

**University of Nebraska Board of Regents
Board of Regents Meeting
Itinerary**

Friday, February 12, 2010

8:30 a.m.

Board of Regents Meeting
Varner Hall

AGENDA
THE BOARD OF REGENTS
OF THE UNIVERSITY OF NEBRASKA
Varner Hall
Friday, February 12, 2010
8:30 a.m.

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN ON JANUARY 22, 2010
- IV. PUBLIC COMMENT

The Standing Rules of the Board provide that any person who gives 24 hours notice to the Corporation Secretary of the Board may speak to any item that is not on the agenda. In addition, any person may appear and address the Board of Regents on any item on the agenda for this meeting. Each person will be given up to five minutes to make his or her remarks. Public comment will be limited to a period of 30 minutes.

- V. RESOLUTION

- A. LINCOLN HAYMARKET ARENA BOND ISSUE

- Board of Regents' support for approving a ballot question proposed by the City of Lincoln regarding a general obligation bond issue in an amount not to exceed \$25 million for construction of a new Lincoln Haymarket Arena and related improvements at the May 11, 2010 primary election

- VI. UNIVERSITY ADMINISTRATIVE AGENDA

- B. BUSINESS AFFAIRS

- University of Nebraska-Lincoln

- 1. Authorize the President to administer and execute the Memorandum of Understanding with the city of Lincoln related to the West Haymarket Arena Project Addendum VI-B-1

- C. FOR INFORMATION ONLY

- 1. Resolution and Statement of Creation (1) authorizing the President to execute the West Haymarket Joint Public Agency Agreement, and (2) authorizing the President to administer and execute the related approvals and instruments for creating and implementing the West Haymarket Joint Public Agency. This item is presented for information only and will be brought back to the Board for approval at its March meeting Addendum VI-C-1

- VII. ADDITIONAL BUSINESS

VI. UNIVERSITY ADMINISTRATIVE AGENDA

B. BUSINESS AFFAIRS

University of Nebraska-Lincoln

1. Authorize the President to administer and execute the Memorandum of Understanding with the City of Lincoln related to the West Haymarket Arena Project Addendum VI-B-1

TO: The Board of Regents
Business Affairs

MEETING DATE: February 12, 2010

SUBJECT: West Haymarket Arena Memorandum of Understanding with the City of Lincoln, Nebraska.

RECOMMENDED ACTION: Authorize the President to administer and execute the Memorandum of Understanding with the City of Lincoln related to the West Haymarket Arena Project.

PREVIOUS ACTION: None.

EXPLANATION: Approval of this agenda item will authorize the President to execute the West Haymarket Arena Memorandum of Understanding with the City of Lincoln. A copy of the agreement is attached.

The City of Lincoln will be considering the Memorandum of Understanding on or before February 8, 2010.

The terms of the Memorandum of Understanding provide for final definitive agreements that will limit the University's financial obligations in the West Haymarket Arena Project to rent for Athletics to operate Home Games and practices for men's and women's basketball programs. The definitive agreements between the University and City are planned to include the creation of a separate entity, the West Haymarket Joint Public Agency (JPA) and a related lease or operating agreement (Lease/Operating Agreement) as determined by the parties.

Athletics is to be a tenant in the Arena, the University is to be a party to the JPA, and the Board of Regents shall approve any Lease/Operating Agreement involving Athletics related to the Arena.

The MOU allows the City to sell suites and loges at a market rate and allows Athletics to sell club seating and floor seating with Athletics retaining sole control of the per-seat contribution. Revenue from the seating is allocated between Athletics and the City according to the Summary of Uses and Sources attached to the MOU.

The MOU also provides for an appropriate debt related pledge of Athletics' portion of loge seating revenues subject to a dollar for dollar reimbursement, should such pledge be required by bondholders as approved by Bond Counsel for the University and then only as a special limited obligation not constituting a debt or liability of the University.

SPONSORS: Christine A. Jackson
Vice Chancellor for Business and Finance

Joel D. Pedersen
Vice President and General Counsel

RECOMMENDED: Harvey Perlman, Chancellor

DATE: February 2, 2010

MEMORANDUM OF UNDERSTANDING

1 This Memorandum of Understanding is made and entered into as of the ____ day of
2 _____, 2010, by and between the **City of Lincoln, Nebraska**, a municipal
3 corporation ("City"), and the **Board of Regents of the University of Nebraska**, a public body corporate
4 organized and existing under the laws of the State of Nebraska ("University") on behalf of the University
5 of Nebraska-Lincoln ("UNL") and its Department of Intercollegiate Athletics ("Athletics").

RECITALS

- 6 A. In an effort to strengthen the long-term economic and physical viability of the West Haymarket
7 District and Downtown Lincoln, the City is proposing to construct an approximately 16,000-seat arena in
8 an irregular bounded tract of land located to the west of the U.S. Post Office in Downtown Lincoln.
- 9 B. In order to pay for site acquisition and related costs, including the cost of acquiring the BNSF Property
10 and constructing the Arena and necessary public improvements, it will be necessary for the City to issue
11 general obligation bonds of the City guaranteed by the authority to levy a tax for the payment thereof.
12 However, in order to avoid a property tax levy for repayment of the bonds, the City intends to repay the
13 bonds from other revenue sources including but not limited to revenues received from new Arena
14 signage, naming rights for the Arena, concourses, plaza, and club area, and the licensing of Premium
15 Seating and other sources that may be needed to fully fund the Arena and related West Haymarket
16 Improvements (defined below).
- 17 C. It is in the best interest of the City to present the question of the issuance of such bonds and the
18 levying of a tax to pay the same ("Bond Question") to the electors of the City at the primary election to
19 be held by the City on Tuesday, May 11, 2010, or at a special election to be held later in 2010.
- 20 D. UNL is a member of the National Collegiate Athletic Association ("NCAA") and UNL's Athletics
21 Department ("Athletics") currently has men's and women's varsity basketball teams ("Basketball
22 Teams"). The Basketball Teams currently play their home games in Lincoln ("Home Games") during each
23 basketball season in the Bob Devaney Sports Center.
- 24 E. If the City goes forward with the Arena, Athletics is willing to relocate the Home Games of the
25 Basketball Teams from UNL's Bob Devaney Sports Center to the Arena in order to provide its Basketball
26 Teams' fans with the best possible experience and venue for the Home Games provided the relocation
27 does not cause Athletics to lose the revenue needed to support its Basketball Teams.
- 28 F. The City and University have developed an estimated Uses and Sources summary (attached as Exhibit
29 A) including a cash flow assumption estimating that premium seating in the Arena will potentially
30 generate revenue for Athletics in excess of an amount that could be produced at the Bob Devaney
31 Sports Center.
- 32 G. The definitive agreements between the University and City are planned to include an interlocal
33 agreement and related provisions to create a Joint Public Agency (JPA) pursuant to the Joint Public

1 Agency Act (Neb. Rev. Stat. §§13-2501 - 13-2550) and a related lease and operating agreement,
2 including Athletics use of the Arena (Lease/Operating Agreement) as determined by the parties.

3 H. The JPA will function as a coordinating entity to finance and provide for the contracted design and
4 construction of the Arena as well as necessary land acquisitions/remediation and supporting
5 infrastructure and facilities for the larger scope of West Haymarket Improvements.

6 I. The JPA will allow the parties to track and account for costs and revenues related to the Leased
7 Improvements at the Arena at the same time allowing for the broader Arena Improvements to benefit
8 from pour-over revenue allocations when available. Other West Haymarket Improvements may also
9 derive the benefits of being included under the general financing authority or jurisdiction of the JPA but
10 are to be stand alone and separate from the debt service and revenue allocations related to the Arena
11 and Athletics. Athletics is to be a tenant in the Arena, the University is to be a party to the JPA, and the
12 University Board of Regents shall approve the Lease/Operating Agreement.

13 J. The City and University are executing and entering into this Memorandum of Understanding to set
14 forth the understandings of the City and University with respect to construction of the Arena on the
15 Arena Site utilizing the JPA for financing and other financial agreements related to Premium Seating, and
16 the subsequent lease of the Leased Improvements to Athletics for the use of its Basketball Teams.

17 NOW, THEREFORE, in consideration of the mutual obligations of this Agreement, the City and University
18 agree as follows:

19 **Definitions.**

20 **Arena** shall mean the approximately 16,000 seat facility proposed for the Arena Site to be constructed
21 as a multi-purpose sports and entertainment facility suitable for use by Athletics for Home Games of the
22 Basketball Teams, as well as to host other sporting events, family shows, concerts, circuses, and similar
23 entertainment and floor events.

