties under this Agreement. This section shall not require the JPA to indemnify or hold harmless the Project Manager for any losses, claims, damages, expenses, arising out of or resulting from the willful wrongful act or negligence of the Project Manager. This section survives any termination of the Agreement.

XVI.

WORKERS' COMPENSATION

Project Manager shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Project Manager or any such employees of Project Manager as may be engaged in the performance of this Agreement.

XVII.

AUTOMOBILE LIABILITY INSURANCE

The Project Manager shall take out and maintain during the life of the contract such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by a such Automobile Liability Insurance shall be as follows:

I Bodily Injury Limit $500,000 Each Person/$1,000,000 Each Occurrence

II. Property Damage Limit $500,000 Each Occurrence

III. Combined Single Limit $1,000,000 Each Occurrence

XIII.

MINIMUM SCOPE OF INSURANCE

All liability insurance policies shall be written on an "occurrence" basis only. All insurance coverages are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of not less than A:VIII unless specific approval has been granted by the JPA.

XIX.

CERTIFICATE OF INSURANCE

All Certificates of Insurance shall be filed with the JPA on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by the preceding sections, and showing the JPA is an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the JPA thirty days notice of cancellation or non-renewal of insurance coverage.

XX.

NOTICE

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

West Haymarket Joint Public Agency
Law Department
Attention: Rod Confer
555 South 10th Street, Suite 300
Lincoln NE 68508

Marvin Investment Management Co. Lincoln, NE 68502
Attention: Daniel K. Marvin
2523 Woods Boulevard

XXI.

INDEPENDENT CONTRACTOR

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

XXII.

NEBRASKA LAW

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

XXIII.

INTEGRATION

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

XXIV.

AMENDMENT

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

XXV.

CAPACITY

The undersigned person representing Project Manager does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind Project Manager to this Agreement.

XXVI.

SEVERABILITY

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

XXVII.

WAIVER OF CONTRACTUAL RIGHT

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

XXVIII.

REPRESENTATIONS

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

XXIX.

AUDIT AND REVIEW

The Project Manager shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

XXX.

LIVING WAGE

If the compensation for services provided pursuant to this Agreement is equal to or exceeds $25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, Project Manager shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, the JPA shall have authority to terminate this Agreement and to seek other remedies for violations of this Ordinance.

IN WITNESS WHEREOF, Project Manager and the JPA do hereby execute this Agreement.

WEST HAYMARKET JOINT PUBLIC AGENCY,

Attest:

_____
City Clerk

By: _____
Chris Beutler, Chair
Board of Representatives

MARVIN INVESTMENT MANAGEMENT CO.
a Nebraska corporation,

By: _____
Daniel K. Marvin, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Chris Beutler, Chair of the Board of Representatives of the West Haymarket Joint Public Agency.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Daniel K. Marvin, President of Marvin Investment Management Co, a Nebraska corporation.

_____
Notary Public

Attachment A

Scope of Services

Project Manager will provide the following Project Manager Services:

A. Provide project management oversight for the following activities:
   a. West Haymarket Contracts;
   b. Community outreach;
   c. Web site management;
   d. Zoning and related permitting;
   e. Redevelopment Agreement negotiations
   f. BID development
   g. Long-term operation planning
   h. Develop contract with the parking enterprise fund to manage parking.

B. Act as the WH JPA's liaison with the
   a. District Energy Corporation
   b. SMG
   c. Convention and Visitors Bureau
   d. FAA
   e. Historic Preservation Commission
   f. Urban Design Committee
   g. UNL on the arena complex

WH 12-32 Introduce: 6-1-12

RESOLUTION NO. WH- _____

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

That the attached Purchase Agreement between the JPA and Lincoln Depot Limited Partnership for the (1) purchase of fee title to part of Lot 2 and all of Lot 4, Lincoln Station Addition; (2) the acquisition of easements and other rights to Lot 2, Lincoln Station Addition, for additional right-of-way, temporary and permanent access, construction and utility easements, and (3) reimbursement of lost storage, under the terms and conditions of said Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Purchase Agreement on behalf of the JPA.

Adopted this _____ day of _____, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

PURCHASE AGREEMENT

This Agreement is made this ____ day of May, 2012, by and between Lincoln Depot Limited Partnership, a Nebraska limited partnership (hereinafter referred to as "LDP") and the West Haymarket Joint Public Agency, a Nebraska Joint Public Agency (hereinafter referred to as "JPA").

WITNESSETH:

WHEREAS, the JPA is a joint public agency organized and existing under the laws of the State of Nebraska, and;

WHEREAS, LDP is a limited partnership organized and existing pursuant to the laws of the State of Nebraska, and;

WHEREAS, JPA is redeveloping portions of the West Haymarket area for entertainment and commercial purposes, and;

WHEREAS, Lots 1, 2 and 4, Lincoln Station Addition, Lincoln, Lancaster County are owned by LDP, ("LDP Property") and;

WHEREAS, Lots 1 and 4 of the LDP Property ("Iron Horse Parking Lot") are subject to the terms of a Redevelopment Agreement under the terms of which the City of Lincoln, Nebraska ("City") entered into a Parking Lot Ground Lease dated September 30, 1988 with LDP for the purpose of operating a public parking lot, and;

WHEREAS, the parties hereto have reached an agreement wherein LDP will convey to JPA the necessary interests as set forth below to accommodate the redevelopment project.

NOW, THEREFORE, in consideration of the terms and conditions set forth below, the parties agree to the following:

1. Fee Title Acquisitions. JPA hereby agrees to purchase from LDP and LDP agrees to sell to JPA all right, title, and interest in and to the property described as:

(A) that portion of Lot 1 consisting of 145 square feet as shown and described in the attached Exhibit 1 in exchange for the JPA completing, within one year of the date of closing herein, a replat for the Lincoln Depot Station, to include Lots 1, 2, and 3, Lincoln Station Addition, Lincoln, Lancaster County, at no cost or expense to LDP except for attorney fees as may be incurred for review of replat materials. In the event JPA fails to complete the replat within one year of closing, LDP may proceed with a replat of its property, all cost and expenses of which shall be paid by JPA;

(B) that portion of Lot 2, consisting of 1,863 square feet as shown and described in the attached Exhibit 2 for the sum of $25.00 per square foot **($46,575.00)** ; and

(C) all of Lot 4 as shown and described in the attached Exhibit 3 for the sum of **One Million and 00/100 Dollars ($1,000,000.00)**.

The above parcels are collectively referred to as "Fee Title Property"

2. Lease Amendment. JPA, at no cost or expense to LDP, shall facilitate obtaining the the amendment and modification of the Parking Lot Ground Lease between LDP and the City of Lincoln, Nebraska which shall reflect a reduction in basic rent payments of no more than 43.7% to reflect the acquisition of Lot 4 by the JPA and such other amendments, consents and approvals to enable LDP to fully comply with the terms of this Agreement without causing any defaults or violations of the Parking Lot Ground Lease as it relates to the remaining interests of LDP in and to Lot 1.

3. Permanent Street Right-of-Way Easement. JPA agrees to purchase from LDP, and LDP agrees to sell to JPA a permanent easement on and over that part of Lot 2 as more fully described in Exhibit 2 for public right-of -way for Q street as, for **$25.00 per square foot** multiplied by the number of square feet (477) listed in Exhibit 2 **(Total: $11,925.00)**, or as may be agreed upon by the parties prior to closing.

4. Locomotive Easement. LDP agrees to grant to JPA in a form substantially similar to Exhibit 7, attached hereto, an easement for Locomotive No.710 on that portion of Lot 2 described in Exhibit 2, for the cost of **$10.00 per square foot** multiplied by the number of square feet (3,458) listed in Exhibit 2 **(Total: $34,580.00)**, or as may be agreed upon by the parties prior to closing. JPA agrees that not more than 2,500 square feet shall be fenced.

5. Deposit. The sum of **Seventy-Five Thousand and 00/100 Dollars ($75,000.00)** (the "Deposit") shall be paid as a deposit for all conveyances described herein within one (1) business day after the date hereof with the date the Deposit is made being the "Deposit Date." The Deposit shall be deposited with the Title Company, to be held in an interest bearing account. Interest earned on the Deposit shall be for the benefit of the JPA. The JPA shall retain ownership of and exclusive control over the Deposit until all contingencies in this Agreement are resolved in favor of a closing, at which time the Deposit will become nonrefundable. At closing, the funds held in escrow shall be paid over to LDP and JPA shall receive a credit for all funds paid out of escrow on the balance due and owing to LDP.

6. Temporary Construction Easement. LDP shall grant to JPA a temporary construction easement in and to those portions of Lots 1 and 2 described in Exhibits 2, 4 and 6, for the cost of **$1.00 per square foot** multiplied by the number of square feet on Lot 1 (1,432) and Lot 2 (6,590) **(Total: $8,022.00)**, or as may be agreed upon by the parties prior to closing..

7. Pedestrian Access Easement. LDP shall, subject to a mutual agreement, grant to JPA a permanent access easement over, under, and across property to the west of 201 North 7th Street, as generally described in Exhibit 2 as the areas designated as "Permanent Easement for Underground Utilities" and "Temporary Easement." In exchange, the JPA will provide not less than $50,000.00 of improvements to property on the west side of 201 North 7th Street, as shall be

negotiated before and after closing of this transaction. LDP shall not be obligated to grant the access easement described herein until the improvements made by JPA are substantially complete.

8. Permanent Underground Utility Easement. LDP agrees to grant to JPA an underground utility easement in and under Lots 1 and 2 as described in Exhibits 2 and 4.

9. Purchase Price for Lost Storage. JPA shall pay to LDP the sum of **One Hundred Thirty One Thousand and 00/100 Dollars ($131,000.00)** for loss of 6,000 square feet of storage space due to the removal of six boxcars by LDP, the Temporary Construction Easement and the Permanent Underground Utility Easement.

10. Removal of Boxcars Payment. JPA will reimburse LDP **Thirty Five Thousand and 00/100 Dollars ($35,000.00)** for part of the cost of removing the six box cars on the west side of the Lincoln Depot building.

12. Title, Deed. The Fee Title Property is to be conveyed by a Warranty Deed (the "Deed") running to JPA, or to the nominee designated by JPA by written notice to LPT as of the Closing Date (as defined in Section 11). The Easements shall be prepared by the JPA, be commercially reasonable and subject to review and comment of legal counsel for LDP. The Deed and Easements (collectively "Property") shall convey title or the interests thereto, free from encumbrances, except the following (collectively, the "Permitted Exceptions"):

(a) Provisions of existing building, subdivision and zoning, land use and environmental laws, regulations and codes;

(b) Such taxes for the then current year as are not due and payable on the Closing Date;

(c) Any liens for municipal betterments assessed after the date of this Agreement; and

(d) The Parking Lot Ground Lease and any such easements, rights of way, restrictions, covenants and agreements of record as of the date of this Agreement which are approved by JPA. The Deed will be properly prepared and signed so that it will be accepted for recording by the Register of Deeds of Lancaster County, Nebraska. Pursuant to Neb Rev. Stat. §76-902, this transaction is exempt from Documentary Stamp Tax.

13. Title Standards. LDP shall provide to JPA a title insurance commitment (the "Preliminary Commitment") issued by a Charter Title, Nebraska licensed title insurance agent, ("Title Company") that contains certain special exceptions proposing to insure JPA for the Purchase Price of all real estate conveyances herein. JPA shall have thirty (30) days from the date of receipt of the title commitment to review the special exceptions set forth in the Preliminary Commitment. If, within the Title Review Period, JPA serves written notice (the "Title Notice") on LDP that the Preliminary Commitment contains any matter, exception or exceptions which are not acceptable to JPA (the "Unpermitted Exceptions"), then LDP shall have thirty (30) days after the date of such notice (the "Cure Period") to cure such defects or failure by removing such unpermitted exceptions or causing the Title Company to provide an affirmative endorsement

insuring JPA over the effect of such unpermitted exceptions, and to deliver a revision of the Preliminary Commitment to JPA. All existing exceptions not objected to in the Title Notice as being unpermitted exceptions are hereinafter referred to as "Permitted Exceptions." If LDP is unable or unwilling to cause any or all of the unpermitted exceptions to be removed or insured over by endorsement as described above, JPA shall have the right to (i) terminate this Agreement by sending written notice of such termination to LDP within ten (10) days after the expiration of the Cure Period, in which event, neither party shall have any further obligations under this Agreement except as explicitly stated herein; or (ii) waive its objection to such unpermitted exceptions and accept title to the Property subject thereto, in which case such unpermitted exceptions shall be deemed Permitted Exceptions. If JPA has not delivered the Title Notice to LDP by the expiration of the Title Review Period, LDP shall be deemed to have waived the provisions of this Paragraph 5 and all easements, restrictions, covenants and agreements of record as of the date of this Agreement shall be deemed approved. Notwithstanding the foregoing, at or prior to Closing, LDP shall cause the discharge of all monetary liens or other encumbrance created or caused by LDP and existing on the Property. The cost of the premium for the Owner's title insurance policy shall be split equally between LDP and JPA at Closing and the fees of the title company for the Closing, if any, shall be paid by JPA.

