AGENDA FOR THE WEST HAYMARKET JOINT PUBLIC AGENCY(JPA) TO BE HELD THURSDAY, SEPTEMBER 23, 2010 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 Snyder)

2. Approval of the minutes of JPA meeting September 9, 2010 (Chair Snyder)

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

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

4. Approval of Payment Registers (Don Herz)

5. Review of the August 2010 Expenditure Reports (Don Herz)

6. Bill No. WH 10-03 Resolution to Approve the Third Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency (Rick Peo)

7. Bill No. WH 10-04 Resolution to approve an agreement with Alfred Benesch & Company (formerly HWS) to provide geotechnical engineering services for the arena and parking garage structures for the West Haymarket Project (Rick Peo)

8. Bill No. Wh 10-05 Resolution to approve Amendment No.1 to the agreement dated August 14,2008, between the City of Lincoln (assigned to the West Haymarket Joint Public Agency) and DLR Group, Inc. to provide architectural services for the design of the arena and other arena improvements for the West Haymarket Project (Rick Peo)

9. Set next meeting date: Friday October 8, 2010 3:00 P.M. (Council Chambers Rm 112)

10. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
September 9, 2010

Meeting Began At: 3:03 P.M.

Meeting Ended At: 3:12 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

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

Chair Snyder opened the meeting and introduced herself, Mayor Chris Beutler and Regent Tim Clare.

The open meetings law is in effect and is posted in the back of the room.

Item 2 – Approval of the Minutes of the JPA Meeting August 27, 2010

Snyder asked for any corrections or changes to the minutes from the JPA meeting on August 27, 2010. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. The motion passed 3-0.

Item 3 – Public Comment and Time Limit Notification

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

Item 4 – Approval of Payment Registers (Herz)

Don Herz explained that the City writes checks once a week and at that time the payment register is printed out. There are two registers to be approved, one for the period from August 18, 2010 to August 25, 2010 and the other for the period from August 26, 2010 through September 1, 2010.

On the first register, several checks were written to the City of Lincoln for items that the City paid prior to the JPA having available funds. Herz reviewed the list with the Board. The reimbursement to the City for the Assistant Controller and Purchasing Agent will be reoccurring because the payroll is run through the City. Payments to the Journal Star were for advertisements for RFP's and the Budget Hearing. Payments of $1,000 each were made to Madge Franssen and Noohznik for right of entry agreements. A payment was made to the Nebraska Department of Environmental Quality for reports. Two payments were made to

Midwest ROW for Right-of-Way acquisitions. Two payments were made to Olsson Associates for professional services for stormwater mitigation. A payment was made on August 25, 2010 to Aon for the Public Liability insurance policy. The final entry on the list was the first payment to the Project Manager, Dan Marvin.

Clare asked for clarification regarding Dan Marvin's position because the Board had decided not to bring on an Arena Project Manager. Herz explained that Dan Marvin is the internal Project Manager, not the Arena Project Manager. Marvin's position is a part of the operating budget that the Board approved. Clare suggested identifying the line item differently so it did not cause confusion with the public. Herz agreed and will try to be as clear as possible.

The second payment register contains items with relatively modest amounts. The first four items were paid to the Journal Star for advertising for various RFP's. Also included on this register were reimbursements to Rick Peo and Miki Esposito for a trip to Dallas to work with Burlington Northern. The remaining item is a payment to Midwest for relocation services.

Herz has also developed some monthly reports that will show the approved budgets and the actual cumulative expenditures. There will be a separate report for the construction and operating budgets so that the Board can monitor those. The first report prepared was for the month ending August 28th and will be in the Board's next packet. Herz will review it with the Board at the next meeting.

Clare asked why the Journal Star Budget Hearing advertisement was ten times more than the other ads. Herz explained that it was a much larger ad as they published the proposed budget. If there was another reason, Herz will let the Board know.

Beutler moved for approval of the registers dated August 19, 2010 to August 25, 2010 and August 26, 2010 to September 1, 2010. Clare seconded the motion. Motion approved 3-0.

Item 5 – Set Next Meeting Date: Thursday September 23, 2010 3:00 P.M.

The next JPA Board meeting is scheduled for September 23, 2010 at 3:00 P.M.

Item 6 – Motion to Adjourn

Beutler motioned to adjourn. Clare seconded the motion. Meeting adjourned at 3:12.

Prepared by: Melissa Ramos-Lammli, Engineering Services

West Haymarket JPA Check Register
9/2/10 through 9/8/10

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
139758	Union Pacific Railroad	WO04367, Cust#62517	PV	1216102	7,991.95	09/08/10	00427778
139758	Union Pacific Railroad	WO04367, Cust#62517	PV	1216103	8,323.13	09/08/10	00427778
594773	Alfred Benesch & Company	July survey	PV	1216104	6,510.00	09/08/10	00427779
Grand total					22,825.08		

West Haymarket JPA Check Register
9/9/10 through 9/15/10

Supplier Number	Name	Remark	Do Ty	Document Number	Amount	Check Date	Check Number
43983	Speece-Lewis Engineers Inc	July,2010 land surveying	PV	1216101	14,254.62	09/09/10	00039449
85796	Office Depot Inc	84031402 020731	PV	1215550	49.77	09/09/10	00039463
26041	Menards - Lincoln North	Asst Purch Agent office	PV	1217515	21.90	09/15/10	00428442
38439	Lincoln Drywall Service Inc	Asst Purch Agent office	PV	1217520	29.18	09/15/10	00428443
81357	Great Plains Appraisal Inc	N St.	PV	1218389	1,000.00	09/15/10	00428444
81357	Great Plains Appraisal Inc	JayLynn	PV	1218389	1,000.00	09/15/10	00428444
120272	City of Lincoln - Accounting Dept	Reimb City for JPA laptop	PV	1217470	2,461.20	09/15/10	00428445
366993	Gilmore & Bell PC	Legal-Tax Anticipation Note	PV	1217486	20,000.00	09/15/10	00428446
456622	Drywall Supply Inc	Asst Purch Agent office	PV	1217512	62.53	09/15/10	00428447
595374	Walcro Inc	Asst Purch Agent office	PV	1217521	8.50	09/15/10	00428448
Grand total					38,887.70		

City of Lincoln, NE
West Haymarket
Construction Expenditure Report
As of August 31, 2010

	Total Budget	Expend.	Encumb.	Available Balance
00951 West Haymarket Capital Proj				
870000 WH West Haymarket Park		184,609		184,609-
870100 WH Arena	168,895,600			168,895,600
870200 WH Parking	30,644,420			30,644,420
870300 WH Roads	18,181,680			18,181,680
870301 WH Sun Vlly-Chrlston & Brdg				
870302 WH "M"&"N" St, 9th & 10th St				
870400 WH Pedestrian Ways	10,121,746			10,121,746
870500 WH Utilities	5,852,280			5,852,280
870501 WH Sanitary Sewer Relocation				
870600 WH Environmental	6,003,600			6,003,600
870700 WH Dirt Moving	9,023,160			9,023,160
870800 WH TIF Improvements	5,515,693			5,515,693
870900 WH Site Purchase	57,873,400			57,873,400
870901 WH BNSF Land Acquistion		25,000		25,000-
870902 WH Alter Site Purchase				
870903 WH Jaylynn Site Purchase				
870904 WH UP Site Purchase				
870950 WH Other Costs	4,200,000			4,200,000
870975 WH Miscellaneous	5,160,000			5,160,000
870976 WH Line of Credit		32,500		32,500-
870977 WH Series 1 JPA Debt				
870978 WH Series 2 JPA Debt				
870979 WH Series 3 JPA Debt				
	321,471,579	242,109		321,229,470
00951 West Haymarket Capital Proj	321,471,579	242,109		321,229,470

City of Lincoln, NE
West Haymarket JPA
Operating Expenditure Report
As of August 31, 2010

00950 West Haymarket Reven
06095 W Haymarket Arena Ad

	ORIGINAL BUDGET	REAPPROP & P/Y ENC	BUDGET REVISIONS	TOTAL	YTD EXPEND	AVAILABLE BALANCE
00950 West Haymarket Revenue						
06095 W Haymarket Arena Adm						
11 Materials & Supplies						
5221 Office Supplies					145	145-
5259 Other Oper Supplies					257	257-
11 Materials & Supplies					402	402-
12 Other Services & Charges						
5621 Misc Contractual Services					1,080	1,080-
5632 System Develop - I.S.	20,000			20,000		20,000
5642 Legal Services	20,000			20,000		20,000
5643 Management Services	76,408			76,408	19,644	56,764
5794 Public Officials	20,000			20,000	26,086	6,086-
5952 Advertising/Media Serv					343	343-
12 Other Services & Charges	136,408			136,408	47,153	89,255
13 Capital Outlay - Equipment						
6069 Data Processing Equipment	4,500			4,500		4,500
6072 Furniture & Fixtures	11,000			11,000		11,000
13 Capital Outlay - Equipment	15,500			15,500		15,500
06095 W Haymarket Arena Adm	151,908			151,908	47,555	104,353
00950 West Haymarket Revenue	151,908			151,908	47,555	104,353

WH 10-03 Introduce: 9-23-10

RESOLUTION NO. WH- _____

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

That the Third Assignment and Assumption Agreement, which is attached hereto marked as Attachment "A" and incorporated herein by this reference, between the City of Lincoln, Nebraska and the West Haymarket Joint Public Agency providing for the City as assignor to assign and for the Agency as assignee to assume all of the City's rights, interests, duties and obligations under the Agreements listed in Exhibit "A" attached to the Third Assignment and Assumption 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 Third Assignment and Assumption Agreement on behalf of the West Haymarket Joint Public Agency.

The Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby further authorized to execute without further action of the Board of Representatives any other assignment and assumption documents which may be needed to obtain any required third party consent to the Third Assignment to and Assumption of such Agreements by the West Haymarket Joint Public Agency.

Introduced by:

_____

Approved as to Form & Legality:

_____

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____

Jayne Snyder, Chair

_____

Tim Clare

_____

Chris Beutler

ATTACHMENT "A"

THIRD ASSIGNMENT AND ASSUMPTION AGREEMENT

This Third Assignment and Assumption Agreement ("Assignment") is made and entered into as of the _____ day of _____, 2010, between the **City of Lincoln, Nebraska,** a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay

the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreements listed in Exhibit A ("Agreements") attached hereto and incorporated herein by this reference which were originally entered into with the City, and Agency assume all obligations of the City under said Agreements.

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

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City's rights, title and interest in and to and under the Agreements as authorized under the agreements listed in Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreements. Agency shall fully and completely indemnify and hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreements.

3. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreements if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Third Assignment and Assumption Agreement as of the ____ day of _____, 2010.

City of Lincoln, Nebraska
a municipal corporation

ATTEST:

_____
City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

EXHIBIT A

LIST OF AGREEMENTS ASSIGNED TO AGENCY

1. Master Development Agreement between the City and BNSF to provide for a land exchange needed to create the new BNSF rail corridor and the site for the West Haymarket Project improvements; to provide for the removal of BNSF improvements on the property to be acquired by the City from BNSF; to provide for BNSF's construction of replacement tracks and related improvements; and to provide for BNSF's granting of certain license and easement rights to the City for Right of Entry Work related to the West Haymarket Project Improvements.

2. Land Exchange Agreement between the City and BNSF for acquisition of property from BNSF for the West Haymarket Project.

3. Construction and Maintenance Agreement between the City and BNSF to provide for terms and conditions regarding construction of the City's rights of entry work under the Master Development Agreement for the West Haymarket Project.

4. Agreement between DLR Group, Inc. and the City of Lincoln, Nebraska dated August 14, 2008 approved by Executive Order No. 81522 providing for the design of the West Haymarket Civic Arena.

MASTER DEVELOPMENT AGREEMENT

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

RECITALS

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

B. The West Haymarket Project requires the acquisition and redevelopment of certain real property, including real property currently owned or controlled by BNSF. City anticipates the acquisition of all necessary rights-of-way, easements, or other interests in land by voluntary purchase if possible, or by condemnation if necessary, for the real property related to the West Haymarket Project. In order to avoid the expense and delay of such condemnation action by City, BNSF is willing to quitclaim to City and City is willing to accept all of BNSF's right, title and interest, if any, in and to the needed BNSF property in lieu of such condemnation action on the terms and conditions set forth in herein.

C. BNSF owns or has an interest in certain parcels of real estate in the Project Area ("**Existing BNSF Property**"). The Existing BNSF Property is legally described in and identified as all or part of Parcels 1, 3, 6, 8, 19, 22-26, 31, 40, 42-47, 53-60, 67, 69, and 71 on the Title Insurance Commitment (as defined in the Exchange Agreement [defined below]) and the Survey (as defined in the Exchange Agreement). The Existing BNSF Property also includes Lots 1-3, Block 286, Original Plat of Lincoln. The Existing BNSF Property is shown on the map attached hereto as **Exhibit B** and incorporated herein by reference.

D. BNSF will retain its ownership interest in and continue railroad operations on certain portions of the Existing BNSF Property as shown on the attached **Exhibit B-1** and incorporated herein by reference ("**Retained BNSF Property**") during and after construction of the West Haymarket Project. BNSF's interest, if any, in the remaining portions of the Existing BNSF Property (totaling approximately 41 acres) as shown on **Exhibit B-1** attached hereto ("**Transferred BNSF Property**") will be quitclaimed to City by quit claim deed and used for the West Haymarket Project. The Transferred BNSF Property consists of all of Parcels 3, 8, 19, 24, 31, 42, 43, 58, 59, 60, and 71 and part of Parcels 1, 6, 22, 25, 40, 44, 47, 55-57 and Lots 1-3, Block 286, Original Lincoln. In addition, BNSF will quitclaim to City by quit claim deed and bill of sale all of BNSF's rights, title and interest, if any, in the existing BNSF railroad bridge over Salt Creek ("**BNSF Bridge**") as shown on the attached **Exhibit C** and incorporated herein by reference.

E. Certain streets and alleys in the Project Area, as shown on **Exhibit D**, attached hereto and incorporated herein by reference have been previously platted and dedicated to City

(collectively "**Existing City Streets and Alleys**"). As part of the West Haymarket Project, City will vacate the Existing City Streets and Alleys and create other new streets and alleys to serve the West Haymarket Project. A portion of the Existing City Streets and Alleys will be vacated subject to title to the real property comprising the vacated Existing City Streets and Alleys being retained by City ("**Vacated Right of Way/Retained City Property**") as shown on **Exhibit D-1**, attached hereto and incorporated herein by reference. The remaining balance of the Existing City Streets and Alleys (i.e., within the Future BNSF Corridor [defined below]) as shown on **Exhibit D-1** attached hereto will be vacated by City and title to the real property transferred to BNSF by quit claim deed as part of the Land Exchange described below ("**Vacated Right of Way/Replacement BNSF Property**").

F. BNSF may have certain reversionary and/or other real estate claims, ordinance rights, licenses, easements and interest relating to providing rail service over the Vacated Right of Way/Retained City Property shown on **Exhibit D-1** attached hereto (collectively "**BNSF Reversionary Interests**") and over certain other City streets and alleys immediately abutting the Project Area ("**Other BNSF Reversionary Interests**") as shown on **Exhibit S**, attached hereto and incorporated herein by reference. BNSF will quitclaim any and all BNSF Reversionary Interests and Other BNSF Reversionary Interests to City by quit claim deed as part of the Land Exchange. BNSF will reasonably cooperate with City to amend or extinguish any ordinance rights BNSF may have to occupy for rail transportation purposes (i) the Vacated Right of Way/Retained City Property and (ii) certain other City streets and alleys to be relinquished as shown on **Exhibit S**.

G. Implementation of the West Haymarket Project will require City to acquire from Union Pacific Railroad Company ("**UP**") certain parcels of real property or railroad rights-of-way ("**Existing UP Property**") as shown on the attached **Exhibit E** and incorporated herein by reference. After acquiring the Existing UP Property, City will retain portions of the Existing UP Property ("**UP/City Retained Property**"), as shown on the attached **Exhibit E-1** and incorporated herein by reference, and will convey certain other portions of the Existing UP Property to BNSF ("**UP/Replacement BNSF Property**") as shown on **Exhibit E-1** attached hereto.

H. Implementation of the West Haymarket Project will further require City to acquire certain parcels of real property as shown on the attached **Exhibit F**, and incorporated herein by reference, from certain third parties ("**Third Party Properties**"). After acquiring the Third Party Properties, City will retain portions of the Third Party Properties, as shown on the attached **Exhibit F-1** and incorporated herein by reference ("**Third Party/Retained City Property**"), and will convey the remaining portions of the Third Party Properties, as shown on **Exhibit F-1** attached hereto, to BNSF ("**Third Party/Replacement BNSF Property**").

I. The Vacated Right of Way/Replacement BNSF Property, UP/Replacement BNSF Property, and Third Party/Replacement BNSF Property are hereinafter collectively referred to as the "**Replacement BNSF Property**". The Replacement BNSF Property consists of parcels identified in the Title Insurance Commitments BNSF001 and BNSF002 and the Survey as Tract 1 (Parcels 1-16), Tract 2, Tract 3, Tract 4, Tract 5 and Tract 6. The Replacement BNSF Property is shown on the maps attached hereto as **Exhibit G** and **Exhibit G-1** and incorporated herein by reference. The Replacement BNSF Property and the Retained BNSF Property is hereinafter referred to as the "**Future BNSF Corridor**" and is shown on **Exhibit H** attached hereto and incorporated herein by reference.

J. Implementation of the West Haymarket Project will also require City to perform certain Rights of Entry Work (defined below) as described in **Exhibit I**, attached hereto and incorporated herein by reference, and pursuant to the Rights of Entry (defined below). The Storm Water Mitigation Area (defined below), the Soil Staging Area (defined below), and the location of

the Pedestrian Bridge (defined below) are shown on **Exhibits I-1**, **I-2**, **I-3**, and **I-4**, which are attached hereto and incorporated herein by reference.

K. As part of the Land Exchange, BNSF will quitclaim to City BNSF's interest, if any, in and to the Transferred BNSF Property, BNSF Reversionary Interests, Other BNSF Reversionary Interests, BNSF Bridge (collectively "**Replacement City Property**"). The Replacement City Property is shown on the map attached hereto as **Exhibit J** and incorporated herein by reference. The Replacement City Property currently includes ballast, rail, railcar storage tracks, rail switching facilities, communication systems, utilities, buildings and other related railroad improvements (collectively "**BNSF Existing Improvements**"). BNSF shall have the right, but not the obligation, to remove all or any portion of the BNSF Existing Improvements (excluding the BNSF Bridge and related support structure, which BNSF shall have no right or obligation to remove) prior to quitclaiming BNSF's interest, if any, in and to the underlying real property to City, as set forth in more detail in the Exchange Agreement. Any BNSF Existing Improvements not removed by BNSF shall be conveyed to City concurrently with the underlying real property and become the property of City upon conveyance of the underlying real property. The Vacated Right of Way/Retained City Property, UP/Retained City Property, and Third Party/Retained City Property are collectively referred to as the "**Retained City Property**". The Replacement City Property and the Retained City Property is hereinafter referred to as the "**Future City Property**" and is shown on **Exhibit K** attached hereto and incorporated herein by reference.

L. Implementation of the West Haymarket Project will also require BNSF to perform the BNSF Work (defined below).

M. In 2008 City, at its expense, engaged HWS Consulting Group, Inc. ("**HWS**") to prepare preliminary design of the BNSF Track Work (defined below) which was completed and submitted to City and BNSF in December 2008 ("**BNSF Track Work 30% Design**"). Subsequently, BNSF, at its expense, engaged HWS to advance the BNSF Track Work 30% Design to a 60% preliminary design (**"BNSF Track Work 60% Design**") in order to refine trackage quantities and project cost estimates to complete the BNSF Track Work which was completed and submitted to City and BNSF on April 1, 2009.

N. In association with the BNSF Track Work 60% Design, BNSF, at its expense, prepared the preliminary design and construction cost estimates for the BNSF Signals and Facilities Work (defined below) ("**BNSF Signals and Facilities Work Preliminary Design**") and for BNSF Utilities Work (defined below) ("**BNSF Utilities Work Preliminary Design**") on the Future BNSF Corridor and other property owned, controlled, or to be acquired by BNSF. The BNSF Signals and Facilities Work Preliminary Design and BNSF Utilities Work Preliminary Design will serve as a general guideline for preparation of the BNSF Signal and Facilities Work Final Design and BNSF Utilities Work Final Design, subject to further review and revision by BNSF. The BNSF Signal and Facilities Work Final Design and BNSF Utilities Work Final Design will be prepared and completed by BNSF as part of the Included BNSF Work, and submitted to City as information with respect to the sequence of actions for completion of the BNSF Work. The BNSF Signals and Facilities Work Final Design and BNSF Utilities Work Final Design will be completed and submitted to City as information on the date shown on the Timeline. Notwithstanding any provision in this Master Agreement, the Exchange Agreement, or the C&M Agreement (defined below) to the contrary, upon request of City, BNSF shall commence preparation of all or part of the BNSF Signal and Facilities Work Final Design and/or BNSF Utilities Work Final Design prior to the dates shown in the Timeline; provided that the request of City shall be in writing and shall contain an affirmation on the part of City to reimburse BNSF for all reasonable design costs incurred in preparing the BNSF Signal and Facilities Work Final Design and/or BNSF Utilities Work Final Design, as applicable.

O. In 2010, BNSF, pursuant to a letter agreement with City dated February 12, 2010, a copy of which is attached as **Exhibit U** hereto, engaged HWS to advance the BNSF Track Work 60% Design to final design ("**BNSF Track Work Final Design**") in order to finalize trackage quantities and project cost estimates to complete the BNSF Track Work. The BNSF Track Work Final Design entitled West Haymarket Track Relocation and dated August 13, 2010, has been provided to City and Amtrak on August 13, 2010.

P. The BNSF Track Work Final Design, the final design of the BNSF Signals and Facilities Work ("**BNSF Signals and Facilities Work Final Design**"), and the final design of the Utilities Work ("**BNSF Utilities Work Final Design**") are sometimes collectively referred to as "**BNSF Work Final Design**".

Q. Implementation of the West Haymarket Project will also require preparation of the City Work Final Design (defined below) by City or others and the completion and Operation (defined below) of the Arena, Ice Center, City Amtrak Work (defined below), Storm Water Mitigation Work (except for the 2010 Storm Water Mitigation Work [defined below]), 2010 Sanitary Sewer Work (defined below), Fiber Optic Work (defined below) and Public Utilities Work (defined below), (collectively "**City Work**"). Notwithstanding anything to the contrary herein, the City Work, BNSF Work and any other work that is or becomes a part of the West Haymarket Project shall be at City's cost and expense, except only to the extent that BNSF becomes responsible for costs to construct the Included BNSF Work in excess of $44,000,000 as described in **Section 2.7.4**.

R. As part of the West Haymarket Project, City, at its expense, engaged Olsson Associates ("**Olsson**") and other professional designers to prepare preliminary design for the West Haymarket Project and the Rights of Entry Work (collectively "**Preliminary City Design**"). The Preliminary City Design is on file with the City Clerk's Office for the City of Lincoln and incorporated herein by reference. The Preliminary City Design includes work that will generally be implemented by City or third parties.

S. City, at its expense, has engaged Olsson to advance the Preliminary City Design for the Storm Water Mitigation Work to final design ("**2010 Storm Water Mitigation Work Final Design**") for the Storm Water Mitigation Area, but excluding the area north of the Future BNSF Corridor in order to permit BNSF to complete the final design of the BNSF Track Work. The Storm Water Mitigation Work for the Storm Water Mitigation Area shown on the Timeline (defined below) to be carried out in calendar year 2010, excluding the area north of the Future BNSF Corridor, shall be the "**2010 Storm Water Mitigation Work**", and BNSF shall complete the 2010 Storm Water Mitigation Work as part of the BNSF Additional City Cost Work. The 2010 Storm Water Mitigation Work Final Design entitled West Haymarket Track Relocation and dated August 13, 2010, has been provided to City on August 13, 2010.

T. City, at its expense, has engaged Olsson to advance the Preliminary City Design for three sanitary sewer lines and related improvements shown on the Timeline to be constructed in 2010 ("**2010 Sanitary Sewer Work**") to final design ("**2010 Sanitary Sewer Work Final Design**") in order to permit BNSF to complete the final design on the BNSF Track Work. The 2010 Sanitary Sewer Work Final Design entitled West Haymarket Utility Relocation (2010) (City Project #870501) and dated _____, 20__, has been completed, reviewed and approved by City and BNSF on _____, 2010. City, at its expense, will commence and complete the construction of the 2010 Sanitary Sewer Work in accordance with the Timeline, provided that any and all obstacles, if any, preventing or otherwise impacting City's ability to undertake and/or complete the 2010 Sanitary Sewer Work have been resolved to City's sole satisfaction.

U. Under the terms and conditions of this Master Agreement, City will complete the balance of the final design of the City Work ("**Balance of City Work Final Design**") based upon

the general framework of the Preliminary City Design. The 2010 Storm Water Mitigation Work Final Design, 2010 Sanitary Sewer Work Final Design and Balance of City Work Final Design are sometimes collectively referred to as "**City Work Final Design**".

AGREEMENTS

NOW, THEREFORE, in consideration of the benefits accruing to the Parties, as described herein, and incorporating all of the above referenced Recitals into the agreements below as if fully set forth therein, the Parties do mutually agree as follows:

1. LAND EXCHANGE. Concurrently with the execution of this Master Agreement, BNSF and City shall enter into a property exchange agreement ("**Exchange Agreement**") for the exchange of the Replacement BNSF Property and the Cash Payment (as defined in the Exchange Agreement) for the Replacement City Property ("**Land Exchange**").

2. BNSF WORK.

2.1 "**BNSF Work**" shall collectively mean:

(i) BNSF's removal, at BNSF's sole election, of all or any portion of BNSF Existing Improvements upon the Future City Property (other than the BNSF Bridge and related support structure) ("**BNSF Removal Work**"); BNSF shall terminate the use of certain BNSF Existing Improvements upon the Future City Property in accordance with the Timeline and BNSF Work Final Design; provided, however, that BNSF may, with City's agreement, which shall not be unreasonably withheld, continue using the BNSF Existing Improvements upon the Future City Property for a limited time if such termination would result in BNSF's inability to provide railroad operations. The rights and obligations of BNSF and City with respect to removal of the BNSF Existing Improvements are as set forth in the Exchange Agreement;

(ii) BNSF's design, site grade and construction of replacement tracks, crossovers, switches and related improvements, including related trackage for the BNSF Amtrak Work (defined below) (collectively "**BNSF Track Work**");

(iii) BNSF's design and construction of signal systems, communication lines and systems, electrical systems, Microwave Work (defined below) facilities, buildings, and improvements on the Future BNSF Corridor and other property owned, controlled, or to be acquired by BNSF (collectively **"BNSF Signals and Facilities Work**") (the BNSF Track Work and BNSF Signal and Facilities Work is sometimes collectively referred to as "**BNSF Replacement Work**") (the BNSF Removal Work and the BNSF Track Work are generally shown or listed on **Exhibit L** attached hereto and incorporated herein by reference); BNSF shall complete the BNSF Replacement Work on the Future BNSF Corridor and other property owned, controlled, or to be acquired by BNSF, all generally in accordance with the Timeline and BNSF Work Final Design; provided that BNSF shall have the flexibility and discretion to determine the final design, configuration, and elements comprising any of the BNSF Replacement Work based on BNSF's operational needs without notice to or approval of City, as long as any such unilateral changes by BNSF do not cause any BNSF Additional City Cost

Work (defined below), adverse impact to the dates in the Timeline for the City Closings as defined in the Exchange Agreement, and/or adverse impact to the dates in the Timeline for BNSF to complete the BNSF Work;

(iv) the Microwave Work, as described in **Section 6** below;

(v) the BNSF Amtrak Work, as described in **Section 7** below;

(vi) the BNSF Utilities Work, as described in **Section 8.1** below;

(vii) the 2010 Storm Water Mitigation Work, as described in **Recital S** above;

(viii) BNSF's obtaining any NPDES Approval (defined below), issuing any necessary STB Notification (defined below), and obtaining any necessary STB Approval (each as described in **Section 14** below);

(ix) BNSF's activities related to shutting down and remobilizing, whether as a result of weather, delays in property acquisition, or otherwise, and including without limitation protecting job sites;

(x) BNSF's activities and temporary operating measures necessary or desirable to compensate for any failure by City to timely acquire and convey to BNSF the Replacement BNSF Property or otherwise meet the dates set forth in the Timeline;

(xi) any related railroad engineering, inspection, flagging, coordination, labor, planning, design, accounting, legal, consultants, investigations, testing, overhead, and administration;

(xii) removal and loading of Removed Tracks & Ties (as defined in the Exchange Agreement) on BNSF railcars for shipment to a disposal site as described in **Section 11.2.6** of the Exchange Agreement, and;

(xiii) shipping and disposal of railroad ties removed from the Replacement City Property.

All BNSF Work is either Included BNSF Work or BNSF Additional City Cost Work. The performance of the BNSF Work is divided into the 2010 BNSF Work (as described in **Section 2.5** below), the 2011 BNSF Work (as described in **Section 2.6.1** below), and the 2012 BNSF Work (as described in **Section 2.6.2** below).

2.2 "**Included BNSF Work**" shall collectively mean:

(i) the BNSF Work listed on **Exhibit X** attached hereto and incorporated by reference herein;

(ii) BNSF's completion of the BNSF Work Final Design;

(iii) BNSF's preliminary engineering, design, and contract preparation costs, and the costs and fees of its outside consultants and attorneys, even though such work may have preceded the Effective Date above; and

(iv) BNSF's cost to ship and dispose of railroad ties removed from the Replacement City Property.

The BNSF Work Payment Amount (defined below) is based on the Parties' agreement and understanding that (a) all grading included in the BNSF Work will be completed in 2010; (b) no BNSF Work will be performed between Thanksgiving and April 1; and (c) minimal or no overtime costs will be incurred in performing the BNSF Work. City shall be responsible for any costs or expenses arising as a result of the failure or non-occurrence of any or all of the foregoing items, and such costs and expenses shall be BNSF Additional City Cost Work. Except as set forth in this Master Agreement, the Exchange Agreement, C&M Agreement, and the Rights of Entry, BNSF has no knowledge of any BNSF requirements to facilitate and accommodate the BNSF Work that are not reflected in the Included BNSF Work. For purposes of this section, BNSF's knowledge is limited to the current actual knowledge of Robert J. Boileau, P.E., Assistant Vice President, Engineering Services.

2.3 "**BNSF Additional City Cost Work**" shall collectively mean:

(i) the costs and expenses of any and all additional BNSF Work required beyond the Included BNSF Work or requested or approved by City as BNSF Additional City Cost Work;

(ii) the increased costs and expenses of the Included BNSF Work caused by delays due to (a) the failure of City to timely satisfy any of the **Section 2.4** conditions precedent to BNSF's obligation to commence the BNSF Work, or (b) any act or omission of City, including without limitation City's failure to timely acquire and convey to BNSF the Replacement BNSF Property or otherwise meet the dates set forth in the Timeline, notwithstanding City's use of commercially reasonable efforts to do so, or (c) BNSF's failure to meet the dates set forth in the Timeline, notwithstanding BNSF's use of commercially reasonable efforts to do so;

(iii) the costs and expenses related to the items listed in **Exhibit Y** attached hereto and incorporated herein by reference;

(iv) BNSF's costs and expenses to complete the 2010 Storm Water Mitigation Work;

(v) BNSF's costs and expenses for construction of any temporary crossings requested by the City or otherwise arising out of the West Haymarket Project;

(vi) BNSF's flagging costs and expenses as described in Article III of the C&M Agreement;

(vii) Pedestrian Bridge maintenance costs and expenses incurred by BNSF as described in **Exhibit HH** attached hereto and incorporated herein by reference;

(viii) BNSF's costs and expenses for installation and/or relocation of microwave tower equipment as described in **Section 6** below;

(ix) any costs and expenses incurred by BNSF for the Fiber Optic Work as described in **Section 8.2** below;

(x) any costs and expenses incurred by BNSF for the Public Utilities Work as described in **Section 8.3** below;

(xi) any costs and expenses incurred by BNSF for the parking rights relinquishment as described in **Section 18** below;

(xii) BNSF's costs and expenses for railroad track and tie removal from the Replacement City Property and loading such railroad ties onto BNSF railcars for shipment to a disposal site for disposal;

(xiii) any costs and expenses for which City is responsible that are incurred by BNSF;

(xiv) any BNSF Work that is not listed in **Section 2.2** above; and

(xv) applicable additives for (i) – (xiv) above at the applicable government rate.

City acknowledges and agrees that any delay described in **Section 2.3(ii)** above could be greater than the number of days affected by such events if the delay causes BNSF or City to miss applicable construction seasons or BNSF's work force schedules, or causes any Governmental Approvals to expire.

2.4 Commencement of BNSF Work. Unless otherwise stated herein, BNSF shall have no obligation to commence any portion of the BNSF Work until (i) the First Closing (as defined in the Exchange Agreement) has been completed; (ii) City has made arrangements satisfactory to BNSF to acquire (including by condemnation if necessary) and convey to BNSF by the completion date such remaining Third Party/Replacement Property as is needed for the BNSF Work as shown on the Timeline and not conveyed to BNSF at the First Closing, and BNSF has approved the condition of such Third Party/Replacement Property; (iii) the Escrow Account (defined below) has been fully funded; (iv) the BNSF Work Payment Amount has been disbursed to BNSF from the Escrow Account in accordance with the Construction Draw Schedule (defined below) as set forth herein; (v) BNSF has issued any STB Notification required for the 2010 BNSF Work and has obtained the NPDES Approval required for the 2010 BNSF Work, (vi) BNSF has approved any terms or conditions of, and City has obtained, all other Governmental Approvals necessary for the 2010 BNSF Work, the 2010 Storm Water Mitigation Work, the 2010 Sanitary Sewer Work, the UP Work, the 2011 BNSF Work, and the 2012 BNSF Work, other than any STB Approval that may be later required to be obtained by BNSF for the 2011 BNSF Work or the 2012 BNSF Work, and (vii) any and all obstacles, if any, preventing or otherwise impacting BNSF's ability to continue to provide railroad operations in the Project Area have been resolved to BNSF's sole satisfaction.

2.5 Commencement and Completion of 2010 BNSF Work. Following satisfaction of the conditions in **Section 2.4** above, or if such conditions have been waived in writing by BNSF, BNSF will promptly commence the 2010 BNSF Work after receiving written notice from City to proceed ("**2010 Notice to Proceed**") with such 2010 BNSF Work. BNSF shall use commercially reasonable efforts to complete the 2010 BNSF Work (defined below) on or before the completion date for the 2010 BNSF Work established in the Timeline. The "**2010 BNSF Work**" shall be the BNSF Work shown on the Timeline to be carried out in calendar year 2010.

2.6 Commencement and Completion of 2011 BNSF Work and 2012 BNSF Work. Unless otherwise stated herein, BNSF shall have no obligation to commence any portion of the 2011 BNSF Work and 2012 BNSF Work until (i) the Second BNSF Closing (as defined in the

Exchange Agreement) has been completed; (ii) City has completed all third party relocations as described in **Section 13** below; (iii) BNSF has obtained required STB Approval, if any, for the 2011 BNSF Work and 2012 BNSF Work; and (iv) any and all obstacles, if any, preventing or otherwise impacting BNSF's ability to continue to provide railroad operations in the Project Area have been resolved to BNSF's sole satisfaction. Following satisfaction of such conditions or if such conditions have been waived in writing by BNSF, BNSF will promptly commence the 2011 BNSF Work and 2012 BNSF Work after receiving written notice from City to proceed ("**2011/2012 Notice to Proceed**") with such 2011 BNSF Work and 2012 BNSF Work. BNSF shall use commercially reasonable efforts to complete the 2011 BNSF Work and 2012 BNSF Work on or before the completion dates for the 2011 BNSF Work and the 2012 BNSF Work established in the Timeline.

2.6.1 2011 BNSF Work. The "**2011 BNSF Work**" shall be the BNSF Work shown on the Timeline to be carried out in calendar year 2011.

2.6.2 2012 BNSF Work. The "**2012 BNSF Work**" shall be the BNSF Work shown on the Timeline to be carried out in calendar year 2012.

2.7 Payments.

2.7.1 Escrow Account. Prior to the First Closing, City shall establish with U.S. Bank National Association, a national banking association, ("**Escrow Agent**") an escrow account (the "**Escrow Account**") pursuant to joint escrow instructions executed by City and BNSF ("**Escrow Agreement**") attached hereto as **Exhibit Z** and incorporated herein by reference. The Escrow Agreement shall direct Escrow Agent to deposit, hold in trust for BNSF's benefit, and periodically disburse the funds in the Escrow Account according to the Construction Draw Schedule attached hereto as **Exhibit Z-1** and incorporated herein by reference ("**Construction Draw Schedule**"). City shall be solely responsible for all costs and expenses associated with the Escrow Account; however, interest accrued on the Escrow Account shall be for City's benefit.

2.7.2 Escrow Account Deposits. Prior to the First Closing, City shall deposit the BNSF Work Payment Amount, and the initial amounts attributable to BNSF Additional City Cost Work as set forth on the Construction Draw Schedule into the Escrow Account. City shall deposit those additional amounts listed on the Construction Draw Schedule for the BNSF Additional City Cost Work according to the schedule on the Construction Draw Schedule, and any incremental amounts for BNSF Additional City Cost Work over and above the amounts listed on the Construction Draw Schedule shall be deposited by City within fifteen (15) days following City's receipt of (i) written notice of the amount by which the Escrow Account needs to be increased, and (ii) the reason therefor set forth in reasonable detail.

2.7.2.1 In addition to its other rights and remedies under this Master Agreement, if any quarterly payment is not paid within fifteen (15) days after due in accordance with the Construction Draw Schedule then BNSF shall have the unilateral right to suspend the BNSF Work until the applicable quarterly payment is paid. Any payments made to BNSF hereunder shall not result in any waiver of contractual rights of City to later maintain an action for breach of this Agreement.

2.7.2.2 BNSF shall have no obligation to undertake any BNSF Additional City Cost Work, and shall have the right to suspend other BNSF Work as necessary, until (i) the Escrow Account has been increased by an amount equal to the cost of such BNSF Additional City Cost Work, (ii) the dates in the Timeline are extended by the number of days reasonably requested by BNSF as a result of any delays related to such Additional City Cost Work, and (iii) the Escrow Agreement and the Construction Draw Schedule are amended by BNSF and

City to reflect the increased BNSF Additional City Cost Work and Escrow Agent is notified of such amendment.

2.7.3 Escrow Account Disbursements. The Escrow Agreement will direct Escrow Agent to disburse payments from the Escrow Account to BNSF on the first day of each quarter in advance in accordance with the Construction Draw Schedule.

2.7.4 BNSF Work Payment Amount. City will pay BNSF and BNSF will accept as full and complete payment for all of BNSF's costs, expenses, and fees for the Included BNSF Work, the sum of Forty-Four Million and no/100 Dollars ($44,000,000.00) ("**BNSF Work Payment Amount**"). Except as provided herein, any cost to construct the Included BNSF Work in excess of $44,000,000.00 shall be the sole responsibility of BNSF.

2.7.5 BNSF Additional City Cost Work. The BNSF Additional City Cost Work shall be the sole responsibility of City, and the Escrow Account shall be increased by the amount of such additional and incremental costs and expenses. BNSF and City shall remain in contact during the performance of the BNSF Work, and shall meet as reasonably necessary regarding coordination of budgeting and scheduling.

2.7.6 Credit for Costs of BNSF Work Final Design.

2.7.6.1 City shall be entitled to take as a credit toward the BNSF Work Payment Amount an amount equal to all costs previously paid by City to BNSF prior to City's deposit of the BNSF Work Payment Amount into the Escrow Account solely for the preparation of the BNSF Track Work Final Design.

2.7.6.2 City shall be entitled to take as a credit toward the BNSF Work Payment Amount an amount equal to all costs previously paid by City to BNSF prior to City's deposit of the BNSF Work Payment Amount into the Escrow Account solely for the preparation of the BNSF Signal and Facilities Work Final Design and/or BNSF Utilities Work Final Design.

2.8 Work Force; Applicable Standards. BNSF will be responsible for the BNSF Work Final Design and construction and implementation of the BNSF Work Final Design, using either its own forces or by contract with others in accordance with BNSF's labor agreements as determined by BNSF. All BNSF Work will meet applicable BNSF or American Railway Engineering and Maintenance-of-Way Association standards, as determined by BNSF in BNSF's reasonable discretion.

3. RIGHTS OF ENTRY. The West Haymarket Project requires that BNSF grant certain license and/or permanent or temporary easement rights to City and certain third parties (each a "**Right of Entry**" and, in multiples, "**Rights of Entry**") for certain activities on BNSF's property (each a "**Right of Entry Work**" and collectively, "**Rights of Entry Work**"). BNSF shall grant the Rights of Entry described in this **Section 3** subject to the following:

3.1 Rights of Entry Work Design. The Preliminary City Design is hereby accepted by BNSF and will become the basis for the more detailed and final design, specifications and construction documents for the Rights of Entry Work ("**Rights of Entry Work Final Design**"). The Rights of Entry Work Final Design will be prepared and completed by City and submitted to Gerald Maczuga, Project Engineer for BNSF's review and written approval. City's commencement of the applicable Rights of Entry Work shall not begin until the applicable Rights of Entry Work Final Design has been coordinated with the BNSF Work and approved in writing by BNSF, which approval shall not be unreasonably withheld. BNSF shall so approve or reject the Rights of Entry Work Final Design within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons

for such rejection shall be set forth in reasonable detail. Corrected plans for the Rights of Entry Work Final Design shall be approved or rejected in the manner hereinbefore provided. Any approval by BNSF shall mean only that the applicable subject matter meets the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that any plans and specifications or construction is adequate, structurally sound, appropriate, or that any plans and specifications or construction meet applicable regulations, laws, statutes or local ordinances and/or building codes. City will be solely responsible for determining whether its plans and specifications, construction, and maintenance (i) are adequate and meet its needs and (ii) will provide for safe operation.

3.2 Grants of Rights of Entry. BNSF agrees to grant rights of entry for the following Rights of Entry Work over the applicable Existing BNSF Property and Future BNSF Corridor in the forms as set forth below, and at the times set forth below, and without additional monetary consideration:

3.2.1 Access to Initial West Haymarket Project. At the Second BNSF Closing, BNSF will grant to City, including its authorized employees, agents, contractors, invitees, and subcontractors (such representatives of either Party are referred to collectively as its "**Personnel**"), a temporary Right of Entry (the "**Temporary Access License for Initial Construction**") in the form attached hereto as **Exhibit EE** and incorporated by reference herein, to provide access to and from the east Hole in the Donut using the three (3) areas on the Future City Property labeled as "Temporary Access Road[s]" generally located at Q, R and T Streets and shown as blue on **Exhibits J-2** and **M-1**, both attached hereto and incorporated herein by reference, in order for City and its Personnel to implement final design, site preparation, grading, utilities, roadways, and initial construction for the West Haymarket Project on those portions of the Transferred BNSF Property that have been quitclaimed to City in the Second BNSF Closing.

3.2.2 Storm Water Mitigation. At the **[** First **]** Closing, BNSF will grant to City and its Personnel:

(a) a temporary Right of Entry (the "**Temporary Grading License for Storm Water Mitigation**") in the form attached hereto as **Exhibit FF-1** incorporated by reference herein for grading as part of the Storm Water Mitigation Work (as defined below) on the areas labeled on **Exhibit I-1** as "Stormwater Mitigation Grading Completed Under City Project" and shown purple with symbols (not crosshatched).

(b) a permanent Right of Entry (the "**Storm Water Mitigation Easement**") in the form attached hereto as **Exhibit FF** incorporated by reference herein for ingress and egress, site preparation, construction, reconstruction, inspection, use, operation, maintenance, repair and replacement (collectively "**Operate**" or "**Operation**") of a detention area and related drainage appurtenances for storm water management and mitigation (collectively "**Storm Water Mitigation**") within the areas labeled on **Exhibit I-2** as "New Perm. Easement" and shown in gold

[*Note that the accesses to the easement area via the box culverts are not depicted on Exhibit I-2, but City is adding this* **]**.

The site preparation and initial construction of the Storm Water Mitigation shall be referred to herein collectively as the "**Storm Water Mitigation Work**". The drainage system will be free-draining and designed to not raise the average water level any higher or closer to the tracks than that average water level existing as of the date of this Master Agreement, including "no net rise" based on and factoring in the anticipated construction of a fourth BNSF main track. The Operation of the Storm Water Mitigation will tie into the existing storm drainage system, and City will ensure that no wetlands subject to jurisdiction of a federal, state, or local agency or wetland mitigation

areas will be created or established on any portion of the Future BNSF Corridor. City will be solely responsible for monitoring and maintaining the Storm Water Mitigation in good working condition so that no new wetlands subject to jurisdiction of a federal, state, or local agency are created or established on any portion of the Future BNSF Corridor. City will be responsible under the applicable Right of Entry for any impact to the Future BNSF Corridor and/or Liabilities (as defined below) arising out of the Storm Water Mitigation, including without limitation costs and assessments, additional fees for runoff capacity, and damage to track structure and environmental liabilities arising from increased drainage and run-off from increases in the impervious surfaces. If, despite the foregoing obligations of City, any wetlands subject to jurisdiction of a federal, state, or local agency do arise on any portion of the Future BNSF Corridor as a result of the Storm Water Mitigation, City will be responsible for providing off-site mitigation for such wetlands subject to jurisdiction of a federal, state, or local agency, for filling and removing such wetlands from the Future BNSF Corridor, and all other costs and obligations of wetlands compliance. City's obligations under this **Section 3.2.2** shall be incorporated into the applicable Right of Entry, and shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings (as defined in the Exchange Agreement) under the Exchange Agreement.

3.2.3 Soil Staging Areas. At the **[** First **]** Closing, BNSF will grant to City and its Personnel, a temporary Right of Entry (the "**Temporary Access License for Soil Staging)**") in the form attached hereto as **Exhibit GG**, incorporated by reference herein, to and from the north Hole in the Donut using the areas labeled as "Temporary Access Road" and shown as blue on **Exhibit I-3** attached hereto and incorporated herein by reference, solely for the purposes of ingress and egress to one or more staging areas on land owned by the City, which City intends to use for segregation by City of suitable and unsuitable fill for development that may be necessary to address both known and unknown areas of environmental contamination subject to a remedial action plan approved by BNSF and the applicable governing jurisdiction or jurisdictions (collectively "**Soil Staging Areas**"). The location and manner of operation of any Soil Staging Areas will be determined by City and subject to prior written approval by BNSF with respect to distances from trackage, and blockage of access roads. No portion of the Soil Staging Areas shall be located on any property then-owned by BNSF or any portion of the Future BNSF Corridor. City will be responsible under the applicable Right of Entry for any Liabilities arising out of the Soil Staging Area, including without limitation environmental liabilities (including re-use and/or disposal of any material), as set forth in more detail in the applicable Right of Entry.

3.2.4 Pedestrian Bridge. At the **[** Third City **]** Closing (as defined in the Exchange Agreement), BNSF will grant to City and its Personnel:

(a) a temporary Right of Entry (the "**Temporary Access License for Construction Staging - Pedestrian Bridge** ") in the form attached hereto as **Exhibit HH-1**, incorporated by reference herein, for the initial access to, site preparation for, and the initial construction of the Pedestrian Bridge on the areas shown in the inset cloud in the box labeled "Location Map" on Page 1 of 4 of **Exhibit HH-A** attached hereto and incorporated herein by reference.