24 **Arena Improvements** shall mean the Building, Utilities, Arena Site Acquisition/Preparation, Roads,
25 Pedestrian Ways, Surface Parking NW of Tracks, Surface Parking south of Ice Rink, and South Parking
26 Garage/s.

27 **Arena Parking Improvements** shall mean a new parking garage adjacent to the Arena ("Arena Parking
28 Garage"), surface parking on the Arena Site ("Arena Surface Parking"), and a surface parking lot
29 northwest of the Arena across the BNSF railroad tracks ("NW Arena Parking Lot").

30 **Arena Sources of Funds** shall include state aid, developer contributions, occupation tax, turn back tax,
31 Arena rent, concessions, premium seating, naming rights, signage, tickets, interest , TIF, parking
32 revenues, state and federal environmental funds and private donations as shown by categories in
33 estimated amounts on Exhibit A.

34 **Arena Site** shall mean the irregular bounded tract of land located to the west of the U.S. Post Office in
35 Downtown Lincoln as shown on Exhibit B.

1 **Basketball Space** shall mean the basketball court, training rooms, locker rooms, Fiber Optic Connection
2 to Husker Vision, and Seating as delineated in Sections 4, 5, 7, 11 and related signage, center-hung and
3 other scoreboards, concessions facilities, and operations facilities customarily associated with an NCAA
4 Division I basketball program.

5 **Drawings and Specifications and Construction Documents** shall mean the same as developed utilizing
6 the process in Section 4.

7 **Leased Improvements** shall mean the Basketball Space, and the basketball related parking spaces
8 provided in the Arena Parking Improvements

9 **Multi-Media Agreement** shall mean the University's Multi-Media Rights Agreement dated July 1, 2008
10 as amended and any successor agreement/s between the Board of Regents of the University of
11 Nebraska and IMG Communication, Inc. d/b/a IMG College or another multi-media agency, department
12 or firm ("MM-Agency")

13 **West Haymarket Improvements** shall mean the Lincoln Traction Phased Project, Ice Center, District
14 Energy Corporation, and any other related improvements coordinated through the JPA.

15 1. **Arena Site Acquisition.** The City will proceed with due diligence after the passage of the Bond
16 Question to acquire the Arena Site ("Arena Site Acquisition").

17 2. **Arena Site Preparation.** The City will proceed with due diligence after Arena Site Acquisition to
18 perform (1) all on-site work to prepare the Arena Site for construction; (2) all on-site and off-site work to
19 cause utilities to be available to the Arena Site, as necessary for the construction and operation of the
20 Arena; and (3) all other on-site and off-site work to be performed as part of the approved Construction
21 Documents (collectively "Site Preparation Work").

22 3. **Arena Construction.** The Arena will be constructed by the City or JPA and financed through the JPA.

23 4. **Process for Design and Construction of Arena; General Intent.** It is the intent of Athletics and the City
24 to work together in all aspects of the design, development and construction of the Arena and in
25 particular, the Basketball Space. Athletics will be given an opportunity to have representatives present
26 at meetings and briefings with the City's design and construction professionals with the intent being that
27 Athletics is entitled to full disclosure of and participation in the process for the design and construction
28 of the Arena. At a minimum, the Basketball Space shall consist of:

29 A. **Basketball Court.** The basketball court shall consist of a portable basketball playing surface with all
30 customary related items including, without limitation, state-of-the-art basketball goals, back-up
31 basketball goals, nets, lines and striping, timekeeper's tables, scorekeeper's tables, adequate signs and
32 markers, home and visiting team benches, tables and chairs, adequate lighting, communications
33 systems, telephone hook-up from each team's bench on floor level to coaches and assistant coaches,
34 radio and television booths;

1 B. Training room, provided that Athletics will outfit the room with needed equipment at Athletics' own
2 cost and expense;

3 C. Locker rooms. Two locker rooms for the exclusive use of the Men's and Women's Basketball Teams
4 shall be provided. Two additional locker rooms for Visitor Teams, one locker room for officials, and one
5 locker room for cheer squads shall be provided. Fit out in excess of that provided in the locker rooms for
6 visitor teams will be paid for by Athletics at its own cost and expense.

7 D. Fiber Optic Connection to Husker Vision as provided below in Section 7.

8 E. Seating. The details for seating are provided below in Section 11.

9 It is the intent of the City to keep the Athletics fully informed as part of the collaborative effort as the
10 Arena is designed and constructed. The City agrees to work together with Athletics to locate, design and
11 build the Arena seating, including the number of suites, loge seating, club seating, and floor seating;
12 media work area; the press box area; the studio and production area; interview room; hospitality rooms,
13 and any other area reasonably necessary to carry out the Home Games. The plans and specifications for
14 the Arena will be prepared at the direction of the City subject to approval of Athletics; such approval not
15 to be unreasonably withheld or delayed and to be limited in scope to confirming that the Arena will
16 fulfill Athletics' needs and that it can be constructed within the approved time schedule.

17 **5. Administration, Design and Construction.** The Arena will include the Basketball Space as designed
18 and constructed in accordance with the approved Drawings and Specifications and Construction
19 Documents.

20 **6. Arena Parking Improvements.** The Arena Parking Improvements to serve the Arena will be
21 constructed in accordance with the approved Drawings and Specifications and Construction Documents.
22 The Arena Parking Improvements are envisioned to contain approximately 550 parking spaces in the
23 Arena Parking Garage, approximately 60 parking spaces in the Arena Surface Parking, and approximately
24 1,500 parking spaces in the NW Arena Parking Lot. The City will provide or cause to be provided to
25 Athletics a reasonable number of up to 100 parking spaces in the Arena Parking Improvements,
26 approximately 40 of which will be in the Arena Surface Parking for student-athletes, coaching staff,
27 support staff, and officials for all Home Games, practice and other Athletics sponsored intercollegiate
28 athletic events at no cost in accordance with the applicable NCAA requirements.

29 **7. Fiber Optic Cable.** The City will install or cause to be installed a 48-strand fiber optic cable from the
30 new Arena to Memorial Stadium's Husker Vision control room.

31 **8. Completion Date.** It is the intent of the parties that the Arena and the Arena Parking Improvements
32 be completed and available for use by September 1, 2013. The parties agree that timely completion of
33 the Leased Improvements in the Arena is critically important and that any anticipated delays or other
34 circumstances jeopardizing the intended completion date shall be timely provided to the other party as
35 soon as practical so that any preventive or remedial measures can be reasonably deployed.

1 **9. Lease/Operating Agreement.** Athletics agrees to lease from the City the Leased Improvements for
2 Home Games and other incidental uses by the Basketball Teams on the terms set forth below:

3 A. Term. Athletics' Lease of the Leased Improvements will have an initial term of thirty (30) years which
4 is anticipated to begin on September 1, 2013, with the actual usage dates of the Leased Improvements
5 to be determined on an annual basis as set forth in C below. At the end of the initial term and each
6 successive extension, the University will have the right to extend the term for three (3) additional five-
7 year periods. The initial term together with any extensions is referred to herein as the "Lease Term." The
8 parties agree that the Lease/Operating Agreement shall include provisions for a funded capital
9 replacement/enhancement program.

10 B. Use by Athletics. During the Lease Term, the Basketball Teams shall be considered the Arena's
11 primary tenant and as such Athletics shall be accorded the privilege of securing the dates it needs for all
12 pre-season and regular season Home Games of the Basketball Teams between October 1 and March 15
13 ("Basketball Season") of each year of the Lease Term before any dates within the Basketball Season are
14 offered to any other entity. Athletics shall also be accorded the privilege of securing the date before
15 each Home Game for practice by the Basketball Teams and visiting teams. In order to secure the
16 foregoing privileges, Athletics shall inform the City as early as possible, but no later than by September 1
17 of each year during the Lease Term of the day before practice dates and dates for Home Games of the
18 Basketball Teams. During each Basketball Season, Athletics shall play in the Arena all of the "Home
19 Games" of both Basketball Teams (excluding any game played outside of Lincoln, Nebraska in a facility
20 which is neutral for both playing teams but where one of the two playing teams nevertheless must be
21 determined as the "home team"). Athletics will use its best efforts to play a minimum of 30 Home
22 Games (15 men's and 15 women's) in the Arena during each Basketball Season. During the Basketball
23 Season, Athletics shall have the right to use the Arena for practice on any other dates the Arena is not
24 scheduled or being prepared for another event subject to City approval which shall not unreasonably be
25 withheld. Athletics shall quit and surrender the Basketball Space to the City at the end of each practice
26 and/or Home Game in the same condition as at the date and time of the commencement of the practice
27 and/or Home Games, ordinary wear and tear excepted. The City will have the right to lease the Arena to
28 other entities on the dates when the Basketball Teams are not scheduled to practice or play Home
29 Games in the Arena provided that at the end of such other event the Arena is again set up for use by the
30 Basketball Teams for practice or Home Games. Notwithstanding the above, the City will use
31 commercially reasonable efforts to work with Athletics to hold use of the Arena open during the last two
32 weeks of March for basketball post-season play at a mutually agreed upon rental rate. Athletics agrees
33 to make reasonable efforts to comply with the City's request that Athletics not schedule day before
34 practices and Home Games on certain dates ("Black Out Dates"). The City will attempt to give Athletics
35 at least ninety (90) days advance notice of the City's requested Black Out Dates.