14. Closings; Closing Date. Closing shall take place at 10:00 a.m. on July 2, 2012 or such other date and /or time as Purchaser and Seller may agree upon in writing and at such location as may be agreed upon by the parties hereto. The time of the commencement of the closing shall sometimes be referred to herein as the "Closing," and the date thereof shall sometimes be referred to as the "Closing Date."

15. Possession and Condition of Property.

(a) LDP shall deliver possession of the Fee Title Property to JPA on the Closing Date, unless otherwise agreed to by the parties in writing.

(b) Condition of Fee Title Property. Upon delivery of possession of the Fee Title Property, Seller shall deliver it, (i) free of any debris and personal property not conveyed to the JPA, (ii) in the same physical condition existing upon execution of this Agreement, and (iii) in compliance with the terms of all easements, restrictions, covenants and agreements of record. JPA shall be entitled to an inspection of the Fee Title Property prior to the Closing in order to determine whether the condition thereof complies with the terms of this section.

16. Condemnation. If, after the execution of this Agreement and prior to Closing, all or any material portion of the Property is taken by exercise of the power of eminent domain or any proceedings are instituted to effect such a taking, LDP shall promptly give JPA notice of such occurrence, and if JPA determines that any such partial taking would hinder or result in the Property being unsuitable for JPA's intended use thereof, JPA may, within fourteen (14) days after receipt of such notice, elect to either (a) terminate this Agreement in which event the Deposit shall be immediately returned to Purchaser and all obligations of the parties hereunder shall cease except as explicitly stated herein, or (b) close the transaction contemplated hereby as scheduled (except that if the Closing Date is less than fourteen (14) days following JPA's receipt of such notice

closing shall be delayed until JPA makes such election), in which event LDP shall assign and/or pay to JPA at Closing all condemnation awards or other damages collected or claimed with respect to such taking

18. Acceptance of Deed. The acceptance and filing of a Deed by Purchaser or Purchaser's nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms thereof, to be performed after the Closing.

19. Notice of Construction. Between the date this transaction is closed and October 31, 2012, JPA agrees to provide to LDP not less than 14 days notice of the commencement of construction on the property conveyed herein in order to allow the Seller to find alternative parking, if necessary, for events at the Lincoln Depot. This term shall survive closing.

20. Adjustments. All real estate taxes, assessments and utility charges which are due and payable as of Closing Date shall be the responsibility of LDP and prorated to the date of closing. The JPA shall be responsible for all real estate taxes, assessments and utility charges that occur after closing.

21. [Intentionally Omitted].

22. Broker's Fee. No real estate broker or licensed salesperson has been hired or contracted with to accomplish this sale by the JPA. James Arter, President of the Arter Group, a partner of LDP, is a licensed real estate broker. The Arter Group shall receive a commission from LDP, but no part or portion of the Commission shall be paid by the JPA. JPA hereby agrees to indemnify and hold LDP harmless from and against any and all losses, claims or damages arising from claims by any person claiming through JPA for any brokerage commission or finder's fee in connection with this Agreement. LDP hereby agrees to indemnify and hold JPA harmless from and against any and all losses, claims or damages arising from claims by any person claiming through LDP for any brokerage commission or finder's fee in connection with this Agreement.

23. Deposits. The Deposit shall be held by the Title Company in escrow, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement, or at the time of its sooner termination, the same to be deposited in an interest bearing FDIC-insured account with interest thereon to be disbursed to JPA at the Closing or, if the Closing does not occur, to the party entitled to the Deposit. If for any reason the Closing does not occur and either party makes a written demand upon the Title Company for payment of the Deposit and all interest earned thereon, the Title Company shall give written notice to the other party of such demand. If the Title Company does not receive a written objection from the party to which such notice was given to the proposed payment within ten (10) business days after notice is received, the Title Company is hereby authorized to make such payment. If the Title Company does receive such written objection within such ten (10) day period or if for any other reason the Title Company in good faith shall elect not to make such payment, the Title Company shall continue to hold the Deposit and the interest earned thereon until otherwise directed by a written instrument from both Seller and Purchaser or a final judgment of a court not subject to further appeal. However, the Title Company shall have the right at any time to pay over the Deposit and any interest thereon to a

court of competent jurisdiction. The Title Company shall give written notice of such payment to LDP and JPA.

24. Default; Damages. If JPA shall fail to fulfill its agreements herein after all contingencies have been resolved in favor of a closing, the Deposit shall be disbursed to LDP and the parties acknowledge and agree that LDP may pursue the recovery of all of its actual damages against JPA, at law or in equity, for JPA's default hereunder with a credit to JPA for the deposit against any award of damages to LDP. If LDP shall fail to fulfill its agreements herein, after all contingencies have been resolved in favor of a closing, the JPA shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be returned to JPA. Nothing contained herein shall be construed to mean that the JPA cannot seek to enforce LDP's obligations hereunder by a suit for specific performance, condemnation or other cause of action.

25. As-Is. JPA acknowledges that it has not been influenced to enter into this transaction nor has JPA relied upon any warranties or representations not set forth or incorporated in this Agreement, or otherwise previously made in writing. Except to the extent otherwise provided in this Agreement, **the property is sold "As Is", "Where Is", and "With All Faults."** JPA is buying the Property based on its inspections and review opportunities provided under Paragraph 26 below. From and after Closing, LDP shall be released from all responsibility and liability to JPA regarding the condition (including its physical condition and its compliance with applicable laws, and the presence in the soil, air, structures and surface and subsurface waters, of hazardous or toxic materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws, regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. This release does not act as a release by any other party or government entity and does not create a duty to indemnify LDP by JPA for liabilities or causes of action brought by any other party pursuant to this section. The foregoing terms of this Section shall survive the Closing and JPA shall execute and deliver at Closing a form of release (the "Release") reasonably acceptable to LDP confirming the terms of this Section.

26. Tests/Inspections. For a period of thirty (30) days after the full execution of this Agreement (the "Inspection Period"), JPA and JPA's representatives shall have the right to enter upon the Property for the purposes of: (i) conducting any testing, examinations, reviews, inspections or investigations of the Property, including but not limited to matters relating to environmental issues, zoning, title, or the physical condition of any improvements located on the Property; (ii) evaluating all utilities servicing or crossing the Property, including but not limited to water, power, natural gas and telephone; (iii) examining and evaluating roads located on, providing access to or otherwise servicing the Property for width and load ratings; (iv) reviewing all permitting matters; and (v) conducting land surveys, inspections, soil tests, core drillings, environmental tests, subsurface investigations, including test pits and borings, and such other examinations and investigations as the JPA may desire; provided, however, no surface or subsurface invasive testing or sampling shall be conducted without LDP's written approval as to the methodology of such testing, which approval may be withheld in LDP's sole discretion. JPA shall repair any and all damage by reason of JPA's access, testing, examinations or investigations of the Property and JPA shall indemnify and save LDP harmless from and against any loss, damage

and liability resulting from or arising out of such activity. The obligations of JPA set forth in the preceding sentence shall survive the termination of this Agreement or the Closing. In the exercise of JPA's rights pursuant to this section, JPA shall give LDP reasonable advance notice of its entry onto the Property and LDP shall have the right to accompany JPA and or its representative. All such activities authorized hereunder shall be at the sole and exclusive risk and cost of JPA. In the event that JPA is not satisfied, in JPA's sole discretion, with the results of any of JPA's examinations and investigations, JPA may terminate this Agreement by giving written notice to LDP no later than 5:00 p.m. on the last day of the Inspection Period, whereupon the Deposit and all interest earned thereon shall be repaid to JPA and neither party shall have any further obligations under this Agreement except as explicitly stated herein. In the event that JPA has not terminated this Agreement by giving written notice to LDP on or before 5:00 p.m. on the last day of the Inspection Period, JPA shall be deemed to have waived its right to terminate this Agreement as a result of the investigations contemplated herein. If JPA does not timely receive the Due Diligence Materials in accordance with Section 4, then, upon written notice to LDP, JPA may extend the Inspection Period to the extent of such delay in JPA's receipt of the Due Diligence Materials up to an additional thirty (30) days.

27. Representations of LDP. LDP hereby represents, warrants, and covenants to JPA as follows to LDP's actual knowledge as of the date of Closing:

(a) LDP has not received written notice from any public authority that there exists with respect to the Property any outstanding violation of any municipal, state, or federal law, rule, or regulation affecting all or any portion of the Property which has not heretofore been rectified.

(b) Other than this Agreement and the Parking Lot Ground Lease, LDP is not party to any outstanding agreements (including, without limitation, any right of first offer) with any party pursuant to which any such party may acquire any interest in the Property.

(c) Seller is not presently a party to any lawsuit in reference to the Property, nor has Seller received written notice of any threatened or contemplated lawsuits against Seller in reference to the Property.

(d) There are no service or maintenance or related contracts relating to the Property which will in any way be binding upon JPA subsequent to the delivery of the Deed or Easements other than those which JPA shall have agreed in writing to assume.

(e) No municipal betterments with respect to the Property have been voted or are under consideration to be assessed or otherwise are pending to be assessed.

(f) No hazardous materials have been released or stored on the Property in violation of applicable laws.

The warranties and representations in this Section 24 shall survive the delivery of the Deed for twelve (12) months.

28. Representations of JPA. JPA hereby represents, warrants, and covenants to LDP as follows:

(a) JPA is a Nebraska interlocal government cooperative duly organized and validly existing under the laws of the State of Nebraska.

(b) JPA has the full power and authority to make, deliver, enter into and perform pursuant to this Agreement. Purchaser further warrants and represents that this Agreement is valid, binding and enforceable against JPA in accordance with its terms.

(c) Neither JPA's execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will result in a breach of, or violation of, any agreement or covenant to which JPA is signatory or is otherwise bound.

(d) No consent, waiver, approval or authorization is required from any person or entity in connection with the execution and delivery of this Agreement by JPA or the performance by JPA of the transaction contemplated hereby, but is subject to the contingencies stated herein.

(e) JPA has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign jurisdiction or nonjudicial proceeding to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

29. Cooperation. If JPA requests, LDP shall reasonably cooperate with JPA by executing an affidavit or such affidavits as may be required by JPA or its attorney certifying that (i) there are no persons or parties in possession of the Property other than as allowed under this Agreement; (ii) all municipal liens due and payable as and at the time of the Closing Date have been paid in full; and (iii) there are no facts or circumstances existent which would give rise to a claim for, or result in the assertion of, a mechanic's or materialman's lien, and agreeing to indemnify and save harmless JPA and any title insurance company underwriting a title policy without noting an exception for the foregoing against loss or damage arising out of or resulting from the falsity of any matter contained in such certification.

30. Evidence of Compliance. LDP shall provide in advance of the Closing Date such documents as JPA or its attorney may reasonably require (i) to evidence LDP's existence and due authority to perform and convey title to the Property as required herein; and (ii) to evidence that LDP is a validly existing entity in good standing under the laws of the State of Nebraska, is qualified to transact business under the laws of the State of Nebraska, and that the officers or directors acting for and on behalf of LDP, have the authority to so act and have acted within the scope of such authority.

31. LDP's Closing Deliveries. At the Closing, LDP shall deliver the following to JPA:

(a) A Warranty Deed to the Fee Title Property;

(b) LDP's executed affidavit as may be required by the Foreign Investments in Real Property Transfer Act;

(c) LDP's executed ALTA statement, Owner's Affidavit or similar statement as may be reasonably required by JPA's attorney or title company;

(d) LDP's executed GAP Undertaking or equivalent which may be required by the Purchaser's title company;

(f) LDP's executed counterpart of an agreed proration or settlement statement; and

(g) Such other documents, instruments, certifications and confirmations as may be reasonably required and designated by JPA's attorney or title company to fully effect and consummate the transactions contemplated hereby.

32. JPA's Closing Deliveries. At the Closing, JPA shall deliver the following to LDP:

(a) Purchaser's executed Real Estate Transfer Statement;

(b) Purchaser's executed Release;

(c) Purchaser's executed counterpart of an agreed proration or settlement statement;

(d) Such other documents, instruments, certifications and confirmations as may be reasonably required and designated by the title company to fully effect and consummate the transactions contemplated hereby;

(e) Funds sufficient to cover JPA's obligations herein pursuant to this agreement and the closing statements, in a manner agreed upon by LDP and JPA.

33. Expenses. LDP shall bear all expenses incurred by it in connection with the negotiation, execution and performance of this Agreement, whether or not the transaction contemplated hereby shall be consummated, including the fees and expenses of its attorneys. JPA shall bear all expenses incurred by it in connection with the negotiation, execution and performance of this Agreement, whether or not the transaction contemplated hereby shall be consummated, including the fees and expenses of its attorneys, accountants and consultants and all personnel of JPA used in conducting JPA's due diligence.