(b) a permanent Right of Entry (the "**Pedestrian Bridge Easement**") in the form attached hereto as **Exhibit HH**, incorporated by reference herein, for the Operation of a pedestrian bridge (including support structures) over the Future BNSF Corridor in the area labeled on **Exhibit I-4** as "New Perm. Easement for Pedestrian Bridge, Retaining Walls and Utilities" and shown in gold (collectively "**Pedestrian Bridge**").

The Pedestrian Bridge will have a minimum of a thirty-one (31) foot high vertical clearance over the BNSF tracks from the top of the rail to the bottom of the Pedestrian Bridge and twenty-five foot

horizontal distance measured perpendicular from the centerline of the existing or future track to the face of the pier or abutment structure. The Pedestrian Bridge will be owned and maintained by City at City's sole cost and expense, as set forth in more detail in the Pedestrian Bridge Easement. It is expressly understood by City and BNSF that any right to install utilities on, in or along the Pedestrian Bridge will be governed by a separate easement or license agreement between the Parties.

3.2.5 City Amtrak Work. At the **[** Second City **]** Closing (as defined in the Exchange Agreement), BNSF will grant to City, Amtrak and their respective Personnel a temporary Right of Entry, subject to the terms and conditions of the Amtrak/BNSF Lease (the "**Temporary Access License for Amtrak Work**"), in the form attached hereto as **Exhibit II**, incorporated by reference herein, for ingress and egress to and from the west Hole in the Donut for Operation of the City Amtrak Work as described in **Section 7** below over the area labeled on **Exhibit M-2** attached hereto and incorporated herein by reference as "Temporary Access Road" and generally located at N Street and shown as light blue thereon.

3.2.6 Fiber Optic Work. To the extent not already covered by existing agreements, BNSF will grant to the Fiber Optic Companies (defined below) and their Personnel without additional monetary consideration Rights of Entry for Operation of the Fiber Optic Work (as described in **Section 8.2** below) pursuant to BNSF's standard form of agreement or by amending existing agreements.

3.2.7 Public Utilities Work. At the **[** First **]** Closing, BNSF will grant to City permanent Rights of Entry (each a "**City Utility Easement**" and collectively the "**City Utility Easements**") in the form attached hereto as **Exhibit TT**, incorporated by reference herein, for the Operation of existing Public Utilities Work (as described in **Section 8.3** below), as depicted in **Exhibit O**, attached hereto and incorporated herein by reference. Future utility work in the areas covered by City Utility Easements will be subject to the approval procedures set forth therein and to BNSF's standard fees for utility supplements. All Public Utilities Work shall be subject to BNSF's then-current Utility Accommodation Policy and other approval processes. City shall have the right to assign such Rights of Entry to the Public Utility Companies (defined below) without additional monetary consideration on the condition that such Public Utility Companies assume and comply with the terms and conditions of such Rights of Entry, including without limitation BNSF's then-current Utility Accommodation Policy and other approval processes.

3.2.8 Security Fencing. At the **[** Fourth City **]** Closing (as defined in the Exchange Agreement), BNSF will grant to City and its Personnel a Right of Entry (the "**Security Fencing License**") in the form attached hereto as **Exhibit JJ**, incorporated by reference herein, to the extent necessary for City to construct, install, maintain, repair, and replace the security fencing (together with all gates and appurtenances generally depicted on **Exhibit P-1** attached hereto and incorporated herein by reference, collectively the "**Security Fencing**") on City property and a portion of BNSF property as described in **Section 9** below and as depicted on **Exhibit P**, all such exhibits attached hereto and incorporated herein by reference. The ingress and egress route for the exercise of such Right of Entry will be as determined by BNSF.

3.2.9 Grading Easements along Arena Drive and North Festival Parking Lot. At the **[** Second City **]** Closing, BNSF will grant to City and its Personnel a temporary Right of Entry (the "**Temporary Grading License For Arena Drive and Parking Lot Construction**") for grading, in the form attached hereto as **Exhibit KK** incorporated by reference herein, covering the areas labeled on **Exhibits AA** - **AA-7** as "Temporary Right-of-Entry" and shown as red thereon, such exhibits attached hereto and incorporated herein by reference.

3.2.10 2nd and "J" Utility Crossing. At the **[** First **]** Closing, BNSF will grant to City permanent Rights of Entry (each a "**2nd and J Utility Easement**" and collectively the "**2nd and J Utility Easements**") in the form attached hereto as **Exhibit TT**, for the Operation of existing Public Utilities Work without additional monetary consideration after the crossing closure described in **Section 19** below. Future Public Utilities Work will be permitted under the 2nd and J Utility Easements, subject to the approval procedures set forth therein. All Public Utilities Work shall be subject to BNSF's then-current Utility Accommodation Policy and other approval processes. City shall have the right to assign such Rights of Entry to the Public Utility Companies (defined below) on the condition that such Public Utility Companies assume and comply with the terms and conditions of such Rights of Entry, including without limitation BNSF's then-current Utility Accommodation Policy and other approval processes.

3.2.11 Access to Transferred BNSF Property.

(a) As of this same Effective Date, BNSF has granted to City, including its Personnel, a temporary access and construction license for performing surveys, geotechnical work, environmental activities and certain construction activities (the "**Temporary License for Survey / Geotech / Environmental Activities / Advance Construction**") in the form attached hereto as **Exhibit BB** and incorporated herein by reference. The Temporary License for Survey / Geotech / Environmental Activities / Advance Construction will provide access to and from the Transferred BNSF Property over the areas labeled as "Existing BNSF Property" and shown purple on **Exhibit B**, in order for City and its Personnel to prepare and implement an environmental remediation work plan, conduct surveys and geotechnical soil borings, perform certain construction activities and prepare the City Work Final Design.

(b) As of this same Effective Date, BNSF has granted to City, including its Personnel, a temporary access and construction license (the "**Temporary Construction and Access License for Sanitary Sewer Work**") in the form attached hereto as **Exhibit BB-1** and incorporated by reference herein, to provide access to and from the three (3) areas of Licensor's property labeled as "Prop San Sewer" shown as heavy dashed green lines on **Exhibit O**, in order for City and its Personnel to perform the 2010 Sanitary Sewer Work. At the applicable Closing (as defined in the Exchange Agreement), City will enter into a City Utility Easement for the portions of the sanitary sewer installation located within the Future BNSF Corridor.

3.2.12 Track Crossing Agreements. At the **[** First **]** Closing, BNSF will grant to City, including its Personnel, one or more temporary private at-grade crossings (each a "**Crossing Agreement**" and collectively the "**Crossing Agreements**") for the locations shown as **[**green,**]** red and yellow circles on **Exhibits J-1** and **J-2** attached hereto and incorporated herein by reference, in the form attached hereto as **Exhibit UU** and incorporated herein by reference, across the rail corridor of BNSF.

3.2.13 Additional Cooperation. BNSF understands and acknowledges that except for the Sanitary Sewer Work Final Design and the Storm Water Mitigation Work Final Design, the City Work and City C&M Work (as defined in the C&M Agreement) has only been preliminarily designed and that final design may require modification to the Rights of Entry, licenses, and/or easements to be granted herein. City may reasonably request additional or modified Rights of Entry, including temporary and permanent licenses and/or easements for the construction and/or Operation of City Work necessary to implement the West Haymarket Project pursuant to the Timeline, and BNSF agrees to reasonably cooperate with such requests without additional monetary consideration for such Rights of Entry, licenses and/or easements; provided that, any additional or modified Rights of Entry, licenses and/or easements will be based upon BNSF's standard forms, as may be modified by mutual agreement of the Parties and subject to

BNSF's customary approval processes with regard to location, safety, scope, duration, and notification to BNSF's local roadmaster prior to any entry.

4. GENERAL CONSTRUCTION AND MAINTENANCE TERMS. Concurrently with the execution of this Master Agreement, BNSF and City shall enter into a construction and maintenance agreement ("**C&M Agreement**"). The provisions of the C&M Agreement, in addition to and not in limitation of the provisions contained in the applicable Rights of Entry, shall apply with respect to the Rights of Entry Work and any other construction, maintenance, Operation, or other work being performed on or adjacent to BNSF property by or for City. In the event of conflicts between the terms of the C&M Agreement and any applicable Right of Entry agreement, the most restrictive provisions shall apply to City.

5. TEMPORARY CONSTRUCTION AGREEMENTS. City shall grant to BNSF, the Fiber Optic Companies, Public Utility Companies, and Amtrak, and their respective Personnel, without additional monetary consideration, temporary construction easements to use and temporarily occupy the Vacated Right of Way/Retained City Property during the initial construction of the West Haymarket Project, the BNSF Work and the Rights of Entry Work, and appurtenances and improvements thereto, for the accommodation of construction equipment, construction activity, and materials, subject to City's reasonable rules and regulations; provided that such temporary construction easements shall be granted pursuant to City's standard easement agreement forms, as may be modified by mutual agreement of the parties, and subject to City's customary approval processes with regard to location, safety, scope, duration, and notification to BNSF's local roadmaster prior to any entry. The grant of said easements shall be at no cost to BNSF and each such easement shall terminate upon completion of the applicable work.

6. MICROWAVE TOWERS. If BNSF determines at any time prior to, during, or after completion of development of the West Haymarket Project that any part of the West Haymarket Project will interfere with BNSF's use and operation of the microwave tower located on the Lincoln Station Office Building, City will, and will cause West Haymarket developers to, cooperate with BNSF in providing suitable locations for replacement and/or repeater antennae within or in the vicinity of the West Haymarket Project, including granting or acquiring permanent easements and/or restrictive covenants as necessary, and installing and/or relocating such replacement and/or repeater antennae at City's sole cost and expense to ensure BNSF's communications will not be interfered with. Any and all BNSF costs and expenses associated with such installation and/or relocation shall be included in the BNSF Additional City Cost Work (design and relocation of the microwave tower located in the existing wye ("**Microwave Work**") is included as part of the Included BNSF Work). The provisions of this **Section 6** shall survive expiration of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

7. AMTRAK. City acknowledges and agrees that National Railroad Passenger Corporation, doing business as Amtrak ("**Amtrak**") operates over BNSF's track, including track affected by the Land Exchange and the BNSF Replacement Work.

7.1 Design of Amtrak Work. City and BNSF acknowledge that Amtrak has reviewed and approved the BNSF Track Work Final Design, BNSF Signals and Facilities Work Preliminary Design and Preliminary City Design. Amtrak has concurred that these designs include all the necessary work for Amtrak operations ("**Amtrak Work**"). The track, signal and communication (connections for phone, fax, and Amtrak intranet) portion of the Amtrak Work will be constructed by BNSF ("**BNSF Amtrak Work**"), as part of the BNSF Track Work and BNSF Signals and Facilities Work. The remaining balance of the Amtrak Work, including the Amtrak depot, utilities, roadway, parking lot, landscape, platform and canopy work items as shown or listed on **Exhibit N** attached hereto ("**City Amtrak Work**") will be constructed by City, at its expense, as

part of the City Work. City and BNSF understand and agree that the final design for the BNSF Amtrak Work and City Amtrak Work ("**Amtrak Final Design**") that involves Amtrak operations must be approved by Amtrak and that City will be responsible for obtaining Amtrak's approval; provided, however, BNSF agrees to assist and cooperate with City in obtaining Amtrak's approval through the Amtrak MOU (defined below).

7.2 Amtrak/BNSF Lease. BNSF agrees to seek to enter into a new agreement with Amtrak, or amend its existing agreement with Amtrak, ("**Amtrak/BNSF Lease**") to lease to Amtrak the future platform access and maintenance area depicted on **Exhibit N**, for nominal rent, subject to City's entry into and performance of its obligations pursuant to the provisions of the Amtrak Agreement (defined below), UP Agreement (defined below), this Master Agreement, the C&M Agreement and the Exchange Agreement. BNSF does not guarantee that Amtrak will enter into the Amtrak/BNSF Lease. The Parties intend that the BNSF Replacement Work, Amtrak Work, BNSF Utilities Work and BNSF Work Final Design will provide similar operational services and flexibility to that which currently exists or that which will be required by BNSF and Amtrak pursuant to the Amtrak/BNSF Lease regarding Amtrak operations, and that City will have no obligations under the Amtrak/BNSF Lease between Amtrak and BNSF.

7.3 Construction of Amtrak Work. City, at its expense and in accordance with the terms of the BNSF/Amtrak Lease, will use commercially reasonably efforts to cause the construction and completion of the City Amtrak Work under this Master Agreement and consistent with the Timeline. BNSF will use commercially reasonable efforts to cause the construction of the BNSF Amtrak Work under this Master Agreement and consistent with the Timeline. All City Amtrak Work will be located on Future City Property, except for the platform, canopies, and portions of the communications, which will be located on the Future BNSF Corridor and owned by Amtrak during the term of the BNSF/Amtrak Lease. All City Amtrak Work on the Future BNSF Corridor will be owned by Amtrak during the term of the Amtrak/BNSF Lease and upon termination of the BNSF/Amtrak Lease, the Parties intend that all improvements on the premises leased to Amtrak pursuant to the Amtrak/BNSF Lease shall be conveyed to BNSF by Amtrak for no monetary consideration by bill of sale. All BNSF Amtrak Work will be located on the Future BNSF Corridor and owned by BNSF pursuant to Amtrak/BNSF Lease.

7.4 Amtrak MOU Between City and Amtrak. In connection with implementation of the West Haymarket Project, City intends to enter into a definitive agreement with Amtrak ("**Amtrak Agreement**") with regards to the City Amtrak Work and a new depot lease. The Amtrak Agreement shall be subject to, in part, to Amtrak and BNSF entering into the Amtrak/BNSF Lease.

8. UTILITIES WORK. All BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work (collectively "**Utilities Work**") shall be required to satisfy the terms and conditions of BNSF's Utility Accommodation Policy, as may be modified by the licenses and/or easements described herein or mutual agreement of the Parties.

8.1 BNSF Utilities Work. Utilities Work serving BNSF and to be located upon the Future BNSF Corridor and other BNSF property shall be considered part of the BNSF Work ("**BNSF Utilities Work**") and shall be as generally shown or listed on **Exhibit O** attached hereto. The BNSF Utilities Work will be considered part of the BNSF Work Final Design. BNSF shall construct or cause others to construct the BNSF Utilities Work.

8.2 Fiber Optic Work. Removal and relocation of fiber optic cable systems to be located upon the Future BNSF Corridor and other BNSF property ("**Fiber Optic Work**") is described in the Preliminary City Design, and is generally shown on **Exhibit O** attached hereto. The "**Fiber Optic Companies**" (any private companies holding rights within the Project Area for fiber optic facilities as of the applicable Closings), with City's cooperation and assistance, will

prepare the Fiber Optic Final Design and implement and construct the Fiber Optic Work. The Fiber Optic Work is not part of BNSF Work and BNSF shall have no obligation to perform, implement, or pay for any portion of the Fiber Optic Work. Any costs incurred by BNSF for the Fiber Optic Work shall be reimbursed by City as BNSF Additional City Cost Work. At no additional cost to BNSF, BNSF agrees to reasonably cooperate with City and Fiber Optic Companies on the Fiber Optic Work Final Design, the Operation of the Fiber Optic Work and to modify, release and relocate, the replacement permanent easement(s) or license(s) for the Fiber Optic Work as generally shown on **Exhibit O**.

8.3 Public Utilities Work. Public utilities work to be located upon the Future City Property, Future BNSF Corridor and other public right-of-way and easements ("**Public Utilities Work**") is not part of the BNSF Work, and is described in the Preliminary City Design, and is generally shown on **Exhibit O** attached hereto. Existing Public Utilities Work is generally shown on the Survey. Plans and Specifications for future Public Utilities Work shall be submitted to BNSF for review and approval per BNSF's Utility Accommodation Policy. City and/or other "**Public Utility Companies**" (any municipal or public utility companies holding rights and Operating utilities within the Project Area) will implement and Operate the Public Utilities Work. BNSF shall have no obligation to perform, implement, or pay for any portion of the Public Utilities Work. Any costs incurred by BNSF for the Public Utilities Work shall be reimbursed by City as BNSF Additional City Cost Work. At no additional cost to BNSF, BNSF agrees to reasonably cooperate with City and Public Utility Companies on the BNSF Utilities Work Final Design and the Operation of the Public Utilities Work.

8.4 BNSF Fiber Optic Communications. City will install, at its sole cost and expense and for BNSF's sole benefit, fiber line within the Vacated Right of Way/Retained City Property from the Lincoln Station Office Building to the Future BNSF Corridor, as designated by BNSF and subject to BNSF's requirements with regard to capacity and location ("**BNSF Fiber Optic Communications**"), and shall grant BNSF, without additional monetary consideration, a nonexclusive and permanent easement in the form attached hereto as **Exhibit NN**, incorporated by reference herein, for the Operation of such fiber line, including without limitation the right to repair, maintain, replace, and remove such line as BNSF deems necessary, subject to City's customary approval processes with regard to compliance with City design standards within City's right-of-way or public easements, and notification to City's Public Works Department prior to any entry. The BNSF Fiber Optic Communications will be for a minimum of two 4-inch conduits to be located in the future Canopy Street, the extension of "P" Street, the extension of "Q" Street, and the crossings of "Backbone Road" at "P" and "Q" Streets as shown on **Exhibit O**. The BNSF Fiber Optic Communications will be owned and Operated by BNSF at BNSF's sole cost and expense, as set forth in more detail in the applicable Right of Entry.

8.5 Licenses and Easements. City and BNSF acknowledge and agree that the final design for the BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work, will be shown in the BNSF Work Final Design, Rights of Entry Work Final Design and final design of the BNSF Fiber Optic Communications, and such final designs must be approved by the applicable easement or license holder, City, and BNSF. City will be responsible for obtaining the easement or license holder's approval for the Fiber Optic Work, Public Utilities Work and BNSF Fiber Optic Communications; provided however, BNSF agrees to assist and cooperate with City in obtaining the easement or license holder's approval for the Fiber Optic Work, Public Utilities Work and BNSF Fiber Optic Communications.

8.6 No Change in Cost Allocation. Nothing in this Master Agreement shall change any allocation of costs or responsibility for utility and fiber optic customer/property owner charges and assessments for utilities and fiber optic services that BNSF uses, consumes or directly benefits from in operating its railroad services.

9. SECURITY FENCING.

9.1 In an effort to strengthen security, City as part of the Rights of Entry Work, will own and Operate the Security Fencing upon the Future City Property (and a small portion of the Future BNSF Corridor) on or near the perimeter of the Future City Property as generally shown on **Exhibit P** attached hereto, and according to **[**General Fencing Requirements**]** previously provided to City by BNSF. BNSF will grant City, without additional monetary consideration, a license over BNSF roadways located upon the Future BNSF Corridor and a portion of Future BNSF Corridor to permit City access to Operate the Security Fencing as part of the Right of Entry described in **Section 3.2.8** above. City will Operate the Security Fencing to comply with all of BNSF's requirements, and all recommendations of the Department of Homeland Security. BNSF shall have no responsibility for the Operation of the Security Fencing. City shall be responsible for all costs of Operation of the Security Fencing (including all gates and related appurtenances thereto), including the costs of initial construction. [Gerald/Chad to confirm name of fencing requirements document]

9.2 Notwithstanding the provisions of **Section 9.1** above, however, BNSF reserves the right to terminate the Security Fencing License upon ___ (__) days' prior written notice to City. As more particularly described in the Security Fencing License, upon such termination by BNSF: (i) City will grant to BNSF a license, as more particularly described in the Security Fencing License, for access to, and Operation of, the Security Fence located on City's property, and (ii) BNSF will assume all responsibility and bear all costs for Operating the Security Fence.

10. CITY INDEMNITIES / WAIVER OF SOVEREIGN AND MUNICIPAL IMMUNITY.

10.1 Indemnifications.

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

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

(ii) THE USE, OCCUPANCY OR PRESENCE OF CITY AND/OR CITY'S CONTRACTORS AND THEIR RESPECTIVE SUBCONTRACTORS, EMPLOYEES OR AGENTS (SUCH CONTRACTORS, SUBCONTRACTORS, EMPLOYEES AND AGENTS BEING REFERRED TO INDIVIDUALLY AS A "CITY PARTY" AND COLLECTIVELY, THE "CITY PARTIES") AND/OR ANY WORK PERFORMED BY CITY OR ANY CITY PARTY IN, ON, OR ABOUT BNSF'S PROPERTY OR RIGHT-OF-WAY AND/OR THE WEST HAYMARKET

PROJECT, INCLUDING, WITHOUT LIMITATION, OPERATION OF THE PEDESTRIAN BRIDGE, SECURITY FENCING, OR STORM WATER MITIGATION BY CITY;

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

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

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

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

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

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

10.1.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT

THERETO, AS CONTEMPLATED BY THIS AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.

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

10.1.4 City agrees that its obligations under the provisions of this **Section 10.1** expressly includes claims related to property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest. City's indemnification obligations herein shall be in addition to, and not in limitation of, City's indemnification obligations pursuant to the terms and provisions of the Exchange Agreement, the C&M Agreement, and the Rights of Entry agreements.

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

10.3 Survival. The terms and conditions of indemnification and liability provisions of this **Section 10** shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

11. CITY INSURANCE OBLIGATIONS.

11.1 Development Period. During that period beginning with the date that is the earlier of (i) the Effective Date or (ii) the initial date City or City's contractors enter onto BNSF's property, and continuing through final completion of the West Haymarket Project (the "**Development Period**"), City shall, and shall require its contractors to, at its sole cost and expense, procure and maintain the following insurance, which may be provided through an Owner Controlled Insurance Policy ("**OCIP**"):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.1.5 Other Requirements:

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

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

City is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automotive Liability and up to $500,000 per occurrence and $500,000 aggregate on Worker’s Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be

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

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

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

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

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

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

If any portion of the operation is to be subcontracted by City and not included as part of City's OCIP coverage, City must require that its contractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the contractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Section 11** will entitle, but not require, Railroad to immediately suspend work under this Master Agreement subject to future termination pursuant to Section 24 below. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.

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

For purposes of this **Section 11**, Railroad means "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

11.2 Post-Development Period. Commencing on the date that is the earlier of (i) the final completion of the West Haymarket Project or (ii) the expiration or termination of this Master Agreement, and continuing thereafter so long as the C&M Agreement and/or any Right of Entry agreement is in effect (the "**Post-Development Period**"), City shall, and shall require City's contractors to, at City's sole cost and expense, procure and maintain the insurance coverages described in the applicable Rights of Entry.

12. TIMELINE; FUTURE SEQUENCING MEETINGS. The Parties will use commercially reasonable efforts to cause their respective work to be completed on or before the dates established in the Timeline. The timeline set forth on **Exhibit Q** attached hereto and incorporated by reference herein ("**Timeline**") is the proposed timeline for completion of the initial West Haymarket Project, the BNSF Work, UP Work, the Rights of Entry Work and related matters. City and BNSF agree that the Timeline may need further refinement including, but not limited to, specific project sequencing consensus reached by the Parties and all key third parties including, but not limited to, the matters listed in **Sections 12.1** and **12.2** below.

12.1 BNSF Work, UP Work, and Amtrak Work Sequencing. BNSF and City have held preliminary design and sequencing meetings with UP and Amtrak to refine the West Haymarket Project, the BNSF Work, UP Work, Amtrak Work and the Rights of Entry Work schedules. City and BNSF have obtained UP's input on preliminary design matters for the UP Work (defined below) and have obtained Amtrak's input on preliminary design matters for the Amtrak Work. BNSF and City will seek to schedule and hold further design and sequencing meetings as needed with UP and Amtrak when BNSF, City, and the applicable third parties are ready to complete final design, further refine implementation sequencing and seek each other's input and consent on final design matters. Said meetings may be held with UP and Amtrak, either individually or jointly.

12.2 BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work Sequencing. BNSF and City will seek to schedule and hold preliminary Utilities Work design and sequencing meeting(s) as needed with all necessary Fiber Optic Companies and Public Utility Companies as shown on the Timeline to refine the work schedules for the BNSF Utilities Work, Fiber Optic Work, and Public Utilities Work and seek to obtain the Fiber Optic Companies' and Public Utility Companies' input and consent on preliminary design matters. Thereafter, BNSF and City will seek to schedule and hold further design and sequencing meetings as needed when BNSF, City and the applicable third parties are ready to complete final design, further refine implementation sequencing and seek each utility company's input or, if required, consent on final design matters. Said preliminary and further meetings may be held jointly or individually with all or select sub-groups of the Fiber Optic Companies and Public Utility Companies.

12.3 Force Majeure. In the event that BNSF or City is delayed, directly or indirectly, from the performance of any act or thing required under the terms of this Master Agreement, the C&M Agreement, or the Exchange Agreement (except for payment of monetary obligations) by a force majeure event, including but not limited to acts of God, emergencies, accident, fire, flood, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kind, labor shortages and/or unavailability of labor, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of material, act of war, riot, and civil commotion, or by any similar or dissimilar cause beyond the reasonable control of BNSF or City, as the case may be (as used herein, "**Force Majeure**"), such failure shall not be deemed to be a breach of this Master Agreement, the C&M Agreement, or the Exchange Agreement or a violation of any such covenants and the time within which BNSF or City must perform any such act shall be extended by a period of time equal to the period of delay arising from any said causes.

13. SERVICE TO ADJACENT PROPERTIES. City has indicated that N-Street Company LLC (Alter Metals) and Jaylynn LLC (Watson-Brickson Lumber) properties will be acquired by the City as part of City's implementation of the West Haymarket Project. BNSF and City will reasonably cooperate in City's efforts and obligations to relocate such third parties; provided that BNSF shall have no obligation to incur any expense or liability in connection with such cooperation. City acknowledges that any adverse impact to rail service to any shippers could delay the Timeline, including without limitation by requiring additional Governmental Approvals.

14. PERMITS AND APPROVALS. The implementation and Operation of the West Haymarket Project, the BNSF Work, the Rights of Entry Work and related activities will require certain federal, state, Lower Platte South Natural Resources District, City of Lincoln and other governing jurisdiction review, waivers, variances, agreements, permits, conditional approvals, and approvals (*e.g.*, Section 106 of the National Historic Preservation Act (NHPA) review, Section 404 wetland permit(s), levy protection letter(s), floodplain management and fill permit(s), NPDES permit(s), grading and land disturbance permit(s), mandatory and voluntary environmental and hazardous waste and material clean-up and mitigation, zoning, subdivision, historic place/district and land use permit(s), and building permit(s)) (collectively "**Governmental Approvals**"). City will be the lead party responsible to secure all Governmental Approvals, except for the NPDES Approval and the STB Notification and STB Approval, and shall also be responsible to pay the costs to implement any required condition or term of the Governmental Approvals and to pay any related soft costs (engineering, design, application, processing and publishing costs) necessary to secure the Governmental Approvals; provided that BNSF shall have the right to participate in the process for obtaining any Government Approvals, and to approve in advance any conditions or other requirements. BNSF shall reasonably cooperate with City in obtaining the Governmental Approvals, including signing applications as landowner when applicable and necessary, subject to BNSF's approval of any such applications, in its sole discretion. If the required applicant of the Governmental Approvals must be the interim property owner, the Parties agree to transfer and assign at Closing to the new property owner the pending application and/or Governmental Approvals, including resulting benefits and liabilities associated with the Governmental Approvals. In addition, BNSF, at its own cost and expense, will (i) obtain the NPDES permit(s) for the BNSF Work (the "**NPDES Approval**"), and (ii) make any necessary filings to the Surface Transportation Board ("**STB**") necessary in connection with the 2010 BNSF Work and related BNSF's operations ("**STB Notification**"). The Timeline provides that City will acquire all property from all existing shippers that may otherwise have been impacted by the West Haymarket Project prior to the removal of any infrastructure and/or conveyance of property required for service to any such shippers. Therefore, according to the Timeline, rail service to shippers will not be impacted by the BNSF Work, the conveyance of any Transferred BNSF Property, or any other activities of BNSF. Consequently, the Parties do not anticipate that any STB approval will be necessary. Should rail service to any shippers be impacted by the West Haymarket Project, BNSF shall use commercially reasonable efforts to obtain any and all necessary abandonment approvals and other approvals (if

any) for the BNSF Work and Land Exchange (collectively "**STB Approval**"). City will be responsible for any costs associated with any STB Approval. Nothing in this Master Agreement, the C&M Agreement, or the Exchange Agreement shall be deemed a submission by BNSF to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law.

15. PURCHASE AND SALE AGREEMENT WITH UNION PACIFIC. In connection with implementation of the West Haymarket Project, City has entered into a Purchase and Sale Agreement, dated June 15, 2010 ("**UP Agreement**") with UP wherein UP agrees to sell and City agrees to buy approximately 14 acres of Existing UP Property, which is identified as Tract 1 (Parcels 1-16) in the Title Insurance Commitment and is shown on the map attached hereto as **Exhibit E**. The UP Agreement will require UP to rehabilitate the existing UP bridge over Salt Creek (i) to accommodate 40 mph travel, (ii) to meet such other requirements of BNSF as provided to City in writing in advance, (iii) to be used by BNSF as access for the new wye track; the UP Agreement will also require UP to reconstruct a segment of UP track generally located to the north of the new wye beginning at the location just east of the UP bridge and extending in a northwesterly direction where it connects to existing track under Sun Valley Boulevard (collectively "**UP Work**"). UP's obligation to complete the UP Work shall survive closing under the UP Agreement. The UP Agreement is contingent in part upon UP entering into the JFA MOU (defined below). City agrees to convey the UP/Replacement BNSF Property as shown on **Exhibit E-1** to BNSF as part of the Replacement BNSF Property.

16. JOINT FACILITIES AGREEMENT BETWEEN UP AND BNSF. BNSF agrees to enter into good faith negotiations with UP and to use commercially reasonable efforts to finalize and execute a Joint Facilities Agreement with UP ("**JFA**") regarding certain BNSF facilities within the Future BNSF Corridor. BNSF contemplates the proposed JFA would be substantially similar in substance as that certain Memorandum of Understanding between BNSF and UP dated February 22, 2010 (the "**JFA MOU**") and attached hereto as **Exhibit R**, and incorporated herein by reference. BNSF warrants and represents that City shall have no obligations under the JFA. BNSF does not guarantee that UP will execute the JFA.

17. UP AND BNSF OPERATIONAL SERVICES. The BNSF Replacement Work, Amtrak Work, BNSF Utilities Work, and UP Work are intended to provide BNSF similar operational services and flexibility to that which currently exists or that which BNSF anticipates will be required by BNSF and UP pursuant to the JFA.

18. LINCOLN STATION REPLACEMENT PARKING. BNSF agrees that, upon request of City, BNSF shall relinquish and give up all or some of its parking rights on the Transferred BNSF Property and at and adjacent to the Lincoln Station Office Building, subject to any termination notice required to be provided by BNSF in order to relinquish such rights, and subject to reimbursement of BNSF by City for any termination fees or related costs payable by BNSF in connection with such termination (which shall be treated as part of the BNSF Additional City Cost Work), provided that BNSF receives seventy-five (75) parking stalls for use by its employees, licensees, and invitees within five hundred (500) feet of the Lincoln Station Office Building at no cost to BNSF for so long as BNSF shall require such stalls for related business purposes associated with on-going BNSF business activities at Lincoln Station Office Building or replacement office property within the Lincoln Haymarket Historic District or the West Haymarket Project Area. BNSF shall not assign, transfer, lease, sublease, license or sublicense these parking stalls to any third parties who are not performing business activities for BNSF. Said request may be exercised by City by delivering written notice to BNSF within two (2) years after the Third City Closing (as defined in the Exchange Agreement). Any of the above described parking stalls used for BNSF business activities and located upon land owned, leased, controlled or operated by City shall be subject to City's parking rules and regulations attached hereto as **Exhibit OO**,

incorporated herein by reference. City may reasonably modify its rules and regulations to reflect then-current City parking management and safety practices in the Downtown Lincoln and the West Haymarket Project.

19. 2nd and "J" CROSSING CLOSURE. Prior to the First Closing, City shall take all necessary actions to permanently close, relinquish, abandon, and vacate the existing public at-grade crossing at 2nd and "J" Street ("**2nd & J**"), as shown on **Exhibit AA**, at no expense to BNSF. Upon vacation of said crossing, title will by law automatically revert to BNSF as the abutting property owner; provided, however, that City shall provide any documentation requested by BNSF to confirm such reversion to BNSF. BNSF agrees to execute and deliver to City at the First Closing an easement in the form of **Exhibit TT** attached hereto granting City and Public Utilities Companies the necessary license or easement rights to permit existing and future utilities Operation within the vacated right-of-way, provided that for future Utilities, plans and specifications are submitted to BNSF for review and approval per BNSF's Utility Accommodation Policy. If this Master Agreement, the C&M Agreement, and/or the Exchange Agreement expire or terminate following the vacation of 2nd & J, BNSF's obligation under this **Section 19** shall survive such expiration or termination.

20. OTHER BNSF TRACKS TO BE RELINQUISHED. BNSF has investigated and determined that BNSF has no need to retain either the existing tracks or any remaining rights to operate future tracks in the bubble area shown on **Exhibit S** attached hereto (as labeled "EXIST. SIDING TRACKS TO BE RELINQUISHED"). BNSF agrees, without additional monetary consideration, to take all action reasonably necessary to relinquish its rights to use such labeled tracks and bubble area. BNSF shall have the right, but not the obligation, to remove all or any portion of such tracks and related appurtenances as BNSF Existing Improvements, provided that if any such tracks and related appurtenances are removed by BNSF, BNSF shall restore the area to as near the condition prior to such track removal as may be practicable. BNSF will quitclaim any BNSF Reversionary Interests in the Existing City Streets and Alleys and other City streets and alleys underlying such tracks to City by quit claim deed as part of the Replacement City Property at the First Closing. Any BNSF Existing Improvements not removed by BNSF shall be conveyed to City and become the property of City concurrently with BNSF's relinquishment of rights to use such tracks. BNSF will reasonably cooperate with City to amend or extinguish any ordinance rights to occupy such portions of the Existing Streets and Alleys as necessary.

21. FUTURE AT-GRADE CROSSINGS. Other than the Rights of Entry agreements and temporary construction crossings expressly described herein or in the Exchange Agreement, no at-grade vehicular or pedestrian crossings shall be created or permitted in connection with the West Haymarket Project, without the prior written consent of BNSF, whether as part of the initial development or in the future. The provisions of this **Section 21** shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

22. CONTINGENCIES. In addition to, and not in limitation of, the contingencies set forth in the Exchange Agreement, the obligations of each Party as set forth below shall be subject to the fulfillment on or before each applicable Closing Date (as defined in the Exchange Agreement) of all of the applicable conditions set forth below.

22.1 City Contingencies for First Closing and 2010 Notice to Proceed. City's obligations to close on the First Closing and to deliver the 2010 Notice to Proceed to BNSF hereunder shall be contingent upon the following:

22.1.1 The City Council for City and/or JPA approving the necessary agreements, resolutions and ordinances for the implementation of the West Haymarket Project, the

City Work, the BNSF Work and the Rights of Entry Work on or before the completion date shown on the Timeline;

22.1.2 Execution of a JFA MOU between UP and BNSF, with terms and conditions acceptable to BNSF and UP;

22.1.3 Execution of the UP Agreement between UP and City for the West Haymarket Project;

22.1.4 Execution of the Amtrak/BNSF Lease, with terms and conditions acceptable to Amtrak and BNSF;

22.1.5 Execution of the Amtrak Agreement;

22.1.6 Obtaining any necessary consents and approvals authorizing the transactions contemplated by this Master Agreement, the licenses and/or easements described herein and in the Exchange Agreement, and all related work;

22.1.7 Governmental Approvals necessary for the 2010 BNSF Work, the 2010 Storm Water Mitigation Work, 2010 Sanitary Sewer Work, UP Work, the 2011 BNSF Work, and the 2012 BNSF Work and City's approval or acceptance of any terms or conditions of such Governmental Approvals; and

22.1.8 During City's due diligence period, City accepting title and environmental conditions of the Replacement City Property.

22.2 BNSF Contingencies for First Closing and 2010 BNSF Work. BNSF's obligations hereunder to close on the First Closing and proceeding with the implementation of the 2010 BNSF Work (subject to the requirements of **Section 2.4** above being satisfied) shall be contingent upon the following:

22.2.1 Execution of the JFA, with terms and conditions acceptable to BNSF and UP;

22.2.2 Execution of the Amtrak/BNSF Lease;

22.2.3 Execution of the UP Agreement between UP and City for the West Haymarket Project;

22.2.4 Execution of the Amtrak Agreement;

22.2.5 Receipt by BNSF of satisfactory evidence from City and Escrow Agent that the BNSF Work Payment Amount has been funded and deposited in the Escrow Account pursuant to the Escrow Agreement;

22.2.6 Obtaining any necessary consents and approvals authorizing the transactions contemplated by this Master Agreement, the licenses and/or easements described herein and in the Exchange Agreement, and all related work;

22.2.7 Obtaining Governmental Approvals necessary for the construction and implementation of the 2010 BNSF Work, the 2010 Storm Water Mitigation Work, 2010 Sanitary Sewer Work, UP Work, the 2011 BNSF Work, and the 2012 BNSF Work and BNSF's approval of any terms or conditions of the applicable Governmental Approvals; and

22.2.8 During BNSF's due diligence period, BNSF accepting title and environmental conditions of the Replacement BNSF Property.

22.3 City and BNSF Contingencies for Second BNSF Closing and All Other City Closings, Notices to Proceed, and BNSF Work. City's and BNSF's obligations to close on the Second BNSF Closing and all subsequent City Closings, the City delivering the Second Notice to Proceed to BNSF and BNSF proceeding with the implementation of the 2011 BNSF Work hereunder shall be contingent upon BNSF obtaining required STB Approval, if any, for the 2011 BNSF Work and 2012 BNSF Work.

22.4 Contingencies Not Satisfied. In the event any of the contingencies in **Section 22.1** and **Section 22.2** are not satisfied to the benefitted Party's reasonable satisfaction by December 31, 2010, or mutual extension thereof by the Parties, or in the event any of the contingencies in **Section 22.3** are not satisfied to the benefitted Party's reasonable satisfaction within eighteen (18) months after the proposed date in the Timeline for the Second BNSF Closing, or mutual extension thereof by the Parties, then the benefitted Party's sole and exclusive remedies hereunder shall be to either (i) waive such contingency by written notice to the other Party; or (ii) terminate this Master Agreement, upon which termination the Parties shall have no further obligations hereunder except those that expressly survive termination.

23. FUNDING. City has secured federal grants and funds to implement environmental assessment and remediation of the West Haymarket Project Area. Furthermore, City may seek additional federal grants and funds to help implement environmental remediation of the West Haymarket Project Area and help implement other aspects of the West Haymarket Project. City represents and warrants to BNSF that there are or will be no conditions or requirements associated with such grants and funds that BNSF will be responsible to satisfy or implement regarding the use of the BNSF Work Payments, the Cash Payment, or any other amounts payable to BNSF for the Project. City's representations and warranties contained in this **Section 23** shall survive expiration or termination of this Master Agreement, the C&M Agreement, and the Exchange Agreement, and all Closings under the Exchange Agreement.

24. DEFAULT AND TERMINATION.

24.1 If either Party fails to perform any of its obligations under this Development Agreement, and, after written notice is given by the non-defaulting Party to the defaulting Party specifying the default, the defaulting Party fails either to promptly commence to cure the default, or to complete the cure expeditiously but in all events to complete the cure within thirty (30) days after the default notice is given, then the non-defaulting Party may (i) seek specific performance of the unperformed obligations; (ii) at defaulting Party's sole cost, arrange for the performance of unperformed City Work or BNSF Work as may be applicable; or (iii) bring a claim for damages. Additionally, any default by City shall entitle BNSF to immediately suspend any further BNSF Work. If BNSF suspends BNSF Work for more than eighteen (18) months, either Party shall have the right to terminate this Master Agreement and/or pursue any other remedies available at law or in equity. For purposes of this Master Agreement, a default in the Exchange Agreement, the C&M Agreement, or any Right of Entry shall be considered a default under this Master Agreement. The remedies set forth in this **Section 24.1** shall be in limitation of any other remedies that a Party may have at law or in equity.

24.2 Any waiver by either Party of any default or defaults under this Master Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Master Agreement for

any subsequent default or defaults, nor shall any such waiver in any way affect such Party's ability to enforce any section of this Master Agreement.

24.3 The term of this Master Agreement shall begin on the Effective Date and terminate on the final Closing under the Exchange Agreement or earlier termination of the Exchange Agreement, unless sooner terminated as set forth herein.

24.4 If this Master Agreement terminates for any reason prior to the final Closing under the Exchange Agreement, then BNSF shall have the right, but not the obligation, to terminate, at BNSF's sole discretion, (i) any or all of the temporary Rights of Entry, and/or (ii) any or all of the permanent Rights of Entry for which the improvements contemplated thereunder have not been completed.

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

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

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

MISCELLANEOUS

26. Time is of the essence of this Master Agreement.

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

28. This Master Agreement binds and is for the benefit of both Parties and their permitted successors and assigns. No Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this Master Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enter into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to the JPA and will not pursue any action against the City until thirty (30) days after the date of such claim or notice to the

JPA, unless failure to pursue action against the City during such time would otherwise prejudice BNSF's rights, and (iii) in no event shall this Master Agreement or any interest herein be assigned unless City's entire interest under the C&M Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to the same assignee.

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

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

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

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

33. This Master Agreement may be executed in more than one counterpart, including facsimile transmissions, each of which shall be deemed an original.

34. As of this same Effective Date, City and BNSF have also entered into the Exchange Agreement, the C&M Agreement, and to the extent executed, certain Rights of Entry. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Rights of Entry. City and BNSF agree that, except as otherwise stated in **Section 4**, (i) in the event the terms of the Master Agreement, the C&M Agreement, the Exchange Agreement, and the various Rights of Entry are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement, the C&M Agreement, and the terms of the various Rights of Entry are inconsistent, then the Exchange Agreement shall prevail; and (iii) in the event the terms of the C&M Agreement and the terms of the various Rights of Entry are inconsistent, then the C&M Agreement shall prevail.

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

36. All aspects of this Master Agreement shall be governed by the laws of the State of Nebraska.

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

38. By signing below, the Parties affirm they have the legal authority to enter into this Master Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have set their hands as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: _____

Exhibits to be attached to Master Development Agreement:

Exhibit A:	Depiction of West Haymarket Project
Exhibit B:	Depiction of Existing BNSF Property
Exhibit B-1:	Depiction of Retained BNSF Property / Transferred BNSF Property
Exhibit C:	Depiction of BNSF Bridge
Exhibit D:	Depiction of Existing City Streets and Alleys
Exhibit D-1:	Depiction of Vacated Right of Way/Retained City Property, Vacated Right of Way/Replacement BNSF Property, and BNSF Reversionary Interests
Exhibit E:	Depiction of Existing UP Property
Exhibit E-1:	Depiction of UP/City Retained Property / UP/Replacement BNSF Property
Exhibit F:	Depiction of Third Party Properties
Exhibit F-1:	Depiction of Third Party/Retained City Property and Third Party/Replacement BNSF Property
Exhibits G and G-1:	Depiction of Replacement BNSF Property
Exhibit H:	Depiction of Future BNSF Corridor
Exhibit I:	Rights of Entry Work
Exhibit I-1:	Depiction of Storm Water Mitigation Area (Temporary Grading)
Exhibit I-2:	Depiction of Storm Water Mitigation Area (Permanent Improvements)
Exhibit I-3:	Depiction of Soil Staging Areas
Exhibit I-4:	Depiction of Pedestrian Bridge Area
Exhibit J:	Depiction of Replacement City Property
Exhibit J-1:	Depiction of Crossing Agreement Areas
Exhibit J-2:	Depiction of Holes in the Donut and Temporary Access Areas
Exhibit K	Depiction of Future City Property
Exhibit L:	Depiction of BNSF Replacement Work and BNSF Removal Work Areas
Exhibit M-1:	Depiction of Temporary Access for Temporary Access License
Exhibit M-2:	Depiction of Temporary Access for City Amtrak Work Area
Exhibit N:	Depiction of City Amtrak Work Area
Exhibit O:	Depiction of Fiber Optic Work and Public Utilities Work Areas
Exhibit P:	Depiction of Security Fencing Area
Exhibit P-1:	Depiction of Gate Locations on Security Fencing Area
Exhibit Q:	Timeline
Exhibit R:	JFA MOU
Exhibit S:	Depiction of Other BNSF Reversionary Interests
Exhibit T:	*Intentionally Deleted*.
Exhibit U:	Letter Agreement for part of the Final Design Work

Exhibit X:	Included Work
Exhibit Y:	BNSF Work Payment Exclusions
Exhibit Z:	Escrow Agreement
Exhibit Z-1:	Construction Draw Schedule
Exhibits AA – AA-7:	Depiction of Arena Drive Grading Area
Exhibit BB:	Form of Temporary License for Survey / Geotech / Environmental Activities / Advanced Construction
Exhibit DD:	*Intentionally Deleted*.
Exhibit EE:	Form of Temporary Access License for Initial Construction
Exhibit FF:	Form of Storm Water Mitigation Easement
Exhibit FF-1:	Form of Temporary Grading License for Storm Water Mitigation
Exhibit GG:	Form of Temporary Access License for Soil Staging
Exhibit HH:	Form of Pedestrian Bridge Easement
Exhibit HH-1:	Form of Temporary Access License for Construction Staging - Pedestrian Bridge
Exhibit HH-A (pp. 1- 4):	Depiction of Pedestrian Bridge License Area
Exhibit II:	Form of Temporary Access License for Amtrak Work
Exhibit JJ:	Form of Security Fencing License
Exhibit KK:	Form of Temporary Grading License for Arena Drive and Parking Lot Construction
Exhibit NN:	Form of Fiber Optic Communication Easement
Exhibit OO:	City Parking Rules and Regulations
Exhibit TT:	Form of City Utility Easement / 2nd and J Utility Easement
Exhibit UU:	Form of Crossing Agreement

EXCHANGE AGREEMENT

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

RECITALS

A. City and BNSF have entered into that certain Master Development Agreement of even date herewith (the "**Master Agreement**"). In connection with certain economic development objectives of City as set forth in the Master Agreement, City desires to acquire the Replacement City Property (defined below) from BNSF in exchange for the Replacement BNSF Property (defined below) and Cash Payment (defined below). All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

B. BNSF owns or controls certain real property and related improvements (collectively, the "**Existing BNSF Property**") located in the City of Lincoln, Lancaster County, Nebraska, and depicted on **Exhibit B** attached hereto and incorporated herein by reference. The Existing BNSF Property consists of (i) the "**Retained BNSF Property**" as depicted on **Exhibit B-1** attached hereto and incorporated herein by reference, and (ii) the "**Transferred BNSF Property**" as depicted on **Exhibit B-1** attached hereto).

C. BNSF owns or controls that certain bridge over Salt Creek (the "**BNSF Bridge**") located in the City of Lincoln, Lancaster County, Nebraska, and depicted on **Exhibit C** attached hereto and incorporated herein by reference.

D. BNSF holds certain ordinance rights, licenses, easements, and/or other interests (collectively "**BNSF Reversionary Interests**") over that certain real property depicted on **Exhibit J** and over certain other City streets and alleys immediately abutting the Project Area ("**Other BNSF Reversionary Interests**") as shown on **Exhibit S** attached hereto and incorporated herein by reference.

E. For purposes of this Agreement, the Transferred BNSF Property, the BNSF Bridge, the BNSF Reversionary Interests and the Other BNSF Reversionary Interests shall be referred to collectively herein as the "**Replacement City Property**".