36 C. Rent. Athletics agrees to pay the City an annual rental ("Rent") of Seven Hundred Fifty Thousand and
37 00/100th Dollars (\$750,000.00). The Rent shall be increased for inflation on an annual basis beginning in
38 September of 2014 and in each succeeding year utilizing the Consumer Price Index for All Urban
39 Consumers (CPI-U) over the last 12 months before seasonal adjustment as reported for the month the
40 adjustment is made by the U.S. Bureau of Labor Statistics (or its successor). The Rent shall be payable in

1 one installment following the Basketball Season but not later than May 1 of each year of the Lease
2 Term. The Rent includes all costs of utilities, janitorial services and routine maintenance incurred and
3 attributable to Athletics' exclusive use of the Leased Improvements but excludes home game expenses
4 as agreed in the Lease/Operating Agreement. Upon reasonable notice to the City, the University may
5 schedule use of the Arena for other University events up to fifteen days per year without paying
6 additional rent. Such use shall be restricted to dates the Arena is not scheduled or being prepared for
7 another event and shall be subject to the University paying the City an amount intended to approximate
8 all actual and direct costs and expenses incurred or paid by or on behalf of the City to provide
9 incremental costs not included in rent related to the event for customary utilities, janitorial, police,
10 traffic control, fire prevention, directional signage, and other similar services for the event not to exceed
11 the lowest rates customarily charged for other Arena users for similar events. University, at its own cost
12 and expense, shall employ all other support staff needed by the University in order to hold the event.

13 D. Credit Against Rent. An annual amount equal to: all turnback sales tax receipts the City receives from
14 the sale of basketball tickets for Home Games (includes 70% of the state sales tax), pursuant to the
15 Convention Center Facility Financing Assistance Act (Neb. Rev. Stat. §§13-2601 to 13-2612); the first
16 dollar of all City imposed ticket surcharges on basketball tickets sold for Home Games during each
17 Basketball Season; and a make-whole provision for lost concessions revenues in an amount of \$300,000
18 shall first be applied as a credit toward Athletics Rent and then to other Athletics Home Game expenses.
19 The City agrees to renegotiate the make-whole provision for concessions in the event University
20 eliminates or modifies its restrictions on the sale of alcohol at Home Games and other University events
21 held in the Arena. The concessions make whole annual amount shall be increased for inflation on an
22 annual basis beginning in September of 2014 and in each succeeding year utilizing the Consumer Price
23 Index for All Urban Consumers (CPI-U) over the last 12 months before seasonal adjustment as reported
24 for the month the adjustment is made by the U.S. Bureau of Labor Statistics (or its successor).

25 **10. Home Games.**

26 A. City Home Game Staffing. Consistent with the terms of (10) B below and the Lease/Operating
27 Agreement for the Basketball Space, the City will be responsible for providing, customary utilities,
28 janitorial, police, traffic control, fire prevention, directional signage and other similar services for events
29 at the Arena. Athletics will retain operational control of the Home Games for purposes of NCAA
30 compliance and otherwise. Home Game related services for concessions and otherwise will be provided
31 and staffed according to the Operating Agreement. The City and Athletics will meet annually to discuss
32 and evaluate the required staffing for Home Games.

33 B. Athletics Home Game Staffing. Athletics, at its cost and expense, shall employ the officials and all
34 event support staff, including but not limited to statisticians, timekeepers, scorekeepers, public address
35 announcers, runners and other event and operations related staffing.

36 C. Basketball Space. The City shall provide or cause to be provided for each Home Game the leased
37 Basketball Space in a first class condition.

1 11. **Seating.** The uses and sources for the Arena at the time of this agreement anticipate the following
2 levels of premium seating: A) Suites, B) Loge C) Club and Floor.

3 A. Suites Seating. It is anticipated the Arena will initially have 36 out of a possible 48 suites of which four
4 (4) will be designated as UNL Suites, two (2) will be designated as City Suites, and the remaining 30
5 suites will be designated as Private Suites all as approved in the Construction Documents. No license fee
6 will be charged for the UNL Suites or City Suites. The City will market and sell all of the Private Suites,
7 retaining the related Suite revenues, provided that Athletics will be provided and retain sole control of
8 the 4 UNL Suites from the initial phase of construction to market, sell or use as determined by Athletics.
9 In the event the City decides to increase the number of suites in excess of 36, the City shall offer the
10 University the option to build up to one-half of the increased number of suites and to market, sell or use
11 such suites as determined by Athletics. If the University does not exercise its option within 180 days
12 from receipt of the same, unless otherwise agreed by the Parties, the City may proceed to construct the
13 suites and market, sell or use such suites as determined by the City. Subject to the terms and conditions
14 of subparagraph D below, University grants City the exclusive right to market, license and assign the
15 Private Suites to individuals and entities in connection therewith.

16 B. Loge Seating. The City will market and sell all of the Loge Seating, retaining the related Loge Seating
17 revenues provided that Athletics will be provided an amount in return 50% of the total net revenues for
18 the Loge Seating. Subject to the terms and conditions of subparagraph D below, University grants City
19 the exclusive right to market, license and assign the Loge Seating to individuals and entities in
20 connection therewith.

21 C. Club and Floor Seating. The Arena will have Club Seating and Floor Seating (front row or courtside) as
22 approved in the Construction Documents consisting of approximately 1,500 seats. The parties
23 understand and agree that the number of Club Seats and Floor Seats will be determined by mutual
24 agreement as provided in the Lease/Operating Agreement between the Parties. Athletics will market
25 and sell all of the Club and Floor Seating for Home Games, retaining the related Club and Floor Seating
26 revenues, provided that the City will market and sell all of the Club and Floor Seating for non-university
27 events and retain the related Club and Floor Seating revenue. Combined sales for both Home Games
28 and non-university events shall be split pro-rata unless otherwise agreed in the Lease/Operating
29 Agreement. Subject to the terms and conditions of subparagraph D below, University and City grant to
30 each other a reciprocal right to market license and assign Club and Floor seats to individuals and entities
31 for non-university events in combination with Home Games.

32 D. Premium Seating.

33 Notwithstanding the City's exclusive right to market, license and assign Suites Seating and Loge Seating,
34 the City agrees to consult with Athletics on assignment of all seats to Home Games. Athletics has
35 exclusive rights to assign seating for the Club Seating, Floor Seating and non-premium seats available to
36 its students and fans for Home Games.

37 Both parties shall cooperate with one another in bundling packages for combined seating at all Arena
38 events. Athletics agrees to allow City to sell suites and loges at a market rate to be determined by City

1 and its consultants. Athletics agrees to allow an appropriate debt related pledge of Athletics portion of
2 the Loge Seating revenues subject to reimbursement, should such pledge be required by bondholders as
3 approved by bond counsel for the University and then only as a special limited obligation not
4 constituting a debt or liability of the University.

5 E. The Parties agree that Arena Sources of Funds shall be expended only as follows: First toward
6 payment of the principal, redemption price and interest due in connection with bonded indebtedness
7 related to the Leased Improvements. The parties agree that any Arena revenues not needed for
8 payment of principal or redemption price and interest shall be segregated and dedicated to pay for
9 operation and maintenance costs of the Leased Improvements and Arena in accordance with the
10 attached West Haymarket Flow of Funds diagram (Exhibit C) indicating the priority of draws on Arena
11 Sources of Funds. University shall have no other responsibility or liability for repayment of the bonds.