34. Notices. Any notice to be given hereunder shall be deemed duly given if mailed by certified mail, return receipt requested, or delivered by any form of private delivery requiring a signed receipt, postage and charges prepaid, or sent by e-mail or by fax transmission (with

confirmation of successful transmission) to the parties or their counsel at their following addresses and fax numbers:

If to Seller:

Lincoln Depot Limited Partnership
Attn: James Arter
927 M Street
Lincoln, NE 68508
Fax No.: 402-477-9500
E-mail: JEA@artergroup.com

If to Seller's counsel:

Peter Katt
1248 "O" Street, #600
Lincoln, NE 68508
Fax No.: 402-475-9515
E-mail: pkatt@baylorevnen.com

If to Purchaser:

Dan Marvin
JPA Secretary
555 South 10th Street
Lincoln, NE 68508

If to Purchaser's Counsel:

Christopher J. Connolly
Assistant City Attorney
555 South 10th Street, Suite 300
Lincoln, NE 68508
Fax No.: 402-441-8812
E-mail: cconnolly@lincoln.ne.gov

or at such other address or fax number within the Continental United States as either party by written notice to the other may from time to time designate. Unless otherwise specifically provided to the contrary, notice shall be deemed given as of the date of such certification or as evidenced by receipt by the courier service or confirmation of successful fax or e-mail transmission. Notice shall also be deemed adequate if given in any other form permitted by law.

35. Foreign Person and Reporting Forms. LDP represents and warrants that LDP is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and will furnish to JPA an appropriate Nonforeign Affidavit on the Closing Date. In addition, LDP shall furnish to whomever is designated by JPA (other than LDP) such information as may be required to report the transaction to the Internal Revenue Service as provided by law.

36. Construction of Agreement. This instrument is to be construed as a Nebraska contract, is to take effect as a sealed instrument, sets forth the entire agreement between the parties, is binding upon and endures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both LDP and the JPA. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

37. Miscellaneous.

(a) Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or holiday, such time for performance shall be extended to the next business day. Otherwise all references herein to "days" shall mean calendar days.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

(c) This Agreement shall inure to the benefit of, and shall be binding upon, the permitted successors and assigns of the parties hereto; provided, however, that LDP shall have the right to approve in advance, in its sole discretion, any assignment by JPA other than to any entity directly or indirectly owned or controlled by JPA or to any entity owned or controlled by JPA; provided, however, in the event of any assignment, the JPA shall not be relieved of its obligations under the Agreement.

(d) In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.

(e) All action required pursuant to this Agreement necessary to effectuate the transaction contemplated herein has been or will be taken promptly and in good faith by JPA and LDP and their representatives, employees and agents.

(f) For purposes of negotiating and finalizing this Agreement, any signed document, including this Agreement, transmitted via facsimile or other electronic means shall be treated in all manners and respects as an original document and any signature thereon shall be considered an original signature and shall have the same binding legal effect as if the original document and signature was delivered to the other party to the extent permitted by Nebraska law.

[SIGNATURE PAGE FOLLOWS]

LINCOLN DEPOT LIMITED PARTNERSHIP,
a Nebraska limited partnership

By: _____

Title: President, The Arter Group Ltd. as general partner

WEST HAYMARKET JOINT PUBLIC AGENCY,
a Nebraska Joint Public Agency

By: _____
Chris Beutler
Chairperson of the Board of Representatives

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 22 day of May, 2012, by James Arter, President of the Arter Group LTD, as General Partner of Lincoln Depot Limited Partnership, a Nebraska limited partnership, on behalf of the limited partnership.

GENERAL NOTARY - State of Nebraska
CHRIS CONNOLLY
My Comm. Exp. Nov. 4, 2012

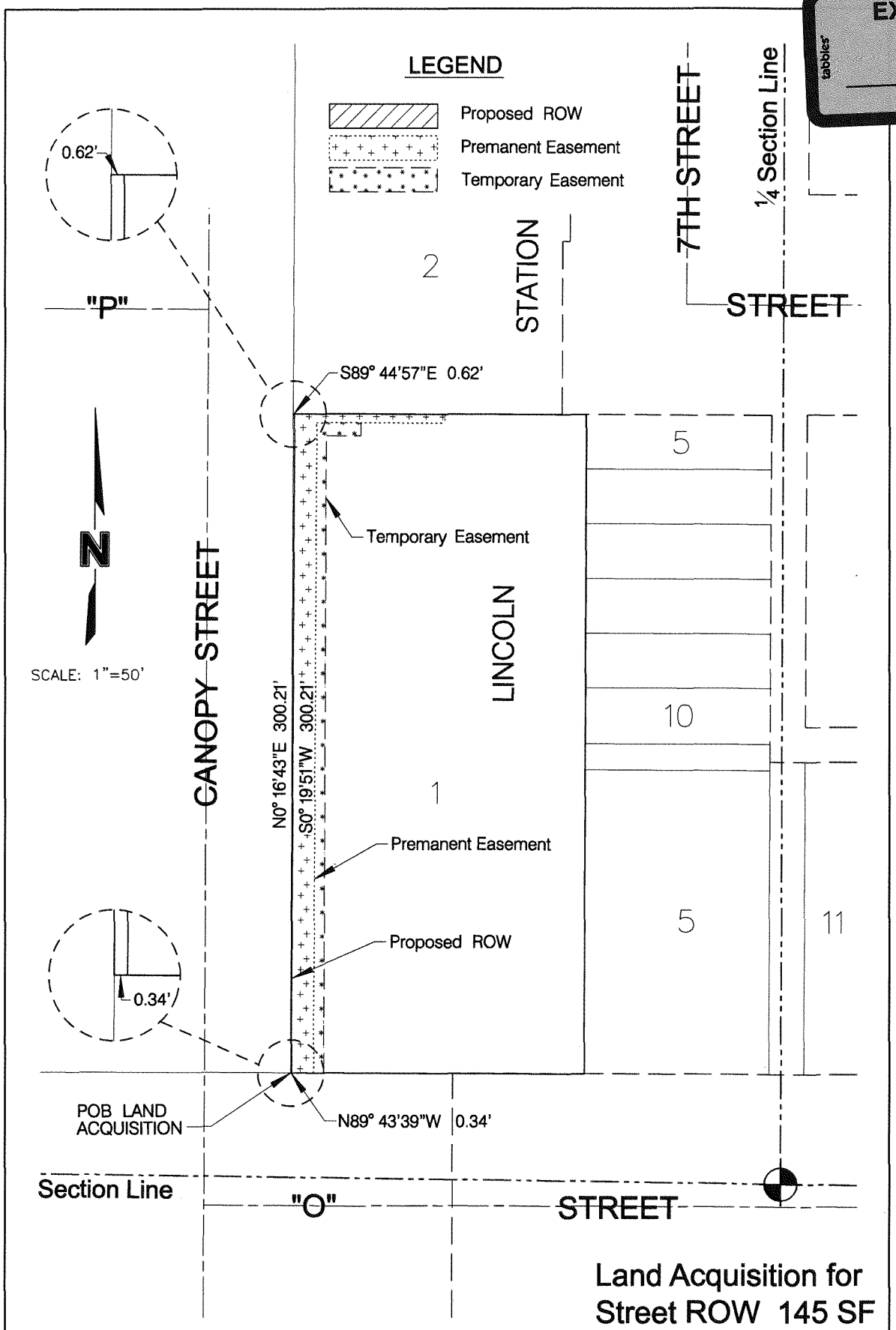
_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Chris Beutler, Chairperson of West Haymarket Joint Public Agency Board of Representatives.

_____
Notary Public

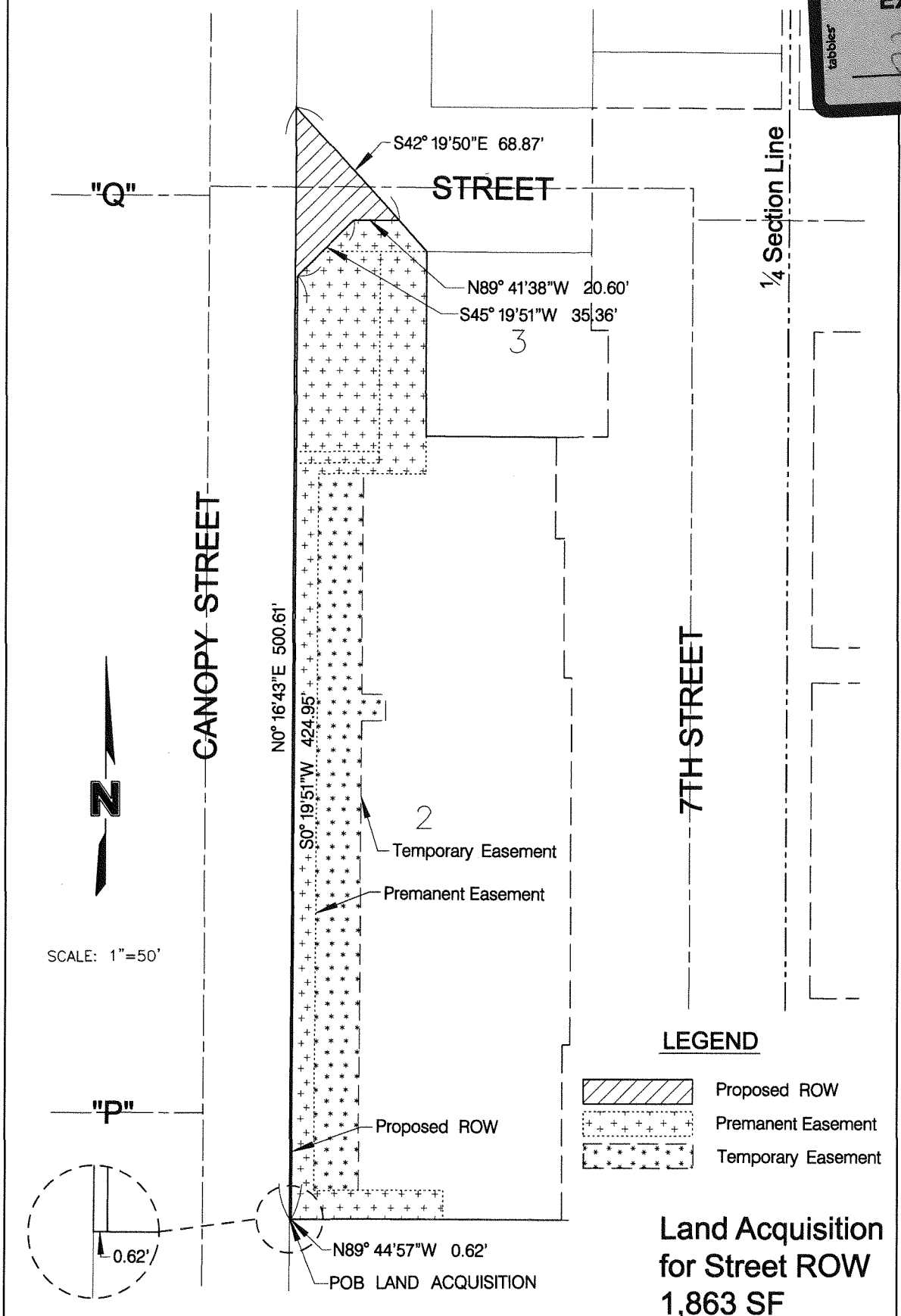
EXHIBIT



Land Acquisition for Street ROW 145 SF

Project : 010-2431	Drawn By : TDB	Date: 3/29/2012
OLSSON ASSOCIATES	WEST HAYMARKET Joint Public Authority Lincoln, Nebraska	Property Exhibit: Lot 1, Lincoln Station Name: Lincoln Depot LTD Partnership Tract No.: 4

File Name: F:\PROJECTS\010-2431\Design\Sheets_Core_Roadways\ROW\LincolnStationLot1ROW.dgn