F. City desires to acquire certain real property and related improvements ("**UP/Replacement BNSF Property**") located in the City of Lincoln, Lancaster County, Nebraska, from Union Pacific Railroad Company ("**UP**"), as depicted on **Exhibit E-1** attached hereto and incorporated herein by reference.

G. City desires to acquire certain real property and related improvements located in the City of Lincoln, Lancaster County, Nebraska, from certain additional third parties ("**Third Party/Replacement BNSF Property**"), as depicted on **Exhibit F-1** attached hereto and incorporated herein by reference.

H. City desires to vacate those streets and alleys (the "**Vacated Right of Way/Replacement BNSF Property**") as depicted on **Exhibit D-1** attached hereto and incorporated herein by reference, and to promptly cause all reversionary interests in the Vacated Right of Way/Replacement BNSF Property to be transferred to BNSF.

I. For purposes of this Agreement, the Vacated Right of Way/Replacement BNSF Property, UP/Replacement BNSF Property, and the Third Party/Replacement BNSF Property shall be referred to collectively herein as the "**Replacement BNSF Property**".

J. The Replacement City Property and the Replacement BNSF Property may be collectively referred to hereinafter as the "**Exchange Properties**" or individually as an "**Exchange Property**". As used

in this Agreement, "**Transferor**" refers to the Party that will be quitclaiming the respective Exchange Property, and "**Transferee**" refers to the Party to which the respective Exchange Property will be quitclaimed.

AGREEMENTS

In consideration of the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. City Initial Acquisition of UP/Replacement BNSF Property and Third Party/ Replacement BNSF Property.

1.1 On or before the First Closing (defined below), City shall acquire, at its sole cost and expense, the UP/Replacement BNSF Property from UP. BNSF shall have no obligation to pay for or assist in the acquisition of the UP/Replacement BNSF Property.

1.2 On or before the First Closing, City shall acquire, at its sole cost and expense, the applicable Third Party/Replacement BNSF Property from Noohznik L.P. and the Lower Platte South Natural Resources District. BNSF shall have no obligation to pay for or assist in the acquisition of the Third Party/Replacement BNSF Property from such parties.

1.3 On or before the Second BNSF Closing (defined below), City shall acquire, at its sole cost and expense, the applicable Third Party/Replacement BNSF Property from N Street Company, LLC. BNSF shall have no obligation to pay for or assist in the acquisition of the Third Party/Replacement BNSF Property.

1.4 City's acquisition of the UP/Replacement BNSF Property and Third Party/Replacement BNSF Property are collectively the "**Initial Acquisitions**".

Section 2. Exchange Consideration; Bargain Sale.

2.1 Subject to the terms and conditions set forth in this Agreement (i) BNSF agrees to convey its interest in the Replacement City Property to City; (ii) BNSF agrees to convey the Rights of Entry (as defined in the Master Agreement); (iii) City agrees to convey its interest in the Replacement BNSF Property to BNSF; (iv) City agrees to pay to BNSF the Cash Payment; and (v) City agrees to cooperate with BNSF to substantiate the Charitable Donation.

2.2 City will convey its interest in the Replacement BNSF Property to BNSF by quitclaim deeds at the BNSF Closings (defined below) as set forth below, free and clear of all Encumbrances (defined below) except the Permitted Encumbrances (defined below). For purposes of this Agreement, all references to a quitclaim deed for the Replacement BNSF Property shall include an easement instead of a quitclaim deed for any parcel over which BNSF elects to receive an easement interest instead of fee simple ownership (as provided for in **Section 9.1** below); provided, however, that any easement interests in the Replacement BNSF Property which are conveyed in lieu of fee simple title shall be quitclaimed to BNSF.

2.3 City hereby advises BNSF that City has immediate need for the Replacement City Property for incorporation into City's development project and should BNSF not agree to exchange the Replacement City Property to City under the terms and conditions of this Agreement, City's staff intends to recommend to its governing body that City immediately initiate the process to exercise its power of eminent domain to acquire the Replacement City Property in accordance with applicable law. In order to avoid the expense and delay of such a condemnation action by City, BNSF is willing to convey the Replacement City Property to City in lieu of such condemnation action on the terms and conditions set forth in this Agreement.

2.4 BNSF will convey its interest in the Replacement City Property to City by quitclaim deeds and deliver the Rights of Entry agreements at the City Closings (defined below) as set forth below.

2.5 In addition to the conveyance to BNSF of the Replacement BNSF Property, City shall also pay to BNSF the sum of One Million and no/100 Dollars ($1,000,000.00) ("**Cash Payment**") as additional consideration for the Replacement City Property at the First Closing.

2.6 BNSF intends to make a charitable donation to City ("**Charitable Donation**") for the amount equal to the fair market value of the Replacement City Property (less the Cash Payment) minus the fair market value of the Replacement BNSF Property (the "**Donation Amount**"). To the extent permitted by law, City agrees to cooperate with BNSF to execute the Donee Acknowledgment Section of Internal Revenue Service Form 8283 and a charitable contribution receipt ("**Charitable Contribution Receipt**") for the Donation Amount. To establish the respective fair market values of the Replacement City Property and Replacement BNSF Property, BNSF, at its sole cost and expense and using an appraiser of BNSF's choice, shall obtain appraisals of each conveyed parcel for the Replacement City Property and Replacement BNSF Property, each such appraisal to be conducted within sixty (60) days prior to the Closing conveying each applicable parcel. BNSF agrees to provide City with copies of such appraisals. The Charitable Donation shall be allocated among the properties included in the City Closings as reasonably determined by BNSF and in compliance with applicable Internal Revenue Service regulations (the "**Donation Allocation**").

Section 3. <u>Existing Information</u>.

3.1 As of the Effective Date, the City has taken reasonable efforts to provide BNSF with copies of (i) any environmental assessments and reports, (ii) any contracts or agreements, (iii) any soil or engineering reports, and (iv) any written notices from any governmental authority relating to the Replacement BNSF Property and in the possession or direct control of the City's designated document custodian (collectively, the "**City Existing Information**"). If during the term of this Agreement and subsequent to such initial delivery, City obtains additional or updated materials that would have been included in the City Existing Information, City shall promptly deliver such additional or updated materials to BNSF.

3.2 As of the Effective Date, BNSF has taken reasonable efforts to provide City with copies of (i) any environmental assessments and reports, (ii) any contracts or agreements (including without limitation known existing licenses and easements to be assigned to City pursuant to the provisions of **Section 4.7.1** below), (iii) any soil or engineering reports, and (iv) any written notices from any governmental authority relating to the Replacement City Property to be conveyed to City and in the possession or direct control of BNSF's designated document custodian (collectively, the "**BNSF Existing Information**"). If during the term of this Agreement and subsequent to such initial delivery, BNSF obtains additional or updated materials that would have been included in the BNSF Existing Information, BNSF shall promptly deliver such additional or updated materials to City.

3.3 Any information provided by the Transferor for each Exchange Property ("**Information**") has been provided without any representation or warranty as to the completeness or accuracy of the data other information contained therein, and all such Information is furnished to the Transferee solely as a courtesy, and the Party delivering such Information has neither verified the accuracy or any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an **AS-IS, WHERE-IS BASIS, AND EACH TRANSFEREE EXPRESSLY ACKNOWLEDGES THAT THE TRANSFEROR MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION.**

Section 4. <u>Title Insurance, Surveys and Other Matters</u>.

4.1 <u>Title Commitments</u>. City will obtain an ALTA Owner's Policy Title Insurance Commitments ("**Title Insurance Commitments**") from Chicago Title Insurance Company through its agent Nebraska Title Company ("**Title Company**") during the City Due Diligence Period (defined below) covering the

Replacement City Property. City has also obtained Title Insurance Commitments from the Title Company dated May 11, 2010 (with file numbers BNSF001 and BNSF002) covering the Replacement BNSF Property. City has caused the Title Insurance Commitments to be separated into parcels corresponding to each Closing (defined below) and Property Survey prior to the applicable Closing. Prior to each Closing, City, at City's sole cost and expense, shall update the applicable Title Insurance Commitments to the dates of the applicable Closings (defined below) (such title commitments, as updated, are respectively the "**Replacement City Property Commitments**" and the "**Replacement BNSF Property Commitments**"). The Replacement City Property Commitments and the Replacement BNSF Property Commitments shall be referred to collectively herein as the "**Title Commitments**". BNSF has been provided with a copy of the initial form of the Replacement BNSF Property Commitment.

4.2 Surveys and Legal Descriptions. City, at its sole cost and expense, has obtained and delivered or caused to be delivered to BNSF surveys of the Replacement BNSF Property dated May 28, 2010 and the Replacement City Property dated _____, pursuant to current on-the-ground staked surveys performed by Daniel A. Thomson of Olsson Associates ("**Surveyor**"); provided, however, such surveys shall be updated during the BNSF Due Diligence Period (defined below) and City Due Diligence Period as reasonably requested by the Parties so that they (i) are certified to City, BNSF and Title Company, (ii) reflect the actual dimensions of and the total number of gross and net acres within the land described therein, (iii) identify any rights-of-way, easements, or other Encumbrances by applicable recording reference, (iv) show the location of all improvements (including, but not limited to, railroad tracks), (v) are conducted in accordance with the Minimum Detail Requirements and Standards for Land Title Surveys of the American Title Association and American Congress on Surveying and Mapping, (vi) provide a recordable legal description for each parcel of the Replacement City Property and the Replacement BNSF Property, which legal descriptions will be attached to the applicable deed or easement at the applicable Closing, and (vii) include the Surveyor's registered number, seal, and the date of the survey (such surveys, as updated are respectively the "**Replacement BNSF Property Surveys**" and "**Replacement City Property Surveys**"). For purposes of this Agreement, the Replacement BNSF Property Surveys and the Replacement City Property Surveys shall be referred to collectively herein as the "**Property Surveys**".

4.3 Replacement BNSF Property. If the Replacement BNSF Property Commitments or the Replacement BNSF Property Surveys disclose any Encumbrances or other matters that are not acceptable to BNSF, then BNSF may give City written notice thereof during the BNSF Due Diligence Period, specifying BNSF's objections ("**BNSF Objections**"), if any. If BNSF Objections are made, City will use reasonable efforts to, but is not obligated to, cure any BNSF Objections. If BNSF gives notice of BNSF Objections to City and City is unable or unwilling to cure the BNSF Objections or cause the Title Company to insure BNSF, at City's sole cost and expense and to the extent acceptable to BNSF in BNSF's sole discretion, against loss or damage that may be occasioned by such Encumbrances within the twenty (20) day period following receipt of the notice ("**City Cure Period**"), then BNSF may either (i) terminate this Agreement by giving written notice thereof to City within ten (10) days after the expiration of such City Cure Period ("**BNSF Title Termination Deadline**"), and, upon such termination, neither Party will have any further rights or obligations under this Agreement, or (ii) waive the BNSF Objections and consummate the conveyance of the Replacement BNSF Property subject to the BNSF Objections (which will be deemed to be Permitted Encumbrances). If BNSF does not terminate this Agreement prior to the BNSF Title Termination Deadline, then BNSF shall have no further right to terminate this Agreement for matters disclosed in the Replacement BNSF Property Commitments or the Replacement BNSF Property Surveys, except to the extent permitted as part of the BNSF Pre-Conveyance Review as described in **Section 11.1.2** and **11.1.3**.

4.4 Replacement City Property. The "**City Due Diligence Period**" shall commence upon the Effective Date and continue until the date that is 60 days after the date upon which the City receives the Replacement City Property Commitments and the last of the BNSF Existing Information, environmental reports, and any other deliverables from BNSF, and has been granted access to the Replacement BNSF Property for such evaluation and inspection purposes (but in no event less than 60 days after the Effective Date), except as otherwise waived in writing. If the Replacement City Property Commitments or the Replacement City Property Surveys disclose any Encumbrances or other matters that are not acceptable to City, then City may give BNSF written notice thereof within the City Due Diligence Period specifying City's objections ("**City Objections**"), if any. If City Objections are made, BNSF may, but is not obligated to, cure

any City Objections, but in any case BNSF will not be required to incur any expense or liability to cure such City Objections. If City gives notice of City Objections to BNSF and BNSF is unable or unwilling to cure the City Objections or cause the Title Company to insure City, to the extent acceptable to City in City's sole discretion, against loss or damage that may be occasioned by such Encumbrances within the twenty (20) day period following receipt of the notice ("**BNSF Cure Period**"), then City may either (i) terminate this Agreement by giving written notice thereof to BNSF within ten (10) days after the expiration of the BNSF Cure Period ("**City Title Termination Deadline**"), and, upon such termination, neither Party will have any further rights or obligations under this Agreement, or (ii) waive the City Objections and consummate the quitclaim of the Replacement City Property subject to the City Objections (which will be deemed to be Permitted Encumbrances). If City does not terminate this Agreement prior to the City Title Termination Deadline, then City shall have no further right to terminate this Agreement for matters disclosed in the Replacement City Property Commitments or the Replacement City Property Surveys, except to the extent permitted as part of the City Pre-Conveyance Review as described in **Section 11.2.2**.

4.5 No Monetary Encumbrances. Notwithstanding the above, except as set forth in **Section 4.6** below, in no event will any liens or other monetary Encumbrances affecting the Exchange Properties be Permitted Encumbrances.

4.6 Exception. Notwithstanding the foregoing or anything to the contrary contained herein:

4.6.1 if any portion of the Replacement City Property is encumbered by liens of one or more mortgages of BNSF (or its predecessors), BNSF, at its expense, shall deliver to City good and sufficient releases of such liens that are applicable to the Replacement City Property within one hundred eighty (180) days after the first meeting of BNSF's Board of Directors held after the applicable Closing;

4.6.2 any judgment against BNSF that may appear of record as a lien against the Replacement City Property shall be settled and satisfied by BNSF and a release filed of record if and when it is judicially determined to be valid, and BNSF hereby indemnifies City for any losses or costs arising out of BNSF's failure to have such a valid judgment lien so settled and satisfied, including attorneys' fees; and

4.6.3 the releases, settlements or satisfaction by BNSF of such liens referred to in **Sections 4.6.1** or **4.6.2** above shall be deemed an acceptable cure of such items for purposes of this **Section 4**. The provisions in **Sections 4.6.1** and **4.6.2** shall survive each applicable Closing, shall be binding on the Parties' successors and assigns, and shall not merge into the quitclaim deeds to the Replacement City Property or any Closing documents.

4.7 For purposes of this Agreement, "**Encumbrances**" shall be defined as all liens, claims, easements, right-of-ways, reservations, restrictions, encroachments, tenancies, leases, licenses and any other encumbrances of whatsoever nature affecting the Exchange Properties. "**Permitted Encumbrances**" shall be defined as all the Encumbrances appearing in the Title Commitments for the Exchange Properties that are either not objected to, insured by the Title Company in a form acceptable to the Parties, or are objected to but not cured and that are subsequently waived pursuant to this **Section 4**.

4.7.1 Permitted Encumbrances – Replacement City Property.

4.7.1.1 The Parties agree that with respect to the Replacement City Property, Permitted Encumbrances shall also be deemed to include, without limitation:

4.7.1.1.1 All existing longitudinal easements and licenses with third parties and all easements and licenses that cross multiple properties (collectively, "**Longitudinal Agreements**") that would not materially interfere with the use of the Replacement City Property for its intended uses under the West Haymarket Redevelopment Plan as determined by the City at the City's sole discretion and that extend beyond the limits of the Replacement City Property for pipelines, telecommunications

(including without limitation, fiber optic cables or lines, communications equipment, control systems and various types of cables), power, water or other utilities; and

4.7.1.1.2 All other existing easements and licenses with third parties (collectively, the "**Non-Longitudinal Agreements**"); provided, however, that BNSF agrees to assign (to the extent assignable), and City to accept, all Non-Longitudinal Agreements to City at the applicable Closings, each such assignment to be substantially in the form attached hereto as **Exhibit SS**, incorporated herein by reference (each a "**License Assignment**" and collectively, "**License Assignments**"). BNSF does not represent or warrant that the Non-Longitudinal Agreements to be assigned (to the extent assignable) or other information contained in the Non-Longitudinal Agreements or License Assignments constitute all of the agreements affecting the Replacement City Property.

4.7.1.2 Upon completion of the Fiber Optics Work (defined in the Master Agreement), BNSF will use reasonable efforts to, but will have no obligation to, secure or obtain written releases from the Fiber Optic Companies (defined in the Master Agreement) for any easements and licenses for fiber optic lines that were relocated from the Replacement City Property to the Future BNSF Corridor. BNSF shall have no obligation to incur any costs or expenses with regards to obtaining such releases.

4.7.2 Permitted Encumbrances – Replacement BNSF Property. The Parties agree that with respect to the Replacement BNSF Property, Permitted Encumbrances shall also be deemed to include the UP/Replacement BNSF Property encumbrances contained in the Purchase and Sale Agreement between UP and the City of Lincoln approved by Executive Order No. 83205, dated June 15, 2010 ("**UP/City PSA**"), including but not limited to all mineral rights reserved in Section 5(a)(i) of the UP/City PSA, all leases and licenses referred to in Sections 6(a) and 6(b) of the UP/City PSA, and the restriction on the use set forth in Section 8 of the UP/City PSA. ***[Subject to discussion – BNSF reviewing UP's response]***

Section 5. Additional Agreements. Except as otherwise set forth in this Agreement, neither Party shall (a) enter into or agree to enter into any lease, easement, license or other agreement concerning occupancy or use of any of the Replacement BNSF Property or Replacement City Property; (b) enter into, or consent in writing to, any easement, encumbrance, covenant, condition, restriction or right-of-way affecting the Replacement BNSF Property or Replacement City Property; or (c) cause or permit to arise any matter affecting title to any of the Replacement BNSF Property or Replacement City Property, without first obtaining the other Party's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed. City and BNSF shall each pay in full prior to the date of each of the applicable Closings for all labor, material and services required to be provided by such Party or otherwise contracted for by or on behalf of such Party. At each Closing, Transferor will represent to Transferee and to the Title Company that there are no outstanding unpaid bills for labor, material, or utilities furnished on behalf of Transferor with respect to the Exchange Property, and will agree to indemnify and hold harmless Transferee and Title Company against all payments and expenses, including court costs and attorneys' fees, if the above representation proves to be inaccurate in whole or in part.

Section 6. Representations and Warranties. Each Party represents and warrants to the other Party as of the date of this Agreement and as of the date of each of the applicable Closings hereunder that:

6.1 It has all necessary power and authority to enter into and consummate the transactions contemplated herein, and the person executing this Agreement on behalf of the Party is duly authorized to do so.

6.2. Except as disclosed to the Transferee in the studies or other materials delivered to the Transferee, to the Transferor's knowledge:

6.2.1 No actions, suits, proceedings, orders, inquiries, or investigations are pending or are threatened against, involving, or affecting the Exchange Property, at law or in equity, or before or by any federal, state, municipal, or other governmental department, court, commission, board,

bureau, agency, or instrumentality, alleging the violation of any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Matters (defined below) or the release of any Hazardous Substances (defined below).

6.2.2 Except as provided for in **Section 2.3** above, no actions, suits, or proceedings are pending, threatened or asserted against the Exchange Property or against Transferor in connection with the Exchange Property, before or by any federal, state, municipal, or other governmental department, court, commission, board, bureau, agency, or instrumentality.

6.2.3 Except as provided for in **Section 2.3** above, no pending or threatened condemnation actions exist with respect to the Exchange Property.

6.2.4 Transferor has not received any notice that any ordinance, regulation, law, or statute of any governmental agency pertaining to the Exchange Property has been violated.

6.2.5 No permission, approval, or consent by third parties or governmental authorities is required for Transferor to consummate this transaction.

6.3 The term "knowledge" as used in this Agreement, including without limitation this **Section 6**, refers to the actual, present knowledge of: (i) David P. Schneider, General Director – Land Revenue Management for BNSF, and (ii) _____ *(name)*, _____ *(title)* for City (each, the respective Party's "**Information Representative**"), as of the Effective Date of this Agreement, without any duty of investigation or inquiry of any kind or nature whatsoever. [City to provide name and title]

Section 7. **Amtrak.** City acknowledges that the Replacement City Property is subject to that certain agreement between National Rail Passenger Service Corporation ("**Amtrak**") and Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, dated September 1, 1996, as amended ("**Operating Agreement**"). City also acknowledges that BNSF is obligated to provide property in the City of Lincoln for intercity rail passenger use under the terms of the federal Rail Passenger Service Act (Title 49 United States Code Section 24308(a)). On or prior to the First Closing: (i) City shall enter into an agreement with Amtrak for a new station lease ("**Station Lease**") for City to provide an intercity railroad passenger station facility for Lincoln, Nebraska for Amtrak on the Replacement City Property (or on other equitable replacement property), on terms and conditions mutually acceptable to City and Amtrak. City does not guarantee that Amtrak will enter into the Station Lease. The new Station Lease shall be binding upon and inure to the benefit of City and Amtrak, and their respective successors and assigns. BNSF agrees to use commercially reasonable efforts to enter into the Amtrak/BNSF Lease (as defined in the Master Agreement) with Amtrak. BNSF does not guarantee that Amtrak will enter into the Amtrak/BNSF Lease.

Section 8. **Closing Conditions.**

8.1 Notwithstanding anything herein to the contrary, the obligations of each Party to consummate the transactions under this Agreement shall be subject to the fulfillment on or before each applicable Closing Date (defined below) of all of the applicable conditions contained in **Sections 8.2** through **8.13**, any or all of which may be waived only by the benefitted Party by written notice to the other Party. In the event any of such applicable conditions are not satisfied or waived by the benefitted Party prior to or at the applicable Closing then either Party may extend the applicable Closing Date by delivering notice to the other Party prior to or on the applicable Closing Date in which case the applicable Closing Date shall be extended to give additional time to satisfy the foregoing conditions and the Parties shall proceed with the terms of this Agreement. Subsequent Closings shall be suspended during any such extension period. If any Closing Date is extended or suspended for more than eighteen (18) months, either Party shall have the right to terminate this Agreement and following any such termination neither Party will have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement. Notwithstanding anything herein to the contrary, if the Master Agreement is terminated prior to the completion of all Closings, this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

8.2 City's obligations to close on the First Closing are contingent upon the satisfaction of the following conditions precedent prior to the First Closing:

8.2.1 The City Council for City and/or the Board of Representatives for JPA (defined below) approving the necessary agreements, resolutions and ordinances for the implementation of the activities contemplated herein;

8.2.2 City obtaining any necessary consents and approvals authorizing the transactions contemplated by this Agreement;

8.2.3 All Initial Acquisitions have taken place, or City has obtained the necessary authority to complete the Initial Acquisitions, including by condemnation if necessary, on a schedule that would satisfy the dates in the Timeline (as defined in the Master Agreement);

8.2.4 BNSF and Amtrak have entered into the Amtrak/BNSF Lease;

8.2.5 The City Due Diligence Period and the City Title Termination Deadline have both expired, or all City Objections have been waived;

8.2.6 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.2.7 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;

8.2.8 All contingencies under **Section 22.1** of the Master Agreement have been satisfied;

8.2.9 The Parties have agreed to the terms and conditions of the Rights of Entry;

8.2.10 City and Amtrak have entered into the Station Lease; and

8.2.11 Title Company has committed to issue the Replacement City Property Owner Policy (defined below) for the First City Closing Property (defined below) in a form acceptable to City.

8.3 BNSF's obligations to close on the First Closing are contingent upon the satisfaction of the following conditions precedent prior to the First Closing:

8.3.1 BNSF obtaining any necessary consents and approvals authorizing the transactions contemplated by this Agreement;

8.3.2 BNSF and Amtrak have entered into the Amtrak/BNSF Lease;

8.3.3 The BNSF Due Diligence Period and the BNSF Title Termination Deadline have both expired, or all BNSF Objections have been waived;

8.3.4 The applicable BNSF Pre-Conveyance Review is completed to BNSF's satisfaction, or all BNSF Pre-Conveyance Review Objections have been waived;

8.3.5 All Initial Acquisitions have taken place, or City has obtained the necessary authority to complete the Initial Acquisitions, including by condemnation if necessary, on a schedule that would satisfy the dates in the Timeline;

8.3.6 City and Amtrak have entered into the Station Lease;

8.3.7 Title Company has committed to issue the Replacement BNSF Property Owner Policy (defined below) for the First BNSF Closing Property (defined below) in a form acceptable to BNSF;

8.3.8 The Parties have agreed to the terms and conditions of the Rights of Entry;

8.3.9 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods; and

8.3.10 All contingencies under **Section 22.2** of the Master Agreement have been satisfied.

8.4 City's obligations to close on the Second BNSF Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second BNSF Closing:

8.4.1 All Initial Acquisitions have taken place;

8.4.2 The First Closing has taken place; and

8.4.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.5 BNSF's obligations to close on the Second BNSF Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second BNSF Closing:

8.5.1 All Initial Acquisitions have taken place;

8.5.2 The First Closing has taken place;

8.5.3 The applicable BNSF Pre-Conveyance Review has been completed to BNSF's satisfaction, or all BNSF Pre-Conveyance Review Objections (defined below) have been waived;

8.5.4 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods; and

8.5.5 Title Company has committed to issue the Replacement BNSF Property Owner Policy for the Second BNSF Closing Property (defined below) in a form acceptable to BNSF.

8.6 City's obligations to close on the Second City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second City Closing:

8.6.1 The First Closing has taken place;

8.6.2 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;

8.6.3 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections (defined below) have been waived; and

8.6.4 Title Company has committed to issue the Replacement City Property Owner Policy for the Second City Closing Property in a form acceptable to City.

8.7 BNSF's obligations to close on the Second City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Second City Closing:

8.7.1 The First Closing and the Second BNSF Closing have taken place; and

8.7.2 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.8 City's obligations to close on the Third City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Third City Closing:

8.8.1 The Second City Closing has taken place;

8.8.2 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.8.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods; and

8.8.4 Title Company has committed to issue the Replacement City Property Owner Policy for the Third City Closing Property (defined below) in a form acceptable to City.

8.9 BNSF's obligations to close on the Third City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Third City Closing:

8.9.1 The Second City Closing has taken place; and

8.9.2 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.10 City's obligations to close on the Fourth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fourth City Closing:

8.10.1 The Third City Closing has taken place;

8.10.2 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.10.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;

8.10.4 Passenger Track No. 2 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.10.5 Title Company has committed to issue the Replacement City Property Owner Policy for the Fourth City Closing Property in a form acceptable to City.

8.11 BNSF's obligations to close on the Fourth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fourth City Closing:

8.11.1 The Third City Closing has taken place;

8.11.2 Passenger Track No. 2 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.11.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

8.12 City's obligations to close on the Fifth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fifth City Closing:

8.12.1 The Fourth City Closing has taken place;

8.12.2 The applicable City Pre-Conveyance Review has been completed to City's satisfaction, or all City Pre-Conveyance Review Objections have been waived;

8.12.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods;

8.12.4 Passenger Track No. 1 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.12.5 Title Company has committed to issue the Replacement City Property Owner Policy for the Fifth City Closing Property (defined below) in a form acceptable to City.

8.13 BNSF's obligations to close on the Fifth City Closing are contingent upon the satisfaction of the following conditions precedent prior to the Fifth City Closing:

8.13.1 The Fourth City Closing has taken place;

8.13.2 Passenger Track No. 1 is removed from service, as determined by BNSF in BNSF's sole and absolute discretion; and

8.13.3 The Master Agreement is in full force and effect, and neither Party is in default under the Master Agreement beyond applicable grace and cure periods.

Section 9. **Closings.** The BNSF Closings and the City Closings are referred to individually herein as a "**Closing**" and collectively as the "**Closings**." The "**First Closing**" shall consist of a conveyance of certain property from City to BNSF as described in **Section 9.1.1** below, and a simultaneous quitclaim of certain property from BNSF to City as described in **Section 9.2.1** below. Each Closing shall occur at the offices of Title Company, on the date for such Closing set forth in the Timeline (each such date to be referred to herein individually as a "**Closing Date**" and collectively as the "**Closing Dates**"). City shall be responsible for all costs associated with the Closings, including, without limitation, escrow fees, documentary stamps and other recording costs, any state, county, or local excise taxes, and costs of all surveys and title policies.

9.1 The "**BNSF Closings**" shall include the First Closing and the Second BNSF Closing. At least _____ (__) days before each of the BNSF Closings, BNSF shall deliver to City written notice of BNSF's decision as to whether each parcel is to be conveyed to BNSF via an easement or by quitclaim deed.

9.1.1 First Closing. At the First Closing, City shall, at its sole cost and expense, vacate the existing public at-grade crossing at 2nd and "J" Street, and vacate that portion of the Vacated Right of Way/Replacement BNSF Property abutting the UP/Replacement BNSF Property, Third Party/Replacement BNSF Property owned by Noohznik L.P., Third Party Replacement BNSF Property owned by Lower Platte South Natural Resources District, and Retained BNSF Property generally shown on **Exhibit G** (BNSF shall have no obligation to pay for or assist in the vacation of the Vacated Right of Way/Replacement BNSF Property and/or the transfer of the Vacated Right of Way/Replacement BNSF Property), and shall convey to BNSF that portion of the Replacement BNSF Property generally shown on **Exhibit G** attached hereto and incorporated herein by this reference, including any remaining improvements located on any such land (collectively, the "**First BNSF Closing Property**").

9.1.2 Second BNSF Closing. At the Second BNSF Closing, City shall, at its sole cost and expense, vacate the Vacated Right of Way/Replacement BNSF Property abutting the remaining Third Party/Replacement BNSF Property as generally shown on **Exhibit G-1** (BNSF shall have no obligation to pay for or assist in the vacation of the Vacated Right of Way/Replacement BNSF Property and/or the transfer of the Vacated Right of Way/Replacement BNSF Property), and shall convey to BNSF all remaining Replacement BNSF Property as generally

shown on **Exhibit G-1** attached hereto and incorporated herein by this reference, including any remaining improvements located on any such land (collectively, the "**Second BNSF Closing Property**").

9.2 At each Closing, City shall deliver, or cause to be delivered, to BNSF the following items with respect to the applicable portion of the Replacement BNSF Property:

9.2.1 With respect to the BNSF Closings, a quitclaim deed ("**Replacement BNSF Property Deed**") in the form attached to this Agreement as **Exhibit QQ**, attached hereto and incorporated herein by this reference, with the applicable legal description prepared pursuant to **Section 4.2** attached thereto, fully executed and acknowledged by City, to be countersigned and accepted by BNSF at the applicable Closing, conveying to BNSF the City's interest in the Replacement BNSF Property for the applicable BNSF Closing, subject only to the Permitted Encumbrances (provided, however, that for all properties for which BNSF elects to receive an easement in lieu of fee ownership, City shall deliver an easement ["**Replacement BNSF Property Easement**"] in the form attached hereto as **Exhibit QQ-1**, incorporated herein by this reference, with the applicable legal description prepared pursuant to **Section 4.2** attached thereto, fully executed and acknowledged by City, granting to BNSF an easement for the Replacement BNSF Property for the applicable BNSF Closing, subject only to the Permitted Encumbrances);

9.2.2 With respect to the First Closing, reasonable documentation of City's and Amtrak's execution of the Station Lease.

9.2.3 At all applicable Closings and in accordance with the Donation Allocation, City shall, to the extent permitted by law, deliver to BNSF any and all documentation necessary to complete and establish the Charitable Donation.

9.2.4 With respect to the First Closing, City shall deliver to BNSF the Cash Payment.

9.2.5 License Assignments, as applicable.

9.2.6 Rights of Entry agreements, as applicable.

9.2.7 Such other and further documents as may be reasonably required to consummate the transactions contemplated by this Agreement and for Title Company to issue the Replacement BNSF Property Owner Policy (defined below) in accordance with this Agreement.

9.2.8 Possession of the Replacement BNSF Property as required under this Agreement.

9.3 In addition to the foregoing, for each BNSF Closing, City shall cause Title Company to issue to BNSF an ALTA Owner's Extended Coverage Policy of Title Insurance ("**Replacement BNSF Property Owner Policy**") in the amount equal to the fair market value of the parcel of Replacement BNSF Property conveyed at such Closing (as determined by appraisal pursuant to the provisions of **Section 2.6**), insuring such parcel of Replacement BNSF Property conveyed to BNSF at the applicable BNSF Closing free and clear of all matters except the Permitted Encumbrances applicable to such parcel of Replacement BNSF Property.

9.4 The "**City Closings**" shall include the First Closing, the Second City Closing, the Third City Closing, the Fourth City Closing, and the Fifth City Closing (each as defined below).

9.4.1 First Closing. At the First Closing, BNSF shall convey to City BNSF's interest in (a) that portion of the Replacement City Property generally shown on **Exhibit J-1** attached hereto and incorporated herein by this reference, (b) any and all BNSF Reversionary Interests as generally shown on **Exhibit J-1** attached hereto and (c) any and all Other BNSF Reversionary Interests as generally shown on **Exhibit S** attached hereto, including any remaining improvements located on any such land (collectively, the "**First City Closing Property**").

9.4.2 Second City Closing. At the "**Second City Closing**", BNSF shall convey to City BNSF's interest in (a) that portion of the Replacement City Property generally shown on **Exhibit J-2** attached hereto and incorporated herein by this reference (the "**Holes in the Donut**"), and (b) any and all BNSF Reversionary Interests to the streets and alleys abutting the Holes in the Donut as generally shown on **Exhibit J-2** attached hereto, including any remaining improvements located on any such land (collectively, the "**Second City Closing Property**").

9.4.3 Third City Closing. At the "**Third City Closing**", BNSF shall convey to City BNSF's interest in (a) that portion of the Replacement City Property generally shown on **Exhibit J-3** attached hereto and incorporated herein by this reference; (b) any and all BNSF Reversionary Interests to the streets and alleys abutting such property and the BNSF Bridge as generally shown on **Exhibit J-3** attached hereto; and (c) the BNSF Bridge, including any remaining improvements located on any such land or the BNSF Bridge (collectively, the "**Third City Closing Property**").

9.4.4 Fourth City Closing. At the "**Fourth City Closing**", BNSF shall convey to City BNSF's interest in (a) the Replacement City Property generally shown on **Exhibit J-4**, attached hereto and incorporated herein by this reference, and (b) any and all BNSF Reversionary Interests to the streets and alleys abutting such property, including any remaining improvements located on any such land as generally shown on **Exhibit J-4** attached hereto (collectively, the "**Fourth City Closing Property**").

9.4.5 Fifth City Closing. At the "**Fifth City Closing**", BNSF shall convey to City BNSF's interest in (a) all Replacement City Property not previously conveyed to City in the previous Closings, as generally shown on **Exhibit J-5**, attached hereto and incorporated herein by this reference, and (b) any and all BNSF Reversionary Interests not previously conveyed to City in the previous Closings (collectively, the "**Fifth City Closing Property**").

9.4.6 The First City Closing Property, Second City Closing Property, Third City Closing Property, Fourth City Closing Property, and the Fifth City Closing Property shall be referred to collectively herein as the "**City Closing Properties**".

9.5 At each Closing, BNSF shall deliver, or cause to be delivered, to City the following items with respect to the applicable portion of the Replacement City Property:

9.5.1 A quitclaim deed ("**Replacement City Property Deed**") in the form attached to this Agreement as **Exhibit RR**, attached hereto and incorporated herein by this reference, fully executed and acknowledged by BNSF, to be countersigned and accepted by City at the applicable Closing, conveying to City BNSF's interest in the Replacement City Property for the applicable City Closing;

9.5.2 A quitclaim bill of sale ("**Bill of Sale**") in the form attached to this Agreement as **Exhibit PP**, attached hereto and incorporated herein by this reference, fully executed by BNSF, to be countersigned and accepted by City at Closing, conveying to City any remaining improvements located on the Replacement City Property for the applicable City Closing (other than remaining improvements necessary for BNSF's railroad operations as described in **Section 11.2.7.1** below), the cost of which is included in the Cash Payment;

9.5.3 With respect to the First Closing, **[** (i) a bill of sale quitclaiming to City the excavated fill described in **Section 11.2.4** below, the cost of which is included in the Cash Payment, and (ii) **]** reasonable documentation of BNSF's and Amtrak's execution of the Amtrak/BNSF Lease. [Bill of Sale subject to further discussion depending on construction work plan and protocols]

9.5.4 With respect to the Third City Closing, a bill of sale ("**Bridge Bill of Sale**") in the form attached hereto as **Exhibit PP-1** and incorporated herein by reference, fully executed and acknowledged by BNSF, quitclaiming to City the BNSF Bridge, the cost of which is included in the Cash Payment.

9.5.5 License Assignments, as applicable.

9.5.6 Rights of Entry agreements, as applicable.

9.5.7 Such other and further documents as may be reasonably required to consummate the transactions contemplated by this Agreement and for Title Company to issue the Replacement City Property Owner Policy in accordance with this Agreement, including, but not limited to, a Certificate of Succession and Aliases to be filed of record in the Office of the Register of Deeds of Lancaster County, Nebraska, as to the following entities: Atchinson and Nebraska Rail Road Company; Burlington Northern Railroad Company; Lincoln & North Western Railroad Company; Lincoln Northwestern Railroad Company; Atchinson and Nebraska Railroad Company; The Chicago Burlington & Quincy Railroad Company; certified copies of the Resolution of the Board of directors of BNSF authorizing the sale and conveyance of the Replacement City Property; and documentation that BNSF, a corporation of the State of Delaware is in good standing according to the Secretary of State, State of Delaware; and **[*Under review by BNSF*]**

9.5.8 Possession of the Replacement City Property as required under this Agreement.

9.6 BNSF acknowledges and agrees that City may, at City's sole cost and expense, obtain, to the extent obtainable, an ALTA Owner's Extended Coverage Policy of Title Insurance ("Replacement City Property Owner Policy") for all or any portion of the Replacement City Property conveyed at such City Closing insuring such parcel of Replacement City Property conveyed to City at the applicable City Closing, free and clear of all matters except the Permitted Encumbrances applicable to such parcel of Replacement City Property.

Section 10. Taxes.

10.1 City Replacement Property.

10.1.1 Locally Assessed Taxes. BNSF shall pay on or before each City Closing Date all locally assessed (i.e., not centrally assessed) real estate taxes, personal property taxes, and special tax assessments ("**Taxes**") levied or assessed against the applicable Replacement City Property that are due and payable on or before such City Closing Date. City shall pay, without proration, all locally assessed real estate taxes and special tax assessments (but not personal property taxes) levied or assessed against the applicable Replacement City Property that are not yet due and payable as of each City Closing Date. BNSF shall pay all locally assessed personal property taxes levied against existing improvements of BNSF remaining on the applicable City Replacement Property that are not yet due and payable as of each City Closing Date.

10.1.2 Centrally Assessed Taxes. BNSF shall pay all real estate and personal property taxes centrally assessed against the Replacement City Property for the year of Closing and all prior years.

10.2 BNSF Replacement Property.

10.2.1 Locally Assessed Taxes. City shall pay on or before each BNSF Closing Date all locally assessed Taxes against the applicable Replacement BNSF Property that are due and payable on such BNSF Closing Date. Locally assessed Taxes levied and/or assessed against the BNSF Replacement Property that are not due and payable as of such BNSF Closing Date shall be prorated to the date of Closing at the prior year tax rate and assessed value.

10.2.2 Centrally Assessed Taxes. City shall pay or cause UP to pay all taxes centrally assessed against the UP/Replacement BNSF Property for the year of Closing and all prior years.

Section 11. Due Diligence Period; Condition of Exchange Properties; Release and Indemnity.
All of Section 11 subject to further discussion

11.1 Replacement BNSF Property.

11.1.1 BNSF shall be allowed to conduct Tests (defined below) and evaluate and inspect the Replacement BNSF Property, City Existing Information, and other information related to the Replacement BNSF Property for the "**BNSF Due Diligence Period**" described herein. The BNSF Due Diligence Period shall commence upon the Effective Date and continue until the date that is 60 days after the date upon which BNSF receives the last of the City Existing Information, Title Insurance Commitments, Replacement BNSF Property Surveys, environmental reports, and any other deliverables from City, and has been granted access to the Replacement BNSF Property (except for N Street Company LLC parcel) for such evaluation and inspection purposes (but in no event less than 60 days after the Effective Date), except as otherwise waived in writing. To the extent City has not completed the Initial Acquisitions, City will reasonably cooperate with BNSF and obtain rights from the underlying landowners as necessary to facilitate BNSF's due diligence investigations and evaluations. During the BNSF Due Diligence Period, BNSF will determine whether BNSF is willing to accept the physical, title, and environmental conditions of each parcel comprising the Replacement BNSF Property. BNSF shall perform investigations of the Replacement BNSF Property as it deems necessary to determine the condition of the Replacement BNSF Property, including without limitation the physical condition, the environmental condition, and the condition of title.

11.1.2 In addition to BNSF's rights during the BNSF Due Diligence Period, BNSF shall have the right to perform a final walk-through inspection, and to review the applicable Title Commitments and any additional or updated Existing City Information during the week prior to each of the First Closing and the BNSF Second Closing (collectively, the "**BNSF Pre-Conveyance Reviews**" and each individually a "**BNSF Pre-Conveyance Review**") to confirm there have been no material changes to the Replacement BNSF Property or to the title thereof.

11.1.2.1 If the BNSF Pre-Conveyance Review conducted before the First Closing reveals material changes to the Replacement BNSF Property or to the title thereof that did not exist as of the expiration of the BNSF Due Diligence Period and the BNSF Title Termination Deadline, that are not acceptable to BNSF, then BNSF shall deliver to City written notice specifying BNSF's objections ("**BNSF Pre-Conveyance Review Objections**") prior to the First Closing. If BNSF Pre-Conveyance Review Objections are made, City will use reasonable efforts to, but is not obligated to, cure any BNSF Pre-Conveyance Review Objections within thirty (30) days from the receipt of the notice and in any event prior to the First Closing. If such changes are not cured by City within such time period, then BNSF may either (i) terminate this Agreement by giving written notice thereof to City prior to the First Closing, and, upon such termination, neither Party will have any further rights or obligations under this Agreement, or (ii) waive any objections and proceed to the First Closing.

11.1.2.2 If the BNSF Pre-Conveyance Review conducted for the Second BNSF Closing, reveals material changes to the Replacement BNSF Property not conveyed to BNSF at the First Closing or to the title thereof that did not exist as of the expiration of the BNSF Due Diligence Period and the BNSF Title Termination Deadline that are not acceptable to BNSF, then City shall cure such changes within thirty (30) days and indemnify BNSF from any BNSF Losses (defined below) arising out of such changes. BNSF shall have no obligation to consummate the Second BNSF Closing until City has complied with the provisions of this **Section 11.1.2.2** to BNSF's satisfaction.

11.1.3 BNSF represents and warrants to City that BNSF has not relied and will not rely on, and City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Replacement BNSF Property or relating thereto (including specifically, without limitation, any City Existing Information related to the Replacement BNSF

Property) made or furnished by City or any agent representing or purporting to represent City, to whomever made or given, directly or indirectly, orally or in writing.

11.1.4 Prior to City's quitclaim of the Replacement BNSF Property to BNSF, City shall, at its sole cost and expense, remove all debris, rubbish, litter, refuse, and other materials and improvements as directed by BNSF from the Replacement BNSF Property. City shall have no obligations with respect to any improvements remaining on the Replacement BNSF Property following the applicable Closing.

11.1.5 **SUBJECT TO SECTION 11.4 BELOW, BNSF IS ACCEPTING THE REPLACEMENT BNSF PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE REPLACEMENT BNSF PROPERTY**, including, but not limited to, the physical condition of the Replacement BNSF Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance with laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Replacement BNSF Property; the condition or existence of any above ground or underground structures or improvements; the condition of title to the Replacement BNSF Property, and the existence of any leases, easements, permits, orders, licenses, or other agreements, affecting the Replacement BNSF Property (collectively, the "**Replacement BNSF Property Conditions**").

11.2 Replacement City Property.

11.2.1 City acknowledges and agrees that it has been allowed to perform an inspection of the Replacement City Property pursuant to the provisions of (i) that certain License for Environmental Access between BNSF and HWS Consulting Group, Inc. (as the inspecting agent for City) dated June 11, 2008, and as modified by that certain Supplemental Agreement dated December 17, 2008 (collectively, the "**HWS Entry Agreement**"), (ii) that certain License between BNSF and City, dated _____ to permit the City and its Personnel, at its election and expense, to implement the Title 200 Work Plan (NDEQ Files #062076; UG #07116-MBS-1100) and to implement the West Haymarket Project Final Design including but not limited to design, surveys, testing, geotechnical studies, site preparation, grading, clean-up, monitoring wells, utilities, roadways, and initial construction for the West Haymarket Project on those portions of the Transferred BNSF Property that will be quitclaimed to City in the Second BNSF Closing (collectively, the "**City Entry Agreement**", and (iii) this **Section 11.2**.

11.2.2 In addition to its previous inspection, City shall have the right to perform a final walk-through inspection, and to review any Title Commitments during the week prior to the applicable Closing (collectively, the "**City Pre-Conveyance Reviews**" and each individually a "**City Pre-Conveyance Review**") to confirm there have been no material changes to the applicable Replacement City Property. Any entry by City onto the Replacement City Property prior to Closing shall be subject to the terms and conditions of the Entry Agreement.

11.2.2.1 If a City Pre-Conveyance Review conducted before the First Closing reveals material changes to the First City Closing Property or to the title thereof that did not exist as of the expiration of the City Due Diligence Period and the City Title Termination Deadline, that are not acceptable to the City, then the City shall personally deliver to BNSF written notice specifying the City's Objections ("**City Pre-Conveyance Review Objections**") prior to or on the date of Closing. If the City Pre-Conveyance Review Objections are made, BNSF will use reasonable efforts to, but is not obligated to, cure any City Pre-Conveyance Review Objections within thirty (30) days from the receipt of the notice and in any event prior to the First Closing. If such changes are not cured by BNSF within such time period, then City may either (i) terminate this Agreement by giving written notice thereof to BNSF prior to the First Closing, and, upon such termination, neither Party

will have any further rights or obligations under this Agreement except as expressly survive termination, or (ii) waive objections and proceed to the First Closing.

11.2.2.2 If a City Pre-Conveyance Review conducted for the other City Closings reveals material changes to the Replacement City Property or to the title thereof that did not exist as of the expiration of the City Due Diligence Period and the City Title Termination Deadline for the remaining City Closings, and if such changes (i) are not acceptable to City, (ii) are a direct result of the negligence or intentional misconduct of BNSF, and (iii) are not covered by City's indemnification obligation under **Section 11.4** below, then BNSF shall cure such changes within thirty (30) days or indemnify from any City Losses (defined below) arising out of such changes. City shall have no obligation to consummate the remaining City Closings until BNSF has complied with the provisions of this **Section 11.2.2.2** to City's satisfaction.

11.2.3 **CITY IS ACCEPTING THE REPLACEMENT CITY PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE REPLACEMENT CITY PROPERTY, AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM BNSF AS TO ANY MATTERS CONCERNING THE REPLACEMENT CITY PROPERTY**, including, but not limited to, the physical condition of the Replacement City Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Replacement City Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Replacement City Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Replacement City Property; the condition or existence of any above ground or underground structures or improvements, including tanks and transformers in, on or under the Replacement City Property; the condition of title to the Replacement City Property, and the existence of any leases, easements, permits, orders, licenses, or other agreements, affecting the Replacement City Property (collectively, the "**Replacement City Property Conditions**").