12 **12. University Ticket Sales.**

13 A. Sales. Athletics shall have the right to set ticket prices for all Basketball Team “Home Games” and
14 other Athletics sponsored intercollegiate events held in the Arena. Athletics shall, at its own cost and
15 expense, perform all duties for the sale of tickets, including operation of a box office at the Arena for the
16 sale of single game tickets. In operating the ticket office, Athletics may use the City’s ticket system or
17 use remote access to its own ticketing system. City will provide Athletics with access to the City’s box
18 office and equipment. Athletics shall be entitled to receive and retain all revenues from all season and
19 single game ticket sales. City reserves the right to fix the prices for non-University ticket sales and sell
20 such tickets for all other uses of the Arena. City shall be entitled to receive and retain all revenues from
21 the other uses of the Arena. Athletics and City agree to work together to resolve any problems which
22 may arise regarding the joint use of the City’s box office and equipment.

23 B. Surcharge. City will initially assess the \$1.00 surcharge per ticket sold on all events in the arena
24 including Home Games subject to the provisions of Paragraph 9D. In the case of season tickets, the
25 \$1.00 surcharge will be assessed separately on each Home Game during the season. If the City
26 determines that the finances of the Arena make it necessary to increase the ticket surcharge to all
27 events in the arena, Athletics agrees to permit a temporary additional surcharge to apply to tickets for
28 Home Games with the following limitations: only for so long as financially required and not to exceed
29 \$0.50 in any 3 year period with a total of 4 incremental increases permitted over the term of the lease,
30 up to a maximum of \$3.00/ticket inclusive of the first dollar subject to the provisions of Paragraph 9D.
31 The Lease/Operating Agreement shall provide the process for determining financial need and the basis
32 for allocating, beginning and ending any temporary additional surcharge. All amounts collected from any
33 City surcharge will be remitted to the City, and except as provided in Paragraph 9D, shall be applied
34 toward payment of the principal, redemption price and interest due in connection with the Debt Service
35 Fund. Athletics will collect such surcharge and any other ticket surcharge or user fee imposed by
36 another governmental agency from the Home Game ticket purchaser and pay the entire amount of such
37 surcharge to the City or other assessing governmental agency as required by applicable law. Except as it
38 relates to the Surcharge, Athletics shall be responsible for all sales tax, use tax, or other tax associated
39 with the sale of tickets or use of the Arena for all Home Games or other Athletics use of the Arena.

1 **13. Naming Rights.**

2 A. Naming Rights. The City reserves and shall have the exclusive right to sell, license, or grant the right to
3 name the Arena and identifying such name on the Arena concourses, the entrances to the Arena, the
4 exterior Arena roof, the exterior of the Arena or any other areas on, in, upon or immediately around the
5 Arena except for the basketball court floor and specific areas leased for the exclusive use of Athletics
6 (e.g., Husker Vision space and locker rooms for the Basketball Teams). The University is hereby granted
7 the exclusive right to sell, license or grant the right to name the basketball court floor and the locker
8 rooms for the Basketball Teams. The City and University will retain all revenue arising from the sale,
9 lease, or licensing of their respective Naming Rights. The parties agree to support and cooperate with
10 each other in the sale and promotion of Naming Rights, and both parties grant a reciprocal right of
11 reasonable consent and approval to the exercise and modification of naming rights taking into
12 consideration the co-existing naming and related terms and conditions in existing and proposed naming
13 agreements. Either party may propose removing any established naming subject to the reasonable
14 consent and approval of the other party if such action is reasonably determined to be necessary for (i)
15 the protection of the reputation and stature of either party, (ii) failure to fulfill agreed upon obligations
16 associated with the naming, or (iii) other changes in circumstances materially impacting either party.
17 Before taking any such action, bond counsel for the JPA and respective legal counsel for the parties shall
18 be consulted in regard to any legal obligations the parties may have under any pre-existing agreement
19 related to naming or in regard to any other matter that may have legal bearing upon a proposed change
20 in name.

21 B. Mutual License. City hereby grants and shall cause to be included in any Naming Rights agreement for
22 the Arena a grant to the University for the term of the lease, of a non-exclusive, royalty free, worldwide,
23 right and license to use the Arena name and identification, solely for the purpose of promoting the
24 University and its athletic programs or functions that use the Arena during the term. University grants to
25 the City, for the term of the lease, a non-exclusive royalty free, worldwide, right and license to use the
26 name of the University, the name of UNL, the name of the Athletic Department, and the names of the
27 Basketball Teams solely for the purpose of promoting the Arena, including but not limited to the sale of
28 Naming Rights and advertisements, during the Lease Term.

29 **14. Arena Signage.** Consistent with the Multi-Media Agreement, the City reserves and shall have the
30 exclusive right to seek, negotiate and obtain agreements regarding the right to temporary and/or
31 permanent signage inside or outside the Arena for non-University events and to retain the revenue
32 therefrom. The City further reserves the right to advertise and promote future City events during Home
33 Games and other University events consistent with the Multi-Media Agreement. Athletics will provide
34 reasonable exposure via electronic means and PA announcements for non-University events before
35 Home Games and once during half-time of Home Games. Athletics will prohibit its MM-Agency from
36 selling sponsorships that include food or drink give-aways at Home Games except as coordinated and
37 agreed with the City and their concessionaire.

38 **15. Concessions.** The City itself, or through its concessionaires, shall operate all food and beverage sales
39 at the Arena including Home Games and shall be entitled to retain all net revenues received therefrom.

1 City agrees that no alcohol sales shall be allowed during UNL Basketball Games and other UNL events.
2 City agrees to include as part of its concessions during Home Games, an assortment of affordable foods.
3 The City agrees to provide, at cost, concession basic food and beverage service to the locker rooms of
4 the Basketball Teams and visiting teams at Home Games.

5 **16. University Broadcast Rights.** University will have the exclusive right to sell or license the television,
6 radio, motion picture, internet or other rights to the broadcasting, filming or other recording
7 (“Broadcast Rights”) of all Home Games held in the Arena and to retain all revenue from such sale or
8 license of Broadcast Rights. University understands that the City may require payment by such
9 broadcasters to City of reasonable and customary hookup or other fees as a condition of their use of the
10 Arena for broadcasting purposes; all such amounts received by City shall be the exclusive property of the
11 City.

12 **17. Branding.** The Arena will provide appropriate locations for the University to identify the Basketball
13 Teams (“Branding”). City will not take any action that is inconsistent with the Branding of the Arena for
14 the Basketball Teams. City will permit University to display historical banners in the Arena that recognize
15 the historical accomplishments of the Basketball Teams, individuals and conference affiliation. The
16 historical banners will not be required to be displayed at events other than Basketball Team games.
17 University agrees that all copyright, trademark and service mark material used by University will be duly
18 licensed or authorized by the copyright, trademark, or service mark’s owner or their representative.

19 **18. Sale of University Merchandise.** The University, at its expense, shall have the exclusive rights to sell
20 or at its option, contract with a third party to sell University merchandise in and around the Arena
21 during Home Games in a manner similar to the Halo policy for memorial stadium. The cost of all
22 merchandise inventory and merchandise sold shall be at the University’s expense. The University shall
23 determine the kind, quality, quantity, and pricing of the merchandise to be sold. The City shall provide
24 suitable locations in each concourse for the sale of merchandise.

25 **19. Operation.** The City, or its designee, will operate and maintain the Arena, Basketball Space and
26 Arena Parking Improvements in a manner consistent with arenas and parking improvements of similar
27 age, size and design, ordinary wear and tear excepted. The City will be entitled to establish reasonable
28 parking fees for the parking garage and parking lot provided that such parking fees established for Arena
29 events will be commercially reasonable. Provisions for VIP parking and other parking arrangements for
30 Home Games will be detailed in the Operating/Lease agreement.

31 **20. Maintenance.** In consideration of the rent paid in 9c above, the City will operate and maintain the
32 Arena and Leased Improvements so as to cause it to remain in a condition comparable to that of other
33 multipurpose sports and entertainment facilities of similar size, design and age, ordinary wear and tear
34 excepted. The City will be responsible for all operating, maintenance, and capital repair expenses related
35 to the Arena and it will be operated in a manner substantially similar to and consistent with other
36 similarly situated multipurpose sports and entertainment arenas suitable for Division I basketball
37 programs.

38 **21. Contingencies.** The performance of this MOU is contingent upon the following:

- 1 A. The City Council for the City approving the necessary agreements, resolutions and ordinances for the
- 2 implementation of the West Haymarket Project, including placing the applicable ballot proposition(s) for
- 3 the necessary financing and implementation by the City of West Haymarket Project (collectively “Ballot
- 4 Proposition”) for voter approval at a Primary Election on Tuesday, May 11, 2010 (“Ballot Election”); and
- 5 B. The approval of the Ballot Proposition at the Ballot Election;
- 6 C. Execution of a Joint Facilities Agreement between Union Pacific Railroad Company (UP) and BNSF
- 7 Railway Company (BNSF) with terms and conditions acceptable to the City;
- 8 D. Execution of a definitive agreement between UP and the City for the West Haymarket Project.
- 9 E. Execution of a definitive agreement between BNSF and the City for the West Haymarket Project.
- 10 F. Execution of a definitive Lease/Operating Agreement between University and City for lease of the
- 11 Leased Improvements.