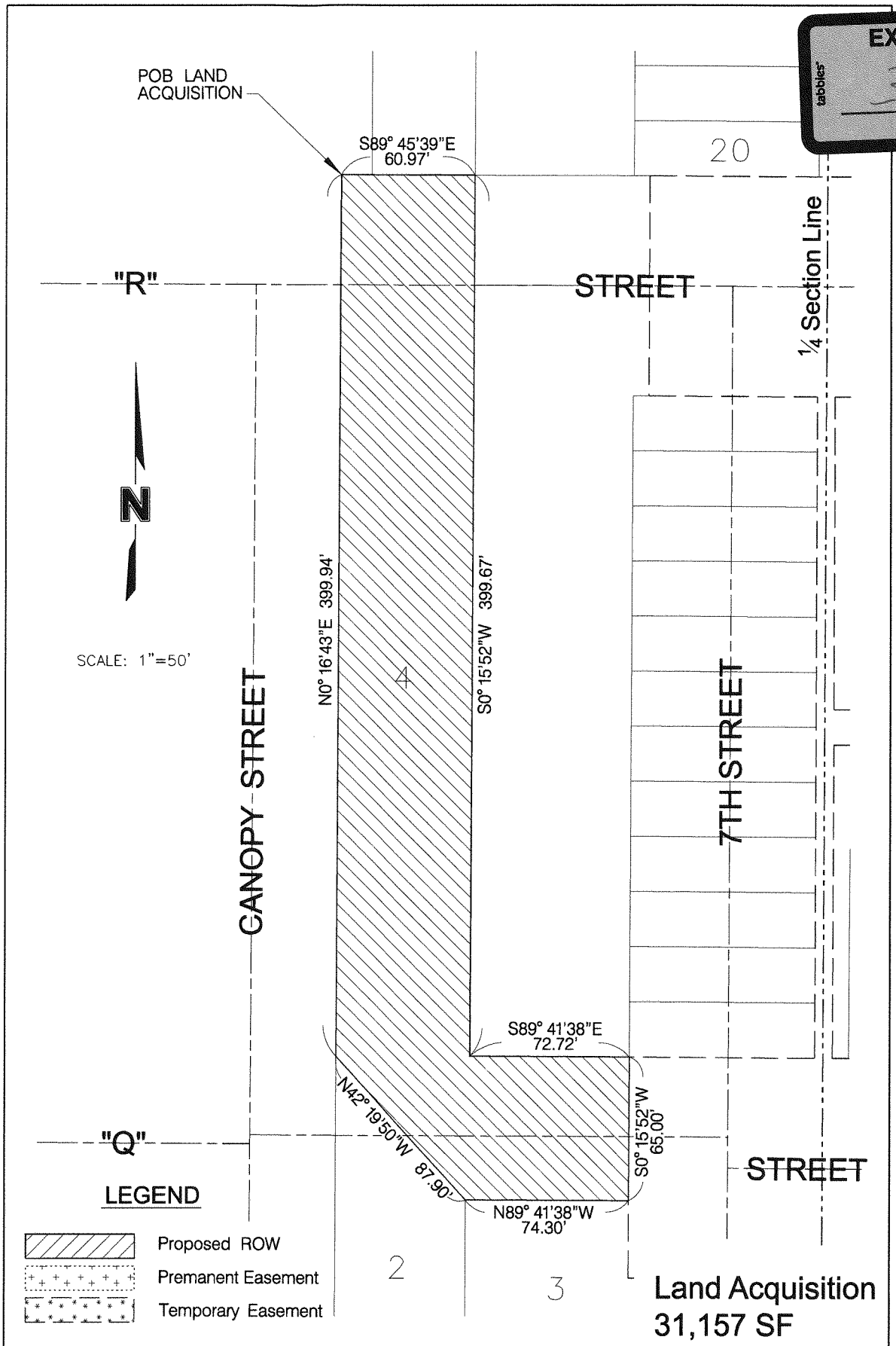


Land Acquisition
for Street ROW
1,863 SF

Project : 010-2431	Drawn By : TDB	Date: 3/29/2012
OLSSON ASSOCIATES	WEST HAYMARKET Joint Public Authority Lincoln, Nebraska	Property Exhibit: Lot 2, Lincoln Station Name: Lincoln Depot LTD Partnership Tract No.: 4

File Name: F:\PROJECTS\010-2431\Design\Sheets_Core_Roadways\ROW\LincolnStationLot2ROW.dgn

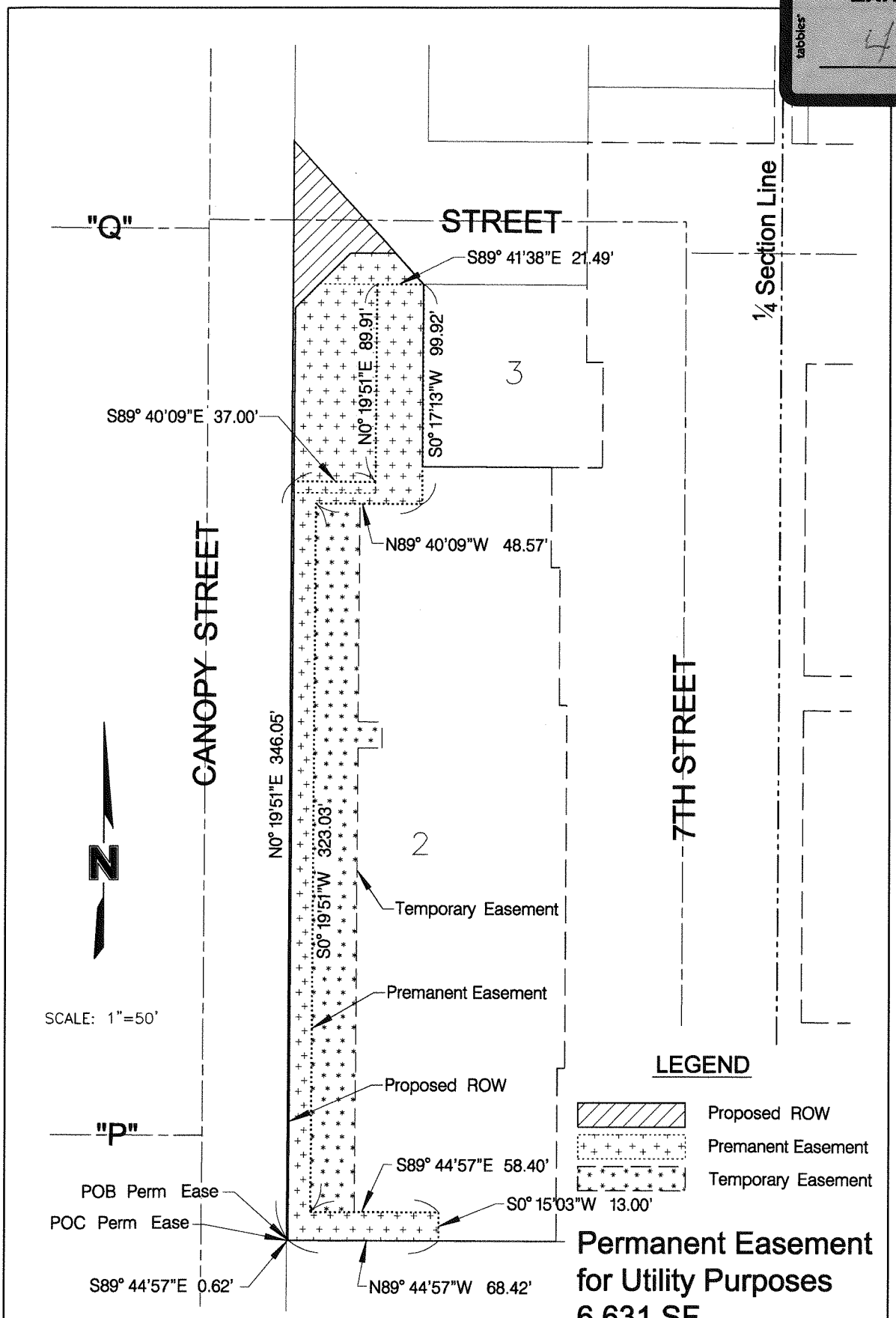
EXHIBIT 3



Project : 010-2431	Drawn By : TDB	Date: 3/29/2012
OLSSON ASSOCIATES	WEST HAYMARKET Joint Public Authority Lincoln, Nebraska	Property Exhibit: Lot 4, Lincoln Station Name: Lincoln Depot LTD Partnership Tract No.: 4

File Name: F:\PROJECTS\010-2431\Design\Sheets_Core_Roadways\ROW\LincolnStationLot4.dgn

EXHIBIT 4

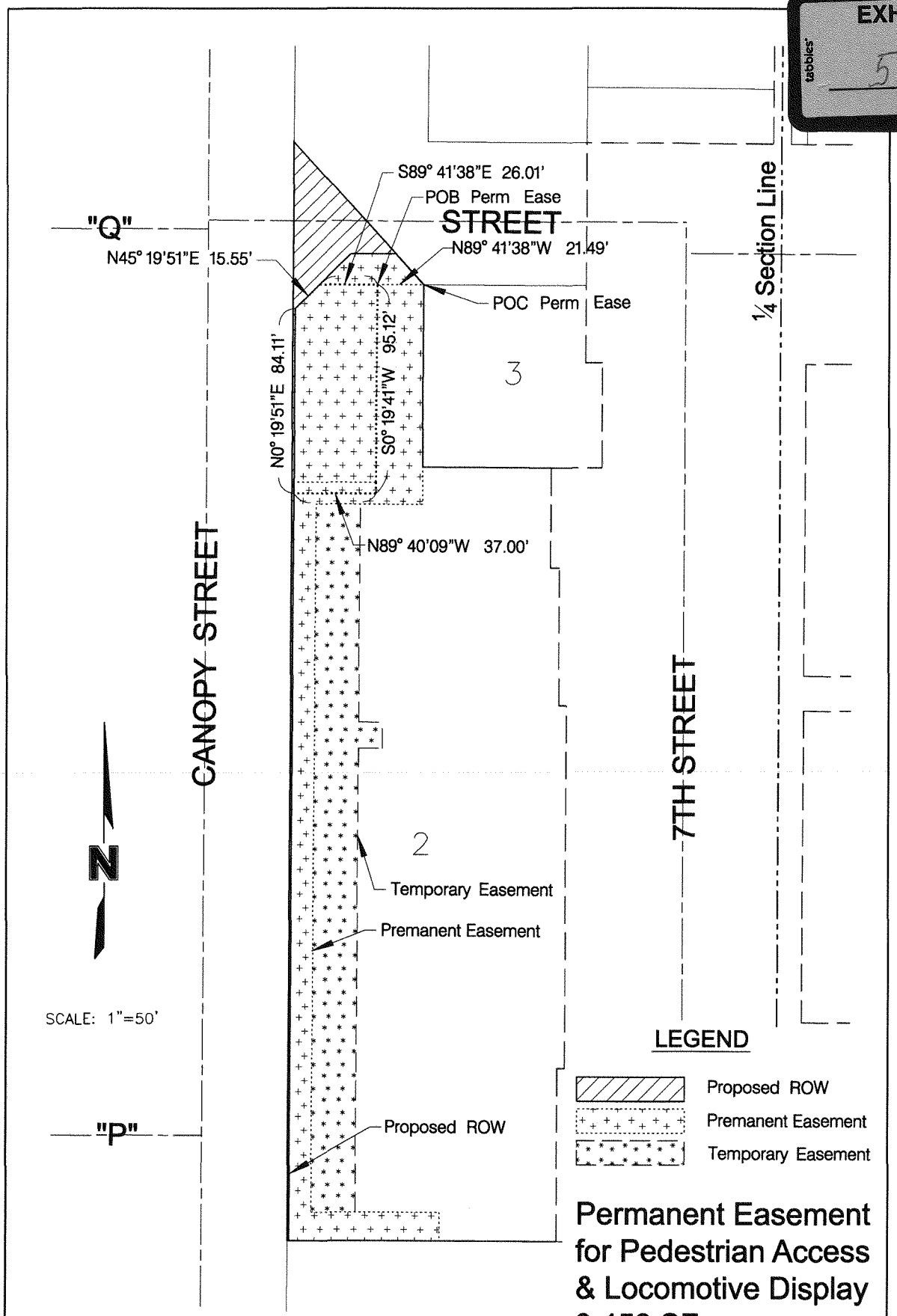


Permanent Easement for Utility Purposes 6,631 SF

Project : 010-2431	Drawn By : TDB	Date: 3/29/2012
OLSSON ASSOCIATES	WEST HAYMARKET Joint Public Authority Lincoln, Nebraska	Property Exhibit: Lot 2, Lincoln Station Name: Lincoln Depot LTD Partnership Tract No.: 4

File Name: F:\PROJECTS\010-2431\Design\Sheets_Core_Roadways\ROW\LincolnStationLot2Perm01.dgn

EXHIBIT 5



Permanent Easement for Pedestrian Access & Locomotive Display 3,458 SF

Project : 010-2431	Drawn By : TDB	Date: 3/29/2012
OLSSON ASSOCIATES	WEST HAYMARKET Joint Public Authority Lincoln, Nebraska	Property Exhibit: Lot 2, Lincoln Station Name: Lincoln Depot LTD Partnership Tract No.: 4

File Name: F:\PROJECTS\010-2431\Design\Sheets_Core_Roadways\ROW\LincolnStationLot2Perm02.dgn