11.2.4 City acknowledges that portions of the Replacement City Property are subject to certain environmental remediation under applicable laws and regulations administered and enforced by the Nebraska Department of Environmental Quality (NDEQ Files #062076; UG #07116-MBS-1100). BNSF understands and acknowledges that under applicable NDEQ laws and regulations, BNSF is deemed the responsible party and that it retains responsibility for this on-going environmental remediation as between BNSF and the NDEQ. However, as between City and BNSF, City shall be solely responsible for all such environmental remediation, and City agrees to assume and perform such environmental remediation, provided that BNSF agrees as the party responsible to NDEQ to: (i) designate City (or at City's discretion, City's contractor) as BNSF's designated representative; (ii) allow City to submit a more aggressive remedial action work plan (prepared by City or City's contractor) for completing BNSF's environmental obligations, subject to the review and approval of NDEQ; (iii) allow City or City's contractor to carry out such remedial action work plan as proposed and approved; (iv) allow City or City's contractor, as BNSF's designated representative, to submit requests for and receive direct reimbursement for the approved remedial actions from NDEQ Title 200 funds, or other such available funds; and (v) following completion of such remedial actions, provide City the NDEQ-issued "No Further Action" letter for the property. If NDEQ Title 200 funds are unavailable or insufficient for any reason to complete all remediation, City shall nevertheless be solely responsible for all costs of remediation as between City and BNSF, and City's release and indemnity obligations set forth herein shall include such remediation and any funding shortfalls. Following completion of remediation, City shall cooperate with BNSF to cause NDEQ to look solely to City thereafter. City further acknowledges that BNSF plans to excavate materials from Exchange Properties and to quitclaim such fill materials to City by quitclaim bill of sale at the First Closing. City shall be responsible for testing, managing, and transporting such material to Replacement BNSF Property for stockpiling

and future usage, including any necessary treatment and disposal, and City's foregoing release and indemnity expressly includes such excavated materials.

11.2.5 City represents and warrants to BNSF that City has not relied and will not rely on, and BNSF is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Replacement City Property or relating thereto (including specifically, without limitation, any BNSF Existing Information related to the Replacement City Property) made or furnished by BNSF or any agent representing or purporting to represent BNSF, to whomever made or given, directly or indirectly, orally or in writing.

11.2.6 Subject to **Section 11.2.7**, BNSF shall have the right, but not the obligation, to remove all or any portion of improvements from the Replacement City Property prior to BNSF's quitclaim of the Replacement City Property to City; provided, however, that BNSF shall not have the right or the obligation to remove the BNSF Bridge. BNSF shall have no obligations with respect to any improvements or other materials remaining on the Replacement City Property on or after BNSF's quitclaim of the Replacement City Property to City. Notwithstanding the foregoing, BNSF will pull up all tracks and ties from tracks 204, 205, 309, 310, 320, 321, 322, and 323, and a portion consisting of eight hundred (800) feet of track 324 (collectively, the "**Removed Tracks & Ties**") within ten (10) days after the applicable Closing, stockpile such Removed Tracks & Ties, and load such Removed Tracks & Ties onto cars supplied by BNSF for shipment to and disposal at an appropriate disposal site. BNSF's costs of pulling up, stockpiling and loading the Removed Tracks & Ties onto cars shall be treated as BNSF Additional City Cost Work (as defined in the Master Agreement). BNSF's right to enter upon the Replacement City Property to pull up, stockpile and load the Removed Tracks & Ties onto cars, and all obligations of City under the provisions of this **Section 11.2.6,** shall survive all Closings hereunder. Except with respect to the Removed Tracks & Ties, BNSF shall not be responsible for removal or disposal of tracks or ties, or any costs of track and tie removal or disposal, for or from any Replacement City Property.

11.2.7 If, after the applicable Closing, improvements belonging to BNSF or third parties that are not covered by Longitudinal Agreements and were not assigned to City pursuant to a License Assignment are discovered on Replacement City Property, then the Party discovering such improvements shall promptly notify the other Party in writing thereof.

11.2.7.1 If such improvements are necessary for BNSF's railroad operations or otherwise, as determined by BNSF in BNSF's sole discretion and the remaining improvements do not materially interfere with City's intended use of the Replacement City Property, as determined by City in City's sole discretion, then BNSF may request that City, at City's election, to either (i) permit BNSF to enter upon the Replacement City Property, upon notice to City, to remove and relocate such improvements to a location off of the Replacement City Property, such removal and relocation to be at City's sole cost and expense, or (ii) promptly obtain and for no monetary consideration, a permanent easement from City to BNSF in form and substance acceptable to BNSF for the Operation (as defined in the Master Agreement) of such improvements. If BNSF elects to remove and relocate such improvements, then BNSF shall have a reasonable amount of time for the Operation of such improvements prior to such removal and relocation.

11.2.7.2 If such improvements are necessary for BNSF's railroad operations or otherwise, as determined by BNSF in BNSF's sole discretion, and the remaining improvements materially interfere with City's intended use of the Replacement City Property, as determined by City in City's sole discretion, then BNSF shall have the right to enter upon the Replacement City Property, upon notice to City, to remove and relocate such improvements to a location off of the Replacement City Property, such removal and relocation to be at City's sole cost and expense. If BNSF elects to remove and relocate such improvements, then BNSF shall have a reasonable amount of time for the Operation of such improvements prior to such removal and relocation.

11.2.7.3 If such improvements are not necessary or desirable for BNSF's railroad operations or otherwise, as determined by BNSF in BNSF's sole discretion, then BNSF shall quitclaim such improvements to City via a bill of sale in the form attached hereto as **Exhibit PP**, whereupon BNSF shall have no further obligations with respect to such improvements.

11.2.7.4 If such improvements belong to a third party, and BNSF determines it has a known license or similar agreement with such third party, then BNSF agrees, at no cost to BNSF, to assign such license or similar agreement to City; provided, however, if such improvements are not covered by an agreement with BNSF, and/or a license or similar agreement cannot be located by BNSF, then BNSF shall notify City of such in writing. Upon such assignment or notification, BNSF shall have no further obligations with respect to such improvements.

11.2.7.5 All rights of BNSF under the provisions of this **Section 11.2.7** shall survive all Closings hereunder.

11.2.8 Notwithstanding anything in this Agreement to the contrary, City acknowledges and affirms that BNSF may not hold fee simple title to the Replacement City Property and that BNSF's interest in all or part of the Replacement City Property, if any, may rise only to the level of an easement for railroad purposes. City is willing to accept BNSF's interest in the Replacement City Property, if any, on this basis and expressly releases BNSF, its successors and assigns from any claims that City or its successors may have as a result of an abandonment of the line of rail running over or adjacent to any portion of the Replacement City Property. In light of BNSF's disclosure that it may not hold a fee interest in all or part of the Replacement City Property, City agrees to indemnify, defend and hold BNSF harmless from any suit or claim for damages, punitive or otherwise, expenses, attorneys' fees, or civil penalties that may be imposed on BNSF as the result of any person or entity claiming an interest in any portion of the Replacement City Property or claiming that BNSF did not have the right to transfer all or part of the Replacement City Property to City.

11.3 Waiver of Municipal and Sovereign Immunity. To the fullest extent permitted by law, City waives its municipal immunity and its sovereign immunity with respect to BNSF arising out of the West Haymarket Project (defined in the Master Agreement), the Rights of Entry agreements and the Master Agreement, including, without limitation, (i) for environmental issues on BNSF Replacement Property that City is conveying to BNSF pursuant to this Agreement and the Master Agreement; (ii) for the environmental condition of the City Replacement Property that BNSF is quitclaiming to City and of property related to the West Haymarket Project that was formerly, but not currently, owned by BNSF and BNSF's predecessors-in-interest, including remediation costs beyond NDEQ Title 200 funds; (iii) for claims arising out of work performed by City or its contractors pursuant to the provisions of this Agreement, the Master Agreement, and the Rights of Entry agreements; and (iv) for claims arising out of continuing rights of City to enter onto the Existing BNSF Property and Future BNSF Property, including work performed by City and City's contractors on such property of BNSF. City's waiver of sovereign immunity herein shall be in addition to, and not in limitation of, City's waiver of sovereign immunity pursuant to the terms and provisions of the Master Agreement and the Rights of Entry agreements.

11.4 Release and Indemnity. To the fullest extent permitted by law, City assumes the risk that Hazardous Substances or other adverse violations of Environmental Laws may affect the Replacement City Property and other land acquired and/or developed by City as part of the Project, and to the fullest extent allowed by law hereby indemnifies, defends and holds harmless and hereby waives, releases and discharges forever BNSF and BNSF's officers, directors, employees and agents (collectively, "**BNSF Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees to the extent permitted by law) of any and every kind or character, known or unknown, arising from or in any way related to Hazardous Substances or other adverse violations of Environmental Laws of the Replacement City Property and any other land acquired and/or developed by City as part of the Project, including the alleged

presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Replacement City Property or such other property (collectively, the "**BNSF Losses**"). "**BNSF Losses**" shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) capital expenditures necessary to cause BNSF's remaining property or the operations or business of BNSF on its remaining property to be in compliance with the requirements of any Environmental Law, and (c) losses for injury or death of any person, and (d) losses arising under any Environmental Law enacted after transfer. The rights of BNSF under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of City to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Replacement City Property or such other property. **ALL INDEMNITY OBLIGATIONS OF CITY UNDER THIS SECTION 11.4 SHALL INCLUDE BNSF LOSSES CAUSED BY BNSF PRIOR TO THE APPLICABLE CLOSING, INCLUDING WITHOUT LIMITATION ANY NEGLIGENCE OF BNSF**, but shall exclude BNSF losses wholly caused by the sole negligence of BNSF or to the extent caused by the gross negligence or willful misconduct or BNSF and all cost, liability, or expense actually incurred by BNSF arising out of Hazardous Substances or other adverse violations of Environmental Laws of such property to the extent caused, contributed to, exacerbated or aggravated by BNSF after the date of conveyance.

11.5 For purposes of this Agreement:

11.5.1 "**Environmental Law(s)** " means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

11.5.2 "**Hazardous Substance(s)**" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

11.5.3 "**Environmental Matters**" means matters relating to the generation, manufacture, use, storage, handling, transportation and/or disposal of Hazardous Substances, or conditions with respect to the atmosphere, soil, surface and ground waters, wetlands, stream sediments, vegetation, endangered species and storm water runoff or discharge.

11.6 The provisions of this **Section 11** shall survive the Closing, bind each Party and their respective heirs, successors and assigns, shall be included in each Replacement City Property Deed and each Replacement BNSF Property Deed and shall be covenants running with the land.

Section 12. <u>BNSF Reserved Rights</u>.

12.1 Notwithstanding the provisions of **Section 2.4** above, the Parties acknowledge and agree that the Replacement City Property quitclaimed to City pursuant to this Agreement excludes all rights in and to the BNSF Reserved Rights (defined below), which BNSF Reserved Rights may be exercised by BNSF as deemed necessary or advisable by BNSF and without charge and without notification to City; provided, however, BNSF's exercise of the BNSF Reserved Rights shall not unreasonably interfere with City's and City's successor's and permitted assign's use and occupancy of the Replacement City Property. The BNSF Reserved Rights shall be binding upon City and its successors and assigns.

12.2 BNSF hereby specifically reserves to itself and its successors and assigns the following interests in the Replacement City Property, which are referred to herein collectively as the "**BNSF Reserved Rights**":

12.2.1 The Longitudinal Agreements and rights to the revenues or fees (collectively, "**License Fees**") attributable to any Longitudinal Agreements involving BNSF or the Replacement City Property of whatever nature. The Parties agree that BNSF shall reserve 100% of its rights to License Fees and this Agreement or the transactions contemplated hereunder shall not alter or otherwise affect such rights.

12.2.2 For BNSF improvements described in **Section 11.2.7.1** that BNSF elects to remove and relocate, BNSF has the limited right to enter upon the Replacement City Property to remove and relocate BNSF improvements as described in **Section 11.2.7.1** above. In addition to and not in limitation of the foregoing, BNSF has the right to continue to Operate such BNSF improvements for such time as is reasonably necessary for BNSF to remove and relocate the BNSF improvements or construct replacement improvements.

12.2.3 For BNSF improvements described in **Section 11.2.7.1** that BNSF desires to continue to Operate in place, BNSF has the right to obtain an easement from City for access to the BNSF improvements, and to Operate the BNSF improvements as described in **Section 11.2.7.1** above.

12.2.4 Any improvements constructed or altered on the Replacement City Property after the date BNSF quitclaims its interest to City shall be constructed or altered in such a manner to provide adequate drainage of water away from any of BNSF's railroad tracks on nearby property, except as expressly provided under the Master Agreement with regard to the Storm Water Mitigation Area.

12.3 The provisions of this **Section 12** shall survive the Closing and bind each Party and their respective heirs, successors and assigns. The provisions of **Sections 12.1** and **12.2** shall be included in each Replacement City Property Deed and the Bill of Sale and shall be covenants running with the land benefiting BNSF and BNSF's successors and assigns.

Section 13. ***Intentionally Deleted*.**

Section 14. **Default and Remedies.** If either Party fails to perform any of its obligations under this Agreement, and, after written notice is given by the non-defaulting Party to the defaulting Party specifying the default, the defaulting Party fails either to promptly commence to cure the default, or to complete the cure expeditiously but in all events to complete the cure within thirty (30) days after the default notice is given, then the non-defaulting Party may (i) seek specific performance of the unperformed obligations; or (ii) bring a claim for damages. Additionally, any default by City shall entitle BNSF to immediately suspend any further Closings. If BNSF suspends a Closing for more than eighteen (18) months, either Party shall have the right to terminate this Agreement and/or pursue any other remedies available at law or in equity. For purposes of this Agreement, a default in the Master Agreement or any of the Rights of Entry agreements shall be considered a default under this Agreement. The remedies set forth in this **Section 14** shall be in limitation of any other remedies that a Party may have at law or in equity.

Section 15. **Master Agreement.** Notwithstanding anything else herein to the contrary, in the event that, prior to the final Closing hereunder, the Master Agreement is terminated for any reason then either City or BNSF may terminate this Agreement, with respect only to all portions of the Exchange Properties that have not yet closed as contemplated herein, by giving written notice thereof to the other Party, and, upon such termination, neither Party will have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive termination of this Agreement.

Section 16. **Information.** If this Agreement is terminated without the final Closing having occurred, then promptly after such termination: (i) each Party shall deliver to the other Party, with respect solely to the Exchange Properties that have not been conveyed to the Transferee, legible copies of all property examinations, surveys, engineering and other inspections, tests and studies, including without limitation Phase I and Phase II environmental assessments (collectively, "**Tests**"), Property Surveys, studies, reports and other written materials obtained or produced solely with respect to its inspection and due diligence review of the other Party's Exchange Property that have not been conveyed to the Transferee and (ii) all copies of

the Existing Information provided to the other Party pursuant to the provisions of **Section 3** above. The Parties agree that the results of any Tests, Property Surveys, studies, reports and other written materials obtained or produced with respect to its inspection and due diligence review of the of the other Party's Exchange Property conducted shall be maintained in absolute confidence, except as otherwise required by law or order of a court with jurisdiction. The obligations under this **Section 16** shall survive the termination of this Agreement.

Section 17. **No Brokers.** The Parties agree that there are no brokers involved in connection with this exchange. EACH PARTY AGREES TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM AND AGAINST THE CLAIMS, DEMANDS, CAUSES OF ACTION, OR OTHER LIABILITY OF ANY AGENT, BROKER, OR OTHER SIMILAR PARTY ARISING FROM OR PERTAINING TO ANY BROKERAGE COMMISSION, FEE, COST, OR OTHER EXPENSE IN CONNECTION WITH THE EXCHANGE OF THE EXCHANGE PROPERTY, TO THE EXTENT SUCH CLAIMS, DEMANDS, CAUSES OF ACTION, OR OTHER LIABILITY ARISE OUT OF ANY COMMITMENTS OR AGREEMENTS OF THE INDEMNIFYING PARTY.

Section 18. **Tax Effect.** No Party has made or is making any representations to the other concerning any of the tax effects of the transactions provided for in this Agreement. No Party shall be liable for or in any way responsible to any other Party because of any tax effect resulting from the transactions provided for in this Agreement.

Section 19. **Notice.** Any notice required or permitted to be given hereunder by one Party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the Party to be notified at the address for such Party specified below, or to such other address as the Party to be notified may designate by giving the other Party no less than thirty (30) days' advance written notice of such change in address:

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

If to BNSF: BNSF Railway Company
2500 Lou Menk Drive - AOB-3
Fort Worth, Texas 76131-2830
Attn: Corporate Real Estate Department
Tel: _____
Fax: _____

With a copy to: BNSF Railway Company
2500 Lou Menk Drive - AOB-3
Fort Worth, Texas 76131-2830
Attn: Robert J. Boileau, P.E., Assistant Vice President, Engineering Services
Tel: _____
Fax: _____

Section 20. **Miscellaneous.**

20.1 Time is of the essence of this Agreement.

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

20.3 This Agreement binds and is for the benefit of both Parties and their permitted successors and assigns. No Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF, provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to the JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to the JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) in no event shall this Agreement or any interest herein be assigned unless City's entire interest under the C&M Agreement, the Master Agreement, and all Rights of Entry agreements are assigned at the same time to the same assignee.

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

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

20.6 This Agreement, the Master Agreement, that certain Construction and Maintenance Agreement between BNSF and City of even date herewith, and the Rights of Entry agreements contain the entire agreement between BNSF and City with respect to the transactions described herein. Oral statements or prior written matters not specifically incorporated into this Agreement are superseded hereby. No variation, modification, or change to this Agreement shall bind either Party unless set forth in a document signed by both Parties. No failure or delay of either Party in exercising any right, power or privilege hereunder shall operate as a waiver of such Party's right to require strict compliance with any term of this Agreement. The captions next to the section numbers of this Agreement are for reference only and do not modify or affect this Agreement.

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

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

20.9 This Agreement is governed by and must be construed in accordance with the laws of the State of Nebraska.

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

20.11 If a Closing Date or the day for performance of any act required under this Agreement falls on a Saturday, Sunday or legal holiday, then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day.

20.12 All warranties, representations, covenants, obligations, and agreements contained in or arising out of this Agreement will survive the Closing and conveyance of the Replacement City Property and the Replacement BNSF Property. The indemnity obligations set forth in this Agreement shall survive all Closings under, or earlier termination of, this Agreement.

20.13 If prior to the Fifth City Closing any portion of the Exchange Properties that have not yet closed is the actual or threatened subject of a condemnation or eminent domain action (other than City's notification as detailed in **Section 2.3** above), the Party to which such Exchange Property is to be conveyed shall proceed to Closing and receive an assignment of all condemnation proceeds for the Exchange Property.

20.14 Nothing in this Agreement shall be deemed a submission by BNSF to the jurisdiction of any state or local body or a waiver of the preemptive effect of any state or federal law.

20.15 Each Transferor and Transferee will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such reasonable further confirmations, instruments, or further assurances and consents as may be reasonably necessary or proper in order to effectuate the covenants and agreements herein provided. Each Transferor and Transferee shall reasonably cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so reasonably requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement. Notwithstanding anything herein to the contrary, neither Party shall be required pursuant to this **Section 20.15** to incur any additional expense or accept or convey any property interests on terms or conditions that are not acceptable to such Party.

[*Signature Page Follows*]

Executed by the Parties as of the date below each Party's signature; to be effective, however, as of the Effective Date above.

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: _____

Exhibits to be attached to Agreement:

Exhibit B:	Existing BNSF Property
Exhibit B-1:	Retained BNSF Property / Transferred BNSF Property
Exhibit C:	BNSF Bridge
Exhibit D-1:	Vacated Right of Way/Replacement BNSF Property
Exhibit E-1:	UP/Replacement BNSF Property
Exhibit F-1:	Third Party/Replacement BNSF Property
Exhibit G:	First BNSF Closing Property
Exhibit G-1:	Second BNSF Closing Property
Exhibit J:	Replacement City Property
Exhibit J-1:	First City Closing Property
Exhibit J-2:	Second City Closing Property and Holes in the Donut
Exhibit J-3:	Third City Closing Property
Exhibit J-4:	Fourth City Closing Property
Exhibit J-5:	Fifth City Closing Property
Exhibit S:	Other BNSF Reversionary Interests (portion outside project footprint)
Exhibit Z:	*Intentionally Deleted.*
Exhibit PP:	Form of Bill of Sale
Exhibit PP-1:	Bridge Bill of Sale
Exhibit QQ:	Form of Replacement BNSF Property Deed
Exhibit QQ-1:	Form of Replacement BNSF Property Easement
Exhibit RR:	Form of Replacement City Property Deed
Exhibit SS:	Form of License Assignment

CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No._____

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

RECITALS

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

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

C. City and BNSF have entered into that certain Master Development Agreement of even date herewith (the "**Master Agreement**"). In connection with certain economic development objectives of City as set forth in the Master Agreement, City desires that BNSF grant certain permanent or temporary license and/or easement rights to City and certain third parties (each a "**Right of Entry**" and, in multiples, "**Rights of Entry**") for certain activities on BNSF's property (each a "**Right of Entry Work**" and collectively, "**Rights of Entry Work**"). All capitalized terms not defined herein shall have the same meaning as in the Master Agreement.

AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III – CITY OBLIGATIONS

3.1 Plans.

3.1.1 If any City C&M Work is not included in the City C&M Work Final Design (as defined in the Master Agreement), City must furnish to BNSF four sets of plans and specifications for such City C&M Work (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, for approval prior to commencement of any construction. BNSF shall approve or reject such plans and specifications within thirty (30) days after BNSF's receipt thereof and, if rejected, the reasons for such rejection shall be set forth in reasonable detail. Corrected plans and specifications shall be approved or rejected in the manner hereinbefore provided. BNSF will give City final written approval of the plans and specifications substantially in the form of **Exhibit B**, attached hereto and incorporated herein by reference. Upon BNSF's final written approval of the plans and specifications (the "**Approved Plans**"), the Approved Plans will become part of this C&M Agreement and incorporated herein. Any approval of the Approved Plans by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the Approved Plans meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the Approved Plans or construction is structurally sound and appropriate or that the Approved Plans meet applicable regulations, laws, statutes or local ordinances and/or building codes.

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

3.1.3 Prior to execution of this C&M Agreement, City shall have provided to BNSF exact minimum vertical and horizontal clearances for the City C&M Work being constructed pursuant to the City C&M Work Final Design, and such final clearances must have been previously approved by BNSF and attached hereto and incorporated herein as **Exhibit D** ("**Final Clearances**"). City shall not deviate from the Final Clearances agreed to prior to this C&M Agreement without the prior written approval of BNSF.

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

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

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

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

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

_____
_____
_____
_____

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

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

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

_____
_____
_____
_____

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

3.2 Additional City Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.3 Construction and Contractor Requirements.

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

3.3.2 Standards. All City C&M Work must performed (i) in a good and workmanlike manner, (ii) in accordance with the applicable City C&M Work Final Design or other Approved Plans, (iii) in conformance with applicable building codes and all applicable engineering, safety and any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**"), (iv) in accordance with the accepted industry standards of care, skill and diligence, and (v) in such a manner as shall not adversely affect the structural integrity or maintenance of any BNSF improvements or other improvements on or near BNSF property, or any lateral support of any structures adjacent to or in the proximity of any BNSF improvements or BNSF property. In addition, each portion of the City C&M Work must be promptly commenced by the Party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications of the City C&M Work which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from BNSF's Project Engineer.

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

3.3.4 Safety/Security.

3.3.4.1 During the City C&M Work, City, at City's sole cost, shall perform all activities and work in such a manner as to preclude personal injury or property damage to BNSF or any

other party, and shall ensure that there is no interference with the railroad operations or other activities of BNSF, or anyone present on BNSF's property with the authority or permission of BNSF. City shall not disturb any improvements of BNSF or BNSF's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements, except as permitted by **Section 3.3.5** below.

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

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

3.3.5 Disturbance of Improvements. City will be responsible at no cost to BNSF to locate and make any adjustments necessary to any wire lines, pipe lines, or other utilities, fences, buildings, improvements or other facilities located within BNSF's property (collectively, "**Other Improvements**"). City must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and, if required, obtain the owner's written approval prior to so affecting the Other Improvements. City must mark all BNSF improvements and Other Improvements on the applicable Approved Plans and mark all BNSF improvements and Other Improvements in the field in order to verify their locations. City must also use all reasonable methods when working on or near BNSF's property to determine if any BNSF improvements or Other Improvements (fiber optic, cable, communication or otherwise) may exist. Failure to mark or identify any BNSF improvements or Other Improvements will be sufficient cause for BNSF to stop construction at no cost to BNSF until such items are completed. City must make all adjustments and other work described in this **Section 3.3.5**, including without limitation adjustments to Other Improvements and work on and affecting BNSF property, in a manner that does not adversely impact utility service to BNSF. City shall use commercially reasonable efforts to cause, at its expense, any utilities for its operations to be separately metered from utilities serving BNSF's operations by the date set forth on the Timeline (as defined in the Master Agreement).

3.3.6 Flagging. Subject to modification in writing by BNSF's Division Engineer, no City Contractor shall conduct any activities on, or be present on, any portion of BNSF's property that is within twenty-five (25) feet of any active railroad track or where any such activities have the potential to foul any active railroad track, except in the presence of a flagger. In addition to and not in limitation of the foregoing, City shall, and shall cause its City Contractors to, comply with all BNSF requirements

concerning flagging, including without limitation the provisions of Section 1.05 of **Exhibit C**. BNSF shall arrange for the presence of flaggers as soon as practicable after receipt of notice from City in accordance with Section 1.05.01 of **Exhibit C**; provided, however, BNSF shall not be held responsible for City delays when flaggers are not available.

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

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

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

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

[3.4 Environmental Compliance and Notification. **]** Environmental provisions are subject to further discussion

3.4.1 Compliance with Environmental Laws. City shall cause its contractors and employees to strictly comply with all federal, state and local environmental laws and regulations in its use

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

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

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

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

3.5 Timing.

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

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

3.6 Indemnifications.

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

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

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

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

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

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

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

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

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

3.6.2 **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, CITY SHALL, AND SHALL CAUSE CITY'S CONTRACTORS TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT BNSF IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE EXCHANGE PROPERTIES (AS DEFINED IN THE EXCHANGE AGREEMENT), OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, FOR THE PURPOSES OF CERCLA OR OTHER**

ENVIRONMENTAL LAWS. CITY WILL, AND WILL CAUSE CITY'S CONTRACTORS TO, INDEMNIFY, DEFEND AND HOLD BNSF HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF BNSF. CITY FURTHER AGREES THAT THE USE OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA OR ANY PROPERTY ADJACENT THERETO, AS CONTEMPLATED BY THIS C&M AGREEMENT SHALL NOT IN ANY WAY SUBJECT BNSF TO CLAIMS THAT BNSF IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD BNSF HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL BNSF BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE EXCHANGE PROPERTIES, OR THE WEST HAYMARKET PROJECT AND/OR THE PROJECT AREA, OR ANY PROPERTY ADJACENT THERETO.

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

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

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

3.8 City Insurance Obligations.

3.8.1 During the Development Period (as defined in the Master Agreement), City shall, and shall require City Contractors to, at its sole cost and expense, procure and maintain the following insurance which may be provided through an Owner Controlled Insurance Policy ("**OCIP**"):

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

the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8.1.5 Other Requirements:

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

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

City is allowed to self-insure up to $250,000 per occurrence and $250,000 aggregate on General Liability and Automotive Liability and up to $500,000 per occurrence and $500,000 aggregate on Worker's Compensation Liability without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by City in lieu of insurance. Any and all Railroad Liabilities that would otherwise, in accordance with the provisions of this C&M Agreement, be covered by insurance will be covered as if City elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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

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

Upon notification to BNSF of cancellation, non-renewal, substitution or material alteration of any such policy(ies), BNSF shall have the option to (i) if feasible, pay, on behalf of the City, any and all such premiums, penalties, fees or expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market and procure such policy(ies) of insurance on behalf of City as required by this C&M Agreement at the then-current market rate. Upon any of the above occurrences, BNSF shall invoice the City for reimbursement of all such premiums, penalties, fees or expenses advanced on City's behalf plus

an additional fifteen (15%) of such advanced amounts as remuneration for BNSF's overhead. Such amounts advanced by BNSF shall be paid by City within thirty (30) days after delivery of a statement for such expense. Any insurance policy must be written by a reputable insurance company reasonably acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

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

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

If any portion of the operation is to be subcontracted by City and not included as part of City's OCIP coverage, City must require that City Contractors provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that City Contractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as City is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this **Section 3.8** will entitle, but not require, Railroad to immediately suspend Railroad's work and all City C&M Work, subject to termination as provided in the Master Agreement. Acceptance of a certificate that does not comply with this section will not operate as a waiver of City's obligations hereunder.

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

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

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

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

ARTICLE IV – MISCELLANEOUS

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

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

4.3 The covenants and provisions of this C&M Agreement are binding upon and inure to the benefit of the successors and assigns of the Parties. Notwithstanding the preceding sentence, neither Party may assign its rights and obligations hereunder without the prior written consent of the other Party. Any permitted assignment shall not terminate the liability of the assigning Party, unless a specific release of such liability in writing is given and signed by the other Party. Notwithstanding any contrary provision herein; City shall have the right to assign this C&M Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of BNSF provided (i) City delivers prior written notification to BNSF of the assignment, (ii) City and JPA enters into BNSF's then-standard Consent to Assignment form, pursuant to which City will remain jointly and severally liable for all of City's obligations hereunder, including without limitation City's liability and indemnification obligations; provided that BNSF agrees it will first send any claim or notice of default to the JPA and will not pursue any action against City until thirty (30) days after the date of such claim or notice to the JPA, unless failure to pursue action against City during such time would otherwise prejudice BNSF's rights, and (iii) in no event shall this C&M Agreement or any interest herein be assigned unless City's entire interest under the Master Agreement, the Exchange Agreement, and all Rights of Entry agreements are assigned at the same time to the same assignee.

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

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

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

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

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

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

4.8 In any action (declaratory or otherwise) brought by either Party in connection with or arising out of the terms of this C&M Agreement, the prevailing Party in such action will be entitled to

recover from the non-prevailing Party all actual costs, actual damages, and actual expenses, including, without limitation, reasonable attorneys' fees and charges to the fullest extent permitted by law.

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

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

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

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

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

4.14 As of this same Effective Date, City and BNSF have also entered into the Master Agreement, the Exchange Agreement and to the extent executed, certain Right of Entry licenses and/or easements. After the Effective Date and upon completion of additional design work, City and BNSF expect to execute other Right of Entry licenses and/or easements. City and BNSF agree that, except as otherwise stated in Section 4.1 of the Master Agreement: (i) in the event the terms of the Master Agreement and the terms of the C&M Agreement, the Exchange Agreement and the various licenses and/or easements are inconsistent, then the Master Agreement shall prevail; (ii) in the event the terms of the Exchange Agreement and the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the Exchange Agreement shall prevail, and (iii) in the event the terms of the C&M Agreement and the various licenses and/or easements are inconsistent, then the C&M Agreement shall prevail.

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

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

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

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

CITY OF LINCOLN, NEBRASKA, a Nebraska municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____

BNSF RAILWAY COMPANY, a Delaware corporation

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

Date: _____

EXHIBIT A

Project Area

EXHIBIT B

Form of BNSF Plan Approval

[Public Projects Manager's letterhead]

Date: _____

Mr./Ms. _____
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

Re: Final Approval of Plans and Specifications dated _____, 20__, drafted by _____ **[insert name of architecture or engineering firm here]** (hereinafter called, the "**Plans and Specifications**")

Dear _____:

This letter serves as BNSF Railway Company's ("**BNSF**") final written approval of the Plans and Specifications covering the construction of _____ **[insert description of the project here]**. This final written approval is given to the City of Lincoln, Nebraska ("**City**") pursuant to Section 3.1.1 of that certain Construction and Maintenance Agreement between BNSF and City, dated _____, 2010. If the Plans and Specifications are revised by City subsequent to the date set forth above, this letter shall no longer serve as final written approval of the Plans and Specifications and City must resubmit said Plans and Specifications to BNSF for final written approval.

Regards,

_____ [Public Projects Manager's Name]

EXHIBIT C

[Insert Exhibit C (Form 0102) and C-1 (Form 0107) here]

EXHIBIT C-1

EXHIBIT D

Final Clearances

81522

AIA® Document B103™ – 2007

Standard Form of Agreement Between Owner and Architect
for a Large or Complex Project

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

City of Lincoln, Nebraska

and the Architect:
(Name, address and other information)

DLR Group, inc. (a Nebraska Corporation)

for the following Project:
(Name, location and detailed description)

West Haymarket Civic Arena. Pre-Election Bond Issue and Design. The Owner and Architect recognize and agree that unless and until the voters of the City of Lincoln approve the issuance of a bond or bonds for the financing of the Project, the Scope of Services for the initial phase of this Agreement is limited to completion of cost of Work estimate by December 31, 2008, and twenty-five percent (25%) of the work of the Schematic Design Phase which 25% portion shall be completed by January 31, 2009 (the "Initial Phase"). Architect understands and acknowledges that future phases of this Agreement beyond completion of the Initial Phase will require approval of the City Council for the City of Lincoln.

The Owner and Architect agree as follows.

The Owner and Architect recognize and agree that the Architect's performance of the total scope of work set forth herein is expressly subject to the right of the Owner to terminate the Architect, without cause, as a consequence of a determination by the voters of the City of Lincoln regarding the financing of the Project pursuant to a bond issue and that such voter determination will not take place until approximately May, 2009, but may be delayed until sometime in 2010, or for the Owner's own convenience even though the basis for such termination is within the control of the Owner and Owner still intends to proceed forward with the balance of the Project utilizing another architect. The express terms and provisions of such a termination without any fault of the Architect set forth in Article 9 are only applicable in the event such services are terminated prior to completion of the Initial Phase.

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

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

Init.
/

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User Notes:

(1784310431)

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13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable, "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

To be provided as shown on Exhibit A

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project shall include the following:

1. Site work,
2. Up to a 16,000 seat arena,
3. South parking,
4. North parking,
5. Bridge, and
6. Garage
7. Estimate of Cost

(See Exhibits A and B, Pre Bond Issue Services)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

Init. /

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User Notes: (1784310431)

The parties agree that upon completion of the Cost of the Work estimate by the Architect to promptly meet and use their best efforts to develop the Owner's budget.

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

January 31, 2009 for twenty-five percent (25%) completion of Schematic Design and December 31, 2008 for the Cost of the Work estimate.

.2 Commencement of construction:

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

.3 Substantial Completion date or milestone dates:

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

.4 Other:

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract or construction management.)

NOTE: IT IS VITALLY IMPORTANT FOR THIS TO BE DETERMINED BY THE OWNWER AT THE EARLIEST OPPORTUNITY

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

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User Notes:

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address and other information.)

Kent Morgan, City of Lincoln, Nebraska

If a hotel and/or convention center becomes a part of or is to be associated with the Project, beyond the level of Work identified as part of the Initial Phase, Architect and Owner shall, at the time such decision(s) is made, mutually agree upon the nature and scope of services which Architect shall furnish in connection therewith and shall also agree upon compensation for such services.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 1.1.10 The Owner will retain the following consultants and contractors:
(List name, address and other information.)

.1 Deleted.

.2 Scheduling Consultant:

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

.3 Geotechnical Engineer:

HWS, Lincoln, Nebraska

.4 Civil Engineer:

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

.5 Other, if any:
(List any other consultants or contractors retained by the Owner, such as a Project or Program Manager, construction contractor, or construction manager as constructor.)

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

Jay Palu, DLR Group

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§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Thornton Thomasetti

.2 Mechanical Engineer:

DLR Group

.3 Electrical Engineer:

DLR Group

.4 Cost Consultant

Turner Construction

.5 CLS

§ 1.1.12.2 Consultants retained under Additional Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

If a hotel and/or convention center becomes a part of or is to be associated with the Project, beyond the level of Work identified as part of the Initial Phase, Architect and Owner shall, at the time such decision(s) is made, mutually agree upon the nature and scope of services which Architect shall furnish in connection therewith and shall also agree upon compensation for such services.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances and who design and/or have designed arenas of a type and size similar to the Project. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

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§ 2.5.1 Comprehensive General Liability with policy limits of not less than One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) in the aggregate for bodily injury and property damage. Owner is to be included under such policy as additional insured to the extent of liability assumed by Architect, with coverage to be primary and not contributory with any such coverage maintained by Owner. The policy shall contain a severability of interests provision in favor of the additional insureds.

§ 2.5.2 Automobile Liability covering owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than One Million Dollars ($1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than the following:

Employer Liability:	
Bodily injury by accident	$500,000
Bodily injury by disease - policy limits	$500,000
Bodily injury by disease - each employee	$500,000

§ 2.5.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than Two Million Dollars ($2,000,000.00) per claim and in the aggregate. Coverage shall be maintained for the term of services under this Agreement. If the Project goes beyond the Schematic Design Phase, the Owner may require Architect to provide Professional Liability with limits of not less than Five Million Dollars ($5,000,000) per claim an din the aggregate. If Owner chooses to acquire a policy of professional liability insurance for the Project, then Owner and Architect must agree on the limits of coverage, parties covered, deductible required and length of the policy period after substantial completion of the services.

§ 2.5.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. All deductibles and premiums associated with the above coverages except a project specific policy of professional liability insurance shall be the responsibility of Architect. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project in the reasonable discretion of the Architect. Architect shall utilize all reasonable efforts to require its consultants and contractors to maintain Professional Liability insurance with policy limits of Two Million Dollars ($2,000,000.00) per claim and in the aggregate. The Architect and Consultants shall submit proof of such insurance to the Owner before submittal of the first invoice. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

NOTE: IF THE OWNER DETERMINES THAT IT IS GOING TO OBTAIN AN OCIP FOR THE PROJECT THEN ADJUSTMENTS TO THE LANGUAGE OF THIS ARTICLE WILL BE REQUIRED

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information prepared and furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or

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information. The Owner and Architect understand and agree that the Architect is only entitled to rely upon the services or information prepared and furnished by the Owner or the Owner's consultants in connection with the Project.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Scheduling Consultant a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Scheduling Consultant and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Architect shall coordinate its work during the Initial Phase with the anticipated development of adjacent facilities by others. Such adjacent facilities include the potential hotel, sports practice facility, and convention center. The Architect's cooperation obligation during performance of the Initial Phase services shall be to coordinate the design of a potential common wall between the arena and the hotel with the architect for the hotel; identify potential connection points for a possible civic center to be located upon the U.S. Post Office Site and reserve and denote space in the site plan for the sports practice facility.

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§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 Deleted.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and request the written approval from the Owner of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase in accordance with Sections 6.1.1 through 6.1.4.4.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner for review and written approval. If revisions to Design Development Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase, the Architect shall incorporate the required revisions in the Construction Document Phase in accordance with Sections 6.1.1 through 6.1.4.4.

§ 3.3.3 Owner and Architect will at a mutually agreed upon date discuss and agree upon timing intervals for the Architect to provide drawings and other reasonable appropriate documents which represent the then current stage of Design Development. Such mutual agreement shall also describe the deliverables to be provided by the Architect upon completion of Design Development.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions).

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The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner for review and written approval. If revisions to Construction Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase, the Architect shall incorporate the required revisions in accordance with Sections 6.1.1 through 6.1.4.4.

§ 3.4.5 Deleted.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- **.1** facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- **.2** participating in a pre-bid conference for prospective bidders, and
- **.3** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- **.1** facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- **.2** participating in selection interviews with prospective contractors; and
- **.3** participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work which the Architect reasonably believes are indicated by changes in requirements or general market conditions. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts, errors, or omissions, but shall not

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have control over or charge of, and shall not be responsible for, acts, errors, or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall advise the Owner in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall act of the Owner's representative in interpreting the requirements of the Contract Documents and in judging the performance of the Contractor thereunder. The Architect's response to requests from Owner concerning performance under and the requirements of the Contract Documents shall be made in writing within a mutually agreed upon time period or otherwise with reasonable promptness.

§ 3.6.2.4 In any dispute between the Owner and Contractor, the Architect shall, upon request by Owner, advise the Owner on issues concerning performance under the Contract Documents. Architect may decide any such performance issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

§ 3.6.2.5 Deleted.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

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§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

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§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Except as may otherwise be noted below, the parties agree to revisit and determine at a later date if the Architect shall provide any of the Additional Services listed below. The parties agree that the Architect's Cost Consultant will be responsible for the preparation of a Cost of the Work estimate by December 31, 2008 based upon twenty-five percent (25%) completion of Schematic Design and that the cost for such service is included in the basic services fee. Any additional cost estimating services as well as responsibility therefor will be hereafter mutually agreed upon by the parties as hereinabove provided.

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

Services		**Responsibility** *(Architect, Owner or Not Provided)*	**Location of Service Description** *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1	Programming	Architect	
§ 4.1.2	Multiple preliminary designs		
§ 4.1.3	Measured drawings		
§ 4.1.4	Existing facilities surveys		
§ 4.1.5	Site Evaluation and Planning (B203™–2007)		
§ 4.1.6	Building information modeling		
§ 4.1.7	Civil engineering		
§ 4.1.8	Landscape design		
§ 4.1.9	Architectural Interior Design (B252™–2007)		
§ 4.1.10	Value Analysis (B204™–2007)		
§ 4.1.11	Detailed cost estimating		
§ 4.1.12	On-site project representation		
§ 4.1.13	Conformed construction documents		
§ 4.1.14	As designed record drawings		
§ 4.1.15	As constructed record drawings		
§ 4.1.16	Post occupancy evaluation		
§ 4.1.17	Facility Support Services (B210™–2007)		
§ 4.1.18	Tenant-related services		
§ 4.1.19	Coordination of Owner's consultants		
§ 4.1.20	Telecommunications/data design		
§ 4.1.21	Security Evaluation and Planning (B206™–2007)		
§ 4.1.22	Commissioning (B211™–2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™–2007)		

Init.
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§ 4.1.25	Historic Preservation (B205™–2007)		
§ 4.1.26	Furniture, Finishings, and Equipment Design (B253™–2007)		
§ 4.1.27	Community Engagement / Outreach except to the extent provided for in Exhibit B.	Architect	Section 4.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.14 Providing services in connection with building commissioning.

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

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study

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and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker;

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

.7 Failure of performance of Owner's consultants or contractors.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein. When the limits below are reached, the Architect shall notify the Owner:

.1 ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 ( ) visits to the site by the Architect over the duration of the Project during construction

.3 ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 ( ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 In the event the Owner receives voter approval to issue a bond or bonds for the financing of the Project, the Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

THE RESPONSIBILITY FOR EMPLOYMENT OF A SCHEDULING CONSULTANT NEEDS TO BE DISCUSSED AND RESOLVED. THIS WILL DEPEND IN PART ON THE PROJECT DELIVERY METHOD CHOSEN FOR THE PROJECT.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign

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portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land,

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rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.1.1 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect agrees that, if the lowest bonafide bid or negotiated price for the entire Scope of Work is greater than ten percent (10%)] of the Architect's estimate of the Cost of the Work most recently approved by the Owner, the Owner may elect to require the Architect to perform, at no cost to the Owner, all necessary services to modify the documents to indicate a design that is approved by the Owner and that conforms to the approved Cost of the Work. The Owner may exercise any of the other options listed in Section 6.1.4.

§ 6.1.2 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

§ 6.1.3 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 6.1.4 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** authorize rebidding or renegotiating of the Project within a reasonable time;
- **.3** terminate in accordance with Section 9.5; or
- **.4** cooperate in revising the Project scope and quality as required to reduce the Cost of the Work

If the Owner chooses to proceed under .4 above, the Architect shall, without additional charge, modify the Contract Documents as reasonably necessary to meet the reduced Cost of the Work..

§ 6.2 Deleted.

§ 6.3 Deleted.

§ 6.4 Deleted.

§ 6.5
(Paragraphs deleted)
Deleted.

§ 6.6 Deleted.

§ 6.7 Deleted.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Ownership of Architect's Instruments of Service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use if so desired. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for and against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

§ 7.3 Deleted.

§ 7.3.1 Deleted.

§ 7.4 Deleted.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that it will insure that the Architect is named as an additional insured under the Commercial General Liability Insurance obtained by the Contractor for the Project. Except for negligent acts and defects in the plans and specifications, Owner agrees to indemnify and defend Architect and its subconsultants against claims made by the Contractor or subcontractor unless the claim is for Architect's or Architect's subconsultant negligent acts, errors or omissions or defects in the plans and specifications.

§ 8.1.3 The Architect and Architect's subconsultants shall indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's negligent acts, errors or omissions in the performance of its services and for patent, copyright or trademark infringement attributable to Architect's services. Architect's liability arising from this indemnification and its liability for damages generally in connection with the Agreement, shall be limited to the parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Owner further agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with the professional services provided in connection with the Project.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or construction manager (collectively for this indemnity "Owner Entity"). This indemnity applies to any Owner Entity deviations from the Instruments of Service not approved by the Architect in writing. Owner shall provide written notice of any known inconsistencies in the Architect's services expeditiously after discovery. Owner has no obligation to investigate

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Architect's services for inconsistencies. The provisions of this section shall extend for all time notwithstanding the termination or expiration of the Agreement. Notwithstanding the above, Architect agrees that to the fullest extent permitted by law no council member, officer, director, or employee of Owner shall have personal liability under this indemnification provision, under any provision of the Agreement, or for any matter in connection with services provided by the City in connection with the Project.

§ 8.1.4 As to the Initial Phase of design services provided pursuant to this Agreement, the Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 8.1.5 Direct Negotiation, as defined below, will be the initial process utilized by the parties.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through direct negotiation and/or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 8.3 of this Agreement

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[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

§ 8.3 ARBITRATION

§ 8.3.1 Deleted.

§ 8.3.1.1 Deleted.

§ 8.3.2 Deleted.

§ 8.3.3 Deleted.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Deleted.

§ 8.3.4.2 Deleted.

§ 8.3.4.3 Deleted.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed from such suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. Notwithstanding the foregoing, the suspension of the Project between completion of the Initial Phase and the Owner's decision to either proceed with or terminate the Project following the vote on the bond issue by the voters of the City of Lincoln does not entitle Architect to be compensated for expenses incurred in the interruption and resumption of Architect's services during said suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause in the event that matters beyond the control and without any fault of the Owner (e.g. a determination by the voters of the City of Lincoln to reject a bond issue of a sufficient amount) result in a final decision by the Owner to not proceed forward with the balance of the Project. Architect agrees that it shall insert similar provisions in all of its contracts with its consultants.

§ 9.6 In the event of termination not the fault of the Architect except as expressly provided for in Section 9.5 and Section 9.9, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

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§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include demobilization expenses, if any, including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are expressly conditioned upon the Owner's duty and obligation to indemnify and hold Architect harmless from and against any damages or liabilities except to the extent caused by Architect.

§ 9.9 The Owner may terminate this Agreement upon not less than seven days written notice to the Architect for the Owner's convenience and without cause even though the basis for such termination is within the control of the Owner and the Owner still intends to proceed forward with the balance of the Project and in such event the Architect shall be compensated for services performed prior to termination, together with all Reimbursable Expenses then due as well as all Termination Expenses as defined in Section 9.7, except that Reimbursable Expenses and Termination Expenses are not recoverable in the event the termination under this Section 9.9 occurs after completion of the Initial Phase and before Owner and Architect agree to proceed with any services beyond the Initial Phase. In the event of any termination under this Section 9.9, the Owner may select another architect of Owner's choice to assist in the completion of the Project and Architect agrees to cooperate and provide any information reasonably requested by Owner in connection with the completion of the Project. Any services provided by Architect which are requested by the Owner after termination shall be fairly compensated by Owner.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Nebraska.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, provided however, if any such materials are discovered by Architect, the Architect shall immediately report such discovery to the owner.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

A lump sum for Architect's Initial Phase Services as itemized on Exhibit B, Pre bond Issue Services. A percent of the Cost of The Work minus the lump sum payment for the Initial Phase Services as itemized on Exhibit B, Pre Bond Issue Services.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ( ), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows: See Exhibit A attached hereto and by reference made a part hereof.