12 **22. Definitive Final Agreement.** The parties acknowledge that the above described terms have been
13 agreed to as the principal terms for the design, development and construction of the Arena and lease of
14 the Basketball Space to University. Based upon this MOU, the parties shall in good faith proceed with
15 expedience to negotiate and enter into a definitive final agreement/s after the Ballot Proposition which
16 shall conform to the provisions set forth herein and provide such other matters as are consistent with
17 and customary for a transaction of this type.

18 **23. Mutual Cooperation.** The successful design, development and construction of the Arena and related
19 activities are dependent upon the continued cooperation and good faith of the University and City.
20 Every covenant, agreement, or restriction herein stated shall be construed in recognition of this
21 interdependence and need for continued mutual cooperation. Athletics retains general responsibility for
22 event management related to Athletics use of the Leased Improvements in recognition of applicable
23 NCAA requirements and that Home Games are part of the Branding and larger mission of the University
24 related to intercollegiate athletics. Athletics and the City or the City’s contractor specifically agree to
25 mutual cooperation in Branding, and other marketing including cooperative efforts to sell sponsorships,
26 naming rights, ticketing, premium seating and advertising to optimize revenues and avoid unintended
27 consequences for all parties.

28 **24. Best and Reasonable Efforts.** University and City will use their best and reasonable efforts to
29 successfully implement this MOU.

30 **25. Termination of Memorandum of Understanding.** This Memorandum of Understanding will
31 automatically terminate on May 31, 2010 in the event the Bond Question is not submitted to or
32 approved by the electors of the city at the primary election on May 11, 2010, unless by May 31, 2010 it
33 is mutually determined by the City and University to submit the Bond Question to the electors of the
34 City at a later special election. In addition, either party may terminate this Memorandum of
35 Understanding prior to the City’s entering into a definitive agreement with BNSF for acquisition of the
36 Arena Site.

1 **26. Nondiscrimination.** University and City shall not discriminate against any person because of race,
2 color, sex, creed, religion, ancestry, national origin, age, marital status or disability, to fail or refuse to
3 hire, or discharge, an employee, or to accord adverse, unlawful, or unequal treatment to any person or
4 employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading,
5 compensation, layoff, discharge, or any other term or condition of employment pursuant to the
6 requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. §48-1122 (Reiss. 2004 as
7 amended).

8 **27. Authorization.** University and City represent and warrant to the other that it has the power and
9 authority to enter into this Memorandum of Understanding and perform its obligations hereunder.
10 University specifically warrants that University has the authority to pledge Loge Seating revenues as
11 provided in Paragraph 11.D.

12 **28. Remedies.** In the event of any default in performance of this MOU by the City or University, the
13 party in default shall, upon written notice from the others, proceed immediately to cure or remedy such
14 default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of
15 reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts
16 to cure and shall diligently continue to cure the default. If the default is not cured, the non-defaulting
17 parties may institute any proceedings at law or in equity which may be necessary to cure and remedy
18 the default.

19 **29. Indemnification.** University and City ("Indemnifying Party" as applicable) shall to the extent lawfully
20 permitted, each defend, indemnify and hold the other harmless from a breach of any of the
21 Indemnifying Party's obligations hereunder.

22 IN WITNESS WHEREOF the parties have caused this Memorandum of Understanding to be executed as
23 of the day and year first written above.

Attest:

**THE BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA**

Corporation Secretary

By:

James B. Milliken
President

Approved as to Form:

General Counsel

THE CITY OF LINCOLN, NEBRASKA

Attest:

City Clerk

By:

Chris Beutler, Mayor of Lincoln

Approved as to Form:

City Attorney

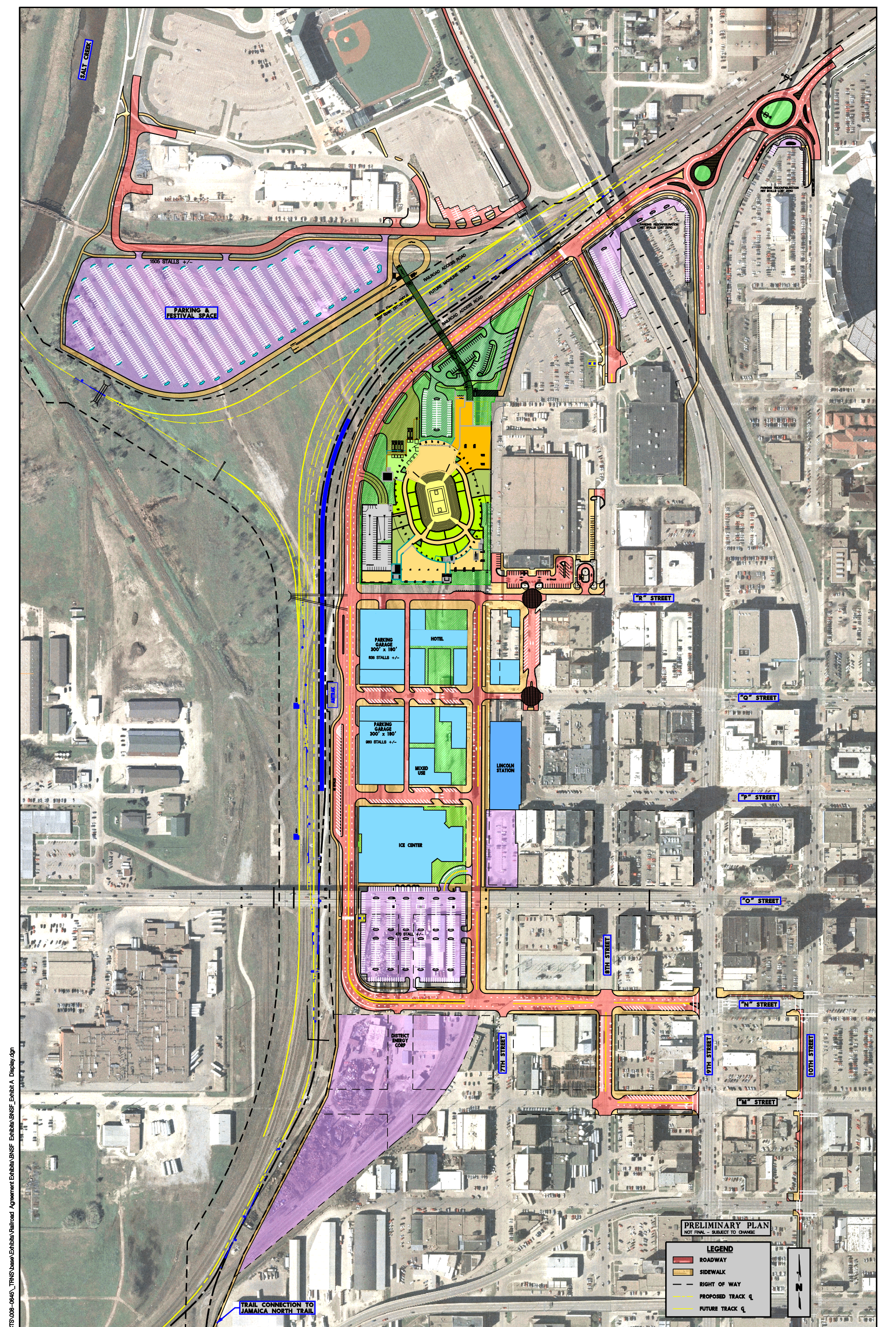
City of Lincoln
West Haymarket
Build Period Cash Flows
12/30/2009