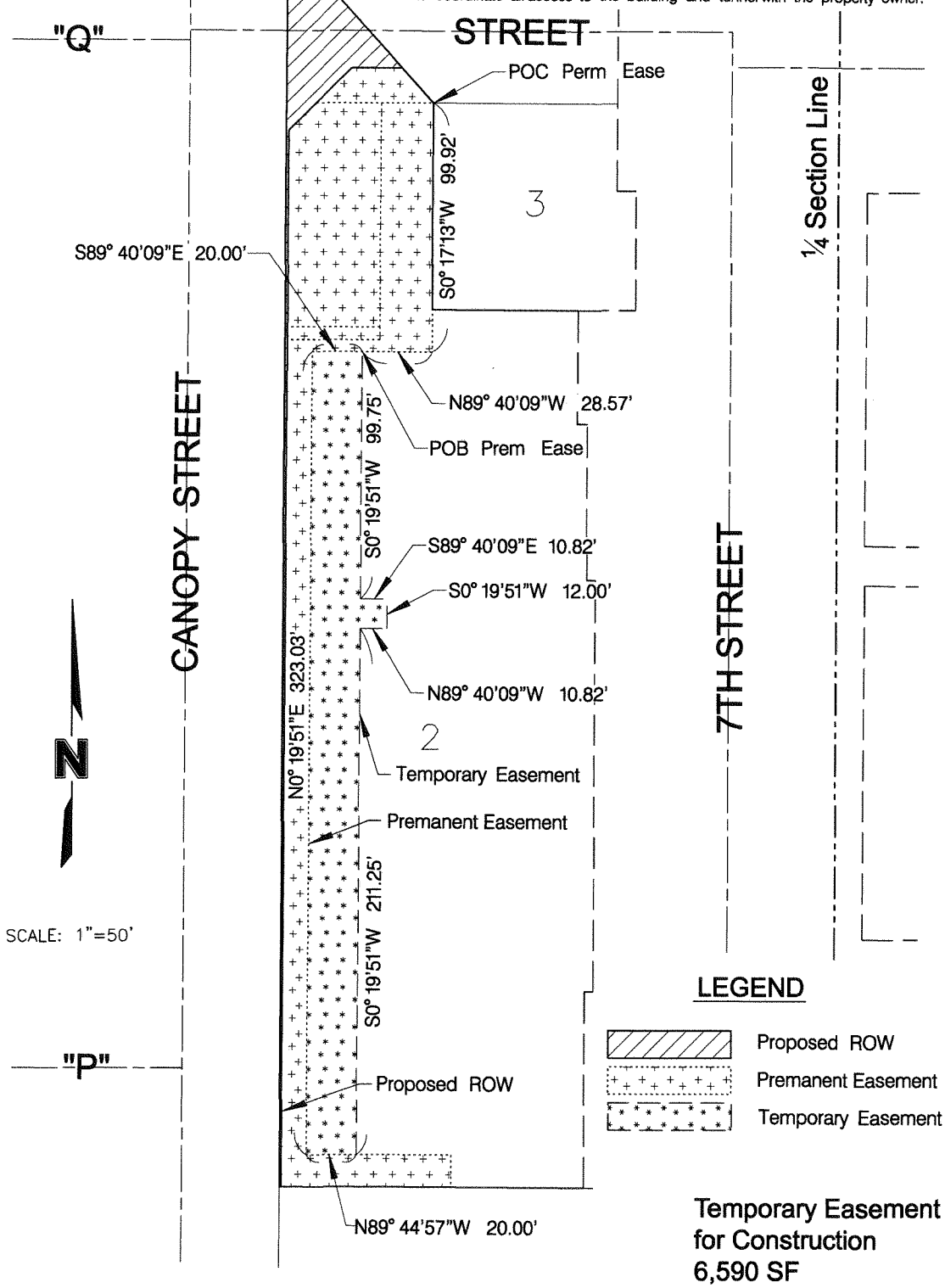
EXHIBIT

tabbies

6

NOTE:

As part of the acquisition of easements for this project, the owner of the Lincoln Station property has provided a right-of-entry to allow the contractor to access the basement of the Lincoln Station Building and the attached tunnel to the west. The need to access these locations is for the purpose of constructing a bulkhead at the tunnel and to install additional conduits for the BNSF Railway Company. The location of the bulkhead will generally be located along the east side of the former stairwells at the railroad platform that is located to the west of the Lincoln Station property. Access to the building shall be through the northwest doors and the contractor shall use the northwest stairwell to access the basement and enter the tunnel. The Contractor will be required to coordinate all access to the building and tunnel with the property owner.



Temporary Easement
for Construction
6,590 SF

Project : 010-2431	Drawn By : TDB	Date: 3/29/2012
OLSSON ASSOCIATES	WEST HAYMARKET Joint Public Authority Lincoln, Nebraska	Property Exhibit: Lot 2, Lincoln Station Name: Lincoln Depot LTD Partnership Tract No.: 4

File Name: F:\PROJECTS\010-2431\Design\Sheets_Core_Roadways\ROW\LincolnStationLot2Temp.dgn

PENGAD-Bayonne, N. J.
EXHIBIT
7

EASEMENT

THIS EASEMENT is entered into this ___ day of _____, 1989, by and between Lincoln Depot Limited Partnership, a Nebraska limited partnership, hereinafter referred to as "Grantor", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "Grantee".

RECITALS

A. Grantor and Grantee have previously entered into the Lincoln Station Redevelopment Project Compulsory Rehabilitation Agreement ("Rehabilitation Agreement") wherein the City agreed as part of the City improvements described and defined in the Rehabilitation Agreement to construct a Railroad Park on Lot 3, Lincoln Station, Lincoln, Lancaster County, Nebraska. In conjunction with said Railroad Park, the City agreed to locate the Burlington Northern Railroad Company steam engine presently located in Pioneers Park (or some other available steam engine) on Grantor's property on that portion of Track 1 left in place after Tract 1 is abandoned by Burlington Northern Railroad company.

B. Grantor and Grantee in the Rehabilitation Agreement further agreed to grant all necessary easements for the proper and convenient function of the various improvements, including the Railroad Park.

C. Grantor and Grantee agree that a non-exclusive easement is required in, on, over and across a portion of Grantor's property in order to allow the City to place and maintain the steam engine on Grantor's property and to allow public display of

the steam engine in conjunction with the operation of the Railroad Park.

NOW THEREFORE, the parties agree as follows:

1. Grant of Easement and Right to Use. Grantor hereby creates, establishes, grants and conveys to Grantee for its benefit and the benefit of the public a non-exclusive easement to place, maintain, inspect, repair and replace a railroad steam engine and appurtenances thereto belonging in, over, upon and across the following described premises situated in Lancaster County, Nebraska, to-wit ("Easement Area"):

> That portion of Lots 2 and 4, Lincoln Station, Lincoln, Lancaster County, Nebraska, more particularly described as follows:
>
> Commencing at the southwest corner of Lot 3, Lincoln Station; thence northerly along the west line of Lot 3, a distance of 9.0 feet, to the point of beginning; thence left, south 90°0'0" west, a distance of 42.0 feet; thence right, north 0°0'0" west, a distance of 144.9 feet; thence right, north 90°0'0" east, a distance of 26 feet; thence right, south 0°0'0" east, a distance of 60 feet; thence left, south 90°0'0" east, a distance of 36 feet; thence right, south 0°0'0" east, a distance of 11.0 feet to a point on the north line of Lot 3; thence westerly along the north line of Lot 3, a distance of 10 feet, to the northwest corner thereof; thence southerly along the west line of Lot 3 a distance of 73.9 feet, to the point of beginning; all in the southwest quarter, Section 23, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

The Grantor does hereby also grant to the Grantee for its benefit and the benefit of the public a non-exclusive easement for pedestrian access for public use in, over, through and across the Easement Area, described above for the purpose of ingress and egress from the Railroad Park (Lot 3, Lincoln Station) to and from the railroad steam engine.

The Easements granted in this paragraph 1 shall be subject to the following terms and conditions:

A. The Easements shall run with the land and shall be binding upon all persons having or acquiring any rights, title or interest therein or any portions thereof and their respective successors and assigns in interest.

B. Grantor covenants that it is the owner of the Easement premises and has legal right, title and capacity to grant the Easements granted herein, subject to unrecorded and recorded easements and restrictions.

C. The term of the Easements shall be so long as the Grantee and its successors and assigns operate and properly maintain Railroad Park, the steam engine, and the Easement Area.

D. The Easements shall not interfere with the operation or permitted activities of Grantor and its successors and assigns in the Easement Area or adjacent areas.

E. Grantee shall maintain and repair, at Grantee's expense, the steam engine and Easement Area consistent with the maintenance and repairs undertaken in the adjacent areas and such maintenance and repairs shall not interfere with the use of areas adjacent to such Easement Area.

F. The Grantee, at its expense, shall be responsible for the construction, maintenance, alterations, or renovations relating to the steam engine and Easement Area and such maintenance, alterations or renovations shall be in compliance with applicable codes and laws.

G. All costs and expenses, of any nature or kind whatsoever, attributable to the steam engine and Easement Area during the term hereof shall be the responsibility of the Grantee and the Grant~~ee~~or shall not have any liability therefore, including but not limited to, real estate taxes, personal property taxes, utility charges, insurance, maintenance, alterations, or renovations.

H. The Grantor shall not be liable, and the Grantee shall indemnify, save, hold harmless and defend the Grantor, for any loss, injury, death, or damage (collectively "Damages") to persons or property which at any time may be suffered or sustained by the Grantee or by any person whosoever may at any time be using, occupying, or visiting the steam engine and Easement Area, when such Damages shall be caused by or in anyway result from, or arise out of any act, omission, negligence, or intentional misconduct of the Grantee or of any visitor or user of any portion of the steam engine and Easement Area and the Grantee shall indemnify the Grantor against all claims, liability, loss or damage, including reasonable attorney fees, whatsoever on account of any such Damages. The Grantee hereby waives all claims against the Grantor for Damages to any improvements which are now on or hereinafter placed or built on the Easement Area and for Damages to person or property in or about the steam engine and Easement Area, from any cause arising at any time.

2. Successors and Assigns. The Easements granted herein shall inure to the benefit of and be binding upon the successors and assigns of Grantor and Grantee.

3. Interpretation. The headings used herein are for the convenience of the parties and are not intended to be used in the interpretation of the Easements. Any uncertainty or ambiguity shall not be interpreted against either party because such party prepared that portion, but shall be construed according to the rules of interpretation of contracts generally.

4. Authorization. The undersigned parties hereby warrant and represent to each other that all necessary action to duly approve the execution, delivery and performance of this Easement have been taken, and this Easement constitutes a valid and binding agreement of the parties enforceable in accordance with its terms.

IN WITNESS WHEREOF the parties have signed this Easement the day and year first above written.

LINCOLN DEPOT LIMITED PARTNERSHIP,
a Nebraska limited partnership,
Grantor

By: DEVCO INVESTMENT CORPORATION,
a Nebraska corporation, as General
Partner

By: _____
Dean E. Arter, President

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation, Grantee

_____
City Clerk

By: _____
Bill Harris, Mayor

WH 12-33 Introduce: 6-1-12

RESOLUTION NO. WH- _____

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

That the Memorandum of Agreement with the Nebraska Department of Environmental Quality to allow the JPA to voluntarily conduct remedial action in accordance with the Remedial Action Plan Monitoring Act and to seek a determination from the Nebraska Department of Environmental Quality that no further remedial action is required upon the property which is subject to this Memorandum of Agreement located in Lincoln, Lancaster County, Nebraska as described in Exhibits 1 and 2 to the Agreement, in accordance with the terms and conditions set forth in said Agreement, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Memorandum of Agreement on behalf of the JPA.

The City Clerk is directed to return a fully executed original Memorandum of Agreement along with a copy of this Resolution to Miki Esposito, Director of the Public Works & Utilities Department, for transmittal to the Nebraska Department of Environmental Quality.

Adopted this _____ day of June, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

THE WEST HAYMARKET
JOINT PUBLIC AGENCY

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (Agreement) is entered into voluntarily by the West Haymarket Joint Public Agency pursuant to the authority vested in the Department of Environmental Quality (DEQ) by the Remedial Action Plan Monitoring Act (RAPMA), Neb. Rev. Stat. § 81-15,181 et seq. (Reissue 2000), the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 1999, Cum. Supp. 2002), and all rules and regulations promulgated thereunder.

FINDINGS

1. The DEQ is the agency of the State of Nebraska authorized pursuant to Neb. Rev. Stat. § 81-1504(1) to exercise exclusive general supervision, administration, and enforcement of NEPA, and all rules, regulations, and orders promulgated thereunder, including the issuance of orders requiring the adoption of remedial action to prevent, control, or abate land and water pollution, and to encourage voluntary cooperation by persons to achieve the purposes of NEPA. The DEQ is further authorized pursuant to Neb. Rev. Stat. §§ 81-15,183 through 81-15,185 to administer RAPMA.