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Thirty-five	percent (	35	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent

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services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices, provided however, no hourly billing rate shall be increased at any time prior to January 31, 2009.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- **.1** Transportation and authorized out-of-town travel and subsistence;
- **.2** Dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- **.3** Fees paid for securing approval of authorities having jurisdiction over the Project;
- **.4** Printing, reproductions, plots, standard form documents;
- **.5** Postage, handling and delivery;
- **.6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- **.7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- **.8** Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; and
- **.9**

(Paragraphs deleted)

Site office expenses.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ( ) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

(Paragraphs deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 No initial payment shall be made upon execution of this Agreement.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

Interest rate shall be nine (9%) percent per annum.

§ 11.10.3 Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of off setting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

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ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

§ 12.1.1 The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

Owner agrees to establish a Design and Construction Contingency of five percent (5%) of the Cost of the Work for changes in the construction of the project and for omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency shall be allocated, respectively, to construction changes, three-fourths (3/4) and to construction documents, one-fourth (1/4). The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes due to construction modifications or adjustments to the construction documents.

PLEASE NOTE THAT THIS CONTINGENCY PROVISION AND TERMS ARE BASED ON THE ASSUMPTION THAT THE PROJECT WILL BE DELIVERED USING THE TRADITIONAL OR "DESIGN-BID-BUILD" METHOD. TO THE EXTENT THAT ANOTHER METHOD SUCH AS CONSTRUCTION MANAGEMENT AT RISK IS SELECTED AS THE PROJECT DELIVERY METHOD, THE TERMS AND OPERATION OF THIS PROVISION WOULD NEED TO BE ADJUSTED.

§ 12.1.2 Upon completion of the Work, the Architect shall compile for and deliver to the Owner a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the contractor. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which the Architect shall assume will be reliable; the Architect cannot and does not warrant their accuracy.

§ 12.1.3 Each party agrees that the other party is not responsible for any damages arising directly or indirectly from any delays for causes beyond the other party's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the party or party's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.1.4 If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the original cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents, provided however, Architect shall be liable to pay any increased cost caused by the omission which would not have otherwise been incurred by Owner. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 12.1.5 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 12.1.6 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and

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defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 12.1.7 If the Owner elects to employ a construction manager, the Owner will promptly notify the Architect of the duties, responsibilities and authority of the construction manager and their relationship to the duties, responsibilities and authority of the Architect. A copy of the agreement between the Owner and the construction manager will be provided to the Architect. (See Section 11.2 for compensation adjustments).

§ 12.1.8 Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.9 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the State of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.10 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contract is that of independent contractor to the City

§ 12.1.11 Architect shall comply with applicable Federal and State laws and City ordinances applicable to the work

§ 12.1.12 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of Section 48-1122, Nebraska Reissue Revised Statutes (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).

§ 12.1.13 If the compensation for services provided pursuant to this Agreement is equal to or exceeds $25,000.00, this Agreement is subject to the Living Wage Ordinance of Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, the service provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under this provision of Lincoln's Living Wage Ordinance, the City shall have the authority to terminate this Agreement to seek other remedies for violation of the ordinance.

§ 12.1.14 Architect 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 above, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

§ 12.1.15 Services to be Confidential. Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of the Arena and the work product generated by third

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parties regarding costs, performance, and potential tenants of other elements to be integrated into Owner's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

(i) was in the possession of Architect before receipt from Owner; or

(ii) is or becomes a matter of public knowledge through no fault of Architect; or

(iii) is rightfully received by Architect from a third party without a duty of confidentiality; or

(iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party; or

(v) is independently developed by Architect and shown by documentation; or

(vi) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors or employees with a specific need to know. Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from any disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Agreement.

Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

§ 12.1.16 Communications. Architect agrees not to communicate in any form with or about any current or proposed tenant, occupant, or other facilities user of the Arena or other elements of the West Haymarket Redevelopment Project and/or to discuss any information concerning the design or development of the Arena or other elements of the West Haymarket Redevelopment Project without the prior written consent of the Owner. Architect further agrees that all communications with the general public and press shall be handled by the Owner, and Architect agrees to make no communication, be it official or unofficial, concerning the design of the Arena and/or other elements of the West Haymarket Redevelopment Project without first obtaining the Owner's prior written consent and approval. Architect understands and acknowledges that in an attempt to coordinate media and other public interactions to the benefit of both Parties, any efforts by Architect to publicize via its website, print media, press release, interviews with the news media, or prominent clients and partners, regarding Architect's relationship with the Owner and the design and development of the Arena shall proceed only after obtaining written consent of and in coordination with the Owner.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below:

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.1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

OWNER	ARCHITECT
(Signature)	*(Signature)*
Chris Beutler	STAN MERADITH AIA VICE PRESIDENT
(Printed name and title) Mayor of Lincoln	*(Printed name and title)*

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PAGE 1

City of Lincoln, Nebraska

...

DLR Group, inc. (a Nebraska Corporation)

...

West Haymarket Civic Arena. Pre-Election Bond Issue and Design. The Owner and Architect recognize and agree that unless and until the voters of the City of Lincoln approve the issuance of a bond or bonds for the financing of the Project, the Scope of Services for the initial phase of this Agreement is limited to completion of cost of Work estimate by December 31, 2008, and twenty-five percent (25%) of the work of the Schematic Design Phase which 25% portion shall be completed by January 31, 2009 (the "Initial Phase"). Architect understands and acknowledges that future phases of this Agreement beyond completion of the Initial Phase will require approval of the City Council for the City of Lincoln.

The Owner and Architect agree as follows.

The Owner and Architect ~~agree as follows.~~

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recognize and agree that the Architect's performance of the total scope of work set forth herein is expressly subject to the right of the Owner to terminate the Architect, without cause, as a consequence of a determination by the voters of the City of Lincoln regarding the financing of the Project pursuant to a bond issue and that such voter determination will not take place until approximately May, 2009, but may be delayed until sometime in 2010, or for the Owner's own convenience even though the basis for such termination is within the control of the Owner and Owner still intends to proceed forward with the balance of the Project utilizing another architect. The express terms and provisions of such a termination without any fault of the Architect set forth in Article 9 are only applicable in the event such services are terminated prior to completion of the Initial Phase.

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PAGE 2

To be provided as shown on Exhibit A

...

The Project shall include the following:

1. Site work,
2. Up to a 16,000 seat arena,
3. South parking,
4. North parking,
5. Bridge, and
6. Garage
7. Estimate of Cost

(See Exhibits A and B, Pre Bond Issue Services)

PAGE 3

The parties agree that upon completion of the Cost of the Work estimate by the Architect to promptly meet and use their best efforts to develop the Owner's budget.

...

January 31, 2009 for twenty-five percent (25%) completion of Schematic Design and December 31, 2008 for the Cost of the Work estimate.

...

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

...

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

...

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...

NOTE: IT IS VITALLY IMPORTANT FOR THIS TO BE DETERMINED BY THE OWNWER AT THE EARLIEST OPPORTUNITY

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...

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PAGE 4

Kent Morgan, City of Lincoln, Nebraska

If a hotel and/or convention center becomes a part of or is to be associated with the Project, beyond the level of Work identified as part of the Initial Phase, Architect and Owner shall, at the time such decision(s) is made, mutually agree upon the nature and scope of services which Architect shall furnish in connection therewith and shall also agree upon compensation for such services.

...

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

...

.1 ~~Cost Consultant:~~
Deleted.

...

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

...

HWS, Lincoln, Nebraska

...

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...

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...

Jay Palu, DLR Group

PAGE 5

Thornton Thomasetti

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DLR Group

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DLR Group
.4 Cost Consultant

Turner Construction

.5 CLS

...

If a hotel and/or convention center becomes a part of or is to be associated with the Project, beyond the level of Work identified as part of the Initial Phase, Architect and Owner shall, at the time such decision(s) is made, mutually agree upon the nature and scope of services which Architect shall furnish in connection therewith and shall also agree upon compensation for such services.

...

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar ~~circumstances.~~ circumstances and who design and/or have designed arenas of a type and size similar to the Project. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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§ 2.5.1 Comprehensive General Liability with policy limits of not less than ~~($)~~ One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) in the aggregate for bodily injury and property damage. Owner is to be included under such policy as additional insured to the extent of liability assumed by Architect, with coverage to be primary and not contributory with any such coverage maintained by Owner. The policy shall contain a severability of interests provision in favor of the additional insureds.

§ 2.5.2 Automobile Liability covering ~~owned and rented~~ owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than ~~($)~~ One Million Dollars ($1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

...

§ 2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than ~~($)~~ the following:

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Employer Liability:	
Bodily injury by accident	$500,000
Bodily injury by disease - policy limits	$500,000
Bodily injury by disease - each employee	$500,000

§ 2.5.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than ~~($—)~~ Two Million Dollars ($2,000,000.00) per claim and in the aggregate. Coverage shall be maintained for the term of services under this Agreement. If the Project goes beyond the Schematic Design Phase, the Owner may require Architect to provide Professional Liability with limits of not less than Five Million Dollars ($5,000,000) per claim an din the aggregate. If Owner chooses to acquire a policy of professional liability insurance for the Project, then Owner and Architect must agree on the limits of coverage, parties covered, deductible required and length of the policy period after substantial completion of the services.

§ 2.5.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. All deductibles and premiums associated with the above coverages except a project specific policy of professional liability insurance shall be the responsibility of Architect. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project in the reasonable discretion of the Architect. Architect shall utilize all reasonable efforts to require its consultants and contractors to maintain Professional Liability insurance with policy limits of Two Million Dollars ($2,000,000.00) per claim and in the aggregate. The Architect and Consultants shall submit proof of such insurance to the Owner before submittal of the first invoice. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

NOTE: IF THE OWNER DETERMINES THAT IT IS GOING TO OBTAIN AN OCIP FOR THE PROJECT THEN ADJUSTMENTS TO THE LANGUAGE OF THIS ARTICLE WILL BE REQUIRED

...

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

...

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information prepared and furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. The Owner and Architect understand and agree that the Architect is only entitled to rely upon the services or information prepared and furnished by the Owner or the Owner's consultants in connection with the Project.

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§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Architect shall coordinate its work during the Initial Phase with the anticipated development of adjacent facilities by others. Such adjacent facilities include the potential hotel, sports practice facility, and convention center. The Architect's cooperation obligation during performance of the Initial Phase services shall be to coordinate the design of a potential common wall between the arena and the hotel with the architect for the hotel; identify potential

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connection points for a possible civic center to be located upon the U.S. Post Office Site and reserve and denote space in the site plan for the sports practice facility.

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§ 3.2.6 ~~The Architect shall submit the Schematic Design Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Schematic Design Documents.~~ Deleted.

§ 3.2.7 ~~Upon receipt of the Cost Consultant's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval~~ The Architect shall submit the Schematic Design Documents to the Owner and request the written approval from the Owner of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development ~~Phase.~~Phase in accordance with Sections 6.1.1 through 6.1.4.4.

...

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner ~~and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Design Development Documents.~~ for review and written approval. If revisions to Design Development Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase, the Architect shall incorporate the required revisions in the Construction Document Phase in accordance with Sections 6.1.1 through 6.1.4.4.

§ 3.3.3 ~~Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.~~Owner and Architect will at a mutually agreed upon date discuss and agree upon timing intervals for the Architect to provide drawings and other reasonable appropriate documents which represent the then current stage of Design Development. Such mutual agreement shall also describe the deliverables to be provided by the Architect upon completion of Design Development.

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§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner ~~and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Construction Documents.~~ for review and written approval. If revisions to Construction Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase, the Architect shall incorporate the required revisions in accordance with Sections 6.1.1 through 6.1.4.4.

§ 3.4.5 ~~Upon receipt of the Cost Consultant's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.~~ Deleted.

...

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work which the Architect reasonably believes are indicated by changes in requirements or general market conditions. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent ~~acts~~ acts, errors, or omissions, but shall not have control over or charge of, and shall not be responsible for, ~~acts~~ acts, errors, or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect ~~has the authority to reject~~ shall advise the Owner in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall ~~interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests~~ act of the Owner's representative in interpreting the requirements of the Contract Documents and in judging the performance of the Contractor thereunder. The Architect's response to requests from Owner concerning performance under and the requirements of the Contract Documents shall be made in writing within ~~any time limits agreed upon~~ a mutually agreed upon time period or otherwise with reasonable promptness.

§ 3.6.2.4 ~~Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if~~ In any dispute between the Owner and Contractor, the Architect shall, upon request by Owner, advise the Owner on issues concerning performance under the Contract Documents. Architect may decide any such performance issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

§ 3.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.~~ Deleted.

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§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Except as may otherwise be noted below, the parties agree to revisit and determine at a later date if the Architect shall provide any of the Additional Services listed below. The parties agree that the Architect's Cost Consultant will be responsible for the preparation of a Cost of the Work estimate by December 31, 2008 based upon twenty-five percent (25%) completion of Schematic Design and that the cost for such service is included in the basic services fee. Any additional cost estimating services as well as responsibility therefor will be hereafter mutually agreed upon by the parties as hereinabove provided.

...

§ 4.1.1	Programming	Architect	

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§ 4.1.27 Community Engagement / Outreach except to the extent provided for in Exhibit B.	Architect	Section 4.2

...

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

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

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

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

.14 Providing services in connection with building commissioning.

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.7 Failure of performance of Owner's consultants or contractors.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein. When the limits below are reached, the Architect shall notify the Owner:

...

§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

...

§ 5.2 ~~The~~ In the event the Owner receives voter approval to issue a bond or bonds for the financing of the Project, the Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

THE RESPONSIBILITY FOR EMPLOYMENT OF A SCHEDULING CONSULTANT NEEDS TO BE DISCUSSED AND RESOLVED. THIS WILL DEPEND IN PART ON THE PROJECT DELIVERY METHOD CHOSEN FOR THE PROJECT.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. ~~The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work.~~ If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

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§ 6.1.1 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect agrees that, if the lowest bonafide bid or negotiated price for the entire Scope of Work is greater than ten percent (10%)] of the Architect's estimate of the Cost of the Work most recently approved by the Owner, the Owner may elect to require the Architect to perform, at no cost to the Owner, all necessary services to modify the documents to indicate a design that is approved by the Owner and that conforms to the approved Cost of the Work. The Owner may exercise any of the other options listed in Section 6.1.4.

§ 6.1.2 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

§ 6.1.3 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 6.1.4 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** authorize rebidding or renegotiating of the Project within a reasonable time;
- **.3** terminate in accordance with Section 9.5; or
- **.4** cooperate in revising the Project scope and quality as required to reduce the Cost of the Work

If the Owner chooses to proceed under .4 above, the Architect shall, without additional charge, modify the Contract Documents as reasonably necessary to meet the reduced Cost of the Work..

§ 6.2 ~~The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.~~ Deleted.

§ 6.3 ~~The Owner shall require the Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.~~ Deleted.

§ 6.4 ~~If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.~~ Deleted.

§ 6.5 ~~If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall~~

- ~~**.1** give written approval of an increase in the budget for the Cost of the Work;~~
- ~~**.2** in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or~~

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~~.3 implement any other mutually acceptable alternative.~~Deleted.

§ 6.6 ~~If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.~~Deleted.

§ 6.7 ~~After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~Deleted.

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§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Ownership of Architect's Instruments of Service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use if so desired. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for and against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

§ 7.3 ~~Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~Deleted.

§ 7.3.1 ~~In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~ Deleted.

§ 7.4 ~~Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~Deleted.

...

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General

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Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that it will insure that the Architect is named as an additional insured under the Commercial General Liability Insurance obtained by the Contractor for the Project. Except for negligent acts and defects in the plans and specifications, Owner agrees to indemnify and defend Architect and its subconsultants against claims made by the Contractor or subcontractor unless the claim is for Architect's or Architect's subconsultant negligent acts, errors or omissions or defects in the plans and specifications.

§ 8.1.3 The Architect ~~shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.~~and Architect's subconsultants shall indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's negligent acts, errors or omissions in the performance of its services and for patent, copyright or trademark infringement attributable to Architect's services. Architect's liability arising from this indemnification and its liability for damages generally in connection with the Agreement, shall be limited to the parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Owner further agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with the professional services provided in connection with the Project.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or construction manager (collectively for this indemnity "Owner Entity"). This indemnity applies to any Owner Entity deviations from the Instruments of Service not approved by the Architect in writing. Owner shall provide written notice of any known inconsistencies in the Architect's services expeditiously after discovery. Owner has no obligation to investigate Architect's services for inconsistencies. The provisions of this section shall extend for all time notwithstanding the termination or expiration of the Agreement. Notwithstanding the above, Architect agrees that to the fullest extent permitted by law no council member, officer, director, or employee of Owner shall have personal liability under this indemnification provision, under any provision of the Agreement, or for any matter in connection with services provided by the City in connection with the Project.

§ 8.1.4 ~~The~~ As to the Initial Phase of design services provided pursuant to this Agreement, the Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

§ 8.1.5 Direct Negotiation, as defined below, will be the initial process utilized by the parties.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

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Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.

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§ 8.2.4 If the parties do not resolve a dispute through direct negotiation and/or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

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~~[ ]~~ [X] Litigation in a court of competent jurisdiction

...

§ 8.3.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~ Deleted.

§ 8.3.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~ Deleted.

§ 8.3.2 ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~ Deleted.

§ 8.3.3 ~~The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~ Deleted.

...

§ 8.3.4.1 ~~Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~ Deleted.

§ 8.3.4.2 ~~Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~ Deleted.

§ 8.3.4.3 ~~The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~ Deleted.

...

§ 9.2 If the Owner suspends the ~~Project,~~ Project for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is ~~resumed,~~ resumed from such suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the

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Architect's services. Notwithstanding the foregoing, the suspension of the Project between completion of the Initial Phase and the Owner's decision to either proceed with or terminate the Project following the vote on the bond issue by the voters of the City of Lincoln does not entitle Architect to be compensated for expenses incurred in the interruption and resumption of Architect's services during said suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without ~~cause.~~cause in the event that matters beyond the control and without any fault of the Owner (e.g. a determination by the voters of the City of Lincoln to reject a bond issue of a sufficient amount) result in a final decision by the Owner to not proceed forward with the balance of the Project. Architect agrees that it shall insert similar provisions in all of its contracts with its consultants.

§ 9.6 In the event of termination not the fault of the ~~Architect,~~ Architect except as expressly provided for in Section 9.5 and Section 9.9, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include ~~expenses~~ demobilization expenses, if any, including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise ~~compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are expressly conditioned upon the Owner's duty and obligation to indemnify and hold Architect harmless from and against any damages or liabilities except to the extent caused by Architect.

§ 9.9 The Owner may terminate this Agreement upon not less than seven days written notice to the Architect for the Owner's convenience and without cause even though the basis for such termination is within the control of the Owner and the Owner still intends to proceed forward with the balance of the Project and in such event the Architect shall be compensated for services performed prior to termination, together with all Reimbursable Expenses then due as well as all Termination Expenses as defined in Section 9.7, except that Reimbursable Expenses and Termination Expenses are not recoverable in the event the termination under this Section 9.9 occurs after completion of the Initial Phase and before Owner and Architect agree to proceed with any services beyond the Initial Phase. In the event of any termination under this Section 9.9, the Owner may select another architect of Owner's choice to assist in the completion of the Project and Architect agrees to cooperate and provide any information reasonably requested by Owner in connection with the completion of the Project. Any services provided by Architect which are requested by the Owner after termination shall be fairly compensated by Owner.

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§ 10.1 This Agreement shall be governed by the ~~law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~laws of the State of Nebraska.

...

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project ~~site.~~site, provided however, if any such materials are discovered by Architect, the Architect shall immediately report such discovery to the owner.

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A lump sum for Architect's Initial Phase Services as itemized on Exhibit B, Pre bond Issue Services. A percent of the Cost of The Work minus the lump sum payment for the Initial Phase Services as itemized on Exhibit B, Pre Bond Issue Services.

...

The parties agree that completion of this contract provision shall be deferred until after the voters of the City of Lincoln have approved the issuance of a bond or bonds to finance the Project. Following voter approval of said bond or bonds, the parties agree (subject to the City's right to terminate) to promptly meet and use their best efforts to reach a mutual agreement upon the terms, conditions, and information to be included herein.

...

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows: See Exhibit A attached hereto and by reference made a part hereof.

Schematic Design Phase	Twenty	percent (	20	%)
Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Thirty-five	percent (	35	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Fifteen	percent (	15	%)

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§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review ~~practices.~~practices, provided however, no hourly billing rate shall be increased at any time prior to January 31, 2009.

...

.2 ~~Long distance services, dedicated~~ Dedicated data and communication services, teleconferences, Project Web sites, and extranets;

...

.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; and

.9 ~~All taxes levied on professional services and on reimbursable expenses;~~

~~**.10** Site office expenses; and~~

~~**.11** Other similar Project related expenditures.~~Site office expenses.

...

~~If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

...

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§ 11.10.1 ~~An~~ No initial payment ~~of ($)~~ shall be made upon execution of ~~this Agreement and is the minimum payment under~~ this Agreement. ~~It shall be credited to the Owner's account in the final invoice.~~

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~( )~~ thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

Interest rate shall be nine (9%) percent per annum.

§ 11.10.3 ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of off setting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

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§ 12.1.1 The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

Owner agrees to establish a Design and Construction Contingency of five percent (5%) of the Cost of the Work for changes in the construction of the project and for omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency shall be allocated, respectively, to construction changes, three-fourths (3/4) and to construction documents, one-fourth (1/4). The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes due to construction modifications or adjustments to the construction documents.

PLEASE NOTE THAT THIS CONTINGENCY PROVISION AND TERMS ARE BASED ON THE ASSUMPTION THAT THE PROJECT WILL BE DELIVERED USING THE TRADITIONAL OR "DESIGN-BID-BUILD" METHOD. TO THE EXTENT THAT ANOTHER METHOD SUCH AS CONSTRUCTION MANAGEMENT AT RISK IS SELECTED AS THE PROJECT DELIVERY METHOD, THE TERMS AND OPERATION OF THIS PROVISION WOULD NEED TO BE ADJUSTED.

§ 12.1.2 Upon completion of the Work, the Architect shall compile for and deliver to the Owner a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the contractor. These Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties, which the Architect shall assume will be reliable; the Architect cannot and does not warrant their accuracy.

§ 12.1.3 Each party agrees that the other party is not responsible for any damages arising directly or indirectly from any delays for causes beyond the other party's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the party or party's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or time required by the

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Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.1.4 If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the original cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents, provided however, Architect shall be liable to pay any increased cost caused by the omission which would not have otherwise been incurred by Owner. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 12.1.5 Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 12.1.6 It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 12.1.7 If the Owner elects to employ a construction manager, the Owner will promptly notify the Architect of the duties, responsibilities and authority of the construction manager and their relationship to the duties, responsibilities and authority of the Architect. A copy of the agreement between the Owner and the construction manager will be provided to the Architect. (See Section 11.2 for compensation adjustments).

§ 12.1.8 Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.9 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the State of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.10 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contract is that of independent contractor to the City

§ 12.1.11 Architect shall comply with applicable Federal and State laws and City ordinances applicable to the work

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§ 12.1.12 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of Section 48-1122, Nebraska Reissue Revised Statutes (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).

§ 12.1.13 If the compensation for services provided pursuant to this Agreement is equal to or exceeds $25,000.00, this Agreement is subject to the Living Wage Ordinance of Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, the service provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under this provision of Lincoln's Living Wage Ordinance, the City shall have the authority to terminate this Agreement to seek other remedies for violation of the ordinance.

§ 12.1.14 Architect 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 above, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

§ 12.1.15 Services to be Confidential. Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of the Arena and the work product generated by third parties regarding costs, performance, and potential tenants of other elements to be integrated into Owner's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

(i) was in the possession of Architect before receipt from Owner; or

(ii) is or becomes a matter of public knowledge through no fault of Architect; or

(iii) is rightfully received by Architect from a third party without a duty of confidentiality; or

(iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party; or

(v) is independently developed by Architect and shown by documentation; or

(vi) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors or employees with a specific need to know. Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from any disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Agreement.

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Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

§ 12.1.16 Communications. Architect agrees not to communicate in any form with or about any current or proposed tenant, occupant, or other facilities user of the Arena or other elements of the West Haymarket Redevelopment Project and/or to discuss any information concerning the design or development of the Arena or other elements of the West Haymarket Redevelopment Project without the prior written consent of the Owner. Architect further agrees that all communications with the general public and press shall be handled by the Owner, and Architect agrees to make no communication, be it official or unofficial, concerning the design of the Arena and/or other elements of the West Haymarket Redevelopment Project without first obtaining the Owner's prior written consent and approval. Architect understands and acknowledges that in an attempt to coordinate media and other public interactions to the benefit of both Parties, any efforts by Architect to publicize via its website, print media, press release, interviews with the news media, or prominent clients and partners, regarding Architect's relationship with the Owner and the design and development of the Arena shall proceed only after obtaining written consent of and in coordination with the Owner.

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Certification of Document's Authenticity

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_____

(Signed)

_____

(Title)

_____

(Dated)

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EXHIBIT A

WEST HAYMARKET

City of Lincoln Nebraska

Civic Arena Complex and Related Elements:
Scope of Services

BACKGROUND AND OVERVIEW

The purpose of this document is to delineate architectural and related design activities for the City of Lincoln's "West Haymarket Civic Arena Complex and Related Elements" Program. This program is part of the overall redevelopment effort for the West Haymarket area in the Downtown Lincoln area.

The focus of this specific scope is to craft an initial design and related capital cost estimate for the construction of a arena complex for the City of Lincoln in the West Haymarket. This complex also includes a number of general program elements related to the civic arena's design, including parking, pedestrian access, a private hotel, and basketball practice facility for the University of Nebraska-Lincoln.

Additional information concerning architectural services and products for this program are discussed below.

"BASIC DESIGN SERVICES" SCOPE

Project Initiation

- The Architect (and participating team members) shall review this document and attached Program Design Statement to become familiar with the overall project requirements.

- The Architect (and participating team members) shall develop a written list of questions and/or clarifications regarding the City's program requirements and provide this list to the City's Project Manager within one week of the project's initiation.

- The Architect (and participating team members) shall work with the City's Project Manager to secure necessary response to the list, including documenting the responses for internal distribution among project members.

Professional Services to be Undertaken

■ Based upon the mutually agreed-upon program, the Architect (and participating team members) shall develop a basic arena complex design (through the exploration of alternative design solutions) which illustrates the scale and relationships of the proposed facilities with the overall redevelopment project.

■ Through the use of drawings and other documentation methods appropriate to the investigation and understanding of the "Basic Design Services," the Architect (and participating team members) shall investigate and address the following issues relative to the proposed civic arena and related facilities:

- o Basic siting concepts and alternatives
- o Building massing
- o Pedestrian and vehicular access and circulation in vicinity of complex
- o Concepts for site planting and paving
- o Exterior relationship to surrounding buildings and open spaces in terms of exterior closure materials, glazing and fenestration, and views to and from the building(s)
- o Preliminary selection of structural systems to be incorporated in the project
- o Roof type and pitch
- o Interior design vocabulary in terms of partitioning of key spaces and built-in furnishings
- o Vertical circulation movements systems to be incorporated in the design solution
- o Initial mechanical systems selection and distribution ideas, including space allocation provisions for mechanical areas
- o Approaches to natural and artificial lighting in terms of both quality and character; Design concept for exterior site lighting; Allocation provisions for electrical & data systems
- o Sustainability in terms of both building materials and mechanical/electrical systems used in the buildings

■ Documentation to be included at the end of "Basic Design Services" shall include the following minimum requirements:

- o Site plan
- o Floor plans of all levels within the buildings
- o Exterior elevations (in color) indicating exterior surface materials and fenestration

- o A minimum of two 'cross sections' through each building indicating the critical vertical spatial relationships within the "Basic Design Services"
- o A Statistical Analysis comparing the areas within the "Basic Design Services" and the original mutually agreed upon Project
- o An Outline Specification of the major systems and material choices in the Project and other necessary information to communicate the appearance & function of the buildings
- o Renderings showing the building(s) and surrounding site context
- o A Computer Simulation (exterior 'fly around') of the "Basic Design Services"

■ The Architect (and participating team members) shall develop a "Statement of Probable Construction Cost:"

- o The information in this Statement of Probable Cost shall be broken down by major building trades or systems (i.e. foundations, structure, exterior closure, interior partitions and finishes, fixed equipment, plumbing, mechanical, electrical, site work and exterior furnishings)
- o The Statement of Probable Construction Cost shall be based upon the anticipated 'Mid-Point' of construction and shall also include contingency amounts appropriate to the eventual further development of the design, market contingencies and anticipated changes made during the construction process

■ The City of Lincoln has secured the services of a Consultant to assist them in the development of the West Haymarket Integrated Development Plan (WH-IDP). This Plan is envisioned to be the foundation document in establishing the design values, goals, & best practices to be incorporated in all physical designs and programs developed by the City and private developers as part of this Project. The Architect (and participating team members) shall work in full collaboration with the City's WH-IDP Consultant throughout the "Basic Design Services" Process.

■ The City has also secured the services of other professionals and a redeveloper team to assist in preparing various components of the West Haymarket Integrated Development Plan. The Architect (and participating team members) shall work in full collaboration with these professionals and redevelopment team throughout the "Basic Design Services" Process.

■ The Mayor of the City of Lincoln – through Executive Order No. 080966 – has set as a policy that the City of Lincoln "shall practice sustainable building

practices, wherever possible; using the concepts of the U.S. Green Building Council's LEED Program or a similar program for all new construction and renovations of existing city building." This Executive Order shall serve as the foundational point for the "Basic Design Services" process.

■ The City of Lincoln seeks to design the arena complex and overall West Haymarket site layout in a manner consistent with security concepts proffered through the United States Department of Homeland Security, as well as other Federal, State, and local agencies whose responsibilities include oversight public security and risk assessments.

Civic Arena Complex

Program Design Statement (PDS)

The following Program Design Statement (PDS) defines the design components of a proposed Civic Arena Complex for the West Haymarket area of Lincoln, Nebraska. The purpose of this Program Design Statement is to present the constituent parts and program usage anticipated for this complex.

A number of the key assumptions concerning the ultimate design and use of the Civic Arena Complex include the following:

- Arena will be owned and operated by the City of Lincoln
- Arena will be a multi-use facility capable of hosting sporting events, concerts, family shows, ice programs, and community activities
- UNL Men's and Women's Basketball will be the main arena tenants
- Among sporting events, basketball will be the prime focus
- UNL basketball practice facility will be an integral part of the overall complex
- Facility design shall conform with the West Haymarket "Future Design Framework" and related standards
- Large concert set and concert rigging capacity is critical
- Maximize arena revenue opportunities through design techniques
- A privately developed and operated hotel will be part of the complex and will have predefined "point(s) of penetration" (excluding guest rooms) into the arena bowl which can be governed and controlled by arena management
- A District Energy Corporation (DEC) facility should be planned for and anticipated to serve the arena complex

General Site Context

The Civic Arena Complex is anticipated to be located on the northern edge of the West Haymarket core redevelopment area of Downtown Lincoln, Nebraska. The preferred location for the Arena is assumed – subject to change - to be on a site generally west of the existing U.S. Post Office. The site lies adjacent to the "Traditional Haymarket" which includes a locally designated historic landmark district. A private hotel is expected to be part of the overall design for the complex. There will also be public gathering areas, surface and decked parking, other potential land use types (such as retail, residential, office and services establishments), new roadways, pedestrian bridges, and additional supporting development.

Overall Arena Concept

Building Footprint

- ✓ Pending further analysis as part of the "Basic Design Services" process, it is assumed the Arena will be in the range of 400,000 to 450,000 square feet in overall building area

Seating capacity

- ✓ Up to 16,000 fixed seats
- ✓ Mid level concourse
- ✓ 360 degree concourses

Suites

- ✓ 20 full sized suites with 20 seats per suite (subject to revision)
  - Open front
  - Wide leather seats
  - No restrooms in suite
  - Kitchenette casework
  - Refrigeration in each suite
  - Lockable casework for client storage in each suite
  - Flat screen monitors in each suite
- ✓ Loge Suites – Design will dictate quantity
  - 4-8 seats per loge
  - Flat screen monitors on tables

Suite level

- ✓ Suite holder, loge and club seat customer access only
- ✓ High quality women's and men's restrooms
- ✓ Bar / café / bistro
- ✓ Multiple flat panel monitors
- ✓ Seating width and material
  - All seats will have backs and armrests cloth or leather/vinyl padded covering
  - 22" minimum

Capacity Notes

- ✓ Arena must have curtain system to reduce visible seating capacity
- ✓ Cut down capacity should be incremental down to 3000 seat capacity
- ✓ All seats must have backs and be padded (with no bench or hard plastic seats)
- ✓ Curtaining the upper seating level is necessary as part of the curtaining requirement
- ✓ Seat minimum width suggest 22"

- ✓ Consideration should be given to a small number of "plus size seats" in accessible locations
- ✓ Floor size should be approximately 30,000 – 32,000 square feet (136' x 235') *so portable / retractable seating pans* will be necessary. Chair quality on retractable must be equal to permanent seats.
- ✓ Capacity does not include portable floor chairs.
- ✓ *16,000 seat-capacities is ideally a 360 degree basketball set.* (Does not count press row, players "bench" and scorer's table)

Sports - Basketball

- ✓ NCAA / Big XII Basketball will be the main sporting event
- ✓ Retractable seating should extend to accommodate a university basketball set
- ✓ Connor portable maple championship sized basketball floor
- ✓ Premium hydraulic baskets
- ✓ Press row should have changeable advertising panels/roll *displays*

Other Sports

- ✓ Other sports to be accommodated include:
  - Volleyball (main center court and two or three cross courts) w/volleyball pole boots in concrete
  - Wrestling (8 mats with support spaces)
  - Ice sheet (hockey size) w/dashers & glass; hockey is not a prime use but ice sheet should accommodate a game setting. Ice sheet should also accommodate Disney on Ice and Figure Skating type competitions
  - Indoor football – played inside dashers, 50 yards and at least eight yard deep endzones
  - Indoor lacrosse
  - Motorsports including:
    - *Monster Trucks*
    - Moto cross, ATV racing, Extreme cycling
    - Indoor mini sprint car or go carts
  - Roller Derby
  - Boxing or Mixed Martial Arts
  - USA Roller Sports, Speed & Figure Skating

Floor Specifications

- ✓ Approximate open floor size of 136' x 235' ~ 30,000 to 32,000 square feet of space
- ✓ Floor should accommodate flat shows, large dinners, equipment exhibitions, rodeo, extreme motorsports, full three-ring circus and multiple mat wrestling tournaments

- ✓ Seamless continuous pour ice floor
- ✓ Flush expansion joint
- ✓ Volleyball pole boots

Lobby

- ✓ Indoor Ticket Window Access, 8 to 12 ticket windows for advance ticket sales and Will Call
- ✓ High security ticket office, vault and camera security features, ticket sales staff offices
- ✓ Ticket office needs an accessible office for season ticket / showroom sales.
- ✓ Large indoor lobby area to accommodate preshow/pre event crowds
- ✓ Lobby needs to have elevator access to suite levels
- ✓ Multiple special needs elevator access to mid level concourse
- ✓ Multiple (2) or more escalators (reversible) for access to mid level concourse
- ✓ Merchandise sales areas with power and secure money/stock office
- ✓ Lobby and / or concourse areas could have areas for:
  - Kid Friendly Area
  - History of Haymarket Display
- ✓ Hall of Fame Areas
- ✓ Speedway Motors Museum rotating vehicle display
- ✓ Automotive or Light Truck Sponsor Vehicle Display area
- ✓ Motorcycle, ATV, Jet Ski, bicycle or small boat sponsor display area
- ✓ Concourse should have vehicle access ramp or walkway
- ✓ Concourse should have fork lift access
- ✓ Merchandise Store

Concourse

- ✓ Main Concessions Areas
  - Multiple Food & Beverage Options
  - Kiosk locations
  - Food Court
- ✓ Concourse Access Restaurant
- ✓ Suite Level Restaurant
- ✓ Wide, concourses, utility to set booths, dinner sets, displays 30' to 40' width
- ✓ Customer service booth
- ✓ ATM Locations
- ✓ Doors should separate inner and outer concourse, not curtains

- ✓ Special needs access doors from outer to inner in select locations
- ✓ Mid level inner concourse special needs areas

Overhead Door

- ✓ All overhead doors should have at least 12' high clearance, preferred 14' to 16' high access to staging area and access to arena floor to accommodate semi floor loading / unloading, monster truck access, farm equipment access for farm shows.
- ✓ Door width should be 12' minimum

Storage Areas

- ✓ Storage areas must accommodate:
  - chairs and chair carts
  - tables and table carts,
  - portable staging and stage components
  - ice/hockey dashers and dasher glass
  - basketball floor
  - hydraulic baskets
  - roller skating floor
  - indoor (football-lacrosse-soccer) turf
  - lighting trusses and lighting instruments
  - sound equipment
  - rigging motors
  - forklifts
  - trash cans
  - spotlights
  - booth drape and booth materials
  - portable concession equipment & kiosks
  - File and records storage
  - show road case storage,
  - sports equipment (volleyball standards, lacrosse /soccer nets)
  - crowd barriers, barricades, and fencing
  - ADA Lift, ADA ramp, etc.
- ✓ Main storage areas need to be on main event floor level.
- ✓ Additional storage needed on concourse level for crowd management rope & stanchions, turnstyles, registration tables, etc.

Loading docks/parking

- ✓ There should be loading/unloading areas for at least four trucks simultaneously with adjustable dock levelers.
- ✓A ramped access for truck and vehicle access on to main floor level for dirt truck access, monster trucks, semi truck loading/unloading on main floor, car/truck shows, farm and construction equipment shows and video/production truck access (must have interior or next to building access for multiple TV production trucks).
- ✓Close parking for 15 production trucks and 10 tour buses with short power.
- ✓ Satellite uplink truck parking w/shore power and cable access

Ceiling Structure

- ✓ Box truss beam construction - area over and near main stage location should be structurally able to accommodate 100,000 pounds of rigged/hung sound and lights, beam/box beam separation distance must be closer over stage area to accommodate rigging
- ✓ Center ceiling structure must be heavy enough to accommodate large center hung scoreboard with multiple video boards.
- ✓ Center area must be able to additionally accommodate concert sound and lights in the round rigging
- ✓ Opposite end from main stage should have box beam steel structure of sufficient strength to hand another 80,000 pounds of sound and lighting truss
- ✓Ceiling height should be minimum 80' of clearance from floor to low steel.
- ✓ Catwalk access to all parts of the ceiling for rigging, lighting adjustments, maintenance, scoreboard maintenance and "in the round rigging"

Locker / Dressing Rooms

- ✓ Four main equal sized locker room / dressing rooms with built in lockers, showers, private toilet facilities and access to white boards and media playback equipment
- ✓ Two of the main locker rooms that will serve as "home" locker rooms to UNL men and women should have a coaches office / lounge / shower and restroom facility. (This requirement may be waived if UNL practice facility is built.)
- ✓ Four additional smaller referee, officials, opening act dressing rooms

Backstage Catering Area

- ✓ A large backstage catering area capable of seating 200 at 5' round tables w/kitchen prep area and serving area must be adjacent to dressing room, load in area. This area may also be used for wrestling / warm up, circus performer prep, boxing warm up, dignitary green room, etc. Finished space, concrete floor preferred.

Scoreboard

- ✓ Center hung scoreboard w/four sides of video board / Daktronics preferred
- ✓ Balcony rail ribbon boards
- ✓ LED Ad Panels for variable advertising

Administration Offices

- ✓ Visitor's Entrance Lobby / Waiting area
- ✓ Business offices
  - General Manager
  - Asst.GM
  - Sr. Acct Mgr
  - Bookkeeper
  - Marketing Director
  - Asst. Marketing Director
  - Event Services Director
  - Asst. Event Services
- ✓ Meeting/ Conference rooms adjacent to business offices
- ✓ Ticketing staff offices in ticketing area in lobby
- ✓ Security office on event level near load in area
- ✓ Operations Staff offices on event/floor level
- ✓ Concessions staff offices near prep kitchen

Concessions

- ✓ Concessions stand all around outer concourse
- ✓ Multiple locations / multiple food theme offerings
- ✓ Number of stands and size of kitchen to be determined
- ✓ Beer / keg coolers
- ✓ Central Beer distribution lines
- ✓ Centralized soft drink delivery system
- ✓ Concessions / chef staff offices near or in main kitchen

Arena Lighting

- ✓ Cross focused TV Color Temperature corrected for basketball and main arena functions.
- ✓ Discussion topic to examine non-dimmable vs automatic shutter type lighting
- ✓ "Instant-on ability" necessary

✓ Dimmable lighting option for arena event / pre event atmosphere / mood lighting

Additional Spaces

✓ Maintenance shop
✓ Mechanical spaces
✓ Video/sound/scoreboard video/ ribbon board control space
✓ Media spaces for interviews / event media working space
✓ Show producer offices / variable locations
✓ Break out meeting rooms (optional)
✓ IATSE Office
✓ Vault room in main office

Power

✓ Stage End Minimum
(2) 800 Amp 3-phase
(1) 1000 Amp 3-phase
(2) 400 Amp 3-phase
(2) 200 Amp 3-Phase
✓ Power needs switching gear so outside generator can be wired in to cover peak loads to minimize over 400kw demand charge

Misc.

✓ Sport Court flooring for Volleyball
✓ Press area for basketball behind baskets
✓ Premium seating around arena floor for basketball
✓ Arena cannot have windows, must be able to black out arena during daylight
✓ Ceiling spot bays with clear lighting shot at end stage
✓ Multiple public access points, main lobby or main raised walkway entrance
✓ Wireless Internet access throughout building
✓ Trash room or compactor access
✓ 400 -500 car parking garage adjacent to arena
✓ Club level and concourse level entrance from parking garage
✓ Surrounding parking lots are "captured" paid parking lots
✓ Building fully "wired" or cable raceway ready for multiple camera locations for sports or other broadcast events
✓ Maximum women's and men's restroom facilities

Optional UNL Basketball Practice Facility

Building Location and Footprint

- ✓ Pending further analysis as part of the Schematic Design, a basketball practice facility for the University of Nebraska-Lincoln could be built as part of or adjacent to the Civic Arena

- ✓ The location of the practice facility relative to the Civic Arena would be determined as part of the Schematic Design process. This may include a future site to accommodate the practice facility's construction after the Arena is built.
- ✓ The size of the overall practice facility would likely be in the range of 45,000 sq. ft. to 55,000 sq. ft.

Constituent Elements

- ✓ Pending further analysis as part of the Schematic Design, the basketball practice may include:
  - Women's practice gym
  - Men's practice gym
  - Women's locker area
  - Men's locker area
  - Training/Medical/Hydro
  - Weight Training
  - Video Equipment/Editing, Women
  - Video Equipment/Editing, Men
  - Player lounge Women
  - Player lounge Men
  - Team Academic Room (Theater Style)
  - Women's coach's area
  - Men's coach's area
  - Lobby/Hall of Fame
  - Donor/Multi-purpose room
  - Pantry/Storage
  - Public Toilets

Ancillary Elements

Public Parking Facility

- ✓ Approximately 400-500 stall structured parking facility as part of overall arena complex
- ✓ Parking structure to have secured direct access into arena
- ✓ Parking structure design should facilitate post-event exiting

Exterior Pedestrian Facilities

- ✓ Elevated pedestrian walkways are assumed to be part of the overall arena design
- ✓ Elevated pedestrian walkways are to be designed to connect to proposed parking facilities/areas to the north and west of the arena

Arena Exterior

Design Parameters

- ✓ Arena exterior shall conform to the design parameters presently being developed as part of the "Integrated Development Plan" process, as expressed in the "West Haymarket-Future Design Framework" document (in process of being developed)

- ✓ The exterior design shall strive to create "active edges" (i.e., store fronts for retail uses, fan activities, office space) along the majority of at least two sides.

Exhibit "B"

August 12, 2008

	Project Scope:	Sitework		Arena		S Parking		N Parking		Bridge		Garage		Total	Fees	% Complete
				400,000	sf							175,000	sf			
				15,000 Seats												
A.	Construction	5,880,000		140,400,000	$351	7,020,000		2,925,000		7,020,000		9,213,750	$53	172,458,750		
1.	Cost	5,000,000		120,000,000	$300	6,000,000		2,500,000		6,000,000		7,875,000	$45	147,375,000		
2.	5% Contingency	250,000		6,000,000	$15	300,000		125,000		300,000		393,750	$2	7,368,750		
3.	12% Escalation	630,000		14,400,000	$36	720,000		300,000		720,000		945,000	$5	17,715,000		
B.	Basic AE Services	352,800	6%	9,828,000	7%	421,200	6%	175,500	6%	491,400	7%	552,825	6%	11,821,725	6.9%	
1.	schematic	70,560	20%	1,965,600	20%	84,240	20%	35,100	20%	98,280	20%	110,565	20%	2,364,345	$591,086	25%
2.	design development	88,200	25%	2,457,000	25%	105,300	25%	43,875	25%	122,850	25%	138,206	25%	2,955,431		
3.	contract documents	123,480	35%	3,439,800	35%	147,420	35%	61,425	35%	171,990	35%	193,489	35%	4,137,604		
4.	bid / award	17,640	5%	491,400	5%	21,060	5%	8,775	5%	24,570	5%	27,641	5%	591,086		
5.	construction	52,920	15%	1,474,200	15%	63,180	15%	26,325	15%	73,710	15%	82,924	15%	1,773,259		

C.	Other Services		$557,500	
1.	Programming	150,000	150,000	100%
2.	Community Engagement/Outreach	100,000	100,000	100%
3.	Feasibility Study-CSL	75,000	75,000	100%
4.	Models / Renderings	125,000	125,000	100%
5.	Overall Project Coord.	75,000	7,500	10%
6.	Site Master Planning	100,000	100,000	100%
D.	Other Expenses		$50,000	
1.	Reimbursables	500,000	25,000	5%
2.	Printing	500,000	25,000	5%
3.	Design Conting. 5% of Total	591,086	0	0%
E.	Total Pre Bond Issue Services		$1,198,586	

WH 10-04 Introduce: 9-23-10

RESOLUTION NO. WH- _____

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

That the Agreement between Alfred Benesch & Company and the West Haymarket Joint Public Agency to provide Geotechnical Engineering Services for the Arena and Parking Garage structures for the West Haymarket Project, attached hereto as Attachment "A" and incorporated herein by this reference, is hereby approved and the Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute said Agreement on behalf of the West Haymarket Joint Public Agency.

Introduced by:

_____

Approved as to Form & Legality:

_____
Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

HWS
Solutions Through Service

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LAW DEPT.

HWS Consulting Group
825 J Street, Box 80358
Lincoln, NE 68501-0358
402.479.2200 • Fax: 402.479.2276
www.hws.com

September 15, 2010

Mr. Rick R. Peo
Chief Assistant City Attorney
City of Lincoln
555 South 10th Street; Suite 300Lincoln, NE. 68508

REFERENCE: Comprehensive Geotechnical Engineering Services for
Arena and Parking Garage Structures
West Haymarket Project
Lincoln, NE.