	2010	2011	2012	2013	Total
Uses					
Deposit to the Project Construction Fund	20,000,000	104,863,114	104,863,114	104,863,114	334,589,343
1.50% Cost of Issuance	3,000,000	-	1,745,625	360,000	5,105,625
7.00% ISG Fee	-	-	-	-	-
Debt Service Reserve Fund - JPA Debt	14,190,491	-	-	-	14,190,491
5.00% Debt Service - JPA Debt	-	10,000,000	10,000,000	15,818,750	35,818,750
Debt Service Reserve Fund - ISG Debt	-	-	-	-	-
6.50% Debt Service - ISG Debt	-	-	-	-	-
Total	37,190,491	114,863,114	116,608,739	121,041,864	389,704,209
Sources					
State Aid (Turn back tax) debt				24,000,000	24,000,000
JPA debt Series #2			116,375,000		116,375,000
JPA debt Series #1	200,000,000				200,000,000
Private Debt (ISG)	-				-
Brownfield and Title 200 Funds	800,000				800,000
Private Donations	22,000,000				22,000,000
Net Occupation taxes etc	-	9,911,999	10,110,239	10,312,444	30,334,682
Arena, pre-opening	-	-	-	2,300,593	2,300,593
2.00% Interest on cash	-	2,947,369	907,294	1,122,970	4,977,633
Total	222,800,000	12,859,368	127,392,533	37,736,006	400,787,907
Net Cash Flow	185,609,509	(102,003,747)	10,783,793	(83,305,858)	
Beginning of Year Cash	-	185,609,509	83,605,762	94,389,555	
Cash at End of Year	<u>185,609,509</u>	<u>83,605,762</u>	<u>94,389,555</u>	<u>11,083,697</u>	
Cumulative Reserve Accounts	14,190,491	14,190,491	14,190,491	14,190,491	

West Haymarket
Operations Period Cash Flows

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Uses												
Debt Service - JPA Debt Series #1	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	10,000,000	14,190,491	14,190,491	14,190,491	14,190,491	14,190,491
Debt Service - JPA Debt Series #2	5,818,750	5,818,750	5,818,750	5,818,750	5,818,750	5,818,750	5,818,750	8,257,092	8,257,092	8,257,092	8,257,092	8,257,092
Debt Service - General Obligation	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859	1,702,859
Debt Service - ISG Debt	-	-	-	-	-	-	-	-	-	-	-	-
3.00% University Reimb for F&B	300,000	309,000	318,270	327,818	337,653	347,782	358,216	368,962	380,031	391,432	403,175	415,270
3.00% Arena Make Whole Payment	750,000	772,500	795,675	819,545	844,132	869,456	895,539	922,405	950,078	978,580	1,007,937	1,038,175
2.00% Arena Marketing Fees	308,764	314,939	321,238	327,663	334,216	340,900	347,718	354,673	361,766	369,001	376,381	383,909
3.00% City Administrative Expenses	200,000	206,000	212,180	218,545	225,102	231,855	238,810	245,975	253,354	260,955	268,783	276,847
Total	19,080,373	19,124,048	19,168,972	19,215,180	19,262,711	19,311,602	19,361,893	26,042,458	26,095,671	26,150,410	26,206,719	26,264,644
Sources:												
2.00% Turn back tax	1,690,933	1,724,752	1,759,247	1,794,431	1,830,320	1,866,927	1,904,265	1,942,350	1,981,197	2,020,821	2,061,238	2,102,462
2.00% Occupation taxes	10,518,693	10,729,066	10,943,648	11,162,521	11,385,771	11,613,487	11,845,756	12,082,671	12,324,325	12,570,811	12,822,228	13,078,672
Developer contributions	88,350	178,467	270,386	364,144	459,777	468,973	478,352	487,919	497,677	507,631	517,784	528,139
2.00% Arena revenues	6,175,275	6,298,781	6,424,757	6,553,252	6,684,317	6,818,003	6,954,363	7,093,450	7,235,319	7,380,026	7,527,626	7,678,179
Parking Revenues	1,160,479	1,230,901	1,303,629	1,378,727	1,456,258	1,480,164	1,504,391	1,528,942	1,553,818	1,579,020	1,604,550	1,630,409
0.00% TIF		320,000	652,800	979,200	1,305,600	1,632,000	1,664,640	1,697,933	1,731,891	1,766,529	1,801,860	1,837,897
3.00% Interest on debt reserve funds	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715	425,715
2.00% Interest on cash balances	231,465	263,721	312,944	379,743	464,616	566,696	682,122	742,086	745,635	758,092	779,798	811,106
Total	20,290,909	21,171,402	22,093,125	23,037,732	24,012,374	24,871,963	25,459,605	26,001,067	26,495,579	27,008,646	27,540,798	28,092,579
Net Cash Flow	1,210,536	2,047,354	2,924,153	3,822,552	4,749,663	5,560,361	6,097,712	(41,391)	399,907	858,236	1,334,079	1,827,935
Beginning of Year Cash	11,083,697	12,294,234	14,341,588	17,265,741	21,088,293	25,837,956	31,398,317	37,496,029	37,454,638	37,854,546	38,712,781	40,046,861
Cash at End of Year	<u>12,294,234</u>	<u>14,341,588</u>	<u>17,265,741</u>	<u>21,088,293</u>	<u>25,837,956</u>	<u>31,398,317</u>	<u>37,496,029</u>	<u>37,454,638</u>	<u>37,854,546</u>	<u>38,712,781</u>	<u>40,046,861</u>	<u>41,874,796</u>
Coverage	1.16	1.21	1.26	1.31	1.37	1.42	1.45	1.08	1.10	1.12	1.14	1.16

Source: City of Lincoln, Don Herz



DATE: 8/27/2009
 DGN: F:\PROJECTS\008-0645_TRANS\base\Exhibits\Railroad_Agreement\Exhibits\BNSF_Exhibit A_Display.dgn

PROJECT NO:	008-0645
DRAWN BY:	JGO
DATE:	8/27/2009

WEST HAYMARKET REDEVELOPMENT AREA

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

EXHIBIT

**West Haymarket Flow of Funds
2014 Projected**

Turnback	Developer	Car Rental	Hotel Occ.	Hotel Lodging	Bar & Rest	Arena Naming *	Arena Adv. *	Arena Seating *	Arena Rent	TIF	Parking
1,690,933	88,350	213,971	2,139,709	267,463	7,897,550	2,303,416	1,249,397	2,056,621	257,078		1,160,479

Interest Inc.	West Haymarket Distribution Fund
657,179	14,115,634 5,866,512

Debt Service Fund		
Arena Debt Service Tranche	Other Debt Service Tranche	Surplus & Other Accounts
-		11,083,697
5,866,512		-
14,115,634		
(9,856,743)	(7,664,866)	-
10,125,403	(7,664,866)	11,083,697
		2,460,537
(10,125,403)	10,125,403	
	(2,460,537)	
(10,125,403)	7,664,866	2,460,537
-	-	13,544,234

Beginning Balance
 Amount Available - Arena Sources
 Amount Available - All Other Sources
 Less: Payment
 Balance before transfers

 Transfer in from Debt Service Fund
 Transfer In Arena Debt ServiceTranche
 Transfer out to Other Debt Service Tranche
 Transfer out to Surplus
 Net Transfers
 Ending Balance

* Arena revenues are net of a 5% fee.

C. FOR INFORMATION ONLY

1. Resolution and Statement of Creation (1) authorizing the President to execute the West Haymarket Joint Public Agency Agreement, and (2) authorizing the President to administer and execute the related approvals and instruments for creating and implementing the West Haymarket Joint Public Agency. This item is presented for information only and will be brought back to the Board for approval at its March meeting Addendum VI-C-1

TO: The Board of Regents
Business Affairs

MEETING DATE: February 12, 2010

SUBJECT: West Haymarket Joint Public Agency/ West Haymarket Arena in the City of Lincoln, Nebraska.

RECOMMENDED ACTION: Resolution and Statement of Creation (1) authorizing the President to execute the West Haymarket Joint Public Agency Agreement, and (2) authorizing the President to administer and execute the related approvals and instruments for creating and implementing the West Haymarket Joint Public Agency. This item is presented for information only and will be brought back to the Board for approval at its March meeting.

PREVIOUS ACTION: None.

EXPLANATION: Approval of this agenda item will authorize the President to execute the West Haymarket Joint Public Agency Agreement with the City of Lincoln. A copy of the agreement is attached.

The City of Lincoln will be considering the Joint Public Agency Agreement on or before February 8, 2010.

The terms of the Agreement, resolution and related Memorandum of Understanding provide for final definitive agreements that will limit the University's financial obligations in the West Haymarket Arena Project to the rent paid for Athletics to operate Home Games and practices for men's and women's basketball programs. The definitive agreements between the University and City are planned to include the creation of a separate entity, the West Haymarket Joint Public Agency (JPA) and a related lease or operating agreement (Lease/Operating Agreement) as determined by the parties.

The JPA will function as a coordinating entity to finance and provide for the contracted design and construction of the Arena as well as necessary land acquisitions/remediation and supporting infrastructure and facilities for the larger scope of West Haymarket Improvements.