2. The West Haymarket Joint Public Agency (JPA) is a political subdivision exercising governmental powers within the area known as the West Haymarket Redevelopment Area. With principal offices at 555 S. 10th Street, Suite 205, Lincoln, Nebraska, the JPA is the party executing this Agreement. The JPA is a "person" within the meaning of Neb. Rev. Stat. § 81-1502(10).

3. The property that is the subject of this Agreement is located in Lincoln, Lancaster County, Nebraska, and is more particularly described in Exhibit 1 and 2 of this Agreement. The Site encompasses approximately 6.65 acres.

4. The JPA has conducted an environmental investigation of the Site and has submitted information to the DEQ that evidences that "land pollution," as defined by Neb. Rev. Stat. § 81-15,182(1), and "water pollution," as defined by Neb. Rev. Stat. § 81-15,182(2), exists at the Site.

5. Pursuant to Neb. Rev. Stat. § 81-15,184, JPA has submitted to the DEQ an application for oversight of the remedial action it plans to conduct at the Site, as well as a nonrefundable application fee of $2,000. In addition, JPA has posted an initial deposit of $3,000 to be used by the DEQ to cover the DEQ's direct and indirect costs related to technical review, oversight, guidance, and other activities associated with remedial action or long-term institutional controls at the Site. The DEQ shall review and approve or deny the application and notify JPA in writing. If the application is denied, the notification will state the reason for the denial. If the DEQ determines that an application does not contain adequate information, the DEQ shall return the application to JPA. JPA will have sixty (60) days to resubmit the required information or the application will be deemed denied.

AGREEMENT

6. The intent of this Agreement is to allow JPA to voluntarily conduct remedial action in accordance with RAPMA and to seek a determination from the DEQ that no further remedial action is required at the Site pursuant to Paragraph 23 of this Agreement.

7. JPA agrees to perform all remedial action at the Site in accordance with NEPA and all rules and regulations promulgated thereunder. JPA shall be responsible for obtaining any necessary permits, licenses, access and other authorizations required under this Agreement. Nothing in this Agreement shall be deemed to impose any additional liabilities or obligations on JPA, other than those specifically stated herein. Nothing shall relieve JPA from complying with all other applicable federal, state and local laws, rules and regulations.

8. JPA agrees to maintain insurance coverage, including self-insurance, sufficient to cover any potential risks to JPA employees, agents, and contractors, performing the actions under this Agreement.

9. Nothing in this Agreement, including any document the DEQ issues as agreed to herein, shall be interpreted to constitute a release or waiver of liability for any of the conditions which existed at the Site before, during, or after execution of this Agreement nor limit the DEQ's authority to respond to such conditions. DEQ shall have the authority to respond to such conditions in addition to requiring further remedial action from JPA under the circumstances described in Paragraph 23 of this Agreement. JPA reserves the right to raise any and all defenses, to any action brought by DEQ for conditions that existed on the Site prior to acquisition by JPA.

10. JPA neither admits nor denies that it caused land or water pollution at the Site in violation of Neb. Rev. Stat. § 81-1506(1)(a), but agrees that DEQ may file an action against JPA if it fails to comply with or terminates this Agreement. JPA waives any affirmative defenses regarding jurisdiction. However, nothing in this Agreement shall constitute a waiver of JPA's right to contest the authority of the DEQ to take any enforcement action against JPA, other than an action to enforce this Agreement.

11. Remedial Action Plan. Within ninety days of approval of the application, JPA shall provide to DEQ a complete Remedial Action Plan (RAP) for the proposed project that conforms to all federal and state environmental standards and substantive requirements and that is subject to review and approval of the DEQ. DEQ approval shall be void upon failure to comply with the approved RAP or willful submission of false, inaccurate, or misleading information by JPA. DEQ shall not commence technical review, oversight, guidance, or other activities associated with the RAP until this Agreement is executed and JPA has submitted a complete RAP to the DEQ.

    The RAP shall, at a minimum, include the following:

    a. Documentation regarding the investigation of land pollution or water pollution including, when appropriate, information indicating that JPA holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

    b. A Remedial Action Work Plan which describes the remedial action measures to be taken to address the land or water pollution; and

c. Project monitoring reports, appropriate engineering, scientific, and financial feasibility data, and other data and information as may be required by the DEQ.

New information about the presence of land pollution or water pollution at the Site may require additional action. Therefore, JPA shall submit any subsequent work plans on a schedule agreed to by JPA and the DEQ.

12. If JPA believes any such data or information is protected by a privilege, it will retain the data and information and notify the DEQ of the nature of the document and the privilege claimed. JPA may also request that the DEQ keep data or information contained in any submission confidential, pursuant to Title 115 - Rules of Practice and Procedure.

13. Upon receipt of the RAP, the DEQ shall review and approve or disapprove the RAP and notify JPA of its decision in writing. If the RAP is disapproved, the notification shall state the reason for disapproval. DEQ will provide JPA an opportunity to resubmit the RAP.

    If the DEQ intends to approve the RAP, DEQ shall issue a public notice of its intent pursuant to § 81-15,185 in a local newspaper of general circulation in the area affected and make the RAP available to the public. The public shall have thirty days from the date of publication during which any person may submit written comments to the DEQ regarding the proposed remedial action. Such person may also request or petition the Director of Environmental Quality, in writing, for a hearing and state the nature of the issues to be raised. The Director shall hold a public hearing if the comments, request, or petition raise legal, policy, or discretionary questions of general application and significant public interest exists.

    Within six (6) months after the RAP is approved by the DEQ, JPA shall begin implementation of the RAP. The RAP shall be completed within twenty-four (24) months of approval by the DEQ, excluding long-term operation, maintenance, and monitoring activity, unless the DEQ grants an extension of time. An approved RAP is not enforceable unless the DEQ can demonstrate that the applicant has failed to fully implement the approved RAP. The DEQ may require further action if such action is authorized by other state statutes administered by the DEQ.

14. The DEQ and its authorized representatives and contractors shall have access at all reasonable times to the Site and any related lands, to the extent access is controlled by or granted to JPA for the purpose of conducting technical review, oversight, guidance, or other activities associated with remedial action at the Site.

15. JPA shall notify the DEQ at least ten (10) days before any scheduled well drilling, installation of equipment, or sampling for the purpose of affording the DEQ the opportunity to collect split samples. If either party is collecting samples, the other party or its authorized representative shall be allowed to take split samples of all samples collected.

16. In addition to any other obligation required by law, JPA shall notify the DEQ immediately upon knowledge of any condition posing an immediate threat to human health and welfare or the environment. In the event that any action or occurrence under this Agreement causes or threatens an emergency situation or presents an imminent threat to human health or welfare or the environment, JPA shall promptly take all appropriate action to prevent, abate, or minimize such emergency or imminent threat in accordance with applicable law. Nothing in this paragraph shall be deemed to limit the authority of the DEQ or State of Nebraska to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release from the Site.

17. Unless otherwise directed by the DEQ, JPA shall submit two copies of all documents required by this Agreement to the person identified below, who shall be DEQ's contact for the Site and for all matters concerning this Agreement:

Mike Felix
Nebraska Department of Environmental Quality
P.O. Box 98922
1200 "N" Street, Suite 400
Lincoln, NE 68509-8922
Phone: (402) 471-3388
Fax: (402) 471-2909
E-mail: Mike.Felix@nebraska.gov

18. Unless otherwise directed, the contact for JPA for all matters concerning this Agreement shall be:

Miki Esposito
City of Lincoln PW&U
555 S. 10th St., Suite 208
Lincoln, Nebraska 68508
Phone: (402) 441-6173
Fax: (402) 441-7590
mesposito@lincoln.ne.gov

19. If the costs incurred by DEQ exceed the initial deposit, an additional amount agreed upon by the DEQ and JPA may be required prior to proceeding. The DEQ shall prepare a summary of all costs and submit an invoice to JPA. Within thirty (30) days of receiving the invoice, JPA shall submit to the DEQ a check payable to the "Department of Environmental Quality, State of Nebraska" for the amount of the invoice. JPA will not be released from their obligations under this Agreement until all DEQ costs are paid. For sites requiring institutional controls extending beyond the termination of this agreement, JPA must fully fund, or make arrangements with DEQ to fund, required long-term oversight. Prior to issuance of an NFA letter for the site, a lump sum will be negotiated between the parties based upon reasonable rates over a defined period of time to cover the costs for long-term NDEQ oversight for any activity and use limitations identified in the environmental covenant as a component of the proposed remedial actions in the RAP. Long-term NDEQ oversight activity includes, but is not limited to, costs to review annual compliance reports, periodic on-site inspections, and review of property transfers. Any balance of funds not reserved for oversight of institutional controls remaining after the mutual termination of this Agreement shall be refunded to JPA by the DEQ.

20. JPA may terminate this Agreement provided JPA:

a. Notifies the DEQ in writing of its intention to terminate this Agreement;

b. Submits to the DEQ full payment of any outstanding costs incurred by the DEQ pursuant to this Agreement; and

c. Leaves the property in no worse condition, from a human health and environment perspective, than when JPA initiated this Agreement.

d. Provides sufficient funding, using a mechanism approved by the Department, to cover the Department's long-term oversight of any indicated institutional controls pursuant to Paragraph 19 above.

21. The DEQ will cease review of any submittals under this Agreement on the date it receives JPA written notice of intent to terminate. The DEQ will then prepare a summary of all costs and provide it to JPA. Once the DEQ determines that JPA has fully complied with all the requirements set forth in (a) through (c) above, the Agreement shall be deemed terminated. The DEQ reserves the right to unilaterally terminate this Agreement if JPA:

a. Violates any terms or conditions or fails to fulfill any obligations of the RAP, including submission of an acceptable RAP within a reasonable period of time;

b. Fails to address an imminent and significant harm to public health and welfare or the environment in a timely and effective manner;

c. Fails to initiate the RAP within six (6) months after approval by the DEQ;

d. Fails to complete the RAP within twenty-four (24) months after approval by the DEQ, excluding long-term operation, maintenance, and monitoring activity, unless the DEQ grants an extension of time; and

e. Violates any terms or conditions of this Agreement.

The DEQ shall notify JPA in writing of its intention to terminate this Agreement and include the reason for termination. The DEQ will also include a summary of all outstanding costs owed to the DEQ. The DEQ reserves the right to suspend this Agreement for any reason. The DEQ will not consider any of the unapproved work performed during any suspension to be eligible for consideration under RAPMA.

22. Within sixty (60) days after completion of the RAP, JPA shall schedule and conduct a pre-certification inspection to be attended by JPA and the DEQ. If the pre-certification inspection is satisfactory, JPA shall submit to the DEQ a Final Remedial Action Report within thirty (30) days, including certification by a registered professional engineer that the RAP has been completed in material satisfaction of the requirements of this Agreement. If the pre-certification inspection is unsatisfactory, the DEQ shall, acting reasonably, identify any additional remedial actions necessary to satisfy this Agreement. JPA shall perform any additional remedial actions identified by DEQ prior to the submission of the Final Remedial Action Report.

23. Provided that JPA: (1) completes the remedial action in accordance with the RAP; (2) is in compliance with all provisions of this Agreement; (3) is in compliance with all state and federal laws, rules and regulations; (4) agrees to impose and enforce any institutional controls the parties mutually deem appropriate and necessary at the Site; and (5) has remitted all outstanding costs and payment of anticipated long-term oversight costs pursuant to Paragraph 19 above to the DEQ, the DEQ may issue a letter to JPA a letter stating that no further action need be taken at the Site related to any land pollution or water pollution for which remedial action has been taken in accordance with the RAP. Such letter shall provide that the DEQ may require JPA to conduct additional remedial action in the event that any monitoring conducted at or near the Site or other

circumstance indicates that (a) contamination is reoccurring, (b) additional contamination is present which was not previously identified under RAPMA, or (c) additional contamination is present for which remedial action was not taken according to the RAP. As a condition of issuance of the no further action letter, the DEQ may require payment of ongoing direct and indirect costs of oversight of any ongoing long-term operation, maintenance, and monitoring at the Site.

24. This Agreement shall not be construed as an acceptance of liability by the State of Nebraska for activities conducted pursuant to RAPMA. JPA, who is proceeding under RAPMA shall indemnify and hold harmless the State of Nebraska for any further action required by the federal Environmental Protection Agency relating to land pollution or water pollution by JPA for the remedial action.

25. This Agreement shall be governed and interpreted under the laws of the State of Nebraska. The powers conferred by the RAPMA shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby, and the act shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

26. This Agreement shall be binding on each party, its successors and assignees subject to the right of termination in Paragraphs 20 and 21. No change in the ownership or corporate or business status of any party, or of the Site shall alter any signatory's responsibilities under this Agreement.

27. By entering into this Agreement, JPA certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the DEQ all information known to JPA and to the best of its knowledge and belief, disclosed information in the possession or control of its officers, employees, contractors and agents which relates in any way to any existing land or water pollution or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site. This Agreement shall be null and void upon willful submission of false, inaccurate, or misleading information by JPA.