Dear Mr. Peo:

Benesch - HWS Consulting Group Inc. (HWS) is pleased to submit a proposal for providing the comprehensive geotechnical engineering services for the City of Lincoln Arena and Parking structures proposed for construction within the BNSF's Lincoln Depot X Yard portion of the West Haymarket site. Description and requirements of the Geotechnical analysis were summarized in a request for proposal by DLR Group (DLR) dated September 8, 2010 and a subsequent e-mail from DLR dated September 10, 2010.

Based on conceptual data provided by DLR, HWS is of the understanding that the proposed Arena structure will consist of a 16,000 seat arena with ancillary spaces expected to be steel framed or concrete structure up to four stories in height. The majority of the structure site will be raised 5 to 6 feet above the current elevation to provide an arena floor elevation approximately 2 feet above the 500-year flood elevation. The structure design is currently being evaluated, and as such, column and continuous footing loads have not been established. In general, the current design is assuming that all arena components would be seated on grade beams and deep foundations. Deep foundations are expected under the majority of the building but some smaller areas may bear on shallow foundations. It is anticipated that the deep foundation system will be end-bearing and obtain bearing within the Dakota formation bedrock materials. The proposed arena grid area that was recommended for performance of subsurface exploratory assessment is 400' x 500' oriented such that the 500' length is predominantly north-south.

The proposed parking garage will be a multi-story structure having a foot print approximately 120' x 350' in plan dimension. Column loading has not been established for this structure, however, it has been assumed that they will be high and that the structure will need to be seated on a deep foundation system.

DRILLING, IN-SITU TESTING, AND SAMPLING METHODS

The RFP requested that borings be performed on an approximately 100' x 100' grid. DLR and HWS are in agreement that this boring spacing is appropriate for existent geotechnical information available at this time. The need for additional borings will be discussed if and when it is appropriate based on the findings of field exploratory efforts. Thirty-four (34) Dutch friction-cone soundings and thirty-four (34) exploratory borings are proposed at the project site. Please refer to the attached boring location plan that shows the tentative location of these borings. The soundings will be performed to depths of up to 30 feet to more accurately establish the consistency of the upper cohesive soils. The borings will be advanced to the depths necessary to penetrate 15 to 20 feet into competent unweathered Dakota formation (sandstone or shale) bedrock material. Based on previous subsurface exploratory data obtained as part of the preliminary geotechnical exploration performed for major building structures proposed within the West Haymarket project area, HWS has assumed that borings will need to extend to a depth of 95 feet below existing grade.

The soundings will be performed in accordance with ASTM D 3441, Standard Test Method for Deep, Quasi-Static, Cone and Friction-Cone Penetration Tests of Soil. The mechanical penetrometer operates in 8-inch increments, using a set of inner rods to operate a telescoping tip and to transmit the components of penetration resistance (cone bearing and friction sleeve resistance) to the surface for measurement. The plot of the test data provides data on soil types, layering, uniformity, and strength of various soils encountered. These data will be used to determine the locations of critical soils that might require sampling.

The soil borings will be made in accordance with ASTM D 1452, Standard Practice for Soil Investigation and Sampling by Auger Borings. Machine-driven, continuous flight auger having a diameter of 6-inches and hollow-stem auger having an inside diameter of 3-1/4 inches will be used to advance the holes for split-barrel and thin-walled tube sampling. Relatively undisturbed samples of cohesive soils will be obtained at selected locations (based upon Dutch cone test results) in accordance with ASTM D 1587, Standard Method for Thin-Walled Tube Sampling of Soils, using open-tube samplers having outside diameter of 3.0 and 5.0 inches.

Penetration tests will be performed in accordance with ASTM D 1586, Standard Method for Penetration Test and Split-Barrel Sampling of Soils. Representative samples of the soil will be obtained for identification purposes. The resistance of the soil to penetration of the sampler, measured in blows per foot (N), is an indication of the relative density of cohesionless soil and of the consistency of cohesive soil.

The soils encountered in the upper portion of each boring (i.e., from the ground surface to a level slightly below the groundwater level which is anticipated as extending 10 to 15 feet below existing grade) will be advanced using 6-inch-diameter continuous flight auger. Advancing the upper portion of each boring using continuous flight auger will allow for retrieval of the soil encountered to these depths for screening using a Photo Ionization Detection (PID) meter to detect for the potential presence of hydro-carbon contaminants within the soils encountered to these depths. Any subsurface contamination, as defined by the laws and regulations of the State of Nebraska, that is detected by odor or visual examination will be reported to the Owner with a

written recommendation to consult an environmental specialist to evaluate any compliance and/or property development issues. HWS will stockpile and retain the upper 2.0 feet of soils from each boring for further environmental testing. Contaminated soils encountered below a depth of 2 feet below existing grade will be placed in drums (along with waters used to wash these soils from the auger) for disposal as recommended by the City's environmental engineer. The fee presented in this cost estimate for disposal of contaminated soils only assumes the presence of hydro-carbon contaminants. The cost for disposal of contaminated soils containing other than hydro-carbons will be provided the City if and when encountered.

The subsurface materials will be identified and described in accordance with ASTM D 2488, Standard Practice for Description and Identification of Soils (Visual-Manual Procedure).

LABORATORY TESTING PROGRAM

The laboratory tests and procedures considered necessary to evaluate the pertinent engineering properties of the foundation soils include, but may not be limited to, the following:

1. Visual inspection of the thin-walled tube samples of foundation soils by a member of HWS' professional engineering staff.
2. Classification of typical soil types in accordance with ASTM D 2487, Standard Test Method for Classification of Soils for Engineering Purposes.
3. Moisture content and dry density of selected undisturbed samples of cohesive soil. These data correlate with the strength and compressibility of the soils. High moisture content and low density usually indicate low strength and high compressibility.
4. Consolidation/swell tests on representative samples of cohesive soils from within the critical floor subgrade and foundation zones. These tests will be performed in accordance with ASTM D 4546, Standard Test Methods for One Dimensional Swell/Settlement Potential of Cohesive Soils. The data from the consolidation/swell tests can be used to develop an estimate of the amount of heaving or settlement of the floor slab and footings that might occur.
5. Unconfined compression tests and triaxial compression tests on representative samples of clayey foundation soils. The unconfined compression tests will be performed in accordance with ASTM D 2166, Standard Test Method for Unconfined Compressive Strength of Cohesive Soil. The triaxial tests will be performed in accordance with ASTM D 4767, Standard Test Method for Consolidated-Undrained Triaxial Compression Test on Cohesive Soils. The unconfined and triaxial data are used to determine the bearing capacities of foundation soils and the safe slopes of excavations.
6. Moisture-density relations of typical soils that will potentially be used for fill material at the project site. This test data along with densities obtained for natural soils encountered on the site can be used to determine shrinkage values/compaction factors for borrow materials used as compacted fill.
7. <u>Soil corrosivity tests</u> on representative samples of the subsurface materials. The tests will be performed in accordance with Appendix A of ANSI/AWWA C105/A21.5-82, "Polyethylene Encasement for Ductile-Iron

Piping for Water and Other Liquids". Each test will consist of determining the resistivity, moisture, sulfide concentration, pH, and redox potential of the soil sample. These test results are used to determine if the soils will be corrosive to steel and ductile iron.

8. Chloride, sulfate, and pH on representative samples of the subsurface materials. The procedures used in the evaluation of the soil samples are presented on pages 6-10 to 6-17 in the Concrete Pipe Handbook published by the American Concrete Pipe Association. These test results are used to determine if the soils will be corrosive to Portland cement concrete.

FOUNDATION ENGINEERING EVALUATION AND RECOMMENDATIONS

The field and laboratory data that would be included in the geotechnical engineering report are as follows:

1. Penetration diagrams of Dutch friction-cone penetrometer.
2. Boring logs.
3. Density and moisture content of undisturbed soil samples.
4. Unconfined compressive strengths of selected samples of foundation soils.
5. Consolidated-undrained (w/ pore pressure) back-pressure saturated triaxial compression test data results.
6. Consolidation/swell test data on selected samples of subgrade and foundation soils.
7. Soil corrosivity test results.
8. Moisture-density relations of selected soil sample(s)
9. Geology:
   a) Depth to groundwater--if encountered.
   b) Summary of surface and subsurface conditions at the site.
10. Soil classification chart and tables listing the criteria used to describe various soil properties.
11. Soil classification test data.

HWS' geotechnical engineering report will include at a minimum the following information:

1. Allowable soil bearing pressure for shallow foundations.
2. Unsuitable subgrade and foundation soil removal from within the building areas.
3. Minimum depth to suitable bearing material for spread foundation systems.
4. Frost depth requirements for the foundation system.
5. Deep foundation recommendations including pile type and size, installation depth and associated allowable capacity, and pile driving criteria.
6. Coefficient of lateral resistance for natural soils that DLR can use during performance of L-pile analysis.
7. Analysis of soil to ascertain presence of potentially expansive soils.
8. Recommended types of fill and backfill materials and compaction requirements.
9. Suitability of on-site soils for reuse as compacted fill.
10. Suitability of project stockpiled soils generated as part of the flood storage excavation operations for use as compacted fill.
11. Estimate of settlement or heave of floor slabs and shallow footings.

12. Active, passive and at-rest earth pressures, and sliding resistance values for use in design of retaining and building walls.
13. Effect of fill and floor loadings on the natural foundation and subgrade soils and the need for surcharge placement.
14. Recommendations for drainage of foundations and retaining walls.
15. Recommendations on seismic site classification.
16. Recommendations on pavement subgrade preparation and thickness recommendations.
17. Bank stability (maximum slope).

FEE ESTIMATE

Per Attachment "A", HWS' estimate of the amount of work involved with performing the comprehensive geotechnical engineering study for the Arena and associated parking garage will be in the $95,000.00 to $105,000.00 range. The cost for the environmental soil screening for hydro-carbon contaminants and potential disposal of up to 40 drums of contaminated soils and wash waters would be in the $10,000.00 to $15,000.00. Based on these computations HWS will perform the scope of services presented in Attachment A and as discussed herein for a Guaranteed Maximum Price of $120,000.00. Depending upon the subsurface conditions encountered at the project site, either more or less work may be warranted. The charges for additional work performed or credit for work not required would be computed using the unit rates provided in Attachments A and B. The total fee will not exceed $120,000.00 without your express authorization and understanding.

TIME SCHEDULE

Approximately 17 working days will be required to complete the soils field exploration after gaining BNSF site access permission and the being provided BNSF flagman lookout support. Approximately 4 weeks will be required to complete the laboratory soils testing, analysis and geotechnical engineering report. Verbal recommendations could be provided 1 to 2 weeks after completing the field exploration work, depending upon the conditions encountered.

EXECUTION OF CONTRACT

If this fee estimate is acceptable, please sign below and return one copy to HWS. Upon execution and receipt by both parties, this Document shall form an Agreement between the City of Lincoln and HWS. Services will be performed in accordance with the attached General Conditions.

HWS appreciates having the opportunity to present this proposal. Please contact us at your convenience if any clarification or additional information is required.

Respectfully submitted,
BENESCH - HWS CONSULTING GROUP INC.

Gary E. Proskovec, P.E.
Vice President of Geotechnical Engineering & Railroad Projects Coordinator
GEP/gep
Enclosure
52-68-5070
ArenaGeotCostEstLtrA.doc

Orig. & 1 pc.: Mr. Rick R. Peo

CITY OF LINCOLN
INC.

By: _____
Authorized Signature

Title: _____

Date: _____, 20_____

BENESCH - HWS CONSULTING GROUP

By: _____
Authorized Representative

Title: Vice President

Date: Sept 15th, 20 10

Benesch - HWS Consulting Group Inc.
825 "J" Street, P.O. Box 80358
Lincoln, Nebraska 68501
(402) 479-2200
FAX (402) 479-2276

Attachment A
Scope of Services and Fee Estimate
West Haymarket Arena and Parking Garage
Comprehensive Geotechnical Engineering and
Surficial Soils Hydro-Carbon Contaminant Assessment

Item No.	Description	Estimated Quantity	Unit Price	Amount
I. GEOTECHNICAL ENGINEERING SERVICES:				
A.	Mobilization and Equipment Preparation:			
	1. Drill Rig and Crew			
	a. CME 75 Drill Rig	17.0 hr.	$ 75.00 /hr.	$ 1,275.00
	a. CME 550 Drill Rig	- hr.	$ 85.00 /hr.	$ -
	a. Mobile B-53 Drill Rig	- hr.	$ 58.00 /hr.	$ -
	a. Tracked Bobcat Drill Rig & Trailer	- hr.	$ 53.00 /hr.	$ -
	a. MR-24 Drill Rig	- hr.	$ 47.00 /hr.	$ -
	b. Advanced Driller	18.0 hr.	$ 52.00 /hr.	$ 936.00
	c. Driller	18.0 hr.	$ 39.50 /hr.	$ 711.00
	d. Driller	18.0 hr.	$ 39.50 /hr.	$ 711.00
	2. Support Vehicle.			
	a. Vehicle Hours	170.0 hr.	$ 4.75 /hr.	$ 807.50
	b. Vehicle Mileage	50.0 mi.	$ 0.650 /mi.	$ 32.50
B.	Site Layout, Utility Locate, Water Readings, Cleanup:			
	1. Advanced Driller	9.0 hr.	$ 52.00 /hr.	$ 468.00
	2. Driller	9.0 hr.	$ 39.50 /hr.	$ 355.50
	3. Driller	9.0 hr.	$ 39.50 /hr.	$ 355.50
	4. Survey Crew	Est.	At Cost	$ 1,000.00
C.	Field Exploration Drilling and Sampling:			
	1. Dutch Friction-Cone Soundings	1,020.0 ft.	$ 5.25 /ft.	$ 5,355.00
	(Thirty-four 30-foot-deep soundings)			
	2. Auger Borings (6-inch-dia. Straight Auger)	- ft.	$ 6.80 /ft.	$ -
	3. Auger Borings (Hollow -stem auger; 0-50 ft. depth)	1,700.0 ft.	$ 9.50 /ft.	$ 16,150.00
	(Thirty-four 50-foot-deep borings)			
	4. Auger Borings (Hollow-stem auger; 50-75 ft .depth)	850.0 ft.	$ 12.00 /ft.	$ 10,200.00
	(Thirty-four 25-foot-deep borings)			
	5. Auger Borings (Hollow-stem auger; 75-100 ft .depth)	680.0 ft.	$ 15.25 /ft.	$ 10,370.00
	(Thirty-four 20-foot-deep borings)			
	6. Standard Penetration Tests			
	(0-50 ft. depth)	340.0	$ 24.25 ea.	$ 8,245.00
	(50-75 ft depth)	170.0	$ 30.50 ea.	$ 5,185.00
	(75-100 ft. depth)	136.0	$ 38.00 ea.	$ 5,168.00
	7. Obtaining Undisturbed Soil Samples	68.0	$ 25.00 ea.	$ 1,700.00
	8. Field Vane Shear Test	-	$ 400.00 ea.	$ -
	9. Backsaver Soil Probe	-	$ 4.50 hr.	$ -
	10. Hand Auger Borings			
	a. Advanced Driller	8 hr.	$ 52.00 /hr.	$ 416.00
	b. Driller	8 hr.	$ 39.50 /hr.	$ 316.00
	d. Coring (bit wear)	- in.	$ 4.50 /in.	$ -
	e. Use of 3" Shelby Tubes	-	$ 9.50 /ea.	$ -
	f. Hand Auger	1 day	$ 14.75 /day	$ 14.75
	11. Rock Coring Bit Wear (None proposed)	- ft.	$ 10.50 /ft.	$ -
D.	Materials Laboratory Testing:			
	1. Soil Density and Moisture Content Determination	68.0	$ 31.50 ea.	$ 2,142.00
	2. Soil Moisture Content Determination	-	$ 11.50 ea.	$ -
	3. Liquid & Plastic Limits, and Plasticity index (dry prep.)	4	$ 83.00 ea.	$ 332.00
	4. Unconfined Compressive Strength of Soil			
	a. Uncarved shelby tube sample	-	$ 46.00 ea.	$ -
	b. Carved sample	16	$ 63.00 ea.	$ 1,008.00
	5. Consolidation Test (without time deformation	10	$ 129.00 ea.	$ 1,290.00
	or permeability data)			
	6. Swell Test (without time deformation or	-	$ 149.00 ea.	$ -
	permeability data)			
	7. Sand Content (+ No. 200 sieve only)	-	$ 30.50 ea.	$ -
	8. Sieve Analysis (washed - more than 3000 grams)	-	$ 49.50 ea.	$ -
	9. Mechanical Analysis w/ + No. 10 Material (Hydrometer)	4	$ 86.00 ea.	$ 344.00
	10. Moisture-Density Relations of Soil (Method A)	2	$ 132.00 ea.	$ 264.00
	11. Falling-Head Permeability Test	-	$ 156.50 ea.	$ -
	12. Triaxial Compression of Cohesive Soil, Consolidated-	12 pt.	$ 336.00 /pt.	$ 4,032.00
	Undrained w/ Pore-Pressure (Back-Pressure Saturated); 3 Points Per Envel.			

Attachment A
Scope of Services and Fee Estimate
West Haymarket Arena and Parking Garage
Comprehensive Geotechnical Engineering and
Surficial Soils Hydro-Carbon Contaminant Assessment

Item No.	Description	Estimated Quantity	Unit Price	Amount
D.	**Materials Laboratory Testing (cont'd.):**			
	13. Soils Corrosivity Test - Concrete (redox, pH, Chlorides and sulfates)	4 set	$ 78.00 /set	$ 312.00
	14. Soil Corrosivity Tests to Steel (redox, pH, resistivity, sulfides, sulfates, chlorides)			
		6 set	$ 150.00 /set	$ 900.00
	15. Soil Resistivity (App. A of ANSI/AWWA C105/A21.5)	6	$ 25.00 ea.	$ 150.00
	16. Crumb Test	-	$ 11.50 ea.	$ -
	17. Pinhole Test	-	$ 127.00 ea.	$ -
	18. Unconfined Compressive Strength of Rock Cores	-	$ 93.50 ea.	$ -
	19. California Bearing Ratio (Each Point)	- pt.	$ 193.00 ea.	$ -
	20. Fly Ash Stabilization Analysis for One Sample of CH Soil			
	a. Lab Technician	- hr.	$ 39.50 /hr.	$ -
	b. Liquid & Plastic Limits, and Plasticity Index	-	$ 83.00 ea.	$ -
	21. Lime Stabilization Analysis for One Sample of CH Soil (Eades-Grim)			
	a. Ph Determination	-	$ 200.00 ea.	$ -
	b. Moisture-Density Relations of Soil (Method A)	-	$ 132.00 ea.	$ -
	c. Moisture-Density Relations of Soil-Cement	-	$ 150.00 ea.	$ -
	d. Liquid & Plastic Limits, and Plasticity Index	-	$ 83.00 ea.	$ -
	e. California Bearing Ratio (Each Point)	- pt.	$ 193.00 ea.	$ -
E.	**Project Coordination, Analysis, Report Preparation, 4 Hour Consultation, & Plans Geotechnical Review:**			
	1. Project Consultant	25.0 hr.	$ 154.00 /hr.	$ 3,850.00
	2. Project Engineer	120.0 hr.	$ 90.00 /hr.	$ 10,800.00
	2. Engineer	- hr.	$ 74.00 /hr.	$ -
	3. Experienced Engineering Geologist	64.0 hr.	$ 70.00 /hr.	$ 4,480.00
	4. Advanced Clerical Assistant	2.0 hr.	$ 45.50 /hr.	$ 91.00
F.	**Reimbursable Expenses and Equipment:**			
	Photocopies, Postage, Telephone Rate Charges, Facsimiles, etc.	Estimated Amount		$ 100.00
	Motel and Meals:			
	1. Motel (- night for a two-man crew)	Est.	At Cost	
	2. Meals (- days for two men)	Est.	At Cost	
		Estimated Subtotal*:		$ 99,866.75
	Subtotal* cost for geotechnical services listed above will not exceed $105,000 without prior approval.			
II. ENVIRONMENTAL HYDRO-CARBON SCREENING COSTS AND REPORTING:				
A.	**Soil Screening, Containment of Contaminated Soils, and Findings Report:**			
	1. Auger Borings (6-inch-dia. Straight Auger) (Thirty-four 10-foot-deep borings)	340 ft.	$ 6.80 /ft.	$ 2,312.00
	2. PID Meter Rental	17 day	$ 95.00 /day	$ 1,615.00
	3. Drumming Contaminated Auger-Cuttings & Decontamination Wash Water			
	a. Advanced Driller	17 hr.	$ 52.00 /hr.	$ 884.00
	b. Driller	17 hr.	$ 39.50 /hr.	$ 671.50
	c. Drums (34 for soil and 6 for wash water)	40 ea.	$ 47.50 /ea.	$ 1,900.00
	d. Hotsy Power Washer	17 day	$ 100.00 /day	$ 1,700.00
	4 Soil Cuttings Disposal (Assumes Non-Haz Hydro-Carbon Soils and Acceptable to Dispose of at Milford Landfill)	34 ea.	$ 100.00 /ea.	$ 3,400.00
	5. Auger Wash Water Disposal (Assumed Non-Haz Hydro-carbon Water Acceptable to Dispose of at Milford Landfill)	7 ea.	$ 55.00 /ea.	$ 385.00
	6. Project Engineer	5.0 hr.	$ 90.00 /hr.	$ 450.00
	7. Environmental Engineer	6.0 hr.	$ 115.00 /hr.	$ 690.00
		Estimated Subtotal:**		$ 14,007.50
	Subtotal** cost for environmental services listed above will not exceed $15,000.00 without prior approval.			
		Estimated Total Fee*:**		$ 113,874.25
	Total*** cost for combined geotechnical engineering and environmental services will not exceed $120,000.00 without prior approval.			

ATTACHMENT B
Personnel, Materials Lab and Reimbursable Unit Rates

Description	Unit Price
Personnel	
Assistant Technician/Driller	$33.50
Clerical Assistant	$33.50
Technician/Driller/Drafter	$39.50
Experienced Clerical Assistant	$39.50
Engineering Geologist/Environmental Technician	$45.50
Experienced Technician/Driller and Advanced Clerical Assistant	$45.50
Advanced Clerical Assistant	$45.50
Graduate Environmental Scientist/Chemist	$52.00
Experienced Engineering Geologist	$52.00
Advanced Technician/Driller/Drafter	$52.00
Graduate Hydrogeologist/Engineer	$55.00
Environmental Scientist/Chemist	$55.00
Advanced Engineering Geologist	$55.00
Senior Technician/Driller/Drafter	$55.00
Hydrogeologist/Architect/Engineer	$70.00
Senior Engineering Geologist/Environmental Scientist/Chemist	$70.00
Project Technician/Drafter	$70.00
Project Manager	$74.00
Senior Hydrogeologist/Architect/Geologist/Engineer	$74.00
Senior Project Technician	$74.00
Senior Project Manager	$90.00
Project Hydrogeologist/Architect/Geologist/Engineer	$90.00
Supervisory Technician	$90.00
Supervisory Project Representative	$97.00
Advance Senior Project Manager	$97.00
Senior Project Hydrogeologist/Architect/Geologist/Engineer	$97.00
Project Consultant	$107.00
Senior Project Consultant	$125.00
Executive Project Consultant	$144.00
Corporate Officer	$157.00

ATTACHMENT B
(Continued)

Description	Unit Price
Materials Laboratory:	
Air Content of Freshly Mixed Concrete (Pressure Method)	$16.00 ea.
Auger Boring (6-in. auger)	$6.80/ft.
Auger Boring (Hollow-stem auger):	
0 to 50 feet below grade	$9.50/ft
50+ feet below grade	Project Specific Rate
Concrete Compression Test of 6" x 12" Concrete Cylinders	$12.50 ea.
Consolidation Test (without time deformation or permeability data)	$129.00 ea.
Coring (bit wear)	$4.75/in.
Corrosivity of Soil (water content, pH, resistivity, redox & sulfides)	$78.00 ea.
Drill Rigs:	
a. CME 75 (550)	$75.00/hr. ($85.00/hr)
b. Mobile B-53	$58.00/hr.
c. MR-24	$47.50/hr.
d. Track Bobcat & Trailer	$53.00/hr.
Dutch Friction Cone Soundings	$5.25/ft.
Electrical Core Machine Rental	($36.25 minimum) $13.50/hr.
Hand Auger	$14.75/day
Handling Charge for Reserve Cylinders	$5.50 ea.
Inspection Vane Equipment	$10.25/hr.
Liquid & Plastic Limits, & Plasticity Index (Wet Prep.)	$105.00 ea.
Liquid & Plastic Limits, & Plasticity Index (Dry Prep.)	$83.00 ea.
Measuring Length of Drilled Core	$13.50 ea.
Moisture Content of Soil	$11.50 ea.
Moisture-Density Relations of Soil (Method A)	$132.00 ea.
Moisture-Density Relations of Soil (One Pt. Check)	$55.50 ea.
Nuclear Moisture-Density Gauge (8 hr./day maximum)	$9.00/hr.
Obtaining an Undisturbed Soil Sample	$25.00 ea.
Osterberg Piston Sampler:	
First Sample (*Additional Samples*)	$70.00 ea. (*$36.00 ea.*)
Particle-Size Analysis of Soil (without specific gravity):	
With Plus No. 10 Material	$86.00 ea.
Without Plus No. 10 Material	$71.50 ea.
Falling or Constant Head Permeability Test	$156.50 ea.
Photoionizer (HNu) Meter	($120.00 minimum) $31.75/hr.
Saximeter	$50.00/day
Sieve Analysis Dry (*Washed*) Less than 3,000 gm.	$32.50, ($40.*00*)
Sieve Analysis Dry (*Washed*) More than 3,000 gm.	$40.00, (*$49.50*)
Sieve Analysis—Material Finer than 200 sieve	$30.50 ea.
Single Use Concrete Cylinder Mold (Plastic)	$2.00 ea.
Slump of Portland Cement Concrete	$16.00 ea.
Soil Density and Moisture Content	$31.50 ea.
Soil Probe (8 hr./day maximum)	$4.75/hr.
Standard Penetration Tests	$24.25 ea.
Support Vehicle (8 hr./day maximum):	
Daily Rate	$45.00/day
Mileage	$0.65/mi.
Swell Test (without time deformation or permeability data)	$149.00 ea.
Trimming, Capping, & Compressive Strength of Concrete Core	$37.00 ea.
Unconfined Compressive Strength of Soil:	
Uncarved Shelby tube sample	$46.00 ea.
Carved sample	$63.00 ea.
Use of Shelby Tube:	
3-in.-diameter	$9.50 ea.
5-in.-diameter	$11.50 ea.
Reimbursables:	
Cellular Telephone	No Charge
Facsimile	$1.00/sheet
Meals and Lodging	At Cost
Postage, Long Distance Telephone, personal vehicle usage etc.	At Cost

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AGREEMENT

THIS AGREEMENT is entered as of this 15th day of September, 2010, by and between the West Haymarket Joint Public Agency, a Nebraska political subdivision, hereinafter referred to as "JPA" and Alfred Benesch & Company, hereinafter referred to as "Benesch."

RECITALS

A. The JPA proposes to engage Benesch to provide Comprehensive Geotechnical Engineering Services for the Arena and Parking Lot Structures for the West Haymarket Project in accordance with the terms and conditions set forth herein, as well as the Scope of Services, attached hereto and incorporated herein by reference.

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

C. Benesch hereby represents that consultant is willing and able to perform the services in accordance with this Agreement and the Scope of Services attached hereto and incorporated herein by reference.

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

I. ADMINISTRATOR OF AGREEMENT

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

II. SCOPE OF SERVICES

On behalf of the JPA, Benesch agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the services set forth in Scope of Services, attached hereto and incorporated herein by reference. In the event there is a conflict between the terms of the Scope of Services and this Agreement, the terms of this Agreement shall control.

III. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement by both parties and shall continue until completion of all obligations of this Agreement and the attached Scope of Services, but in no event longer than December 31, 2011.

IV. COMPENSATION

The JPA agrees to pay Benesch for the services set forth in the attached Scope of Services, a sum not to exceed $120,000.00. Progress payments based upon a percentage of the services performed shall be payable monthly upon receipt of supporting documentation acceptable to the JPA for the work completed. All approved payments will be made to Benesch.

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

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

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

V. NON-RAIDING CLAUSE

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

VI. TERMINATION OF AGREEMENT

A. This Agreement may be terminated by Benesch if the JPA fails to adequately perform any material obligation required by this Agreement or the attached Scope of Services ("Default"). Termination rights under this paragraph may be exercised only if the JPA fails to cure a Default within ten (10) calendar days after receiving written notice from Benesch specifying the nature of the Default.

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

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

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

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

VII. ADDITIONAL SERVICES

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

VIII. FAIR EMPLOYMENT

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

IX. FAIR LABOR STANDARDS

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

X. ASSIGNABILITY

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

XI. INTEREST OF CONSULTANT

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

XII. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL

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

XIII. COPYRIGHTS, ROYALTIES & PATENTS

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

XIV. COPYRIGHT; CONSULTANT'S WARRANTY

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

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

XV. INDEMNIFICATION

To the fullest extent permitted by law, Benesch shall indemnify and hold harmless JPA, its elected officials, officers, agents, and employees, as indemnitees, 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 therefrom, that is caused in whole or in part by Benesch or anyone directly or indirectly employed by Benesch or anyone for whose acts any of the them may be liable. This section will not require Benesch 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. The JPA does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. The provisions of this section survive any termination of this Agreement.

XVI. INSURANCE

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

1. Workers' Compensation; Employer's Liability. Such insurance coverage as will fully protect both Benesch and JPA from any and all claims under any Worker's Compensation Act or Employer's Liability Law. Benesch shall exonerate, indemnify and hold harmless JPA from and against, and shall assume full responsibility for payment of all federal, state, and local taxes and contributions imposed or required under unemployment insurance, social security and income tax laws with respect to Benesch or any such employees of Benesch as may be engaged in the performance of this Agreement. The minimum acceptable limits of liability to be provided by such Workers' Compensation policy shall be as follows:

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

2. Automobile Liability Insurance. For all of Benesch's automobiles, including owned, hired and non-owned automobiles, Benesch shall keep in full force and effect such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in an capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by a such Automobile Liability Insurance shall be as follows:

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

ii. Property Damage Limit $500,000 Each Occurrence

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

3. General Liability Insurance. General Liability Insurance, naming and protecting Benesch and the JPA, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Benesch and Benesch's employees, students, or those directly or indirectly employed by Benesch. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

i. All Acts or Omissions - $1,000,000 each Occurrence; $2,000,000 Aggregate; and

ii. Bodily Injury/Property Damage - $1,000,000 each Occurrence; $2,000,000 Aggregate; and

iii. Personal Injury Damage - $1,000,000 each Occurrence; and

iv. Contractual Liability - $1,000,000 each Occurrence; and

v. Products Liability and Completed Operations - $1,000,000 each Occurrence; and

vi. Medical Expenses (any one person) - $10,000.

If Benesch does not possess General Liability Insurance in the amounts as provided in this Agreement, Benesch may use Excess or Umbrella Insurance to supplement the General Liability Insurance to reach the minimum acceptable limits of liability as provided in this Agreement.

4. Professional Liability Insurance. Professional Liability Insurance, naming and protecting Benesch against claims for damages resulting from Benesch's errors, omissions, or negligent acts. Such policy shall contain a limit of liability not less than two million dollars ($2,000,000) per claim and aggregate.

B. Minimum Scope of Insurance. All liability insurance policies (except Professional Liability) shall be written on an "occurrence" basis only, except for professional liability insurance which may be based upon a "claims-made" basis. All insurance coverages are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of not less than A:VIII unless specific approval has been granted by the JPA.

C. Deductibles. All deductibles on any policy shall be the responsibility of Benesch and shall be disclosed to the JPA at the time the evidence of insurance is provided.

D. Certificate of Insurance. All Certificates of Insurance shall be filed with the City Attorney of the City of Lincoln 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 for General Liability Insurance and Excess or Umbrella Insurance if used to supplement the General Liability Insurance. Benesch may present evidence of equivalent self-insurance in place of a certificate of insurance for General Liability Insurance. The JPA shall be treated as an additional insured as if Benesch possessed General Liability Insurance. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the JPA thirty days notice of reduction in amount, increase in deductibles, cancellation, or non-renewal of insurance coverage.

XVII. NOTICE

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

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

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

XVIII. INDEPENDENT CONTRACTOR

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

XIX. NEBRASKA LAW

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

XX. INTEGRATION

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

XXI. AMENDMENT

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

XXII. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would

become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

XXIII. WAIVER OF CONTRACTUAL RIGHT

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

XXIV. FEDERAL IMMIGRATION VERIFICATION

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

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

XXV. REPRESENTATIONS

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

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

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Jayne Snyder, Chair

ALFRED BENESCH AND COMPANY

By: _____
Title: _____

UNITED STATES CITIZENSHIP ATTESTATION FORM
FOR INDIVIDUAL CONSULTANT
(to be used pursuant to Section XXVII.B)

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

☐ I am a citizen of the United States.

OR

☐ I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of the USCIS (United States Citizenship and Immigration Services) documentation upon request required to verify Benesch's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States. I understand and agree that lawful presence in the United States is required and Benesch may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT
(to be used pursuant to Section XXVII.C)

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

☐ I am a citizen of the United States.

OR

☐ I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I agree to provide a copy of my USCIS (United States Citizenship and Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

WH 10-05 Introduce: 9-23-10

RESOLUTION NO. WH- _____

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

That the Amendment No. 1 to the Agreement dated August 14, 2008 between the City of Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group, Inc. to provide architectural services for the design of the Arena and other Arena improvements for the West Haymarket Project, attached hereto as Attachment "A" and incorporated herein by this reference, 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 West Haymarket Joint Public Agency.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

AGREEMENT made as of the 1st day of September in the year 2010
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

City of Lincoln, Nebraska

and the Architect:
(Name, address and other information)

DLR Group, inc. (a Nebraska corporation)

for the following Project:
(Name, location and detailed description)

Lincoln Arena – Amendment No. 1 to the Agreement dated August 14, 2008.

The Owner and Architect agree as follows.

TABLE OF ARTICLES

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2 ARCHITECT'S RESPONSIBILITIES

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13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

As defined in the Agreement dated August 14, 2008.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project scope shall include: (1) an arena not to exceed 16,000 seats and 450,000 square feet, (2) a 500-stall parking structure, and (3) a surface parking all located within the project boundaries as defined in Exhibit A – Arena Project Area. The Owner shall provide a buildable site pad including all design and construction services necessary to prepare the site as defined in Exhibit A, for construction of the arena, parking structure, and surface parking. Design Services under this Amendment specifically excludes: Incorporation of Central Utilities Systems or any sub-systems on the Arena site; any coordination or incorporation into the arena instruments of service for pedestrian connector, plaza connection or hotel/convention center.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1: See Exhibit B – Project Budget.
(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction schedule: To be determined by the Project Design and Construction Team consisting of: ***(Need to define)***

.1 Design phase milestone dates, if any:

« »

.2 Commencement of construction:

« »

.3 Substantial Completion date or milestone dates:

« »

.4 Other:

« »

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract or construction management.)

Construction Manager at Risk. See Exhibit C - Lincoln Arena Organization Chart.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The Architect shall prepare _____bid packages for the project as defined in Exhibit E – Lincoln Arena Architectural and Engineering Design Services.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address and other information.)

Program Manager: James Martin, Program Manager, The Benham Companies LLC, 622 Emerson Road, Suite 600, St. Louis, MO 63141-6728; (402) 417-2239.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

« »

§ 1.1.10 The Owner will retain the following consultants and contractors: Owner to Provide.
(List name, legal status, address and other information.)

.1 Cost Consultant:

The Owner's Program Manager will act as Cost Consultant.

.2 Scheduling Consultant:

The Owner's Program Manager will act as Scheduling Consultant.

.3 Geotechnical Engineer:

« »« »« »« »« »« »

.4 Civil Engineer:

« »« »« »« »« »« »

.5 Other, if any:
(List any other consultants or contractors retained by the Owner, such as a Project or Program Manager, construction contractor, or construction manager as constructor.)

Program Manager, Topographic and Boundary Surveyor, and Construction Manager at Risk (to be named).

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

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

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

« »« »« »« »« »« »

.2 Mechanical Engineer:

« »« »« »« »« »« »

.3 Electrical Engineer:

« »« »« »« »« »« »

§ 1.1.12.2 Consultants retained under Additional Services:

To be selected by the Architect and Owner.

§ 1.1.13 Other Initial Information on which the Agreement is based:

« »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall procure and maintain the following insurance coverage from A-rated insurance carriers for the duration of this Agreement. The Owner shall be named as an additional insured on the Commercial General Liability, Automobile Liability and any umbrella or excess Commercial General Liability and Automobile Liability policies. Additional insured coverage shall be primary and not contributory to any such coverage maintained by Owner. The policies shall contain a severability of interests' provision in favor of the additional insureds. The insurance policies shall contain a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. All deductibles and premiums associated with the below coverages shall be the responsibility of the Architect.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars ($2,000,000) for each occurrence and Two Million Dollars ($2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than «Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies and follows the form of the additional insured provisions as included in the underlying policies.

§ 2.5.4 Workers' Compensation as statutorily required and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars ($500,000).

§ 2.5.5 Professional liability covering the Architect's negligent acts, errors, and omissions in its performance of professional services with policy limits not less than Five Million Dollars ($5,000,000) per claim and in the aggregate.

§ 2.5.6 The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project in the reasonable discretion of the Architect. Architect shall utilize all reasonable efforts to require its Consultants and Contractors to maintain professional liability insurance with policy limits of Five Million Dollars ($5,000,000) per claim and in the aggregate.

§ 2.5.7 Prior to commencing work under this Agreement, the Architect and Consultants shall submit acceptable proof of such insurance to the Owner and the provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary **civil,** structural, mechanical, and electrical engineering services as defined in Exhibit E. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services

and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Program Manager a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project..

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Program Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and

elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager at Risk and Program Manager. The Architect shall meet with the Construction Manager at Risk and Program Managerto review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Program Manager's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner and the Program Manager and Construction Manager at Risk. The Architect shall meet with the Program Manager and Construction Manager at Risk to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Program Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge

that in order to construct the Work the Construction Manager at Risk will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Program Manager and Construction Manager at Risk. The Architect shall meet with the Program Manager and Construction Manager at Risk to review the Construction Documents.

§ 3.4.5 Upon receipt of the Program Manager's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES
§ 3.5.1 GENERAL
The Architect shall assist the Owner and Construction Manager at Risk in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager at Risk in (1) obtaining either competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING
§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Construction Manager at Risk in bidding the Project by participating in a pre-bid conference for prospective bidders, if any.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.6 CONSTRUCTION PHASE SERVICES
§ 3.6.1 GENERAL
§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager at Risk modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Program Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Program Manager only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk's failure to perform the Work in accordance with the requirements of the

Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner/Program Manager reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the Owner/Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall advise the Owner/Program Manager in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall act as the Owner's representative in interpreting the requirements of the Contract Documents and in judging the performance of the Construction Manager at Risk thereunder. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 In any dispute between the Owner/Program Manager and Construction Manager at Risk, the Architect shall, upon request by Owner/Program Manager, advise the Owner/Program Manager on issues concerning performance under the Contract Documents. Architect may decide any such performance issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner/Program Manager and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR ***[Question: Does Program Manager do this?]***

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager at Risk and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner/Program Manager, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract

Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner/Program Manager to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk has used money previously paid on account of the Contract Sum.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Construction Manager at Risk submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager at Risk submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager at Risk that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager at Risk in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's/Program Manager's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager at Risk and forward to the Owner/Program Manager, for the Owner's/Program Manager's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner/Program Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner/Program Manager about the balance of the amount remaining to be paid the Construction Manager at Risk, including the amount to be retained by the Owner under the agreement with the Construction Manager at Risk, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 ADDITIONAL SPECIALTY CONSULTANT SERVICES

§ 4.1 Additional Specialty Consultant Services listed below, except as otherwise noted, are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Specialty Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.4.
(Designate the Additional Specialty Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Table in 4.1 – No Revisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.14 Providing services in connection with building commissioning.

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

.1 Reviewing a Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager at Risk from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; ***[Question: What is extensive number of Claims?]***

.5 Evaluating substitutions proposed by the Owner or Construction Manager at Risk and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

.7 Failure of performance of Owner's consultants or contractors. ***[Question: What service is to be provided?]***

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Specialty Consultant Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 One (1) onsite project representative of the Architect

.3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed by October 31, 2013, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall furnish the services of a Program Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Program Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager at Risk and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before accepting the Construction Manager at Risk's guaranteed maximum price (GMP) and giving the Construction Manager at Risk Notice to Proceed with the Construction Phase of Contract, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work (Guaranteed Maximum Price) shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include Construction Manager at Risk's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget (see Exhibit B - Project Budget) for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Program Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work, including a five percent (5%) design and construction contingency as defined in Paragraph 12.1.1. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Program Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Program Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Program Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Program Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Program Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 Ownership of Architect's and Architect's Consultant's Instruments of service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use subject to Owner's approval which will not be unreasonably withheld. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for an against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the

requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that the Architect will be named as an additional insured under the Commercial General Liability Insurance obtained by the Construction Manager at Risk for the Project.

§ 8.1.3 The Architect shall and shall cause Architect's consultants to indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's and/or Architect's consultants' negligent acts, errors or omissions in the performance of any services performed by Architect or Architect's consultants under this Agreement and for patent, copyright or trademark infringement attributable to Architect's services under this Agreement. Notwithstanding the above, Owner agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement, except for gross negligence or intentional acts of misconduct.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or Construction Manager at Risk (collectively for this indemnity "Owner Entity").

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. ***[Note: Need to define consequential damages.]***

§ **8.1.5** Direct Negotiation, as defined below, will be the initial process utilized by the parties to resolve Claims and disputes or other matters arising out of this Agreement..

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. If the Project is resumed after more than thirty (30) days of suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services and the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include demobilization expenses including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Nebraska.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, except that the term Contractor shall mean Construction Manager at Risk.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the West Haymarket Joint Public Agency (JPA) or to a lender providing financing for the Project if the JPA or lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services for the arena and surface parking only, described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

A lump sum fee of Eight Million Dollars ($8,000,000.00) as defined in Exhibit E – Lincoln Arena Architectural and Engineering Design Services. An additional lump sum fee for basic services described

under Article 3, the 500-stall parking structure shall be negotiated by the Architect and Owner and a contract amendment shall be executed prior to commencement of any services by the Architect.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Paragraph 11.4.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: Services shall be a negotiated amount based upon work effort to be expended.
(Insert amount of, or basis for, compensation.)

« »

§ 11.4 Compensation for Additional Services of the Architect's specialty consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%):

« »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Predesign Phase	$ 150,000
Schematic Design Phase	$1,200,000
Design Development Phase	$2,000,000
Construction Documents Phase	$2,250,000
Bidding or Negotiation Phase	$ 150,000
Construction Phase	$2,250,000
Total Basic Compensation	$8,000,000

§ 11.6 If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid, or (2) if no such bid is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be reviewed annually and are subject to adjustment by the Architect on or after agreement anniversary date.
(If applicable, attach an exhibit of hourly billing rates or insert them below.) (See Exhibit D - Hourly Rates)

« »

Employee or Category	Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence outside of the State of Nebraska;

.2 Dedicated data and communication services, teleconferences, Project Web sites, and extranets;

.3 Fees paid for securing approval of authorities having jurisdiction over the Project;

.4 Printing, reproductions, plots, standard form documents;

.5 Postage, handling and delivery;

~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

.8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 1.10 times the expenses incurred.

§ 11.9 « »

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of $0.00 shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice. Amounts unpaid forty-five (45) days after receipt of the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

9% per annum

§ 11.10.3 Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of off setting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

§ 12**.1.1**

§ 12.1.2 Each Party agrees that the other Party is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 1**2.1.3** If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 1**2.1.4** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 1**2.1.5** It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services provided Architect requires all such subcontractors to maintain professional liability insurance coverage covering the subcontractor's negligent acts, errors and omissions in its performance of the laboratory testing services with policy limits appropriate to the Project in the reasonable discretion of the Architect. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 1**2.1.6** A copy of the agreement between the Owner and the Construction Manager at Risk will be provided to the Architect defining the duties, responsibilities and authority of the Construction Manager at Risk.

§ **12.1.7** Notwithstanding anything else contained in this Agreement to the contrary, Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.8 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the state of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.9 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contractor is that of independent contractor to the City.

§ 12.1.10 Architect shall comply with applicable Federal and State laws and City ordinances applicable to the work.

§ 12.1.11 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of section 48-1122, Nebraska Reissue Revised Statues (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).

§ 12.1.12 If the compensation for services provided pursuant to this Agreement is equal to or exceeds $25,000.00, this Agreement is subject to the Living Wage Ordinance of Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, the service provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under this provision of Lincoln's Living Wage Ordinance, the City shall have the authority to terminate this Agreement to seek other remedies for violation of the ordinance.

§ 12.1.13 Architect 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 above, copies of all financial and performance related records and materials at no cost to the City germane to this Agreement, as allowed by law.

§ 12.1.14 Services to be Confidential. Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered

proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of the Arena and the work product generated by third parties regarding costs, performance, and potential tenants of other elements to be integrated into Owner's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

(i) was in the possession of Architect before receipt from Owner; or
(ii) is or becomes a matter of public knowledge through no fault of Architect; or
(iii) is rightfully received by Architect from a third party without a duty of confidentiality; or
(iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party,. Or
(v) is independently developed by Architect and shown by documentation; or
(vi) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors, or employees with a specific need to know./ Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from an disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Agreement.

Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, AIA Document C106™-2007, Digital Data Licensing Agreement, or the following:

« »

.3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

AIA Document B103 – 2007 Standard Form of Agreement Between City of Lincoln, NE and DLR Group, inc. (a Nebraska corporation), dated August 14, 2008.

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

OWNER	ARCHITECT
(Signature)	*(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

ATTACHMENT "A"

THIRD ASSIGNMENT AND ASSUMPTION AGREEMENT

This Third Assignment and Assumption Agreement ("Assignment") is made and entered into as of the _____ day of _____, 2010, between the **City of Lincoln, Nebraska,** a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay

the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreements listed in Exhibit A ("Agreements") attached hereto and incorporated herein by this reference which were originally entered into with the City, and Agency assume all obligations of the City under said Agreements.

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

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City's rights, title and interest in and to and under the Agreements as authorized under the agreements listed in Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreements. Agency shall fully and completely indemnify and hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreements.

3. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreements if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Third Assignment and Assumption Agreement as of the ____ day of _____, 2010.

City of Lincoln, Nebraska
a municipal corporation

ATTEST:

_____
City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

EXHIBIT A

LIST OF AGREEMENTS ASSIGNED TO AGENCY

1. Master Development Agreement between the City and BNSF to provide for a land exchange needed to create the new BNSF rail corridor and the site for the West Haymarket Project improvements; to provide for the removal of BNSF improvements on the property to be acquired by the City from BNSF; to provide for BNSF's construction of replacement tracks and related improvements; and to provide for BNSF's granting of certain license and easement rights to the City for Right of Entry Work related to the West Haymarket Project Improvements.

2. Land Exchange Agreement between the City and BNSF for acquisition of property from BNSF for the West Haymarket Project.

3. Construction and Maintenance Agreement between the City and BNSF to provide for terms and conditions regarding construction of the City's rights of entry work under the Master Development Agreement for the West Haymarket Project.