The JPA will allow the parties to track and account for costs and revenues at the Arena at the same time allowing for the broader Arena Improvements to benefit from pour-over revenue allocations when available. Other West Haymarket Improvements may also derive the benefits of being included under the general financing authority or jurisdiction of the JPA but are to be stand alone and separate from the debt service and revenue allocations related to the Arena and Athletics.

Athletics is to be a tenant in the Arena, the University is to be a party to the JPA, and the Board of Regents shall approve any Lease/Operating Agreement involving Athletics related to the Arena.

SPONSORS:

Christine A. Jackson
Vice Chancellor for Business and Finance

Joel D. Pedersen
Vice President and General Counsel

RECOMMENDED:

Harvey Perlman, Chancellor

DATE:

February 2, 2010

RESOLUTION
AUTHORIZING THE EXECUTION AND DELIVERY OF
THE WEST HAYMARKET JOINT PUBLIC AGENCY AGREEMENT

WHEREAS, the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act") permits local government units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other governmental units on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

NOW THEREFORE, BE IT RESOLVED that the Board of Regents of the University of Nebraska (the "University"), finds and determines that there exists a need for the creation of a joint public agency (the "Agency") pursuant to the Act to facilitate land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing public facilities including, but not limited to, a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots (the "West Haymarket Facilities") for the benefit of the students, faculty and staff of the University of Nebraska and the residents of the State of Nebraska as provided in the Act. The participants in the Agency will be the Board of Regents of the University of Nebraska and the City of Lincoln, Nebraska (the "City").

NOW THEREFORE, BE IT FURTHER RESOLVED that the form, terms and provisions of the proposed Joint Public Agency Agreement Creating the West Haymarket Joint Public Agency (the "Agreement") between the City and the University are, in all respects, hereby approved, authorized, ratified and confirmed, and the President and Corporation Secretary are each separately and individually hereby authorized and directed to execute, acknowledge and deliver the Agreement, including counterparts thereof, in the name and on behalf of the University. The Agreement, as executed and delivered, shall be in substantially the form placed on file with the Corporation Secretary under Agenda Item IX-B-1 (March 5, 2010) subject to such changes therein as shall be approved by the President, such execution thereof to constitute conclusive evidence of the University's approval of any and all changes or revisions therein from the form of the Agreement now on file; and from and after the execution and delivery of the Agreement by the University, the officers, agents and employees of the University are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement.

NOW THEREFORE, BE IT FURTHER RESOLVED that (a) if any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever; (b) to the extent that the provisions of this Resolution conflict with provisions of prior resolutions, or parts thereof, the provisions of this Resolution shall control, to the extent of such conflicts; and (c) this Resolution shall be in

full force and effect immediately upon its passage and approval.
Approved as to Form and Legality:

General Counsel

Approved:

Bond Counsel

STATEMENT OF CREATION
OF
WEST HAYMARKET JOINT PUBLIC AGENCY

The undersigned, being all of the representatives of the Board duly appointed pursuant to Section 13-2509(2), Reissue Revised Statutes of Nebraska, as amended, to represent the proposed participating public agencies hereby submit to the Secretary of State pursuant to Section 13-2510, Reissue Revised Statutes of Nebraska, as amended, the following statement of creation of a Joint Public Agency.

- 1. The names of the proposed participating public agencies are:
 - (a) The Board of Regents of the University of Nebraska; and
 - (b) The City of Lincoln, Nebraska.

2. Attached hereto and incorporated herein by reference are certified copies of the resolutions of necessity of each proposed participating public agency.

3. Notice of the Resolution was published in three issues not less than seven days between issues of a legal newspaper having general circulation in the area served by each of the proposed participating public agencies. The resolution was passed by the governing bodies of the public agencies more than five days after the last such publication. The proof of publication is attached hereto and incorporated herein by reference.

4. The general nature of the joint public agency's activities will be to issue bonds to pay the costs to facilitate land acquisition, site preparation and the construction, equipping, furnishing and financing public facilities, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, public plaza space, sanitary sewer mains, water mains, elevated transmission lines, drainage systems, flood control, parking garages and surface parking lots.

5. The name of the joint public agency shall be West Haymarket Joint Public Agency.

CITY OF LINCOLN, NEBRASKA

By: _____
Mayor

By: _____
City Council

BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA

By: _____

**JOINT PUBLIC AGENCY AGREEMENT
CREATING THE
WEST HAYMARKET JOINT PUBLIC AGENCY**

This JOINT PUBLIC AGENCY AGREEMENT (the "Agreement"), dated _____, 2010, is between THE CITY OF LINCOLN, NEBRASKA (the "City"), and THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA (the "University").

RECITALS

1. The University is a public body corporate duly created and existing under the laws of the State of Nebraska.
2. The City is duly organized and validly existing as a city of the primary class and political subdivision of the State pursuant to Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its home rule charter (the "Charter").
3. The City has determined that it is necessary, desirable, advisable and in the best interest of the City and its residents to acquire the land for and to relocate existing businesses, to undertake environmental remediation and site preparation and to construct, equip, furnish and finance public facilities in the West Haymarket Area of the City including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass, public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots ("West Haymarket Facilities").
4. The University has determined that if the sports/entertainment arena and supporting parking and infrastructure is built, it is in the best interest of the University to relocate the home games of the University of Nebraska Lincoln's men's and women's basketball teams from the University's Bob Devaney Sports Center to the arena.
5. The University and the City (collectively, the "Participants") desire to make the most efficient use of their taxing authority and other powers and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of both the University and the City.
6. The Participants have determined that to achieve the objectives set forth above, it is necessary, desirable, advisable and in the best interest of the Participants that a joint public agency be formed by the Participants pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act").
7. The Participants have passed resolutions after published notice as required by the Act determining that it is necessary, desirable, advisable and in the best interest of the

Participants that they form a joint public agency pursuant to the Act to finance the Project through bonds issued by such agency.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the Participants agree as follows:

ARTICLE I

CREATION OF THE JOINT PUBLIC AGENCY

Pursuant to the Act, the Participants hereby create a joint public agency which shall be named the West Haymarket Joint Public Agency (the "Agency") and which shall constitute a separate political subdivision and a public body corporate and politic of the State of Nebraska as provided by the Act. The Agency shall be subject to control by the Participants in accordance with the terms hereof. The governing body of each Participant has passed a resolution after published notice of the same as required by the JPA Act determining that a need for the Agency exists. A certified copy of each approving resolution shall be kept on file by the Agency at the City Clerk's office located at 555 South 10th Street, Lincoln, Nebraska, 68508. The governing body of the Agency (the "Board") shall submit the statement required by Section 13-2510, Reissue Revised Statutes of Nebraska, as amended, to the Secretary of State. The Agency's existence shall commence upon the issuance of a certificate of creation by the Secretary of State as provided in Section 13-2511, Reissue Revised Statutes of Nebraska, as amended.

ARTICLE II

PURPOSES

The purposes of the Agency are as follows:

(a) To make the most efficient use of the taxing authority and other powers of the Participants and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of the Participants.

(b) To exercise any power, privilege or authority to facilitate land acquisition, relocation of existing businesses, environmental remediation, site preparation and the construction, equipping, furnishing and financing public facilities, including but not limited to a sports/entertainment arena, roads, streets, sidewalks, pedestrian overpass public plaza space, sanitary sewer mains, water mains, electric transmission lines, drainage systems, flood control, parking garages and surface parking lots ("West Haymarket Facilities") and any other capital improvements or other projects pertaining to the redevelopment of the West Haymarket Area as shall be determined by the Board to be necessary, desirable, advisable or in the best interests of the Participants in the manner and as provided for by the Act.

(c) To issue bonds to finance the West Haymarket Facilities, and to levy a tax as provided by the Act and this Agreement to pay the principal or redemption price of and interest on such bonds, when and as the same shall become due, to own the Arena and Parking Garages for so long as any Agency Bonds (hereinafter defined) are outstanding, to enter into a lease with the City to operate the Arena and Parking Garages for so long as any Agency Bonds are outstanding and to convey the Arena and Parking Garages to the City at such time as no Agency Bonds are outstanding.

(d) To sell, lease or otherwise dispose of excess land not needed for the West Haymarket Facilities to the City, University or private entities for redevelopment as part of and in accordance with the City's West Haymarket Redevelopment Plan and, in particular, the Lincoln Traction Phased Project.

ARTICLE III

ORGANIZATION

Section 301. Governing Body. The Board of the Agency shall consist of the following representatives:

1. Mayor of the City.
2. The member of the Board of Regents of the University of Nebraska from District No. 1.
3. A member of the City Council of the City.