28. This Agreement shall become effective upon execution by both parties and may only be modified or amended by an agreement in writing signed by both parties.

29. Signatures. The undersigned representatives of the parties certify that they are fully authorized to enter into the terms and conditions of this Agreement.

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Date: _____ By: _____

_____
Title

WEST HAYMARKET JOINT PUBLIC AGENCY

Date: _____ By: _____

_____
Title

Exhibit 1 – PROPERTY INFORMATION

Latitude/Longitude: 40.813030 / -96.712392

Lot or Subdivision: Property ID# 10-26-105-003-000 (former Watson-Brickson Lumber)

Lincoln Original, Block 51, Lot 6-156, & W25' Lot 16 and the BNSF spur track lying within parts of Lots 7, 8 and 15.

- Property size: 1.21 acres
- Current Land Use: Vacant. Formerly occupied by a lumber yard
- Future Land Use: Public parking lot, bike trail

Latitude/Longitude: 40.811668 / -96.713532

Lot or Subdivision: Property ID# 10-26-111-004-000 (former Alter Scrap Metal Company)

Lincoln Original, Block 50, Lot 1-2, 18 & part of Lots 3-4,16, 17,& West 40' of vacated south 6th Street ADJ, & B73 LTS 10-12 & Part of LTS 8 & 9, & B81 3, & CG Reiss's LTS A-B (99-18153 Except 2011-21269) including abutting portions of M Street, L Street 5th Street and part of the east/west alleyways in Blocks 50, 73 and 82.

- Property size: 3.96 acres
- Current Land Use: Vacant. Currently occupied by a scrap metal recycling facility
- Future Land Use: Public roadway, parking and bike trail

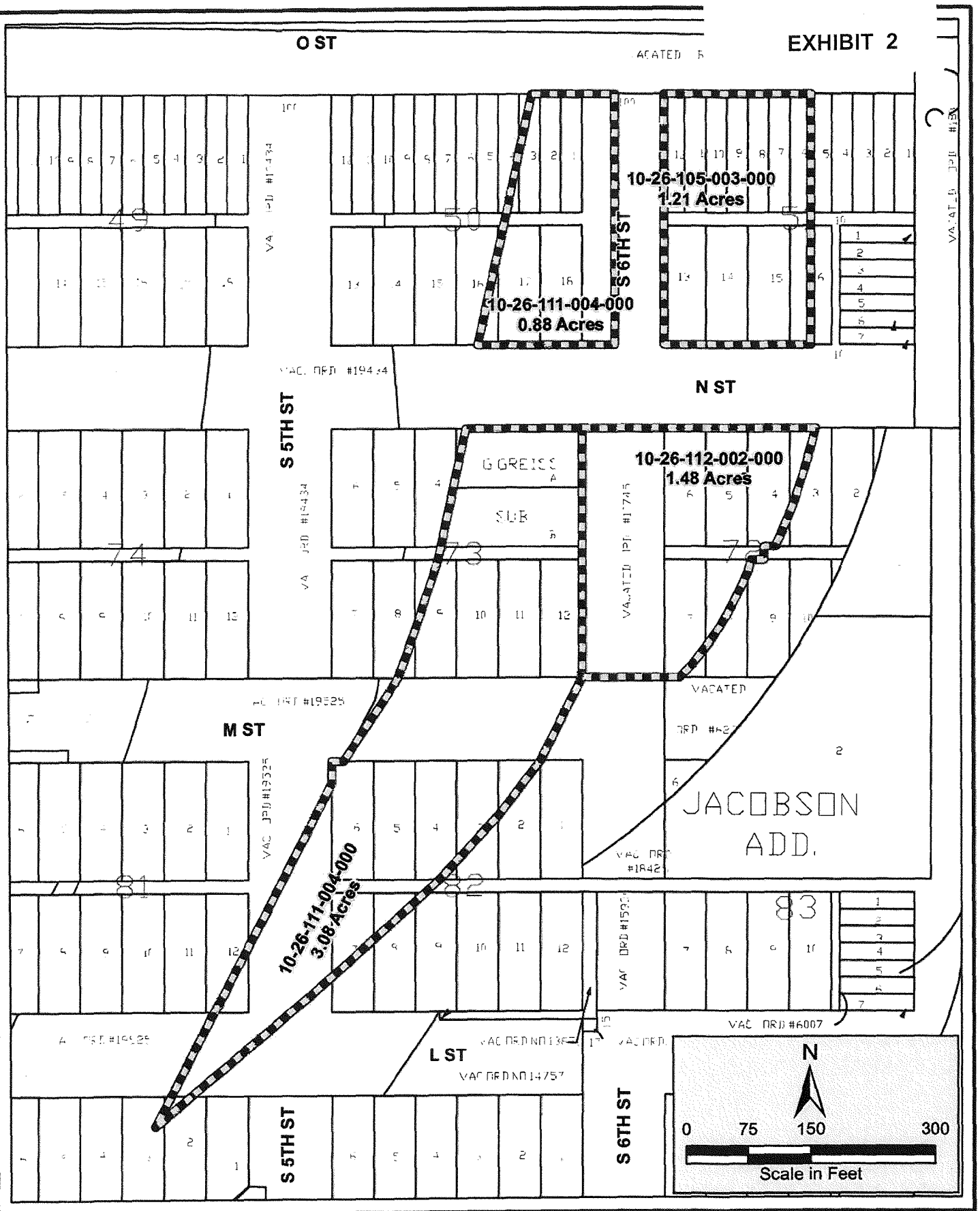
Latitude/Longitude: 40.812090 / -96.712618

Lot or Subdivision: Property ID# 10-26-112-002-000 (former Alter Scrap Metal Company)

Lincoln Original, Block 72, Lot 3-4, 7,8, & 9 Lying NW of RR ROW & Lots 5 & 6 & W120' Vacated E-W Alley ADJ & Vacated 6th St ADJ (described in INST# 2008-20185).

- Property size: 1.48 acres
- Current Land Use: Currently occupied by a scrap metal recycling facility
- Future Land Use: Public roadway, parking and bike trail

EXHIBIT 2



PROJECT: 010-1633, 203, 203005	West Haymarket Redevelopment Site - South Lincoln, Nebraska
DRAWN BY: RD	
DATE: March 12, 2012	

OLSSON ASSOCIATES
1111 Lincoln Mall, Suite 111
P.O. Box 84608
Lincoln, NE 68501-4608
TEL 402 474 6311
FAX 402 474 5160
www.olssonassociates

F:\Projects\010-1633_GOHY\GIS\West Haymarket South\West Haymarket Redevelopment - South.mxd

WH 12-34 Introduce: 6-1-12

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 6 to the Agreement for Environmental Remediation Consulting Services between Alfred Benesch & Company and the West Haymarket Joint Public Agency to add previously planned Task 22 and Task 23 and to provide additional required remediation activities for an additional amount of $338,591.00 is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 6 on behalf of the JPA.

The City Clerk is directed to return a fully executed original of Amendment No. 6 to Alfred Benesch & Company, Attn: Gary Proskovec, 825 J Street, Lincoln, NE 68508.

Adopted this _____ day of June, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Tim Clare

_____
Chris Beutler

_____
Eugene Carroll

AMENDMENT NO. 6

to the AGREEMENT for

ENVIRONMENTAL REMEDIATION CONSULTING SERVICES

between ALFRED BENESCH & COMPANY

and the

WEST HAYMARKET JOINT PUBLIC AGENCY

WEST HAYMARKET ENVIRONMENTAL REMEDIATION PROJECT

Specification No. 10-083

This Contract Amendment is made by and between Alfred Benesch & Company (Consultant), and the West Haymarket Joint Public Agency, hereinafter called JPA, this _____ day of _____ 2012 and approved by Resolution No. _____.

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

The general description of work covered by this Amendment shall include supplementing Task 6 (Environmental Contingency Plan) to account for supplemental required oversight of Arena auger cast piling inspections, supplemental oversight and subcontracting for abandonment of newly discovered underground storage tanks on "N" St. and continued ECP response activities dictated by infrastructure project needs; adding new Tasks 22 and 23 for investigation and remedial action planning for the former JayLynn, LLC and Alter Trading Corporation properties, respectively. These sites are collectively referred to as the West Haymarket Redevelopment Site South (WHRSS) areas of investigation which have been entered into NDEQ's VCP (Alter and JayLynn) and EPA's PCB cleanup requirements (Alter) requiring further investigation and preparation of remedial action plans prior to site redevelopment activities.

A detailed breakdown of the scope and fee for this amendment is included in the attached "**Amendment No. 6 to Scope of Services**."

The total estimated fee for completion of the work associated with this Amendment is **$338,591.00**, which increases the total not-to-exceed contract amount from **$1,533,419.71** to **$1,872,010.71.**

NOW THEREFORE, it is hereby agreed that the existing Agreement be amended to include the services as described in the attached "**Amendment No. 6 to Scope of Services**."

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

West Haymarket Joint Public Agency

_____

Title:_____

Environmental Consultant – Alfred Benesch & Company

By: Frank Eckland

Title: Sr. Project Mgr. 5-22-12

Attachment:

Amendment no. 6 to Scope of Services

Amendment No. 6 to Scope of Services

Qualified Environmental Consultants

Haymarket Environmental Remediation Services - Specification no. 10-083

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

This Amendment No. 6 provides for new scope and fee for continued/supplemental implementation of Task 6 - Environmental Contingency Plan (ECP) and new tasks 22 and 23 consisting of completion of investigations and remedial action plans required under the NDEQ Voluntary Cleanup Program (VCP) for the former JayLynn and Alter Trading Corporation properties, respectively.

Task 6 – Environmental Contingency Plan

Current Contract Authorized Fee: Time and Materials – Cost not to Exceed $311,599.71

Supplemental Request: Continued implementation of the ECP requires oversight and response to various construction – related incidents and needs including most recently 1) support to the "N" St. improvements including sampling and analysis of dewatering fluids; 2) supplemental/continued oversight, testing and reporting of auger cast piling spoils generation at the Arena site and 3) response and subcontracting to facilitate abandonment in place of two (estimated 10,000 gal. capacity each) underground storage tanks discovered during the "N" St. improvement project and 4) continued response to incidental requests to inspect, sample and report upon various ECP-related activities throughout the WHRS construction process.

The total estimated cost to complete this supplemental work is **$64,708.00** as detailed below bringing the total authorization for Task 7 to **$376,307.71:**

		Task 6	
ITEM/DESCRIPTION	RATE	Supplemental ECP Support	
LABOR		HRS	$$
Project Manager Uhlarik	$155.00	16	$2,480
Geochemist/Data Specialist/Lippoldt	$130.00	16	$2,080
Environmental Scientist II/Thomssen, Fettin, Swar	$95.00	60	$5,700
Sr. Technician/Prochaska	$82.00	60	$4,920
Technician	$60.00	120	$7,200
Drafting/GIS	$101.00	8	$808
TOTAL LABOR (HRS/$)		280	$23,188
EXPENSES	RATE	UNITS	$$
Travel/Mileage	$0.75	400	$300
Sub - Meter GPS Equipment	$50.00	8	$400
Organic Vapor Meter	$95.00	24	$2,280
Drilling Services (Geoprobe)	$1,750.00	2	$3,500
On-site Lab Supplies	$20.00	2	$40
Subcontract for UST Closure/Removal	$30,000.00	LS	$30,000
Lab Expenses	$5,000.00	LS	$5,000
TOTAL EXPENSES			$41,520
TOTAL TASK/ACTIVITY			***$64,708***

Task 22 – VCP Investigation and Remedial Action Plan Preparation – Former JayLynn, LLC Property

The JPA has entered into the NDEQ's VCP requiring a comprehensive soil and groundwater investigation and completion of a remedial action plan for the former JayLynn, LLC property. Former Manufactured Gas Plant (FMGP) operations at the site have impacted both soil and groundwater with heavy metals and polynuclear aromatic hydrocarbons (PAH) in excess of applicable VCP remediation goals. Free product has been detected in groundwater which if determined to be pervasive may require removal in accordance with NDEQ Title 118. A work plan has been prepared consisting of over thirty soil probes, with several borings proposed to be completed to bedrock in order to characterize the vertical and horizontal extent of soil and groundwater impacts at the site. An innovative boring technology utilizing Laser Induced Fluorescence (LIF) is proposed as a part of the investigation plan to lower the overall cost of boring and monitoring well installation for the project area.