ATTACHMENT 1

WH 10-03A Introduce: 9-23-10

RESOLUTION NO. WH- _____

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

That the Consent to Assignment and Assumption Agreement, which is attached hereto marked as Attachment "A" and incorporated herein by this reference, between the BNSF Railway Company (BNSF), the City of Lincoln, Nebraska (City) and the West Haymarket Joint Public Agency (Agency) providing for the City, as assignor, to assign and for the Agency, as assignee, to assume all of the City's rights, interests, duties and obligations under the Agreements listed in Exhibit "A" attached to the Consent to Assignment and Assumption Agreement and providing for BNSF's consent to the assignment, is hereby accepted and approved and the Board of Representatives have executed said Consent to Assignment and Assumption Agreement on behalf of the West Haymarket Joint Public Agency.

Introduced by:

_____

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

_____
Legal Counsel for
West Haymarket Joint Public Agency

_____
Jayne Snyder, Chair

_____
Tim Clare

_____
Chris Beutler

ATTACHMENT "A"

THIRD ASSIGNMENT AND ASSUMPTION AGREEMENT

This Third Assignment and Assumption Agreement ("Assignment") is made and entered into as of the _____ day of _____, 2010, between the **City of Lincoln, Nebraska,** a municipal corporation ("City") and the **West Haymarket Joint Public Agency**, a political subdivision and corporate body politic of the State of Nebraska ("Agency").

RECITALS

I.

The Agency has been created and established by and between the University of Nebraska and the City of Lincoln pursuant to the Joint Public Agency Act, (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act"), by entering into the Joint Public Agency Agreement creating the West Haymarket Joint Public Agency.

II.

A Certificate of Creation of the West Haymarket Joint Public Agency has been issued by the Secretary of State of the State of Nebraska in accordance with the Act.

III.

The Agency has been formed for the purpose of (a) constructing, equipping, furnishing and financing public facilities in the West Haymarket area of the City including but not limited to (1) a sports/entertainment arena (the "Arena"), (2) roads, streets and sidewalks, (3) a pedestrian grade separation, (4) public plaza space, (5) sanitary sewer mains, (6) water mains, (7) electric transmission lines, (8) drainage systems, (9) flood control, (10) parking garages and (11) surface parking lots (collectively, the "West Haymarket Facilities"), and (b) to (1) acquire land and to relocate existing businesses, and (2) undertake environmental remediation and site preparation as necessary and appropriate for the construction, equipping, furnishing and financing of the West Haymarket Facilities (collectively, as itemized on Exhibit A hereto, as the same may be amended from time to time, the "Projects," and, individually, a "Project"), (c) issuing bonds to finance the same (the "Bonds"), (d) providing for the operation, maintenance and management of the Arena and related facilities, (e) collecting revenues, rents, receipts, fees, payments and other income related to the Arena, (f) levying a tax, as required and as provided by the Act and the JPA Agreement to pay

the principal or redemption price of and interest on the Bonds, when and as the same shall become due; and (g) exercising any power, privilege or authority to provide for the acquisition, construction, equipping, furnishing, financing and owning such capital improvements or other projects upon or related to any of the Projects as shall be determined by the governing body of the Agency to be necessary, desirable, advisable or in the best interests of any of the Participants in the manner and as provided by the Act.

IV.

The Agency and the City have entered into a Facilities Agreement dated July 26, 2010, providing that the Agency pay the costs of acquiring and constructing each of the Projects for and on behalf of the City and that the Agency issue Bonds for such purposes, subject to certain funding obligations of the City.

V.

In order to carry out the above purpose of the Agency and its obligations under the Facilities Agreement, the parties desire that the City as Assignor assign to the Agency as Assignee all of its rights, interests, duties, and obligations under the agreements listed in Exhibit A ("Agreements") attached hereto and incorporated herein by this reference which were originally entered into with the City, and Agency assume all obligations of the City under said Agreements.

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

1. Assignment. City does hereby sell, assign, transfer, and convey to Agency all of the City's rights, title and interest in and to and under the Agreements as authorized under the agreements listed in Exhibit A, and Agency shall be entitled to exercise such rights without the prior consent or permission of City.

2. Assumption. Agency does hereby assume and covenant and agree to fully, completely, and timely perform, comply with, and discharge each and all of the obligations, duties and liabilities of the City under said Agreements. Agency shall fully and completely indemnify and hold City harmless from and against the performance of any and all duties and obligations that arise after the date hereof that are imposed on City under the terms and provisions of the Agreements.

3. Future Performance of City. City agrees to cooperate fully with Agency and to assist Agency in exercising Agency's rights under the Agreements if such assistance becomes necessary or desirable in order for Agency to fully realize the benefits of which Agency is entitled under this Assignment, including the making, executing, and delivering of any documents or instruments or the giving or granting of any permission, waiver, or consent so long as such assistance or action does not subject City to liability solely by reason thereof and so long as Agency reimburses City for the reasonable value of any out-of-pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Third Assignment and Assumption Agreement as of the ____ day of _____, 2010.

City of Lincoln, Nebraska
a municipal corporation

ATTEST:

_____
City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

West Haymarket Joint Public Agency
Board of Representatives

By: _____
Jayne Snyder, Chairperson

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing Assignment and Assumption Agreement was acknowledged before me on this ____ day of _____, 2010, by Jayne Snyder, Chairperson of the Board of Representatives of the West Haymarket Joint Public Agency, on behalf of the Joint Public Agency.

_____
Notary Public

EXHIBIT A

LIST OF AGREEMENTS ASSIGNED TO AGENCY

1. Agreement between DLR Group, Inc. and the City of Lincoln, Nebraska dated August 14, 2008 approved by Executive Order No. 81522 providing for the design of the West Haymarket Civic Arena.

ATTACHMENT 2

WH 10-03B Introduce: 9-23-10

RESOLUTION NO. WH- _____

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

That the Third Assignment and Assumption Agreement, which is attached hereto marked as Attachment "A" and incorporated herein by this reference, between the City of Lincoln, Nebraska and the West Haymarket Joint Public Agency providing for the City as assignor to assign and for the Agency as assignee to assume all of the City's rights, interests, duties and obligations under the Agreements listed in Exhibit "A" attached to the Third Assignment and Assumption 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 Third Assignment and Assumption Agreement on behalf of the West Haymarket Joint Public Agency.

The Chairperson of the West Haymarket Joint Public Agency Board of Representatives is hereby further authorized to execute without further action of the Board of Representatives any other assignment and assumption documents which may be needed to obtain any required third party consent to the Third Assignment to and Assumption of such Agreements by the West Haymarket Joint Public Agency.

Introduced by:

_____

Approved as to Form & Legality:

_____

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

_____

Jayne Snyder, Chair

_____

Tim Clare

_____

Chris Beutler

WH 10-03

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 10-03 as follows:

1. Divide Bill No. WH 10-03 into two resolutions designated as Bill No. WH 10-03A and Bill No. WH 10-03B. Bill Nos. WH 10-03A and WH 10-03B are attached hereto as Attachments 1 and 2, respectively.

2. Substitute the Consent to Assignment and Assumption Agreement attached to Bill No. WH 10-03A as Attachment "A" for the Third Assignment and Assumption Agreement attached to Bill No. WH 10-03 as Attachment "A".

3. Substitute the Third Assignment and Assumption Agreement attached to Bill No. WH 10-03B as Attachment A for the Third Assignment and Assumption Agreement attached to Bill No. WH 10-03 as Attachment "A".

Introduced by:

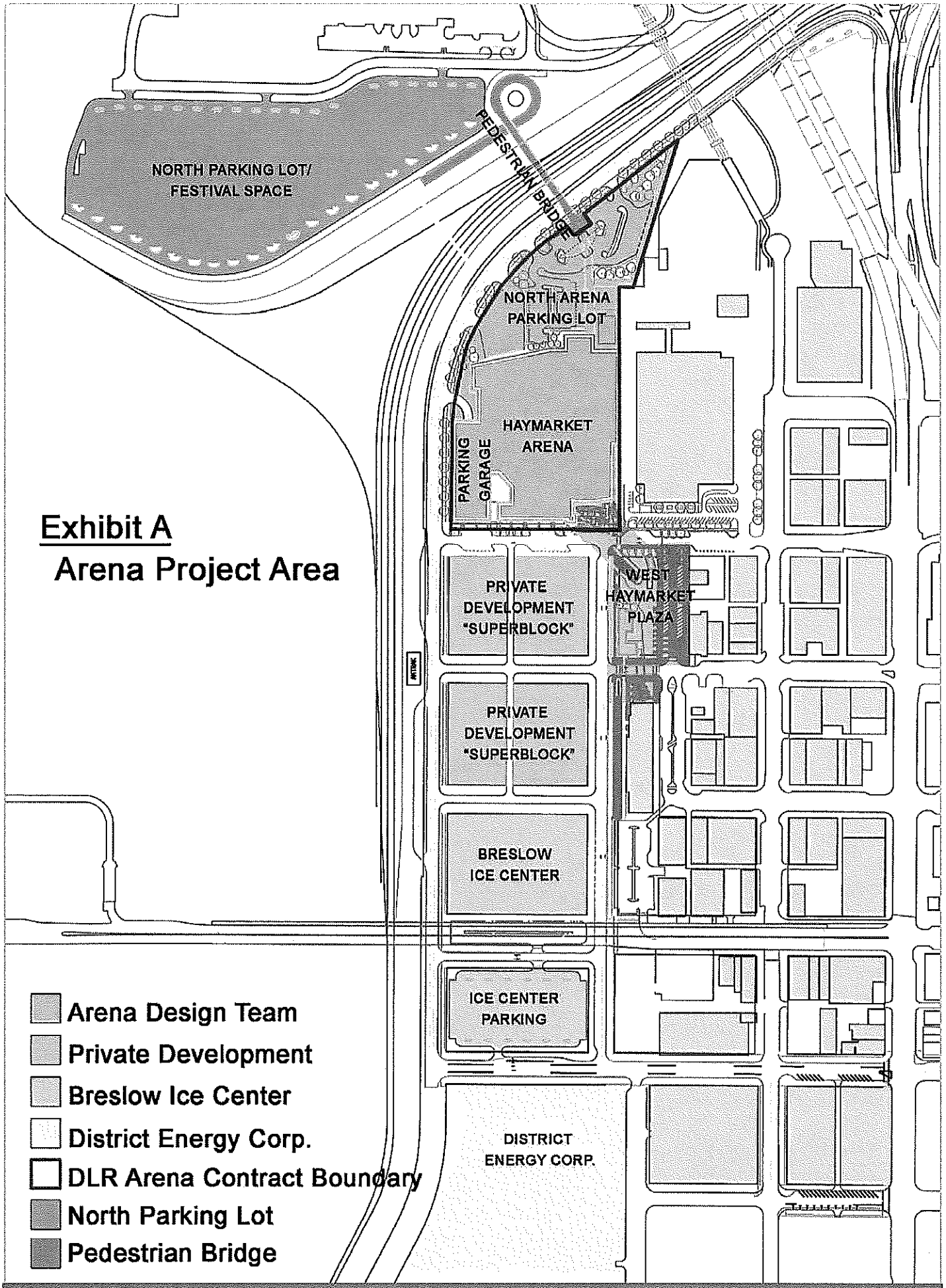
_____

Approved as to Form & Legality:

_____
City Attorney

Requested by: Law Department

Reason for Request: To separate the approval of the assignment to and acceptance of BNSF Agreements (Master Development Agreement, Land Exchange Agreement and Construction & Maintenance Agreement) by the JPA from the assignment to and assumption of the DLR Agreement due to delays in finalizing the BNSF Agreements.



WEST HAYMARKET DEVELOPMENT
CONTRACT BREAKDOWN DIAGRAM 8.26.10

DLR Group

EXHIBIT B – PROJECT BUDGET

City of Lincoln
West Haymarket
Use of Funds Analysis

17-Nov-09

Item	Description	Ref	Construction Cost Estimate	20.00% Engr./Design	Total Const. Cost Estimate	Inflation Rate	Inflation	15.00% Contingency	Total
ARENA COSTS:									
Arena	465,163 sq ft @$301	4-1	139,913,000	27,982,600	167,895,600	0.0%	-	-	167,895,600
	Preoccupancy expense		1,000,000	-	1,000,000	0.0%	-	-	1,000,000
	Total Arena		140,913,000	27,982,600	168,895,600			-	168,895,600
Parking	Surface - Northwest of Tracks	6-9	3,806,400	761,280	4,567,680	10.0%	456,768	753,667	5,778,115
	Surface -South of Ice Rink	6-7	1,362,200	272,440	1,634,640	10.0%	163,464	269,716	2,067,820
	Surface - Train Station		1,000,000	-	1,000,000	0.0%	-	150,000	1,150,000
	Garages - South of Arena		11,900,000	1,190,000	13,090,000	10.0%	1,309,000	1,079,925	15,478,925
	Garage - Arena	4-22	9,411,000	941,100	10,352,100	5.0%	517,605	448,200	11,317,905
	Total Parking		27,479,600	3,164,820	30,644,420		2,446,837	2,701,508	35,792,765
Roads	Sun Valley - Charleston and Bridge	6-2	3,850,600	770,120	4,620,720	10.0%	462,072	762,419	5,845,211
	Sun Valley - ROW	6-1	614,500	122,900	737,400	10.0%	73,740	121,671	932,811
	Arena Drive	6-3	4,945,300	989,060	5,934,360	10.0%	593,436	979,169	7,506,965
	P, Q & R Streets	6-4	2,298,900	459,780	2,758,680	10.0%	275,868	455,182	3,489,730
	M & N Streets	6-5	1,708,400	341,680	2,050,080	10.0%	205,008	338,263	2,593,351
	Canopy Street & Ice Drop Off	6-6	1,733,700	346,740	2,080,440	10.0%	208,044	343,273	2,631,757
	Total Roads		15,151,400	3,030,280	18,181,680		1,818,168	2,999,977	22,999,825
Pedestrian Ways	Trails and sidewalks		500,000	100,000	600,000	10.0%	60,000	90,000	750,000
	Pedestrian Crossings over BNSF	4-23	6,934,788	1,386,958	8,321,746	10.0%	832,175	1,248,262	10,402,182
	Plaza		1,000,000	200,000	1,200,000	10.0%	120,000	180,000	1,500,000
	Total Pedestrian Ways		8,434,788	1,686,958	10,121,746		1,012,175	1,518,262	12,652,182
Utilities	Water	6-22	816,800	163,360	980,160	5.0%	49,008	147,024	1,176,192
	Wastewater	6-23	1,892,400	378,480	2,270,880	5.0%	113,544	340,632	2,725,056
	LES	6-24	385,000	77,000	462,000	5.0%	23,100	69,300	554,400
	Trunk storm sewer to Haymarket area	6-8	1,240,300	248,060	1,488,360	5.0%	74,418	223,254	1,786,032
	Communication and Other	6-25	542,400	108,480	650,880	5.0%	32,544	97,632	781,056
	Total Utilities		4,876,900	975,380	5,852,280		292,614	877,842	7,022,736
Environmental	North Area - R to Tracks (arena area)	6-17	815,000	163,000	978,000	10.0%	97,800	146,700	1,222,500
	South Area - R to O	6-18	1,750,000	350,000	2,100,000	10.0%	210,000	315,000	2,625,000
	South Area - O on South	6-18.5	2,000,000	400,000	2,400,000	10.0%	240,000	360,000	3,000,000
	West Area - Roundhouse	6-19	300,000	60,000	360,000	10.0%	36,000	54,000	450,000
	Wetlands, Seeding and Removals	6-21	138,000	27,600	165,600	10.0%	16,560	24,840	207,000
	Total Environmental		5,003,000	1,000,600	6,003,600		600,360	900,540	7,504,500
Dirt Moving	Pad site development - fill	6-11	1,931,100	386,220	2,317,320	5.0%	115,866	347,598	2,780,784
	Stormwater/Floodplain mitigation	6-20	5,588,200	1,117,640	6,705,840	5.0%	335,292	1,005,876	8,047,008
	Total Dirt Movement		7,519,300	1,503,860	9,023,160		451,158	1,353,474	10,827,792
TIF Improvements	Public Use of TIF Proceeds		5,515,693	-	5,515,693	0.0%	-	-	5,515,693

EXHIBIT B – PROJECT BUDGET

City of Lincoln
West Haymarket
Use of Funds Analysis

17-Nov-09

Item	Description	Ref	Construction Cost Estimate	20.00% Engr./Design	Total Const. Cost Estimate	Inflation Rate	Inflation	15.00% Contingency	Total
ARENA COSTS:									
Site Purchase	BNSF Land Acquisition	5-1	1,000,000		1,000,000	0.0%	-	-	1,000,000
	BNSF Construction, Rehab, & Relloc.	5-2	44,000,000	-	44,000,000	0.0%	-	-	44,000,000
	Canopy Rehabilitation	6-12	177,000	35,400	212,400	10.0%	21,240	31,860	265,500
	Amtrak Building	6-14	1,200,000	240,000	1,440,000	0.0%	-	-	1,440,000
	UP Land Acquisition		1,000,000		1,000,000	0.0%	-	150,000	1,150,000
	UP Wetland Enhancement		1,000,000	200,000	1,200,000	10.0%	120,000	180,000	1,500,000
	UP Track Modifications W of Bridge	6-16	1,030,000	206,000	1,236,000	10.0%	123,600	185,400	1,545,000
	Subtotal Railroad Site Purchase		49,407,000	681,400	50,088,400		264,840	547,260	50,900,500
	Subtotal Other Land Acquisition		7,585,000	200,000	7,785,000		150,000	1,167,750	9,102,750
	Total Site Purchase		56,992,000	881,400	57,873,400		414,840	1,715,010	60,003,250
Other Costs	Dynamic Message Signage	6-10	2,250,000	450,000	2,700,000	10.0%	270,000	405,000	3,375,000
	Other		-	-	-	5.0%	-	-	-
	Total Other		2,250,000	450,000	2,700,000		270,000	405,000	3,375,000
	SUBTOTAL		274,135,681	40,675,898	314,811,579		7,306,152	12,471,613	334,589,343
Other Adj.	PLUS: Additional Contingencies		-		-				-
	PLUS: Cost of Bond Issuance, 1.50%		5,160,000		5,160,000	0.0%	-		5,160,000
			5,160,000	-	5,160,000		-	-	5,160,000
	TOTAL ARENA COSTS		279,295,681	40,675,898	319,971,579		7,306,152	12,471,613	339,749,343

Inflation Assumptions:

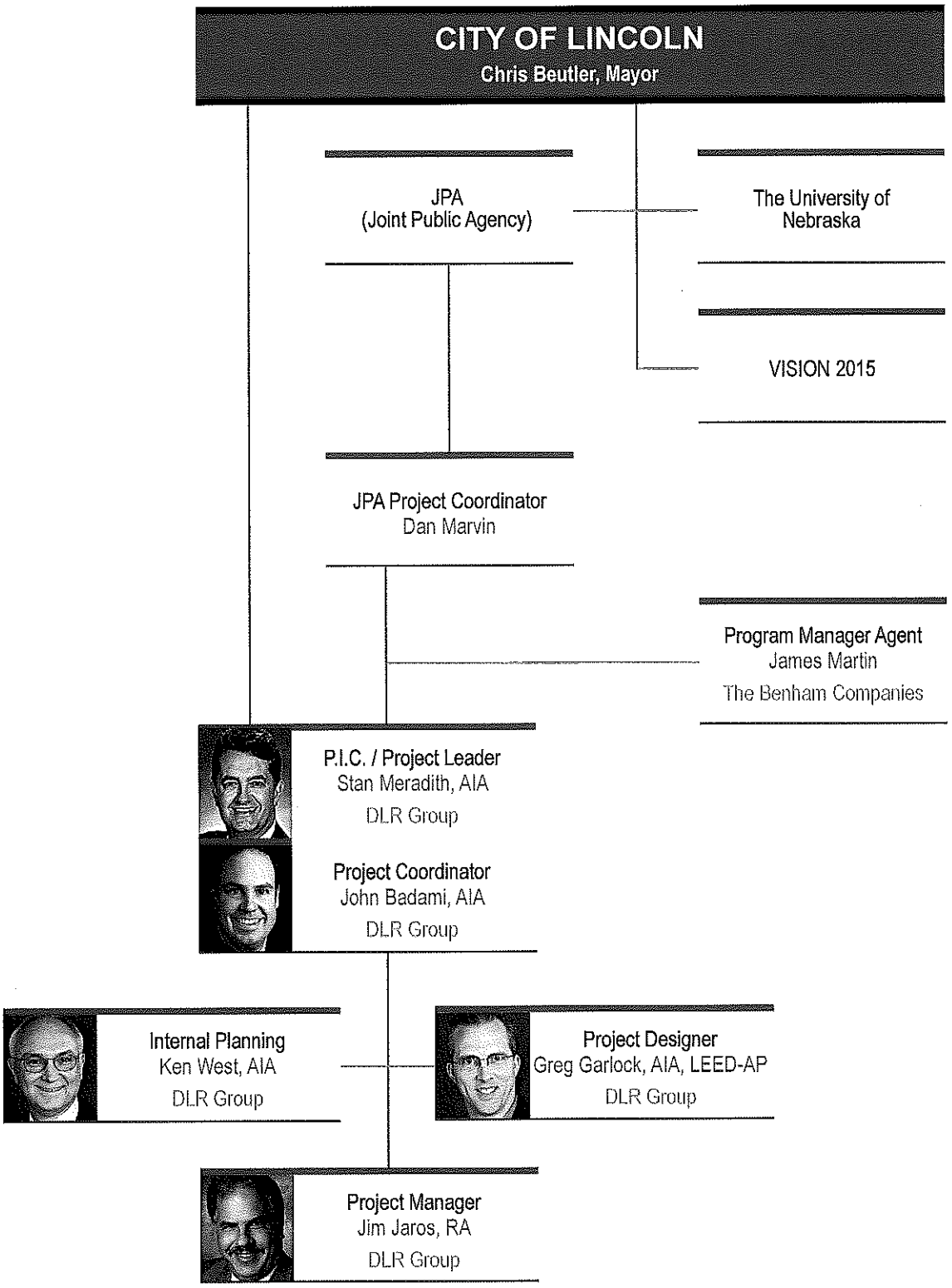
Payments made in 2010	0.0%
Payments span 2010 to 2011	5.0%
Payments span 2010 to 2013	10.0%

Source: Olsson & Associates, DLR, ISG, City of Lincoln

Yellow area is a city estimate

WEST HAYMARKET CIVIC ARENA
DLR GROUP MANAGEMENT TEAM

EXHIBIT C



Submittal of Organization by DLR Group | Spring 2010

DLR Group

ORGANIZATIONAL CHART
(AS OF 7/12/2010)

EXHIBIT C

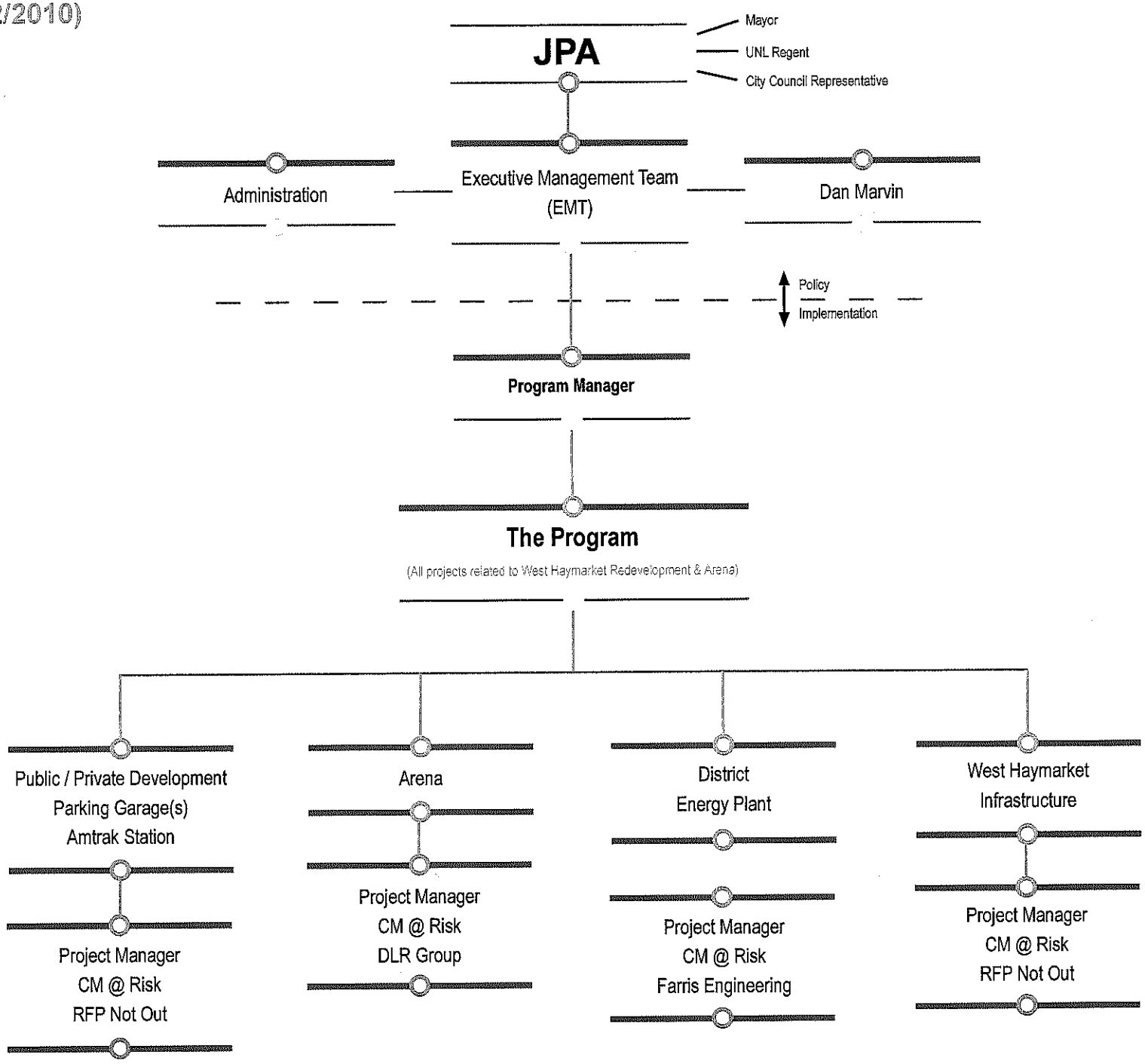


EXHIBIT D - HOURLY RATES

CATEGORY NUMBER/TITLE	HOURLY RATES	DESCRIPTION OF CATEGORY
6. PRINCIPAL	$250	• Principals who lead offices, disciplines and Project Teams
5. SENIOR PROFESSIONAL	$150	• All registered or licensed Professionals with 10 years or more experience since registration. • All personnel in equivalent roles in related professional disciplines in which there is no registration, but who have 15 years experience in their field including 10 years experience in leadership roles in those related disciplines. Examples of these disciplines are: Accounting, Office Management, Business Development, Construction Administration, Design, Technology or similar areas of expertise.
4. PROFESSIONAL	$125	• New registrants and all registered professionals with less than 10 years since registration. • Nonregistered Architectural, Engineering or Design personnel who have more then 15 years experience in their professional discipline and are in direct professional leadership roles in their field. • All personnel in equivalent roles in related professional disciplines in which there is no registration, but who have 15 years experience and are in direct leadership roles in their field. Examples of these disciplines are: Accounting, Office Management, Business Development, Construction Administration, Design, Technology or similar areas of expertise.
3. PROFESSIONAL SUPPORT	$100	• New professional degreed graduates and interns who are not yet registered. • Nonregistered Architectural, Engineering or Design personnel who have 10 years experience in their professional discipline under the supervision of registered professionals or related discipline professionals. • All personnel in related professional disciplines in which there is no registration, but have 10 years experience in their field. Examples of these disciplines are: Accounting, Office Management, Business Development, Construction Administration, Design, technology or similar areas of expertise and work under the supervision of others in their field. • Drafters, CADD technicians, Designers and similar technicians without registration, but with 10 years experience in their professional support field.
2. TECHNICAL	$75	• Nonregistered Architectural, Engineering, or Design personnel who have less than 10 years experience in their professional discipline. • All personnel in related professional disciplines in which there is no registration, but have less than 10 years experience in their field. • Drafters, CADD technicians, Designers and similar technicians without registration, but with less than 10 years experience in their professional support field. • All Administrative support, clerical and word processing personnel with 10 years experience.
1. CLERICAL	$50	• All Administrative support, clerical and word processing personnel with less than 10 years experience.

EXHIBIT E: Lincoln Arena Architectural and Engineering Design Services Summary

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS	LUMP SUM FEE
TOTAL - BASIC SERVICES	**Hours**	**808**	**16,818**	**18,113**	**4,132**	**6,179**	**5,121**	**2,492**	**10,609**	**64,272**	**$8,000,000**
PHASE 1 - PRE-DESIGN	Hours	80	320	520	80	0	0	0	0	1,000	$150,000
PHASE 2 - SITE ANALYSIS	Hours	0	0	0	0	0	0	0	0	0	$0
PHASE 3 - SCHEMATIC DESIGN 16 weeks)	Hours	162	2,334	2,084	684	928	698	632	2,344	9,866	$1,200,000
PHASE 4 - DESIGN DEVELOPMENT (28 WEEKS)	Hours	160	3,784	5,241	232	1,336	1,184	632	2,400	14,969	$2,000,000
PHASE 5 - CONSTRUCTION DOCUMENTS (20 WEEKS)	Hours	256	2,560	5,646	208	2,752	2,152	656	4,008	18,238	$2,250,000
PHASE 6 - BID/NEGOTIATIONS (10 weeks)	Hours	14	1,016	52	120	53	25	58	37	1,375	$150,000
PHASE 7- CONSTRUCTION ADMINISTRATION (104 weeks)	Hours	136	6,804	4,570	2,808	1,110	1,062	514	1,820	18,824	$2,250,000
PHASE 8 - TRANSITION / COMMISSIONING	Hours	0	0	0	0	0	0	0	0	0	$0
SPECIALTY CONSULTANTS ALLOWANCE											$915,000
TOTAL - ARCHITECTURAL & ENGINEERING DESIGN SERVICES											**$8,915,000**

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE I - PREDESIGN	**TOTAL**	**80**	**320**	**520**	**80**	**0**	**0**	**0**	**0**	**1,000**
A.	**Administration** **Subtotal**	**80**	**80**	**0**	**80**	**0**	**0**	**0**	**0**	**240**
01.	In-House Management	80								80
02.	Initial consultation		40							40
03.	Project schedule development									0
04.	Progress Reports				40					40
05.	Owner Reviews									0
06.	Bond referendum assistance									0
07.	Financial advisor coordination									0
08.	Owner consultant coordination		40							40
09.	Develop project directory									0
10.	Meeting minutes				40					40
11.	Family Visits									
B.	**Programming** **Subtotal**	**0**	**160**	**0**	**0**	**0**	**0**	**0**	**0**	**160**
01.	Project Manager		160							
02.	Project Designer		160							160
C.	**Space Schematics** **Subtotal**	**0**	**0**	**120**	**0**	**0**	**0**	**0**	**0**	**120**
01.	Operation / Functions narrative			20						20
02.	Adjacency / Flow patterns			20						20
03.	Flexibility/Expansion considerations/plans			40						40
04.	Staffing analysis			40						40

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
D.	**Program Review** **Subtotal**	**0**	**0**	**400**	**0**	**0**	**0**	**0**	**0**	**400**
01.	Program workshop			120						120
02.	Program Revisions			40						40
03.	Finalize program			240						240
E.	**Budget** **Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Budget Development									0
02.	Project costs update									0
03.	Construction research									0
F.	**Presentations** **Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Agency									0
02.	Jurisdictional authorities									0
03.	Public Bond Referendum Assistance									0
04.	Standards board									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 1 - PRE-DESIGN									
Hours	**80**	**320**	**520**	**80**	**0**	**0**	**0**	**0**	**1,000**
A. Administration									
Hours	80	80	0	80	0	0	0	0	240
B. Programming									
Hours	0	160	0	0	0	0	0	0	160
C. Space Schematics									
Hours	0	0	120	0	0	0	0	0	120
D. Program Review									
Hours	0	0	400	0	0	0	0	0	400
E. Budget									
Hours	0	0	0	0	0	0	0	0	0
F. Presentations									
Hours	0	0	0	0	0	0	0	0	0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 2 - SITE ANALYSIS										
	TOTAL	0	0	0	0	0	0	0	0	0
A.	**Administration Subtotal**	0	0	0	0	0	0	0	0	0
01.	In - house management									0
02.	Agency meetings									0
03.	Meeting documentation									0
04.	City/County coordination									0
05.	Consultant coordination									0
06.	Real estate agent/owner coordination									0
07.	Zoning commission									0
08.	Land use assessment									0
09.	Owner consultant coordination									0
10.	Planning commission									0
B.	**Site Planning Subtotal**	0	0	0	0	0	0	0	0	0
01.	Site Selection Criteria									0
02.	Site Infrastructure Assessment									0
03.	Site Concept Diagrams									0
04.	Public Hearings									0
05.	Site Survey Coordination									0
06.	Site Landscape Design									0
07.	Coordination with Owner Consultant									0
08.	E.I.S. Site Evaluation Support/Misc.									0
09.	Submittal requirement									0
10.	Public hearings									0
11.	Environmental confirmation									0
12.	Geotechnical investigations									0
13.	Topographic confirmation									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
14.	Legal confirmation									0
15.	Cost analysis confirmation									0
C.	**Off-Site Studies Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Infrastructure analysis/verification									0
02.	Budget development									0
03.	Easements									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 2-SITE ANALYSIS									
Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
A. Administration									
Hours	0	0	0	0	0	0	0	0	0
B. Site Planning									
Hours	0	0	0	0	0	0	0	0	0
C. Off-Site Studies									
Hours	0	0	0	0	0	0	0	0	0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

			Qty	hrs	Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 3-SCHEMATIC DESIGN (16 weeks)														
		TOTAL				**162**	**2,334**	**2,084**	**684**	**928**	**698**	**632**	**2,344**	**9,866**
A.	**Administration**	**Subtotal**				**24**	**1256**	**40**	**136**	**32**	**32**	**32**	**32**	**1584**
01.	A/E Project Representative		14	40	Full time		560							560
02.	A/E Project Manager		14	40	Full time		560							560
03.	Quality Control Review						40	40	24	16	16	16	16	168
04.	Progress Reports		14	4			56							56
05.	Clerical		14	8					112					112
06.	Budget Review					24	40			16	16	16	16	128
B.	**Program Review/Development**	**Subtotal**				**42**	**36**	**64**	**108**	**0**	**8**	**4**	**68**	**330**
01.	Design objectives					8	2							10
02.	Space requirements - Confirm/modify					16	4							20
03.	Flexibility evaluation					2								2
04.	Site requirements													0
05.	Master Plan review.					4								4
06.	Codes/Standards Review						4	4						8
07.	Room Finish Requirements					4	2	16						22
08.	Equipment Requirements					4	8	16						28
09.	Engineering Criteria/Goals					4	8	16	8		8	4	4	52
10.	Off-site utility impact							4						4
11.	Budget Review						8	8						16
12.	Data Entry/Processing								100					100
C.	**Seating Bowl/Grid/Section Development**	**Subtotal**				**10**	**164**	**40**	**0**	**12**	**0**	**0**	**32**	**258**
01.	Seating Bowl Focus (Baskletball/Hockey)					4	2							6
02.	Seating Type -Locations					2	2							4
03.	Seating Bowl/Grid/Section Options						80			12			32	124
04.	Capacity Verification						40							40
05.	Select/Refine Finalize					4	40	40						84
D.	**Space Schematics**	**Subtotal**				**6**	**18**	**0**	**0**	**4**	**2**	**8**	**4**	**42**
01.	Space allocation/program testing					2	2							4
02.	Operation / Functions analysis													0
03.	Adjacency/Intra-relationships/Flow Patterns					2	2							4

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
04.	Flexibility/Expansion									4	2		2	8
05.	Technology Assessment						2							2
06.	Site Demolition Assessment					2	4					8	2	16
07.	Security Systems						8							8
E.	**Agency Review**	**Subtotal**				**0**	**60**	**44**	**0**	**0**	**0**	**0**	**0**	**104**
01.	City/County Agency consultation						8	8						16
02.	Code research/documentation						24	24						48
03.	Health department						4							4
04.	Building department						8	4						12
05.	Fire Marshall						8	4						12
06.	RailRoad Coordination						8	4						12
F.	**Architectural Design**	**Subtotal**				**0**	**576**	**1824**	**280**	**0**	**0**	**0**	**0**	**2680**
01.	Project Designer		14	40	Full time		560							560
02.	Building plans (2D)		20	36				720						720
03.	Building sections		10	20				200	240					440
04.	Building Skin							200						200
05.	Elevations		10	16				160	40					200
06.	Outline Specifications/Room Data Sheets							80						80
07.	3D study models		20	10				200						200
08.	BIM Management		14	16				224						224
09.	ADA assessment/Code research						16	40						56
G.	**Site Planning/Design**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**560**	**0**	**560**
01.	Phasing - Site Development											40		40
02.	Traffic/Site/Roadways											40		40
03.	Permits											8		8
04.	Landscaping											32		32
05.	Electrical service											32		32
06.	Gas service											16		16
07.	Water service											16		16
08.	Sanitary sewers											40		40
09.	Storm sewers											40		40
10.	Fire Protection											24		24
11.	Emergency systems											16		16
12.	Utility coordination/planning											24		24

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
13.	Outside engineer coordination											24		24
14.	Grading											40		40
15.	Drainage											40		40
16.	Paving											24		24
17.	Lighting											24		24
18.	Parking Lot - North Area											80		80
		Subtotal				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**2212**	**2212**
H.	**Structural Design**												80	80
01.	System concepts												80	80
02.	System alternatives												160	160
03.	Truss and Beam design												160	160
04.	Calculations												840	840
05.	Foundation plans		35	24									840	840
06.	Framing plans		35	24									28	28
07.	A/E coordination		14	2									24	24
08.	Outline Specifications													
		Subtotal				**0**	**0**	**0**	**0**	**844**	**0**	**0**	**0**	**844**
I.	**Mechanical Design**									8				8
01.	Energy source evaluation									8				8
02.	Building orientation									40				40
03.	HVAC concepts									24				24
04.	Plumbing concepts									8				8
05.	Fire protection concepts									16				16
06.	Special systems									8				8
07.	Space analysis									16				16
08.	Life-cycle cost analysis									32				32
09.	Flow diagram of systems									16				16
10.	Code/Standards									600				600
11.	Plan Documentation		25	24						8				8
12.	Cut sheets research/assembly									8				8
13.	Energy Analysis									24				24
14.	Concession/Food Service									28				28
15.	A/E Coordination		14	2										
		Subtotal				**0**	**0**	**0**	**0**	**0**	**620**	**0**	**0**	**620**
J.	**Electrical Design**										16			16
01.	Power concepts										24			24
02.	Lighting concepts/analysis													

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
03.	Communications/IT concepts										16			16
04.	Fire protection analysis										16			16
05.	Security systems analysis										16			16
06.	Special systems Coordination										40			40
07.	Codes/standards										16			16
08.	Plan Documentation		14	24							336			336
09.	Mechanical Coordination										40			40
10.	Concession/Food Service										24			24
11.	A/E coordination		14	2							28			28
12.	Daylighting analysis										8			8
13.	Mechanical Coordination										40			40
K.	**Specialized Consultants**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
														0
L.	**Interior Design**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Material research													0
02.	Color Boards													0
03.	FF&E coordination													0
04.	Budget analysis													0
M.	**Outline Specifications**	**Subtotal**				**0**	**48**	**16**	**120**	**24**	**24**	**16**	**16**	**264**
01.	Material selection						24		80	24	24	16	16	184
02.	Documentation								40					40
03.	Consultant coordination						24	16						40
N.	**Project Budget**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Quantity take-offs				Tasks performed by CM									0
02.	Data entry/processing				Tasks performed by CM									0
03.	Project costs development				Tasks performed by CM									0
04.	Construction research				Tasks performed by CM									0
05.	Program Budget Verification				Tasks performed by CM									0
06.	Cost report				Tasks performed by CM									0
O.	**Presentations**	**Subtotal**				**80**	**176**	**56**	**40**	**12**	**12**	**12**	**12**	**400**
01.	JPA meetings		4		Monthly	32	64							96

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
02.	Schematic submittal					8	16	24	24	8	8	8	8	104
03.	Presentation material preparation						24	32	16	4	4	4	4	88
04.	Public Meetings		1			8	8							16
05.	City/County Meetings		4		Monthly	32	64							96
06.	Other													0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 3-SCHEMATIC DESIGN									
Hours	**162**	**2,334**	**2,084**	**684**	**928**	**698**	**632**	**2,344**	**9,866**
A. Administration									
Hours	24	1256	40	136	32	32	32	32	1,584
B. Program Review/Development									
Hours	42	36	36	36	36	36	36	36	294
C. Seating Bowl/Grid/Section Development									
Hours	10	164	40	0	12	0	0	32	258
D. Space Schematics									
Hours	6	18	0	0	4	2	8	4	42
E. Agency Review									
Hours	0	60	44	0	0	0	0	0	104
F. Architectural Design									
Hours	0	576	1824	280	0	0	0	0	2,680
G. Site Planning									
Hours	0	0	0	0	0	0	560	0	560
H. Structural Design									
Hours	0	0	0	0	0	0	0	2212	2,212
I. Mechanical Design									
Hours	0	0	0	0	844	0	0	0	844
J. Electrical Design									

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
Hours	0	0	0	0	0	620	0	0	620
K. Specialized Consultants									
Hours	0	0	0	0	0	0	0	0	0
L. Interior Design									
Hours	0	0	0	0	0	0	0	0	0
M. Outline Specifications									
Hours	0	48	16	120	24	24	16	16	264
N. Project Budget									
Hours	0	0	0	0	0	0	0	0	0
O. Presentations									
Hours	80	176	56	40	12	12	12	12	400

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 4-DESIGN DEVELOPMENT									
Hours	**160**	**3,784**	**5,241**	**232**	**1,336**	**1,184**	**632**	**2,400**	**14,969**
A. Administration									
Hours	24	1800	120	112	32	32	32	32	2,184
B. Agency Review									
Hours	0	8	60	16	0	0	0	0	84
C. Architectural Design									
Hours	0	1760	4981	0	0	0	0	0	6,741
D. Site Design									
Hours	0	0	0	0	0	0	560	0	560
E. Interiors									
Hours	0	0	80	0	0	0	0	0	80
F. Structural Design									
Hours	0	0	0	0	0	0	0	2328	2,328
G. Mechanical Design									
Hours	0	0	0	0	1264	0	0	0	1,264
H. Electrical Design									
Hours	0	0	0	0	0	1112	0	0	1,112
I. Specialized Consultants									
Hours	0	0	0	0	0	0	0	0	0
J. Specifications									
Hours	0	160	0	80	40	40	40	40	400

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

			Qty	hrs	Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 4-DESIGN DEVELOPMENT (28 weeks)		**TOTAL**				**160**	**3,784**	**5,241**	**232**	**1,336**	**1,184**	**632**	**2,400**	**14,969**
A.	**Administration**	**Subtotal**				**24**	**1800**	**120**	**112**	**32**	**32**	**32**	**32**	**2184**
01.	A/E Project Representative		28	20	Half Time		560							560
02.	A/E Project Manager		28	40	Full Time		1120							1120
03.	BIM Management							120						120
04.	Quality Control Review					8	40			16	16	16	16	112
05.	Progress Reports		7		Monthly Reports	8	40							48
06.	Clerical		28	4	4 hours each week				112					112
07.	Budget Review					8	40			16	16	16	16	112
B.	**Agency Review**	**Subtotal**				**0**	**8**	**60**	**16**	**0**	**0**	**0**	**0**	**84**
01.	Agency consultation						8							8
02.	Code check							24						24
03.	Agency submittals							4						4
04.	ADA Compliance								16					16
05.	Building Department							16						16
06.	Fire Marshall							8						8
07.	Health department							8						8
C.	**Architectural Design**	**Subtotal**				**0**	**1760**	**4981**	**0**	**0**	**0**	**0**	**0**	**6741**
01.	Project Architect				Full Time		1280							1280
02.	Orientation Plans		6	15				90						90
03.	Code Plans		7	30				210						210
04.	Architectural Plans		29	60				1740						1740
05.	Reflected Ceiling Plans		29	25				725						725
06.	Roof Plans		4	25				100						100
07.	Building Elevations		4	25				100						100
08.	Door and Frame Sheets		3	32				96						96
09.	Wall Sections		8	40				320						320
10.	Elevator Plans and Sections		10	40				400						400
11.	Seating Configuration Diagrams		3	30				90						90
12.	Seating Plans		18	25				450						450
13.	Interior Elevations		6	40				240						240
14.	Wall Types		1	60				60						60
15.	Case Work		3	40				120						120
16.	Food Service							0						0
17.	Specifications (First Draft)						80	40						120

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
18	BIM Models						400	200						600
D.	**Site Design**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**560**	**0**	**560**
01.	Site layout											80		80
02.	Grading plan											80		80
03.	Utility distribution plans											120		120
04.	Roadway/parking											80		80
05.	Composite utility plan											40		40
06.	Details											40		40
07.	Fire protection											40		40
08.	Sanitary Sewer											80		80
09.	Parking/Parking Garage											0		0
E.	**Interiors**	**Subtotal**				**0**	**0**	**80**	**0**	**0**	**0**	**0**	**0**	**80**
01.	Equip./Furnishing selection							0						0
02.	Finish/color selection							40						40
03.	Color boards							40						40
F.	**Structural Design**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**2328**	**2328**
01.	System analysis												40	40
02.	Framing Plans		35	24									840	840
03.	Foundation plan		17	24									408	408
04.	Calculations												40	40
05.	Soils investigation												24	24
06.	Column analysis												40	40
07.	Truss Plans and Details												80	80
08.	Beams/joist												80	80
09.	Seating Bowl Plans/Sections		25	16									400	400
10.	Curtain Wall												80	80
11.	Special details												40	40
12.	Material selection												24	24
13.	Staging												40	40
14.	Alternate systems												40	40
15.	A/E coordination/Clash Detection		28	4									112	112
16.	Quality control review												40	40
G.	**Mechanical Design**	**Subtotal**				**0**	**0**	**0**	**0**	**1264**	**0**	**0**	**0**	**1264**

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
01.	Site/Civil Coordination									40				40
02.	HVAC plans		35	8						280				280
03.	Plumbing plans		35	8						280				280
04.	Calculations									40				40
05.	Fixture schedules									40				40
06.	Equipment schedules									80				80
07.	Consessions/Food Service									20				20
08.	Site Utilities									20				20
09.	Sections									20				20
10.	Details									40				40
11.	Fire protection plans		10	8						80				80
12.	Riser diagrams									40				40
13.	Off-site utility coordination									20				20
14.	Ice Floor									40				40
15.	Energy management System									20				20
16.	A/E coordination/Clash Detection		28	2						56				56
17.	Smoke management control									20				20
18.	Quality Control review									40				40
19.	Utility coordination									40				40
20.	Energy code analysis									40				40
21.	Budget Review									8				8
H.	**Electrical Design**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**1112**	**0**	**0**	**1112**
01.	Lighting plans		28	16							448			448
02.	Power plans		35	8							40			40
03.	Schedules - Fixture										40			40
04.	Security System coordination										16			16
05.	Energy analysis report										16			16
06.	Emergency Power Analysis										8			8
07.	Details										40			40
08.	Enlarged plans		8	4							16			16
09.	Substations design/plans										16			16
10.	Fire alarm										40			40
11.	Motor control schedules										40			40
12.	Off-site utility coordination										40			40
13.	A/E coordination/Clash Detection		28	2							56			56
14.	Quality control review										32			32
15.	Utility coordination										40			40
16.	Switch gear										40			40
17.	Distribution panels										24			24