Section 302. Term of Office. Unless otherwise disqualified by the provisions of the Act, and except as provided herein or any amendment hereto, each representative shall serve for so long as such representative holds the position set forth in Section 301.

Section 303. Voting. Unless the Board unanimously adopts different rules relating to voting by representatives, each representative shall have one vote on matters before the Board. Except as may otherwise be provided herein, or in any agreement to which the Agency is a party, all actions of the Agency may be taken with the concurrence of a majority of the representatives entitled to vote. All actions of the Agency related to the Arena (as opposed to the West Haymarket Facilities as a whole) may only be taken by a unanimous vote of all the representatives entitled to vote.

Section 304. Rules of Governance. The Board shall adopt rules of governance that will include at a minimum, the following:

(a) **Quorum.** A majority of the representatives shall constitute a quorum for the transaction of any Agency business, except as provided in Section 303 above.

(b) Officers. The Board shall elect a chair and vice-chair from among the representatives. The Board shall elect a secretary as provided in Section 13-2516 of the Act and appoint a treasurer who each shall serve at the pleasure of the Board and until their respective successors shall be appointed or elected as the case may be.

Section 305. Meetings and Notice. Meetings of the Board may be called by the chair or any two representatives. Written notice of the meeting and agenda shall be provided to each representative, the City Clerk, and the University of Nebraska - Lincoln Chancellor at least seven days prior to each such meeting.

The Board shall also give public notice of the meeting pursuant to Section 84-1411, Reissue Revised Statutes of Nebraska, as amended. Public notice shall be given by posting a notice of the meeting on the official bulletin board of the City in the County-City Building, 555 South 10th Street, Lincoln, Nebraska, under the heading of "PUBLIC NOTICE OF MEETING," maintaining an agenda in the office of the City Clerk which shall be available for inspection by the public. All meetings shall be conducted in accordance with the Open Meetings Act (Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended).

Section 306. Treasurer's Bond. In the event that there is no treasurer's bond that expressly insures the Agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the Agency, together with the written authorization filed with the secretary, a surety bond, effective for protection against the loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the Agency other than the treasurer.

ARTICLE IV

DURATION

The duration of the Agency shall be perpetual, commencing with the date of issuance of the certificate of creation, and shall continue in effect until terminated as provided in Article XIII hereof.

ARTICLE V

POWERS

The Agency shall have such powers as are allowed by the Act, and any amendments thereto including, but not limited to, the powers:

(a) to incur debts, liabilities, or obligations, including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Act;

(b) to borrow money or accept contributions, grants or other financial assistance from a public agency and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable;

(c) subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the Board shall deem proper;

(d) to contract with and compensate consultants for professional services including, but not limited to, architects, engineers, planners, lawyers, accountants, financial advisors and others found necessary or useful and convenient to the stated purposes of the Agency;

(e) to levy taxes upon the taxable property in the City of Lincoln, Nebraska pursuant to Sections 13-2507 and 77-3443, Reissue Revised Statutes of Nebraska, as amended, to the extent that the authority to levy taxes is expressly and specifically assigned and allocated to the Agency by a Participant herein. Such levy authority may be exercised by the Agency only to the extent the assigning Participant restricts the exercise of its own levy authority to the same degree and the levy authority allocated to the Agency is reported to the Property Tax Administrator; and

(f) to exercise any other powers which are deemed necessary and convenient to carry out the provisions of the Act.

ARTICLE VI

ISSUANCE OF BONDS

The Agency, by resolution of the Board, may from time to time issue bonds or other evidences of indebtedness payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, or leases made by the Agency with any person, including any Participant, or from its revenue generally which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the Agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

The Agency may from time to time also issue bonds in such principal amounts as the Board shall determine to be necessary to provide sufficient funds to carry out any of the Agency's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the Board may determine, and the payment of all other costs or expenses of the Agency incident to and necessary or convenient to carry out its purposes and powers.

Notwithstanding any other terms hereof to the contrary, the Agency shall not issue any bonds or other form of indebtedness without the question of such bonds or indebtedness being first presented to, and approved by, the Mayor and Council of the City.

ARTICLE VII

LEVY AUTHORITY

Pursuant to the provisions of Section 13-2507:

(a) The City hereby irrevocably allocates and assigns to the Agency, for the period beginning June 1, 2010 and ending on the date upon which all of the Agency Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, its authority to cause the levy of taxes within the taxing district of the City, beginning in the year 2010 for collection in 2011, for the purpose of paying the costs of the West Haymarket Facilities pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which will be sufficient to pay the principal or redemption price of and interest on the Agency Bonds when and as the same become due (the "City Levy"), solely for the purpose of paying the principal or redemption price of and interest on the Agency Bonds.

(b) The City shall implement the Agency Bond Levy as requested by the Agency as may be required to pay the principal or redemption price of and interest on the Agency Bonds as the same become due, and shall not levy less than the Agency's lawful requested or certified levy, as long as any Agency Bonds remain outstanding.

(c) The City shall collect and disburse to the trustee named by the Agency, all taxes collected under the Agency Bond Levy.

ARTICLE VIII

EXPENSES

All expenses of the Agency not payable from the proceeds of the Agency Bonds, including without limitation, travel expenses, administrative costs, insurance and professional fees, shall be paid one-half each by the City and University.

ARTICLE IX

BUDGETING

The Board shall prepare a budget based on a fiscal year coinciding with the fiscal year of the City for the operation of the Agency. The budget of the Agency shall be established as provided in the Nebraska Budget Act (Chapter 13, Article 5, Reissue Revised Statutes of Nebraska, as amended) and presented to the City Council prior to the Agency's levy certification. The Agency shall cause to be conducted annually an audit conducted by a private

qualified auditing business. The resulting audit report shall be delivered to the Agency and the governing body of each Participant.

ARTICLE X

BIENNIAL REPORT

Commencing in 2011, and each odd-numbered year thereafter, the Agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State, such fee and any other information or requirements as may be specified in Section 13-2525, Reissue Revised Statutes of Nebraska, as amended.

ARTICLE XI

NOT FOR PROFIT

It is expressly understood that the Agency is a public body and is to be operated not for profit, and no profit, dividend or Agency asset shall inure to the benefit of any individual.

ARTICLE XII

WITHDRAWAL

If the governing body of a Participant adopts a resolution setting forth the determination that the need for the Agency no longer exists, the Participant shall be permitted to withdraw from participation in the Agency, but withdrawal shall not affect the obligations of the withdrawing Participant pursuant hereto or any other agreements with the Agency. Withdrawal shall not impair or adversely affect the levy of the City Levy or receipt of revenues for, or the payment of, any outstanding bonds or indebtedness or the interest thereon.

ARTICLE XIII

DISSOLUTION

The Agency shall not be dissolved so long as any Agency Bonds are outstanding under the instrument pursuant to which they were issued. Upon dissolution of the Agency, provided the City continues to have the responsibility for the West Haymarket Facilities, all interest in the land, capital improvements, personal property and all other assets of the Agency used in the operation of the West Haymarket Facilities financed by the Agency Bonds remaining in the Agency shall be transferred to the City.

ARTICLE XIV

MANNER OF ACQUIRING AND HOLDING PROPERTY

The Board may lease, purchase or acquire by any means, from a Participant or from any other source, such real and personal property as is required for the operation of the Agency and for carrying out the purposes hereof. The title to all such property, personal or real, needed for the West Haymarket Facilities shall be held in the name of the Agency for so long as any Agency Bonds shall remain outstanding. The Agency shall convey all of its interest in the West Haymarket Facilities to the City at such time as no Agency Bonds remain outstanding. The Agency shall comply with the applicable bidding procedures of the City. The City shall perform the functions of the purchasing agent designated therein.

All conveyances of real property owned or held in the name of the Agency shall be authorized by resolution of the Board and executed by the Chair.

ARTICLE XV

AMENDMENT

This Agreement may be amended in writing, signed by all the Participants; provided, however, no amendment may be made limiting the duty of the Agency or the Participants to levy and collect taxes for the payment of any Agency Bonds. Any amendment hereto must first be approved by resolution of the governing body of each Participant. The amended and restated Agreement shall be filed with the Nebraska Secretary of State.

ARTICLE XVI

In exercising its authority and carrying out its duties and functions the Agency shall not discriminate against any employee, applicant for employment, contractor, potential contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor

Approved as to Form and Legality:

City Attorney

ATTEST:

**BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA**

Corporate Secretary

By: _____
James B. Milliken, President

Approved as to Form and Legality:

General Counsel, University of Nebraska

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by James B. Milliken, President of the Board of Regents of the University of Nebraska, a public body corporate.

Notary Public