The total projected fees for this task are estimated at **$192,630.00** as detailed below:

ITEM/DESCRIPTION	RATE	Task 22 Former JayLynn VCP Investigation/RAP	
LABOR		HRS	$$
Project Manager Uhlarik	$155.00	40	$6,200
Senior Project Engineer/Lim	$130.00	60	$7,800
EnviroGroup	$155.00	24	$3,720
Geochemist/Data Specialist/Lippoldt	$130.00	60	$7,800
Senior Scientist/Goodenkauf	$130.00	24	$3,120
Environmental Scientist II/Fettin, Sw ard	$95.00	200	$19,000
Sr. Technician/Prochaska	$82.00	160	$13,120
Technician	$60.00	120	$7,200
Drafting/GIS	$101.00	60	$6,060
WP Support/Accounting	$50.00	8	$400
TOTAL LABOR (HRS/$)		756	$74,420
EXPENSES	RATE	UNITS	$$
Travel/Mileage	$0.75	1200	$900
Sub - Meter GPS Equipment	$50.00	2	$100
Water Level Indicator	$50.00	8	$400
Organic Vapor Meter	$95.00	6	$570
Laser Induced Flourescense Logging Service	$20,000.00	1	$20,000
Drilling Services (Geoprobe)	$2,000.00	6	$12,000
Drilling Services (Monitoring Wells Installation)	$3,000.00	7	$21,000
On-site Lab Supplies	$20.00	12	$240
Lab Expenses	$63,000.00	LS	$63,000
TOTAL EXPENSES			$118,210
TOTAL TASK/ACTIVITY			***$192,630***

Task 23 – VCP Investigation and Remedial Action Plan Preparation – Former Alter Trading Corporation Property

The JPA has entered into the NDEQ's VCP requiring a comprehensive soil and groundwater investigation and completion of a remedial action plan (RAP) for the former Alter Trading Corporation property. Previous investigations have revealed heavy metals, PAHs and polychlorinated biphenyls (PCBs) in soil and/or groundwater at the site that will require further investigation and completion of a remedial action plan in accordance with the VCP. Investigation and RAP work will also entail conformance to EPA's self-implementing cleanup requirements for PCBs. The scope of this investigation will cover only portions of the Alter property north of "N" Street.

The total projected fees for this task are estimated at **$81,253.00** as detailed below:

		Task 23	
ITEM/DESCRIPTION	RATE	Former Alter Trading Corp. VCP/TSCA Investigation/RAP	
LABOR		HRS	$$
Project Manager Uhlarik	$155.00	20	$3,100
Senior Scientist Imig	$125.00	116	$14,500
Senior Project Engineer/Lim	$130.00	30	$3,900
Geochemist/Data Specialist/Lippoldt	$130.00	30	$3,900
Environmental Scientist II	$95.00	35	$3,325
Sr. Technician	$82.00	60	$4,920
Technician	$60.00	60	$3,600
Drafting/GIS	$101.00	28	$2,828
WP Support/Accounting	$50.00	12	$600
TOTAL LABOR (HRS/$)		391	$40,673
EXPENSES	RATE	UNITS	$$
Travel/Mileage	$0.75	200	$150
Sub - Meter GPS Equipment	$50.00	1	$50
Organic Vapor Meter	$95.00	4	$380
Drilling Services (Geoprobe)	$2,000.00	4	$8,000
On-site Lab Supplies/PCB Test Kits	$20.00	100	$2,000
Lab Expenses	$30,000.00	LS	$30,000
TOTAL EXPENSES			$40,580
TOTAL TASK/ACTIVITY			***$81,253***

WH 12-35 Introduce: 6-1-12

RESOLUTION NO. WH- _____

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

That the attached Amendment No. 1 to the Agreement for Construction Observation and Testing Services for the Arena, Arena Garage and Ramp Construction Sites between Alfred Benesch & Company and the West Haymarket Joint Public Agency to expand the scope of construction observation and testing services of the Arena to include Arena floor subgrade testing as a precursor to the pouring of the Arena concrete floor for an additional fee of $24,675.00 is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Amendment No. 1 on behalf of the JPA.

The City Clerk is directed to return a fully executed original of Amendment No. 1 to Alfred Benesch & Company, Attn: Gary Proskovec, 825 J Street, Lincoln, NE 68508.

Adopted this _____ day of June, 2012.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Chris Beutler, Chair

_____
Tim Clare

_____
Eugene Carroll

AMENDMENT NO. 1

TO THE AGREEMENT FOR
SERVICES FOR THE ARENA, ARENA PARKING GARAGE
AND RAMP CONSTRUCTION SITES
between ALFRED BENESCH & COMPANY
and the
WEST HAYMARKET JOINT PUBLIC AGENCY

This Amendment No 1 is made by and between Alfred Benesch & Company (Benesch) and the West Haymarket Joint Public Agency, hereinafter called JPA, this _____ day of June, 2012 and approved by Resolution No. WH_____.

WHEREAS, it is the mutual desire of the parties hereto to amend the Agreement For Construction Observation and Testing Services for the Arena, Arena Parking Garage and Ramp Construction Sites which was entered into with the JPA on September 1, 2011 by Resolution No. WH00192 to expand the services to include construction observation and testing of the Arena floor subgrade as a precursor to the pouring of the Arena concrete floor.

A detailed breakdown of the scope and fee for this amendment is set forth in the Benesch Proposal dated May 18, 2012 attached hereto as Attachment A.

The total estimated fee for completion of the work associated with this Amendment is $24,675.00.

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

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

West Haymarket Joint Public Agency

_____
Chris Beutler, Chair

Alfred Benesch & Company

_____
Title:

ATTACHMENT "A"

benesch
engineers · scientists · planners

Alfred Benesch & Company
825 J Street
Lincoln, NE 68508
www.benesch.com
402-479-2200
402-479-2276

May 18th, 2012

Mr. Dan Marvin
Joint Public Authority
City of Lincoln
c/o PC Sports
311 North 8th Street; Suite 102
Lincoln, NE. 68508

REFERENCE: Cost Estimate for Construction Observation & Testing
I. Arena Construction Site:
A. Arena Floor Subgrade Inspection and Testing
West Haymarket Development Project
Approximately "R" to "T" Streets & 5th to 6th Streets
West Haymarket Area; Lincoln, Nebraska

Dear Mr. Marvin:

Alfred Benesch and Company (Benesch) is pleased to submit, to the Joint Public Authority (JPA), a proposal for the providing of geotechnical engineering services consisting of the providing of construction observation and testing services associated with construction for the Arena, building structure. These construction observation, and testing services will include performance of floor subgrade testing as a precursor to the pouring of concrete for the Arena floor. This work will be an addendum to the Arena piling installation observation and testing contract with the JPA.

For the sake of preparing this cost estimate assumptions had to be made as to the duration of time that these services will need to be provided. The duration of time that were assumed when preparing this proposal are based on actual field and project time spent during the working of the first two of some twenty-six floor areas that have been established by Mortenson Construction Company. An earlier (December 7th, 2011) submittal, which had a lessor assumed number of hours of floor subgrade testing, was derived from the City of Lincoln's Arena SIS RFP. The specific assumptions made as to the duration of time required to perform this segment of observation, monitoring and testing services are presented below and in Attachment A-1 Scope of Services and Fee Estimate.

CONSTRUCTION OBSERVATION AND TESTING SERVICES

Assumptions made when preparing the estimated cost associated with the providing of the floor subgrade testing services presented in Attachment A-1 SCOPE OF SERVICES AND FEE ESTIMATE are as follows:

I. ARENA FLOOR SUBGRADE TESTING: Based on recent discussions with Mortenson Construction and floor subgrade testing that is being implemented,

Benesch anticipates that there could be 26 separate floor subgrade testing events. These events would include 15 for the initial floor areas, 7 for the second sequence of floor installation, and four for the center arena floor area. It was assumed that each segment of floor subgrade testing services would require up to eight (8) hours of field inspection and testing time. As previously stated, this amount of time was selected based on the time services were requested of Benesch as the first two floor subgrade areas have been tested and retested after reworking in deficient areas. Other associated engineering and technician time is presented in Attachment A-1 under this above stated heading.

TIME SCHEDULE

It has been assumed that the construction observation, monitoring and testing services discussed herein would be performed during the 2012 and 2013 calendar years.

CONSTRUCTION OBSERVATION AND TESTING SERVICES FEE ESTIMATE

Benesch's estimate of the amount of work involved in the construction observation, monitoring and testing services discussed herein is provided in Attachments A-1. The estimated total fee presented in Attachment A-1 is $24,675.00. The total fee for these services will not exceed $24,675.00 without the JPA's express authorization. The cost for additional services required on the project or credit for services not required when performing work during the 2012 calendar year will be computed using the unit rates presented in Attachments A-1 (2012 segment work). For the invoicing for services performed in 2013 it should be assumed that all unit rates could be increased consistent with COLA salary increases Benesch employees receive. The COLA is anticipated to range between 0% and no more than 3%. Similarly, it should be assumed that the equipment charge rates presented in Attachment A-1 for services provided during the 2013 construction seasons would increase accordingly. The cost for services not discussed in this submittal will be charged using the unit rates presented in future cost estimates (if requested) that JPA may solicit of Benesch.

Per PC Sports request Benesch will breakout the invoicing. One invoice will present the charges for the performance of the original testing performed on the subgrade, the associated reporting of results and general consultation time. A second invoice will be provided for Benesch time spent observing the required extent of unsuitable subgrade removal and associated retesting of compacted floor subgrade materials as they are placed and constructed up to top the finished cohesive floor subgrade elevation.

EXECUTION OF CONTRACT

If this fee estimate is acceptable to the Joint Public Authority and approval is given for the performance of the geotechnical construction observation, and testing services discussed herein, please prepare an addendum to the JPA's Arena piling inspection and testing Agreement with Benesch for the performance of the services discussed herein.

BENESCH appreciates having the opportunity to present this proposal and to continue the on-going relationship that we have with the JPA on the West Haymarket Project. Please do not hesitate to contact us at your convenience if any clarification or additional information is required.

Respectfully submitted,
ALFRED BENESCH & COMPANY

Gary E. Proskovec, P.E.
Geotechnical Engineering Services Director

GEP/gep
Enclosure
P1111447; 00110359
JPAArenaFloorSubgrTstngCostEst05_18_2012.doc

Orig.:	Joint Public Authority; c/o PC Sports
1pc.:	Ms. Paula Yancey; PC Sports; e-mail: Paula@projectcontrol.com
1pc.:	Mr. Randy Swanson; PC Sports; e-mail: Randy@projectcontrol.com
1pc.:	Benesch – Mr. Jim Linderholm

benesch engineers · scientists · planners

Attachment A-1 Scope of Services And Fee Est.
For Arena Floor Subgrade Testing Prior to Floor Installation

Item No.	Description		Unit Price	Amount
I.	**Arena Floor Subgrade Testing (assumed services performed immediately prior to pouring of floor slab)**			
	(Assumed 26 work areas and 8 hours field time for each; Center of arena floor was treated as 4 areas)			
	(Assumed 8 hours field time for each work area, no weekly project meeting attendance, and			
	any meeting involvement charged out per unit rates presented below):			
	A. Field Construction Site Services:			
	1. Personnel:			
	a. Field/Lab Technician I	208 hr.	$ 48.00 /hr.	$ 9,984.00
	b. Field/Lab Technician II	0 hr.	$ 57.00 /hr.	$ -
	c. Project Engineer II	16 hr.	$ 97.00 /hr.	$ 1,552.00
	d. Project Manager I	4 hr.	$ 140.00 /hr.	$ 560.00
	e. Sr. Project Manager	16 hr.	$ 161.00 /hr.	$ 2,576.00
	f. Vehicle:			
	i1. Hourly Rate (to nearest hour)	26 day	$ 45.00 /day	$ 1,170.00
	i2. Vehicle Mileage	300 mi.	0.75 /mi.	$ 225.00
	g. Nuclear Moisture/Density Gauge	104 hr.	$ 11.00 /hr.	$ 1,144.00
	B. Reporting:			
	1. Personnel:			
	a. Field/Lab Technician I	52 hr.	$ 48.00 /hr.	$ 2,496.00
	b. Field/Lab Technician II	0 hr.	$ 57.00 /hr.	$ -
	c. Project Engineer II	16 hr.	$ 97.00 /hr.	$ 1,552.00
	d. Project Manager I	6 hr.	$ 140.00 /hr.	$ 840.00
	e. Sr. Project Manager	16 hr.	$ 161.00 /hr.	$ 2,576.00
	Subtotal III:		**$ 24,675**	
II.	**Special Project Consultation & Meetings (None assumed now; *Charge rate per Unit Rate for Given Year)**			
	1. Personnel			
	a. Senior Project Manager*	hr.	$ 161.00 /hr.	$ -
	b. Project Manager I*	hr.	$ 140.00 /hr.	$ -
	c. Project Engineer II*	hr.	$ 97.00 /hr.	$ -
	d. Designer II*	hr.	$ 76.00 /hr.	$ -
	e. Field/Lab Technician I*	hr.	$ 48.00 /hr.	$ -
	Subtotal II:		**$ -**	
		Estimated Total:		**$ 24,675.00**
	*Hourly rate are for 2012 and will increase consistent w/ COLA salary increases (i.e., assumed between 0 and 3 percent) for the			
	each of the years during which services are requested/required.			