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
18.	Communication system										0			0
19.	Ice Floor										40			40
20.	Audio/Visual										0			0
21.	IT/Communications										0			0
22.	Consessions/Food Service										80			80
23.	Budget Review										40			40
24.	Special Systems Plans										0			0
I.	**Specialized Consultants**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
J.	**Specifications**	**Subtotal**				**0**	**160**	**0**	**80**	**40**	**40**	**40**	**40**	**400**
01.	General/Supplementary Conditions													0
02.	Architecture						120							120
03.	Mechanical									40				40
04.	Electrical										40			40
05.	Structural												40	40
06.	Civil											40		40
07.	Special Consultants													0
08.	Bid Packages/Coordination						40							40
09.	Clerical								80					80
K.	**Project Budget**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Quantity take-off				Tasks performed by CM									0
02.	Data entry				Tasks performed by CM									0
03.	Cost report				Tasks performed by CM									0
04.	Life-Cycle Cost Analysis				Tasks performed by CM									0
05.	Alternatives Assessment				Tasks performed by CM									0
06.	Budget Review				Tasks performed by CM									0
L.	**Presentations**	**Subtotal**				**136**	**56**	**0**	**24**	**0**	**0**	**0**	**0**	**216**
01.	Design Development Presentation					16	40		24					80
02.	JPA Meetings		7		Monthly Meetings	56								56
03.	Public Meetings		1			8	16							24
04.	City/County Meetings		7		Monthly Meetings	56								56
05.	Other													0
M.	**Project Delivery**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Bid packaging assessment				Tasks performed by CM									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
02.	Contractor solicitation				Tasks performed by CM									0
03.	Phasing				Tasks performed by CM									0
04.	Owner Review				Tasks performed by CM									0
05.	Temporary construction plan				Tasks performed by CM									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 4-DESIGN DEVELOPMENT										
	Hours	**160**	**3,784**	**5,241**	**232**	**1,336**	**1,184**	**632**	**2,400**	**14,969**
A. Administration										
	Hours	24	1800	120	112	32	32	32	32	2,184
B. Agency Review										
	Hours	0	8	60	16	0	0	0	0	84
C. Architectural Design										
	Hours	0	1760	4981	0	0	0	0	0	6,741
D. Site Design										
	Hours	0	0	0	0	0	0	560	0	560
E. Interiors										
	Hours	0	0	80	0	0	0	0	0	80
F. Structural Design										
	Hours	0	0	0	0	0	0	0	2328	2,328
G. Mechanical Design										
	Hours	0	0	0	0	1264	0	0	0	1,264
H. Electrical Design										
	Hours	0	0	0	0	0	1112	0	0	1,112
I. Specialized Consultants										
	Hours	0	0	0	0	0	0	0	0	0
J. Specifications										
	Hours	0	160	0	80	40	40	40	40	400

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
K. Project Budget									
Hours	0	0	0	0	0	0	0	0	0
L. Presentations									
Hours	136	56	0	24	0	0	0	0	216
M. Project Delivery									
Hours	0	0	0	0	0	0	0	0	0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

			Qty	hrs	Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 5-CONSTRUCTION DOCUMENTS (20 weeks)		**TOTAL**				**256**	**2,560**	**5,646**	**208**	**2,752**	**2,152**	**656**	**4,008**	**18,238**
A.	**Administration**	**Subtotal**				**104**	**1368**	**200**	**128**	**8**	**8**	**8**	**8**	**1832**
01.	A/E Project Representative		20	20	Half Time		400							400
02.	A/E Project Manager		20	40	Full Time		800							800
03.	BIM Management/Modeling		20	8				160						160
04.	Quality Control Review					40								40
05.	Agency Consultation						40	24						64
06.	Code Check						40							40
07.	Agency Submittals							16						16
08.	ADA Compliance						40							40
09.	Building Department						16							16
10.	Fire Marshall						8							8
11.	Health Department						8							8
12.	Progress Reports				Monthly Reports	48			48					96
13.	Clerical		20	4	4 hours each week				80					80
14.	Budget Review					16	16			8	8	8	8	64
B.	**Architectural Production**	**Subtotal**				**40**	**880**	**5406**	**0**	**0**	**0**	**0**	**0**	**6326**
01.	Project Architect		20	40	Full Time		800							800
02.	Orientation Plans		7	10				70						70
03.	Code Plans		14	10				140						140
04.	Architectural Floor Plans		29	36				1044						1044
05.	Architectural Large Scale Plans		5	24				120						120
06.	Reflected ceiling plans and details		31	24				744						744
07.	Roof Plans and Details		6	16				96						96
08.	Building Elevations		4	24				96						96
09.	Door and Frame Sheets		6	40				240						240
10.	Wall Sections		14	40				560						560
11.	Elevator Plans and Sections		22	16				352						352
12.	Seating Configuration Diagrams		3	8				24						24
13.	Seating Plans		18	8				144						144
14.	Interior Floor Finish Plans		16	24				384						384
15.	Interior Elevations		10	24				240						240
16.	Acoustic Baffle System Plan		1	60				60						60
17.	Wall Types		1	12				12						12
18.	Railing Details		2	40				80						80
19.	Casework Plans and Details		3	40				120						120

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
20.	Food Service Plans		20	20				400						400
21.	Private Suite Plans/Elevations		4	80				320						320
22.	BIM models		20	8				160						160
23.	Quality Control Review					40	80							120
C.	**Structural Production**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**3912**	**3912**
01.	Calculations verification												80	80
02.	Foundations plans		22	24									528	528
03.	Framing plans		48	24									1152	1152
04.	Truss Details and Schedules		30	24									720	720
05.	Precast Seating Bowl Plans & Details		33	24									792	792
06.	Beam schedules												40	40
07.	Column schedules												40	40
08.	Roofing												120	120
09.	Staging												40	40
10.	Ice Floor												40	40
11.	Curtain Wall												80	80
12.	General notes												40	40
13.	Sections												120	120
14.	Details												40	40
15.	Precast Systems - Special												80	80
D.	**Mechanical Production**	**Subtotal**				**0**	**0**	**0**	**0**	**2656**	**0**	**0**	**0**	**2656**
01.	Utility plans		8	8						64				64
02.	HVAC plans		36	24						864				864
03.	HVAC piping plans		12	24						288				288
04.	Plumbing plans		40	16						640				640
05.	Large scale plans		8	40						320				80
06.	Fire protection plans									40				40
07.	Rises diagrams									40				40
08.	Fixture schedules									40				40
09.	Equipment schedules									40				40
10.	Details									80				80
11.	Site plan coordination									40				40
14.	Roof drains/penetrations									40				40
15.	Damper coordination									40				40
16.	Quality Control Review									40				40
17.	Food Service/Concessions Coordination									80				80

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
E.	**Electrical Production**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**2056**	**0**	**0**	**2056**
01.	Utility plans		8	8							64			64
02.	Lighting plans		35	16							560			560
03.	Power plans		35	16							560			560
04.	Special systems plans		24	16							384			384
05.	Wiring diagrams										24			24
06.	Equipment schedules										40			40
07.	Fixture schedules										24			24
08.	Scoreboard										20			20
09.	Panel schedules										40			40
10.	Site plan coordination										8			8
11.	Symbols/Legends										24			24
12.	Underground conduits										40			40
13.	Audio/Visual Risers										24			24
14.	Vertical Transportation										80			80
15.	Details										40			40
16.	Fire Alarm/Detection Systems										24			24
18.	Quality Control Review										40			40
19.	Ice Flooring										20			20
20.	Food Service/Concessions Coordination										40			40
21.	IT/Communications													0
F.	**Site/Civil Production**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**600**	**0**	**600**
01.	Site grading/Layout											80		80
02.	Site utilities											240		240
03.	Roads/walks											80		80
04.	Details											40		40
05.	Off-site coordination											40		40
06.	Lighting											40		40
07.	Parking											80		80
G.	**Specialized Consultants**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
H.	**Interior Design**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Material selections													0
02.	Furnishings													0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
03.	Color boards													0
04.	Specifications													0
05.	Cost analysis													0
														0
I.	**Equipment**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Food service/Concessions													0
02.	Staging													0
03.	Ice Floor													0
04.	IT/Communications/Security													0
05.	Discipline Coordination/Details													0
06.	Signage													0
														0
J.	**Specifications**	**Subtotal**				**0**	**168**	**40**	**80**	**80**	**80**	**40**	**80**	**568**
01.	General/Supplemental Conditions				Tasks performed by CM		8							8
02.	Site/Civil											40		40
03.	Structural												80	80
04.	Architectural						160							160
05.	Security/Communications													0
06.	Audio/Visual													0
07.	IT/Communication													0
08.	FF & E							40						40
09.	Electrical										80			80
10.	Mechanical									80				80
11.	Clerical								80					80
														0
K.	**Budget/Cost Input**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Site/Civil				Tasks performed by CM									0
02.	Structural				Tasks performed by CM									0
03.	Architecture				Tasks performed by CM									0
04.	Mechanical				Tasks performed by CM									0
05.	Electrical				Tasks performed by CM									0
06.	Equipment				Tasks performed by CM									0
07.	Security/Communications				Tasks performed by CM									0
08.	Alternate const. Analysis				Tasks performed by CM									0
09.	Bid alternates				Tasks performed by CM									0
10.	Final Construction Cost Estimate				Tasks performed by CM									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
L.	**Project Delivery**	**Subtotal**				**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Bid Packaging				Tasks performed by CM									0
02.	Contractor solicitation				Tasks performed by CM									0
03.	Schedule/Phasing Plan				Tasks performed by CM									0
M.	**Presentations**	**Subtotal**				**112**	**144**	**0**	**0**	**8**	**8**	**8**	**8**	**288**
01.	Design Development Presentation					16	40			8	8	8	8	88
02.	JPA Meetings		5		Monthly Meetings	40								40
03.	Public Meetings		1			16	24							40
04.	City/County Meetings		5		Monthly Meetings	40	80							120
05.	Other													0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 5-CONSTRUCTION DOCUMENTS									
Hours	**256**	**2,560**	**5,646**	**208**	**2,752**	**2,152**	**656**	**4,008**	**18,238**
A. Administration									
Hours	104	1368	200	128	8	8	8	8	1,832
B. Architectural Production									
Hours	40	880	5406	0	0	0	0	0	6,326
C. Structural Production									
Hours	0	0	0	0	0	0	0	3912	3,912
D. Mechanical Production									
Hours	0	0	0	0	2656	0	0	0	2,656
E. Electrical Production									
Hours	0	0	0	0	0	2056	0	0	2,056
F. Site/Civil Production									
Hours	0	0	0	0	0	0	600	0	600
G. Specialized Consultants									
Hours	0	0	0	0	0	0	0	0	0
H. Interior Design									
Hours	0	0	0	0	0	0	0	0	0
I. Equipment									
Hours	0	0	0	0	0	0	0	0	0
J. Specifications									
Hours	0	168	40	80	80	80	40	80	568

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
K. Budget/Cost Input									
Hours	0	0	0	0	0	0	0	0	0
L. Project Delivery									
Hours	0	0	0	0	0	0	0	0	0
M. Presentations									
Hours	112	144	0	0	8	8	8	8	288

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 6-BID/NEGOTIATIONS (10 weeks)			Qty	hrs	Descripiton									
		TOTAL				**14**	**1,016**	**52**	**120**	**53**	**25**	**58**	**37**	**1,375**
A.	**Administration**	**Subtotal**				**0**	**720**	**0**	**80**	**0**	**0**	**0**	**0**	**800**
01.	A/E Project Representative		10	20	Half time		200							200
02.	A/E Project Manager		10	40	Full time		400							
03.	Document Distribution				Tasks performed by CM									0
04.	Pre-Bid Pkg #1 - Site						24							24
05.	Pre-Bid Pkg #2 - Structure						24							24
06.	Pre-Bid Pkg #3 - MEP						24							24
07.	Pre-Bid Pkg #4 - Bldg. Enclosure						24							24
08.	Pre-Bid Pkg #5 - Interiors/Specialities						24							24
09.	Clerical		10	8					80					80
B.	**Bid Solicitation**	**Subtotal**				**0**	**200**	**0**	**0**	**0**	**0**	**0**	**0**	**200**
01.	CM Coordination						200							200
02.	Pre-Bid Pkg #1 - Site				Tasks performed by CM									0
03.	Pre-Bid Pkg #2 - Structure				Tasks performed by CM									0
04.	Pre-Bid Pkg #3 - MEP				Tasks performed by CM									0
05.	Pre-Bid Pkg #4 - Bldg. Enclosure				Tasks performed by CM									0
06.	Pre-Bid Pkg #5 - Interiors/Specialities				Tasks performed by CM									0
C.	**Documentation/Addenda**	**Subtotal**				**0**	**56**	**44**	**40**	**48**	**20**	**40**	**32**	**280**
01.	Bid Pkg. #1 - Site						16							16
02.	Civil/Site											24		24
03.	Utilities									8		16		24
04.	Bid Pkg. #2 - Structure						16						24	40
05.	Framing												4	4
06.	Foundations												4	4
07.	Roofing							4						4
08.	Bid Pkg. 3 - MEP						16							16
09.	Mechanical									24				24
10.	Electrical										16			16
11.	Plumbing									8				8
12.	Fire Alarm/Fire Protection									8	4			12
13.	Bid Pkg. # 4 - Bldg. Enclosure						16							16
14.	Architectural						8	40	40					88
15.	Security / IT/Communications													0
16.	Food Service													0
17.	Audio/Visual													0
18.	Curtain Wall													0
19.	Graphics/Signage													0
20.	Vertical Transportation													0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
21.	Bid Pkg. #5 - Interiors/Specialites													0
22.	Finishes													0
23.	Staging													0
24.	Ice Flooring													0
25.	Seating													0
26.	Acoustics													0
		Subtotal				**28**	**40**	**16**	**0**	**10**	**10**	**18**	**10**	**132**
D.	**Bid Evaluations**													
01.	CM Coordination						24							24
02.	Bid Pkg. # 1 - Site													0
03.	Alternate Review/Evaluations											16		16
04.	Bid Recommendations											2		2
05.	Negotiations/Contract Preparation/Award				Tasks performed by CM									0
06.	Bid Pkg. # 2 - Structure													0
07.	Alternate Review/Evaluations												8	8
08.	Bid Recommendations												2	2
09.	Negotiations/Contract Preparation/Award				Tasks performed by CM									0
10.	Bid Pkg. # 3 - MEP													0
11.	Alternate Review/Evaluations									8	8			16
12.	Bid Recommendations									2	2			4
13.	Negotiations/Contract Preparation/Award				Tasks performed by CM									0
14.	Bid Pkg. # 4 - Bldg. Enclosure													0
15.	Alternate Review/Evaluations					24	16	16						56
16.	Bid Recommendations					4								4
17.	Negotiations/Contract Preparation/Award				Tasks performed by CM									0
18.	Bid Pkg. # 5 - Interiors/Specialites													0
19.	Alternate Review/Evaluations													0
20.	Bid Recommendations													0
21.	Negotiations/Contract Preparation/Award				Tasks performed by CM									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 6-BID/NEGOTIATIONS									
Hours	**14**	**1,016**	**52**	**120**	**53**	**25**	**58**	**37**	**1,375**
A. Administration									
Hours	0	720	0	80	0	0	0	0	800
B. Bid Solicitation									
Hours	0	200	0	0	0	0	0	0	200
C. Documentation/Addenda									
Hours	0	56	44	40	48	20	40	32	280
D. Bid Evaluation									
Hours	28	40	16	0	10	10	18	10	132

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

			Qty	hrs	Description	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 7 - CONSTRUCTION ADMINISTRATION (104 weeks)														
		TOTAL				**136**	**6,804**	**4,570**	**2,808**	**1,110**	**1,062**	**514**	**1,820**	**18,824**
A.	**Administration**	**Subtotal**				**-**	**6,240**	**768**	**936**	**104**	**104**	**56**	**48**	**8,256**
01.	A/E Project Representative		104	20	Half Time		2080							2080
02.	A/E Project Manager		104	40	Full Time		4160							4160
08.	Application for Payment Review				Tasks performed by CM									0
09.	Bid Packages coordination/overview									24	24	16	8	72
10.	Value Engineering Responses													0
11.	Field Reports								416	80	80	40	40	656
12.	Proposal Request/Scope Change/Contingency Items		24	8	one each month			192						192
13.	Construction Change Directives		48	8	two each month			384						384
14.	Change Order Review/Contingency overview		24	8	one each month			192						192
15.	Construction Record Keeping		104	5	one hour each day				520					520
B.	**Shop Drawing Review/Processing**	**Subtotal**				**88**	**16**	**258**	**360**	**150**	**158**	**92**	**284**	**1,406**
01.	Storm sewers/Sanitary											6		6
02.	Site utilities											24		24
03.	Site grading											16		16
04.	Underground conduits/plumbing lines									8		16		24
05.	Roadways/walks/ADA Access review										24			24
06.	Landscaping											4		4
07.	Reinforcement												40	40
08.	Concrete (grade slabs, elevated slabs, joint layout,finish)					40		40	16				40	136
09.	Precast concrete							40	16				40	96
10.	Structural steel (rebar, slabs,walls,joist, lintels,stairs)												40	40
11.	Architectural Precast					2		4					24	30
12.	Special Materials (CMU,brick,stone, EFIS)					2		2	2					6
13.	Metal decking												24	24
14.	Metal fabrications												24	24
15.	Millwork								2					2
16.	Metal roofing (panels, wall, soffits)								2					2
17.	Membrane roofing/insulation system							4						4
18.	Flashing							2						2
19.	Roof accessories							2						2
20.	Skylights							2						2
21.	Doors and frames (coiling, storefront, glazing)							16	18					34
22.	Hardware/Keying							8	16					24
23.	Audio (CCTV Cabling)										8			8
24.	Visual													0
25.	Curtain Wall					2		4					24	30
26.	Staging (curtains,rigging,sound control)													0
27.	Ice Flooring							8						8
28.	Vertical Transportation/Code/state inspector coordination)							8	4					12
29.	Security/Access Control							4						4

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
30.	Information Technology - Owner Coordination			4	4					8
31.	Communication systems (Phone, Data)			4	4					8
32.	Scoreboard (steel coodination,catwalk access,power/data)			8			8			16
33.	Lockers									0
34.	Toilet accessories/partitions	2			2					4
35.	Signage									0
36.	Stage Equipment									0
37.	Finishes				4					4
38.	Speciality doors and frames				8					8
39.	Seating (fixed, bleachers,camera platforms,ADA)	40			24					64
40.	Special Equipment (marker boards, extingushiers,loading dock)			8	4	4	2			18
41.	Food service equipment coordination/layout/concession stands)			16	8	8	8			40
42.	Pipe supports					2				2
43.	Valves					4				4
44.	Cleanouts					2				2
45.	Hot water equipment					4				4
46.	Plumbing fixtures					8				8
47.	Ice systems					2				2
48.	Sprinkler system (performance specification)			4		4				8
49.	Irrigation system					4		2		6
50.	Boilers					4				4
51.	Cooling tower					8				8
52.	Pumps					4				4
53.	HVAC units					8				8
54.	Thermostats					2				2
55.	Fans					4				4
56.	Dampers (controls,volume,fire,smoke)			8	4	4	4			20
57.	Hoods					4				4
58.	Diffusers/registers/grille					4				4
59.	Curbs (structural interface)			4	4	8	8		4	28
60.	Controls (coordination with Facility manager)			8		4	4			16
61.	Wiring (grounding, raceways, routing)			8			4			12
62.	Motor starters						2			2
63.	Panels						8			8
64.	Switchboards						8			8
65.	Disconnects					4	2			6
66.	Fuses						4			4
67.	Transformers (coodination with CM)			4			8			12
68.	Generators						8			8
69.	Alarm systems					2	2			4
70.	Fixtures						4			4
71.	Security systems									0
72.	Public address system						2			2
73.	Plastic laminate.stone.granite)			2	2					4
74.	Sealant (joint,fire resistant)									0
75.	Flooring/finishes			4						4

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
76.	Grout													0
77.	Paint/stain													0
78.	GWB/CeramicTile/Quarry Tile)							16	8					
79.	Wall covering													0
80.	Acoustical ceiling													0
81.	Mats													0
82.	Carpet/Floor Coverings (base,cove)													0
83.	Monitor shop drawing log		104	2	2 hours each week				208					208
84.	Material Substitution/Evaluation/Process						16	16		40	40	24	24	160
C.	**Testing Coordination**	**Subtotal**				**-**	**-**	**56**	**8**	**32**	**32**	**14**	**136**	**278**
01.	Earthwork compaction											4		4
02.	Utility excavation											8	16	24
03.	Piers/piling							24					80	104
04.	Concrete (rebar,excavation,footings,walls)							24					40	64
05.	Asphalt											2		2
06.	HVAC balancing									24				24
07.	Electric panels										16			16
08.	Fire protection system (code reviews,inspections)							8	8	8				24
09.	Audio/Visual systems													0
10.	Underground electrical serv.										16			16
11.	Special buildings systems													0
12.	Special inspections - interface													0
D.	**RFI/Interpretations**	**Subtotal**				**-**	**-**	**3,168**	**520**	**320**	**320**	**80**	**640**	**5,048**
01.	Architectural		50	8				400						400
02.	Site/Civil		10	8				80				80		160
03.	Mechanical		40	8				320		320				640
04.	Electrical		40	8				320			320			640
05.	Structural		40	16				640					640	1280
06.	Special systems		0	8				0						0
07.	Audio/Visual		0	8				0						0
08.	Owner provided equipment		0	8				0						0
09.	Ice Flooring		0	8				0						0
10.	Audio/Visual		0	8				0						0
11.	Vertical Transportation		0	8				0						0
12.	Food Service		0	8				0						0
13.	Curtain Wall		5	8				40						40
14.	Roofing		5	8				40						40
15.	Interiors		0	8				0						0
16.	Seating		2	8				16						16
17.	Construction Change Directives		30	16				480						480
18.	Supplemental Instructions/ASI processing		104	8	8 hours each week			832						832
19.	Clerical		104	5	one hour each day				520					520

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
E.	**Field Observations**	**Subtotal**				**8**	**324**	**120**	**840**	**440**	**376**	**208**	**648**	**2,964**
01.	Pre-construction/Pre-Installation Conference					8	24	40	8	8	8	8	8	112
02.	Earthwork											40		40
03.	Foundations												120	120
04.	Reinforcings												80	80
05.	Concrete												40	40
06.	Framing												120	120
07.	Masonry												40	40
08.	Underground Utilities									40	40			80
09.	Precast - Exterior Walls/Roofs												40	40
10.	Precast - Structural												80	80
11.	Doors/Windows - Standard						20							20
12.	Doors/Windows - Special						40							40
13.	Glazing - Commercial						80							80
14.	Seating						20							20
15.	Roofing - Commercial						20							20
16.	Staging						40							40
17.	Vertical Transportation						80							80
18.	Plumbing		52	2						104				104
19.	HVAC		52	4						208				208
20.	Electrical		52	4							208			208
21.	Food Service													0
22.	Interior Finishes/Owner reviews													0
23.	Ice Flooring									40				40
24.	Curtain Wall												40	40
25.	Equipment - General													0
26.	Equipment - Special													0
27.	Seating Bowl												40	40
28.	Off-Site utility coordination							40				80		120
29.	Communication systems										40			40
30.	Audio/Visual													0
31.	Mock-ups (reviews with Owner)							40					40	80
32.	On-Site Utilities									40	80	80		200
33.	As Built Document Verification													0
34.	Field Report Preparation/Distribution		104	8	8 hours each week				832					832
F.	**Project Close-Out**	**Subtotal**				**40**	**224**	**200**	**144**	**64**	**72**	**64**	**64**	**872**
01.	Punch list - Field Visit # 1 (all disciplines)					24	80	80	40	40	40	16	40	360
02.	Punch List Preparation (edits,monitor progress,sign off)						40	16	40					96
03.	Consent of surety				Tasks performed by CM		8							8
04.	Cert. of Substantial completion (multiple phases)				Tasks performed by CM		24	16						40
05.	Punch list review - field visit #2					16	40	40	40	24	24	8	24	216
07.	Certificates of occupancy						8	24			8			40

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

						PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
08.	Final certificate of payment				Tasks performed by CM		16							16
10.	Regulatory Agency Coordination							24	24			40		88
11.	Substantial Completion Certificate				Tasks performed by CM		8							8
13.	Collect manufacturers manuals				Tasks performed by CM									0
14.	Prepare manuals				Tasks performed by CM									0
15.	Warranty Reviews				Tasks performed by CM									0
16.	Final Completion Certificate				Tasks performed by CM									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 7 - CONSTRUCTION ADMINISTRATION									
Hours	**136**	**6,804**	**4,570**	**2,808**	**1,110**	**1,062**	**514**	**1,820**	**18,824**
A. Administration									
Hours	0	6240	768	936	104	104	56	48	8,256
B. Shop Drawing Review/Processing									
Hours	88	16	258	360	150	158	92	284	1,406
C. Testing Evaluation									
Hours	0	0	56	8	32	32	14	136	278
D. RFI/Interpretations									
Hours	0	0	3168	520	320	320	80	640	5,048
E. Field Observations									
Hours	8	324	120	840	440	376	208	648	2,964
F. Project Close-Out									
Hours	40	224	200	144	64	72	64	64	872

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 8-TRANSITION/COMMISSIONING										
	TOTAL	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
A.	**Administration Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	In-House Management									0
02.	Program Manager Interface									0
03.	Construction Manager Interface									0
04.	Owner Meetings									0
B.	**Systems Commissioning Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Central Building Mgmt System: Linkages to Remote Monitoring/ Control Sites									0
02.	HVAC Systems									0
03.	Line Safety/Fire Alarm									0
04.	Line Safety/Smoke Control									0
05.	Line Safety/Fire Protection									0
06.	Domestic/Process Water Pumping									0
07.	Emergency Power Systems									0
08.	Lighting Control Systems									0
09.	Telephone Control Systems									0
10.	Telephone/Data/Televisiting									0
11.	Evac System									0
12.	Detention Security System									0
13.	Roofing Systems									0
C.	**Start-Up/Transition/Training Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Functional Performance Testing									0
02.	Test/Balancing									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

		PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
03.	On-Site Troubleshooting									0
04.	Seasonal/Deferred Functional Performance Testing									0
05.	Test/Balance Verification									0
06.	Test/Balance Final Adjustment									0
07.	Final Commissioning									0
08.	Warranty									0
09.	Staff Training									0
10.	Transition Planning									0
11.	Operation/Maint. Manuals									0
D.	**Warranty Review Subtotal**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
01.	Initial Warranty inspection									0
02.	10-month warranty Inspection									0
03.	Document deficiencies									0
04.	Word processing/distribution									0

EXHIBIT E: Lincoln Arena Architectural and Engineering Basic Design Services

	PRINCIPAL	SENIOR PROFESSIONAL	PROFESSIONAL	PROFESSIONAL SUPPORT	MECHANICAL	ELECTRICAL	CIVIL	STRUCTURAL	TOTAL HOURS
PHASE 8 -TRANSITION/COMMISSIONING									
Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
A. Administration									
Hours	0	0	0	0	0	0	0	0	0
B. Systems Commissioning									
Hours	0	0	0	0	0	0	0	0	0
C. Start-Up/Transition/Training									
Hours	0	0	0	0	0	0	0	0	0
D. Warranty Review									
Hours	0	0	0	0	0	0	0	0	0

EXHIBIT E: Lincoln Arena Specialty Design Consultants

SPECIALTY CONSULTANTS ALLOWANCE		**$915,000**
01.	ADA	$35,000
02.	Audio Visual / Acoustics	$210,000
03.	Communications	$50,000
04.	Curtain Wall	$35,000
05.	Fire Protection / codes	$75,000
06.	Graphics / Signage	$135,000
07.	Ice Flooring	$50,000
08.	Security	$65,000
09.	Sports Lighting	$30,000
10.	Stage Rigging	$110,000
11.	Vertical Transportation	$30,000
12.	Wind Tunnel	$90,000

ATTACHMENT A

AGREEMENT made as of the 1st day of September in the year 2010
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

West Haymarket Joint Public Agency

and the Architect:
(Name, address and other information)

DLR Group, inc. (a Nebraska corporation)

for the following Project:
(Name, location and detailed description)

Lincoln Arena – Amendment No. 1 to the Agreement dated August 14, 2008.

The Owner and Architect agree as follows.

TABLE OF ARTICLES

1 INITIAL INFORMATION

2 ARCHITECT'S RESPONSIBILITIES

3 SCOPE OF ARCHITECT'S BASIC SERVICES

4 ADDITIONAL SERVICES

5 OWNER'S RESPONSIBILITIES

6 COST OF THE WORK

7 COPYRIGHTS AND LICENSES

8 CLAIMS AND DISPUTES

9 TERMINATION OR SUSPENSION

10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

As defined in the Agreement dated August 14, 2008.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The Project scope shall include: (1) an arena not to exceed 16,000 seats and 450,000 square feet, (2) a 500-stall parking structure, and (3) a surface parking all located within the project boundaries as defined in Exhibit A – Arena Project Area. The Owner shall provide a buildable site pad including all design and construction services necessary to prepare the site as defined in Exhibit A, for construction of the arena, parking structure, and surface parking. Design Services under this Amendment specifically excludes: Incorporation of Central Utilities Systems or any sub-systems on the Arena site; any coordination or incorporation into the arena instruments of service for pedestrian connector, plaza connection or hotel/convention center.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1: See Exhibit B – Project Budget.
(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction schedule: To be determined by the Owner's Project Design and Construction Team consisting of members to be designated by Owner at a later date.

.1 Design phase milestone dates, if any:

.2 Commencement of construction:

.3 Substantial Completion date or milestone dates:

.4 Other:

« »

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract or construction management.)

Construction Manager at Risk. See Exhibit C - Lincoln Arena Organization Chart.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The Architect shall prepare bid packages for the project as defined in Exhibit E – Lincoln Arena Architectural and Engineering Design Services.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address and other information.)

Program Manager: James Martin, Program Manager, The Benham Companies LLC, 622 Emerson Road, Suite 600, St. Louis, MO 63141-6728; (402) 417-2239.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

« »

§ 1.1.10 The Owner will retain the following consultants and contractors: Owner to Provide.
(List name, legal status, address and other information.)

.1 Cost Consultant:

The Owner's Program Manager will act as Cost Consultant.

.2 Scheduling Consultant:

The Owner's Program Manager will act as Scheduling Consultant.

.3 Geotechnical Engineer:

« »« »« »« »« »« »

.4 Civil Engineer:

« »« »« »« »« »« »

.5 Other, if any:
(List any other consultants or contractors retained by the Owner, such as a Project or Program Manager, construction contractor, or construction manager as constructor.)

Program Manager, Topographic and Boundary Surveyor, and Construction Manager at Risk (to be named).

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

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

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

« »« »« »« »« »« »

.2 Mechanical Engineer:

« »« »« »« »« »« »

.3 Electrical Engineer:

« »« »« »« »« »« »

§ 1.1.12.2 Consultants retained under Additional Services:

To be selected by the Architect and Owner.

§ 1.1.13 Other Initial Information on which the Agreement is based:

« »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall procure and maintain the following insurance coverage from A-rated insurance carriers for the duration of this Agreement. The Owner shall be named as an additional insured on the Commercial General Liability, Automobile Liability and any umbrella or excess Commercial General Liability and Automobile Liability policies. Additional insured coverage shall be primary and not contributory to any such coverage maintained by Owner. The policies shall contain a severability of interests' provision in favor of the additional insureds. The insurance policies shall contain a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies. All deductibles and premiums associated with the below coverages shall be the responsibility of the Architect.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars ($2,000,000) for each occurrence and Two Million Dollars ($2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering owned, rented, and non-owned vehicles operated by the Architect with policy limits of not less than Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Commercial General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies and follows the form of the additional insured provisions as included in the underlying policies.

§ 2.5.4 Workers' Compensation as statutorily required and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars ($500,000).

§ 2.5.5 Professional liability covering the Architect's negligent acts, errors, and omissions in its performance of professional services with policy limits not less than Five Million Dollars ($5,000,000) per claim and in the aggregate.

§ 2.5.6 The Architect shall ensure that all Consultants engaged by the Architect carry and maintain sufficient insurance that is appropriate to the project in the reasonable discretion of the Architect. Architect shall utilize all reasonable efforts to require its Consultants and Contractors to maintain professional liability insurance with policy limits of Five Million Dollars ($5,000,000) per claim and in the aggregate provided however nothing herein shall obligate Architect to incur additional costs to its Consultants or Contractors to obtain an increase in policy limits from Two Million Dollars ($2,000,000) to Five Million Dollars ($5,000,000).
§ 2.5.7 Prior to commencing work under this Agreement, the Architect and Consultants shall submit acceptable proof of such insurance to the Owner and the provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary **civil,** structural, mechanical, and electrical engineering services as defined in Exhibit E. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Program Manager a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Program Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager at Risk and Program Manager. The Architect shall meet with the Construction Manager at Risk and Program Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Program Manager's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner and the Program Manager and Construction Manager at Risk. The Architect shall meet with the Program Manager and Construction Manager at Risk to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Program Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager at Risk will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall, if requested, assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Program Manager and Construction Manager at Risk. The

Architect shall meet with the Program Manager and Construction Manager at Risk to review the Construction Documents.

§ 3.4.5 Upon receipt of the Program Manager's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES
§ 3.5.1 GENERAL
The Architect shall assist the Owner and Construction Manager at Risk in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager at Risk in (1) obtaining either competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING
§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk in bidding the Project by

1. facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
2. participating in a pre-bid conference for prospective bidders, if any, and
3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS
§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documetns.

§ 3.5.3.2 The Architect shall, if requested by Owner, assist the Construction Manager at Risk inobtaining proposals by

1. facilitating the reproduction of Proposal Documents for distribution to prospectice contractors, and requesting their return upon completion of the negotiation process;
2. participating in selection interviews with prospective contractors; and
3. participating in negotiations with prospective contractors.

3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager at Risk modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Program Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Program Manager only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner/Program Manager reasonably informed about the observable progress and quality of the portion of the Work completed, and report to the Owner/Program Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall advise the Owner/Program Manager in writing, regarding a recommendation of rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall act as the Owner's representative in interpreting the requirements of the Contract Documents and in judging the performance of the Construction Manager at Risk thereunder. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 In any dispute between the Owner/Program Manager and Construction Manager at Risk, the Architect shall, upon request by Owner/Program Manager, advise the Owner/Program Manager on issues concerning performance under the Contract Documents. Architect may decide any such performance

issue solely on matters of aesthetic effect consistent with the intent expressed in the Contract Documents. Prior to rendering such services, the Owner/Program Manager and Architect shall mutually determine if such constitute Additional Services subject to the provisions of Article 4.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall, if requested by Owner, review and certify the amounts due the Construction Manager at Risk and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner/Program Manager, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner/Program Manager to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall, if requested, maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Construction Manager at Risk submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager at Risk submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager at Risk that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely

upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager at Risk in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's/Program Manager's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager at Risk and forward to the Owner/Program Manager, for the Owner's/Program Manager's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner/Program Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner/Program Manager about the balance of the amount remaining to be paid the Construction Manager at Risk, including the amount to be retained by the Owner under the agreement with the Construction Manager at Risk, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 ADDITIONAL SPECIALTY CONSULTANT SERVICES

§ 4.1 Additional Specialty Consultant Services listed below, except as otherwise noted, are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Specialty Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.4.
(Designate the Additional Specialty Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Table in 4.1 – No Revisions

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

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

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
.7 Preparation for, and attendance at, a public presentation, meeting or hearing;
.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
.9 Evaluation of the qualifications of bidders or persons providing proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
.11 Assistance to the Initial Decision Maker, if other than the Architect.
.12 Changes required in the Instruments of Service to reduce the cost of the Project where the Owner has provided Value Engineering;
.13 Providing services made necessary by the default or termination of Construction Manager at Risk, by defects or deficiencies in the construction of the Project or by the failure of the Owner, any contractor or others performing services or Work in connection with the Project; or
.14 Providing services in connection with building commissioning.

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

.1 Reviewing a Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;
.2 Responding to the Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager at Risk from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;
.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;
.4 Evaluating an extensive number of Claims as the Initial Decision Maker;
.5 Evaluating substitutions proposed by the Owner or Construction Manager at Risk and making subsequent revisions to Instruments of Service resulting therefrom; or
.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.
.7 Services as may be requested by the Owner in connection with the failure of performance of Owner's consultants and contractors, including insolvency.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Specialty Consultant Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
.2 One (1) onsite project representative of the Architect
.3 One (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
.4 One (1) inspection for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed by October 31, 2013, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall furnish the services of a Program Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Program Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager at Risk and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before accepting the Construction Manager at Risk's guaranteed maximum price (GMP) and giving the Construction Manager at Risk Notice to Proceed with the Construction Phase of Contract, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work (Guaranteed Maximum Price) shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include Construction Manager at Risk's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget (see Exhibit B - Project Budget) for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Program Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work, including a five percent (5%) design and construction contingency as defined in Paragraph 12.1.1. The

Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Program Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Program Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Program Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Program Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Program Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 Ownership, not including the copyright, of Architect's and Architect's Consultant's Instruments of Service, including Drawings, Specifications, and other deliverables, shall become the property of the Owner as soon as payment for the same has been completed. The Architect may retain copies of all information for its own records and use subject to Owner's approval which will not be unreasonably withheld. It is mutually agreed that these documents are to be used by the Owner solely in connection with this Project. In the event the Owner elects to use portions of or all of the information contained in the documents prepared for this Project, for any purpose other than the specific purpose for which they were prepared, the Owner agrees to hold harmless and indemnify the Architect for an against any and all liability, including cost of defense, in any manner whatsoever arising out of the utilization of such information.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. Owner agrees that the Architect will be named as an additional insured under the Commercial General Liability Insurance obtained by the Construction Manager at Risk for the Project.

§ 8.1.3 The Architect shall and shall cause Architect's consultants to indemnify and hold Owner and its officers, employees and successors, harmless from and against all, damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they arise from Architect's and/or Architect's consultants' negligent acts, errors or omissions in the performance of any services performed by Architect or Architect's consultants under this Agreement and for patent, copyright or trademark infringement attributable to Architect's services under this Agreement. Notwithstanding the above, Owner agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal or employee of Architect shall have personal liability under this Indemnification provision, under any provision of the Agreement, except for gross negligence or intentional acts of misconduct.

Owner assumes liability for and agrees to indemnify, and hold Architect, its consultants, and their respective officers, directors, shareholders, partners, principals, employees and successors harmless from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from negligent acts, errors or omissions of Owner, its agents, employees, consultants, contractors or Construction Manager at Risk (collectively for this indemnity "Owner Entity").

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.5 Direct Negotiation, as defined below, will be the initial process utilized by the parties to resolve Claims and disputes or other matters arising out of this Agreement.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement.

Direct Negotiation Representatives of the parties shall be the Owner's Designated Representative, as defined in Section 1.1.8 and the Architect's Designated Representative, as defined in Section 2.3.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architect's Designated Representatives.

Each party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties.
Rick-If direct negotiations fail since the City has eliminated the obligation to mediate assume that litigation is next? DLR would prefer to still have the mediation step as part of the dispute resolution process.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through direct negotiation and/or mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[« » Arbitration pursuant to Section 8.3 of this Agreement

[« X » Litigation in a court of competent jurisdiction

[« »] Other *(Specify)*

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or

damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. If the Project is resumed after more than thirty (30) days of suspension, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services and the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include demobilization expenses including, but not limited to costs associated with computer systems, web site shutdown, employment outplacement, severance and all reimbursable costs to date, directly attributable to termination for which the Architect is not otherwise compensated.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Nebraska.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, except that the term Contractor shall mean Construction Manager at Risk.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the West Haymarket Joint Public Agency (JPA) or to a lender providing financing for the Project if the JPA or lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this

Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services for the arena and surface parking only, described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

A lump sum fee of Eight Million Dollars ($8,000,000.00) as defined in Exhibit E – Lincoln Arena Architectural and Engineering Design Services. An additional lump sum fee for basic services described under Article 3, the 500-stall parking structure shall be negotiated by the Architect and Owner and a contract amendment shall be executed prior to commencement of any services by the Architect.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See Paragraph 11.4.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: Services shall be a negotiated amount based upon work effort to be expended.
(Insert amount of, or basis for, compensation.)

« »

§ 11.4 Compensation for Additional Services of the Architect's specialty consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%):

« »

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Predesign Phase	$ 150,000
Schematic Design Phase	$1,200,000
Design Development Phase	$2,000,000
Construction Documents Phase	$2,250,000
Bidding or Negotiation Phase	$ 150,000
Construction Phase	$2,250,000
Total Basic Compensation	$8,000,000

§ 11.6 If any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. Rick-What is the thinking re the deletions of negotiated proposal?

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be reviewed annually and are subject to adjustment by the Architect on or after agreement anniversary date.
(If applicable, attach an exhibit of hourly billing rates or insert them below.) (See Exhibit D - Hourly Rates)

« »

Employee or Category	Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES
§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence outside of the State of Nebraska;
.2 Dedicated data and communication services, teleconferences, Project Web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;

.5 Postage, handling and delivery;

~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~

.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

.8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 1.10 times the expenses incurred.

§ 11.9 « »

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of $0.00 shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice. Amounts unpaid forty-five (45) days after receipt of the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

9% per annum

§ 11.10.3 Payments to the Architect shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of off setting reimbursement or credit from other parties who may have caused Additional Services or expenses. No withholdings, deductions or offsets shall be made from the Architect's compensation for any reason unless the Architect has been found to be legally liable for such amounts.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

§ 12**.1.1** The Owner and the Architect agree, that due to the nature of construction, certain costs and changes may be required during the project and that a Design and Construction Contingency be included in the Cost of the Work as outlined in Section 6.1.

Owner agrees to establish a Design and Construction Contingency of five percent (5%) of the Cost of the Work for changes in the construction of the project due to omissions, ambiguities or inconsistencies in the construction documents. The Design and Construction Contingency will be used, as required, to pay for any such increased cost and changes for construction modifications or adjustments necessary to complete the project in accordance with the original design intent.

§ 12.1.2 Each Party agrees that the other Party is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural

disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

Except for delays that are for causes beyond the control of the Owner or the Owner's contractors or consultants, if delays caused by the Owner or the Owner's contractors or consultants increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 1**2.1.3** If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

§ 1**2.1.4** Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

§ 1**2.1.5** It is acknowledged that the Architect has been requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner. The Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services provided Architect requires all such subcontractors to maintain professional liability insurance coverage covering the subcontractor's negligent acts, errors and omissions in its performance of the laboratory testing services with policy limits appropriate to the Project in the reasonable discretion of the Architect. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§ 1**2.1.6** A copy of the agreement between the Owner and the Construction Manager at Risk will be provided to the Architect defining the duties, responsibilities and authority of the Construction Manager at Risk.

§ 1**2.1.7** Notwithstanding anything else contained in this Agreement to the contrary, Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for Owner not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants or design-build contractors shall be to coordinate Owner's consultant's portion of the Instruments of Service. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of consultants or design-build contractors shall be to coordinate the consultant's portion of the Instruments of Service. Architect shall take whatever action is reasonably necessary, including, if necessary, an assignment of rights, to enable Owner to pursue its

claims for errors, omissions and deficiencies directly against any consultant retained by Architect. Owner shall require consultants or design-build contractors retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§ 12.1.8 The Architect shall perform all required services using staff personnel with specialized skill, experience and professional qualifications appropriate for this Project. Services provided shall be under the direct supervision of a registered professional architect licensed to practice in the State of Nebraska. The Architect, also, hereby agrees to affix the seal of a registered professional architect licensed to practice in the state of Nebraska on all plans and specifications prepared hereunder.

§ 12.1.9 The status of Architect including Architect's agents and employees, under or by virtue of the terms of this Contractor is that of independent contractor to the City.

§ 12.1.10 Architect shall comply with applicable Federal and State laws and City ordinances applicable to the work.

§ 12.1.11 Neither the Architect nor the Architect's agents or employees shall discriminate against any employee or applicant for employment, or be employed in the performance of this contract, with respect to his hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to requirements of section 48-1122, Nebraska Reissue Revised Statues (as amended) and Section 11.08.160 of the Lincoln Municipal Code (as amended).

§ 12.1.12 If the compensation for services provided pursuant to this Agreement is equal to or exceeds $25,000.00, this Agreement is subject to the Living Wage Ordinance of Lincoln Municipal Code Chapter 2.81. The ordinance requires that, unless specific exemptions apply or a waiver is granted, the service provider shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under this provision of Lincoln's Living Wage Ordinance, the City shall have the authority to terminate this Agreement to seek other remedies for violation of the ordinance.

§ 12.1.13 Architect 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 above, copies of all financial and performance related records and materials at no cost to the City germane to this Agreement, as allowed by law.

§ 12.1.14 Services to be Confidential. Architect and Owner acknowledge that in the performance of this Agreement it may be necessary for the Owner to disclose information to the Architect that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but is not limited to, the details and financial information regarding the design and construction of the Arena and the work product generated by third parties regarding costs, performance, and potential tenants of other elements to be integrated into Owner's redevelopment of the West Haymarket District in Downtown Lincoln through implementation of the West Haymarket Redevelopment Project. If the Owner considers the information to be Confidential Information, it shall be identified as such in writing or marked "Confidential." If orally disclosed to or observed by the Architect, a description of the Confidential Information shall be reduced to writing by the Owner, marked "Confidential," and delivered to Architect within thirty (30) days of disclosure.

The Architect agrees to keep in confidence and not to disclose Confidential Information of the Owner to any person outside the Architect's organization or to any unauthorized person within Architect's organization. Architect further agrees not to use Owner's Confidential Information for any purpose other than the performance of Architect's obligations under this Agreement, without the prior written approval of Owner. Architect acknowledges it will treat Owner's Confidential Information in a manner consistent

with Architect's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

(i) was in the possession of Architect before receipt from Owner; or
(ii) is or becomes a matter of public knowledge through no fault of Architect; or
(iii) is rightfully received by Architect from a third party without a duty of confidentiality; or
(iv) is disclosed by Owner to a third party without a duty of confidentiality on the third party,or is independently developed by Architect and shown by documentation; or
(v) is disclosed publicly under operation of law.

Architect agrees that it shall disclose Confidential Information only to its officers, directors, or employees with a specific need to know / Architect further represents and warrants to the Owner that all of the Architect's officers, directors or employees have written confidentiality obligations in place that would preclude them from any disclosures of Confidential Information.

Architect retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Agreement.

Upon request of Owner, Architect shall return all Confidential Information, including copies, within ten (10) days of such request.

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, AIA Document C106™-2007, Digital Data Licensing Agreement, or the following:

« »

.3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

AIA Document B103 – 2007 Standard Form of Agreement Between City of Lincoln, NE and DLR Group, inc. (a Nebraska corporation), dated August 14, 2008.

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

OWNER	ARCHITECT
(Signature)	*(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

WH 10-05

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. WH 10-05 as follows:

Substitute the Amendment No 1 to the Owner-Architect Agreement dated August 14, 2008 between the City of Lincoln (Assigned to the West Haymarket Joint Public Agency) and DLR Group attached hereto as Attachment A for the existing Attachment A attached to Bill No. WH 10-05.

Introduced by:

_____

Approved as to Form & Legality:

_____
City Attorney

Requested by: Law Department

Reason for Request: The Substitute Amendment No. 1 adds contractual details including Exhibits A-E which are missing from Amendment No. 1 attached to Bill No. WH 10-05.